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CLUE Case Law Database

NEPA Case Law for Highway, Transit, Rail, and Airport Projects 2019 Year in Review

March 2020

Preface

This report presents a sampling of federal court decisions issued in 2019 in transportation project cases involving the National Environmental Policy Act (NEPA) and other environmental laws.¹ The goal of this report is to provide NEPA practitioners, both lawyers and non-lawyers, with a general understanding of how courts have handled the types of issues that frequently arise in NEPA litigation. The report focuses on environmental reviews conducted by the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Federal Railroad Administration (FRA), and Federal Aviation Administration (FAA), as well as states that have been assigned FHWA's responsibilities for compliance with environmental laws.

This report accompanies the case law summaries posted on [AASHTO's Case Law Updates on the Environment \(CLUE\) website](#). For a complete listing of the 2019 court decisions on the CLUE website, refer to the appendix to this report.²

Please note a few caveats:

- This report is intended for a general audience, and therefore it does not fully capture the legal analysis in the court decisions.
- Each case involves a unique set of factual circumstances; the outcome in one case cannot necessarily be used to predict what a court would decide in a similar case.
- This report includes only a subset of the issues addressed in the court decisions. For more detailed summaries and copies of the decisions themselves, refer to the CLUE website.
- Some of the cases remain in litigation, either in the district court or on appeal, and therefore the outcomes described in this report could change.
- This paper and the summaries on the CLUE website do not constitute legal advice. Practitioners seeking legal advice regarding a specific project should consult their legal counsel.

This report was prepared by Perkins Coie LLP on behalf of the AASHTO Center for Environmental Excellence.

¹ Other laws addressed in cases this year include Section 4(f) of the Department of Transportation Act of 1966 (Section 4(f)), Section 106 of the National Historic Preservation Act (Section 106 or NHPA), the Clean Water Act, the Endangered Species Act, and statutes authorizing private activity bonds and the New Starts grant program.

² The CLUE website includes case summaries for nearly 300 court decisions involving NEPA reviews for transportation projects from the early 2000s through 2019. The CLUE website includes year-in-review reports from 2014 through 2019. See <https://environment.transportation.org/clue/>.

Key Holdings in 2019 Court Decisions

Purpose and Need

Courts generally defer to an agency's statement of a project's purpose and need as long as it has a rational basis and does not unreasonably limit the scope of alternatives considered. This principle was demonstrated in one case this year.

- Consideration of Cooperating Agency Comments and Statutory Requirements. In the Walk Bridge Replacement Project case, the court upheld the agencies' decision to revise the purpose and need statement to reflect comments and statutory requirements of the Coast Guard, which was a cooperating agency. During scoping, the Coast Guard commented that it would not approve the project pursuant to the General Bridge Act and the Rivers and Harbors Act unless the replacement bridge maintained the existing navigational capacity in the river. The court held that these statutory requirements and scoping comments provided a rational basis for including "maintaining or improving navigational capacity" in the purpose and need statement.³

Screening of Alternatives

Courts generally defer to an agency's methodology and rationale for screening alternatives, as reflected in two cases this year in which courts upheld the agencies' elimination of alternatives.

- Criteria for Eliminating Alternatives. In the Walk Bridge Replacement Project case, the court upheld the agencies' reasons for eliminating alternatives. An initial conceptual engineering report considered rehabilitating the existing bridge and multiple replacement alternatives, including different types of fixed and movable bridges. The agencies then eliminated rehabilitation and fixed bridge alternatives based on their inability to meet the purpose and need, costs, construction time, impacts to river navigation, right-of-way requirements, and other factors. The agencies carried forward three movable bridge options for more detailed analysis in the environmental assessment (EA). The court held that the agencies adequately evaluated fixed bridge alternatives and justified their decision for eliminating them earlier in the environmental review process.⁴
- Reconsideration of Eliminated Alternatives Based on New Information. In the NC 12 case, the court held that new information did not require the agencies to reconsider an alternative that they had previously eliminated. Earlier in the environmental review process, the agencies had eliminated the alternative based on its cost, feasibility, inability to meet the purpose and need, and incompatibility with the surrounding national wildlife refuge. The plaintiffs argued that the agencies should have reconsidered the alternative based on new information regarding its cost and

³ *Norwalk Harbor Keeper v. Federal Transit Administration*, 2019 WL 2931641 (D. Conn. 2019).

⁴ *Norwalk Harbor Keeper v. Federal Transit Administration*, 2019 WL 2931641 (D. Conn. 2019).

feasibility. The court held that the agencies were not required to reconsider the alternative because there were other independently adequate reasons—unaffected by the new information—for rejecting the alternative.⁵

Impacts Analysis – Level of Detail

Many NEPA cases involve allegations that certain environmental impacts were not considered in sufficient detail. Courts tend to be deferential to agencies on such claims, and this year was no exception.

- Construction Impacts of Highway Project. In the NC 12 case, the court rejected the plaintiffs’ argument that the agencies did not adequately consider impacts of construction traffic and haul roads. The environmental documents compared the construction traffic impacts of the different alternatives, explained that a temporary construction easement would be necessary to support construction traffic and that the land would be restored after construction was completed, and analyzed the impacts of haul roads generally (but not specifically in each community). The court held that this analysis was sufficient, noting that impacts only need to be discussed in proportion to their significance.⁶
- Construction Noise Impacts of Highway Project. In the SR 520 case, the court rejected the plaintiffs’ argument that the agencies did not adequately consider noise impacts from demolishing a market, including impacts on a nearby historic district. The court noted that the agencies’ reevaluation discussed noise and vibration from demolition of the market and the subsequent use of the market property for construction staging. It also discussed mitigation, which included limiting construction hours, installing construction noise walls, and complying with city noise regulations or obtaining a noise variance from the city. In addition, noise impacts on the historic district were mitigated through a Section 106 Programmatic Agreement, which was considered in an earlier environmental document.⁷
- Noise Impacts of Rail Project. In the All Aboard Florida/Brightline Project case, the court held that the environmental impact statement (EIS) adequately analyzed noise impacts from train warning horns, as well as associated mitigation measures. The court noted that mitigation included installing pole-mounted horns at grade crossings and cooperating with local governments to establish quiet zones, which would allow trains to pass through grade crossings without sounding horns.⁸
- Impacts of Rail Project on Pedestrian Safety. In the All Aboard Florida/Brightline Project case, the court held that the EIS adequately analyzed pedestrian safety and mitigation measures to reduce trespassing along the railroad corridor. The EIS acknowledged that trespassing on the existing rail corridor was widespread and

⁵ *Save Our Sound OBX v. North Carolina Department of Transportation*, 914 F.3d 213 (4th Cir. 2019).

⁶ *Save Our Sound OBX v. North Carolina Department of Transportation*, 914 F.3d 213 (4th Cir. 2019).

⁷ *Montlake Community Club v. Mathis*, 2019 WL 3928732 (W.D. Wa. 2019).

⁸ *Indian River County v. United States Department of Transportation*, 945 F.3d 515 (D.C. Cir. 2019).

that the project could increase the frequency of collisions by increasing the volume of train traffic. The EIS discussed mitigation measures that included adding sidewalks to encourage the use of formal grade crossings, a public information campaign, and field surveys to determine where to install fencing and other measures to prevent trespassing.⁹

Impacts Analysis – Methodology

Courts typically give significant deference to an agency’s choice of methodology when the agency acts within its area of technical expertise. Several cases in 2019 upheld traffic and noise analyses that were based on agency expertise and industry-standard methodologies, while one case found that an agency’s conclusions lacked adequate support.

- Noise Analysis – Deference to Agency Expertise and Discretion. In the C-470 case, the court held that the agencies’ noise analysis methodology was adequately supported by a supplemental report that the agencies submitted to the court, which included declarations from agency staff and a noise consultant who worked on the project. The supplemental report explained that the agencies’ noise analysis was based on agency guidance documents, industry standards, and agency expertise and discretion. The court noted that it gave significant deference to decisions involving technical or scientific matters within the agencies’ area of expertise. The court concluded that the supplemental report “provided a roadmap of their decision-making process, offered a rationale for their decision to use short-term measurements, and showed they considered relevant factors in deciding which validation method to use.”¹⁰
- Traffic Forecasts – Deference to Agency Expertise. In the SR 520 case, the court upheld the agencies’ traffic analysis, which was based on peak-hour trip counts and an industry-standard trip generation methodology. The court explained that the agencies’ methodology was entitled to deference, and although the plaintiffs criticized different aspects of the traffic analysis, they did not identify a different methodology that the agencies should have used.¹¹
- Traffic Forecasts – Unsupported by Administrative Record. In the U.S. 101 case, the court ruled that the agency’s conclusion regarding truck traffic was inadequately supported. The purpose of the project was to improve a section of the highway to accommodate extra-long trucks, which were prohibited from using the existing road due to its narrow width and tight curves. The EA stated that the total number of trucks using that section of highway would not increase. The agency relied on a study of the project’s economic impacts, which contained two paragraphs discussing truck traffic in broad generalities, and was based on the online survey responses of 14 non-representative local businesses. The court ruled that this study—which

⁹ *Indian River County v. United States Department of Transportation*, 945 F.3d 515 (D.C. Cir. 2019).

¹⁰ *Highlands Ranch Neighborhood Coalition v. Cater*, 2019 WL 1873363 (D. Colo. 2019), *appeal filed*, No. 19-1190 (10th Cir.).

¹¹ *Montlake Community Club v. Mathis*, 2019 WL 3928732 (W.D. Wa. 2019).

relied on “flimsy” data and “juggled conjecture and possibility with zero substance”—was inadequate to support the agency’s conclusion, particularly since the project’s purpose was to allow additional trucks to use the highway.¹²

- Noise Impacts – Reliance on FHWA Noise Abatement Regulations. In the U.S. 101 case, the court ruled that the agency’s NEPA obligations were not satisfied by its traffic noise analysis conducted pursuant to the Federal-Aid Highway Act and FHWA’s noise abatement regulations (23 U.S.C. § 109(i) and 23 C.F.R. Part 772). Applying those regulations, the agency determined that the project would not result in a substantial increase in traffic noise. The court held that the project could still have a significant noise impact for NEPA purposes, which the agency failed to analyze adequately.¹³

Mitigation

NEPA requires an EIS to discuss possible mitigation measures, and agencies often adopt mitigation commitments in the Record of Decision (ROD). A case this year involved a claim that agencies failed to carry out their mitigation commitments.

- Agency Compliance with Mitigation Commitments. In a case involving the Purple Line Project, the court ruled that the plaintiffs could not challenge the agencies’ alleged failure to comply with mitigation commitments in the ROD. The court explained that the Administrative Procedure Act only allows challenges to final agency actions; the agencies’ failure to take actions during project implementation was not a final action. “While the ROD is a final agency action subject to judicial review, implementing or carrying out—or, as plaintiffs put it, ‘following through on’—commitments contained in the ROD during ongoing construction is not.”¹⁴

Predetermination

Claims of predetermination typically target actions taken by the project sponsor or lead agency that indicate a specific alternative was chosen before completing the NEPA process. In reviewing such claims, courts generally hold that it is permissible to have a favored alternative, as long as the federal agency retains control of the NEPA process and the preference does not undermine the integrity of the NEPA document. A case this year was consistent with this approach to predetermination.

- Settlement Agreement Committing Agency to Seek Approval for a Specific Alternative. In the NC 12 case, the plaintiffs alleged that the agencies’ selection of an alternative was predetermined by a settlement agreement reached with environmental groups in previous litigation regarding the project. The settlement

¹² *Bair v. California Department of Transportation*, 2019 WL 1979751 (N.D. Cal. 2019), *appeal filed*, No. 19-16478 (9th Cir.).

¹³ *Bair v. California Department of Transportation*, 2019 WL 1979751 (N.D. Cal. 2019), *appeal filed*, No. 19-16478 (9th Cir.).

¹⁴ *Friends of the Capital Crescent Trail v. Federal Transit Administration*, 2019 WL 1046889 (D.D.C. 2019).

agreement committed the agencies to selecting that alternative as the preferred alternative, and to seek approval of that alternative from other permitting agencies. Consistent with the rule in the Fourth Circuit, the court limited its predetermination inquiry to the environmental documents for the project. (In other circuits, courts may consider information beyond the environmental documents, such as internal agency correspondence.¹⁵) The court held that there was no predetermination because the environmental documents—some of which were prepared before the settlement agreement—showed that the agencies objectively and comprehensively evaluated various alternatives. Even considering the settlement agreement, the court held that it did not show predetermination because it allowed for the possibility of selecting a different alternative based on the outcome of the environmental review and permitting process.¹⁶

Segmentation

When two or more projects are undertaken around the same time and in close proximity to one another, plaintiffs commonly raise the issue of segmentation. For transportation projects, courts typically consider the segmentation criteria in FHWA, FTA, and FRA NEPA regulations: whether projects (1) connect logical termini and are of sufficient length to address environmental matters on a broad scope; (2) have independent utility or independent significance; and (3) do not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.¹⁷ In one case this year, the court determined that related projects were not improperly segmented based primarily on their independent utility and significance.

- Projects with Independent Benefits that Could Proceed Independently. In the Walk Bridge Replacement Project case, the court held that the EA did not need to evaluate two nearby rail infrastructure projects that would reduce train delays and service disruptions. The court explained that although those projects would help alleviate impacts from track outages during construction of the Walk Bridge project, they were not improperly segmented because each had independent long-term benefits and each could proceed without the other being built.¹⁸
- Project with Independent Function. In the Walk Bridge Replacement Project case, the court held that the EA did not need to evaluate the relocation of high-voltage transmission lines that used the towers of the existing bridge, which would be removed as part of the project. The court explained that the relocation of the transmission lines would be required even in the absence of the Walk Bridge project: “regardless of whether the Walk Bridge Project moves forward, those lines will need to move because the high towers are structurally unsound and require replacement. Because the transmission lines

¹⁵ See, e.g., *Forest Guardians v. United States Fish and Wildlife Service*, 611 F.3d 692, 716–17 (10th Cir. 2010).

¹⁶ *Save Our Sound OBX v. North Carolina Department of Transportation*, 914 F.3d 213 (4th Cir. 2019).

¹⁷ 23 C.F.R. 771.111(f).

¹⁸ *Norwalk Harbor Keeper v. Federal Transit Administration*, 2019 WL 2931641 (D. Conn. 2019).

sit on the towers, they need to be removed and relocated. The relocation of those lines has an independent function regardless of whether the Walk Bridge Replacement Project is built.”¹⁹

Supplementation

A supplemental EIS is required when there are substantial changes to the project or significant new information or circumstances relevant to environmental concerns. Courts typically defer to an agency’s decision not to prepare a supplemental EIS as long as the agency took a “hard look” at the potential environmental consequences associated with the project changes or the new information or circumstances.

- Changes to Project Alignment. In the NC 12 case, the court rejected the plaintiffs’ argument that the agencies should have prepared a supplemental EIS to consider differences between the final alignment (which was studied in an EA) and the alternatives studied in earlier environmental documents for the project. The court noted that the EA contained a detailed comparison of the final and earlier alignments and explained the reason for the changes, which were to reduce environmental and community impacts. The court held that the agencies sufficiently analyzed the potential environmental consequences of the alignment changes, and that the agencies rationally concluded that the changes did not implicate any significant environmental concerns.²⁰

Environmental Assessments

Two cases this year addressed the adequacy of EAs and Findings of No Significant Impact (FONSI).

- Adequacy of EA/FONSI and Need to Prepare EIS. In the U.S. 101 case, the court ruled that an EIS was required because there were substantial questions whether the project may have significant environmental impacts. The Council on Environmental Quality (CEQ) NEPA regulations define significance based on an action’s context and ten enumerated factors of intensity.²¹ In this case, the court held that an EIS was required based on inadequate analysis in the EA and the presence of multiple intensity factors:
 - *Unique Characteristics of the Area and Impacts on Significant Cultural Resources.* The project involved a section of highway through a state park with some of the world’s last remaining old-growth redwood trees, which the court considered to be culturally significant.
 - *Uncertain Effects.* The court held that the EA did not adequately consider potential impacts of traffic noise on park visitors. The court explained that

¹⁹ *Norwalk Harbor Keeper v. Federal Transit Administration*, 2019 WL 2931641 (D. Conn. 2019).

²⁰ *Save Our Sound OBX v. North Carolina Department of Transportation*, 914 F.3d 213 (4th Cir. 2019).

²¹ 40 C.F.R. § 1508.27.

this uncertainty could be resolved with additional data collection and analysis in an EIS.

- *Highly Controversial Effects.* The court identified two potential effects that were highly controversial, meaning there was a substantial dispute concerning the size, nature, or effects of the project:
 - *Pavement Over Tree Roots.* The court held that the EA did not adequately analyze whether additional paving would damage trees by limiting their roots' oxygen intake. The EA stated that the project would use paving material that allows for greater oxygen diffusion to the soil than traditional material, and cited studies about redwood trees' resilience in general. The court explained that the agency should have addressed more specifically whether the special paving material would allow sufficient oxygen to reach tree roots.
 - *Construction in Trees' Root Zones.* The court held that the EA did not adequately explain why construction in the trees' root zones would not damage trees, given that a park guidance document recommended against such activity because it could injure tree roots and introduce disease.²²
- Requirement to Obtain Incomplete Information. In the I-73 case, the plaintiff argued that the agencies' EA and reevaluations were inadequate because they omitted relevant information, in violation of a CEQ regulation (40 C.F.R. § 1502.22). That regulation applies "[w]hen an agency is evaluating reasonably foreseeable significant adverse effects on the human environment in an environmental impact statement and there is incomplete or unavailable information."²³ The court ruled that this regulation applies only to an EIS; therefore, the plaintiffs could not sue the agencies for failing to comply with that regulation with respect to the EA and reevaluations.²⁴

Categorical Exclusions

Cases this year addressed whether agencies properly relied on categorical exclusions (CEs), including the adequacy of an agency's consideration of cumulative impacts.

- Applicability of CE for a Project Within the Existing Operational Right-of-Way. In the I-630 case, the plaintiffs argued that the highway widening project did not qualify for a CE as a project within the "existing operational right-of-way" because it would require expanded clear zones (the areas outside the roadway shoulder). At

²² *Bair v. California Department of Transportation*, 2019 WL 1979751 (N.D. Cal. 2019), *appeal filed*, No. 19-16478 (9th Cir.); *Bair v. California Department of Transportation*, 2019 WL 2644074 (N.D. Cal. 2019), *appeal filed*, No. 19-16478 (9th Cir.).

²³ 40 C.F.R. § 1502.22.

²⁴ *South Carolina Coastal Conservation League v. United States Army Corps of Engineers*, No. 17-cv-3412, ECF No. 54 (D.S.C. Jan. 30, 2019).

the time of the agencies' CE determination, the term "existing operational right-of-way" was defined in FHWA's NEPA regulations as "right-of-way that has been disturbed for an existing transportation facility or is maintained for a transportation purpose."²⁵ The court held that the project could qualify for this categorical exclusion even if it would expand clear zones. In addition, the court ruled that the plaintiffs did not prove that the area required for the project's expanded clear zones had not been disturbed previously. Therefore, the court concluded that the project satisfied the requirements for the CE.²⁶

- **Consideration of Cumulative Impacts.** In the Seattle-Tacoma Airport Takeoff Procedures case, the agency relied on a CE and determined that there were no extraordinary circumstances, including that the action was not likely to cumulatively create a significant environmental impact. The court held that the agency's CE documentation was inadequate because its cumulative impact analysis did not include projects described in an airport planning document. The court explained that planning documents, even if short of an official proposal, can provide evidence of future projects that may be reasonably foreseeable; if the agency determines that those projects are not reasonably foreseeable, it should mention that determination in the environmental document.²⁷

Public Participation

Agencies have discretion in determining the type and extent of public participation in the NEPA process, particularly with an EA, as reflected by one case this year.

- **Public Participation for an EA.** In the Walk Bridge Replacement Project case, the court held that the agencies provided more than an adequate level of public participation, which included scoping for the EA, releasing a draft EA for public review and comment, and holding public meetings to solicit comments on the EA.²⁸

Ability to Sue State Agencies

Two cases this year addressed whether state agencies could be sued for violating federal laws.

- **Ability to Sue Non-Federal Project Sponsor Before Issuance of ROD.** In the Southwest Light Rail Transit Project case, the court held that a non-federal project sponsor could not be sued for violating 40 C.F.R. § 1506.1(a), a CEQ NEPA regulation requiring that "no action concerning the proposal shall be taken [before issuance of a ROD] which would . . . limit the choice of reasonable alternatives."²⁹

²⁵ Current regulations define "existing operational right-of-way" as "all real property interests acquired for the construction, operation, or mitigation of a project." 23 C.F.R. § 771.117(c)(22).

²⁶ *Wise v. United States Department of Transportation*, 943 F.3d 1161 (8th Cir. 2019).

²⁷ *City of Burien v. Elwell*, 790 Fed. App'x 857 (9th Cir. 2019).

²⁸ *Norwalk Harbor Keeper v. Federal Transit Administration*, 2019 WL 2931641 (D. Conn. 2019).

²⁹ *Lakes and Parks Alliance of Minneapolis v. Federal Transit Administration*, 926 F.3d 759 (8th Cir. 2019).

- Ability to Sue State Agency for Violation of NHPA. In the I-295 Direct Connection Project case, the court held that the NHPA does not create a private right of action; in practical terms, this ruling meant that a state agency could not be sued for violating Section 106 consultation requirements.³⁰

Statutes of Limitations

The general statute of limitations applicable to NEPA is six years. However, the statute of limitations for challenging certain transportation project decisions is 150 days following publication of a notice of the decision in the Federal Register. In two cases this year, courts held that plaintiffs' claims were untimely.³¹

- Impacts Addressed in Prior Environmental Documents. In the SR 520 case, FHWA issued an EIS and ROD in 2011, a reevaluation in 2016, and another reevaluation in 2018. The project design did not change following the 2016 reevaluation. The plaintiffs filed their lawsuit more than six years after publication of the EIS and ROD, and more than 150 days after a notice of the 2016 reevaluation was published in the Federal Register. The court ruled that the plaintiffs could not raise any arguments based on impacts that were considered in the EIS and ROD or the 2016 reevaluation because the statutes of limitations for challenging those documents had passed.³²
- Section 4(f) and NHPA Decisions. In a case involving the Purple Line Project, the plaintiff filed the lawsuit three years after FTA published a notice in the Federal Register of its Section 4(f) determination and Section 106 Programmatic Agreement. The court held that the Federal Register notice triggered a 150-day statute of limitations. The court dismissed the plaintiffs' claim that FTA failed to consider the project's adverse effects on historic sites in violation of Section 4(f) and the NHPA.³³

Standing

To establish standing, a plaintiff must show that (1) it has suffered a concrete and actual or imminent injury, (2) the injury is caused by the defendant's conduct, and (3) the requested relief will remedy the injury. Cases this year came out on both sides of the standing inquiry.

- Injuries Caused by Federal Funding of Project. In a case involving the Purple Line Project, the court ruled that the plaintiffs had standing to bring their lawsuit challenging FTA's approval of a full funding grant agreement. The court concluded that the plaintiffs suffered an injury that was caused by FTA's funding of the project and could be remedied by setting aside the grant agreement: The plaintiffs were unable to use a pedestrian and bike path that was closed to allow construction of the

³⁰ *Camden County Historical Society v. New Jersey Department of Transportation*, 371 F. Supp. 3d 187 (D.N.J. 2019).

³¹ 23 U.S.C. § 139(l).

³² *Montlake Community Club v. Mathis*, 2019 WL 3928732 (W.D. Wa. 2019).

³³ *Friends of the Capital Crescent Trail v. Federal Transit Administration*, 2019 WL 1046889 (D.D.C. 2019).

project, and construction would likely stop if the grant agreement were rescinded and the project lost the \$900 million in federal funding.³⁴

- No Greater Injury Caused by Selected Alternative. In the Walk Bridge Replacement Project case, the court determined that the plaintiffs did not have standing. The plaintiffs argued that construction of the selected alternative (a movable bridge) would prevent them from using the river for recreation and harm their aesthetic interests. The court ruled that these injuries were insufficient to demonstrate standing because the plaintiffs' preferred alternative (a fixed bridge) would result in *greater* harm to their recreational and aesthetic interests: Construction of the moveable bridge would be 12 to 24 months shorter and would require fewer complete blockages of the river channel as compared to a fixed bridge. Thus, the "plaintiffs fail to show that their recreational and aesthetic enjoyment of the area would be lessened if a fixed bridge were chosen instead, and therefore lack standing to bring their claim."³⁵

Mootness

The doctrine of mootness requires courts to dismiss a case if there is no longer an active controversy. A case this year concerned the mootness of an NHPA claim.

- Mootness of NHPA Claim After Demolition of Historic Building. In the I-295 Direct Connection Project case, the court held that the plaintiff's NHPA claim was moot because the historic building at issue had been demolished. The court explained that the only remedy available for FHWA's alleged NHPA violation was a new Section 106 consultation. But because the building had been demolished, "ordering a new section 106 review would be futile, and therefore such request for relief is moot."³⁶

Ripeness

The doctrine of ripeness requires courts to dismiss a case that is brought prematurely before the agency's decision-making process is concluded. A case this year involved the ripeness of a Section 4(f) claim based on new information discovered after the ROD.

- Ripeness of Section 4(f) Claim Based on New Information. In the NC 12 case, the plaintiffs argued that FHWA violated Section 4(f) because the project would harm a historically significant shipwreck. The ROD determined that the shipwreck did not merit preservation in place and ordered data recovery. The court held that any argument based on new information discovered through the data recovery project was not yet ripe for judicial review until FHWA issued a final decision about the significance of that new information.³⁷

³⁴ *Friends of the Capital Crescent Trail v. Federal Transit Administration*, 2019 WL 1046889 (D.D.C. 2019).

³⁵ *Norwalk Harbor Keeper v. Federal Transit Administration*, 2019 WL 2931641 (D. Conn. 2019).

³⁶ *Camden County Historical Society v. New Jersey Department of Transportation*, 2019 WL 5558725 (D.N.J. 2019).

³⁷ *Save Our Sound OBX v. North Carolina Department of Transportation*, 914 F.3d 213 (4th Cir. 2019).

Intervention

In two cases this year, courts allowed a project sponsor to intervene in a lawsuit to defend its permit and denied a request to intervene from business groups with only an economic interest in the project.

- Intervention by Project Sponsor. In a case involving the Purple Line Project, the court allowed the project sponsor to intervene in the lawsuit, which challenged the Army Corps of Engineers' decision to issue a Clean Water Act Section 404 permit for the project. The court explained that the project sponsor, as the permit holder, would be seriously impacted by an adverse outcome in the case, and its intervention early in the litigation would not cause any delay in the judicial process.³⁸
- Intervention by Groups with Economic Interest in Project. In the I-73 case, the court denied requests by business groups to intervene in the lawsuit as defendants. The business groups did not hold any permits, were not involved in construction of the project, and had only a general economic interest in seeing the project built. In addition, their ultimate goal—defending the project's EIS and permits—was the same as the agency defendants. The court determined that allowing the business groups to intervene would unnecessarily complicate the lawsuit without providing any clear benefits.³⁹

³⁸ *Friends of the Capital Crescent Trail v. United States Army Corps of Engineers*, 2019 WL 3238749 (D. Md. 2019).

³⁹ *South Carolina Coastal Conservation League v. United States Army Corps of Engineers*, No. 17-cv-3412, ECF No. 54 (D.S.C. Jan. 30, 2019).

Appendix: List of 2019 Court Decision in CLUE Database

The following 2019 court decisions are included in the case law summaries posted in the CLUE database on the AASHTO Center for Environmental Excellence website. The full text of the court decision is posted along with each case law summary on the CLUE website.

Highway

1. *Bair v. California Department of Transportation*, 2019 WL 1979751 (N.D. Cal. 2019), *appeal filed*, No. 19-16478 (9th Cir.) (**U.S. 101 Project**; California).
2. *Bair v. California Department of Transportation*, 2019 WL 2644074 (N.D. Cal. 2019), *appeal filed*, No. 19-16478 (9th Cir.) (**U.S. 101 Project**; California).
3. *Camden County Historical Society v. New Jersey Department of Transportation*, 371 F. Supp. 3d 187 (D.N.J. 2019) (**I-295 Direct Connection Project**; New Jersey).
4. *Camden County Historical Society v. New Jersey Department of Transportation*, 2019 WL 2443101 (D.N.J. 2019) (**I-295 Direct Connection Project**; New Jersey).
5. *Camden County Historical Society v. New Jersey Department of Transportation*, 2019 WL 5558725 (D.N.J. 2019) (**I-295 Direct Connection Project**; New Jersey).
6. *Friends of Etna Turpentine Camp v. United States Fish and Wildlife Service*, 2019 WL 5110654 (M.D. Fla. 2019), *report and recommendation adopted as modified*, 2019 WL 3852732 (M.D. Fla. 2019) (**Suncoast Parkway II Project**; Florida).
7. *Highlands Ranch Neighborhood Coalition v. Cater*, 2019 WL 1873363 (D. Colo. 2019), *appeal filed*, No. 19-1190 (10th Cir.) (**C-470 Project**; Colorado).
8. *Montlake Community Club v. Mathis*, 2019 WL 3928732 (W.D. Wa. 2019) (**SR 520 Project**; Washington).
9. *Save Our Sound OBX v. North Carolina Department of Transportation*, 914 F.3d 213 (4th Cir. 2019) (**NC 12 Project**; North Carolina).
10. *Sierra Club v. North Carolina Department of Transportation*, 2019 WL 332795 (E.D.N.C. 2019), *modifying* 2018 WL 4955200 (E.D.N.C. 2018) (**U.S. 70 Havelock Bypass**; North Carolina).
11. *South Carolina Coastal Conservation League v. United States Army Corps of Engineers*, No. 17-cv-3412, ECF No. 54 (D.S.C. Jan. 30, 2019) (**I-73 Project**; South Carolina).

12. *Wise v. United States Department of Transportation*, 943 F.3d 1161 (8th Cir. 2019) (**I-630 Widening Project**; Arkansas).

Transit

13. *Friends of the Capital Crescent Trail v. Federal Transit Administration*, 2019 WL 1046889 (D.D.C. 2019) (**Purple Line Project**; Maryland).
14. *Friends of the Capital Crescent Trail v. United States Army Corps of Engineers*, 2019 WL 3238749 (D. Md. 2019) (**Purple Line Project**; Maryland).
15. *Lakes and Parks Alliance of Minneapolis v. Federal Transit Administration*, 926 F.3d 759 (8th Cir. 2019) (**Southwest Light Rail Transit Project**).
16. *Norwalk Harbor Keeper v. Federal Transit Administration*, 2019 WL 2931641 (D. Conn. 2019) (**Walk Bridge Replacement Project**; Connecticut).

Rail

17. *Indian River County v. United States Department of Transportation*, 945 F.3d 515 (D.C. Cir. 2019) (**All Aboard Florida/Brightline Project**; Florida).

Airport

18. *City of Burien v. Elwell*, 790 Fed. App'x 857 (9th Cir. 2019) (**Seattle-Tacoma Airport Takeoff Procedure**; Washington).
19. *Kushino v. Federal Aviation Administration*, 2019 WL 6534150 (W.D. Ky. 2019) (**Henderson City-County Airport Expansion Project**; Kentucky).