

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA

NORTHERN DIVISION

BLACK WARRIOR RIVERKEEPER, INC., )

Plaintiff, )

v. )

ALABAMA DEPARTMENT OF )  
TRANSPORTATION; JOHN R. COOPER, )  
DIRECTOR, ALDOT; FEDERAL )  
HIGHWAY ADMINISTRATION; and )  
MARK BARTLETT, DIVISION )  
ADMINISTRATOR, FHWA, )

Defendants. )

NO. \_\_\_\_\_

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**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Black Warrior Riverkeeper, Inc., by and through its undersigned counsel of record, files this Complaint. Pursuant to Local Rule 7.1, Plaintiff Black Warrior Riverkeeper's Disclosure Statement is attached hereto as Exhibit 1.

**INTRODUCTION**

1. This action challenges violations of the National Environmental Policy Act of 1969 ("NEPA"), 42 U.S.C. § 4321 *et seq.*, in connection with Defendants' decision to authorize, fund, and otherwise advance construction of the Northern Beltline in the vicinity of Birmingham, Alabama. The proposed 52-mile road project would constitute a new controlled-access highway between Interstate 459 in Bessemer, Alabama, and Interstate 59 in Trussville, Alabama.

2. Defendants prepared an Environmental Impact Statement ("EIS") for the Northern Beltline project pursuant to NEPA on June 12, 1997. Federal Highway Administration

(“FHWA”) regulations require re-evaluations of projects if no activity has occurred within three years of the preparation of an EIS. On August 17, 2006, Defendants prepared a “Reevaluation of the Proposed Corridor for the Northern Beltline from West of S.R. 79 to East of S.R. 75, Jefferson County, Alabama” (“Re-evaluation”), which constitutes a 3.4-mile segment of the Northern Beltline project. As set out more fully below, this lawsuit is prompted by the deficient Re-evaluation of an inadequate original EIS for the Northern Beltline; Defendants’ undertaking of activities in other segments of the project for which no re-evaluation has been completed; and the Defendants’ failure to create a Supplemental Environmental Impact Statement (“SEIS”) for this project.

3. NEPA regulations require the analysis of different categories of impacts in each EIS, including direct, indirect, and cumulative impacts. Indirect impacts and cumulative impacts were never analyzed in the original 1997 EIS, nor were they analyzed in the 2006 Re-evaluation.

4. The 2006 Re-evaluation represents an unlawful segmentation of the Northern Beltline project in an attempt to downplay environmental impacts and move part of the project forward without the requisite comprehensive environmental analyses.

5. Defendant Alabama Department of Transportation (“ALDOT”) has been receiving funding, acquiring right-of-way, demolishing structures, conducting surveys, and doing other site preparation work without having completed the required NEPA studies for this project. Such activities are occurring both within and outside of the small segment that was re-evaluated.

6. Defendants’ activities are contrary to law, arbitrary and capricious, and constitute an abuse of discretion under § 706(2)(A) of the Administrative Procedure Act. 5 U.S.C. §§ 551-706 (2002). Plaintiff Black Warrior Riverkeeper requests that this court grant declaratory and injunctive relief to ensure compliance with the requirements of NEPA.

## JURISDICTION AND VENUE

7. This action arises under NEPA, 42 U.S.C. § 4321 et seq. This Court has jurisdiction pursuant to 28 U.S.C. § 1331, and may issue declaratory and further relief pursuant to 28 U.S.C. §§ 2201 and 2202. Plaintiff is entitled to bring this action pursuant to the Administrative Procedure Act, 5 U.S.C. §§ 701-06.

8. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

## PARTIES AND STANDING

### Plaintiff

9. Plaintiff Black Warrior Riverkeeper (“Riverkeeper”) is a not-for-profit corporation whose mission is to protect and restore the Black Warrior River and its tributaries. The majority of the proposed route of the Northern Beltline lies within the Black Warrior River watershed.

10. Riverkeeper has members who live in the vicinity of the proposed Northern Beltline and members who visit, recreate, observe birds and other wildlife, photograph and otherwise use and enjoy the waterways, public lands, and other areas in the vicinity of the proposed Northern Beltline. These activities will be negatively impacted by the proposed Northern Beltline.

11. Riverkeeper and its members have an interest in agencies conducting proper studies and analyses in order to minimize harm to the environment and to fully involve the public in agency decisionmaking as required by law. This interest will be harmed by the proposed Northern Beltline and the flawed environmental analyses concerning this project.

12. Riverkeeper and its members have been regular participants in meetings and correspondence with ALDOT and FHWA concerning the Northern Beltline, both before and after the Re-evaluation was issued.

13. Riverkeeper seeks to inform and educate its members and the public concerning highway and transportation planning and the impacts of transportation decisions on the Black Warrior River watershed, and advocates for transportation planning and policies that will have the least long-term impact on the watershed. Riverkeeper also works to ensure that agencies comply with all applicable environmental laws. These organizational interests are directly and irreparably injured by the Defendants' violations of law described in this complaint.

### **Defendants**

14. Defendant ALDOT is an agency of the State of Alabama. ALDOT is responsible for complying with NEPA before proceeding with projects which involve major federal action. ALDOT is also the agency with the primary responsibility for preparing the inadequate Re-evaluation challenged in this action.

15. John R. Cooper is the Director of ALDOT. Mr. Cooper had the final authority for the State's preparation of the inadequate Re-evaluation challenged in this action and for the State's decision to proceed with the challenged project despite this inadequate analysis. Mr. Cooper is sued in his official capacity.

16. FHWA is a federal agency within the U.S. Department of Transportation. FHWA was responsible for overseeing the preparation of the inadequate Re-evaluation and NEPA analyses challenged in this action and for insuring that all analyses complied with NEPA. FHWA issued the inadequate Re-evaluation through its office in Montgomery, Alabama.

17. Mark Bartlett is the Division Administrator for FHWA in Alabama. Mr. Bartlett had the final authority for FHWA's preparation and approval of the inadequate Re-evaluation challenged in this action. Mr. Bartlett is sued in his official capacity.

## LEGAL BACKGROUND

### A. NEPA

18. NEPA requires agencies to prepare an EIS before undertaking a major federal action that will significantly affect the quality of the human environment. 42 U.S.C. § 4332(2)(C).

19. The EIS serves three primary functions. First, it ensures that an agency takes a hard look at the direct, indirect and cumulative environmental impacts of a proposed project. 40 C.F.R. § 1508.25(c). Second, it guarantees that the agency considers a range of reasonable alternatives to accomplish the underlying goals of the proposed project and considers options that may have fewer adverse impacts on the environment before deciding whether to undertake the project in the form proposed. Finally, the EIS presents detailed information about a proposed project, its impacts, and reasonable alternatives, to the public and other agencies, so that they may participate in the decision-making process.

20. To implement the requirements of NEPA, the Council on Environmental Quality (“CEQ”) has promulgated regulations applicable to all federal agencies. See 40 C.F.R. §§ 1500-1508 (“the CEQ regulations”). FHWA has also promulgated supplemental regulations and procedures for complying with NEPA. See 23 C.F.R. § 771.101.

21. NEPA requires that every EIS must be prepared with objective good faith and must fully and fairly discuss, among other things, the adverse environmental effects of the proposed action and the alternatives to the proposed action which may avoid or minimize these adverse effects. 42 U.S.C. § 4332(2)(C), (E).

22. The “effects” that must be discussed in an EIS include, among other considerations, the direct environmental impacts of the proposed action, the indirect effects of the proposed action, and the cumulative impacts of the proposed action. 40 C.F.R. § 1502.16 (a)

– (h); 40 C.F.R. § 1508.27(b)(7).

23. NEPA regulations define “indirect effects” as effects “which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable.” 40 C.F.R. § 1508.8(b). Further, indirect effects 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 C.F.R. § 1508.8(b).

24. The NEPA regulations define “cumulative impact” as the “impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.” 40 C.F.R. § 1508.7.

25. FHWA regulations require “a written evaluation of the final EIS” if major steps to advance the project have not occurred within 3 years after completion of the final EIS. 23 C.F.R. § 771.129(b). This re-evaluation must occur “before further approvals may be granted.” *Id.*

26. FHWA regulations require the preparation of a Supplemental EIS in cases where “new information or circumstances relevant to environmental concerns and bearing on the proposed action or its impacts would result in significant environmental impacts not evaluated in the EIS.” 23 C.F.R. § 771.130(a)(2). “The standard for determining when an SEIS is required is essentially the same as the standard for determining when an EIS is required.” *Sierra Club v. U.S. Army Corps of Eng’rs*, 295 F.3d 1209, 1215-16 (11<sup>th</sup> Cir. 2002) (internal quotation marks and citation omitted).

27. In measuring the “significance” of the overall environmental impacts of a given

project, the CEQ regulations forbid an agency from attempting to avoid significance by “breaking [an action] down into small component parts.” 40 C.F.R. § 1508.27(b)(7).

28. FHWA regulations also prohibit project segmentation, stating that actions evaluated under NEPA shall:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

23 C.F.R. § 771.111(f).

**B. APA**

29. The APA confers a right of judicial review on any person that is adversely affected by agency action. See 5. U.S.C. § 702. The APA provides that the reviewing court “shall...hold unlawful and set aside agency action, findings, and conclusions found to be [] arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” Id., § 706(2)(A).

30. Defendants’ actions in approving the 2006 Re-evaluation and in engaging in site preparation for the Northern Beltline, right-of-way acquisition, and other activities in anticipation of construction are “agency actions” subject to judicial review under the APA.

## FACTS GIVING RISE TO LEGAL CLAIMS

### Project History

31. The Northern Beltline was conceptualized in the 1960s with the development and expansion of the Interstate Highway System.

32. A Draft EIS for the Northern Beltline was approved on March 20, 1995.

33. The Final EIS for the Northern Beltline was signed on June 12, 1997 on behalf of then-Division Administrator Joe Wilkerson of the FHWA.

34. The Final EIS noted that “no Record of Decision will be issued until such time as funding is identified that would allow the inclusion of the Northern Beltline in the fiscally constrained [regional transportation] plan.” FEIS at 1-3. Further, the Final EIS stated, “[a]t that time a re-evaluation will be completed including the appropriate analysis to demonstrate this project’s inclusion in the conforming [Transportation Improvement Program] and plan.”

35. The Northern Beltline’s purposes as identified in the Final EIS are “to increase cross-region accessibility and for its potential to stimulate economic development.” FEIS at 1-1. Traffic congestion reduction was identified as a secondary purpose of the road.

36. According to the Final EIS, approximately 25 streams will be impacted by the Northern Beltline, most of which are in the Black Warrior River basin. FEIS at 4-63. The Cahaba River basin will also be impacted by the roadway.

37. The Final EIS did not analyze the indirect effects of the Northern Beltline.

38. The Final EIS did not analyze the cumulative impacts of the Northern Beltline.

39. On September 8, 1997, the United States Environmental Protection Agency (“EPA”) submitted a letter to ALDOT noting that the preferred alignment for the Northern Beltline “has the most impacts to natural resources.” The letter noted that the road would cross 14 streams, impact 4050 acres of forest within the right-of-way, destroy up to 68 acres of



wetlands, and have the “greatest impact on wildlife of all the alignments discussed.” Finally, the letter noted that the road would “likely generate a high level of secondary development and associated impacts to the environment.”

40. The Record of Decision for the Northern Beltline was signed on August 24, 1999.

41. On June 23, 2003, ALDOT held a design public hearing for the segment of the Northern Beltline from State Route 79 to State Route 75.

42. On November 20, 2003, funding for preliminary engineering for the re-evaluated segment of the Northern Beltline was authorized.

43. The Northern Beltline was added to the Appalachian Development Highway System (“ADHS”) as Corridor X-1 on January 23, 2004. It was formally approved by the Appalachian Regional Commission on February 22, 2004. The ADHS was created to provide regional connections and stimulate economic growth in rural and poverty-stricken areas of Appalachia. The Northern Beltline is the only new beltline included in the ADHS.

44. On January 10, 2005, approximately \$8 million was allocated to the Northern Beltline for right-of-way acquisition from west of State Route 79 to State Route 75.

45. The Southern Environmental Law Center submitted comments on behalf of Riverkeeper and several other organizations on May 27, 2005. These comments expressed concerns that neither the indirect or cumulative impacts of the Northern Beltline had been analyzed by either ALDOT or FHWA. The comments also explained that an SEIS should be prepared for the entire project in part because of the omission of these impacts from previous studies.

46. The Southern Environmental Law Center, Riverkeeper, and several other organizations met with representatives of ALDOT on February 21, 2006 to reiterate concerns

about the Northern Beltline and the flawed environmental studies.

47. The Re-evaluation of the segment of the Northern Beltline from west of State Route 79 to east of State Route 75 was signed on August 17, 2006. Notice of completion of the Re-evaluation was not published in the *Federal Register*.

48. In responding to a comment that ALDOT and FHWA must address indirect and cumulative impacts, as required by NEPA, the Re-evaluation noted that “omitting the [Indirect and Cumulative Impact] analysis for [the State Route 79 to State Route 75] section of the Beltline would represent a segmented approach which is inconsistent with FHWA and CEQ guidance for [Indirect and Cumulative Impacts].” Re-evaluation at 3-5 – 3-6.

49. The Re-evaluation went on to note that “future authorizations outside the S.R. 79 to S.R. 75 section will not be approved by the ALDOT and FHWA until the [Indirect and Cumulative Impact analysis] is completed.” Re-evaluation at 3-6.

50. Finally, the Re-evaluation reiterated that “promoting and facilitating development is one of the goals of the project.” *Id.*

51. The Southern Environmental Law Center submitted comments addressing critical flaws in the Re-evaluation on October 19, 2006. Riverkeeper submitted further comments raising concerns about the process for evaluating the Northern Beltline on November 30, 2006.

52. In response to a letter from a concerned citizen, ALDOT reported on December 19, 2006, that “the Birmingham Northern Beltline is currently undergoing an environmental re-evaluation at this time.”

53. The FHWA sent instructions to ALDOT on how to perform an Indirect and Cumulative Impact analysis on February 6, 2007.

54. The Southern Environmental Law Center submitted comments on behalf of

Riverkeeper and other organizations to the Birmingham Metropolitan Planning Organization (“MPO”) asking that funding for the Northern Beltline be withheld from the Transportation Improvement Program (“TIP”) pending completion of all federally-required environmental studies on August 21, 2007.

55. On September 7, 2007, FHWA submitted a letter to U.S. Representative Spencer Bachus stating that “ALDOT is preparing an indirect and cumulative impact report on the entire Beltline.”

56. On October 8, 2008, an ALDOT representative told *The Birmingham News* that environmental impact documents are still to be completed and “we can’t do anything further on the northern end until the environmental document is complete.”

57. On March 8, 2009, Bill Van Luchene of the FHWA sent an email to Mark Bartlett and others stating, “the [Indirect and Cumulative Impact Analysis] has to be the entire project, the reevaluation should cover the entire thing, but must include logical termini.”

58. On June 16, 2009, FHWA provided a report on the Northern Beltline project to the Appalachian Regional Commission. The report stated:

“[t]he entire corridor is being analyzed for indirect and cumulative impacts. The reevaluation of the environmental document for the segment from SR-79 to SR-75 was approved 8/17/2006. The [right-of-way] acquisition process has resumed on this segment. Reevaluations will be submitted for approval this year on the remaining segments from just west of I-65 to I-59. A supplemental EIS is required from I-459 to just west of I-65.”

59. In letters dated July 16, 2009 and March 17, 2010, the United States Fish and Wildlife Service (“FWS”) expressed concerns about the indirect impacts of the construction of the Northern Beltline on threatened and endangered species. In its letter of July 16, 2009, FWS stated:

“[b]ased on this anticipated growth [generated by the Northern Beltline], the Service is

concerned that the listed species in the area could experience substantial adverse impacts as a result of the direct and indirect effects of the project caused by secondary development, habitat fragmentation, population isolation, road kills, increased predation and road right-of-way maintenance activities. The Service believes that it is reasonable to expect long-term expansive secondary development as a logical extension of the project and that such development would disrupt the normal behavioral patterns such as feeding, mating, nesting, and sheltering of resident wildlife.”

60. In a letter to a concerned citizen dated December 9, 2009, EPA notes that it “expects to receive a reevaluation of the indirect and cumulative impacts [of the Northern Beltline] in the spring of 2010.”

61. In June 2010, the Birmingham MPO published its “FY2010 Rebalanced/Updated FY2008-2011 Transportation Improvement Program (TIP).” That document contains \$85,999,457 for construction of the Northern Beltline within the SR. 79 – S.R. 75 segment, and \$47,727,281 for right-of-way acquisition outside of the S.R. 79 – S.R. 75 segment.

62. On October 14, 2010, representatives from Riverkeeper visited a property adjoining right-of-way for the Northern Beltline within the re-evaluated segment, with permission from the property owner. The property is located at 4721 Cyndell Drive, Pinson, AL 35126. They observed heavy equipment in the right-of-way, some land clearing, and placement of riprap in and along the banks of Self Creek.

63. On January 13, 2011, a representative from Riverkeeper visited the same property as was visited on October 14, 2010, and noted evidence of soil boring and previous heavy equipment access in the Northern Beltline right-of-way.

64. On February 15, 2011, the Southern Environmental Law Center requested a meeting with ALDOT and FHWA to discuss concerns about the Northern Beltline. ALDOT responded on March 9, 2011, with a denial of the request for a meeting.

65. On March 9, 2011, the FWS sent a letter to FHWA expressing concerns over the

environmental review being conducted for the Northern Beltline. Stating that “the landscape around Birmingham has changed both economically and environmentally” in the 14 years since the original EIS, the FWS called on FHWA to conduct a full supplemental EIS for the project rather than break the project into segments for piecemeal evaluation. Furthermore, the FWS noted its recent designation of 13 miles of streams within Turkey Creek’s watershed as critical habitat for the endangered vermilion darter, pursuant to the federal Endangered Species Act. See 75 FR 75913 (Dec. 7, 2010). This critical habitat is located around Pinson, AL, in the vicinity of and downstream from the footprint of the Northern Beltline. The FWS also referenced the number of endangered and threatened species in the Cahaba River watershed and expressed concerns about the direct and indirect impacts of the Northern Beltline on this river system in addition to the Black Warrior River.

### **CLAIMS FOR RELIEF**

#### **FIRST CLAIM FOR RELIEF:**

##### **Defendants’ Failure to Conduct a Reevaluation and Supplemental Environmental Impact Statement for the Entire Northern Beltline Project Violates NEPA**

66. The above paragraphs are incorporated herein by reference.

67. FHWA regulations governing NEPA require the preparation of a reevaluation when a project has been inactive for a period of three years. 23 C.F.R. § 771.129(b).

68. The purpose of a reevaluation is to determine whether a final EIS remains valid or whether a supplemental EIS is needed for the project. *Senville v. Peters*, 327 F. Supp. 2d 335, 350 (D. Vt. 2004); *S. Trenton Residents Against 29 v. FHA*, 176 F.3d 658, 661 (3d Cir. 1999).

69. Both the CEQ and FHWA regulations governing NEPA require the preparation of an SEIS when significant new information surfaces about a project. 40 C.F.R. § 1502.9(c); 23 C.F.R. § 771.130(a)(2).

70. In this case, the entire 1997 EIS has never been re-evaluated and is now more than 13 years old.

71. Since the publication of the 1997 EIS, several new archaeological sites have been discovered in the vicinity of the Northern Beltline, and critical habitat has been designated immediately downstream from the proposed Beltline route. As FWS has pointed out, “the landscape around Birmingham has changed both economically and environmentally.” These significant changes, coupled with the total lack of analysis of indirect and cumulative impacts, underscore the need for an SEIS.

72. Rather than reevaluate the validity of the entire project, Defendants are engaging in unlawful segmentation of the project, both in terms of the geographic components of the project and of the categories of impacts of the project.

73. Defendants have improperly divided the Northern Beltline into a number of geographic segments for reevaluation. The 2006 reevaluation only reevaluates a 3.4 mile stretch of the 52-mile project. Even the 2006 Re-evaluation admits that Defendants are taking a segmented approach that is inconsistent with proper analysis of indirect and cumulative impacts.

74. In addition, Defendants allegedly are separating the indirect and cumulative impact analysis of the project from the re-evaluation of the different project segments. By sequestering these impacts from the project’s direct impacts on the human and natural environment, Defendants are depriving themselves and the public the opportunity to fully understand and react to the impacts of the project as a whole. All types of impacts must be included in a full reevaluation contained in an SEIS for the entire project.

75. Even as they pursue this segmented approach, Defendants have acknowledged that at least one of the segments of the Northern Beltline requires an SEIS. See June 16, 2009

Report to Appalachian Regional Commission.

76. Defendants are improperly moving ahead with work on the Beltline before complying with NEPA. NEPA requires the analysis of all environmental impacts and alternatives before actions are taken on the ground. 42 U.S.C. § 4332(2)(C),(E). Otherwise, NEPA is reduced to an empty exercise that contains only post-hoc justifications for projects and deprives agencies and the public of the right to understand all impacts before projects move forward.

77. Additionally, FHWA regulations require a written evaluation of a final EIS “before further approvals may be granted” if major steps to advance the project have not occurred within three years of the publication of the FEIS. 23 C.F.R. § 771.129(b) (emphasis added).

78. In the August 17, 2006 Re-evaluation of one small segment of the Northern Beltline, Defendants note that other segments of the project will not be advanced to the right-of-way acquisition phase until the project’s indirect and cumulative impacts are analyzed.

79. Despite this statement and in open defiance of NEPA, Defendants have been engaged in construction-related activities and have secured over \$47 million for work in areas outside of the lone segment of the Northern Beltline that was re-evaluated in 2006.

80. Defendants’ failure to create a comprehensive reevaluation for the Northern Beltline as a whole, their additional failure to create an SEIS for the entire project, and their ongoing activities in the Beltline corridor, violate NEPA and its implementing regulations, and are arbitrary, capricious, and otherwise contrary to law.

**SECOND CLAIM FOR RELIEF:**

**Defendants' August 17, 2006 Re-evaluation of the Northern Beltline from West of S.R. 79 to East of S.R. 75 Is an Illegal Segmentation of the Project and Therefore Violates NEPA**

81. The above paragraphs are incorporated herein by reference.

82. NEPA prohibits the segmentation of a project in order to mask the overall significance of the project's impacts, particularly its cumulative impacts. 40 C.F.R. § 1508.27(b)(7); *City of Oxford v. FAA*, 428 F.3d 1346, 1353 (11th Cir. 2005).

83. Defendants have divided the Northern Beltline into at least five segments, including the segment that was subject to the August 17, 2006 Reevaluation.

84. FHWA regulations require that an action evaluated "connect logical termini," "have independent utility," and "not restrict consideration of alternatives for other reasonably foreseeable transportation improvements." 23 C.F.R. § 771.111(f)(1)-(3).

85. This regulation is applied to EISs as well as reevaluations. *See Senville v. Peters*, 327 F. Supp. 2d 335, 350 (D. Vt. 2004).

86. The reevaluated segment in this case has no independent utility. S.R. 79 and S.R. 75 are already connected both north and south of the proposed route of the re-evaluated segment, including a direct connection less than 5 miles south of the re-evaluated segment.

87. The reevaluated segment has no logical termini. The Re-evaluation describes the segment as starting "west of" S.R. 79 and terminating "east of" S.R. 75. This effectively turns the segment into a road to nowhere, since it does not originate or terminate by intersecting with any existing roadways.

88. The reevaluated segment constrains the analysis that must occur for the rest of the Northern Beltline. By moving forward with the reevaluated segment, the examination of alternative routes for the Northern Beltline will necessarily be limited. Reevaluating this



segment alone essentially locks in the rest of the project which will now need to accommodate this segment, thereby frustrating the intent of NEPA to analyze impacts and alternatives before projects move forward in order to ensure the best possible decisionmaking. *See* 23 C.F.R. § 771.111(f).

89. Evaluating the impacts of only a 3.4-mile segment of a 52-mile project will necessarily result in the artificial minimization of the project's overall impacts, frustrating the purposes of NEPA.

90. Defendants' knowing segmentation of the Northern Beltline through the Re-evaluation violates NEPA and its implementing regulations, and is arbitrary, capricious, and otherwise not in accordance with law.

### **THIRD CLAIM FOR RELIEF:**

#### **Defendants' August 17, 2006 Re-evaluation of the Northern Beltline from West of S.R. 79 to East of S.R. 75 Violates NEPA Because It Does Not Analyze the Project's Indirect and Cumulative Impacts**

91. The above paragraphs are incorporated herein by reference.

92. NEPA requires all environmental studies to take a hard look at a project's direct, indirect, and cumulative impacts. *City of Oxford v. F.A.A.*, 428 F.3d 1346, 1352 (11th Cir. 2005). This requirement applies to both EISs and reevaluations of EISs. *See Senville v. Peters*, 327 F. Supp. 2d 335, 350 (D. Vt. 2004).

93. In addition, the purpose of a reevaluation is to determine whether a final EIS remains valid or whether a supplemental EIS is needed for the project. *Senville v. Peters*, 327 F. Supp. 2d 335, 350 (D. Vt. 2004); *S. Trenton Residents Against 29 v. FHA*, 176 F.3d 658, 661 (3d Cir. 1999).

94. In this case, the 1997 EIS failed to analyze the indirect and cumulative impacts as required by federal regulations. 40 C.F.R. § 1502.16 (a) – (h); 40 C.F.R. § 1508.7; 40 CFR

1508.25.

95. The 2006 Re-evaluation that Defendants prepared for the segment of the Northern Beltline from west of S.R. 79 to east of S.R. 75 did not address the invalidity of the original EIS, nor did it complete the 1997 EIS by offering an analysis of the Northern Beltline's indirect or cumulative impacts, either as to this particular segment or as to the project as a whole.

96. The Re-evaluation notes that other segments of the Northern Beltline will not be advanced to the right-of-way acquisition phase until the project's indirect and cumulative impacts are analyzed, an admission that the Re-evaluation is itself deficient because of the lack of analysis of these important impacts.

97. In the Re-evaluation, Defendants reiterate that "promoting and facilitating development" is one of the goals of the Northern Beltline. Yet despite this core stated purpose, the Re-evaluation contains no analysis of indirect, or growth-inducing, impacts.

98. Defendants' knowing publication of a Re-evaluation that does not examine indirect and cumulative impacts, and their ongoing site preparation work within the segment that was subject to the flawed Re-evaluation, violate NEPA and its implementing regulations, and are arbitrary, capricious, and otherwise not in accordance with law.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Enter a declaratory judgment that the Defendants have violated the National Environmental Policy Act by failing to prepare a comprehensive reevaluation and Supplemental Environmental Impact Statement for the entire Northern Beltline project;
2. Enter a declaratory judgment that the Defendants have violated the National Environmental Policy Act by preparing a deficient Re-evaluation for a portion of the Northern

Beltline project;

3. Enter a declaratory judgment that the Defendants have violated the National Environmental Policy Act by improperly segmenting the Northern Beltline in order to minimize project impacts;

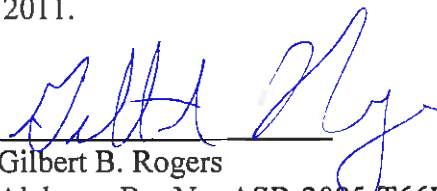
4. Vacate the August 17, 2006 Re-evaluation for the Northern Beltline from west of S.R. 79 to East of S.R. 75;

5. Enter appropriate preliminary and permanent injunctive relief to ensure that Defendants comply with the National Environmental Policy Act, and specifically to ensure that Defendants take no further actions toward proceeding with the Northern Beltline until they have prepared an SEIS in compliance with NEPA;

6. Award Plaintiff the costs of this action, including its reasonable attorneys' fees;  
and

7. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 11<sup>th</sup> of April, 2011.



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**EXHIBIT 1**

IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
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Defendants. )

NO. \_\_\_\_\_

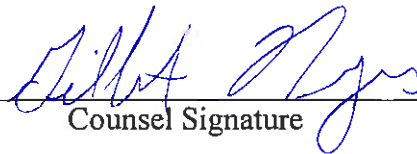
**CONFLICT DISCLOSURE STATEMENT**

COMES NOW Black Warrior Riverkeeper, a Plaintiff in the above-captioned matter, and in accordance with the order of this Court, making the following disclosure concerning parent companies, subsidiaries, partners, limited liability entity members and managers, trustees (but not trust beneficiaries), affiliates, or similar entities reportable under the provisions of the Middle District of Alabama's General Order No. 3047:

- This party is an individual, or
- This party is a governmental entity, or
- There are no entities to be reported, or
- The following entities and their relationship to the party are hereby reported:

7/11/2011

Date



Counsel Signature

Counsel for: Black Warrior Riverkeeper, Inc.  
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IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION

**CERTIFICATE OF SERVICE**

I, Gilbert B. Rogers, do hereby Certify that a true and correct copy of the foregoing has been furnished by certified mail on this 11th day of April 2011, to:

Alabama Department of Transportation  
1409 Coliseum Boulevard  
Montgomery, Alabama 36110

John R. Cooper  
Transportation Director  
Alabama Department of Transportation  
1409 Coliseum Boulevard  
Montgomery, Alabama 36110

Federal Highway Administration  
1200 New Jersey Ave., SE  
Washington, DC 20590

Mark Bartlett  
Division Administrator  
Alabama Division  
Federal Highway Administration  
9500 Wynlakes Place  
Montgomery, Alabama 36117

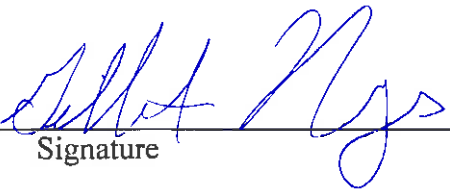
The Honorable Eric H. Holder, Jr.  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530-0001

The Honorable Luther Strange  
Attorney General  
Office of the Attorney General  
501 Washington Avenue  
Montgomery, AL 36130

Leura G. Canary  
U.S. Attorney  
U.S. Attorney's Office for the Middle District of  
Alabama  
131 Clayton Street  
Montgomery, AL 36104

4/11/2011

\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature