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VIA E-MAIL AND U.S. MAIL

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RE: Monroe Connector/Bypass: Request for a Supplemental Environmental Impact Statement

Dear Ms. Harris and Mr. Sullivan:

We were disappointed to see the North Carolina Department of Transportation (“NCDOT”) and Federal Highway Administration (“FHWA”) issue a combined Final Supplemental Final Environmental Impact Statement (“FSFEIS”) and Record of Decision (“ROD”) approving the \$838 million Monroe Bypass. As you know, North Carolina has a substantial shortfall in transportation funding — most recent figures show approximately \$70 billion in transportation needs and just over \$12 billion in available funding for the next decade.¹ It is increasingly clear that available funding must be prioritized for only the most meritorious projects and as such, NCDOT should reconsider committing such significant resources to the construction of this expensive, unpopular and destructive Bypass when less costly and more effective alternatives are available.

Moreover, we were particularly troubled by the process the agencies used in rushing through final approval of this project, bypassing public comment. Federal regulations provide that a combined FEIS/ROD is not appropriate where “there are significant new circumstances or

¹ Calvin Leggett, NCDOT, *Projected Revenues and STIP Budget 2016-2025*, presentation to the North Carolina Board of Transportation Funding & Appropriations Strategies Committee (June 4, 2014), Attachment 1.

information” that bear on the proposed action. 42 U.S.C. § 4332a(b). Such “significant” information was included with the FSFEIS though it had never before been released for public comment, including new socio-economic data showing that growth in Union County, previously used to justify the Bypass, is now forecast to be considerably less than previously anticipated. The new forecasts have significant implications for the purpose of the project, the analysis of alternatives, and the likely impact of the Bypass in the study area. It was therefore essential NCDOT provide the public, as well as resource agencies and local and state decisionmakers, with this information before making a final decision in order to comply with the National Environmental Policy Act’s (“NEPA”) core purpose as a “democratic decisionmaking tool.” *North Carolina Wildlife Federation v. North Carolina Dept. of Transp.*, 677 F.3d 596, 601-02 (4th Cir. 2012) (quoting *Or. Natural Desert Ass’n v. Bureau of Land Mgmt.*, 625 F.3d 1092, 1121 n.24 (9th Cir.2010)).

Because the public was not provided with this and other new significant information, on behalf of our clients, Clean Air Carolina, the North Carolina Wildlife Federation, and the Yadkin Riverkeeper, the Southern Environmental Law Center (“SELC”) requests that FHWA and NCDOT issue a Supplemental EIS which would allow for transparent public review of the project prior to a final decision. This document should also address new significant information regarding the Bypass that has recently come to light, detailed below, including the fact that NCDOT continues to actively mislead the public about the Bypass’s purpose and likely impacts. 40 C.F.R. § 1502.9(c)(1). In addition, we submit a reply from transportation expert David T. Hartgen, which answers NCDOT’s response to Dr. Hartgen December 2013 report critiquing NCDOT’s traffic forecasts for the project.²

In the meantime, we urge NCDOT not to waste any additional taxpayer funds on this project until all litigation, including the federal criminal charges pending against project contractor Boggs Paving, and potential future challenges to the NEPA documents and other permits, are fully resolved. As we have detailed in our past comment letters, NCDOT has already wasted significant resources on this project due to premature spending while litigation was pending.³ We urge the Department not to make the same mistake again.

I. Significant New Information In The FSFEIS

As noted above, federal law prohibits issuance of a combined FEIS/ROD where “there are significant new circumstances or information relevant to environmental concerns and that bear on the proposed action or the impacts of the proposed action.” 42 U.S.C. § 4332a(b). FHWA has issued guidance on this matter, noting that the decision to combine the documents is

² Dr. David T. Hartgen, *Reply to Response to Comments, “Review of Traffic Forecasting: Monroe Connector/Bypass, DFSEIS, December 26, 2013* (June 9, 2014), Attachment 2.

³ See, e.g., letter from Kym Hunter and Kate Asquith, SELC, to Jennifer Harris, NCDOT, *Monroe Connector/Bypass: Draft Supplemental Environmental Impact Statement*, at 78-84 (Jan. 6, 2014) [hereinafter “SELC Jan. 6, 2014 Comments”].

a case-by-case determination that requires agencies to “consider the facts and circumstances relevant to the EIS process.”⁴

As the United States Court of Appeals for the Fourth Circuit has underscored in relation to this very project, the “EIS process” requires that all significant information be available for public comment so as to “permit[] the public and other government agencies to react to the effects of a proposed action at a meaningful time.” *NC Wildlife Fed’n*, 677 F.3d at 601-02 (citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989)). As the court explained, “[w]hen relevant information ‘is not available during the impact statement process and is not available to the public for comment, . . . the impact statement process cannot serve its larger informational role, and the public is deprived of its opportunity to play a role in the decision-making process.’” *Id.* at 604-05 (citing *N. Plains Resource Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1085 (9th Cir. 2011)).

As you know, in that case the Fourth Circuit concluded NCDOT contravened NEPA’s public disclosure requirements when, during the public comment period, it falsely characterized the assumptions behind the socio-economic data it relied upon. *NC Wildlife Fed’n*, 677 F.3d at 602-03. Here, NCDOT has once again failed to provide the public and resource agencies with timely access to all significant information, providing significant new information only after public comment has closed. NCDOT’s actions in this instance are even more egregious, as it has withheld data showing a dramatic shift in socio-economic and traffic volume projections — shifts that fully destabilize NCDOT’s assumptions supporting the project analysis — until after a decision was made.

a. Significant New Growth Trends Never Presented For Public Comment

As we have noted, data over the last several years have demonstrated that Union County is no longer experiencing the growth boom used to justify construction of the Bypass in the initial EIS.⁵ Since NCDOT issued the Draft SFEIS and closed the period for public comment on the project’s NEPA review, evidence has continued to mount demonstrating that Union County is not growing at its previous rate; instead, NCDOT now admits that the growth originally projected to occur by 2030 is not expected to occur until at least a full decade later.⁶ Even more, NCDOT now recognizes that the growth that is occurring in the Metrolina region is concentrating away from the Bypass study area and that these trends are expected to continue into the future.⁷

Despite general knowledge of these extreme shifts in area demographics, NCDOT failed to consider or present to the public up-to-date socio-economic data for the region in its NEPA analysis until well after the public comment period closed. These data, compiled by the Charlotte Regional Transportation Planning Organization (“CRTPO”), clearly document the

⁴ FHWA, *Interim Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews*, available at <http://www.fhwa.dot.gov/map21/guidance/guideacccdecer.cfm>.

⁵ See, e.g., SELC Jan. 6, 2014 Comments at 12-13.

⁶ FSFEIS at Appendix E-3-5.

⁷ FSFEIS at Appendix E-3.

significant changes in observed and projected growth patterns.⁸ CRTPO's data show the previous growth in Union County has slowed significantly since NCDOT's initial study: While the MPO projections underlying NCDOT's traffic forecasts for the Bypass ("2009 projections") predicted 118,886 households and 130,193 jobs in Union County by 2030, the MPO's most recent data ("2014 projections") now show 16% less households (100,336) and 21% less jobs (103,282) over the same period.⁹ NCDOT has recognized that the "the forecasts of household and employment are *substantially* lower in Year 2030," and that the household growth is expected to not even reach the levels previously predicted by 2040, a full decade later than anticipated in the NEPA analysis for the Bypass.¹⁰

Moreover, the data demonstrate that what growth Union County is still experiencing is concentrating in western and central Union County, rather than in the areas of eastern Union County, such as Marshville, that would be most directly served by the Bypass.¹¹ NCDOT itself has admitted that while the 2009 projections expected low to modest growth in the western to central portions of the study area and higher growth rates in central and eastern portions, the new 2014 projections expect much more modest growth in the central and eastern portions of the study area and moderate to higher growth in the western portions.¹² These growth patterns are recognized as part of a wider trend of more concentrated urban growth. A new UNC Charlotte Urban Institute study demonstrates that population growth in North Carolina is urbanizing, shifting away from rural areas like Union County.¹³ As the study author John Chesser, a senior analyst at the institute, has explained, "Union County in the 2000s was ensconced in everyone's mind as the hottest county in the region . . . [b]ut the trend has reversed."¹⁴ The Urban Institute report demonstrates that this urbanization is in keeping with national trends whereby population growth is centralizing in urban areas, while small towns and rural areas are experiencing population stagnation or decline.¹⁵

This newly projected shift in expected location of growth conflicts dramatically with what NCDOT has presented previously and set out for public comment. The data undercut NCDOT's impacts analysis, which is premised on the now-unsupported conclusion that overall growth in the Study Area will not change as a result of constructing the Bypass, but instead

⁸ CRTPO, *Draft 2040 Metropolitan Transportation Plan*, Chapter 9 (Feb. 2014), available at http://crtpo.org/PDFs/MTP/2040/Report/Draft_Ch9_Population_Land_Use.pdf, Attachment 3; see also Appendix E-3.

⁹ FSFEIS at E3-5.

¹⁰ *Id.* (emphasis added).

¹¹ CRTPO, *Draft 2040 Metropolitan Transportation Plan*, at 9-8 (Feb. 2014), available at http://crtpo.org/PDFs/MTP/2040/Report/Draft_Ch9_Population_Land_Use.pdf, Attachment 3.

¹² FSFEIS at E3-9.

¹³ John Chesser, *Big urban gains, rural losses in the Carolinas* (Apr. 3, 2014), UNIVERSITY OF NORTH CAROLINA - CHARLOTTE URBAN INSTITUTE, available at <http://ui.uncc.edu/story/census-nc-sc-population-growth-2013>, Attachment 4.

¹⁴ Adam Bell, *Mecklenburg growth rate continues to outpace neighboring counties* (Apr. 27, 2014), CHARLOTTE OBSERVER, available at <http://www.charlotteobserver.com/2014/04/27/4869882/meck-growth-rate-continues-to.html#.U20wZvldVOQ>, Attachment 5.

¹⁵ John Chesser, *Big urban gains, rural losses in the Carolinas* (Apr. 3, 2014), UNIVERSITY OF NORTH CAROLINA - CHARLOTTE URBAN INSTITUTE, available at <http://ui.uncc.edu/story/census-nc-sc-population-growth-2013>, Attachment 4.

expected growth will merely shift toward eastern Union County.¹⁶ Now that growth is expected to concentrate in an entirely separate section of Union County, NCDOT must consider how construction of the Bypass may change those growth patterns.

Even more, the new data undercut the very need for a Bypass. Many Union County residents and statewide officials have long supported the Bypass because they believe the project will spur economic development in more rural, more impoverished eastern Union County. In fact, these expectations underlie much of the Bypass's support for the project from eastern Union County towns like Marshville and even elected and other high-level officials at the state level. The town of Marshville, for example, passed a pro-Bypass resolution in March 2013 in support of the Bypass in part because it would "create hundreds of jobs" in the community.¹⁷ Marshville Mayor Franklin Deese has stated that the project will spur "noticeable development and growth for Marshville and points east."¹⁸ And, as we have documented in the past, many Board of Transportation officials and NCDOT staff have highlighted the Bypass as being important to bringing jobs to economically depressed communities like eastern Union County and Anson County.¹⁹ If this shift in growth is no longer anticipated, it may have a significant impact on the project's support locally and statewide.

Yet despite the significant changes in growth expectations for the study area, NCDOT has failed to put forward any analysis of CRTPO's recent socioeconomic projections for public comment. Instead, NCDOT provided a new analysis of CRTPO's latest projections as an addendum to the combined FSFEIS/ROD, providing no opportunity for public comment on its comparison of the outdated socioeconomic projections used in this NEPA analysis to CRTPO's updated projections.²⁰ NCDOT claimed it evaluated how induced growth estimates might change if the 2014 Projections were used, outlining its conclusions that the accessibility analysis would be unchanged and that its analysis remains valid because the Bypass's induced growth, indirect effects, and cumulative effects are likely to be generally lower if the agency used the updated 2014 projections.²¹ The reasoning behind this brief and cursory analysis is highly questionable and insufficient to satisfy NEPA. Furthermore this explanation — that generally impacts would be lower — fails to account for the positive impacts of the Bypass such as economic growth. And most egregious, despite the fact that the conclusions concern issues at the heart of the NEPA analysis, the public has not had the opportunity to comment on either the methodologies used or the ultimate conclusions presented.

Nor have the resource agencies or the public been given any information on how these changes in project impacts will affect mitigation measures associated with the project, which appear to have not been revisited since 2011.²² NCDOT has failed to document its specific mitigation plan for the project beyond stating that it purchased credits under North Carolina's

¹⁶ DSFEIS at Chapter 4.

¹⁷ Town of Marshville, *Resolution in Support of the Marshville Town Council in Support of the Monroe Connector-Bypass & Request to Expedite Project Construction* (Mar. 4, 2013), Attachment 6.

¹⁸ Tenikka Smith, *Marshville Mayor remains staunch supporter of Monroe Bypass* (Dec. 12, 2013), Attachment 7.

¹⁹ See, e.g., SELC Jan. 6, 2014 Comments at 47.

²⁰ FSFEIS Appendix E3.

²¹ *Id.* at E3-12 – E3-15.

²² See FSFEIS Appendix C.

Ecosystem Enhancement Program in 2010.²³ Because these new socio-economic projections demonstrate that project impacts are likely to have changed significantly since this time, NEPA necessitates further transparent study of whether these mitigation measures are sufficient. 40 C.F.R. § 1502.16(h).

The substantial changes in socio-economic expectations also undercut NCDOT's alternatives analysis as many project alternatives were rejected based on the expectation that the future congestion on the U.S. 74 Corridor would be so high that anything other than a new-location Bypass would be overwhelmed. One of the primary criteria for determining if project alternatives warranted further study was the projection that traffic volumes along the U.S. 74 corridor would increase about 30-35 percent from 2007 to 2030.²⁴ This assumption was explicitly based on the belief that "[a]nticipated increases in population and employment opportunities in the region will result in higher traffic volumes."²⁵ Addressing these anticipated increases in traffic volumes were also a major factor in an alternative's ability to meet the "high speed regional travel" criterion.²⁶

CRTPO's projections demonstrate this projected dramatic increase in traffic volumes is no longer a valid assumption. Yet despite the new information NCDOT has failed to reconsider less costly and destructive alternatives such as upgrades to existing U.S. 74 and other area roadways; the Transportation Demand Management alternative; the Transportation System Management alternative; the Mass Transit alternative, or combinations of such alternatives using the up-to-date socio-economic and traffic projections.²⁷

b. NCDOT's Response To Dr. Hartgen's Traffic Forecast Critique Has Not Been Presented For Public Consideration

Similarly, NCDOT has failed to allow for public comment on its response to transportation expert Dr. David Hartgen's significant criticisms of the traffic forecasts underlying the NEPA analysis, which included significant new information. As you know, in December 2013 Dr. Hartgen issued a report analyzing NCDOT's traffic forecasts, finding myriad flaws and ambiguity in the assumptions, methodology, and baseline data supporting the forecasts and ultimately concluding that the forecasts are inadequate to support decisionmaking.²⁸ NCDOT issued a cursory response as an appendix to the combined FSFEIS/ROD which attempted to address some of Dr. Hartgen's many criticisms.²⁹ In this response, NCDOT struggled to clarify previously unexplained methodologies and assumptions.³⁰ The response also provided new analyses, charts, and figures regarding important factors such as traffic growth rates, road

²³ *Id.*

²⁴ NCDOT, *Monroe Connector/Bypass Project Alternatives Development and Analysis Report*, at 1-1 (Nov. 5, 2007), available at

http://www.ncdot.gov/projects/monroeconnector/download/monroe_archives_AltsDevRptAllScreenings110607.pdf.

²⁵ *Id.* at 1-2.

²⁶ *Id.* at 1-2.

²⁷ *Id.* at 1-7, 1-8, 1-10, 1-12,

²⁸ David T. Hartgen, *Review of Traffic Forecasting: Monroe Connector/Bypass Draft Supplemental Final EIS*, November 2013 (Dec. 26, 2013).

²⁹ FSFEIS Appendix E-4.

³⁰ *Id.* at Comments 49, 54.

capacity, comparisons to national vehicle miles traveled (“VMT”) rates, correlations between growth in traffic and population growth rates, land use forecasting, and external traffic.³¹

We have included a reply to NCDOT’s response from Dr. Hartgen with this letter;³² yet because NCDOT’s response was issued as part of the combined FSFEIS/ROD, there was no opportunity for Dr. Hartgen, the resource agencies, or the public to analyze and respond to this new information before NCDOT and FHWA made and published their final decision. As outlined above, at the heart of NEPA is the requirement that such significant information, new or otherwise, be put forward for public comment so that the decisionmaking process can be fully informed. The Fourth Circuit emphasized the importance of the public’s opportunity to evaluate and respond to such information when it last considered the Bypass, noting that the “broad dissemination of information mandated by NEPA permits the public and other government agencies to react to the effects of a proposed action at a meaningful time.” *NC Wildlife Fed’n*, 677 F.3d at 601-02 (citing *Marsh v. Or. Natural Res. Council*, 490 U.S. 360, 371 (1989)).

Opportunity for public review and response is particularly important here because Dr. Hartgen’s latest response demonstrates that NCDOT has failed to resolve the critical flaws he identified in NCDOT’s traffic forecasts, as outlined in further detail below. FHWA interim guidance cautions against issuing a combined FEIS/ROD where there is “a substantial degree of controversy” such that issuing the FEIS as a separate document could help to resolve the controversy.³³ Certainly such controversy was present here, where a recognized transportation expert,³⁴ upon whose expertise the agency itself relies upon in other aspects of its NEPA analysis, identifies pervasive and fundamental flaws in the forecasts at the foundation of the study.

II. Significant New Information Since The DSFEIS

Significant new information has also arisen since the issuance of the DSFEIS prompting new concerns that NCDOT should address before proceeding forward with the project. Federal regulations require that an agency “shall” prepare a supplement to a draft environmental impact statement where “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts” arise. 40 C.F.R. § 1502.9(c)(1).

a. NCDOT Has Continued To Mislead The Public About The Purpose And Impact Of The Bypass

Evidence continues to mount demonstrating NCDOT and its agents have fostered much of the widespread public misunderstandings regarding the Bypass’s purpose and likely impacts. As we have documented, many in Union County and across the state continue to believe constructing the Bypass will improve current levels of congestion in the corridor, reduce truck

³¹ *Id.* at Comments 40, 41, 44, 54, 61, 63, 70.

³² Dr. David T. Hartgen, *Reply to Response to Comments*, “*Review of Traffic Forecasting: Monroe Connector/Bypass, DFSEIS, December 26, 2013* (June 9, 2014), Attachment 2.

³³ FHWA, *Interim Guidance on MAP-21 Section 1319 Accelerated Decisionmaking in Environmental Reviews*, available at <http://www.fhwa.dot.gov/map21/guidance/guideaccdecer.cfm>.

³⁴ FSFEIS at E4-7 (minutes from project team meeting noting “[i]t was agreed that Dr. Hartgen is generally respected as a land use and transportation expert”).

traffic on U.S. 74, and spur significant economic growth in Union and Anson counties — beliefs at odds with the findings stated in the NEPA documents.³⁵ Yet despite the Fourth Circuit’s warning about the importance of transparency, and our frequent documentation of NCDOT’s deceptive behavior, NCDOT staff have continued to make such misleading statements.

For example, the agency’s May 15, 2014 press release regarding the signing of the ROD, NCDOT Chief Engineer Mike Holder stated that the project is critical because “[i]t will help greatly reduce congestion,” providing no other context to clarify that the agency has hopes the project will reduce expected *future* congestion (expectations which, as noted in previous comments, are based on highly inflated future traffic forecasts), not the *current* congestion already frustrating drivers on U.S. 74.³⁶ He also highlighted that the Bypass would “provide a strategic connection between eastern Union County and Charlotte, a major economic center,” exploiting local beliefs that the project will spur significant economic growth in Union County.³⁷ Because these statements were included in NCDOT’s own press release, they were repeated in media throughout the state.³⁸

To make matters worse, NCDOT then prevented the public from being able to review the veracity of these public statements or the FSFEIS/ROD more generally by providing no public access to the new NEPA documents for several weeks. Though NCDOT issued a press release on May 15 announcing the issuance of these documents,³⁹ the agency failed to make them publically available online for two weeks.⁴⁰ In the intervening days, local decisionmakers, the public, and the media were left without any basis for reviewing or analyzing the agencies decisions or public statements. Even now, NCDOT has still not included a project update on its main project webpage since issuing the FSFEIS/ROD, nor has it provided a link to the FSFEIS/ROD documents on that page.⁴¹

Documents produced as a result of a recent public records request demonstrate that NCDOT has long been acutely aware of the public confusion documented in our comment letters. For example, NCDOT consultant Carl Gibilaro was present at the Mecklenburg-Union Metropolitan Planning Organization (“MUMPO”) when the MPO passed the pro-Bypass resolution promoting the Bypass’s ability to spur growth and fix current congestion on U.S. 74,

³⁵ See, e.g., SELC Jan. 6, 2014 Comments at 41-47; see also Steve Lyttle, Steve Harrison and Adam Bell, *N.C. gets go-ahead for work on Monroe Bypass* (May 16, 2014), CHARLOTTE OBSERVER, Attachment 8 (“Proponents say the bypass will speed the trip for Charlotte-area residents headed to the Carolinas coast, and that it will spur business development in eastern Union County and Anson County.”).

³⁶ NCDOT, *Federal Highway Administration Issues Record Of Decision For Monroe Connector Bypass Project In Mecklenburg And Union Counties* (May 15, 2014), available at <https://apps.ncdot.gov/newsreleases/details.aspx?r=9847>, Attachment 9.

³⁷ *Id.*

³⁸ See, e.g., Steve Lyttle, Steve Harrison and Adam Bell, *N.C. gets go-ahead for work on Monroe Bypass* (May 16, 2014), CHARLOTTE OBSERVER, Attachment 8.

³⁹ NCDOT, *Federal Highway Administration Issues Record Of Decision For Monroe Connector Bypass Project In Mecklenburg And Union Counties* (May 15, 2014), available at <https://apps.ncdot.gov/newsreleases/details.aspx?r=9847>, Attachment 9.

⁴⁰ See, NCDOT, Screenshot of *Monroe Bypass: Project Resources* website (May 28, 2014), Attachment 10.

⁴¹ See, NCDOT, *Monroe Bypass project website* (June 6, 2014), Attachment 11.

directly contradicting NCDOT's own review of the Bypass.⁴² Gibilaro promptly reported the passage of the resolution to the Bypass project team, as well as the fact that it was prepared by the Union County Chamber of Commerce and had also been approved by several municipalities throughout the county.⁴³ NCDOT engineer Jamal Alvi circulated a copy of the resolution that same day, providing the team with the text urging swift action on the Bypass because "the Monroe Bypass will stimulate economic and commercial development," and that "the Monroe Bypass will ease congestion on U.S. Highway 74 and other routes."⁴⁴ Similarly, Gibilaro distributed an article regarding the Union County Board of Commissioners' passage of a pro-Bypass resolution that based its support on the project's ability to greatly increase employment opportunities, expand Union County's commercial tax base, and address current congestion on U.S. 74.⁴⁵ NCDOT made no effort to correct the misrepresentations.

NCDOT's knowledge of the common public misconceptions about the Bypass makes the agency's decision to continue to promote a false image of the proposed Bypass, and otherwise remain silent rather than address misleading statements, all the more duplicitous. Indeed, despite clear knowledge of widespread misunderstandings, NCDOT did nothing to set the record straight in its December public meetings, but instead refused to correct clear public confusion expressed during the public question and answer session. For example, at the December 9, 2014 public hearing in Union County, NCDOT moderators and engineers refused to comment on the widespread belief, expressed by several commenters, that construction of the Bypass would remove significant volumes of truck traffic from U.S. 74.⁴⁶

NCDOT's reluctance to address favorable, but false, impressions of the Bypass is made all the more troubling when contrasted with the agency's swift action to address public misstatements which the agency felt might stymie its ability to push the Bypass forward. For example, at the December 10, 2014 public hearing in Union County, the NCDOT presenter Jamille Robbins was quick to correct a commenter's semantic mistake regarding right-of-way acquisition, noting that the speaker was incorrect in stating that that NCDOT "takes" land in the path of the road, but rather that NCDOT "acquires" it.⁴⁷ Yet NCDOT moderators did not correct the same speaker's substantive misstatements that the Bypass will spur significant growth and economic development in Monroe specifically.⁴⁸

Similarly, recently obtained public records demonstrate NCDOT staff were quick to contact Chris Platé, executive director of Monroe Union County Economic Development ("MUCED"), to ensure he curtailed his discussions of the planned large-scale industrial complex

⁴² Email from Carl Gibilaro, Atkins, to Jennifer Harris, et. al., *MUMPO Resolution* (Mar. 21, 2013), Attachment 12; see also e-mail from Jennifer Harris, NCDOT, to Jamal Alvi & Scott Slusser, NCDOT, and George Hoops, FHWA, *RE:* (Mar. 21, 2013), Attachment 13.

⁴³ *Id.*

⁴⁴ E-mail from Jamal Alvi, NCDOT, to Monroe Bypass Project Team, *RE: MUMPO resolution* (Mar. 21, 2013), Attachment 12.

⁴⁵ Email from Carl Gibilaro, Atkins, to Jennifer Harris, et. al., *MUMPO Resolution* (Mar. 23, 2013), Attachment 12.

⁴⁶ FSFEIS at A2-343 (one of many speakers stating construction of the Bypass would remove trucks from U.S. 74); see also, e.g., FSFEIS at A2-327 (refusing to comment on how construction will affect current congestion on U.S. 74).

⁴⁷ FSFEIS at A2-341.

⁴⁸ *Id.*

at Legacy Park, which had previously held up approval of the Bypass project by resource agencies.⁴⁹ NCDOT sought to ensure Platé was informed of “new information” that the project had been scaled back, information which NCDOT has relied heavily upon in assuaging the concerns of environmental resource agencies regarding the project’s impacts, as well as in avoiding a more substantial analysis of the project’s cumulative impacts.⁵⁰

In its most recent response to public comment, NCDOT has tried to underrate the level of public misunderstanding, claiming that only 6% of commenters seemed confused about the purpose of the project.⁵¹ By our own count, the percentage of commenters expressing support for the Bypass based on misguided belief that it would decrease congestion, remove a large percentage of trucks from existing U.S. 74, or result in significant economic growth was closer to a quarter of all commenters. Such a disparity indicates NCDOT has again failed to truly acknowledge, let alone address, the widespread public misunderstanding it has helped to foster.

Recent campaign efforts for three open Union County Commission seats further demonstrate the continuing local confusion regarding the Bypass even among generally informed potential decisionmakers. For example, incumbent candidate Jerry Simpson stated his support for the Bypass is based on his belief that the Bypass is “essential” to attracting “major companies” to locate in Union County and expand its tax base.⁵² Similarly, candidate Sherry Hodges stated that she supported the Bypass because the “potential commercial and industrial business it will attract will be invaluable to the revenue of the county.”⁵³ Candidate Clint Laster stated that he considers the Bypass to be an “infrastructure opportunity” that “will support, encourage and foster smart economic development,” while Kim Ormiston called it “a potential economic driver” for Union County.⁵⁴ Though several other candidates opposed the Bypass, or at the very least expressed serious reservations based on many of the concerns we have highlighted in our various comment letters, the fact that so many candidates expressed these opinions further demonstrates the pervasive misunderstandings surrounding the project.⁵⁵

As the federal courts have outlined in detail, one of NEPA’s primary functions is to provide full public disclosure of information relevant to the decision-making process. Indeed, as the United States Court of Appeals for the Fourth Circuit highlighted in its review of the prior analysis of the Bypass, “[t]he very purpose of public issuance of an environmental impact statement is to “provid[e] a springboard for public comment.” *N.C. Wildlife Fed’n*, 677 F.3d at 603 (citing *Dep’t of Transp. v. Pub. Citizen*, 541 U.S. 752, 756-57 (2004)). NCDOT has again failed this core requirement of NEPA in the latest environmental review. As such, NCDOT must supplement the FSFEIS by clearly and publically addressing the false image of the Bypass it has helped to perpetuate.

⁴⁹ See email from Ken Gilland, Michael Baker Corporation, to Jennifer Harris & Colin Mellor, NCDOT, *RE: Response to USFWS letter comments* (Aug. 23, 2013), Attachment 14.

⁵⁰ See *id.*

⁵¹ FSFEIS at A2-232.

⁵² *County commission candidates discuss UCPS, Monroe Bypass, taxes*, CAROLINA WEEKLY (April 24, 2014), available at <http://www.unioncountyweekly.com/news/2014/04/county-commission-candidates-discuss-ucps-monroe-bypass-taxes/>, Attachment 15.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

b. Recent Evidence Further Demonstrate NCDOT's Alternatives Analysis Is Based On Significantly Flawed Traffic Forecasts

i. Dr. Hartgen's Concerns Regarding The Traffic Forecasts Remain Following NCDOT's Clarifications

As you know, last December transportation expert Dr. David Hartgen issued a report critiquing the traffic forecasts underlying NCDOT's NEPA analysis of the Bypass, finding that many of the assumptions and baseline data upon which the forecasts were founded were significantly outdated and flawed. Dr. Hartgen ultimately concluded the substantial flaws were such that the forecasts were inadequate to support decisionmaking on the project. Rather than conduct updated traffic forecasts that reflect current growth trends, socioeconomic projections, or a more realistic vision of the expected future transportation network, NCDOT has attempted to merely explain away the many significant flaws highlighted in Dr. Hartgen's report. Following his recent full review of NCDOT's response, Dr. Hartgen found that he was "compelled to stand by [his] original overall assessment, that 'the traffic forecasts presented . . . are too uncertain and insufficiently supported to be the basis of decision-making regarding the Monroe Connector/Bypass.'"⁵⁶

In his latest response, attached to this letter, Dr. Hartgen explained his concerns regarding traffic forecasts remained. For example, he noted NCDOT's explanations demonstrate that neither recent road improvements to U.S. 74 nor foreseeable planned future improvements to the corridor were incorporated into the traffic forecasts.⁵⁷ He found NCDOT agreed that traffic volumes on U.S. 74 have demonstrated zero growth since 2000, and that traffic volume growth rates do not track with population growth patterns in the county, contradicting a fundamental assumption underlying NCDOT's forecasts.⁵⁸ He demonstrates that, in fact, only by going back to 1980s can NCDOT show an increasing traffic trend.⁵⁹ As such, Dr. Hartgen remains concerned that NCDOT has still offered no explanation to square the observed traffic trends of zero growth for more than a decade with NCDOT's own projection that traffic volumes in the corridor will skyrocket in the future.

Dr. Hartgen also found after reviewing NCDOT's response that the agency has failed to allay his concern that the MRM is not properly calibrated for analysis of the Bypass. In his response, Dr. Hartgen laid out his analysis of the details of the calibration, demonstrating significant error rates on a variety of factors such as traffic counts on both minor and major thoroughfares throughout Union County.⁶⁰ Dr. Hartgen found that even if the model was adequately calibrated for study of the greater Metrolina region as a whole, these significant error rates show that the MRM was not sufficiently calibrated at the regional level.⁶¹ Even more, Dr.

⁵⁶ Dr. David T. Hartgen, *Reply to Response to Comments, "Review of Traffic Forecasting: Monroe Connector/Bypass, DFSEIS, December 26, 2013 (June 9, 2014), Attachment 2.*

⁵⁷ *Id.* at 36-37, 41-42, 44-45.

⁵⁸ *Id.* at 13-14, 49, 65.

⁵⁹ *Id.* at 66.

⁶⁰ *Id.* at 99-102.

⁶¹ *Id.*

Hartgen found that NCDOT's response further underscored his points regarding the inadequacy of the socioeconomic data used in the forecasts, recommending that NCDOT instead must use the updated CRTPO data described above.⁶² He ultimately concluded that the version of the MRM used to develop the traffic forecasts was inappropriate for use in analyzing the study area.⁶³

Dr. Hartgen also remains concerned about several unexplained aspects of NCDOT's methodology. For example, he noted that the NEPA analysis was not clear regarding the use of the MRM to distribute induced growth.⁶⁴ Nor has NCDOT addressed impacts that the significant changes in expected growth patterns, such as the great decrease in projected growth for eastern Union County, may have on traffic patterns.⁶⁵ Similarly, he noted that NCDOT appears to have not attempted to estimate external traffic, though such data is available and like to impact traffic forecasts.⁶⁶

As before, despite NCDOT's efforts to explain away the significant flaws in its forecasts, Dr. Hartgen closed his review with the conclusion that the traffic forecasts are simply too outdated and rooted in unreasonable assumptions to serve as the foundation for decisionmaking regarding the Bypass.⁶⁷ He continues to urge NCDOT to conduct new traffic forecasts based on accurate, up-to-date data, and consider an expanded review of potential solutions to the transportation issues facing the U.S. 74 Corridor.⁶⁸ His expert review provides further evidence that much remains to be studied regarding the Bypass's expected impacts and the potential alternatives to the project.

ii. NCDOT Has Failed To Incorporate Planned Transportation Improvements Into Traffic Forecasts And The Analysis Of Alternatives

As we have noted, NCDOT's outdated traffic forecasts fail to account for recently implemented and future planned improvements within the U.S. 74 Corridor. In addition to the many planned improvements we detailed in our earlier letters,⁶⁹ recently available information demonstrates NCDOT has continued to develop additional plans for small-scale improvements along existing U.S. 74 that are likely to further improve traffic conditions in the corridor. For example, NCDOT has recently announced that it has implemented signal phasing changes on U.S. 74 at Main Street in Wingate.⁷⁰ NCDOT's past experience with this type of improvement has proven to reduce accidents at the intersection, improving safety as well as preventing the inevitable traffic slow-downs associated with even the most minor accidents.⁷¹ NCDOT should

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.* at 125.

⁶⁵ *Id.* at 120.

⁶⁶ *Id.* at 137-38.

⁶⁷ *Id.* at Summary.

⁶⁸ *Id.*

⁶⁹ *See, e.g.*, SELC Jan. 6, 2014 Comments at 11-12.

⁷⁰ NCDOT, *NCDOT To Make Signal Phasing Changes at Union County Intersection* (May 13, 2014), available at <https://apps.ncdot.gov/newsreleases/details.aspx?r=9831>, Attachment 16.

⁷¹ *Id.*

expect similar improvements in traffic flow from this project and incorporate these expectations into future traffic forecasts.

And more improvements are planned. As you know, North Carolina has recently instituted the new STI transportation prioritization and funding program. While the scoring process is still ongoing, the recently released draft STI project scores offer information on the likelihood of funding for the full range of proposed projects statewide. These draft scores demonstrate that several additional targeted improvements to the U.S. 74 corridor are very likely to be constructed within the next several years. For example, NCDOT has indicated that it plans to implement a superstreet intersection upgrade at the U.S. 74/Rocky River Road intersection, a project that will function well with the other four superstreets planned and funded for U.S. 74 in Indian Trail.⁷² NCDOT has publically stated that this project is fully funded for construction within the next ten years.⁷³ As we have demonstrated, superstreet installations greatly improve traffic flow and safety, thereby reducing the number of accidents and associated slow-downs.⁷⁴ Similarly, NCDOT has announced that an interchange improvement at the existing U.S. 74/U.S. 601 interchange is also fully funded for construction in the next ten years. NCDOT must likewise analyze the expected travel benefit from this foreseeable project and incorporate it into future traffic forecasts.

A project to widen approximately three miles of U.S. 74 in the study area also scored quite well in the highway ranking process, such that it is very likely to be funded for construction in the near future as well.⁷⁵ The project would widen U.S. 74 to six lanes through the length of Monroe,⁷⁶ which NCDOT's own traffic data demonstrates is among the most congested portions of the corridor.⁷⁷ The project would also include a median, bike lanes, and sidewalks from Hanover Drive to Rocky River Road.⁷⁸ Certainly this foreseeable project would have significant impacts on traffic flow through the U.S. 74 Corridor that must be incorporated into future traffic forecasts.

NCDOT should also consider the impacts of other planned improvements to the road network served by U.S. 74. For example, NCDOT must analyze projects such as the proposed "Southern Connector Two," which would provide a new route from NC 200 to Old Pageland Road.⁷⁹ Another planned network improvement to consider is the planned extension of Secrest

⁷² NCDOT, *Highway Scoring Spreadsheet* (May 14, 2014), available at <https://connect.ncdot.gov/projects/planning/Pages/ResourcesMPO-RPO.aspx>, Attachment 17 (see SPOT ID H141897).

⁷³ *Id.*

⁷⁴ SELC Jan. 6, 2014 Comments at 12.

⁷⁵ NCDOT, *Highway Scoring Spreadsheet* (May 14, 2014), available at <https://connect.ncdot.gov/projects/planning/Pages/ResourcesMPO-RPO.aspx>, Attachment 17 (see SPOT ID H111190).

⁷⁶ *Id.*

⁷⁷ DSFEIS at 1-9 – 1-10.

⁷⁸ NCDOT, *Highway Scoring Spreadsheet* (May 14, 2014), available at <https://connect.ncdot.gov/projects/planning/Pages/ResourcesMPO-RPO.aspx>, Attachment 17 (see SPOT ID H111190).

⁷⁹ *Id.* (see SPOT ID H090701).

Avenue from Walkup Avenue to Olive Branch Road, with an interchange for the Bypass.⁸⁰ NCDOT also has plans to widen Rocky River Road from Old Charlotte Highway to U.S. 74, strengthening the connection and improving capacity between two major Union County roadways.⁸¹ This project would function well with an additional planned improvement to widen SR-1009, which parallels U.S. 74, from Rocky River Road to Wesley Chapel-Stouts Road,⁸² as well as from Seymour Street to NC 200.⁸³ These projects could greatly improve travel speeds on U.S. 74 by providing a stronger parallel route to U.S. 74 through a congested portion of Union County. NCDOT must fully consider these foreseeable projects in new traffic forecasts.

c. Recent Planning Efforts Demonstrate NCDOT's Cumulative Impacts Analysis Is Incomplete

As we have noted, NCDOT's minimal discussion of cumulative impacts failed to analyze several reasonably foreseeable projects.⁸⁴ New information has recently become available to underscore many of the points we made in our earlier comment letters, as well as to introduce additional projects which NCDOT must address in a proper cumulative impacts analysis.

i. Cumulative Impacts Of Planned Transportation Projects

NCDOT has recently demonstrated that the planned system of High Occupancy Toll ("HOT") lanes in the Charlotte metropolitan region, which we highlighted in our January 6th comments,⁸⁵ is slated for construction in the immediate future. While we recognize that NCDOT has analyzed the I-485 widening to some extent, recently available data demonstrates this analysis did not encompass the entire funded project. NCDOT noted that it studied the cumulative impacts of the I-485 HOT lanes project in 2010,⁸⁶ but it failed to address how these projects have evolved since that 2010 analysis. For example, while NCDOT did consider the impacts of widening a 5-mile stretch of I-485 from NC 16 (Providence Road) to US 74,⁸⁷ the local MPO has expanded this project through several TIP amendments in 2012.⁸⁸ The new project, known in the STI ranking process as I-5507, would widen I-485 for over 16 miles to connect I-77 with U.S. 74 right before the western end of the Monroe Bypass (see Figure, below). The project would provide for the construction of an additional express toll lane in each direction of this stretch of roadway. This expanded project is likely to have significantly greater impacts than that studied by NCDOT. Because NCDOT has stated that the project is fully funded due to its high score in the STI process, it is therefore certainly "reasonably foreseeable" such that full consideration is necessary.

⁸⁰ *Id.* (see SPOT ID H090434).

⁸¹ *Id.* (see SPOT ID H090594).

⁸² *Id.* (see SPOT ID H111195).

⁸³ *Id.* (see SPOT ID H140416).

⁸⁴ SELC Jan. 6, 2014 Comments at 47-52.

⁸⁵ *Id.* at 50-51.

⁸⁶ FSFEIS at A2-284 (citing Michael Baker Engineering, *Indirect and Cumulative Effects (ICE) Quantitative Analysis* (April 2010), Appendix D ("Other Federal Actions Summary")).

⁸⁷ Michael Baker Engineering, *Indirect and Cumulative Effects (ICE) Quantitative Analysis* (April 2010), Appendix D ("Other Federal Actions Summary"), at 6.

⁸⁸ MUMPO, *MUMPO 2012-2018 TIP Amendments* (July 2013), available at http://www.crtpo.org/PDFs/TIP/2012-2018/2012-2018_TIP_Amendments.pdf, Attachment 18.

Moreover, as we have noted, NCDOT has never analyzed the full extent of the cumulative impacts resulting from the U.S. 74/Independence Boulevard upgrades immediately north of the Bypass. This project, represented in the STI ranking process by TIP numbers U-5526 and U-2509, would upgrade the stretch of U.S. 74/Independence Boulevard inside the beltway to a freeway, thereby providing additional capacity and safety improvements and improving traffic flow to the roadway immediately adjacent to the western end of the proposed Bypass.⁸⁹

While NCDOT studied the cumulative impacts of some portions of this project in its 2010 analysis, the recently released STI project scores demonstrate NCDOT intends to fund a much larger-scale project. The 2010 cumulative impacts analysis NCDOT relies upon considered widening Independence Boulevard from only Conference Drive to Village Lake, and then from Krefeld Drive to NC 51.⁹⁰ Yet this project was also expanded through a series of TIP amendments since 2010, such that the project is now proposed for construction on a much larger scale.⁹¹ Just this May, NCDOT stated that planned upgrades and HOT lanes running the length of Independence Boulevard/U.S. 74 from I-277 to I-485 are among the most meritorious projects for funding statewide, ranking the three individual components of the project within the top fifty of more than 1,700 highway projects statewide.⁹² In light of these high scores, NCDOT stated that each of the three project components are “fully funded for construction,” again indicating that the expansion is foreseeable such that it should have been included in the cumulative impacts analysis.⁹³ And the project’s impacts are likely significant: Together these three components were given a “Long Term Employment” score of over 2,500 additional jobs, indicating the project is likely to result in substantial development.⁹⁴ In the figure below, we illustrate the vast difference in scope between the projects NCDOT studied and those which it should have (projects that are funded or very likely to be funded in the foreseeable future).⁹⁵

⁸⁹ NCDOT, *Highway Scoring Spreadsheet* (May 14, 2014), available at <https://connect.ncdot.gov/projects/planning/Pages/ResourcesMPO-RPO.aspx>, Attachment 17 (see SPOT ID H140272, H090962-A, and H090962-B).

⁹⁰ Michael Baker Engineering, *Indirect and Cumulative Effects (ICE) Quantitative Analysis* (April 2010), Appendix D (“Other Federal Actions Summary”), at 6 (note Conference Drive is misidentified as “Confederate Drive” and Krefeld Drive is misidentified as “Krefield Drive” in this document).

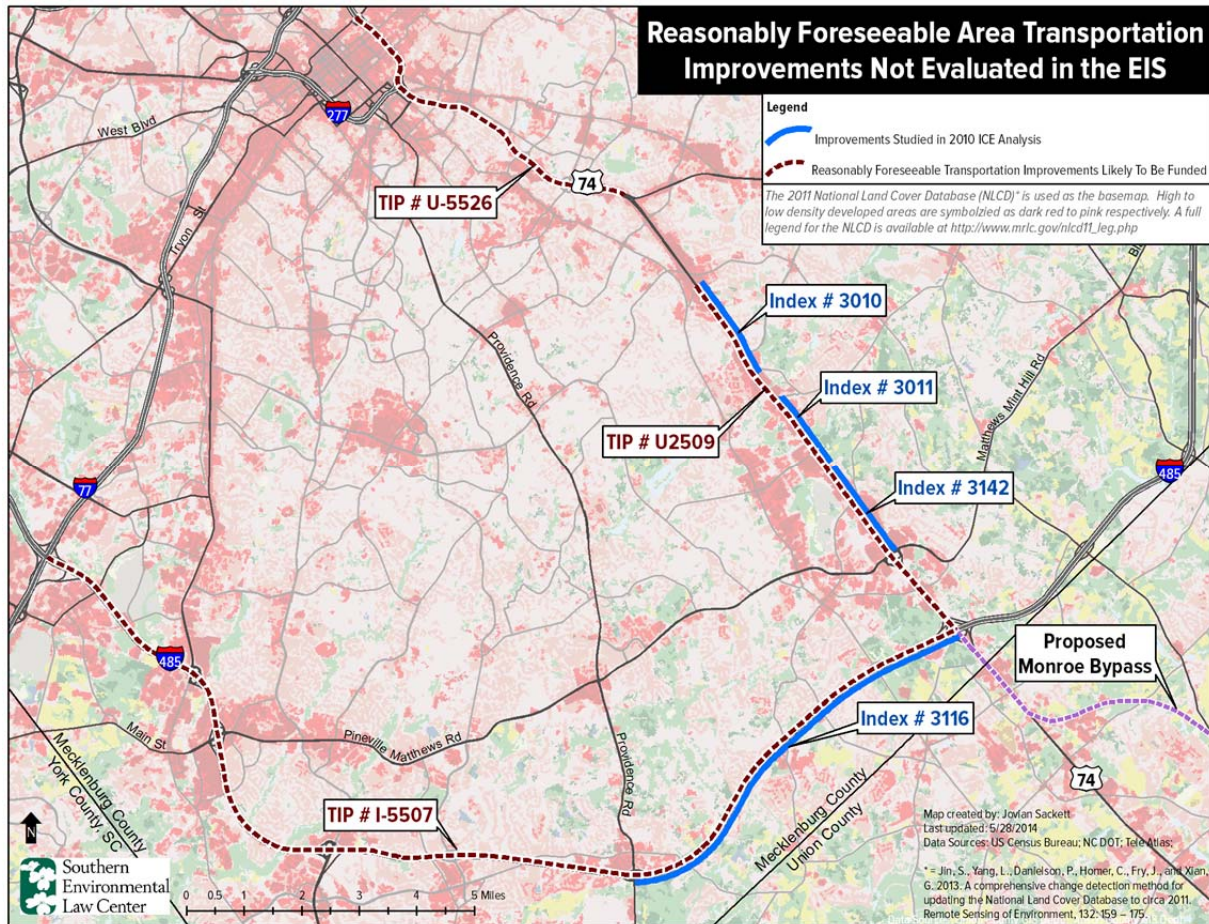
⁹¹ MUMPO, *MUMPO 2012-2018 TIP Amendments* (July 2013), available at http://www.crtpo.org/PDFs/TIP/2012-2018/2012-2018_TIP_Amendments.pdf, Attachment 18.

⁹² *Id.*

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ A larger version of this figure is included as Attachment 19.



We also note that NCDOT based its 2010 ICE analysis of foreseeable road projects on MUMPO’s *draft* 2035 LRTP based on conversations with MUMPO staff in October 2009,⁹⁶ well before the plan’s May 3, 2010 effective approval date.⁹⁷ This effort indicates NCDOT’s acknowledgment of the importance of considering the most up-to-date project list available. Yet no such consideration was given in NCDOT’s most recent re-analysis of the Bypass. All of the changes in foreseeable proposed projects discussed above have been on MUMPO’s (now CRTPO) project list since 2012, and are also documented in CRTPO’s 2040 MTP Fiscally Constrained Project List for Horizon Year 2025.⁹⁸

ii. U.S. 74 Economic Development Corridor

As we noted in our January 6th letter, substantial planning efforts have gone toward the development and promotion of a “U.S. 74 Economic Development Corridor,”⁹⁹ a point which

⁹⁶ Michael Baker Engineering, *Indirect and Cumulative Effects (ICE) Quantitative Analysis* (April 2010), Appendix D (“Other Federal Actions Summary”), at 4-6.

⁹⁷ See CRTPO, *2035 Long Range Transportation Plan*, available at <http://www.crtpo.org/2035-long-range-transportation-plan>, Attachment 20.

⁹⁸ CRTPO, *2040 MTP Fiscally Constrained Project List*, available at <http://www.crtpo.org/plans-programs/metropolitan-transportation-plan>, Attachment 21.

⁹⁹ SELC Jan. 6, 2014 Comments at 48-50.

NCDOT failed to acknowledge in its response to public comments.¹⁰⁰ New information further demonstrates that, outside of the Monroe Bypass NEPA process, NCDOT considers the establishment and enhancement of a U.S. 74 corridor as a single economic development goal to cultivate a strong transportation network from Charlotte to Wilmington. Accordingly, NCDOT has a duty to supplement the FSFEIS with an analysis of the role the Monroe Bypass will play in the development of this corridor, as well as the cumulative impacts of the other projects associated with further corridor development.

For example, just last month, NCDOT's Transportation Planning Branch hosted a series of stakeholder planning meetings as part of the North Carolina Transportation Network ("NCTN") planning process at which the NCTN planning team has been highlighting "Corridor U" (U.S. 74 W/U.S. 74 E/Future I-74) as of a corridor of immense statewide importance. Corridor U, which follows the full length of U.S. 74 from western North Carolina to Wilmington and which include the Monroe Bypass as a central feature,¹⁰¹ is currently ranked as the fourth most important Strategic Transportation Corridor in the state, behind only the state's three major interstates (I-85, I-40, and I-95).¹⁰² NCDOT has stated that the Strategic Transportation Corridor rankings are intended to serve as a planning tool to identify and help shape the "backbone of the state's transportation system," with economic development as a major planning factor.¹⁰³ As such, this designation certainly lends further force to NCDOT's duty to analyze the role the Bypass will play in the development of this statewide corridor.

Additionally, several projects recently ranked under the STI process also fit well within NCDOT's goal to develop this proposed corridor, the cumulative impacts of which must also be analyzed. For example, NCDOT should also evaluate the cumulative impacts associated with Project R-4441, would significantly change the character of over thirty miles of U.S. 74 from the eastern terminus of the Monroe Bypass to the Rockingham Bypass.¹⁰⁴ The project anticipates the widening and upgrading to freeway standards of this section of U.S. 74, starting at the Bypass's endpoint in Marshville as it runs through Anson County.¹⁰⁵ Project R-4441 also includes constructing new roadway sections to bypass Wadesboro.¹⁰⁶ Other projects, such as the Shelby Bypass and TIP R-4462, which would upgrade approximately 40 miles of U.S. 74 from Whiteville to US 17/I-140 to interstate standards, further indicate NCDOT's plans to enhance the full U.S. 74 corridor statewide.¹⁰⁷

iii. Cumulative Impacts Of Development At The Legacy Park Site

We again question NCDOT's refusal to examine the cumulative impacts associated with development of the Legacy Park site at the Bypass's eastern end in Union County. In NEPA

¹⁰⁰ See FSFEIS at A2-283 – 84.

¹⁰¹ NCDOT, *North Carolina Transportation Network Regional Meetings*, at slide 24 (May 2014), Attachment 22.

¹⁰² *Id.* at slide 28.

¹⁰³ *Id.* at slide 7-8.

¹⁰⁴ NCDOT, *Highway Scoring Spreadsheet* (May 14, 2014), available at <https://connect.ncdot.gov/projects/planning/Pages/ResourcesMPO-RPO.aspx>, Attachment 17 (see SPOT ID H090281).

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* (see SPOT ID H090287-A, H090287-B, H090287-C, H090287-D, H090287-E, and H141493).

documents NCDOT has stated that Legacy Park is “highly speculative” and “not a reasonably foreseeable development,”¹⁰⁸ but recently available NCDOT planning documents demonstrate that outside the NEPA process NCDOT has continued to plan with development of the site in mind.

For example, just last month, the NCTN stakeholder planning meetings featured draft maps highlighting the Legacy Park site’s statewide importance.¹⁰⁹ Legacy Park was marked as one of only ten “potential logistics sites” available for development statewide,¹¹⁰ guiding NCDOT in its decision to designate “Corridor U” (U.S. 74 W/U.S. 74 E/Future I-74) as a corridor of statewide importance as it develops the NCTN.¹¹¹ In particular, Legacy Park helped contribute to Corridor U’s high economic prosperity score (rated 7 out of 10) in the planning process, supporting the corridor’s rank as fourth highest rated Strategic Transportation Corridor (“STC”) in the state.¹¹² This designation is of particular importance to the Bypass’s NEPA evaluation because the STC program is NCDOT’s latest effort to update the Strategic Highway Corridor (“SHC”) program, which has long served as a key aspect of the Bypass’s stated purpose and need.¹¹³ To the extent that NCDOT continues to rely on the U.S. 74 Corridor’s SHC designation to justify construction of the Bypass, it must consider the Bypass’s role in the entire envisioned corridor. This most recent planning effort simply reiterates the findings of past planning efforts such as the Governor’s Logistics Task Force Report and the state’s “Seven Portals Study.”¹¹⁴

In light of the ongoing NCTN planning process, NCDOT’s reluctance to acknowledge the Bypass’s role in encouraging development at the Legacy Park site in the NEPA analysis is particularly confounding given the agency’s willingness to plan the next phase of development of North Carolina’s transportation network around the project. These planning tools demonstrate a pervasive understanding at multiple levels of state departments that the Legacy Park site will be a key site for shaping North Carolina’s future development. As such, NCDOT cannot simply deny that development at the site is foreseeable, nor can it assume the abbreviated scale contemplated in the NEPA analysis.¹¹⁵ Instead, NCDOT must supplement the FSFEIS with an analysis of the cumulative impacts associated with development of the Legacy Park site. This analysis should reflect the full scale of development which it and other decisionmakers statewide have envisioned and planned around. Even more, NCDOT must account for the Bypass’s role in encouraging this development: As we have documented, planners and statewide officials have

¹⁰⁸ See, e.g., Michael Baker Engineering, Inc., *Monroe Connector/Bypass Indirect and Cumulative Effects Quantitative Analysis Update*, at 61-62 (Nov. 2013).

¹⁰⁹ NCDOT, *North Carolina Transportation Network: Regional Meetings*, at slide 23 (May 2014), Attachment 22.

¹¹⁰ *Id.*

¹¹¹ *Id.* at slide 28.

¹¹² *Id.*

¹¹³ *Id.* at slide 7.

¹¹⁴ See, e.g., SELC Jan. 6, 2014 Comments at 46.

¹¹⁵ See, e.g., Michael Baker Engineering, Inc., *Monroe Connector/Bypass Indirect and Cumulative Effects Quantitative Analysis Update*, at 63 (Nov. 2013).

regularly acknowledged that development at the Legacy Park site simply cannot proceed without construction of the Bypass.¹¹⁶

III. Project Costs

In light of NCDOT's recent statements since the issuance of the ROD, we remain concerned that NCDOT is planning to repeat its past error of expending significant taxpayer funds developing the project despite legal roadblocks. NCDOT spokesperson Jen Thompson has said that work on the project could begin within two weeks of the signing of the ROD.¹¹⁷ NCDOT has said this work will include right-of-way purchases, permitting work, and developing a final design.¹¹⁸ Statements at the North Carolina Turnpike Authority Board meeting last week indicate these efforts have already begun.

As we have noted and the media has documented, NCDOT has wasted a significant amount of North Carolina taxpayer money since the 2010 issuance of the initial project ROD. For example, by engaging in a premature construction contract while the Fourth Circuit case was pending, NCDOT locked itself into a contract to build a road with which there was no guarantee it could legally proceed.¹¹⁹ Since that time, NCDOT has paid the project contractor, the Monroe Bypass Constructors ("MBC"), at least \$78.4 million dollars the design-build notice to proceed while the project remained in limbo.¹²⁰

Furthermore, following the issuance of the 2010 ROD, NCDOT spent significant taxpayer money purchasing right-of-way for a project has yet to be constructed, and that may in fact never be constructed.¹²¹ Despite the clear possibility of a legal challenge to the most recent ROD, NCDOT appears to now be poised to begin these activities anew. Even more, NCDOT appears to intend to move forward with continued Bypass expenditures despite the fact that, as we have documented in past letters, a key member of the MBC joint venture, Boggs Paving, is under federally indictment for charges including fraud in highway contracts.¹²² Trial for Boggs

¹¹⁶ See, e.g., SELC Jan. 6, 2014 Comments at 46

¹¹⁷ See, e.g., Steve Lyttle, Steve Harrison and Adam Bell, *N.C. gets go-ahead for work on Monroe Bypass* (May 16, 2014), CHARLOTTE OBSERVER, Attachment 8.

¹¹⁸ *Id.*; see also Michael Tomsic, *NC Transportation Department To Resume Work On Monroe Bypass* (May 16, 2014), WFAE, Attachment 23 ("[T]he state Department of Transportation says it will immediately resume purchasing land along the route, conducting permit work and developing the project's final design."); Graziella Steele and Sharon Roberts, *Feds give Monroe Bypass the go-ahead* (May 16, 2014), MECKLENBURG TIMES, Attachment 24 (NCDOT "will continue its efforts to acquire rights of way for the project and work with contractors on the road's Design"); Ken Elkins, *Monroe Bypass construction could start this year, state says* (May 16, 2014), CHARLOTTE BUSINESS JOURNAL, Attachment 25 ("[T]he state says it's clear to resume work on the highway.").

¹¹⁹ SELC Jan. 6, 2014 Comments at 78-79.

¹²⁰ FSFEIS at Section 2-17, A2-316; see also Steve Harrison, *To Build Monroe Bypass DOT staying with Indicted Contractor, for now*, CHARLOTTE OBSERVER (Jan. 4, 2013) available at <http://www.charlotteobserver.com/2014/01/03/4586177/to-build-monroe-bypass-dot-staying.html#storylink=cpy>, Attachment 26.

¹²¹ SELC Jan. 6, 2014 Comments at 83-84.

¹²² *Id.* at 82.

Paving and several of its employees has been delayed until September 2014,¹²³ and as such will certainly not be resolved before NCDOT plans to reinstate planning efforts.

In light of the certain delays that would be caused by potential legal challenges to the Bypass ROD and its permits, as well as the Boggs Paving criminal trial, we strongly encourage NCDOT to halt any plans to ramp up activity on the Bypass, and instead refrain from extending any taxpayer resources on the project until all legal challenges, including challenges to NEPA documents, state and federal permits, and the criminal charges levied against Boggs Paving, have been fully resolved.

As always, we are eager to avoid costly and time-intensive litigation. We therefore urge NCDOT to develop a Supplemental EIS to rectify the legal deficiencies in the current NEPA document. In the new document NCDOT should conduct a thorough analysis of the Monroe Bypass and alternative solutions based on accurate, up-to-date data that takes into account changed circumstances. The document should then be clearly and transparently presented to the public, with common misunderstandings addressed head on. If it would be helpful to discuss any of our concerns we are happy to meet with you at your convenience.

Sincerely,



Kym Hunter
Staff Attorney



Kate Asquith
Associate Attorney

CC (via e-mail and U.S. mail):

Tim Gestwicki, NCWF
Dean Naujoks, Yadkin Riverkeeper
June Blotnick, Clean Air Carolina
David Hartgen, The Hartgen Group

¹²³ Sharon Roberts, *Contractors' fraud trial likely to be next fall; new charges added* (Nov. 11, 2013), MECKLENBURG TIMES, Attachment 27.

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