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9-12-09

**Statement of Converse M. West at the City Council Public Hearing
Regarding Proposed Hot Lanes Project on I-95 & I-395
Saturday, September 12, 2009**

My name is Converse West and I live on North Pickett Street. I want to take my two minutes to give you an update and a “heads up” on the “hot lanes” situation.

As you probably know, Arlington County filed a suit in the District of Columbia Circuit Court to challenge the Secretary of Transportation’s waiver of environmental studies for this project. Actually, my nephew Arthur West filed a similar suit one day prior to that filing and his suit is in the U.S. District Court for the Eastern District of Virginia at Alexandria. A copy of that suit has been provided to the Clerk of the Council.

And now here is the back story. I call my nephew the “Ralph Nader of the Northwest” because for 30 years from his home in Olympia, Washington he has seen to it that our National Forests remain intact and that Puget Sound stays pure and free of contamination. He doesn’t do this for money. His office is the nearest Starbucks and he buys his suits at the Salvation Army.

Last month Arthur came to stay with me for a month and after we did Mt. Vernon and the Newseum we got into a discussion of current issues affecting Northern Virginia. Arthur looked at the specifics of the hot lanes project (and the devastation already occurring on the beltway) and concluded that the project over-all has marginal justification and for those who live in Arlington and Alexandria inside the beltway there is a potential for substantial negative impact.

Arthur is the type of person who involves himself fully in a project. He pulled at least two “all-nighters” and spent an entire week accessing data bases in Richmond and Texas, where the contracting company is located, and he contacted by Email officials in Arlington and he had long conversations with the *Washington Post* reporters who are covering the story. Finally, he dug into his own pocket for the \$350 filing fee and as a private citizen entered the suit.

He reviewed a copy of Arlington County’s suit, filed a day later, and he is fully supportive of their objectives, but points out that the Arlington attorney missed noting the U.S. Code that limits DC jurisdiction to claims against federal officers. Arthur very much hopes that Arlington will join in his suit and he intends to file a motion for consolidation. He also hopes, as I do, that Alexandria will join with Arlington in pursuing this matter.

I feel that the hot lanes project is outrageous and personally hope that Alexandria will take a strong stand on this issue, whether or not you wish to join Arthur’s suit.

If I have any time left, I want to take this opportunity to welcome the new members of Council and to wish the very best to those returning incumbents who I am sure will continue to do the outstanding work that ensured their re-election.

FILED

2009 AUG 18 A 9 51

CLERK US DISTRICT COURT
ALEXANDRIA, VIRGINIA

UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA-AT ALEXANDRIA

ARTHUR S. WEST,
Plaintiff,

Vs.

Case No. 1:09cv923
(AJT/TCB)

PIERCE R. HORNER, DAVID S. EKERT,
RAY LAHOOD, FEDERAL HIGHWAY
ADMINISTRATION,
Defendants

PLAINTIFF'S ORIGINAL
COMPLAINT FOR
VIOLATION OF NEPA

I. INTRODUCTION

This is an action for declaratory and injunctive relief in regard to an improper Categorical Exclusion, and to require compliance with the National Environmental Policy Act in regard to the proposed, improperly segmented, and ill defined I 95-395 HOT Lanes Project in the Eastern District of Virginia. Plaintiff seeks an order requiring appropriate NEPA documentation for the entire project¹ in the form of an EIS or FONSI, and the appropriate traffic, economic, and cumulative impact studies, in addition to a full consideration of alternatives.

II. JURISDICTION

2.1 The jurisdiction of this Court is conferred by and invoked pursuant to federal question jurisdiction under 28 U.S.C. 1331, the Administrative Procedure Act, 5 U.S.C. 702, and 704, and the National Environmental Policy Act, 42 USC 4331, et sequ.

¹ To include binding HOT Lane rate schedules, complete and specific final project elements, proposed mitigation measures, and the terms of the suspect "Comprehensive agreement" with Fluor-Transurban whereby "the Concessionaire will have the responsibility for compliance with NEPA" (See Exhibit 1, CTB Resolution, Page 2)

PLAINTIFF'S
ORIGINAL
COMPLAINT

AWestaa@Gmail.com

ARTHUR S. WEST
120 State Ave NE #1497
Olympia, WA. 98501

1 2.2 The jurisdiction of this court is also conferred by and invoked pursuant to 28 U.S.C. 1346 by
2 virtue of the naming of one agency of the U.S. Government as defendant to this action.

3 **III. PARTIES**
4

5 3.1 Plaintiff West is a citizen and a member of that discreet class of persons authorized to drive
6 on our National Highways. He has travelled repeatedly upon the I 95-395 Interstate and the
7 Shirlington Interchange, and employed the immediate vicinity of the project and the Shirlington
8 Town Center for leisure, recreation, and entertainment purposes. He has standing to maintain this
9 action because the alteration of traffic patterns caused by the project will impact the safety of
10 travel near and upon the interchange as well as his esthetic and recreational enjoyment of the
11 area, which will be degraded by the increase in traffic, noise, air pollution, and cumulative
12 impacts of the proposed action. He also has procedural standing to require a proper consideration
13 of environmental, social, and economic factors before the project is constructed.

14 3.2 Pierce R Homer is Chairman of the Virginia Commonwealth Transportation Board that
15 adopted a Resolution on June 18, 2009, which improperly approved a delegation of NEPA
16 Authority to a private entity and which was otherwise unlawful and ultra vires.

17 3.3 Defendant David S. Ekern is the Commissioner of the Virginia Department of Transportation
18 that improperly issued and/or approved a defective Categorical Exclusion for the I 95- 395
19 project.

20 3.4 Defendant LaHood is the United States Secretary of Transportation that improperly issued
21 and/or approved a defective Categorical exclusion for the I 95- 395 project.

22 3.5 Defendant Federal Highway Administration is the Federal Agency charged with
23 administering the Federal Highway System.
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1 3.6 Fluor-Transurban, Arlington County, and Alexandria are potentially interested parties subject
2 to joinder in this case.

3
4 IV. ALLEGATIONS

5 4.1 The I 95-395 HOT Lane project is a major Federal action with reasonably foreseeable
6 significant impacts.

7 4.2 The I 95-395 HOT Lane project will cause a major and significant alteration in traffic
8 patterns, and have significant environmental, socioeconomic, and regional cumulative impacts.

9 4.3 The project has been impermissibly segmented and approved before key conditions and
10 components have been defined, documentation prepared for the project is woefully inadequate to
11 meet the requirements of NEPA, and NEPA authority has been improperly delegated to a private
12 entity in a manner at variance with the clear and unambiguous remedial intent of NEPA.

13 4.4 The I 95-395 HOT Lane project is either not properly subject to, and does not meet the
14 definition of a categorically Excluded Action as defined in the CFR, or exceptional
15 circumstances exist making a CE improper under the CEQ regulations. (See, generally, West v.
16 Secretary of Transportation, 206 F.3d 920, (9th Circuit, 2000)

17 4.5 To the extent that the defendants, acting for the FHA, CTB or VDOT have delegated any
18 NEPA responsibility to a third party, this is an unlawful delegation under the doctrine of
19 delegatus non potest delegare, and evidence of impermissible privatization and segmentation.

20 4.6 Defendants have taken final action in approving an incomplete, segmented, and ill-defined
21 project, and this case is ripe for review.

22
23 V. NEPA-APA CLAIM

24 5.1 By issuing a categorical exclusion for a project that was incomplete, segmented, and
25 not properly exempt, in the absence of compliance with NEPA in the form of an EIS, EA, or

1 FONSI, the State and Federal defendants violated the National Environmental Policy Act for
2 which relief is appropriate under the Administrative Procedures Act.

3
4 VI. DECLARATORY JUDGMENTS ACT CLAIM

5 6.1 By issuing a categorical exclusion for a project that was incomplete, segmented, and
6 not properly exempt, in the absence of compliance with NEPA in the form of an EIS, EA, or
7 FONSI, and in improperly delegating NEPA authority, the State and Federal defendants acted
8 unlawfully and violated the National Environmental Policy Act for which relief is appropriate
9 under the Federal Declaratory Judgments Act.

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11 VII. REQUEST FOR RELIEF

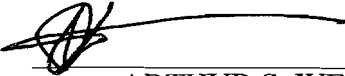
12 Plaintiff respectfully requests the following relief:

13 7.1 That a declaratory Judgment issue declaring the I 95-395 HOT Lane project CE void, and
14 annulling any delegation of NEPA authority to any private entity.

15 7.2 That the State and Federal defendants be compelled to revoke the CE for the I 95-395
16 project, and comply with the requirements of NEPA in regard to assessment of appropriate
17 traffic, economic, and environmental impacts of the I 95-395 and 495 HOT Lane projects as a
18 whole, and that mitigation measures be considered to reduce resulting traffic impacts upon the
19 City of Alexandria and Arlington County.

20 7.3 That the Court order that such relief issue as may be necessary to protect the status quo
21 pending the ultimate determination of this case.

22 Dated this 17th day of August, 2009

23
24 

ARTHUR S. WEST



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Pierce R. Homer
Chairman

1401 East Broad Street - Policy Division - CTB Section - #1106
Richmond, Virginia 23219

(804) 786-1830
Fax: (804) 225-4700

Agenda item #10

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

June 18, 2009

MOTION

Made By: Mr. Koelemay Seconded By: Dr. Davis Action: Motion Carried, Unanimously

Title: Limited Access Control Changes (LACC) for Interstates 95/395 to Accommodate High Occupancy Travel (HOT) Lanes in Arlington, Fairfax, Prince William, and Stafford Counties and the City of Alexandria

WHEREAS, all Interstate Highways located within the Commonwealth were designated as a Limited Access Highways by the State Highway Commission, predecessor to the Commonwealth Transportation Board (CTB), on October 4, 1956; and

WHEREAS, Interstates 95/395, located in Arlington, Fairfax, Prince William, and Stafford Counties and the City of Alexandria, were designated as Limited Access Highways by the State Highway Commission, predecessor to the CTB or by the CTB, on various projects; and

WHEREAS, in connection with Interstates 95/395, the Commonwealth acquired certain lands and limited access easements from various landowners on various projects; and

WHEREAS, pursuant to the Public Private Transportation Act (PPTA) of 1995, the CTB approved Fluor-Transurban's proposed concept for the design of HOT lanes along Interstates 95/395 on January 20, 2005; and

WHEREAS, as a result of continued design development and refinement of the conceptual plans for the Interstates 95/395 HOT lanes, it has been determined numerous changes to the existing Interstates 95/395 limited access controls shall be required; and

WHEREAS, the Interstates 95/395 HOT Lanes Project has been subject to a National Environmental Policy Act (NEPA) study, which resulted in a Categorical Exclusion (CE); and

Resolution of the Board

Limited Access Control Changes (LACC) – Interstates 95/395 to Accommodate
High Occupancy Travel (HOT) Lanes
Arlington, Fairfax, Prince William, and Stafford Counties and the City of Alexandria
June 18, 2009
Page Two

WHEREAS, the Concessionaire for the said Project will have the responsibility for compliance with NEPA under the terms of a Comprehensive Agreement; and

WHEREAS, approval by the CTB of the various proposed changes for limited access control for said project is required as part of the project development process; and

WHEREAS, VDOT shall ensure that the various LACC for said project will enhance public travel and are appropriate for the said proposed project from a design and traffic control standpoint subject to further review and approval by VDOT and the Federal Highway Administration (FHWA); and

WHEREAS, all right of way, engineering, construction, and necessary safety improvements shall be made to the specifications, standards and plans approved by VDOT; and

WHEREAS, VDOT and the FHWA staff have determined there will be no adverse environmental impacts; and

WHEREAS, all costs of engineering and construction, including all necessary safety improvements, will be borne in accordance with the PPTA Project Agreement; and

WHEREAS, no compensation shall be due to the Department in consideration of the proposed LACC; and

WHEREAS, Location and Design public hearings for the project were held on February 9, 10, and 11, 2009, to include the proposed LACC, with opportunity for public comments in compliance with VDOT and FHWA guidelines; and

WHEREAS, upon completion of the proposed project, to include the LACC and acceptance by VDOT, all work, roadway construction, improvements and equipment will become the property of the Commonwealth.

NOW, THEREFORE, BE IT RESOLVED, that the CTB hereby approves the LACC to Interstates 95/395, as determined by VDOT to be necessary for the construction, maintenance and operation of the Interstates 95/395 HOT Lanes as set forth and subject to the above referred to conditions. The Commonwealth Transportation Commissioner is hereby authorized to execute any and all documents needed to comply with this resolution.

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