

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

LATIN AMERICANS FOR SOCIAL AND
ECONOMIC DEVELOPMENT, CITIZENS
WITH CHALLENGES, DETROIT ASSOCIATION
OF BLACK ORGANIZATIONS, DETROITERS
FOR PROGRESS, MANA DE METRO DETROIT,
MEXICAN PATRIOTIC COMMITTEE OF METRO
DETROIT, DETROIT INTERNATIONAL BRIDGE
COMPANY,

Plaintiffs,

-vs-

Case No. 10-10082
Hon: AVERN COHN

The ADMINISTRATOR of the Federal Highway
Administration, in his official capacity, THE FEDERAL
HIGHWAY ADMINISTRATION, JAMES J. STEELE,
in his official capacity as the Michigan Division
Administrator of the Federal Highway Administration,
an individual,

Defendants.

MEMORANDUM

I.

This is an Administrative Procedures Act (APA) case involving a challenge to the Federal Highway Administration's (FHWA) January 4, 2009 Record of Decision (ROD) approving a proposed United States/Canada international bridge crossing with the Detroit side in the Delray area. Plaintiffs include a number of community organizations with ties to the Delray area as well as the operators of the Ambassador Bridge, an international bridge crossing located approximately two miles from the proposed

crossing. Plaintiffs claim that defendants—the Administrator of the FHWA, the Michigan Division Administrator of the FHWA, and the FHWA (collectively “the government”)—failed to comply with the requirements of the National Environmental Protection Act (NEPA), Section 4(f) of the Department of Transportation Act (Section 4(f)), and Section 106 of the Historic Preservation Act when they issued the ROD.

II.

On January 19, 2011, the Court held an on-the-record conference in the case. This memorandum memorializes the actions taken at the conference.

Pending before the Court are plaintiffs’ renewed motion for discovery (Doc. 36), which is fully briefed, and the government’s motion to affirm the administrative decision (Doc. 29).¹

The government has advised plaintiffs that they will entertain supplementing the administrative record to include specific items that plaintiffs state should be part of the record if the government believes they arguably should be part of the record. The parties have thirty (30) days to meet and confer.

As to the administrative record, the government shall lodge with the Court a list of the reports and studies underlying the ROD, including the full name of each report and study and its acronym.

After the government has advised the Court that the administrative record is complete, the Court will issue a ruling on plaintiffs’ renewed motion to supplement

¹As noted at the conference, plaintiffs’ motion for discovery (Doc. 16) is MOOT in light of defendants’ renewed motion. Likewise, defendants’ motion for extension of time (Doc. 47) is MOOT in light of defendants’ response to plaintiffs’ renewed motion (Doc. 51).

discovery.

After the Court rules, the government shall advise the Court whether it intends to file an amended motion to affirm the administrative decision, and an amended statement of material facts not in dispute. If so, the Court shall be promptly notified of the government's intent to do so. This will enable the Court to better set the time for plaintiffs' response to the motion to affirm.

Plaintiffs should keep in mind that a review of the administrative decision is based on the administrative record compiled by the agency. Circumstances that require supplementation of the administrative record are extremely narrow. Objections to the administrative record are best dealt with in a response to a motion to affirm.

SO ORDERED.

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: January 24, 2011

I hereby certify that a copy of the foregoing document was mailed to the attorneys of record on this date, January 24, 2011, by electronic and/or ordinary mail.

S/Julie Owens
Case Manager, (313) 234-5160