

May 27, 2005

*Via Facsimile and U.S. Mail*

Mr. James R. Horsley, Division Engineer  
Alabama Department of Transportation  
P.O. Box 2745  
Birmingham, AL 36202-2745

**RE: Birmingham Northern Beltline Project AFS-350(1)**

Dear Mr. Horsley:

The Southern Environmental Law Center submits these comments concerning the proposed Birmingham Northern Beltline on behalf of the Alabama Rivers Alliance, the Cahaba River Society, and the Black Warrior Riverkeeper. As part of these comments, we attach and incorporate by reference the concerns outlined in the Cahaba River Society's July 1, 2003 letter to you. We continue to have concerns about the significant environmental impacts of this project, particularly to waterways in the project footprint, as well as the indirect impacts associated with the development that will accompany this project. The Alabama Department of Transportation (ALDOT) completed an Environmental Impact Statement (EIS) for the project, which was approved by the Federal Highway Administration (FHWA) on June 12, 1997. That EIS lacked several necessary components, and ALDOT is currently exacerbating this error by conducting the re-evaluation process in a piecemeal manner with no meaningful opportunity for public input. Because of these flaws, which are contrary to the National Environmental Policy Act (NEPA), we ask that a Supplemental Environmental Impact Statement (SEIS) be conducted for the Northern Beltline.

### **Project Overview**

The Northern Beltline would be a limited access expressway around the northern Birmingham Metropolitan Area, corresponding roughly with existing I-459 to the south. The project will be approximately 50 miles in length and will impact roughly 68 acres of wetlands, along with waterways in the Black Warrior and Cahaba River Basins. An EIS for the project was approved on June 12, 1997. Since October 2003, the ALDOT has held design public hearings on three segments of the roadway. These hearings consist of ALDOT staff being available to answer questions about the segment in question but do not include an opportunity for the public to voice concerns about the project as a whole in a formal hearing.

## **The National Environmental Policy Act**

NEPA is one of this country's bedrock environmental statutes. It is designed not to force a particular outcome, but to insure that an agency has thoroughly reviewed all environmental impacts associated with a given action, as well as alternatives to that action. It also gives other agencies, and the public, an opportunity to review and comment on a project. NEPA's goal is to promote better decisionmaking and coordination among federal agencies, by making sure that agencies take a hard look at all environmental impacts before taking action in a certain direction.

The statute requires the preparation of an EIS for any major federal action significantly affecting the quality of the human environment. 42 U.S.C. § 4332(C). Regulations promulgated by the Council on Environmental Quality ("CEQ") flesh out NEPA's statutory mandate and provide guidance on the types of impacts federal agencies must evaluate. 40 CFR §§ 1500-1508. Generally, these can be summarized as direct, indirect, and cumulative impacts. Once an EIS has been prepared, an agency has a duty to re-evaluate and supplement that EIS if project circumstances change or significant new information relevant to environmental concerns surfaces. 40 C.F.R. § 1502.9(c)(1)(ii). This requirement is echoed in the Federal Highway Administration's NEPA regulations. 23 C.F.R. § 771.130(a)(2). Because there is significant new information that has surfaced since 1997, ALDOT must conduct a full SEIS for the Northern Beltline.

## **Endangered Species**

In addition to the species concerns outlined in the Cahaba River Society's attached letter, the construction of the Northern Beltline may also threaten the existence of the endangered vermilion darter, which is found only in Turkey Creek in the Black Warrior River Basin. Indeed, Samford University biologist Paul Blanchard has noted that the highway will "impact Turkey Creek, but even more of an impact will be the commercial and residential development [the Northern Beltline] brings."<sup>1</sup> Under Section 7 of the Endangered Species Act, 16 U.S.C. § 1536, the ALDOT and the FHWA must consult with the United States Fish and Wildlife Service before taking further action that could jeopardize the continued existence of this species, which was listed as endangered in November 2001.<sup>2</sup>

We also urge the ALDOT and the FHWA to update field data associated with the flattened musk turtle, the watercress darter, and the red-cockaded woodpecker. All of these species are known or likely to occur within the project area, and the Northern Beltline will only exacerbate the adverse effects on water quality and habitat fragmentation that have already reduced the populations of these species. Much of the data used in the EIS is dated; as an example, the study of the watercress darter is now 25 years old. See EIS at 4-94.

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<sup>1</sup> See Wayne Martin, *U.S. Plan Could Preserve Vermilion Darter*, BIRMINGHAM NEWS, March 28, 2005, at 01-A.

<sup>2</sup> See 66 Fed. Reg. 59367 (November 28, 2001).

## **Air Quality**

The 1997 EIS detailed the significant air quality impacts that will occur once the Northern Beltline is constructed. However, since that time, the federal government has begun to regulate fine particulate matter, PM<sub>2.5</sub>, under the Clean Air Act. PM<sub>2.5</sub> poses substantial risks to public health, including aggravated asthma, pulmonary disease, heart disease, and potentially cancer.<sup>3</sup> Although stationary sources such as power plants account for a majority of PM<sub>2.5</sub> emissions, mobile sources contribute to PM<sub>2.5</sub> pollution both directly (as with diesel emissions) and indirectly (as with emissions of PM<sub>2.5</sub> precursors). The Birmingham metropolitan area has been designated nonattainment for this new air quality standard, and even the federal government's own projections show that the area will not attain the standard by 2015.<sup>4</sup>

In order to receive the federal funds necessary to construct the Northern Beltline, the ALDOT must show that the project will conform to Alabama's State Implementation Plan. Since the PM<sub>2.5</sub> standard is so new, Alabama has not yet created a SIP for this pollutant. There are other tests, such as the build/no build test, that must be conducted in the absence of a SIP. The ALDOT should prepare a SEIS that conclusively demonstrates that the Northern Beltline will not further delay the Birmingham area's attainment of the PM<sub>2.5</sub> standard or contribute to the area's already-serious problem with particulate pollution.

## **Indirect Impacts**

The CEQ regulations define indirect impacts as those impacts that are later in time or farther removed in distance from a given project, but still reasonably foreseeable. They may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems. 40 CFR § 1508.8(b). Indirect impacts are particularly important in the context of new road construction, as the new means of access can facilitate significant and often rapid secondary development in the project area, bringing increased impervious surface area, increased erosion and sedimentation, and other detrimental effects to water quality. This will be particularly true in the case of the Northern Beltline, which is being touted as a growth engine and will open up many rural areas in Jefferson County to suburbanization.

The 1997 EIS does not adequately account for the indirect impacts of the Northern Beltline. The only section to address the issue at all is a page and a half that discusses "Land Use Planning Impacts." EIS at 4-31. The section notes that there will be significant industrial, commercial and residential development along the Northern Beltline, particularly in areas surrounding new interchanges. The section notes that the

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<sup>3</sup> See <http://www.epa.gov/air/urbanair/pm/hlth1.html> <visited May 26, 2005>; C. Arden Pope III et al, *Lung Cancer, Cardiopulmonary Mortality, and Long-Term Exposure to Fine Particulate Air Pollution*, 287 JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION 1132 (March 6, 2002).

<sup>4</sup> See <http://www.epa.gov/CAIR/state/al.html> <visited May 6, 2005>.

changes “should be beneficial” but does nothing substantive to address the impacts themselves, whether beneficial or detrimental.

We note that there is a Northern Beltline Corridor Study (the Study) being undertaken by a stakeholder group that includes members of business organizations, government entities, conservation groups, and the public. The Study will attempt to link transportation planning and land use planning along the Northern Beltline corridor. However, the stakeholder group will not be able to complete its job effectively if the ALDOT has already designed the road before the stakeholders are able to determine how best to incorporate the project into the affected communities. The ALDOT must appreciate and account for the substantial indirect impacts of this project and allow the Study to determine design parameters for the roadway and its interchanges that are sensitive to community goals and concerns.

### **Cumulative Impacts**

The 1997 EIS fails to evaluate cumulative impacts properly; in fact, it does not mention cumulative impacts at all. NEPA defines cumulative impacts as those impacts that result from the incremental impacts on the environment from a project when added to past, present, and reasonably foreseeable future actions in the same area. These impacts can arise from individually minor but collectively significant actions taking place over a period of time. 40 C.F.R. § 1508.7.

The most obvious source of cumulative impacts along the Northern Beltline route is the construction of Corridor X, which will ultimately be I-22, a limited-access interstate highway running from Birmingham to Memphis, TN. This roadway brings its own significant impacts, and the combination of the two projects in areas like Graysville will compound impacts to water quality, air quality, traffic congestion, and the indirect impacts associated with development along and between these corridors.

Furthermore, the ALDOT is already studying the possibility of extending the Northern Beltline an additional 10-15 miles to connect to I-20 in the area of Leeds, AL. This significant new development will further impact and degrade the headwaters of the Cahaba River; its impacts will require the preparation of another EIS or analysis as part of the SEIS for the Northern Beltline. Without a full analysis of the direct and indirect impacts of this portion of the project, as well as the project’s cumulative impacts with the rest of the Northern Beltline, the ALDOT risks improperly segmenting the Northern Beltline, which NEPA prohibits. Segmentation analysis is designed to weed out those projects which are pretextually segmented, where there is no independent reason for a given project to exist. When the segmented project has no independent justification, no life of its own, or is simply illogical when viewed in isolation, the segmentation will be held invalid. *Macht v. Skinner*, 715 F. Supp. 1131, 1135 (D.D.C. 1989), *aff’d*, 889 F.2d 291 (D.C. Cir. 1989) (Table). In this case, the portion of the Northern Beltline connecting I-59 and I-20 would not be built on its own; it has no independent justification.

Because of the significant cumulative impacts associated with the Northern Beltline, the ALDOT must re-evaluate the project in its entirety (including the portion connecting the roadway to I-20 in Leeds) and address the cumulative impacts on natural resources and communities associated with this project, Corridor X, and other reasonably foreseeable future infrastructure improvements in the affected area.

## **Conclusion**

In summary, we feel that the EIS has several legal flaws and must be fully supplemented. Moreover, we strongly urge the ALDOT and the FHWA to make the EIS re-evaluation process more transparent and to examine the direct, indirect, and cumulative impacts of the whole project with adequate opportunities for public participation.

Thank you for your consideration of these comments. Please contact me if you have any further questions.

Sincerely,

Gilbert B. Rogers  
Staff Attorney

cc: Joe McInnes, Director, Alabama Department of Transportation  
Bill Garnett, Alabama Department of Transportation  
Joe Wilkerson, Federal Highway Administration  
Paul Bradley, U.S. Army Corps of Engineers, Mobile District  
Bruce Porter, U.S. Fish and Wildlife Service  
Bill Foisy, Birmingham Regional Planning Commission  
Adam Snyder, Alabama Rivers Alliance  
Beth Stewart, Cahaba River Society  
Nelson Brooke, Black Warrior Riverkeeper

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