

environmental impact of the actual exchange of land from federal to private hands, but also the impact of the private purchaser's proposed use of the land.

Applying this proposed-use standard, the court found that the Forest Service had considered the effect of the private purchaser's planned development of the land when it determined that the exchange would not "significantly" affect the human environment and, therefore, an EIS was not required. The court found the Forest Service's conclusions, that the planned development of the exchanged land would not significantly affect the water quality, air quality, soil, esthetics, endangered or threatened species or historical and cultural resources of the land, satisfied the requisite considerations under 40 C.F.R. § 1508.27. Moreover, the court found that the exchange would not threaten to violate state environmental protection laws. Although the Forest Service failed to specifically refer to such state statutes, as required by 40 C.F.R. § 1508.27(10), this error was harmless because its determination as to the need for an EIS covered the same subject matter as would a determination of possible infringement of state environmental protection laws.

The court also addressed the potential for significant environmental effects to the exchanged land if sold by the first private purchaser to another private party with different development plans. This was an immediate concern, because the private party in the land exchange had advertised the land for sale. Here, the court declined to expand the scope of NEPA. Although the government must consider the environmental impact of the proposed use of exchanged land by the initial private purchaser, it need not consider the possible effects of use by "hypothetical subsequent purchasers." Because the Forest Service complied with the statutory and regulatory requirements under NEPA, and its decision to exchange federal land was not arbitrary and capricious, the court affirmed the decision of the district court.

MATT MATHEWS

*Macht v. Skinner*, 916 F.2d 13 (D.C. Cir. 1990)

Appellants sought to enjoin the construction of a light-rail line because of appellees' failure to complete the environmental analysis required by section 4(f) of the Department of Transpor-

tation Act, 49 U.S.C. § 303 (1988) and the National Environmental Policy Act (NEPA), 42 U.S.C. §§ 4321-4370a (1988). The Maryland Mass Transit Administration (MTA) originally planned to build a twenty-seven mile light-rail line. State and local governments would pay 250 million dollars and the Urban Mass Transportation Administration (UMTA) would pay the remaining 40 million dollars. However, after realizing that compliance with NEPA and section 4(f) was required to receive UMTA funding, the MTA decided to build a smaller 22.5 mile light-rail line to be funded entirely by state and local governments.

The MTA received a 2.5 million dollar UMTA grant to perform an Alternatives Analysis and Draft Environmental Impact Statement (EIS) for three possible extensions to the rail line. If built, these extensions would be federally funded. Appellants alleged that the line would adversely impact the Robert E. Lee Park, and that the MTA was attempting to build the line through the park without doing the required EIS.

The court examined the threshold issue of whether there was sufficient federal involvement in the light-rail line to constitute a major federal action requiring an EIS under NEPA. Appellants argued that the line was a major federal action for two reasons: First, the UMTA provided MTA with a 25 million dollar grant; and second, the MTA had to obtain a wetlands permit from the United States Army Corps of Engineers (Corps) prior to construction. The court held that neither involvement was sufficient to render the light-rail line a major federal action. The UMTA grant was neither a final decision to fund any proposed extensions, nor would it have any impact on the environment. Therefore, the federal grant could not transform the state-funded light-rail line into a major federal action requiring an EIS.

The court held that the light-rail line was not "federalized" by the need for a Corps permit for three reasons. First, the Corps' jurisdiction only covered 3.58 acres of the 22.5 mile rail line, a negligible portion. Second, because the federal involvement was limited to the wetlands permit and the MTA had not contracted for goods and services from a federal agency, no "joint venture" between the state and the federal government existed. Third, because the federal government had not yet given Maryland any financial aid for the project, no "partner-

ship" between the state and federal government existed. Therefore, the court denied the injunction.

MORGAN HOGERTY

*Tongass Conservation Society v. Cheney*, 924 F.2d 1137 (D.C. Cir. 1991)

Plaintiff-appellant, Tongass Conservation Society, sought injunctive relief under the National Environmental Policy Act (NEPA), contesting the adequacy of the United States Navy's Environmental Impact Statement (EIS) for a planned testing facility.

For their new Trident nuclear submarines, the United States Navy requires testing grounds which must be free from both natural and human noise. In 1979, the increasing noise at the Navy's existing West Coast testing facilities prevented the accurate and complete testing of the new Trident submarines, causing the Navy to begin a search for new testing facilities based on the area's quietness, size, water depth, weather conditions, remoteness from waterway traffic, and proximity to home ports. Twelve of these sites were eliminated by the Navy as being unsuitable and one was eliminated on the basis of the potentially increasing ambient noise. The remaining site, the western arm of the Behm Canal, located near Ketchikan, Alaska, is a relatively pristine fjord that extends sixty miles from north to south and three miles from east to west. This area was deemed to be the only site which would provide the necessary testing conditions.

NEPA provides that the EIS must address all "alternatives to the proposed action." 42 U.S.C. § 4332(2)(C)(iii). The court found that the Navy satisfied NEPA through the preparation of an EIS and an Addendum to the EIS. The criteria for the screening of potential sites by the Navy and the characteristics of each site were stated in the EIS. The EIS Addendum described the field studies that eliminated alternative sites, evaluated the suitability of the Behm Canal, and reviewed the process for the selection of the testing site within the Behm Canal. The Navy made reasonable efforts to acquire information concerning socio-economic impacts and took steps to mitigate the potential damage to the socio-economic environment of the area, which is marketed as a wilderness. In sum, the court concluded that the