

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

RETHINK35, TEXAS PUBLIC	§	
INTEREST RESEARCH GROUP, AND	§	
ENVIRONMENT TEXAS	§	
<i>Plaintiffs</i>	§	
vs.	§	
	§	CIVIL ACTION NO. 1-cv-22-00620
TEXAS DEPARTMENT OF	§	
TRANSPORTATION; AND MARC D.	§	
WILLIAMS, IN HIS OFFICIAL	§	
CAPACITY AS EXECUTIVE	§	
DIRECTOR OF THE TEXAS	§	
DEPARTMENT OF	§	
TRANSPORTATION	§	
<i>Defendants</i>	§	

ORIGINAL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Rethink35, Texas Public Interest Research Group (“TexPIRG”), and Environment Texas bring this civil action against the Texas Department of Transportation (“TxDOT”), and Marc D. Williams, in his official capacity as its Executive Director, for declaratory and injunctive relief pursuant to the provisions of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, and the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et. seq.* and its implementing regulations.

2. This litigation arises from the Defendants’ decisions to expand and widen Interstate Highway 35 between State Highway 45 North and State Highway 45 Southeast. (“I-35 Project”, “I-35 Capital Express Program”, or “the Project”). The I-35 Capital Express Program proposes to widen and make other alternations to 28 miles of I-35 between SH 45 North and SH 45 Southeast. Defendants have improperly divided the Project into three smaller projects or segments—North, Central, and South. The North Project covers the section of I-35 from SH 45 North to U.S. Route 290 East. The Central Project involves the portion of I-35 from U.S. 290 East to SH 71/Ben White

Boulevard, with additional fly overs at I-35 and U.S. 290 East. Lastly, the South Project comprises of the section of I-35 from SH 71/Ben White Boulevard to SH 45 Southeast.

3. Rethink35, TexPIRG, and Environment Texas file this lawsuit to challenge the arbitrary and capricious actions by a state agency and its officials that are attempting to circumvent the procedural and substantive requirements of NEPA and the constraint on arbitrary and capricious decision-making found in the APA.

I. JURISDICTION

4. This action arises under NEPA, 42 U.S.C. § 4321 *et. seq.*, and its implementing regulations, especially those of the Council on Environmental Quality (“CEQ”) found at 40 C.F.R. § 1500 *et. seq.*, and the Federal Highway Administration (“FHWA”), 23 C.F.R. § 770 *et. seq.* Judicial review is sought pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. §§701–706. This Court has jurisdiction over the case pursuant to 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), and 5 U.S.C. §§ 552, 701–706, for violation of, *inter alia*, the APA and NEPA.

II. VENUE

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), (c)(2), and (e) because the location of the property where the proposed expansion of I-35 is to take place is located within this district, Defendants reside in the district maintaining offices at Texas Department of Transportation 125 East 11th Street, Austin, Texas 78701. Rethink35, TexPIRG, and Environment Texas members reside in the district and these organizations maintain offices within the district. Rethink35 maintains an office at 92 Navasota Street, Austin, Texas 78702. TexPIRG maintains an office at 200 E 30th Street, Austin, Texas 78705. Environment Texas maintains an office at 200 East 30th Street, Austin, Texas 78705.

III. PARTIES

6. Rethink35 is an association of supporters sponsored by Safe Streets Austin, TexPIRG is a non-profit corporation, and Environment Texas is a citizen-based environmental advocacy organization. These organizations are made up of citizens concerned about public health and safety of residents living directly adjacent or in the immediate vicinity of the proposed I-35 Capital Express North, Central, and South projects.

7. The Texas Department of Transportation is a state agency of the State of Texas and may be served at 125 East 11th Street, Austin, Texas 78701–2483.

8. Marc D. Williams is sued in his official capacity as Executive Director of the Texas Department of Transportation and may be served at 125 East 11th Street, Austin, Texas 78701–2483.

IV. STANDING

9. Rethink35, TexPIRG, and Environment Texas are organizations whose supporters are citizens living directly adjacent or in the immediate vicinity of the proposed I-35 Capital Express North, Central, and South projects. Many supporters will be directly affected by the negative impacts associated with this highway expansion.

10. Rethink35 is an organization whose supporters are committed to exploring alternative community proposals instead of expanding I-35 in Austin. TexPIRG is an organization whose supporters are dedicated to preserving and advocating for a healthier and safer community. Environment Texas is an organization advocating for a greener and healthier communities on behalf of its supporters.

11. Rethink35, TexPIRG, and Environment Texas have supporters that will be directly affected by the air pollution, noise pollution, and other impacts from the proposed expansion of

these projects. Thus, the citizens within these organizations are uniquely affected by this proposed action of TxDOT.

V. BACKGROUND FACTS

a. Initial Studies and Scoping

12. Between the late 1980s and early 2000s, TxDOT Austin District undertook the I-35 Major Investment Study that proposed improvements along I-35 from Georgetown to Buda, Texas. This study concluded in 2004. However, due to funding issues, implementation problems, and lack of community support none of the improvements identified in this study moved forward.

13. In 2010, the City of Austin committed to funding a \$1.5 million feasibility study to explore improving operations on I-35 through downtown.

14. A year later, TxDOT Austin District launched the Mobility35 Program, also known as the I-35 Capital Area Improvement Program that focused on modifications to I-35 in Travis, Hays, and Williamson counties.

15. In 2013, TxDOT released the I-35 Capital Area Improvement Program Corridor Implementation Plan for Travis County, which identified modifications for I-35. A year later, an updated plan was released that included Travis, Hays, and Williamson counties.

16. In 2015 individual projects identified on the north and south ends of the study area are environmentally cleared as part of the Mobility35Prgram and construction begins accommodating additional mainlanes as part of the design.

17. Between 2016 and 2017, TxDOT conducted “open houses” for the North16, Central7, and South10 projects. The current I-35 Capital Express North, Central, and South projects considered some concepts and feedback from these projects.

18. The Texas Transportation Commission approved state and federal gas and sales tax dollars for the new I-35 Capital Express North and South projects in 2019.

19. In 2020, the Texas Commission approved \$3.4 billion in discretionary funds for I-35 Capital Express Central project. Moreover, the Capital Area Metropolitan Planning Organization (“CAMPO”) committed \$633 million to the Central project.

20. After the Central project became fully funded at \$4.9 billion, TxDOT launched an Environmental Impact Statement for the project.

21. Public Hearings for the North and South projects and the second public and agency scoping meeting for the Central project were hosted in 2021.

b. FHWA Delegates NEPA Duties to TxDOT

22. On December 16, 2014, TxDOT took over responsibilities for NEPA compliance under a Memorandum of Understanding (“MOU”) with the Federal Highway Administration pursuant to 23 U.S.C. § 327(a)(2)(A). Appropriately, the same federal environmental and administrative law standards that would otherwise apply to federal agencies, like FHWA, in this context apply to TxDOT. See *id.* § 327(a)(2)(C) (“State shall assume responsibility under this section subject to the same procedural and substantive requirements as would apply if the responsibility were carried out by the Secretary.”). In accordance with the MOU, TxDOT became the lead agency for the I-35 Capital Express North, Central, and South projects environmental reviews. Additionally, TxDOT explicitly waived the Eleventh Amendment immunity and consented to federal court jurisdiction for all responsibilities assumed pursuant to the MOU. As of December 9, 2019, the MOU has been renewed for another five years.

23. As detailed in this complaint, TxDOT has failed to fully comply with their duties under NEPA’s environmental review, the Council on Environmental Quality’s NEPA regulations,

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