

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION**

COALITION TO PRESERVE MC INTIRE)	
PARK, et. al.,)	
Plaintiffs;)	
)	
v.)	
)	
VICTOR MENDEZ, ADMINISTRATOR OF)	
THE FEDERAL HIGHWAY)	
ADMINISTRATION)	
Defendant.)	

Civil No. 3:11-cv-00015

ANSWER

COMES NOW the defendant, Victor Mendez in his official capacity as Administrator of the Federal Highway Administration and states the following as his Answer to the Complaint in this law suit:

The numbered paragraphs in this answer correspond to the numbered paragraphs in the Complaint.

Introduction

1. The allegations in paragraph 1 are denied.
2. The allegations in paragraph 2 are denied.
3. The allegations in paragraph 3 are denied.

Jurisdiction

4. The allegations of jurisdiction in paragraph 4 are conclusions of law to which no response is required. To the extent that a response may be required, jurisdiction is admitted.

Venue

5. The allegation of venue in paragraph 5 is a conclusion of law to which no answer is required. To the extent that an answer may be required, venue is admitted.

Parties

6. Paragraph 6 describes a party involved in this action (Coalition to Preserve McIntire Park (CPMP)) and requires no response. However to the extent that a response is required, the defendant does not have enough information to admit or deny the allegations in paragraph 6.
7. Paragraph 7 references the CPMP Steering Committee and requires no response. However, to the extent that a response is required, the defendant does not have sufficient information to admit or deny the claims in paragraph 7.
8. Paragraph 8 describes parties involved in this action and requires no response. However, to the extent that a response is required, the defendant does not have sufficient information to determine the accuracy of the claims, and therefore cannot admit or deny the claims made in paragraph 8.
9. Paragraph 9 describes the parties involved in this action and requires no response. However, to the extent that a response is required, the defendant does not have sufficient information to admit or deny the claims in paragraph 9.
10. Paragraph 10 describes the parties involved in this action and requires no response. However, to the extent that a response is required, the defendant does not have sufficient information to admit or deny the claims in paragraph 10.

11. Paragraph 11 describes the parties involved in this action and requires no response. However, to the extent that a response is required, the defendant does not have sufficient information to admit or deny the claims made in paragraph 11.
12. Paragraph 12 describes the parties involved in this action and requires no response. However, to the extent that a response is required, the defendant does not have sufficient information to admit or deny the claims in paragraph 12.
13. The allegations in paragraph 13 are admitted.

Statutory Background

14. The conclusions of law in paragraph 14 require no response. However, to the extent that a response is required, the NEPA and court decisions applying the NEPA speak for themselves.
15. Plaintiffs' conclusions of law in paragraph 15 require no response. However, to the extent that a response is required, the NEPA and its implementing regulations speak for themselves.
16. Plaintiffs' conclusions of law in paragraph 16 require no response. However, to the extent that a response is required, the NEPA and its implementing regulations speak for themselves.
17. Plaintiffs' conclusions of law in paragraph 17 require no response. However, to the extent that a response is required, the NEPA and the FHWA's implementing regulations speak for themselves.
18. The allegations in Paragraph 18 are denied.

Factual Background

19. The claims in Paragraph 19 are admitted with the following clarification:

Early governmental efforts were carried out by the City of Charlottesville, Albemarle County and the Commonwealth of Virginia. FHWA did not become involved until 1983 when VDOT requested federal aid funds for preliminary engineering for a four lane roadway from Preston Avenue to the north corporate limits of Charlottesville. The FHWA project that is the subject of this law suit did not come to the attention of the FHWA until 2004 when FHWA authorized funding for preliminary engineering for an interchange.

20. The defendant does not have sufficient information to admit or deny the allegations in Paragraph 20 of the complaint.

21. The defendant does not have sufficient information to admit or deny the allegations in Paragraph 21 of the complaint.

22. The allegations in paragraph 22 are denied.

23. The allegations in paragraph 23 are denied.

24. The allegations in paragraph 24 are denied.

25. The allegations in paragraph 25 are denied.

26. The defendant does not have sufficient information to admit or deny the allegations in paragraph 26.

27. The allegations in paragraph 27 are admitted with the following clarification:

This project is two-lane roadway located in Albemarle County and is under construction with a southern terminus at Melbourne Road. The allegation that the project is being built “to a specific point on the northeast perimeter of the McIntire Park”, is perhaps technically true, however the project is being built all the way to Melbourne Road to give it a connection.

28. The allegations in paragraph 28 are denied.
29. The allegations in paragraph 29 are admitted.
30. The allegations in paragraph 30 are admitted with the following clarification:

The quotation from the Corps of Engineers letter is accurate, however that particular letter does not reflect the Corps of Engineers' current position.
31. The allegation in paragraph 31 is admitted with the clarification that the Corps of Engineers subsequently reinitiated its evaluation.
32. The defendant does not have sufficient information to admit or deny the allegations in paragraph 32.
33. The defendant does not have sufficient information to admit or deny the allegation in paragraph 33.
34. The allegations in paragraph 34 are denied with the following explanation and partial admission:

FHWA did not become aware of the potential interchange until 2004. The interchange has not been part of a long standing proposal. The defendant admits that the interchange is the only one of several "segments" (projects) for which federal funds will be used in construction.
35. The allegations in paragraph 35 are denied.
36. The allegations in paragraph 36 are denied.
37. The allegations in paragraph 37 are denied.
38. The allegations in paragraph 38 are denied.
39. The defendant does not have sufficient information to admit or deny the allegations in paragraph 39.

40. The allegations in paragraph 40 are denied.
41. The allegations in paragraph 41 are denied.
42. The allegations in paragraph 42 are admitted.
43. The allegations in paragraph 43 are denied.
44. The allegations in paragraph 44 are denied.
45. The allegations in paragraph 45 are denied.
46. The allegations in paragraph 46 are denied.
47. The allegations in paragraph 47 are denied.

Claims for Relief

Count I (Violation of Department of Transportation Act)

48. The defendant's answers to all preceding paragraphs are incorporated herein by reference.
49. Plaintiffs' conclusion of law in paragraph 49 requires no response. However, to the extent that a response is required, section 4(f) of the U.S. Department of Transportation Act of 1966 speaks for itself.
50. The allegations in paragraph 50 are denied.
51. The allegations in paragraph 51 are denied.
52. The allegations in paragraph 52 are denied.

Count II (Violation of the National Environmental Policy Act)

53. The defendant's answers to all preceding paragraphs are incorporated herein by reference.
54. The allegations in paragraph 54 are denied.
55. The allegations in paragraph 55 are denied.

56. The allegations in paragraph 56 are denied.

Count III (Violation of the National Environmental Policy Act)

57. The defendant's answers to all preceding paragraphs are incorporated herein by reference.

58. The Plaintiffs' conclusion of law in paragraph 58 requires no response. However, to the extent that a response may be required, the NEPA speaks for itself.

59. The allegations in paragraph 59 are denied.

60. The allegations in paragraph 60 are denied.

By way of further answer, the defendant denies that the plaintiffs are entitled to any of the relief sought in their "Prayer For Relief" and that all the relief sought by the plaintiffs should be completely denied by the Court.

WHEREFORE, having fully answered the allegations in the plaintiffs' complaint, the defendant prays that the plaintiffs take nothing by way of their complaint, that the same be dismissed, and that judgment be awarded in favor of the defendant together with costs and such other and further relief as the Court deems appropriate.

Respectfully submitted,

TIMOTHY J. HEAPHY
UNITED STATES ATTORNEY

/s/ Thomas L. Eckert
Assistant U.S. Attorney
P.O. Box 1709
Roanoke, VA 24008
(540) 857-2761 voice
(540) 857-2155 FAX
Virginia Bar # 18781
Attorney for the Defendant

CERTIFICATE OF SERVICE

I hereby certify that on April 20, 2011 I caused this Answer to be filled with the Clerk of this Court using the CM/ECF system which will electronically send notice of this filing and a true copy of this Answer to the attorneys for the Plaintiffs.

/s/ Thomas L. Eckert
Assistant U.S. Attorney