

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 HEDLEY 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,)

Intervener-Defendants.)

ORDER

This matter is before the court following court-hosted telephonic conference September 1, 2017, pursuant to Federal Rule of Civil Procedure 16(a), with plaintiffs appearing through counsel Michael K. Murphy, Brazen C. Smith, and Zia Gatley; defendants North Carolina Department of Transportation and James H. Trogdon, III (collectively, “the state defendants”), appearing through

counsel John G. Batherson, Colin Justice, and Mollie Cozart; defendants Federal Highway Administration and John F. Sullivan, III (collectively “the federal defendants”), appearing through counsel Carter Fleeth Thurman; and Intervener-defendants Defenders of Wildlife and National Wildlife Refuge Association appearing through counsel Kimberly Hunter and Nicholas S. Torrey. This order memorializes the court’s oral pronouncements, including amendments to the court’s prior order amending order on joint motion for briefing schedule. The court also memorializes herein its orders upon the federal defendants’ oral motion for reconsideration of issues pertinent to filing of the administrative record, and plaintiffs’ oral motion for privilege log.

SUMMARY OF ISSUES ADDRESSED

A. Miscellaneous Case Filing Considerations

The federal defendants’ oral motion for reconsideration of the court’s determination that the administrative record shall be filed in CM/ECF in a miscellaneous case file, on a date to be decided, was denied. Request to be able to reference portions of the electronic case record in the prior related case also was denied. Counsel was encouraged to work closely with the clerk’s office in advance of filing to make certain of procedures governing filing of voluminous materials in a companion miscellaneous file.

B. Privilege Log

With regard to plaintiffs’ motion to compel completion of the administrative record, (DE 60), at conference, plaintiffs moved that the federal defendants be required to maintain and produce a privilege log identifying documents withheld under claims of attorney-client privilege or the work product doctrine, which motion was allowed.


C. Motion to Compel and Related Considerations

The court lifted stay of the federal defendants' deadline to respond to the motion to compel and reimposed the original response deadline of September 19, 2017.

While local rules ordinarily do not permit replies in discovery motions, plaintiffs were granted opportunity to make reply to any response no later than September 26, 2017. (If plaintiffs deem reply unnecessary, plaintiffs immediately shall lodge notice of such determination on the docket).

Upon consideration of concerns raised by the federal defendants concerning filing of the disputed materials, the court negated requirement for filing of any joint report. No joint status report as previously ordered need be made. Rather, the federal defendants shall file the disputed materials together with the privilege log, **ex parte, in camera under seal**, by September 19, 2017, at which time their response is due. The court also negated prior directive, given representations today the disputed materials are minimal, that electronic copy including a searchable index with hyperlinks separately be provided to chambers.¹

SO ORDERED, this the 1st day of September, 2017.



LOUISE W. FLANAGAN
United States District Judge

¹ The court notes deadlines for filing the settled administrative record and any dispositive motion remain to be decided. The state defendants informed at conference that the project remains on schedule, with ground-disturbing activities set to begin March 2018.