

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION

NO. 2:17-CV-4-FL

SAVE OUR SOUND, OBX, INC., )  
THOMAS ASCHMONEIT, RICHARD )  
AYELLA, DAVID HADLEY, MARK )  
HAINES, JER MEHTA, and GLENN )  
STEVENS )

Plaintiffs, )

v. )

NORTH CAROLINA DEPARTMENT OF )  
TRANSPORTATION, JAMES H. )  
TROGDON, III, in his official capacity as )  
Secretary of the North Carolina )  
Department of Transportation, FEDERAL )  
HIGHWAY ADMINISTRATION, and )  
JOHN F. SULLIVAN, III, in his official )  
capacity as Division Administrator for the )  
Federal Highway Administration, )

Defendants, )

and )

DEFENDERS OF WILDLIFE and )  
NATIONAL WILDLIFE REFUGE )  
ASSOCIATION,<sup>1</sup> )

Intervenor-Defendants. )

ORDER AMENDING  
ORDER ON JOINT MOTION  
FOR BRIEFING SCHEDULE

This matter is before the court, sua sponte, to revisit decision on the parties' joint motion for briefing schedule, (DE 41), wherein the parties moved to allow defendants Federal Highway

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<sup>1</sup> Where defendant-intervenors Defenders of Wildlife and National Wildlife Refuge Association's motion to intervene (DE 19) was granted, the caption is amended so to reflect.

Administration and John F. Sullivan, III (collectively “the federal defendants”), to lodge the administrative record in the form of “electronic media in lieu of a paper copy,” which motion was allowed. (DE 43). Pursuant to the Eastern District of North Carolina’s Electronic Case Filing Administrative Policies and Procedures Manual, the only exception for filing electronically is to file in paper form. As the administrative record is part of the court record, and the court record must be available to the public, where the public terminals in the clerk’s office are not configured to accept electronic media, it will not be possible for counsel to file a USB drive<sup>2</sup> or other electronic medium in lieu of filing the documents electronically through CM/ECF or in paper form. Also in light of plaintiffs’ recent motion to compel, the court’s March 23, 2017, order granting joint motion for briefing schedule, (DE 43), is amended as follows:

1. Where on August 28, 2017, plaintiffs moved to compel completion of the administrative record seeking inclusion of “all non-privileged documents regarding settlement negotiations between Defendants and Defendant-Intervenors in Defenders of Wildlife v. North Carolina Department of Transportation, No. 2:11-CV-35 (E.D.N.C.), to which Defendant Federal Highway Administration (“FHWA”) was a party or that were in FHWA’s possession prior to April 30, 2015” (“disputed materials”), (DE 60), as set forth above, the disputed materials must be filed in CM/ECF.
2. The parties shall file a joint status report within seven days hereof including their proposal for filing disputed materials in CM/ECF, as needed, to resolve the pending

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<sup>2</sup> On July 7, 2017, the federal defendants placed notice on the record that a USB drive containing the administrative record was lodged with the clerk, and a courtesy copy provided to chambers. (DE 59).

motion to compel.

- a. If the disputed materials are not voluminous, the parties shall consider utility of electronically filing the disputed materials directly on this docket, as an attachment to the joint status report.
  - b. If the disputed material are voluminous, the parties shall include in the report their proposal for filing on the docket disputed materials in electronic form.<sup>3</sup>
3. Plaintiffs shall, at the time of filing of the joint status report, also tender to the court duplicate electronic copies of the disputed materials including a searchable index with hyperlinks to searchable documents in PDF format, if efficiencies reasonably will accrue to the court in having the disputed materials accessible also through this means. This and any questions the parties may have concerning these procedures may be discussed more particularly at pending status conference.
  4. At said Rule 16 telephonic status conference set for September 1, 2017, at 11:00 a.m., the court also may address 1) deadline for lodging the settled administrative record in CM/ECF; 2) the federal defendants' response time pertaining to motion to compel filed August 28, 2017, where their response pending determination of filing

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<sup>3</sup> For an example of the docketing procedure for voluminous administrative records, see the court's docket in Defenders of Wildlife v. North Carolina Department of Transportation, No. 2:11-CV-35-FL (E.D.N.C.), with reference also to the corresponding miscellaneous case file housing the case's administrative record. If the parties deem efficiencies will accrue if the administrative record is segregated into several miscellaneous files (for example, a file particular to documents contained in USB drives provided to the court, (DE 59), now bearing bates stamps "AR" and another file particular to documents bearing bates stamps "RD")), for ease of reference or some other reason, they shall offer their particular filing proposal in the report. For an additional example of the court's case management procedures for actions involving records generated pursuant to the Administrative Procedure Act, see Sierra Club v. North Carolina Department of Transportation, No. 4:16-CV-300-FL (E.D.N.C.) (DE 35).

issues herein discussed now is stayed; and, 3) where the record is contested upon that motion to compel, a revised schedule for summary judgment briefing.

SO ORDERED, this the 29th day of August, 2017.

  
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LOUISE W. FLANAGAN  
United States District Judge