

SOUTHERN ENVIRONMENTAL LAW CENTER

THE CANDLER BUILDING
127 PEACHTREE STREET, SUITE 605
ATLANTA, GA 30303-1800

Telephone 404-521-9900
Facsimile 404-521-9909
selcga@selcga.org

Charlottesville, VA
Chapel Hill, NC
Atlanta, GA

October 19, 2006

Via Facsimile and U. S. Mail

Mr. Bill Garnett, Division Engineer
Alabama Department of Transportation
P.O. Box 2745
Birmingham, AL 35202-2745

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

Dear Mr. Garnett:

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 Black Warrior Riverkeeper. These comments follow our letter dated May 27, 2005 (attached) and the meetings that have been held between our organizations, the Alabama Department of Transportation (ALDOT), and the Federal Highway Administration (FHWA). These comments are intended specifically to address some concerns that have arisen since our last meeting on February 21, 2006, and to address the re-evaluation document that was signed on August 17, 2006.

As an initial matter, we must reiterate our concerns that this project and the sprawl development it will generate will substantially degrade many sensitive areas of the Black Warrior and Cahaba watersheds, including important headwaters in both basins in the northeastern portion of the project footprint that ultimately supply drinking water to most of the residents of Birmingham. Each of our groups is committed to protection of the waterways in the project footprint, and a project of this magnitude will unquestionably have significant negative impacts to sensitive areas of river systems that serve as prime aquatic habitat, allow for recreational use and enjoyment, and provide the people of Birmingham with drinking water. The re-evaluation of the Highway 79-Highway 75 segment runs the risk of locking the project into an alternative that will be particularly damaging for Birmingham's drinking water supplies, especially construction to the east of the re-evaluated segment

We appreciate the concrete steps taken to reduce impacts to water quality by bridging streams in the AL Highway 79 – AL Highway 75 segment of the project footprint, and we expect ALDOT to adhere to these commitments once any construction occurs. We note that bridging streams, while important, does not alone constitute sufficient protection to address water quality, as we discussed in our meetings with you last summer. We have recommended numerous concrete measures that will lessen the

environmental impact of the Beltline at previous meetings with ALDOT, and we would appreciate hearing what additional design measures and other proactive steps ALDOT is willing to take to reduce impacts in both the construction and post-construction phases of this ambitious project.

While we are generally encouraged by the steps that ALDOT and FHWA have committed to take to improve their study of the project's indirect and cumulative environmental impacts, as required by the National Environmental Policy Act, we do not support the decision to issue a re-evaluation document that does not address these impacts. Indirect and cumulative impacts of this project, both of which are likely to be significant, were never analyzed during the initial Environmental Impact Statement (EIS) preparation and have yet to be analyzed or vetted before the public. ALDOT admits as much in the re-evaluation document: "Omitting the ICI [indirect and cumulative impacts] analysis for this [Highway 79 to Highway 75] section of the Beltline would represent a segmented approach which is inconsistent with FHWA and [Council on Environmental Quality] guidance for ICI." Re-evaluation at pp. 3-5 – 3-6. Without any analysis of these indirect and cumulative effects on endangered species, water quality, air quality, and other environmental indicators, any general declaration as to the overall significance of the project, or of this segment, is premature and without legal merit.

We reiterate the assertion in our May 2005 letter that a full supplemental EIS must be prepared to analyze all direct, indirect, and cumulative impacts in one document. The piecemeal approach that ALDOT is taking in analyzing different types of impacts does not lend itself to an objective overall evaluation of impacts, but more to a post-hoc justification of a pre-ordained outcome. Furthermore, because the project's stated purpose is primarily to stimulate economic growth, indirect impacts are clearly going to be significant, since they are by definition the impacts from growth induced by a particular project.

We understand that ALDOT wishes to begin – and may have already initiated – land acquisition in the footprint of the re-evaluated segment of the Northern Beltline project. We have also heard conflicting reports that steps have already been taken to acquire land to the east in the vicinity of the currently proposed interchanges at I-59 and Old Springville Road. Please understand that we cannot support land acquisition along any portion of the project footprint until the project's overall impacts, including projected costs and routing alternatives, have been thoroughly reviewed. Given that almost ten years have passed since the initial EIS was completed, we expect the agencies to undertake a complete review of impacts and alternatives before moving forward with land acquisition in each segment. By definition, moving forward with one segment of the project constrains a full and fair consideration of project alternatives and potentially could result in needless costs to the agency and impacts to the affected areas pending a supplemental review of the project's impacts. NEPA does not allow putting the cart before the horse.

Furthermore, the Alabama Highway 79- Alabama Highway 75 segment lacks independent utility and will reduce the agencies' ability to avoid or minimize impacts to the headwaters in the northeastern portion of the project footprint. The re-evaluation contains a few conclusory statements that the 79-75 segment has independent utility, but there is no concrete justification for this assertion.

We hope to hear back from the agencies about any land acquisition that is planned or has already transpired. After conducting extensive site visits in the northeastern segment of the proposed Beltline footprint, we have become increasingly concerned about the project's impacts to waterways in this area. As stated above, both areas contain sensitive headwaters for present or future drinking water supplies in the Cahaba and Black Warrior Basins. Please consider this letter a formal request pursuant to the Section 36-12-40 of the Code of Alabama for any records detailing the status of, or any schedule for, the acquisition of land for the Northern Beltline project, including information about any parcels that have already been purchased. Please do not incur any costs greater than \$50 in fulfilling this request without contacting me first.

We also reiterate our significant concerns with any proposal to move forward with an extension of the Northern Beltline to I-20. This extension will cause further negative impacts to water quality in the Cahaba watershed and potentially the Coosa watershed. The agencies will have a difficult time demonstrating the purpose of and need for a roadway that parallels so closely with existing I-459, particularly when people could simply drive a short distance down I-59 south to reach I-459. The logic behind such an extension could one day be used to justify extending the road yet again to I-65, rather than have people drive a short distance down I-20 to I-459. This part of the project seems particularly unjustified in light of other high-priority roadway improvements needed elsewhere in Alabama. We note that the Federal Highway Administration recently published a Notice of Intent to prepare an Environmental Impact Statement for this project, and we will be submitting comments separately pursuant to that Notice. See 71 FR 43835-43836 (August 2, 2006).

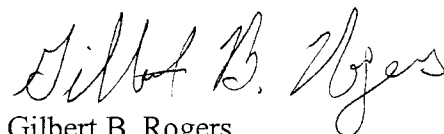
Conclusion

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

We must also say that we appreciate ALDOT's and FHWA's willingness to communicate with us over the past year. We hope that this open line of dialogue will continue as this and other projects go forward.

Thank you for your consideration of these comments and for your willingness to communicate about this project. Please contact me if you have any further questions.

Sincerely,

A handwritten signature in black ink that reads "Gilbert B. Rogers". The signature is written in a cursive style with a large, prominent "G" and "R".

Gilbert B. Rogers
Staff Attorney

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

GBR/gnd