

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 205-745-3060

2829 2ND AVENUE SOUTH, SUITE 282
BIRMINGHAM, AL 35233-2838

Facsimile 205-745-3064

October 14, 2011

Via Electronic Mail and Facsimile

Brian Davis, Division Engineer
Sandra Bonner
Third Division, Alabama Department of Transportation
P.O. Box 2745
Birmingham, AL 35202-2745

RE: Summary of Preliminary Analysis Conducted for the Reevaluation of Project HPP-1602(530)(529)(502)(531)(532) Birmingham Northern Beltline

Dear Mr. Davis and Ms. Bonner:

The Southern Environmental Law Center ("SELC") submits this letter on behalf of Black Warrior Riverkeeper, Inc. ("Riverkeeper"), concerning the above-referenced document, hereinafter referred to as "Summary." SELC is a regional not-for-profit legal organization whose mission is to protect the natural resources and special places in the southeastern United States. Riverkeeper is a not-for-profit organization whose mission is to protect and restore the Black Warrior River and its tributaries. Both organizations have been expressing consistent concerns about the lack of environmental studies for the Northern Beltline by the Alabama Department of Transportation ("ALDOT") and the Federal Highway Administration ("FHWA") under the National Environmental Policy Act ("NEPA").

The latest document represents little more than a rehashing of the studies that have been undertaken to date as well as a description of those studies that ALDOT intends to pursue in the future. Rather than being a substantive reevaluation as expected, the Summary was simply a justification document for building the Northern Beltline. As such, the Summary makes giving substantive feedback difficult. If anything, the Summary points to the breakdown in the NEPA process for this project, as well as the ongoing violations of NEPA and its regulations as ALDOT continues to pursue permits, secure money, and take other actions to further the Northern Beltline before completing the proper environmental studies.

The overall conclusion of the Summary is that the western part of the proposed Northern Beltline will require "updated environmental studies," while the eastern portion will not. Summary at 3.0, pp. 9-10. However, given the lack of up-to-date and conclusive data for such environmental indicators as air quality, water quality, and endangered species, as well as archaeological resources, we are unable to see how ALDOT can make such a claim. Indeed,

such a position underscores our ongoing and unresolved concerns with the segmentation of this project and the pressing need for a full and comprehensive Supplemental Environmental Impact Statement (“SEIS”) to satisfy the requirements of NEPA.

Furthermore, the Summary does not give Riverkeeper or anyone else in the general public an accurate depiction of the full impacts of or reasonable alternatives to this project, in large part because many of the impacts remain unknown even to ALDOT. We are therefore unclear as to the purpose of subjecting the Summary to public notice and hearings. While we are strong supporters of public involvement in infrastructure projects – particularly projects that entail expenditures of billions of taxpayer dollars – such involvement must be meaningful. This Summary and its accompanying public hearings seem calculated to be little more than excuses to drum up support for this massive project, without giving the public a true sense of the project’s impacts or other ways in which public money might be better spent to generate economic development in metropolitan Birmingham, including Jefferson County and surrounding counties.

While ALDOT has yet to undertake an SEIS and satisfy NEPA’s other requirements, ALDOT has continued to take steps that will lock this Northern Beltline route down and make a meaningful discussion of impacts and alternatives all but impossible. According to the latest Transportation Improvement Program (“TIP”) and State Transportation Improvement Program (“STIP”), ALDOT has amassed between \$419,848,262 and \$527,881,000¹ for work including purchasing right-of-way, demolishing structures, relocating utility lines, conducting design and engineering analyses, and starting road construction. Some of this work is slated to occur along segments of the Beltline that have never been properly analyzed or re-evaluated under NEPA. Furthermore, ALDOT has applied for Clean Water Act permits from the U.S. Army Corps of Engineers for construction on the Beltline. This activity presupposes a finalized route for the project, which should happen only after all NEPA studies have concluded.

Our specific concerns are addressed below. Many of them were raised in our February 15, 2011 letter to ALDOT and FHWA.

Need for a Complete Supplemental Environmental Impact Statement

FHWA regulations require an Environmental Impact Statement (“EIS”) to be reevaluated if significant action on a project is not taken for more than three years after the EIS is published. 23 C.F.R. § 771.129(b). This re-evaluation must occur “before further approvals may be granted.” *Id.* In this case, the EIS was finalized in 1997. The only reevaluation that has been completed to date has been the August 17, 2006 Reevaluation of the Birmingham Northern Beltline from West of S.R. 79 to East of S.R. 75 (“Reevaluation”), which covers only a tiny fraction of the Northern Beltline. This Reevaluation was itself inadequate and is now also out of

¹ This inconsistency between the amounts found in the TIP and STIP is itself contrary to law.

date. According to documents submitted by ALDOT to the Appalachian Regional Commission, ALDOT intends to create several more reevaluations for segments of the Beltline east of Interstate 65, and a Supplemental Environmental Impact Statement (“SEIS”) for the section west of I-65. This is contrary to the law. Rather than continue with this section-by-section approach, NEPA calls for a comprehensive SEIS for the entire Beltline project.

As a threshold matter, a SEIS is necessary because our understanding of the ways to stimulate sustainable economic development – which is the primary justification for the Beltline – has changed dramatically in the last 15 years. In the 1997 EIS, the stated purpose of the Northern Beltline was to “increase cross region accessibility” and “stimulate other economic development.” EIS at § 1.1 (p. 19). ALDOT sought a route that would be “safe...efficient...compatible with the environment...the best possible return on the capital investment...[and] responsive to the travel demands of the public.” *Id.* Since 1997, the best ways to accomplish these stated goals have changed significantly, triggering the need to prepare a SEIS to compare and evaluate alternatives that meet these purposes.

The idea of providing safe and efficient transportation that is responsive to the travel demands of the public is now a very distant second to the project’s foremost goal of generating economic development. The Northern Beltline is not a transportation improvement project and will not facilitate safe and efficient travel for the region. In 2010, the Birmingham Metropolitan Planning Organization estimated that the Beltline would only absorb 1-3% of the current traffic in the area, will not remove significant truck traffic from existing roads, and will not provide congestion relief. Birmingham 2035 Regional Transportation Plan Public Involvement Meeting Documentation April 2010 Chapter 4, p. 17. An economic impact study commissioned by the Coalition for Regional Transportation (“CRT”) only reinforces this conclusion; it expressly did not address the extent, if any, to which the project would improve traffic flow. *Socioeconomic Indirect and Cumulative Impact Components for the Northern Beltline*, June 2010 at 1, 16 <http://www.birminghambusinessalliance.com/uploads/PDFs/NorthernBeltlineFullReport.pdf>. ALDOT has never undertaken studies or made any comparisons that would analyze alternatives that best address the secondary goal of safe and efficient transportation. If the purpose of the project is truly to enhance travel experiences and improve transportation, the time to examine the best alternatives that accomplish this goal in light of changed circumstances is now, in an SEIS, before the Beltline advances even further.

As a practical matter, the Beltline is *not* efficient and will actually impede the goal of safe and efficient travel in several important respects. The highway design is a spiral that ends near Argo, not a true beltway. Traffic using the Beltline to travel eastbound will either have to take an alternate route such as local roads, or backtrack several miles on I-59 to get to I-20. Indeed, the Beltline would actually *increase* traffic between the current I-59/I-459 interchange and the planned Beltline terminus at I-59 in Trussville.

Perhaps most importantly, ALDOT has never looked at what might yield the best return on this massive capital investment. Unlike the 1960s when this project was first conceptualized, and even in 1997 when it was last studied, conventional thinking about the need for and beneficial effects of large highway projects has changed dramatically. Even the CRT concedes this in their economic impact study: “highway projects generally contribute to economic development but do not automatically generate or guarantee such growth.” *Socioeconomic Indirect and Cumulative Impact Components for the Northern Beltline*, p. 22.

<http://www.birminghambusinessalliance.com/uploads/PDFs/NorthernBeltlineFullReport.pdf>. National studies suggest that often the “growth” from such projects is not new investment but rather a redistribution of ongoing growth that would have occurred elsewhere in the region. These premises are borne out by observing examples such as Greenville, South Carolina, and Fort Wayne, Indiana, both of which built costly beltlines to spur economic growth that never materialized. At the same time, many thriving Southeastern cities do not have complete beltlines, such as Greensboro, Winston-Salem, Charleston, Knoxville, Chattanooga, Tampa, and Orlando. In fact, since 1997 many cities such as Charleston, South Carolina are shelving proposed beltline additions because of their high costs and marginal benefits.

Accordingly, ALDOT must undertake a SEIS that objectively evaluates all reasonable alternatives (not just highway systems or different route choices) that can accomplish the Beltline’s primary goal of economic development, together with the secondary purpose of improving transportation. This will clearly define the issues presented and provide a better basis for choice among options by both ALDOT and the public, which is the heart of the NEPA process. *See* 40 C.F.R. § 1502.14.

In addition to the reasons stated above, regulations promulgated by the Council on Environmental Quality (“CEQ”) call for the preparation of an SEIS if significant new information has arisen in the time since the original EIS, or if there have been substantial changes to a project that bear on environmental concerns. 40 C.F.R. § 1502.9(b). FHWA regulations mimic this requirement. 23 C.F.R. § 771.130(a). Aside from the fact that the original EIS for the Northern Beltline is 14 years old, a number of major changes and new circumstances have occurred since 1997 that compel the preparation of an SEIS for this project. They include, but are not limited to, the following:

- The Northern Beltline is now proposed to be six lanes instead of four. This adds over 100 miles of new roadway to the project and increases impervious surfaces by 50%, which will have implications for both air quality (from increased vehicular traffic) to water quality (from increased impervious surfaces) to noise.
- Attaining and maintaining healthy air quality in the Birmingham metropolitan area has continued to be a challenge, and the Beltline will have a negative impact on air quality in northern Jefferson County by promoting sprawl development and

adding thousands of new mobile sources of air pollution from the cars and trucks that will use the highway. The Birmingham area continues to struggle with unhealthy levels of both ozone and particulate matter, which can be caused or worsened by vehicle exhaust.

- Since 1997, a number of streams in and close to the Northern Beltline footprint have been added to the state's 303(d) list of impaired waters, and several now have Total Maximum Daily Loads. ALDOT and FHWA must carefully reassess the water-quality impacts of this road and its alternatives.
- ALDOT and FHWA must analyze the road's impacts on newly-listed threatened and endangered species, a number of which inhabit the rivers and tributaries that will be impacted by the highway; critical habitat must also be examined. The U.S. Fish and Wildlife Service recently designated increased critical habitat for the endangered vermilion darter, and the rush darter has just been added to the endangered species list. Both live within Turkey Creek and its tributaries, which flow into the Locust Fork of the Black Warrior River.
- Watershed science has greatly progressed since 1997, with significant changes in the methods for accurately evaluating the impacts of highways and their attendant growth on watersheds, drinking water and wildlife, and for assessing the best practices to mitigate those impacts. The long-term, post-construction impacts of stormwater runoff and other hydrological changes caused by projects like the Northern Beltline are now understood to be the primary impacts to watersheds, exceeding even the impacts caused by construction itself. These significant post-construction impacts were neither acknowledged or considered in the 1997 EIS.
- If the Northern Beltline is built crossing the sensitive headwaters of tributaries to the Locust Fork, even if the Beltline is built with the best possible design, construction, and land management practices, there will still be degradation to the river and to tributaries affected by the Beltline and its indirect development impacts. The science regarding impacts of land use on watershed ecosystems and water resources supports the concern that a highway of this magnitude and the intensive growth it is intended to create cannot be built without negative impacts to the watershed. These impacts need to be fully analyzed and vetted in a SEIS.
- Watershed impacts to the Locust Fork from the Beltline will affect one of the Birmingham metropolitan area's primary sources for drinking water and recreation, as well as other important values and uses. This tradeoff should be fully acknowledged, studied, and understood – rather than ignored – as ALDOT and the public consider the future of the Beltline. Impacts to the reliable supply

and cost of drinking water will affect all customers of the Birmingham Water Works Board system as well as those in the area who rely on wells for drinking water. The 1997 EIS makes no mention of these potential impacts to drinking water. An adequate assessment of the direct, indirect and cumulative impacts of this project in a SEIS is necessary to address this vitally important issue.

- Runoff from the development that could result from the Northern Beltline will flow into the Locust Fork upstream of the Birmingham Water Works Board's identified new source for the region's drinking water: the Black Warrior River below Bankhead Dam in the Holt Lake Reservoir section of the river.
- The project's direct, indirect and cumulative impacts on our region's floodplains and forests have never been adequately assessed. The passage of floodplain ordinances by Jefferson County and other local communities in the path of the Beltline since 1997 also need to be considered.
- The price of this project has skyrocketed, even in the last year. The increase in projected cost from \$3 billion to \$4.7 billion indicates significant changes in economic conditions, which are among the effects to be examined in the NEPA process. Furthermore, the funding assumptions for this road should be re-examined. Since the 1997 EIS, the fuel economy of cars and trucks has increased significantly. As a result, the amount of money generated by fuel taxes has remained relatively flat, especially compared to increasing costs for construction materials, land, and highway maintenance. This trend alone should prompt a second look at alternatives that could meet the Beltline's stated purpose of economic development, at a lesser cost.
- The Birmingham area has continued to grow and develop over the last 14 years. Changes in demographics, population density, and locations of homes and businesses must be taken into account.
- Interest and investment in multimodal forms of transportation has also increased dramatically since 1997. Virtually all of the 50 largest metropolitan areas in the country are planning transit expansions. This economic development tool was not studied in the 1997 EIS and must be examined now.

In creating a SEIS, we request that ALDOT and FHWA take a hard look at all reasonable practical alternatives to the Northern Beltline that would serve the project purpose of enhancing economic development in northern Jefferson County. Given the massive projected expense of the Beltline, a thorough look at alternatives is especially warranted. Safety and congestion improvements to existing highways, secondary roadways, bridges and railroad crossings, as well

as alternative investments to transport goods and people, would all spur economic development, in many cases at a significantly reduced cost. Many of these alternatives would also minimize environmental impacts.

Without the benefit of a full SEIS for this entire project and an objective weighing of alternatives, ALDOT is moving forward with a \$4.7 billion infrastructure investment that has never been thoroughly studied since it was conceptualized in the 1960s. Such a review is particularly critical given the current economic and fiscal climate.

Segmentation

Segmentation is not allowed under NEPA regulations, thereby precluding the advancement of a section of the project that cannot stand on its own as a reasonable transportation investment. 40 C.F.R. § 1508.27(b)(7). Highway projects analyzed under NEPA must have independent utility, logical termini, and must not foreclose the analysis of alternatives to serve the underlying purpose of and need for the proposed project. 23 C.F.R. § 771.111(f). The 2006 Reevaluation fails all three of these requirements.

First, the 3.4-mile segment of the Northern Beltline connecting S.R. 79 with S.R. 75 has no independent utility. Connections between these two roads exist both north and south of the Beltline, including a direct connection roughly a mile south of the proposed Beltline. The Beltline segment here is an unnecessary redundancy.

Second, the segment as defined has no logical termini, making it essentially a road to nowhere. The reevaluated segment begins approximately one mile west of S.R. 79 and ends approximately one mile east of S.R. 75.

Further, evaluating and constructing this segment of the Beltline on its own will necessarily constrain alternatives for future segments of the Beltline or alternative transportation investments. This segment effectively locks in the Beltline's spiral design and stifles more cost-effective choices for economic development and transportation system enhancement.

We are concerned that ALDOT apparently plans to continue this pattern of segmenting the road for purposes of NEPA analysis. The Summary indicates that ALDOT has already determined (based on what ALDOT concedes is incomplete information) that the western portion of the Beltline warrants a more thorough re-evaluation than the eastern portion. For ALDOT to arbitrarily choose one segment for thorough re-analysis without having the benefit of all information only further demonstrates the problems with pursuing this segmented approach to the project. NEPA calls for the avoidance of such a piecemeal approach, and ALDOT must treat this project as a whole in order to reach a full understanding of its impacts.

Indirect and Cumulative Impacts Analysis

NEPA regulations clearly require agencies to evaluate the indirect and cumulative impacts of proposed projects. Indirect impacts include growth-inducing impacts, which will be particularly significant for a project such as the Northern Beltline, the identified purpose of which is to spur economic development. 40 C.F.R. § 1508.8(b). Cumulative impacts are the incremental impacts of a project combined with past, present and reasonably foreseeable future impacts on local resources. 40 C.F.R. § 1508.7. In this case, cumulative impacts would include impacts of the completion of Corridor X and upgrades to I-65, I-59, I-459, and U.S. 280, combined with the Beltline's impacts, as well as impacts from other transportation infrastructure projects in the area such as the \$112 million Norfolk-Southern railroad hub in McCalla.

Neither ALDOT nor FHWA has ever examined these categories of impacts for this 52-mile highway. The original 1997 Environmental Impact Statement ("EIS") contains no such analysis. The 2006 Reevaluation contains no such analysis. Instead, ALDOT has been promising to produce an Indirect and Cumulative Impact Analysis for at least the past six years, but it has not yet been publicly released. Meanwhile, property acquisition and site preparation have continued. NEPA unambiguously requires agencies to examine impacts *before* actions are taken, *before* resources have been committed (including right-of-way acquisition with limited exceptions), and *before* decisions are made.

Indirect and cumulative impacts will be particularly significant for this project. The primary purpose of the Northern Beltline is to spur economic development in an area that is currently undeveloped. As such, the project will have significant growth-inducing impacts on air quality, water quality, ecosystems, socioeconomics, noise, and other environmental factors. For example, numerous secondary roads, water lines, sewers, utilities, and other infrastructure will need to be constructed or upgraded to facilitate any development opportunities created by the Beltline.² These significant impacts will need to be analyzed as part of a comprehensive SEIS.

The road's cumulative impacts will also be significant. ALDOT must examine this project's impacts when combined with past, present, and reasonably foreseeable future projects. The addition of new travel lanes in each direction will have cumulative impacts on air and water quality in addition to the direct impacts associated with the lanes themselves. Other road

² Jefferson County is close to financial collapse, in large part because of the mismanagement of its sewer system. That system remains in a state of disrepair, specifically with regard to sewer collection system overflows. In order to accommodate additional development for the Beltline, these collection lines will have to be extended and upgraded, adding more burden to an already failing system. Some of the nine wastewater treatment plants in Jefferson County will not be able to handle large additional sewage loads, as their design capacity and plant life cannot accommodate the growth being projected along the Beltline. Environmental impacts to area streams and water supplies; public health threats to swimmers, paddlers, and fishermen; and the significant additional financial burdens on taxpayers all need to be carefully considered.

projects such as the completion of Interstate 22 need to be analyzed in conjunction with the Beltline. Only then can the public have a full picture of the road's environmental costs.

We have strong concerns with the anticipated production of an Indirect and Cumulative Impact Analysis as a stand-alone document. NEPA envisions the study of all impacts of a project – direct, indirect, and cumulative – in a single document to aid agency decision-making. ALDOT and FHWA are instead providing this information on a piecemeal, ad-hoc basis by discussing categories of impacts in separate documents, which frustrates the ability of the transportation and permitting agencies, as well as the public, to understand the totality of a project's impacts. Rather than segmenting the impacts in this manner, ALDOT and FHWA should publish a comprehensive SEIS for the entire Northern Beltline before further work is undertaken, as required by NEPA. We are aware of no regulations or policies that would allow the Northern Beltline project to be advanced in the manner in which the transportation agencies are apparently planning to proceed at this time.

Conclusion

In summary, the changes outlined above are of such magnitude that NEPA requires a reassessment of the entire Northern Beltline project. We ask both ALDOT and FHWA to suspend any further activities that would have adverse environmental impacts or limit the choice of alternatives until the required SEIS is complete.

Neither ALDOT nor FHWA have ever asked or studied whether the Beltline is the most cost-effective way to bring economic growth to the Birmingham area. Before investing nearly \$5 billion, taxpayers deserve an idea of what the return on their investment will be, as well as whether there are alternatives that provide an even greater value for less money and less impact to the environment. By not complying with NEPA, ALDOT and FHWA are denying all of us the opportunity to make a good and informed decision about the future of Birmingham.

Thank you for your attention to this letter.

Sincerely yours,



Gilbert B. Rogers
Senior Attorney

cc: Charles Scribner, Black Warrior Riverkeeper
Jim Ippolito, Alabama Department of Transportation
Mark Bartlett, Federal Highway Administration

Heinz Mueller, U.S. Environmental Protection Agency, Region IV
Bill Pearson, U.S. Fish and Wildlife Service
Courtney Shea, U.S. Army Corps of Engineers