North Carolina Federal Court Gives Go Ahead for Shooting Range on Public Land

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The U. S. District Court for the Western District of North Carolina recently upheld approval by the U.S. Forest Service ("USFS") of a recreational shooting range in North Carolina's Nantahala National Forest. The case is significant because it confirms the limited role courts play in reviewing agency administrative decisions.

The case concerned the proposed construction of eight shooting lanes, ten parking spaces, and a 1,300 foot gravel road by private parties on five or less acres of public land. USFS approved the proposal, and nearby residents filed suit. Plaintiffs alleged USFS violated its duties under the National Environmental Protection Act ("NEPA") and that its approval violated state contract law. Specifically, plaintiffs alleged USFS:

1. Failed to prepare an Environmental Impact Statement (EIS) as required by NEPA,
2. Failed to rigorously explore and objectively evaluate the full range of reasonable alternatives as required by NEPA,
3. Failed to prepare an EA and decision document in conformance with NEPA, and
4. Approved a contract that was patently invalid under North Carolina state law.

Under the federal Administrative Procedures Act ("APA"), federal courts reviewing agency decisions under NEPA must consider whether the agency weighed relevant factors and whether there was a clear error of judgment. In conducting this review, courts give great deference to the agency. This means that as long as the administrative record shows the agency weighed competing interests and articulated a rational basis for its decision, the decision will be upheld.

The Court rejected all of plaintiffs' allegations as follows:

Failure to prepare an EIS. NEPA requires federal agencies to prepare an EIS only for major federal actions that significantly affect the quality of the human environment. If the agency determines an EIS is not required, then, subject to certain exceptions, it must prepare an EA instead. The court found the agency's decision to prepare an EA followed by issuance of a FONSI was not arbitrary and capricious. Factors considered by the court included the small size of the project and the results of three studies showing little impact on nearby homes. The court stressed the FONSI set out ten specific findings that the proposed project would have no significant environmental impact. The court held this was enough.

Insufficient Consideration of Reasonable Alternatives. NEPA requires federal agencies to review reasonable alternatives when considering a project. Here, plaintiffs argued the existence of a private

shooting range in an adjoining Georgia county required USFS to fully consider a “no-build” alternative among the range of alternatives. The court held the EA contained sufficient discussion of reasonable alternatives without having to consider this information.

The EA Was Inadequate. Plaintiffs argued the EA failed to adequately consider the potential impact of the shooting range on noise levels, traffic, dust, and property values. The court disagreed and found that multiple sound tests, traffic studies and dust analyses showed USFS adequately analyzed these three issues. The court further emphasized that USFS had committed to the installation of buffers, landscaping, speed bumps, and road maintenance to address these concerns. Regarding property values, the court held any reduction was not something that NEPA required to be considered.

Illegal Contract. Finally, plaintiffs argued that USFS’ intention to enter into a contract with Clay County Country Club to build and operate the shooting range was an illegal contract under North Carolina law. The court held the USFS decision under appeal was not a contract and that there is no mention of the contract in the EA. Therefore, the court held it had no basis to consider this argument.

In upholding the adequacy of the EA process, the court emphasized its limited role under the APA: “The question before the court was not whether the Forest Service made the right or best decision, but whether the agency took a ‘hard look’ at the data before it. Review of the decision clearly shows that the USFS took the required hard look.” The court found that the extensive administrative record from 2002 through 2015, the multiple scientific tests conducted, and the supporting and opposing comments reviewed all support a finding that USFS took a “hard look” at the potential impact of the project.

This is a favorable ruling for business, and one that is based on a clear reading of the statute. Too often, judges around the country who review agency decisions seek to substitute their own views for the decisions of regulators, permit writers, or land use planners. Here, the Court resisted the temptation to do so and deferred to USFS.

***McGuinness v. U.S. Forest Service*, CA No. 1:15-cv-00072 (Oct. 13, 2016, W.D.N.C.)**

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