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UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

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CONCERNED CITIZENS)
 COALITION,)
Plaintiff,)
 v.)
 FEDERAL HIGHWAY)
 ADMINISTRATION,)
Defendant.)

CV 03-292-A-MZ
 Judge Parker
 Magistrate Noland

COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

Plaintiff Concerned Citizens Coalition makes the following allegations upon knowledge as to itself and upon information and belief as to all other matters:

I. INTRODUCTION

1. This action concerns the Federal Highway Administration's ("Highway Administration") proposal to construct an interstate highway ("the I-49 Connector") through the historic heart of Lafayette, Louisiana. As approved by the Highway Administration in its Record of Decision ("ROD"), the I-49 Connector will use federally protected parkland and historic properties in Lafayette despite the existence of prudent and feasible alternatives. By approving the I-49 Connector, the Highway Administration violated the express provision of section 4(f) of the Department of Transportation Act ("section 4(f)"), which prohibits federal projects that will "require the

use of any publicly owned land from a public park, recreation area . . . or any land from an historic site of national, State, or local significance” if there are "prudent and feasible" alternatives. 23 U.S.C. § 138.

2. In addition, the National Environmental Policy Act ("NEPA") and the National Historic Preservation Act ("NHPA") require the Highway Administration to examine the I-49 Connector's potential impacts on the environment and historic properties. The Highway Administration violated NEPA and the NHPA by failing to examine reasonable alternatives that would have fewer impacts on historic properties and the environment, failing to study the cumulative impacts of the I-49 Connector and foreseeable and planned highway projects, and failing to adequately evaluate the I-49 Connector's effects on historic properties in Lafayette Parish.

II. JURISDICTION

3. This Court has jurisdiction over the action pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction), the Administrative Procedure Act ("APA"), 5 U.S.C. § 702 (governing judicial review of final agency actions), 28 U.S.C. § 2201 (governing actions for declaratory relief), and 16 U.S.C. § 470w-4 (the citizen suit provision of NHPA).

III. VENUE

4. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e)(2) because “a substantial part of the events or omissions giving rise to [this] claim occurred” in this district when the Highway Administration prepared and issued the Final Environmental Impact State ("Final EIS") and ROD for the I-49 Connector.

IV. PARTIES

Plaintiff

5. Plaintiff Concerned Citizens Coalition is a non-profit corporation organized under the laws of the State of Louisiana composed of residents of Lafayette. The Concerned Citizens Coalition's purpose is to protect and improve the quality of its members' environment and neighborhoods, including Sterling Grove and other neighborhoods that will be adjacent to the I-49 Connector.

6. Concerned Citizens Coalition's members live, work, and recreate in the Sterling Grove National Historic District ("Sterling Grove") and other neighborhoods that will be adjacent to the I-49 Connector. The I-49 Connector will impair the members' use and enjoyment of these areas because of the increased noise, visual blight, and safety risks resulting from an elevated interstate highway running adjacent to these neighborhoods.

7. In addition, Concerned Citizens Coalition's members use the recreational facilities at Beaver Park, the Lil Woods Playground, and the Acadian Culture Unit of Jean Lafitte National Historical Park and Preserve. The I-49 Connector will diminish the members' use and enjoyment of the parks through the increased noise and visual blight created by an elevated interstate highway running through and near the parks.

8. There is no adequate remedy at law to redress the members' injuries once the harm has occurred.

Defendant

9. Defendant Federal Highway Administration is an agency of the federal government. The Highway Administration is the lead agency in developing the I-49 Connector.

V. OVERVIEW

10. In 1990, the Highway Administration began studying the construction of an interstate highway through Lafayette, Louisiana. In 1992, the Highway Administration issued a Draft Environmental Impact Statement ("Draft EIS") that proposed constructing a highway through Lafayette. Because of the potential harm to the community, the Draft EIS was met with widespread public opposition. The proposal was never finalized.

11. Despite the opposition to the previous proposal, the Highway Administration issued a second Draft EIS proposing to construct a highway through Lafayette on October 31, 2000. The purposes articulated by the Highway Administration for the project included relieving traffic congestion in Lafayette and providing a hurricane evacuation route for south Louisiana.

12. Concerned Citizens Coalition members submitted timely comments on the Draft EIS and raised among other concerns the existence of reasonable alternatives that were not included in the Draft EIS, the potential impacts on historic properties, the potential impact on low-income and minority households, and the failure to study many potential environmental impacts.

13. The Highway Administration issued a Final EIS on August 30, 2002. The Highway Administration selected RR-4 Alternative as the "preferred alternative." Under

this alternative, the I-49 Connector will be constructed as an elevated highway running through or adjacent to historic properties and parkland in Lafayette. The cost is more than \$304 million.

14. The Final EIS does not include discussion of any alternatives not included in the Draft EIS.

15. In both the Draft EIS and the Final EIS, the agency studied seven alternatives, including a "no-build" alternative. Of the six "build" alternatives, all are located fully or substantially within the existing Evangeline Thruway corridor. Of those alternatives that are partly off the corridor, all remain within 2000 feet of the corridor.

16. All of the alternatives would displace numerous low-income and minority households.

17. The Concerned Citizens Coalition submitted timely comments on the Final EIS on October 31, 2002.

18. In January 2003, the Highway Administration issued a Record of Decision ("ROD") approving the I-49 Connector. The ROD selected the Elevated RR-4 Alternative.

19. The Highway Administration violated section 4(f) by approving the I-49 Connector because that project will "require[] the use of . . . publicly owned land from a public park . . . [and] land from an historic site of national, State, or local significance" despite the existence of "feasible and prudent" alternatives to the project. See 23 U.S.C. § 138.

20. The Highway Administration also violated NEPA by: (1) failing to consider foreseeable and cumulative environmental impacts of the proposed action and; (2) failing to consider all reasonable alternatives in the Final EIS.

21. The Highway Administration also violated the National Historic Preservation Act by failing to “make a reasonable and good faith effort” to identify historic properties that will be affected by the I-49 Connector, and failing to adequately evaluate the historic properties that the agency did identify.

22. Construction of the I-49 Connector, as planned, will irreparably harm the Concerned Citizens Coalition by damaging the quality of their neighborhoods and recreation areas.

VI. LEGAL BACKGROUND

SECTION 4(f)

23. Section 4(f) prohibits the approval of any transportation project “which requires the use of any publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge . . . or any land from an historic site of national, State, or local significance” unless there is “no feasible and prudent alternative” to the use of the protected site. 23 U.S.C. § 138.

24. The Highway Administration's regulations define “historic site of national, State, or local significance” under section 4(f) as any site “on or eligible for the National Register.” 23 C.F.R. § 771.135(e).

25. Under Highway Administration regulations, transportation projects "use" a site protected by section 4(f) in three ways: (1) permanent incorporation of land into a

transportation facility, (2) temporary adverse occupation of land, and (3) constructive use of the land. 23 C.F.R. § 771.135(p)(1).

26. Constructive use of a protected site occurs when “the project’s proximity impacts are so severe that . . . the protected activities, features, or attributes of the [site] are substantially diminished.” *Id.* § 771.135(p)(2).

27. An example of constructive use is when the “projected noise level increase attributable to the project substantially interferes with the . . . enjoyment of an urban park where serenity and quiet are significant attributes[.]” *Id.* § 771.135(p)(4)(i).

28. Constructive use also occurs where the “proximity of the proposed project substantially impairs esthetic features or attributes of a resource protected by section 4(f), where such features or attributes are considered important contributing elements to the value of the resource. Examples of substantial impairment to visual or esthetic qualities would be the location of a proposed transportation facility in such proximity that it . . . substantially detracts from the setting of a park or historic site which derives its value in substantial part due to its setting[.]” *Id.* § 771.135(p)(4)(ii).

29. In addition, constructive use also occurs where the “project results in a restriction on access which substantially diminishes the utility of a significant publicly owned park, recreation area, or a historic site[.]” *Id.* § 771.135(p)(4)(iii).

30. An alternative is “feasible and prudent” so long as it can be built “as a matter of sound engineering policy.” *Citizens to Protect Overton Park v. Volpe*, 401 U.S. 402, 411 (1971) overruled on unrelated grounds by *Califano v. Sanders*, 430 U.S. 99 (1997).

31. If all “feasible and prudent alternative[s]” to a transportation project would use protected property, section 4(f) requires the project to “include[] all possible planning to minimize harm to” the property. 23 U.S.C. § 138. In a situation where all alternatives to a transportation project would use protected land, the Highway Administration must choose the alternative that has the least adverse impacts on the protected land.

NEPA

32. NEPA directs that “to the fullest extent possible . . . all agencies of the federal government shall . . . include in [all] major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official” 42 U.S.C. § 4332(C).

33. Under NEPA, agencies are required to “(i) consider the environmental impacts of the proposed action; (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented, [and] (iii) alternatives to the proposed action” before taking action. Id.

34. An agency must consider cumulative impacts. 40 C.F.R. § 1508.7. These are impacts “which result[] from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” Id.

35. An agency is required to consider effects or impacts of a proposed project, including, “(a) Direct effects, which are caused by the action and occur at the same time and place [and] (b) Indirect effects, which are caused by the action and are later in time or

farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems... Effects includes ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative.” Id. § 1508.8.

36. The alternatives requirement lies at the “heart of the environmental impact statement.” Id. § 1502.12. The agency is required to “[r]igorously explore and objectively evaluate all reasonable alternatives.” Id. § 1502.12(a). Additionally, the agency must “[d]evote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits.” Id. § 1502.12(b).

NHPA

37. NHPA § 106 requires any federal agency with “jurisdiction over a proposed Federal or federally assisted undertaking [to] . . . take into account the effect of the undertaking on any . . . site . . . that is included in or eligible for inclusion in the National Register.” 16 U.S.C. § 470f.

38. The Advisory Council on Historic Preservation (“Council”) has mandated three basic steps federal agencies must follow to comply with NHPA § 106. 36 C.F.R. § 800.

39. To comply with NHPA §106, an agency must locate and evaluate all historic sites in the vicinity of the project. Id. § 800.4. To do this, the agency must

identify the project's "area of potential effect." Id. The "area of potential effect" is "the geographic area or areas within which an undertaking may directly or indirectly cause alterations in the character or use of historic properties, if any such properties exist." Id. § 800.16(d). The agency must then "make a reasonable and good faith effort" to locate all historic sites within the "area of potential effect." Id. § 800.4(c). The agency must consult with the State Historic Preservation Officer throughout this process. Id.

40. To comply with NHPA §106, the agency, in consultation with the State Historic Preservation Officer, must assess the effects the project will have on historic sites. Id. § 800.5. The agency and the State Historic Preservation Officer must base this assessment on the Council's "criteria of adverse effect." Id. § 800.5(a)(1). Under these criteria, "[a]n adverse effect is found when an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the Federal Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association Adverse effects may include reasonably foreseeable effects caused by the undertaking that may occur later in time, be farther removed in distance or be cumulative." Id.

41. Examples of adverse effects under the Council's criteria include "introduction of visual, atmospheric or audible elements that diminish the integrity of the property's significant historic features[.]" Id. § 800.5(a)(2).

42. To comply with NHPA §106, the agency must attempt to resolve the adverse effects a project will have on a historic site. Id. § 800.6. This entails consulting with the State Historic Preservation Officer and notifying the Council itself of any adverse effect the project will have on a historic site. Id. § 800.6(a). These parties may

then enter into a "Memorandum of Agreement" which contains measures to resolve or mitigate the adverse effects. *Id.* § 800.6(b)(1)(iv). The Memorandum of Agreement is then binding on the agency in carrying out the project. *Id.* § 800.6(c).

43. The NHPA creates a private cause of action under which citizens may sue a federal agency to enforce the provisions of the statute. 16 U.S.C. § 470w-4.

APA

44. The APA provides for judicial review of federal administrative agency actions. Thus, the APA provides the vehicle for redress of NEPA and section 4(f) violations.

45. The APA defines a person as "an individual, partnership, corporation, association or public or private organization other than an agency." 5 U.S.C. § 551(2).

46. Agency means "each authority of the Government of the United States, whether or not it is within or subject to review by another agency." 5 U.S.C. § 701(1); 5 U.S.C. § 551(1).

47. Agency action includes the whole or a part of an agency order. An order is defined as "the whole or part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency." 5 U.S.C. § 551(6).

48. Any person "adversely affected or aggrieved by agency action" within the meaning of NEPA, is entitled to judicial review thereof. 5 U.S.C. § 702.

VII. GENERAL ALLEGATIONS

49. The Final EIS and ROD are final agency actions.

50. The I-49 Connector will have substantial adverse effects on Sterling Grove, including increased noise and visual impacts. In addition, the I-49 Connector will

increase the isolation of the Sterling Grove neighborhood from other areas of Lafayette, such as the Central Business District, and increase safety risks by increasing traffic.

51. In the Final EIS and the ROD, the Highway Administration acknowledges that the I-49 Connector will have an adverse visual effect on Sterling Grove.

52. The I-49 Connector will also have substantial adverse effects on Beaver Park, the Lil Woods Playground, and the Acadian Culture Unit of Jean Lafitte National Historical Park and Preserve.

53. The I-49 Connector will run through Beaver Park.

54. In the Final EIS and the ROD, the Highway Administration acknowledges that the project will increase noise at Beaver Park.

55. In its Section 106 Report, the Highway Administration failed to adequately examine the I-49 Connector's impacts on two of the three historic properties evaluated in the Section 106 Report (an appendix to the Final EIS). These properties are: (1) Sterling Grove and (2) the Trappey's Plant Complex.

56. The Highway Administration identified eight additional historic properties in the Section 106 Report but completely failed to examine the I-49 Connector's impacts on those properties. These properties are: (1) Charles H. Mouton House, (2) the Evangeline Hotel, (3) Caffery House, (4) Heymann Department Store, (5) Sans Souci, (6) Good Hope Hall, (7) N.P. Moss School, and (8) Arceneaux House.

57. The I-49 Connector will have substantial adverse impacts on 10 of the 11 historic properties identified in the Section 106 Report: (1) Sterling Grove, (2) the Trappey's Plant Complex (3) Charles H. Mouton House, (4) the Evangeline Hotel,

(5) Caffery House, (6) Heymann Department Store, (7) Sans Souci, (8) Good Hope Hall, (9) N.P. Moss School, and (10) Arceneaux House properties. Adverse impacts on the historic properties include increasing noise, visual blight, and the isolation of the properties.

58. The Highway Administration failed to examine the I-49 Connector's impacts on other historic properties in Lafayette Parish because it only examined impacts within a five-mile area.

59. The Highway Administration failed to consider reasonable alternatives to the proposed action.

60. The Highway Administration limited its consideration of alternatives to those that lay on or within 2000 feet of the current Evangeline Thruway.

61. Neither the Final EIS nor the ROD studied other reasonable alternatives, including the Teche Ridge Route and improved public transit.

62. The Teche Ridge Alternative is an alignment that would route I-49 to the east of the city, through St. Martin Parish. The selected I-49 Connector would cost almost twice as much as the Teche Ridge Alternative and would take up to seven years longer to build.

63. The Teche Ridge Alternative would relieve traffic in Lafayette by routing traffic around the city and would be a better route for hurricane evacuation.

64. Public transit improvements would cost less to implement than the selected alternative and would ease congestion on the Evangeline Thruway.

65. In its comments, the Concerned Citizens Coalition asked the Highway Administration to consider both the Teche Ridge Alternative and public transit

improvement alternatives. However, the Highway Administration never analyzed either the Teche Ridge Alternative or improved mass transit as an alternative in any NEPA document for the I-49 Connector.

66. The Highway Administration did not study the cumulative environmental effects of the proposed action when added to other past, present, or reasonably foreseeable future highway projects.

67. In the Final EIS, the Highway Administration identified expanding I-90 and extending I-49 to New Orleans as foreseeable highway projects, but did not study the cumulative impacts of these projects.

68. In the ROD, the Highway Administration did not include any additional alternatives and did not examine the cumulative effects of the I-49 Connector and foreseeable highway projects.

69. In the ROD, as in the Draft EIS and Final EIS, the Highway Administration stated that section 4(f) does not apply to the I-49 Connector.

70. In the ROD, the Highway Administration did not enlarge the area of potential effects, nor did it adequately evaluate the I-49 Connector's effects from the historic properties that it did identify.

VIII. FIRST CAUSE OF ACTION

SECTION 4(f): USE OF PARKS

71. Plaintiff realleges and incorporates by reference 1-70.

72. Beaver Park, the Lil Woods Playground, and the Acadian Culture Unit of Jean Lafitte National Historical Park and Preserve are public parks.

73. The I-49 Connector will use Beaver Park by passing directly through it.

74. The I-49 Connector will use Beaver Park, the Lil Woods Playground, and the Acadian Culture Unit of Jean Lafitte National Historical Park and Preserve by substantially increasing noise and adverse visual impacts.

75. There are feasible and prudent alternatives to the use of Beaver Park, the Lil Woods Playground, and the Acadian Culture Unit of Jean Lafitte National Historical Park and Preserve.

76. The Highway Administration violated section 4(f) by failing to select a feasible and prudent alternative to the use of Beaver Park, the Lil Woods Playground, and the Acadian Culture Unit of Jean Lafitte National Historical Park and Preserve.

77. The I-49 Connector does not include all possible planning to minimize harm to Beaver Park, the Lil Woods Playground, and the Acadian Culture Unit of Jean Lafitte National Historical Park and Preserve.

78. The Highway Administration violated section 4(f) because it failed to include all possible planning to minimize harm to Beaver Park, the Lil Woods Playground, and the Acadian Culture Unit of Jean Lafitte National Historical Park and Preserve.

IX. SECOND CAUSE OF ACTION

SECTION 4(f): USE OF HISTORIC PROPERTIES

79. Plaintiff realleges and incorporates by reference 1-70.

80. Sterling Grove is on the National Register of Historic Places.

81. The I-49 Connector will use Sterling Grove by having a substantial adverse visual impact on Sterling Grove, increasing noise in Sterling Grove, restricting

access to Sterling Grove, and substantially detracting from Sterling Grove's setting in the heart of historic Lafayette.

82. The I-49 Connector will have adverse effects on, and thus use, other historic properties in Lafayette Parish.

83. There are feasible and prudent alternatives to the use of Sterling Grove and other historic properties in Lafayette Parish.

84. The Highway Administration violated section 4(f) by failing to select a feasible and prudent alternative to the use of Sterling Grove and other historic properties in Lafayette Parish.

85. The I-49 Connector does not include all possible planning to minimize harm to Sterling Grove, and the other historic properties in Lafayette Parish.

86. The Highway Administration violated section 4(f) because it failed to include all possible planning to minimize harm to Sterling Grove, and the other historic properties.

X. THIRD CAUSE OF ACTION

NEPA: FAILURE TO CONSIDER CUMULATIVE IMPACTS

87. Plaintiff realleges and incorporates by reference paragraphs 1-70.

88. The Highway Administration is a federal agency responsible for the I-49 Connector.

89. The I-49 Connector is major federal action significantly affecting the human environment.

90. The Highway Administration failed to consider the cumulative effects resulting from the I-49 Connector and planned or reasonably foreseeable highway projects.

91. The Highway Administration's failure to consider cumulative effects violates NEPA. 42 U.S.C. § 4332(C)(i); 42 U.S.C. § 4332(C)(ii).

XI. FOURTH CAUSE OF ACTION

NEPA: FAILURE TO CONSIDER ALTERNATIVES

92. Plaintiff realleges and incorporates by reference paragraphs 1-70.

93. The Highway Administration is the federal agency responsible for the I-49 Connector.

94. The I-49 Connector is major federal action significantly affecting the human environment.

95. The Concerned Citizens Coalition brought reasonable alternatives to the I-49 Connector, including routes outside the city and mass transit improvements, to the Highway Administration's attention.

96. Despite the existence of reasonable alternatives, the Highway Administration did not study these alternatives in the Draft EIS, Final EIS, or ROD.

97. The Highway Administration's failure to study reasonable alternatives violates NEPA. 42 U.S.C. § 4332(C)(iii).

XII. FIFTH CAUSE OF ACTION

NHPA

98. Plaintiff realleges and incorporates by reference paragraphs 1-70.

99. The area of potential effects that the Highway Administration studied does not include all areas of Lafayette Parish within which the I-49 Connector may directly or indirectly cause alterations in the character or use of historic properties.

100. The Highway Administration failed to make a reasonable and good faith effort to identify all historic properties that will be affected by the I-49 Connector.

101. The Highway Administration failed to adequately examine the impacts of the I-49 Connector on ten of the historic properties it did identify. These properties are: (1) Sterling Grove, (2) the Trappey's Plant Complex (3) Charles H. Mouton House, (4) the Evangeline Hotel, (5) Caffery House, (6) Heymann Department Store, (7) Sans Souci, (8) Good Hope Hall, (9) N.P. Moss School, and (10) Arceneaux House.

102. The Highway Administration has violated the NHPA by not adequately taking into account the I-49 Connector's effects on historic sites in Lafayette Parish

XIII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for judgment as follows:

A. An order enjoining the Highway Administration from proceeding with construction of the I-49 Connector because of its use of historic properties and parkland;

B. An order enjoining the Highway Administration from proceeding with construction of the I-49 Connector until defendant fully complies with NEPA requirements in preparing a new EIS, or in the alternative a Supplemental EIS, to fully address environmental impacts of the project, including: (1) a full range of reasonable

alternatives and (2) an analysis of the cumulative impacts of the project in conjunction with other planned highway projects;

C. An order enjoining the Highway Administration from proceeding with construction of the I-49 Connector until defendant fully complies with NHPA requirements in preparing a new section 106 report including: (1) an analysis of the full area of potential effects from the project and (2) a full analysis of the effects the project will have on all the historic properties within the area of potential effects;

D. A declaration that the Highway Administration has violated section 4(f) by approving the I-49 Connector because it will use protected historic property and parkland;

E. A declaration that the Highway Administration has violated NEPA by not considering all reasonable alternatives or foreseeable cumulative impacts;

F. A declaration that the Highway Administration has violated NHPA by not adequately taking into account the I-49 Connector's effects on historic sites in Lafayette Parish;

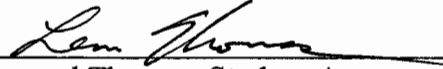
G. An award for expenses, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d), and any other applicable laws;

H. An award of costs of litigation, and expert witness fees pursuant to 16 U.S.C. § 470W-4 and any other applicable laws. The Plaintiff does not, however, seek attorney fees;

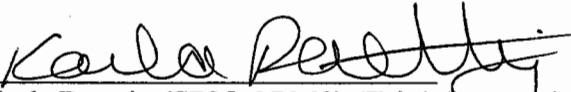
I. An award of such other relief as the Court deems just and proper.

Respectfully Submitted on April 15, 2003,

TULANE ENVIRONMENTAL LAW CLINIC



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