UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

FRIENDS OF THE CAPITAL CRESCENT TRAIL, *et al*.	:	
	:	**Case No. 1:14-cv-01471-RJL**
Plaintiffs,	:	
v.	:	
FEDERAL TRANSIT ADMINISTRATION, *et al*.	:	
Federal Defendants,	:	
MARYLAND TRANSIT ADMINISTRATION	:	
Defendant/Intervenor.	:	

REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' RULE 59(e) MOTION FOR RECONSIDERATION OR CLARIFICATION

Plaintiffs submit this Reply Memorandum in Support of their Rule 59(e) Motion to Alter or Amend the May 30, 2017 judgment entered in this action. Defendants criticize the Motion as an impermissible attempt to reargue the merits of two of Plaintiffs' NEPA claims, while neglecting to mention that *they* extensively reargued the merits of the Court's vacatur and SEIS rulings in their own Rule 59(e) motions earlier in this case. In ruling on those motions, the Court correctly noted that it has "broad discretion" to grant or deny relief under Rule 59(e). Memorandum Opinion at 3 (Nov. 22, 2016) (ECF # 109). In fact, the Court granted in part the relief requested by Defendants, allowing Defendants to make the initial assessment of the need for an SEIS, even though Defendants certainly could not establish that such relief was required under the Rule 59(e) "clear error" standard. Indeed, the Court's earlier grant of Rule 59(e) relief to Defendants was plainly an exercise of discretion, not any sort of confirmation that the Court was correcting any "clear error."

Now that the shoe is on the other foot, however, Defendants adopt the strict approach to granting Rule 59(e) relief that was conveniently elided in their own motions. In the process, they make no meaningful attempt to counter Plaintiffs' substantive analysis of how their noise and air pollution claims were mishandled in the FEIS process. They choose instead to mischaracterize Plaintiffs' Motion as nothing more than reargument of claims the Court has "unambiguously" rejected, in that the Court's summary judgment ruling "unequivocally covered" Plaintiffs' noise and air quality arguments. Fed. Mem. 1, 3, 5; Maryland Mem. 3. In fact, as Plaintiffs have made clear without dispute, the Court did not specifically address, let alone "unambiguously reject," Plaintiffs' NEPA-based noise and air pollution claims, Motion at 3, 5-6, and appears to have overlooked Plaintiffs' legal theory on why the noise pollution is also a violation of Section 4(f) of the Highway Act. *Id.* at 6-7.

The reality is that Plaintiffs are more mindful of the constraints inherent in Rule 59(e) than Defendants appear to have been when they sought relief under that Rule. Hence, Plaintiffs made clear at the outset of their Motion that it should be **denied** if the Court is satisfied that it has indeed taken the requisite "hard look" at the noise and air pollution impacts discussed in the Motion. *Id.* at 3. That is a far cry from the false accusation by Defendants that Plaintiffs are demanding that the Court "document and discuss in detail its analysis of each and every issue. . . ." Maryland Mem. 4; Fed. Mem. 1, 6. To be sure, Plaintiffs would welcome such analysis from the Court because Plaintiffs believe that their noise and air pollution arguments are legally valid, but at minimum, Plaintiffs are simply asking for affirmation that such analysis has in fact been performed by the Court, in light of Plaintiffs' summary focusing on these particular claims, distinct and discrete from the many other issues briefed on summary judgment.

Similarly, Plaintiffs' Motion cannot fairly be characterized as merely reargument of the merits of their noise and air pollution claims. Plaintiffs have been extremely selective in limiting their Motion to two of the many NEPA claims broadly rejected by the Court under the extreme pressure exerted by the State of Maryland, including its extraordinary step of filing a mandamus petition in the D.C. Circuit when extensive summary briefs had only been pending for a few months. Especially under these circumstances, resulting from the State's own litigation tactics, it would not be at all unlikely that some of the many NEPA issues addressed in the summary judgment briefs did not receive as thorough a review as the Court might deem warranted on reconsideration. The two issues selected by Plaintiffs are ones that that Plaintiffs respectfully submit most clearly warrant an assurance that a "hard look" has been taken given the paucity of administrative record support and the other clear legal problems identified in Plaintiffs' motion. And this point is made in the Motion with reference to what the Court did and did not say about these issues in its Summary Judgment Opinion (ECF # 149), as compared to what the parties said. This is not merely reargument of the merits; it is a discussion of the import of how the Court addressed the merits—an approach that mirrors that taken by Defendants in their Rule 59(e) motions in this case.

Plaintiffs are likewise improperly faulted for failing to assert that the Court's Opinion constitutes "clear error" under Rule 59(e). Fed. Mem.1, 6; Maryland Mem. 4. But as explained above, because the Opinion does not specifically address Plaintiffs' noise and air pollution points, Plaintiffs cannot know whether the Court has squarely considered them. In the case of whether noise impacts may constitute a "use" of parks in violation of section 4(f) of the Transportation Act, Plaintiffs are merely asking the Court to address a legal theory that Plaintiffs did set forth in their summary judgment papers. A Rule 59(e) motion is the appropriate vehicle for invoking the

discretion of the Court to clarify the situation. Indeed, even in denial, there can be no question that the future course of this litigation would be better served were the Court to provide the parties a more detailed explanation of its rejection of Plaintiffs' noise and air pollution claims than has been provided. This would also mirror the approach taken by the Court in rejecting Defendants' Rule 59(e) request to restore the ROD in connection with the SEIS remand. Memorandum Opinion at 8-11 (Nov. 22, 2016) (ECF# 109).

Ignoring their own earlier approach to the seeking of relief under Rule 59(e), Defendants seek to distinguish factually cases cited by Plaintiffs where courts have invoked their discretion to clear up similar matters on reconsideration. Fed. Mem. 4-5. Maryland Mem. 4. Of course those cases presented different circumstances; each case is unique when it comes to a Rule 59(e) motion. And Plaintiffs never claimed that those cases were flatly binding precedent here, only that they illustrate what the Court said in earlier granting Rule 59(e) relief to plaintiffs: there is broad discretion involved in the Court's granting or denying relief.

CONCLUSION

For the foregoing and previously stated reasons, Plaintiffs respectfully seek appropriate relief under Rule 59(e): a summary judgment disposition in their favor on the noise and air pollution issues or, at a minimum, an explanation as to why their arguments regarding these specific issues have been rejected.

Respectfully submitted,

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July 17, 2017

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this 17th day of July 2017, a true and correct copy of Plaintiffs' 59 (e) Reply Memorandum in Support of Plaintiffs' 59 (e) Motion were electronically filed with the Clerk of the Court using the Cm/ECF system, which will send notification of such to the attorneys of record:

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