

FEDERAL LITIGATION AGAINST TPB AND COG

On December 20, suit was filed against COG, TPB, the U.S. Department of Transportation, and the Federal Highway Administration, as well as Chairs Fiset and Knapp, Secretary Peters, and Administrator Capka, in the United States District Court for the District of Columbia. This suit, brought by Environmental Defense and Sierra Club, contests federal approvals of the InterCounty Connector and its inclusion by TPB in its October 2006 approval of the FY 2007-2012 Transportation Improvement Program (TIP). On the same date the Audubon Society and several Maryland plaintiffs filed suit against federal defendants contesting the environmental impact review of the proposed ICC by federal agencies and MDOT.

Although many of the allegations in the two lawsuits are parallel, the District of Columbia suit emphasizes alleged violations of required procedures, while the Maryland suit is a more substantive contest of the environmental findings.

The District of Columbia suit, 106 pages in length and consisting of 593 numbered paragraphs of factual allegations and 38 separate counts, essentially questions the procedure used by the federal defendants in determining the potential environmental degradation or harm at or near a number of specific locations on the proposed ICC route – certain “hot spots.”

- A “qualitative” methodology was used to determine potential harm at hot spots and to establish conformity with the Clean Air Act.
- The “qualitative” methodology was used upon the advice of EPA and, in fact established conformity.
- Based upon this conformity finding and approval of the FHWA, TPB included the ICC in the FY 2007-2012 Transportation Improvement Program.

Among other allegations, the plaintiffs assert that the appropriate and required method of analysis should have been “quantitative” rather than “qualitative.” The plaintiffs demand as relief:

- A declaration that the federal defendants violated SAFETEA-LU, NEPA, and other applicable statutes and regulations.
- A declaration that the Conformity Determination was void *ab initio*.
- A declaration that TPB violated SAFETEA-LU and the APA.
- A vacation of both the current TIP and CLRP which include the ICC.
- Injunction against federal funding for any part of ICC planning, acquisition, or construction.