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U.S. Court of Appeals for D.C.

ENVIRONMENTAL LAW

NATIONAL ENVIRONMENTAL POLICY ACT / ENVIRONMENTAL IMPACT STATEMENT / INDIRECT EFFECTS

In a suit regarding the construction of the "Purple Line" light rail line in Maryland, preparation of a supplemental Environmental Impact States ("EIS") is unnecessary under the National Policy Act. Given the projected benefits of a light rail line compared to buses, and the unlikelihood that the Metrorail system would cease to exist by 2040, Appellees/Cross-Appellants could reasonably conclude that the information submitted by Appellants/Cross-Appellees present new environmental impacts significant enough to require a supplemental EIS. The process to produce the final EIS fulfilled the purposes of the National Environmental Policy Act and requiring more detail on rejected alternatives is unnecessary. The final EIS' indirect effects analysis adequately considers the project's possible indirect effects, such as on water quality, wildlife, and socioeconomic effects. Failure to use "green track mitigation" as originally planned is not significant enough to require a supplemental EIS. Grants of partial summary judgment reversed and affirmed.

FRIENDS OF THE CAPITAL CRESCENT TRAIL, et al. v. FEDERAL TRANSIT ADMINISTRATION, et al.

U.S.App.D.C. No. 17-5132 (consolidated with 17-5161, 17-5174, & 17-5175). Decided on December 19, 2017. Before Garland, C.J., and Rogers and Srinivasan, J.J., with Judge Rogers writing for the Court. *Kevin W. McArdle*, Atty., U.S. Dept. of Justice, argued the cause for appellants/cross-appellees Federal Transit Administration, et al. With him on the briefs were *Jeffrey H. Wood*, Acting Asst. Atty. Gen., *Eric Grant*, Dep. Asst. Atty. Gen., *Matthew Littleton* and *Erika Kranz,* Atty., *Paul M. Geier*, Asst. Gen. Counsel, U.S. Department of Transportation, and *Charles E. Enloe* and *Joy K. Park*, Attys. *Nick Goldstein*, Esq., *James M. Auslander*, Esq., and *Gus B. Bauman*, Esq., were on the brief for *amicus curiae* American Road & Transportation Builders Association in support of appellants/cross-appellees. *Albert M. Ferlo*, Esq., argued the cause for intervenor-appellant/cross-appellee State of Maryland. With him on the briefs were *Eric D. Miller*, Esq., *William G. Malley, Brian E. Frosh*, Atty. Gen., Office of the Atty. Gen. for the State of Maryland, and *Julie T. Sweeney*, Asst. Atty. Gen. *Linda DeVuono*, Asst. Atty. Gen., entered an appearance. *Jared M. McCarthy*, Esq., and *Milton E. McIver*, Esq., were on the brief for *amicus curiae* Prince George's County, Maryland. *John P. Markovs*, Esq., was on the brief for *amicus curiae* Montgomery County, Maryland. *Eric R. Glitzenstein*, Esq., argued the cause for appellees/cross-appellants Friends of the Capital Crescent Trail, et al. With him on the briefs was *David W. Brown*, Esq. *William S. Eubanks, II,* Esq., entered an appearance.

ROGERS, *Circuit Judge*: This case concerns multiple challenges under the National Environmental Policy Act to Maryland's proposed "Purple Line" light rail project. Two orders of the district court are principally at issue. In the first order, the district court directed the Federal Transit Administration ("FTA") to prepare a supplemental Environmental Impact Statement ("SEIS") to analyze the effects of Metrorail's recent safety and ridership problems on the Purple Line's environmental impact and purpose; it also vacated FTA's Record of Decision pending completion of the SEIS. In the second order, the district court rejected other challenges to FTA's final Environmental Impact Statement ("FEIS"). For the following reasons, we reverse the order directing the preparation of a SEIS and vacating the Record of Decision, and we affirm the order rejecting the three challenges to the FEIS presented on appeal.

I.

For over two decades, beginning as early as 1990, the Maryland Transit Administration ("Maryland") has developed plans to construct the "Purple Line" — a 16-mile public transit project that would connect communities in Maryland's Montgomery and Prince George's counties with each other and with other regional transit systems, including the Washington Metropolitan Area Transit Authority's Metrorail system. In 2003, Maryland applied for funding under the "New Starts" program administered by FTA, *see* 49 U.S.C. § 5309(b)(1); 49 C.F.R. pt. 611, to defray part of the Purple Line's construction costs. Notice of Intent to Prepare an EIS, 68 Fed. Reg. 52,452, 52,454 (Sept. 3, 2003). Designed to "foster the development and

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revitalization of public transportation systems," 49 U.S.C. § 5301(a), the "New Starts" program proceeds in three phases. First, FTA and the applicant together conduct an environmental review, including an analysis under the National Environmental Policy Act ("NEPA"), and develop and compare project alternatives. *Id.* § 5309(d)(1); 23 C.F.R. § 771.109(c)(2). This review culminates in a Record of Decision ("ROD") in which FTA identifies the alternative chosen and demonstrates the project's compliance with NEPA. *See id.* § 5309(d)(2)(A). In the next two phases, FTA evaluates the project's compliance with other statutory and regulatory criteria not relevant here, finalizes the project's engineering and design, and addresses the project's financial aspects, ultimately deciding whether or not to enter into a grant agreement with the applicant that commits federal funding to the project. *Id.* § 5309(k).

A.

NEPA, 42 U.S.C. §4321 *et seq.,* imposes a set of procedural requirements on federal agencies to "ensure[] that the[y] will not act on incomplete information, only to regret [their] decision after it is too late to correct." *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989). It also requires "broad dissemination of information ... [to] permit[] the public and other government agencies to react to the effects of a proposed action at a meaningful time." *Id.* Thus, planned actions that would have an impact on the physical environment will be "fully informed and well-considered." *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1309–10 (D.C. Cir. 2014) (quotation marks and citation omitted). Among other things, NEPA requires federal agencies proposing to undertake "major Federal actions significantly affecting the quality of the human environment" to prepare an environmental impact statement ("EIS") that compares in detail the foreseeable environmental effects of project alternatives. 42 U.S.C. § 4332(C); *see also Metro. Edison Co. v. People Against Nuclear Energy*, 460 U.S. 766, 772 (1983). This requires an agency to "take a hard look at environmental consequences" of its proposed action, *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989) (quotation marks and citation omitted), thus ensuring that it will "consider every significant aspect of the environmental impact of a proposed action" and "inform the public" of its analysis and conclusion. *Balt. Gas & Elec. Co v. NRDC, Inc.,* 462 U.S. 87, 97 (1983). Completion of the EIS, however, does not always mark the end of the NEPA process. If "new information" arises that presents "a seriously different picture of the environmental landscape," then the agency must prepare a supplemental EIS ("SEIS"). *City of Olmsted Falls v. FAA*, 292 F.3d 261, 274 (D.C. Cir. 2002) (citation omitted).

Between 2003 and 2008, FTA and Maryland jointly prepared a draft EIS ("DEIS"). *See* 23 U.S.C. § 139(c)(3); 23 C.F.R. §§ 771.109(c)(2), 771.111(a). The DEIS, which was released for public comment in October 2008, discussed eight project design alternatives for the Purple Line. Six were "build" alternatives, contemplating new construction of a light rail or bus rapid transit system at varying investment levels. The seventh was a "transportation systems management" alternative in which there is no new construction but various improvements are made to existing systems. The eighth was the "no-build" alternative, in which no action is taken. *See* 40 C.F.R. § 1502.14(d). The DEIS compared these alternatives on various grounds, including environmental impact, stating that because "the alternatives generally follow existing roadways and railroad rights-of-way . . . , the environmental and community impacts are relatively minor in type and degree for projects of this nature." DEIS, ch. 6, at 6 (Oct. 2008). The DEIS therefore concluded that "[b]ecause all the alternatives would have similar alignment characteristics, [their] impacts on parks, wetlands, historic properties, business properties, and other environmentally sensitive sites would be similar . . . , and are thus unlikely to be a differentiating factor among the[m]." *Id.*

After the close of the comment period, Maryland publicly identified in August 2009 a modified version of the medium- investment light rail option as its "locally preferred alternative" for the Purple Line. *See* 49 U.S.C. §5309(d)(2)(A)(i). Although acknowledging that the bus rapid transit option would be more cost-effective than light rail, Maryland identified offsetting benefits underlying its choice of light rail: greater expected ridership (and ability to expand capacity to meet future demand), greater opportunities for local economic development, faster travel times, and (importantly) local government support. Purple Line Locally Preferred Alternative, at 4 (Aug. 2009).

Upon further study by Maryland and FTA, and public involvement, FTA issued the Purple Line's final EIS ("FEIS") in August 2013. The FEIS sets forth the project's three purposes:

(1) Provide faster, more direct, and more

> reliable east– west transit service connecting the major activity centers in [Montgomery and Prince George's counties, including] Bethesda, Silver Spring, Takoma/Langley Park, College Park, and New Carrollton,
>
> (2) Provide better connections to Metrorail services located in the corridor, and
>
> (3) Improve connectivity to the communities in the corridor located between the Metrorail lines.

FEIS, ch. 1, at 1 (Aug. 28, 2013). With reference to these purposes, the FEIS compares in detail Maryland's preferred light rail alternative and the "no-build" alternative. It includes chapters on adverse environmental effects resulting from construction and operation, indirect effects, impacts on nearby historic properties, mitigation and minimization measures, FTA's responses to public comments, and technical reports on noise impacts, travel forecasts, and other issues. In addition, the FEIS compares the alternatives' transportation-related effects, including future ridership forecasts and impacts on low-income and minority communities. It also incorporates by reference the earlier analysis of alternatives contained in the DEIS. *Id.* ch. 2, at 1. In total, including technical reports, the FEIS is over eight hundred pages.

Based on the FEIS, DEIS, and other supporting technical and design documents, FTA issued the Purple Line's Record of Decision ("ROD") in March 2014. 79 Fed. Reg. 18,113 (Mar. 31, 2014). It certified the project's compliance with NEPA, see 49 U.S.C. § 5309(d)(1)(A)(i)(II), thereby advancing it to the next "New Starts" phase, in which engineering and design elements are finalized. *See* 49 U.S.C. § 5309(d)(2).

B.

In August 2014, Friends of the Capital Crescent Trail and two individual environmentalists (collectively, "the Friends") filed suit against FTA in the federal district court here, alleging that in developing the FEIS, FTA had violated NEPA and other environmental statutes. The State of Maryland intervened in support of FTA. In October 2015, while the lawsuit was pending, the Friends wrote to FTA about purported new information on Metrorail's safety and ridership problems. Their letter stated that a "series of incidents," including the death of a passenger in January 2015, "have raised questions about [Metrorail] passenger safety." Friends Letter to FTA, at 2–3 (Oct. 9, 2015) ("Friends 2015 Letter"). It also described the decline in Metrorail ridership since 2009 "due to interruptions, delays, accidents[,] and the adoption of other means and patterns of travel." *Id.* at 3. Because the Purple Line "is inextricably linked to and dependent upon" Metrorail, the Friends concluded that the problems experienced by Metrorail undermined the ridership projections in the FEIS and, therefore, necessitated preparation of a SEIS. *Id.* at 3. Attached to the Friends' letter were three declarations questioning the assumptions and methodology underlying the ridership projections in the FEIS. *Id.* at 5. Maryland's response was that because the Purple Line and Metrorail are separate legal entities, "the financial or other issues currently being experienced by [Metrorail] do not involve the Purple Line, and they have no relationship to the environmental impacts of the Purple Line." Maryland Letter to FTA, at 3 (Dec. 7, 2015) ("Md. 2015 Letter"). Maryland characterized the declarations as simply "late-filed comment[s] on the analysis in the [F]EIS," not new information warranting preparation of a SEIS. *Id.* at 9–10. FTA agreed and declined to prepare a SEIS to address the ridership issue. FTA Letter to Maryland, at 4 (Jan. 7, 2016) ("FTA 2016 Letter"). The Friends then filed an additional complaint under the Administrative Procedure Act ("APA"), 5 U.S.C. §706, alleging the refusal to prepare a SEIS was arbitrary. Cross- motions for summary judgment were filed.

The district court granted partial summary judgment to the Friends. *Friends of the Capital Crescent Trail v. FTA*, 200 F. Supp. 3d 248 (D.D.C. Aug. 3, 2016). It concluded that Metrorail's ridership decline and safety problems "directly undermined the [ridership] rationale" upon which the Purple Line was justified, and that because the FEIS had estimated approximately a quarter of expected Purple Line riders would transfer to or from Metrorail, a potentially large change to that forecast requires reevaluation of the Purple Line project alternatives. *Id.* at 252–53. The district court ordered FTA to prepare a SEIS addressing the ridership issue and vacated the ROD pending its completion. *Id.* at 254. Subsequently, in responding to FTA's motion for reconsideration, the district court permitted FTA to examine on remand the "significance of [Metrorail's] ridership and safety issues [on the Purple Line] and determine what level of additional environmental analysis is required." *Friends of the Capital Crescent Trail v. FTA*, 218 F. Supp. 3d 53, 58 (D.D.C. Nov. 22, 2016).

In December 2016, FTA filed a memorandum with the district court based on Maryland's evaluation of five hypothetical scenarios in which Metrorail ridership declines in varying degrees to the year 2040. FTA Scenarios Memorandum (Dec. 13, 2016) ("FTA Scenarios Report"); *see* Maryland Metrorail Ridership Assessment (Nov. 3, 2016) ("Md. Ridership Assessment"). In the most extreme scenario, Metrorail ceases to function, resulting in zero transfers to and from the Purple Line. FTA Scenarios Report, at 4. FTA determined that under any of the five scenarios light rail would meet the Purple Line's purposes as well as or better than any other option. *Id.* at 6–7. In addition, FTA emphasized, no matter the level of Metrorail's ridership, the Purple Line's environmental impact during construction and operation would not worsen. *Id.* at 4. Therefore, FTA again concluded that preparation of a SEIS was not required. *Id.* at 7.

The district court disagreed. *Friends of the Capital Crescent Trail v. FTA*, 253 F. Supp. 3d 296 (D.D.C. May 22, 2017). First, because FTA did not ascertain which of the five Metrorail ridership scenarios was most likely to occur, it found that FTA had no basis to conclude that the Purple Line would fulfill the stated purposes in all scenarios. *Id.* at 301. Second, it found that FTA failed to respond specifically and meaningfully to the criticisms raised by the Friends' declarants. *Id.* at 301–02. The district court therefore ordered the preparation of a SEIS. *Id.* at 303. Its vacatur of the ROD pending completion of the SEIS remained intact. FTA and Maryland appeal.

II.

NEPA itself does not state when a SEIS must be prepared, but the regulations promulgated by the Council on Environmental Quality

("CEQ") do. As explained by the Supreme Court, "[t]he CEQ regulations, which . . . are entitled to substantial deference, impose a duty on all federal agencies to prepare supplements to either draft or final EIS's if there 'are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.'" *Marsh*, 490 U.S. at 372 (quoting 40 C.F.R. § 1502.9(c)); *see Union Neighbors United, Inc. v. Jewell*, 831 F.3d 564, 569 n.1 (D.C. Cir. 2016). Similarly, FTA's own NEPA regulations, supplementing those of CEQ, require, as relevant, preparation of a SEIS where "[n]ew information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the [F]EIS." 23 C.F.R. § 771.130(a)(2); *see id.* § 771.101. Consistent with a "rule of reason," an agency need not supplement an EIS every time new information comes to light after the EIS is finalized; rather, the need for supplementation "turns on the value of the new information to the still pending decisionmaking process." *Marsh,* 490 U.S. at 374.

Our review of the district court's grant of summary judgment is *de novo. Defenders of Wildlife v. Zinke*, 849 F.3d 1077, 1082 (D.C. Cir. 2017) (citation omitted). Review of FTA's decision not to prepare a SEIS is "searching and careful," but "narrow." *Marsh,* 490 U.S. at 375–76; 5 U.S.C. § 706(2)(A). Because this is a challenge to "an agency action under the APA, [this court] review[s] the administrative action directly, according no particular deference to the judgment of the [d]istrict [c]ourt." *In re Polar Bear Endangered Species Act Listing*, 709 F. 3d. 1, 8 (D.C. Cir. 2013). If an agency's decision not to prepare a SEIS turns on a "factual dispute the resolution of which implicated substantial agency expertise," the court defers to the agency's judgment. *Marsh,* 490 U.S. at 376 (internal citation and quotation marks omitted). The Friends maintain the submitted Metrorail information undermines conclusions in the FEIS, while FTA and Maryland view the information as not significant with respect to either environmental effects or the choice of alternative. "Because analysis of the relevant documents requires a high level of technical expertise, we must defer to the informed discretion of the responsible federal agenc[y]," provided the "decision not to [prepare a SEIS] was not arbitrary or capricious." *Id.* at 377 (citations omitted); *see id.* n.23. In other words, the question is whether FTA's "decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment." *Id.* at 378 (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 416 (1971)). "When specialists express conflicting views, an agency must have discretion to rely on the reasonable opinions of its own qualified experts even if, as an original matter, a court might find contrary views more persuasive." *Id.* At the same time, "in the context of reviewing a decision not to supplement an EIS, courts should not automatically defer to the agency[] . . . without carefully reviewing the record and satisfying themselves that the agency has made a reasoned decision based on its evaluation of the significance — or lack of significance — of the new information." *Id.*

Consistent with this standard of review, central to our resolution of the challenges to the order requiring the preparation of a SEIS is FTA's Scenarios Report, which assesses the impact of five hypothetical scenarios of future Metrorail ridership decline on the Purple Line's ridership. In the most optimistic scenario of "near-term rebound," Metrorail ridership declines through 2017, but after completion of safety and reliability improvements, ridership returns to its prior growth path from 2018 through 2040, the study's cutoff date. FTA Scenarios Report, at 3. In the second scenario, Metrorail ridership increases from 2018 through 2040, but at a slower rate. *Id.* In the third scenario, Metrorail ridership stagnates between 2018 and 2040. *Id.* In the fourth scenario, Metrorail ridership declines through 2040 at the same rate it has for the past decade. *Id.* In the fifth scenario, Metrorail ceases to exist, resulting in no transfers to or from the Purple Line. *Id.* at 4.

With respect to the transportation-related impacts of Metrorail decline on the Purple Line, FTA acknowledged that in the fifth scenario the light rail option would no longer satisfy one of the Purple Line's three purposes, namely, improving connectivity to Metrorail. *Id.* at 7. Nonetheless, FTA determined:

> This would not affect the choice between alternatives, however, because no alternative would be capable of meeting that [purpose], as it relies on the existence of the Metrorail system. Moreover, the corresponding increases in roadway congestion would amplify the extent to which the [light rail] project meets the [other, non-Metrorail-related purposes of the Purple Line], making [light rail] still the best able to meet [the Purple Line's] overall Purpose and Need, even under this highly unlikely scenario.

Id.

Separately, FTA determined with respect to environmental impacts that none of the five scenarios would "affect the [construction-related environmental] footprint" of the Purple Line. *Id.* at 4–5. Indeed, were the Purple Line to reduce its frequency of service, its energy use and consequent operational environmental impact would also decrease. *Id.* at 5. Therefore, FTA concluded under its SEIS regulation, 23 C.F.R. § 771.130(a)(2), that the Friends' information on Metrorail ridership decline does not present "significant . . . new information" with respect to the Purple Line's purposes or environmental impact that was not already "evaluated in the [F]EIS." *Id.* at 7.

This determination would appear to be

precisely the type of judgment "implicat[ing] substantial agency expertise" to which the court owes deference. *See Marsh,* 490 U.S. at 376– 77. The Friends contend, however, that FTA erred as a matter of law because it should have applied the CEQ SEIS regulation rather than FTA's own regulation, noting a textual difference between them. *Compare* 40 C.F.R. § 1502.9(c)(1)(ii) (CEQ regulation) *with* 23 C.F.R. § 771.130(a)(2) (FTA regulation). The Friends view the CEQ regulation as substantially broader, requiring a SEIS in a greater range of circumstances. *See* Appellee Br. at 38–41. Their focus on the textual difference is not implausible. For example, if an agency received "new information" that seriously undermined a project's rationale, thereby making environmentally friendlier alternatives more attractive, then under the CEQ regulation, the Friends suggest, that information is "relevant to environmental concerns and bear[s] on the proposed action or its impacts," thereby requiring preparation of a SEIS. 40 C.F.R. § 1502.9(c)(1)(ii). By contrast, under the FTA regulation, if that new information did not also reveal some new environmental impact "not evaluated in the [F]EIS," then, they suggest, no SEIS would be required. 23 C.F.R. § 771.130(a)(2). The Friends, therefore, urge that even if its Metrorail ridership and safety information did not reveal an environmental impact of a kind not previously addressed in the FEIS, it was surely "relevant" to the Purple Line's environmental impact and "bear[s] on the proposed action" because it makes the bus rapid transit and other alternatives more attractive. Appellee Br. at 40. They maintain that the district court properly ordered the preparation of a SEIS. *Id.* at 40–41.

The Friends have overread the effect of the textual difference between the two regulations. As interpreted by the Supreme Court, NEPA requires the preparation of a SEIS where new information "will affect the quality of the human environment in a significant manner or to a significant extent *not already considered*." *Marsh,* 490 U.S. at 373–74 (emphasis added). Over the course of a long-running project, new information will arise that affects, in some way, the analysis contained in a prior FEIS. NEPA does not require agencies to needlessly repeat their environmental impact analyses every time such information comes to light. Rather, a SEIS must be prepared only where new information "provides a seriously different picture of the environmental landscape." *Nat'l Comm. for the New River v. FERC,* 373 F.3d 1323, 1330 (D.C. Cir. 2004) (emphasis added).

So understood, regardless of whether the CEQ or FTA regulation applies, FTA and Maryland reasonably explained why the Friends' Metrorail information does not require preparation of a SEIS. Not only does that information not adversely affect the Purple Line's environmental impact in an absolute sense — the construction and operational footprint would remain the same — neither does it have relative environmental or transportation effects that would alter Maryland's selection of light rail over bus rapid transit or other alternatives. FTA determined that the Metrorail information offered no basis to distinguish the alternatives on environmental grounds: Each alternative "would have similar alignment characteristics" and thus similar "impacts on parks, wetlands, historic properties, residential and business properties, and other environmentally sensitive sites." *DEIS*, ch. 6, at 6. Given that the alternatives were rough equivalents with regard to their environmental impacts, Maryland concluded that "[a] reduction in Metrorail ridership, resulting in a reduction in Purple Line ridership, would not cause any increase or decrease in the relative environmental impacts of the [bus rapid transit] and light rail alternatives." Md. Ridership Assessment, at 31; *see also id.* at 33–34.

Furthermore, the Metrorail information offered no reason for Maryland to reconsider the transportation reasons for selecting its preferred alternative. Even if Metrorail ceased to exist — an extreme and highly unlikely scenario given its centrality to transportation in the greater Washington metropolitan area — light rail would still provide faster (and higher-capacity) east–west connections between major Maryland activity centers in Montgomery and Prince George's counties than would other alternatives, like bus rapid transit. *See* Md. Ridership Assessment, at 32. Light rail also would promote new economic opportunities in the underserved low- income and minority communities located between those centers, and provide better connections to non-Metrorail regional transit options, including the MARC train, the Amtrak railroad, and local bus routes. *See* FTA Scenarios Report, at 6; FEIS, ch. 1, at 1. And in contrast to bus rapid transit, light rail would help reduce roadway congestion in a region with a fast- growing population and economy. *See* ROD, at 3; FEIS, app. A, at 19–20; *see also* Md. Ridership Assessment, at 7–8, 32. FTA and Maryland, therefore, could reasonably conclude that the Metrorail information submitted by the Friends does not present any new environmental impacts, whether absolute or relative, that were "significant" enough to require preparation of a SEIS. 40 C.F.R. §1502.9(c)(1)(ii); 23 C.F.R. § 771.130(a)(2).

The Friends resist this conclusion on an additional ground, pointing to *Alaska Wilderness Recreation and Tourism Association v. Morrison*, 67 F.3d 723 (9th Cir. 1995). There, the Ninth Circuit required the agency to complete a SEIS in light of significantly changed conditions, namely, the cancellation of a long-term contract upon which the agency's chosen alternative depended. *Id.* at 728–30. No analogous situation exists here. *Alaska Wilderness* involved a basic change that undercut the rationale upon which the agency action depended. By contrast, even with reduced Metrorail ridership, a light rail Purple Line still meets its Metrorail- connection purpose

as well as or better than the other alternatives, and still meets its non-Metrorail-related purposes.

To the extent the district court faulted Maryland and FTA for failing to respond to the Friends' three declarations questioning and raising methodological concerns regarding FTA's ridership numbers in the FEIS, the court's analysis is flawed. *Friends of the Capital Crescent Trail v. FTA*, 253 F. Supp. 3d 296, 301–03 (D.D.C. May 22, 2017). The district court analogized to *Public Employees for Environmental Responsibility v. Hopper*, 827 F.3d 1077 (D.C. Cir. 2016), where an agency's post-remand determination not to prepare a SEIS was vacated because it had ignored and excluded data submitted by the plaintiffs. *Id.* at 1089–90. That is not what happened here. FTA and Maryland both referred to and discussed the views in the declarations. *See* FTA 2016 Letter, at 3; Md. 2015 Letter, at 9–10. Further, FTA had previously explained its assumptions in predicting Purple Line ridership, which the Friends' declarants criticized without offering ridership numbers of their own. *See* DEIS, Travel Demand Forecasting Technical Report; FEIS, Travel Forecasts Results Technical Report. In these circumstances, treatment of the three declarations as "late-filed comments" was appropriate. Md. 2015 Letter, at 9–10. In addition, FTA's response to the Friends' subsequent declarations criticizing its measurement of future Metrorail ridership was reasonable. *See* FTA Scenarios Report. Agencies are not always required to give "point-by- point responses" to every objection raised. *Cf. Am. Forest & Paper Ass'n, Inc. v. EPA*, 294 F.3d 113, 116 n.3 (D.C. Cir. 2002). FTA and Maryland explained how they measured Metrorail ridership and its impact on the Purple Line. *See* FTA Scenarios Report, at 2–3; Md. Ridership Assessment, at 10–20. Absent more than mere disagreement about methodological choice, FTA's responsive explanation "is entitled to deference from this court." *Cmtys. Against Runway Expansion, Inc. v. FAA*, 355 F.3d 678, 689 (D.C. Cir. 2004).

In sum, FTA and Maryland's explanation of why the Metrorail problems identified by the Friends did not require preparation of a SEIS satisfies the CEQ and FTA regulations on supplementation, this court's precedent, and *Marsh's* "rule of reason," 490 U.S. at 373–74, the overarching principle governing judicial review of NEPA. Because NEPA "does not mandate particular results," the court's role is to ensure that agencies consider all significant and reasonably foreseeable environmental impacts. *Robertson*, 490 U.S. at 350. Assuming that NEPA requires a SEIS where new information justifies reconsideration of a more environmentally favorable alternative, on this record the court cannot say that the Friends' Metrorail information constitutes such new information. At most it partially called into question one of the Purple Line's purposes. It did not call into question the entirety of the Purple Line, or the choice of light rail over other alternatives, or the Purple Line's environmental impact — or at least FTA was entitled to so conclude. FTA and Maryland sufficiently examined the impact of Metrorail issues on the Purple Line's three purposes, and reasonably concluded that Metrorail problems would not change the project's preferred alternative, grounding that conclusion on an assessment of five ridership scenarios. These circumstances warrant deference by the court to FTA's (and Maryland's) reasonable, fact-intensive, technical determination that preparation of a SEIS was not required. Accordingly, we reverse the order requiring FTA to prepare a SEIS.

III.

Separate from the Metrorail-related SEIS issue, the district court granted partial summary judgment to FTA on the Friends' other environmental challenges to the Purple Line FEIS. *Friends of the Capital Crescent Trail v. FTA*, 255 F. Supp. 3d 60 (D.D.C. June 9, 2017). The Friends now appeal three of the district court's rulings, contending that the alternatives analysis in the FEIS violates NEPA, as does its indirect effects analysis, and that Maryland's elimination of the "green track" mitigation technique necessitates preparation of a SEIS. We agree with the district court that the Friends' challenges to the sufficiency of the FEIS lack merit. *See Defenders of Wildlife*, 849 F.3d at 1082,

A.

Although the DEIS compared eight project alternatives, the FEIS for the Purple Line compared only two: Maryland's "locally preferred" light rail alternative and the "no-build" option (i.e., taking no action and assuming all planned and in- progress local projects are completed). *See* 40 C.F.R. § 1502.14(d). In the Friends' view, the comparison in the FEIS of only two starkly different alternatives precluded a meaningful analysis and was therefore insufficient.

NEPA requires a detailed, meaningful alternatives analysis. *See* 42 U.S.C. §§ 4332(C)(iii), (E). The CEQ regulations, in turn, require agencies to "[r]igorously explore and objectively evaluate *all reasonable alternatives*, and for alternatives which were eliminated from detailed study, [to] briefly discuss the reasons for their having been eliminated." 40 C.F.R. § 1502.14(a) (emphasis added). Further, the FTA NEPA regulations require the FEIS to "identify the preferred alternative and evaluate *all reasonable alternatives* considered." 23 C.F.R. § 771.125(a)(1) (emphasis added); *see also id.* § 771.111(f).

The reasonableness of the analysis of project alternatives in a FEIS is resolved not by any particular number of alternatives considered,

but by the nature of the underlying agency action. *See Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991). For some agency actions, the FEIS itself should consider a broad range of reasonable alternatives. *See*, *e.g., Union Neighbors United, Inc. v. Jewell*, 831 F.3d 564, 576–77 (D.C. Cir. 2016). But the NEPA process adopted by FTA and Maryland for the Purple Line — an enormously complex project involving coordination between multiple government and private actors — fulfilled NEPA's purposes. As the FEIS explained, Maryland initially considered numerous alternatives, evaluating them for their effectiveness in meeting project goals, engineering feasibility, cost, public support, and environmental impact. *See* FEIS, ch. 2, at 4. Alternatives "not considered reasonable" were "eliminated from further consideration." *Id.* The eight alternatives that met the reasonableness standard were evaluated in the DEIS at a range of investment levels. *Id.* at 5– 12. Following further study, Maryland chose the light rail option as its locally preferred alternative. *Id.* at 12–18. That choice narrowed FTA's role: Its ultimate decision was to decide whether or not to fund the preferred alternative. The FEIS therefore focused on comparing light rail and the "no-build" option.

This "funneling approach" adopted by Maryland and FTA, narrowing alternatives over a period of years, was in accord with NEPA's "rule of reason," *Marsh,* 490 U.S. at 373–74, and common sense: Agencies need not reanalyze alternatives previously rejected, particularly when an earlier analysis of numerous reasonable alternatives was incorporated into the final analysis and the agency has considered and responded to public comment favoring other alternatives. The alternatives analysis contained in the FEIS was sufficient under NEPA. The FEIS permissibly summarizes and expressly incorporates the analysis of eight alternatives contained in the DEIS, identifies the alternatives considered throughout the "New Starts" process, details the methodology used to compare alternatives, and explains the reasons light rail was chosen by Maryland. *See* FEIS, ch. 2. It then compares the light rail and "no-build" alternatives. *See id.* ch. 3 (comparing transportation effects); *id.* ch. 4 (comparing environmental impacts and presenting mitigation measures); *id.* ch. 9 (evaluating alternatives). The FEIS also includes FTA's earlier responses to comments on the DEIS's alternatives analysis. *See id.* app. A. Requiring more detail on rejected alternatives would elevate form over function. The process undertaken fulfilled NEPA's purpose to identify and analyze project alternatives, to make that analysis available for public comment, and to respond to those comments in a manner that explained the preferred alternative, thereby promoting reasoned, well- considered decisionmaking. *See*, *e.g., Sierra Club v. U.S. Dep't of Energy*, 867 F.3d 189, 196 (D.C. Cir. 2017) (citations omitted).

B.

The Friends' challenge to the adequacy of the FEIS's examination of the Purple Line's indirect environmental effects, *see* 40 C.F.R. §§1502.16(a), (b), is similarly unavailing. In the Friends' view, FTA failed to analyze adequately the impact of Purple Line-induced economic development on local water quality and wildlife or on the socioeconomic makeup of local communities.

Under FTA's regulations, "indirect effects" are those "caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable"; they include "growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." 40 C.F.R. § 1508.8(b). The required indirect effects analysis is thus limited to what is reasonably foreseeable, "with *reasonable* being the operative word." *Sierra Club*, 867 F.3d at 198. "[B]aseless speculation is unhelpful," id., and agencies "need not foresee the unforeseeable," *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014). Still, agencies must "fulfill [their] duties to the fullest extent possible" with the information available. *Id.*

The analysis of indirect effects addressed in Chapter 7 of the FEIS meets this standard. That chapter defines the area of analysis as "a reasonable walking distance around station areas of approximately one-half-mile," and identifies twelve urban light rail stations where the Purple Line would likely induce economic development. FEIS, ch. 7, at 2–6. It uses local land use and zoning plans to describe possible economic

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development at these stations to the cutoff year 2040. *Id.* at 6– 18. Cautioning that development plans may change for myriad market- and regulation-related reasons, the FEIS describes existing and reasonably foreseeable future projects that could have environmental and socioeconomic effects in areas surrounding the Purple Line Stations. *Id.* This includes a discussion of water quality and stormwater drainage issues. For example, with respect to Coquelin Run, a stream near a proposed Purple Line station in Chevy Chase, Maryland, the FEIS states that "any negative impact to water quality from the increased development [surrounding the station] would be avoided through the requirements of state and federal water quality regulations and the stated intent of the community to restore" the stream, as shown in local planning documents. *Id.* at 11. The FEIS also acknowledges the potential for increased property values and discusses the potential socioeconomic effects at each station — including residential and commercial displacement, housing stock changes, business migration, and changes to neighborhood character. *Id.* at 11–18. Additionally, in Chapter 4, it considers environmental justice issues and impacts on poor and minority communities. *Id.* ch. 4, at 143–69. Because national, state, and local politico- economic factors affect these kinds of issues, FTA explains that "[t]he degree to which the Purple Line would affect ... property values would be subjective and difficult to quantify." *ROD*, at 96; *see also* FEIS, ch. 4, at 166–67.

The Friends rely on *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017). There, the court invalidated an indirect effects analysis because the agency had technical and contractual information on "how much gas the pipelines [would] transport" to specific power plants, and so could have estimated with some precision the level of greenhouse gas emissions produced by those power plants. *Id.* at 1371–74. The court also recognized that "in some cases quantification may not be feasible." *id.* at 1374, and this is such a case. Local land use planning documents are inherently less concrete than numerical estimates based on pipeline capacity and contractual usage commitments. FTA discussed Purple Line-induced indirect effects based on local planning and zoning documents while acknowledging the limits of its prediction. Even assuming the indirect effects analysis could "be[] more thorough", *City of Alexandria v. Slater*, 198 F.3d 862, 869–70 (D.C. Cir. 1999), the Friends have not identified a critical flaw or glaring hole that would inhibit NEPA's information-promoting and accountability goals. *See Robertson*, 490 U.S. at 348–49.

C.

Likewise unpersuasive is the Friends' challenge to FTA's decision to abandon its commitment to use a "green track" mitigation measure. In responding to public comments, FTA stated in the ROD that the Purple Line "will use" green track in certain locations, in which vegetation would be planted along the light rail route to reduce impervious surfaces, limit stormwater runoff, and provide aesthetic benefits. ROD, attach. C, at 91, 113; *see* FEIS, ch. 2, at 29. Subsequently, Maryland's newly-elected Governor conditioned the State's continued approval of the Purple Line on cost-cutting changes, including using other trackside mitigation measures such as crushed stone instead of green track. In the Friends' view, this was a significant change that required preparation of a SEIS to reevaluate the Purple Line's stormwater effects.

Although breaking a promise to use green track mitigation may present a political issue, the Friends fail to show the change is legally significant enough to require preparation of a SEIS. *Friends of the Capital Crescent Trail v. FTA*, 255 F. Supp. 3d 60, 68–69 (D.D.C. June 9, 2017). Use of green track as a mitigation measure is hardly a central piece of the Purple Line, and FTA could reasonably conclude its elimination does not present a "seriously" different picture of environmental impacts that would require preparation of a SEIS. *See Nat'l Comm. for the New River*, 373 F.3d at 1330. State environmental and stormwater standards will apply regardless of whether green track or another stormwater mitigation measure is used, and to that extent the environmental impact is the same. *See* Overview of Maryland Stormwater Management Requirements and [Maryland's] Approach to Stormwater Compliance for the Purple Line (Dec. 2015).

National Wildlife Federation v. Marsh, 721 F.2d 767 (11th Cir. 1983), illustrates the point. There, the agency revised its mitigation plan to consist of planting 200 acres of "green tree reservoirs" (i.e., wooded areas that are seasonally flooded to provide wildlife habitats) and adopting an "intense wildlife management" plan. *Id.* at 772–73, 782–83. The Eleventh Circuit concluded this was a "change in the character of the land itself," and therefore required preparation of a SEIS. *Id.* at 783. Unlike those revisions, which "envision[ed] a change in the types of activities to be undertaken on the land," id., there is no analogous basic change to the Purple Line project or its environmental effects.

IV.

Finally, as to the district court's order vacating the ROD pending completion of a SEIS, *see Friends of the Capital Crescent Trail v. FTA*, 200 F. Supp. 3d 248, 254 (D.D.C. Aug. 3, 2016), our holdings that a SEIS was not required and that the FEIS challenges lack merit mean the vacatur was error. The court, therefore, need not address the parties' contentions regarding the validity or not of vacatur.

Accordingly, we reverse the grant of partial summary judgment to the Friends requiring the preparation of a SEIS and vacating the ROD, and we affirm the grant of partial summary judgment to FTA on the Friends' challenges to the FEIS.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMENDED NOTICE OF PROPOSED LOCAL RULE CHANGE AND OPPORTUNITY TO COMMENT

The United States District Court for the District of Columbia at its November Executive Session approved the publication of the following proposed rule changes for notice and comment.

PROPOSED DISCLOSURE RULE

(a) Unless the parties otherwise agree and where not prohibited by law, the government shall disclose to the defense, upon a defense request, all information "favorable to an accused" that is "material either to guilt or to punishment" under *Brady v. Maryland*, 373 U.S. 83, 87 (1963), and that is known to the government. This requirement applies regardless of whether the information would itself constitute admissible evidence. The information, furthermore, shall be produced in a reasonably usable form unless that is impracticable; in such a circumstance, it shall be made available to the defense for inspection and copying. Beginning at the defendant's arraignment and continuing throughout the criminal proceeding, the government shall make good-faith efforts to disclose such information to the defense as soon as reasonably possible after its existence is known, so as to enable the defense to make effective use of the disclosed information in the preparation of its case.

(b) The information to be disclosed under (a) includes, but is not limited to:

(1) Information that is inconsistent with or tends to negate the defendant's guilt as to any element, including identification, of the offense(s) with which the defendant is charged;

(2) Information that tends to mitigate the charged offense(s) or reduce the potential penalty;

(3) Information that tends to establish an articulated and legally cognizable defense theory or recognized affirmative defense to the offense(s) with which the defendant is charged;

(4) Information that casts doubt on the credibility or accuracy of any evidence, including witness testimony, the government anticipates using in its case-in-chief at trial; and

(5) Impeachment information, which includes but is not limited to: (i) information regarding whether any promise, reward, or inducement has been given by the government to any witness it anticipates calling in its case-in-chief; and (ii) information that identifies all pending criminal cases against, and all criminal convictions of, any such witness.

(c) As impeachment information described in (b)(5) and witness-credibility information described in (b)(4) are dependent on which witnesses the government intends to call at trial, this rule does not require the government to disclose such information before a trial date is set.

(d) In the event the government believes that a disclosure under this rule would compromise witness safety, victim rights, national security, a sensitive law-enforcement technique, or any other substantial government interest, it may apply to the Court for a modification of the requirements of this rule, which may include *in camera* review and/or withholding or subjecting to a protective order all or part of the information.

(e) For purposes of this rule, the government includes federal, state, and local law-enforcement officers and other government officials who have participated in the investigation and prosecution of the offense(s) with which the defendant is charged. The government has an obligation to seek from these sources all information subject to disclosure under this Rule.

(f) The Court may set specific timelines for disclosure of any information encompassed by this rule.

(g) If the government fails to comply with this rule, the Court, in addition to ordering production of the information, may:

(1) specify the terms and conditions of such production;

(2) grant a continuance;

(3) impose evidentiary sanctions; or

(4) enter any other order that is just under the circumstances.

Pursuant to Local Civil Rule 1.1 (b), the Court is required to advise that the proposed rule will be adopted unless modified or withdrawn by the Court after receiving comments from organized bar associations, members of the bar, and the public. Such comments must be made in writing by February 1, 2018 and should be addressed to Kevin M. Hodges, Esq., Chairman, Advisory Committee on Local Rules, Williams & Connolly Procter LLP, 725 Twelfth St., N.W; Washington, DC 20005.

ANGELA D. CAESAR, CLERK

Pub Dates: Jan 2, 9, 16, 2018.

Legal Notices

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First Insertions

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Civil Action No. 2017 CA 003738 L(RP)(ACTION INVOLVING REAL PROPERTY)

S&S INVESTMENTS, LLC, 11 Dupont Circle, NW, Suite 750, Washington, DC 20036

Plaintiff

vs.

THE UNKNOWN PERSONAL REPRESENTATIVE OF THE ESTATE OF JIMMIE L. HEMINGWAY, Address unknown; And THE UNKNOWN PERSONAL REPRESENTATIVE OF THE ESTATE OF MATTIE M. HEMINGWAY, Address unknown; And SHAWN ANITA HEMINGWAY a/k/a SHAWN A. BAKER, Heir, Address unknown; And THE DISTRICT OF COLUMBIA WATER AND SEWER AUTHORITY, 801 1st Street, NE, Suite 1100, Washington, DC 20002; And D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS, HOUSING REGULATION ADMINISTRATION1100 4th Street, SW, Washington, DC 20024; And THE DISTRICT OF COLUMBIA, Serve: Muriel Bowser, Mayor, Attn: Christina Anderson, Correspondence Unit, 1350 Pennsylvania Avenue, NW #221, Washington, DC 20001, Serve: Attorney General of the District of Columbia, Attn: Darlene Fields, 441 4th St. NW, Washington, DC 20001, And Any and all unknown owners of the property described below, their heirs, devisees, personal representatives, and executors, administrators, grantees, assigns or successors in right, title, interest, and any and all persons having or claiming any interest in the leasehold or fee simple in the property and premises in the District of Columbia described as: Square: 6223, Lot: 0033, which may also be known by the street address 85 Darrington Street, SW, Washington, DC

Defendants.

AMENDED ORDER OF PUBLICATION

In accordance with D.C. Code § 47-1375, the object of this proceeding is to secure the foreclosure of the right of redemption in the real property described as Square: 6223, Lot: 0033, which may also be known by the street address 85 Darrington Street, SW, Washington, D.C., which property was sold by the Mayor of the District of Columbia to the Plaintiff in this action.

The Amended Complaint states, among other things, that the amounts necessary for redemption have not been paid.

Accordingly, it is this 20th day of December, 2017, hereby

ORDERED by the Superior Court of the District of Columbia, that notice be given by the insertion of a copy of this Order in The Daily Washington Law Reporter, a newspaper having a general circulation in the District of Columbia, once a week for three (3) successive weeks, notifying all persons interested in the real property described above to appear in this Court by the 14th day of March, 2018, and redeem the real property by payment of $4,071.07, together with interest from the date the real property tax certificate was purchased; court costs; reasonable attorney's fees; expenses incurred in the publication and service of process; and all other amounts in accordance with the provisions of D.C. Official Code §§ 47-1361 through 1377, et seq., or answer the Amended Complaint, or, thereafter, a final judgment will be entered foreclosing the right of redemption in the real property and vesting in the Plaintiff a title in fee simple. /s/ Magistrate Judge J.E. Beshouri. Pub Dates: Jan 2, 9, 16, 2018.

Superior Court of the District of Columbia
PROBATE DIVISION
2017 SEB 000574
HOLLY A. FIERCE AKA HOLLY FIERCE, Deceased
Notice of Appointment, Notice to Creditors
And Notice to Unknown Heirs

JEWEL C. FIERCE, whose address is 2126 CONNECTICUT AVE, NW, UNIT 44, WDC 20008, was appointed Personal Representative of the estate of HOLLY A. FIERCE AKA HOLLY FIERCE, who died on OCT 18, 2016 WITHOUT a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 1, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 1, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its publication shall so inform the Register of Wills, including name, address and relationship. Date of Publication: JAN 2, 2018. /s/ JEWEL C. FIERCE. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspaper: DWLR. Pub Date: JAN 2, 2018.

Superior Court of the District of Columbia
PROBATE DIVISION
2017 SEB 501
TROY B. FOSTER, Deceased
Notice of Appointment, Notice to Creditors
And Notice to Unknown Heirs

YOLANDA E. SMITH, whose address is 1929 VALLEY TERRACE SE, WASHNGTON, DC 20032, was appointed Personal Representative of the estate of TROY B. FOSTER, who died on AUG 11, 2017 WITHOUT a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 2, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 2, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its publication shall so inform the Register of Wills, including name, address and relationship. Date of Publication: JAN 2, 2018. /s/ YOLANDA E. SMITH. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspaper: DWLR. Pub Date: JAN 2, 2018.

Superior Court of the District of Columbia
PROBATE DIVISION
2017 SEB 000538
CARMEN SALVATORE GENOVESE AKA CARMEN GENOVESE, Deceased
Notice of Appointment, Notice to Creditors
And Notice to Unknown Heirs

RIMAS PUSKORIUS, whose address is 3224 MILITARY ROAD, NW, WASHINGTON, DC 20015, was appointed Personal Representative of the estate of CARMEN SALVATORE GENOVESE AKA CARMEN GENOVESE, who died on JUN 23, 2017 WITH a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's Will) shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 1, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 1, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its publication shall so inform the Register of Wills, including name, address and relationship. Date of Publication: JAN 2, 2018. /s/ RIMAS PUSKORIUS. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspaper: DWLR. Pub Date: JAN 2, 2018.

Superior Court of the District of Columbia
PROBATE DIVISION
2015 SEB 502
ETHEL P. JONES, Deceased
Notice of Appointment, Notice to Creditors
And Notice to Unknown Heirs

LEONA V. JOHNSON, whose address is 3302 20TH STREET NE, WASHINGTON, DC 20018, was appointed Personal Representative of the estate of ETHEL P. JONES, who died on JUL 4, 2013 WITH a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's Will) shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 2, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 2, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its publication shall so inform the Register of Wills, including name, address and relationship. Date of Publication: JAN 2, 2018. /s/ LEONA V. JOHNSON. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspaper: DWLR. Pub Date: JAN 2, 2018.

Superior Court of the District of Columbia
PROBATE DIVISION
2017 SEB 000575
GARY SPENCER JONES AKA GARY S. JONES, Deceased
Notice of Appointment, Notice to Creditors
And Notice to Unknown Heirs

LEONARD S. JONES, whose address is 2833 KINGSDALE RD, N. CHESTERFIELD, VA 23237, was appointed Personal Representative of the estate of GARY SPENCER JONES AKA GARY S. JONES, who died on APR 14, 2017 WITHOUT a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment (or to the probate of decedent's will) shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 1, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 1, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its publication shall so inform the Register of Wills, including name, address and relationship. Date of

Publication: JAN 2, 2018. /s/ LEONARD S. JONES. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspaper: DWLR. Pub Date: JAN 2, 2018.

Superior Court of the District of Columbia
PROBATE DIVISION
2017 SEB 000562
REGINA H. SAXTON, Deceased
Notice of Appointment, Notice to Creditors
And Notice to Unknown Heirs

JOAN S. JACKSON, whose address is 5319 OLD BRANCH AVENUE, TEMPLE HILLS, MD 20748, was appointed Personal Representative of the estate of REGINA H. SAXTON, who died on OCT 23, 2015 WITHOUT a Will. All unknown heirs and heirs whose whereabouts are unknown shall enter their appearance in this proceeding. Objections to such appointment shall be filed with the Register of Wills, D.C., Building A, 515 5th Street, N.W., 3rd Floor, Washington, D.C. 20001, on or before FEB 1, 2018. Claims against the decedent shall be presented to the undersigned with a copy to the Register of Wills or filed with the Register of Wills with a copy to the undersigned, on or before FEB 1, 2018, or be forever barred. Persons believed to be heirs or legatees of the decedent who do not receive a copy of this notice by mail within 25 days of its publication shall so inform the Register of Wills, including name, address and relationship. Date of Publication: JAN 2, 2018. /s/ JOAN S. JACKSON. TRUE TEST COPY /s/ ANNE MEISTER Register of Wills. Name of Newspaper: DWLR. Pub Date: JAN 2, 2018.

Third Insertions

IN THE SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
CIVIL DIVISION
Civil Action No. 17-0005778 L(RP)
(Action Involving Real Property)
Calendar #18, Magistrate Judge Raymond
Christopher Hauser
Plaintiff
vs.

Unknown Heirs, devisees, personal representatives, executor administrators & grantees of Hyman Viener, Deceased; THE DISTRICT OF COLUMBIA, And All unknown owners of the real property described below, their heirs, devisees, personal representatives, executors, administrators, grantees, assigns or successors in right, title, and interest and any and all persons having or claiming to have any interest, including adverse possession, in the leasehold or the fee simple in the real property and premises situate, lying and being in the District of Columbia described as a vacant lot on the south side of Peabody St., NE between improvements known as 327 Peabody St, NE and 331 Peabody St., NE: Square 3733, Lot 0820 and assessed to Hyman Viener and otherwise known as Peabody St., NE, Washington, D.C.,

Defendants

ORDER OF PUBLICATION

In accordance with D.C. Official Code Section 47-1375 (2001 ed.), the object of this proceeding is to secure the foreclosure of the right of redemption in the following real property located in the District of Columbia, and sold by the Mayor of the District of Columbia to the Plaintiff in tis action: Square 3733 Lot 0820 which may also be known as Peabody St., NE, Washington, DC.

The complaint states, among other things, that the amounts necessary for redemption have not been paid.

Pursuant to the Chief Judge's Administration Order Number 02-11, it is this 17th day of August, 2017,

ORDERED by the Superior Court of the District of Columbia, that notice be given by the insertion of a copy of this Order in the Washington Afro-American, a newspaper having a general circulation in the District of Columbia, once a week for three (3) successive weeks, notifying all persons interested in the Real Property described above to appear in this Court by the 3rd day of January, 2018, and redeem the Real Property by payment of $935.35, together with interest from the date the Real Property tax certificate was purchased, court costs, and reasonable attorney's fees, expenses incurred in the service of process and service of process by publication, reasonable fees for the title search, and all other amounts paid the Plaintiff in accordance with the provisions of D.C. Official Code Sections 47-1361 and 47-1377 (2001 ed.), and all outstanding municipal lien amounts due and owing on the aforementioned Real Property, or answer the complaint, or, thereafter, a final judgment will be entered foreclosing the right of redemption in the Real Property and vesting in the Plaintiff(s) a title in fee simple. Pub Dates: Dec 18, 26, 2017, Jan 2, 2018.

SUPERIOR COURT OF THE
DISTRICT OF COLUMBIA
Civil Division
Case No. 2017 CA 001093 R(RP)
Judge Elizabeth C. Wingo, Civil Calendar 14
SIXTEENTH STREET HEIGHTS DEVELOPMENT, LLC,
Plaintiff,
v.
GEORGIAN HEIGHTS CONDOMINIUM
ASSOCIATION, et al.,
Defendants.

ORDER

Before the Court is plaintiff Sixteenth Street Heights Development, LLC's Motion to Serve by Publication ("Motion") , filed November 20, 2017. For the reasons set forth below , the Motion is granted.

Plaintiff commenced this action on February 17, 2017, by filing its Complaint to Quiet Title to real property located at 5549 - 5551 Illinois Avenue, N.W., # 302, Washington, D.C., 20011 ("the Property ") . Since that time, it has been unable to serve either Georgian Heights Condominium Association ("Defendant Georgian Heights") or Benjamin Fox ("Defendant Fox") , the defendants in this case. On August 7, 2017, Plaintiff filed its first Motion to Serve b y Publication, which the Court denied without prejudice in open court on August 11, 2017. In its instant Motion, Plaintiff again requests that the Court grant permission to serve the defendants by publication pursuant to D.C. Code § 13 - 336.

District of Columbia law permits service of process by publication as a substitute for personal service "upon a defendant who cannot be found and who is shown by affidavit to be a nonresident, or to have been absent from the District for at least six month s, or against the unknown devisees of deceased persons." D.C. Code § 13 - 336 (a) (2) . D.C. Code § 13 - 338 explicitly sets forth the requirements listed in D.C. Code § 13 - 336 (a): "An order for the substitution of publication for personal service may not be made until : (1) a summons for the defendant has been issued and returned ' Not to be found,' and (2) the nonresidence of the defendant or his absence for at least six months is proved by affidavit to the satisfaction of the court." Section 13 - 336 authorizes service by publication only in eight enumerated types of cases , including "actions for the establishment of title to real estate by possession." See D.C. Code § 13 - 336 (b); see also *Spevacek v. Wright* , 512 A.2d 1024, 1027 (D.C. 1986).

This matter is a claim for the establishment of title to real estate by possession, which is one of the types of cases in which service by publication is permitted. Plaintiff does not explicitly address the first requirement, of § 13 - 338 (1) – that is, that a summons for Defendant Georgian Heights and Defendant Fox have been issued and returned "Not to be found." However, viewing the evidence in its totality, including the Court docket[1], the Court is sufficiently satisfied that Plaintiff has acted with due diligence to serve the defendants, who have either been absent for six or more months or are purposefully evading service.

In the instant Motion, Plaintiff delineates its attempts to locate and serve Defendant Georgian Heights and Defendant Fox, respectively. Plaintiff 's counsel, Ms. Baker, submitted a signed affidavit on Plaintiff's behalf averring that Defendant Georgian Heights is an unincorporated association that cannot be served through the same means of a corporation, and Plaintiff has been unable to serve the President of the Board of the Georgian Heights Condominium Association, Traceyann F. Davis, since February 2017, despite the efforts of two hired process servers. Additionally, one of the process servers, Adrian K. Bean, submitted a sworn Affidavit of Due Diligence attesting to his efforts to serve Defendant Georgian Heights through Ms. Davis, including performing skip tracing to locate her last known residence and canvassing the area once per week from September 15, 2017, to November 16, 2017 . Plaintiff has also been unable to locate Defendant Fox, who once resided at the Property but has left that address. The process server performed a skip trace, canvassed the area of his last - known address, and checked multiple databases for his location, but all efforts to locate his whereabouts were unsuccessful. Therefore, upon consideration of the Motion and the entire record herein, the Court is satisfied that the requirements of § 13 - 336 are met, as diligent efforts have been made to serve the defendants, who either cannot be found or are seeking to avoid service of process.

Accordingly, it is by the Court this 11th day of December, 2017, hereby

ORDERED that Plaintiff's Motion to Serve by Publication is GRANTED , and Plaintiff may serve Defendant Georgian Heights and Defendant Fox in accordance with D.C. Code § 13 - 340 ; and it is further

ORDERED , that Plaintiff will file proof of service of process by publication by February 9, 2018 ; and it is further

ORDERED that the scheduling conference set for Friday, January 26, 2018, is continued to Friday, February 9, 2018, at 10:30 a.m . in Courtroom A - 47 to appropriately allow for time to serve.

SO ORDERED . /s/ Judge Elizabeth Carroll Wingo, Superior Court of the District of Columbia. [1]Two of the Court's mailed notices alerting Defendant Fox to appear for hearings were returned to sender and marked as "Not Known" or "Not Deliverable." Although the two returned notices were docketed on July 6, 2017 and July 13, 2017, the time stamps indicated that the Clerk's Office received them on June 12, 2017, and July 11, 2017, respectively. Pub Dates: Dec 19, 26, Jan 2, 2018.

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David F. O'Brien, Esq.
Legal Editor