Van Raden v. City of Portland

United States District Court for the District of Oregon

May 31, 2001, Decided

CV 01-233-BR

Reporter
2001 U.S. Dist. LEXIS 7745; 2001 WL 34047031

WAYNE B. VAN RADEN; REBECCA A. VAN RADEN; and VAN RADEN INDUSTRIES, INC., an Oregon corporation, Plaintiffs, v. CITY OF PORTLAND, a political subdivision of the State of Oregon; NORMAN Y. MINETA, in his official capacity as Secretary of United States Department of Transportation; HELEN M. KNOLL, in her official capacity as Regional Administrator of Department of Transportation-Federal Transit Administration; DAVID COX, in his official capacity as Division Administrator of Department of Transportation-Federal Highway Administration; GRACE CRUNICAN, in her official capacity as Director of Oregon Department of Transportation; MIKE BURTON, in his official capacity as Executive Officer of Metropolitan Service District; FRED HANSEN, in his official capacity as General Manager of Tri-County Metropolitan Transportation District of Oregon; VICTOR F. RHODES, in his official capacity as Director of Portland Office of Transportation; and KAREN RABINER, in her official capacity as Project Manager for City of Portland, Oregon Department of Transportation, Defendants.

Disposition: [*1] Plaintiffs' Motion for Temporary Restraining Order (# 45) DENIED. Plaintiffs leave to file June 4, 2001, a motion for temporary restraining order under Plaintiffs' Fourth Claim as specified granted.

Case Summary

Procedural Posture

Plaintiffs, landowners and tenant, sued defendants, local and federal agencies and federal, state, and local officials, under federal statutes including the National Environmental Policy Act (NEPA), *42 U.S.*C.S. § 4321 et seq. Plaintiffs sought declaratory relief and to enjoin defendants from undertaking any construction on a railroad crossing project. Plaintiffs moved for a temporary restraining order.

Overview

The disputed project involved grade separation between railroad tracks and streets in an industrial area that included a building eligible for listing on the National Historic Register. A single overcrossing would be constructed that would require destruction of the historic building. The court denied injunctive relief, as the owners and tenant could not establish they were likely to prevail on the merits of their claim that a categorical exclusion under NEPA (making an Environmental Assessment or Environmental Impact Statement unnecessary) was improper. The court found that, consistent with the regulations, the agencies evaluated the historical significance of the historic building and consulted independent experts and historic preservation agencies. Those agencies agreed to the destruction of the building. There was ample factual support for the conclusion that destruction of the building did not constitute a significant environmental effect under the regulations. The agencies' application of the categorical exclusion under *23 C.F.R. § 771.117(d)*(3) was not shown to be procedurally improper under NEPA or arbitrary and capricious.

Outcome

The court denied the motion for temporary restraining order, but granted the owners and tenant leave to file a motion for temporary restraining order under another of their claims. The court also continued, until the filing deadline for that motion,

its previous order enjoining the agencies and officials from taking any destructive action against the historic building in question.

Counsel: KELLY W.G. CLARK, O'DONNELL & CLARK LLP, Portland, OR, for Plaintiffs.

LINDA MENG, Chief Deputy City Attorney, TERENCE L. THATCHER, Deputy City Attorney, Portland, OR, for City of Portland, Karen Rabiner, and Victor Rhodes (the City), Defendants.

DUANE A. BOSWORTH, DEAN M. PHILLIPS, Davis Wright Tremaine LLP, Portland, OR, for Fred Hansen, Defendant.

MICHAEL W. MOSMAN, United States Attorney, THOMAS C. LEE, Assistant United States Attorney, Portland, OR, for Norman Y. Mineta, Helen M. Knoll, and David Cox, the Federal Defendants.

DANIEL B. COOPER, KATHLEEN A. POOL, LISA M. UMSCHEID, Metro Office of General Counsel, Portland, OR, for Mike Burton, Defendant.

Judges: Anna J. Brown, U.S. District Judge.

Opinion by: Anna J. Brown

Opinion

OPINION and ORDER

BROWN, Judge.

This matter comes before the Court on Plaintiffs' Motion for Temporary Restraining Order (# 45). Plaintiffs seek to enjoin Defendants from ″undertaking any construction or construction related activity on [*2] the Lower Albina Overcrossing Project.″ For the reasons set forth below, the Court **DENIES** Plaintiffs' Motion as it arises under Plaintiffs' First and Fifth Claims for Relief, and grants Plaintiffs leave to file, no later than 4:00 p.m., June 4, 2001, a motion for temporary restraining order arising under Plaintiffs' Fourth Claim for Relief.

FACTUAL BACKGROUND

The parties have submitted a Joint Stipulation of Facts from which the following summary is taken, unless otherwise noted.

The Lower Albina Industrial Area involves approximately eight city blocks located in North Portland on the east bank of the Willamette River between the Broadway Bridge to the south and the Fremont Bridge to the north. It is bounded on the west by North Interstate Avenue. Heavy rail lines run parallel to North Interstate Avenue, leading into the Albina Rail Yard at the north end of the Industrial Area. The area is comprised mainly of industrial buildings. One of these buildings is the Pacific Power & Light Albina Service Center Building, also known as the Tucker Building. The Tucker Building is eligible for listing on the National Historic Register.

Road vehicle and railroad traffic conflicts [*3] have imposed safety hazards and economic burdens on the Lower Albina Industrial Area for some time. Traffic entering the area must cross the railroad tracks at one of five intersections, resulting in frequent traffic congestion and accidents. To resolve the safety and traffic problems, the City of Portland determined it should separate the grades between the Union Pacific railroad tracks and motor-vehicle routes in the Lower Albina area. The grade separation project is called the Lower Albina Overcrossing Project.

A lengthy planning process resulted in Defendants' selection of a location for a single overcrossing that will require destruction of the Tucker Building. The Overcrossing Project will create a new elevated access road to the industrial area that will span the railroad tracks from North Interstate Avenue at North Tillamook Street to North River Street north of

North Lewis Avenue. The five existing streets that cross the railroad tracks at grade will be closed at the tracks, eliminating the conflict between motor vehicles and trains. Rabiner Declaration. The estimated total cost of the project is $ 14 million. Funding will come from a variety of sources, including $ 4 million [*4] from the Federal Highway Administration (FHWA).

Construction of the Overcrossing Project will coincide with construction of a section of the Interstate MAX light rail line along Interstate Avenue. Local officials, therefore, sought a way to coordinate the contracting and construction for the two projects, and to do so, funding for the Overcrossing Project was transferred from FHWA to the Federal Transit Administration (FTA).

Plaintiffs Wayne and Rebecca Van Raden own commercial property in the Lower Albina Industrial Area, which they lease to Plaintiff Van Raden Industries. The Lower Albina Overcrossing essentially will bisect the Van Raden property and require removal or demolition of a modular office building. Complaint at P 16. Plaintiffs allege they enjoy the historic Tucker Building and its destruction will have a negative impact on them ″as a result of an irreplaceable loss of an historic resource, which Plaintiffs wish to preserve and enjoy observing.″ Complaint at P 4. Plaintiffs have filed a Complaint seeking injunctive and declaratory relief, alleging Defendants have violated the National Environmental Policy Act (NEPA), *42 U.S.C. §§ 4321-4335*; the [*5] National Historic Preservation Act (NHPA), *16, U.S.C. § 470*; and the Department of Transportation Act, *49* U.S.C. § 303. This Court, therefore, has federal question jurisdiction.

PROCEDURAL BACKGROUND

The procedural record before the Court is confusing as the parties' pleadings have presented a moving target, with both legal claims and relevant factual allegations shifting as the case progressed. In their Complaint filed on February 15, 2001, Plaintiffs assert five claims for relief. In their First Claim, Plaintiffs allege Defendants violated NEPA by relying on a categorical exclusion for the Overcrossing Project. Plaintiffs assert in their Second Claim that Defendants failed to perform a ″Section 106″ analysis of the Tucker Building as required under the NHPA. In their Third Claim, Plaintiffs contend Defendants failed to complete an evaluation of the impact to a historical resource required under the Department of Transportation Act. Plaintiffs assert in their Fourth Claim that Defendants failed to supplement the Final Environmental Impact Statement issued in connection with the North Corridor Interstate MAX Light Rail Project [*6] to incorporate an analysis of the environmental impact of the Overcrossing Project. Finally, Plaintiffs' Fifth Claim arises under the Administrative Procedures Act (APA), 5 U.S.C. §§ 701-706, again challenges Defendants' use of a categorical exclusion for the Overcrossing Project.

In April 2000, Defendants City of Portland, Victor Rhodes, and Karen Rabiner (collectively the City) filed a Response to Motion for Temporary Restraining Order and Preliminary Injunction and Memorandum in Support of Motion for Summary Judgment (# 26). At the time the City filed its ″Response,″ no Motion for Temporary Restraining Order (TRO) or Preliminary Injunction was pending. Soon thereafter, Plaintiffs filed their Motion for Temporary Restraining Order (# 28) and Motion for Preliminary Injunction (# 29), which both sought TROs enjoining the City ″from continuing condemnation proceedings in state court″ against property owned by Van Raden. After a court-ordered status conference on May 8, 2001, Plaintiffs conceded the Anti-Injunction Act, *28 U.S.C. § 2283*, prohibits the Court from enjoining a state court action and withdrew both of their Motions.

Plaintiffs [*7] thereafter filed a Second Renewed Motion for Preliminary Injunction to Enjoin All Defendants From Proceeding with All Construction Activities Relating to the Lower Albina Overcrossing Project (# 39). In that Motion, Plaintiffs seek a preliminary injunction enjoining Defendants from proceeding with any construction or construction-related activities relating to the Overcrossing Project until such time as Defendants comply with NEPA, NHPA, the Department of Transportation Act, and the APA. Plaintiff then filed a Motion for a Temporary Restraining Order Against All Defendants Enjoining All Construction and Construction-Related Activities on the Lower Albina Overcrossing Project (# 45).

Only Plaintiffs' TRO motion (# 45) is currently before the Court. A hearing on that motion was held on May 17, 2001. At the hearing, Plaintiffs conceded Defendants had by that time complied with both NHPA and the Department of Transportation Act and withdrew their Second and Third Claims for Relief. Plaintiffs still maintained, however, that Defendants failed to comply with NEPA. Plaintiffs sought to enjoin all construction related to the Overcrossing Project. At

the conclusion of the hearing, the Court [*8] ruled from the bench temporarily enjoining Defendants from taking any action to destroy the Tucker Building pending the Court's decision on Plaintiffs' TRO motion.

Following the hearing, the Court directed the parties to file supplemental briefs and gave the parties leave to ask the the Court to consider the briefing and argument on Plaintiffs' TRO motion as dispositve of Plaintiffs' Motion for Preliminary Injunction. To date, no such request has been made, and Plaintiffs remain free to continue their pursuit of a preliminary injunction notwithstanding the Court's rulings herein.

I. Standard For Injunctive Relief

To qualify for injunctive relief, the moving party must satisfy one of two alternative tests. Under the traditional test, Plaintiffs must show 1) they will suffer irreparable injury if injunctive relief is not granted; 2) they will probably prevail on the merits; 3) in balancing the equities, Defendants will not be harmed more than Plaintiffs will be helped by the injunction; and 4) the public interest favors granting the injunction. *See* *Stanley v. University of Southern California, 13 F.3d 1313, 1319 (9th Cir. 1994)*. Under the alternative test, [*9] Plaintiffs must demonstrate either a combination of probable success on the merits and the possibility of irreparable injury or that serious questions are raised and the balance of hardships ″tips sharply″ in Plaintiffs' favor. *Id.* The two standards are not treated as two distinct tests, but rather as a sliding scale representing ″a continuum of equitable discretion whereby the greater the relative hardship to the moving party, the less probability of success must be shown.″ *Regents of Univ. of Calif. v. ABC, Inc., 747 F.2d 511, 515 (9th Cir. 1984)*.

The parties agree the planned and imminent destruction of the historic Tucker Building sufficiently establishes the probability of irreparable harm. Under either test, however, Plaintiffs also must establish they are likely to prevail on the merits.

II. NEPA and the Use of Categorical Exclusions

NEPA requires federal agencies to prepare either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) for major federal actions [1] that significantly affect the quality of the human environment. *42* U.S.C. § 4332(2)(C). Pursuant to regulations promulgated by the Council [*10] of Environmental Quality (CEQ), each agency is required to identify categories of actions that do not individually or cumulatively have a significant effect on the human environment. These actions are then classified as categorical exclusions. Neither an EA nor an EIS is required for actions designated by the agency as categorical exclusions. *40 C.F.R. § 1508.4*.

FHWA categorical exclusions are set forth at *23 C.F.R. § 771.117*. FHWA describes categorical exclusions as actions that:

> . . . . do not induce significant impacts to planned growth or land use for the area; do not require the relocation of significant numbers of people; do not have a significant impact on any natural, cultural, recreational, historic or other resource; do not involve significant air, noise, or water quality impacts; or do not otherwise, either individually or cumulatively, [*11] have any significant environmental impacts.

23 C.F.R. § 771.117(a).

FWHA's regulations specify two types of categorical exclusions. *Section 771.117(c)* lists 20 actions that meet the criteria for a categorical exclusion set forth in *§ 771.117(a)* and do not require any further NEPA approvals. *Section 771.117(d)* governs the second type of categorical exclusion -- a documented categorical exclusion. A documented categorical exclusion is available for actions other than those listed in subsection (c) only after FHWA approval. To obtain a documented categorical exclusion, an applicant must submit ″documentation which demonstrates that the specific conditions or criteria for these CEs are satisfied and that significant environmental effects will not result.″

One type of action for which a documented categorical exclusion is available is ″Bridge rehabilitation, reconstruction or replacement or **the construction of grade separation to replace existing at-grade railroad crossings**.″ *23 C.F.R. § 771.117(d)(3)*(emphasis added). This is the documented categorical exclusion at issue in Plaintiffs' Motion.

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[1] The parties agreed at the May 17, 2001, hearing that the Overcrossing Project is a major federal action.

An agency's determination [*12] that a particular action falls within one of its categorical exclusions is reviewed under the arbitrary and capricious standard. *Alaska Center for the Environment v. U.S.* Forest Service, *189 F.3d 851, 857 (9th Cir. 1999)*. An agency's interpretation of its own categorical exclusion should be given controlling weight unless plainly erroneous or inconsistent with the terms used in the regulation. *Id.*

III. Plaintiffs Are Not Likely to Prevail in Asserting Defendants' Reliance on a Documented Categorical Exclusion for the Overcrossing Project was Arbitrary and Capricious

On February 15, 2000, FHWA issued a Project Prospectus for the Overcrossing Project in which it recommended the project receive a categorical exclusion under NEPA. FHWA identified the Tucker Building as a ″significant building″ and recommended evaluation of its historical significance. [2] The City performed that evaluation, and in June 2000, the Oregon State Historic Preservation Office concluded the Tucker Building was eligible for listing as historic. It recommended removal of the structure only after it had been photographically recorded and after the City agreed to undertake certain [*13] other mitigative measures. After conducting public hearings on the matter, the Portland Historic Landmarks Commission also approved destruction of the Tucker Building and recommended mitigative measures including photographic recordation.

Because the Overcrossing Project would require removal of the Tucker Building, the Federal Defendants also were required to pursue what is known as a Section 4(f) evaluation. Federal law instructs the Secretary of Transportation not to approve a transportation program or project ″requiring use [*14] of park land or significant historic sites″ unless he determines there is ″no prudent and feasible alternative.″ *49* U.S.C. § 303(c). [3] The Defendants evaluated the proposal and four alternatives. On October 3, 2000, in compliance with Section 4(f), FHWA announced its conclusion that there were no feasible and prudent alternatives to achieve the safety and traffic goals of the Overcrossing Project and that the project should proceed despite the harm to the Tucker Building. Plaintiffs do not challenge this decision.

Before issuing the documented categorical exclusion, the FTA also required documentation of the environmental impacts of the project in numerous areas including, among others, air quality, endangered species, stormwater capture and treatment, [*15] residential housing, cultural resources, traffic volumes and distribution, business displacements and visual impacts. Defendant Tri-Met provided the requested documentation, the FTA subsequently considered the historic nature of the Tucker Building, the effect of its destruction, and studies assessing the traffic volume and patterns that would result from the proposed Overcrossing. On May 14, 2001, the FTA notified Tri-Met that the Overcrossing Project qualified for a documented categorical exclusion and that the FTA funding would require the City and Tri-Met to implement specified mitigative measures regarding the Tucker Building.

To prevail on their TRO motion, Plaintiffs must establish they are likely to prevail on their argument that Defendants' reliance on a documented categorical exclusion for the Overcrossing Project was arbitrary and capricious. Plaintiffs contend FHWA and/or FTA should have prepared an EA instead of relying on a documented categorical exclusion. Plaintiffs point out that *23 C.F.R. § 771.115* requires an EA where ″the significance of the environmental impact is not clearly established.″ Plaintiffs assert ″the fact that this question [*16] is so close suggests that an EA, rather than a DCE, is more appropriate″. They dispute Defendants' description of the project's impact on travel patterns and argue ″it is just as plausible″ traffic will travel in a different pattern. The issue is not, however, whether an Environmental Assessment or a documented categorical exclusion is ″more appropriate″ or whether other possible impacts are ″just as plausible.″ Plaintiffs must meet a more stringent test.

> An agency's decision is arbitrary and capricious if the agency has relied on factors which Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for

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[2] Plaintiffs argue the February 15, 2000, Project Prospectus is the agency's final action and constitutes the allowance of a documented categorical exclusion for the project. They assert the Court's review should be limited to the agency record as it existed at the time of the February 15, 2000, decision. This argument is rejected because the Project Prospectus clearly contemplates further evaluation of the significance of the Tucker Building and, therefore, it is not a final action.

[3] This statute first appeared as Section 4(f) of the Department of Transportation Act of 1966 and generally still is known as Section 4(f). The parties addressed it as such throughout their pleadings, and the Court will continue that convention.

> its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise.

Inland Empire Public Lands Council v. Glickman, 88 F.3d 697, 701 (9th Cir. 1996)(citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S.* 29, 43, 77 L. Ed. 2d 443, 103 S. Ct. 2856 (1983)).

Plaintiffs do not specifically address any of these ways in which an agency [*17] decision can be considered arbitrary and capricious. Instead, Plaintiffs' argument boils down to the contention that use of categorical exclusions for any project involving destruction of any property with any historic significance is *per se* prohibited. Plaintiffs contend destruction of a historic building is, in all cases, a significant environmental impact for which a categorical exclusion is not permitted. Plaintiffs, however, do not point to anything in the statutes, rules or case law that suggests such a narrow application.

Consistent with the regulations, Defendants evaluated the historical significance of the Tucker Building and consulted independent experts and historic preservation agencies. Both the Oregon State Historic Preservation Office and the Portland Historic Landmarks Commission agreed to the destruction of the building regardless of its historic value. Plaintiffs cite no contrary evidence. The record reflects ample factual support for the agency's conclusion that destruction of the Tucker Building does not constitute a significant environmental effect under the regulations. Plaintiffs are not likely to prevail on this issue.

Plaintiffs also argue the documented [*18] categorical exclusion is inappropriate because the agency did not take into account the project's impact on travel patterns. Again, Plaintiffs are not likely to prevail on this issue. The FTA considered three traffic studies that examined traffic impacts due to the Overcrossing Project and concluded there would be no significant impact due to the Overcrossing. Plaintiffs maintain that evidence of *any* impact should be considered significant impact. Plaintiffs, however, cite no authority for their interpretation. In any event, Plaintiffs have proffered no evidence to support their contention that the Overcrossing will have a ″significant″ impact on travel patterns contrary to the agency's findings in this regard.

All parties cite to *West v. Secretary of the Department of Transportation, 206 F.3d 920 (9th Cir. 2000)*, as support for their arguments. In *West*, the plaintiffs challenged FHWA's approval of a documented categorical exclusion for a freeway interchange project on I-5 in Washington. FHWA asserted the project was an ″approval for changes in access control,″ *23 C.F.R. § 771.117(d)*(7). The Ninth Circuit disagreed and ruled the [*19] construction project was on a much larger scale than the other types of actions listed as examples under subsection (d) and that ″approvals for changes in access control″ did not include the interchange project. The court also held the FHWA's use of a documented categorical exclusion for the interchange project was inconsistent with the terms used in subsection (a) of the regulation which ″forbid the use of a categorical exclusion for projects that will have 'significant impacts on travel patterns' because the project necessarily involved significant changes in travel patterns. *West, 206 F.3d at 929*, quoting *23 C.F.R. § 771.117(a)*.

In contrast, Plaintiffs here offer no meaningful argument to refute Defendants' conclusion that the Overcrossing Project constitutes the ″construction of grade separation to replace existing at-grade railroad crossings.″ Plaintiffs concede the Overcrossing Project ″could conceivably be thought of as a 'grade separation'″; however, citing *West*, they argue the magnitude of this undertaking is inconsistent with the purpose of a documented categorical exclusion. Plaintiffs' reliance upon *West* is misplaced. [*20] The project in *West* did not fit the literal meaning of the documented categorical exclusion. Moreover, the *West* court emphasized that the new, fully-directional interchange was intended to have a substantial impact on travel patterns, a purpose at odds with *§ 771.117(a)*. In this matter, the Overcrossing Project fits the plain meaning of *§ 771.117(d)*(3), and the agency has determined its traffic impact is not inconsistent with *§ 771.117(a)*. Plaintiffs' argument that replacing five at-grade crossings with one overcrossing exceeds the scope of the regulation is similarly unconvincing. The regulation is not so limited.

The Court agrees Plaintiffs have not shown that Defendants' choice to proceed under a documented categorical exclusion was procedurally improper under NEPA nor that Defendants' application of *§ 771.117(d)*(3) to the Overcrossing Project was arbitrary and capricious. Plaintiffs, therefore, are not likely to prevail on the merits of this issue. The Court accordingly denies Plaintiffs' Motion for Temporary Restraining Order insofar as it is based on Plaintiffs' First and Fifth Claims for Relief.

IV. Plaintiffs Have Not Made Clear Whether Their Pending Motion [*21] for Temporary Restraining Order Also Reaches Their Fourth Claim for Relief

In their Fourth Claim for Relief, Plaintiffs contend Defendants violated NEPA by failing to prepare a Supplemental EIS for the Interstate MAX light rail project after the funding for the MAX project was combined with the Overcrossing Project. Plaintiffs' pending Motion for Temporary Restraining Order, however, is expressly limited to enjoining Defendants from ″undertaking any construction or construction related activity on the Lower Albina Overcrossing Project.″

While the Court is satisfied that Plaintiffs have failed to establish they are entitled to a TRO preventing destruction of the Tucker Building under their First and Fifth Claims, it is not clear whether Plaintiffs contend destruction of the building would cause them irreparable harm under their Fourth Claim. Because Defendants intend to proceed immediately with destruction of the Tucker Building if not enjoined, the Court continues until 4:00 p.m., Monday, June 4, 2001, its Order enjoining Defendants from taking destructive action against the building to allow time for Plaintiffs to seek a TRO under their Fourth Claim. If Plaintiffs wish to pursue [*22] such a TRO, they must file all of the following documents before 4:00 p.m. on Monday, June 4, 2001:

a) A motion expressly seeking a TRO to prevent destruction of the Tucker Building on the basis of Plaintiffs' Fourth Claim;

b) A memorandum in support of such motion that specifies the factual and legal bases on which Plaintiffs contend they are likely to prevail; and

c) A bond in the amount of $ 50,000.

The Court has considered Plaintiffs' request for waiver of the bond required under *Federal Rule of Civil Procedure 65(c)*.

The Rule provides:

> No restraining order or preliminary injunction shall issue except upon the giving of security by the applicant in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained.

Fed. R. Civ. P. 65(c).

The court ″has discretion to dispense with the security requirement, or to request mere nominal security, where requiring security would effectively deny access to judicial review.″ *People ex rel. Van de Kamp v. Tahoe Regional Planning Agency, 766 F.2d 1319, 1325 (9th Cir. 1985)*. [*23] Defendants have produced evidence that suggests they have incurred and will continue to incur costs of approximately $ 7,000 per day of delay. Plaintiffs have provided the Court with information regarding their financial resources. In the exercise of discretion, the Court concludes a bond in the amount of $ 50,000 will provide sufficient protection to Defendants but will not effectively deny Plaintiffs' access to judicial review.

CONCLUSION

Based on the foregoing, the Court **DENIES** Plaintiffs' Motion for Temporary Restraining Order (# 45) and grants Plaintiffs leave to file no later than 4:00 p.m., June 4, 2001, a motion for temporary restraining order under Plaintiffs' Fourth Claim as specified herein. The Court also continues until 4:00 p.m., June 4, 2001, its previous Order enjoining Defendants from taking any destructive action against the Tucker Building.

If Plaintiffs decide to pursue a TRO under their Fourth Claim and timely file the required materials, the Court will continue its Order protecting the Tucker Building until the new motion is resolved and will conduct a status conference at 9:00 a.m., Tuesday, June 5, 2001, to set a briefing schedule to ensure [*24] expeditious resolution of that motion. If Plaintiffs do not timely file the required documents, the Court's Order enjoining Defendants from taking any destructive action against the Tucker Building will expire at 4:00 p.m. on June 4, 2001.

IT IS SO ORDERED.

DATED this 31st day of May, 2001.

/s/ Anna J. Brown

U.S. District Judge