

**CITIZENS FOR SMART GROWTH ODIAS SMITH KATHIE SMITH
SECRETARY DEPARTMENT OF TRANSPORTATION RICHARD
CAPKA ADMINISTRATOR FEDERAL HIGHWAY ADMINISTRATION
DIVISION ADMINISTRATOR FEDERAL HIGHWAY
ADMINISTRATION FLORIDA DIVISION FLORIDA DEPARTMENT OF
TRANSPORTATION SECRETARY STEPHANIE KOPELOUSOS v.**

**CITIZENS FOR SMART GROWTH, a Florida Non Profit Corporation, ODIAS SMITH,
an individual, KATHIE SMITH, an individual, Plaintiffs—
Appellants, versus SECRETARY of the DEPARTMENT OF TRANSPORTATION, J
RICHARD CAPKA, ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION,
DIVISION ADMINISTRATOR, FEDERAL HIGHWAY ADMINISTRATION, FLORIDA
DIVISION, FLORIDA DEPARTMENT OF TRANSPORTATION, SECRETARY
STEPHANIE C. KOPELOUSOS, Defendants—Appellees.**

No. 11-11056 _ D.C. Docket No. 2:07-cv-14122-JEM

-- February 06, 2012

Before WILSON and COX, Circuit Judges, and RESTANI, Judge. WILSON, Circuit Judge:
This appeal concerns the actions and decisions of the Federal Highway Administration
("FHWA") and the Secretary of the Florida Department of Transportation ("FDOT") during the
planning and development of the Indian Street Bridge Project in Martin County, Florida.
Appellants Odias Smith, Katie Smith, and Citizens for Smart Growth (collectively, "Citizens")
brought suit under the Administrative Procedure Act, 5 U.S.C. §§ 701-706, alleging that FHWA
and FDOT violated both the National Environmental Protection Act of 1969 ("NEPA"), 42
U.S.C. §§ 4321-4347, and Section 4(f) of the Department of Transportation Act ("Section
4(f)"), 49 U.S.C. § 303, during development of the project. Citizens also requested an
injunction to stop construction of the bridge. The district court granted summary judgment in
favor of FHWA and FDOT and denied the injunction. After review of the extensive 10,000-
page administrative record in this case, we affirm the district court. I. Background In 1998,
FDOT began the planning and decision process that led up to the construction of the Indian
Street Bridge in Martin County. Responding to Martin County's desire for an additional
crossing of the St. Lucie River for traffic relief and evacuation purposes, FDOT began
investigating possible improvements to the State Road 714 corridor. FDOT presented the
findings of this investigation in the Feasibility Study Report ("Feasibility Study") of 1998. The
Feasibility Study considered one corridor—the existing four-lane Palm City Bridge on State
Road 714—and evaluated three alternatives within this corridor: a No-Build Alternative, a Six-
Lane Alternative, and an Eight-Lane Alternative. The study concluded that widening the
bridge would require taking Section 4(f) properties, possibly exceed noise maximums,
potentially negatively impact the environment, and possibly affect Superfund sites along the
corridor. Additionally, only the Eight-Lane option provided the level of service required in
design year 2026, but this option was barred by FDOT policy regarding lane maximums on state
highways. The Feasibility Study concluded that the No-Build Alternative was the "best"
alternative of those examined but recommended that other alternatives (including an additional
bridge crossing) be considered to address the traffic concerns. FDOT then prepared the New
Bridge Crossing Alternative Corridor Report ("Corridor Report"), released in March 2001. The
Corridor Report examined seven potential corridors for a river crossing and one tunnel

alternative and evaluated each option on the basis of cost, traffic service levels, engineering factors, environmental impacts (noise, air quality, wetlands impact, endangered species impact, and potential contamination), and socio-economic factors (public opinion, Section 4(f) impacts, future development, sustainability, and community cohesion). As part of this analysis, the Corridor Report also took into account that the Martin County Metropolitan Planning Organization had unanimously endorsed the Indian Street Corridor and voted to prohibit widening State Road 714. The Corridor Report concluded that Corridor Three, the Indian Street Crossing, was the best alternative because it had scored highest on the evaluation matrix. Following the completion of the Corridor Report, the FHWA prepared a Draft Environmental Impact Statement (“EIS”) as required by NEPA; distributed it to federal, state, and local agencies for notice and comment; and published it in the Federal Register. Citizens submitted an alternative (“Citizens's Alternative”) during this comment period, proposing a combination of traffic management mechanisms and road improvements rather than construction of a new bridge. Appellees analyzed Citizens's Alternative, but they ultimately rejected it because it did not provide another corridor across the river—desirable for emergencies and evacuations—or reduce traffic to the extent desired. On July 6, 2006, FHWA issued the Final EIS (“FEIS”), which incorporated by reference the findings of the Feasibility Study and the Corridor Report. On October 19, 2006, FHWA signed a Record of Decision (“ROD”), responding to the comments to the FEIS and approving the project. The Feasibility Study, Corridor Report, FEIS, and ROD were made available to the public. Citizens filed suit on April 20, 2007, alleging that Appellees violated NEPA and Section 4(f) in their development of the Indian Street Bridge Project. On October 1, 2009, Citizens's motion for a preliminary injunction was denied. Both parties moved for summary judgment, and on April 30, 2010, the district court granted summary judgment in favor of FHWA and FDOT and denied the motion for an injunction. All other pending motions were dismissed. The project received funding from the American Reinvestment and Recovery Act on February 9, 2010, and construction of the bridge is now underway.

II. Jurisdiction This suit was brought under the Administrative Procedure Act (“APA”), which provides for judicial review of federal agency actions and allows federal courts to enjoin authorities of the United States government. See 5 U.S.C. §§ 701, 702. Citizens seeks only injunctive relief against the Secretary of FDOT. The Secretary argues that this court lacks jurisdiction to enjoin a state official in an action based on the APA because FDOT is not a federal agency. Our jurisdiction over a state official in an action like this one is a complex legal question and presents an issue of first impression in this circuit. Other circuits that have addressed this question have focused on whether a highway project constitutes a major federal action or whether the state and federal projects are sufficiently interrelated. *Sw. Williamson Cnty. Cmty. Ass'n, Inc. v. Slater*, 243 F.3d 270, 277 (6th Cir.2001) (“If we conclude that the highway corridor constitutes a ‘major federal action,’ then we have the authority to instruct the district court to enjoin the state from further construction on the highway.”); *Fund for Animals, Inc. v. Lujan*, 962 F.2d 1391, 1397 (9th Cir.1992) (“Nonfederal defendants may be enjoined if federal and state projects are sufficiently interrelated to constitute a single federal action for NEPA purposes.” (quotation marks omitted)). While we agree with the Secretary of FDOT that the APA does not apply to state agencies, we decide that jurisdiction over the Secretary may be exercised in the circumstances of this case. The Secretary admits that “FDOT's substantial role is well documented in the Administrative Record.” And, the Secretary calls FDOT a “party working in tandem with federal agencies.” Given these circumstances, and the fact that the plaintiffs have only sought injunctive relief against the Secretary, we find the district court

properly exercised its jurisdiction over the Secretary in this case. III. Standard of Review We review a grant of summary judgment de novo and apply the same legal standards as the district court. See *Wilderness Watch & Pub. Emps. for Envtl. Responsibility v. Mainella*, 375 F.3d 1085, 1087–88 (11th Cir.2004). When confronted with claims brought under the APA, we may only set aside agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). This standard is “exceedingly deferential.” *Sierra Club v. Van Antwerp*, 526 F.3d 1353, 1360 (11th Cir.2008). To determine whether an agency decision was arbitrary and capricious, the reviewing court must consider whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment. This inquiry must be searching and careful, but the ultimate standard of review is a narrow one. Along the standard of review continuum, the arbitrary and capricious standard gives an appellate court the least latitude in finding grounds for reversal; administrative decisions should be set aside in this context only for substantial procedural or substantive reasons as mandated by statute, not simply because the court is unhappy with the result reached.*1