

September 30, 2024

Via Electronic Mail

Sandra F. P. Bonner
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1020 Bankhead Highway- West
Birmingham, AL 35204

RE: Birmingham Northern Beltline

Dear Ms. Bonner,

On August 27, 2024, ALDOT and FHWA hosted a public meeting on the proposed Northern Beltline section from US-31 to SR-79 where they simultaneously released their 2024 Reevaluation of the Northern Beltline's FEIS. ALDOT and FHWA are seeking public input by September 30, 2024. The Southern Environmental Law Center (“SELC”) timely submits the following comments on behalf of Black Warrior Riverkeeper. SELC is a nonpartisan, non-profit organization that works to protect the air, water, and special places of the Southeast. Black Warrior Riverkeeper is an Alabama nonprofit membership organization with over 6,000 members that seeks to protect and restore the Black Warrior River and its tributaries through education, advocacy, and pollution prevention.

The Northern Beltline is a 52-mile route that was first proposed in the 1960’s and would stretch around north of Birmingham from Interstate-459/59/20 in Bessemer to I-59 near Trussville. The Northern Beltline would be the most expensive road project in the history of Alabama, costing taxpayers more than \$5 billion, or \$96.3 million per mile.¹ This controversial project would also permanently alter dozens of streams and impact thousands of football fields worth of forest.² According to the 2024 Reevaluation, the eastern section of the project alone would negatively impact over 52,000 linear feet of streams (around 10 miles) and destroy acres of wetlands.³ In addition to negatively impacting Alabama’s natural heritage, the Northern Beltline would forcibly relocate hundreds of families and dozens of businesses—approximately 555 residences and businesses combined, according to ALDOT.⁴

In 1997, the Federal Highway Administration (“FHWA”) and the Alabama Department of Transportation (“ALDOT”) reviewed the environmental impacts of the Northern Beltline in its Final Environmental Impact Statement (“FEIS”). FHWA reevaluated its FEIS in 2012 and again in 2024. Twenty-seven years have passed since the initial FEIS. Since that time, the area, many regulations, and the project itself have changed significantly. But FHWA and ALDOT refuse to supplement the FEIS with a Supplemental Environmental Impact Statement (“SEIS”). Instead, in

¹ U.S. Department of Transportation Federal Highway Administration, Active Major Project Status Report, <https://fhwaapps.fhwa.dot.gov/foisp/publicActive.do> (last visited September 30, 2024) (20.4 miles will cost \$1.966 billion (\$96.3 million per mile); which means that 52 miles will cost approximately \$5 billion).

² 2024 Final Environmental Impact Statement Reevaluation for Project No. ADPF-1602 - Birmingham Northern Beltline, United States Department of Transportation Federal Highway Administration and Alabama Department of Transportation, 57. (Feb. 12, 2024) (hereinafter *2024 Reevaluation*), available at <https://southernenvironment.sharefile.com/d-s05601768a79343288ba0db88f34ca154>.

³ *2024 Reevaluation* at 31, 72.

⁴ *2024 Reevaluation* at 35.

both 2012 and 2024, FHWA and ALDOT concluded in reevaluations that there were no new significant environmental impacts to the eastern area of the project between I-65 and I-59.⁵

In preparing these comments, SELC reviewed the 2024 Reevaluation and uncovered several shortcomings that call into doubt both the adequacy of the Reevaluation itself and the soundness of the conclusions found therein. The following comments address these shortcomings. Specifically, several sections of the 2024 Reevaluation are based on incomplete and inaccurate information.

Under the FWHA’s National Environmental Policy Act (“NEPA”) regulations, FHWA must produce written reevaluations of a final EIS when there have been no major steps to advance the project for three years. 23 C.F.R. § 771.129 (b). The purpose of a reevaluation is to determine whether a final EIS remains valid or whether there needs to be an SEIS. Senville v. Peters, 327 F. Supp. 2d 335, 350 (D. Vt. 2004). When conducting a reevaluation, an agency must take a “hard look” to determine whether the new environmental impacts will be “significant.” N. Idaho Cmty. Action Network v. U.S. Dep’t of Transp., 545 F.3d 1147, 1154 (9th Cir. 2008). NEPA’s purpose is to ensure that:

the agency will not act on incomplete information, only to regret its decision after it is too late to correct . . . In view of this purpose, an agency that has prepared an EIS cannot simply rest on the original document. The agency must be alert to new information that may alter the results of its original environmental analysis.

Friends of the Clearwater v. Dombeck, 222 F.3d 552, 557 (9th Cir. 2000).

Courts overturn agency decisions as arbitrary and capricious under a “hard look” review when they suffer from one of the following: “(1) the decision does not rely on the factors that Congress intended the agency to consider; (2) the agency failed entirely to consider an important aspect of the problem; (3) the agency offers an explanation which runs counter to the evidence; or (4) the decision is so implausible that it cannot be the result of differing viewpoints or the result of agency expertise.” Sierra Club v. U.S. Army Corps of Engineers, 295 F.3d 1209, 1216 (11th Cir. 2002). In its consideration of the economic, Right of Way impacts, and stream impacts, ALDOT and FHWA have failed to both consider an important aspect of the problem and failed to offer an explanation consistent with the evidence.

I. ALDOT has failed “to consider an important aspect of the problem” as it has not considered the overwhelming evidence demonstrating that the Northern Beltline will not fulfill its purpose of stimulating economic growth, responding to traffic growth, and enhancing cross-regional transportation.

The stated purpose of the Northern Beltline is to “enhance cross-region accessibility, stimulate economic development, and respond to traffic growth in the northern portions of Jefferson County.”⁶ Yet FHWA and ALDOT have never provided evidence that the Northern Beltline will achieve these aims. Instead, the 2024 Reevaluation fails to prove that the benefits

⁵ 2024 Reevaluation, Introduction: Mark D. Bartlett’s Letter.

⁶ 2024 Reevaluation at 10.

even begin to outweigh the costs —\$5 billion dollars, the forced relocation of 550 residential homes and small businesses, and devastating environmental impacts, among other things.

- a. **The 2024 Reevaluation does not consider important economic information that evidences that the Northern Beltline is a poor return on investment, therefore it “fails to consider an important aspect of the problem.”**

Regarding economic impacts, the 2024 Reevaluation relies solely on a 2010 report conducted by University of Alabama Center for Business and Economic Research (“CBER”) and commissioned by the Coalition for Regional Transportation to draw the conclusion that there have not been any significant changes to the economic impact of the Northern Beltline from 1997 to 2024.⁷

Pulling from the CBER report, the 2024 Reevaluation claims that the Northern Beltline will generate more than \$2 billion annually (if construction is ultimately completed); will generate 70,000 construction jobs during the highway’s construction phase; will create 20,000 new jobs per year as a direct result of economic growth from the Northern Beltline; and will create over 370 new businesses.⁸ The 2024 Reevaluation also promises \$155 million in new tax revenue during the construction phase of the project and \$54 million in new tax revenue for local governments per year after the construction is completed.⁹ FHWA and ALDOT base all their economic and development assertions on the 2010 CBER report, commissioned by the Coalition for Regional Transportation.

In the 2024 Reevaluation, FHWA and ALDOT failed to update the fourteen-year-old report or consider other economic analyses of the impacts of the Northern Beltline. Notably, there are three other economic reports on the Northern Beltline that the agencies must consider: 1) Appendix L of the 2012 Reevaluation 2) the 2012 Ochs Report (attached as Exhibit 1) and 3) the 2024 Report by Metzgar and Depken (“Metzgar Report”) (attached as Exhibit 2) that ALDOT should now consider and describe in the 2024 Reevaluation. In its March 2012 Reevaluation, ALDOT buried a study in an appendix (L) which predicted that the Northern Beltline would only cause a 1.1% growth in the population (2,208 people) and cause only a 7.6% growth in permanent jobs (2,842 jobs).¹⁰ Additionally, in 2012, the Ochs Center for Metropolitan Studies released an economic report that analyzed the Northern Beltline project and the CBER report. In 2024, Dr. Matthew Metzgar and Dr. Craig A. Depken II from the University of NC at Charlotte, also wrote a report that updated the Ochs Center report and further criticized the CBER report.

The Ochs Center report found and corrected significant errors in the 2010 CBER report. Namely, the CBER report significantly exaggerated any potential economic benefits of the

⁷ 2024 Reevaluation at 44-45, 88.

⁸ 2024 Reevaluation at 45.

⁹ *Id.*

¹⁰ 2012 Final Environmental Impact Statement Reevaluation for Project HPP-1602 - Birmingham Northern Beltline, United States Department of Transportation Federal Highway Administration and Alabama Department of Transportation, Appendix L. (March. 29, 2012) (hereinafter *2012 Reevaluation*), available at <https://southernenvironment.sharefile.com/d-s05601768a79343288ba0db88f34ca154>.

Northern Beltline and ignored verifiable negative impacts. Nonetheless, ALDOT and FHWA failed to consider or respond to this new economic report in their 2024 Reevaluation and failed to correct or update inaccurate data.

Contrary to the CBER report, the Ochs report determined that the Northern Beltline will not produce 70,000 jobs during the construction phase.¹¹ First, the 70,000 jobs statistic is misleading, because the CBER forecasts 69,535 *person-years* of work.¹² Person-years of work refers to the total number of one-year jobs that could be created over the construction period, so instead of 70,000 construction jobs, the CBER actually forecasts the equivalent of 70,000 one-year contracts.¹³ Additionally, this estimate of 69,535 person-years of work derives from FHWA's outdated 2002 data.¹⁴ Using FHWA's 2007 data, in optimistic scenarios, according to the Ochs' report, the Northern Beltline would only produce 48,880 one-year construction and spinoff jobs, at best.¹⁵ That equates to only 1,501 actual construction jobs per year if the project is completed in 30 years.¹⁶ In brief, the Northern Beltline's ability to create construction jobs is dramatically overestimated.

Additionally, the Metzgar report calculated that the cost to the taxpayer for each promised construction job has drastically increased from rising costs of construction materials. On a 17-year timeframe, the cost per construction job would be \$560,512 per job.¹⁷ On a 30-year timeframe, the cost per construction job would increase to \$845,453 per job.¹⁸ Given that most of these construction jobs are expected to pay \$35,000 or less per year, this is an extremely wasteful use of taxpayer dollars.¹⁹

The Ochs report also determined that the CBER report significantly overestimates the permanent jobs, businesses, and economic growth which may stem from the Northern Beltline. The CBER report predicted that if the Beltline had been built within 17 years from the date of the report (or by 2027) it would have created 20,000 permanent jobs and over 370 new businesses. Together, the CBER report claims, this would have generated approximately \$2 billion. But the Ochs' report demonstrates how those estimates were never accurate. First, the current projection for the completion of the Northern Beltline is 60 years not 17, and it is difficult for any model to predict 60 years into the future.²⁰ Additionally, to produce \$2 billion, each of the new 370 businesses would need to generate \$5.5 million in new output which is infeasible.²¹ Also, to create the economic output and job creation predicated by the CBER study, each new Northern Beltline resident would need to be five times as productive as the current Alabamian, and each

¹¹ Dr. Ken Chilton & Dr. Peter B. Meyer, *If You Build It, Will They Come? Reassessing the Economic Impacts of the Northern Beltline, the Ochs Center for metropolitan studies*, June 2012, 8-9 (hereinafter Ochs Report).

¹² *Id.* at 7.

¹³ *Id.*

¹⁴ *Id.* at 8.

¹⁵ *Id.*

¹⁶ *Ochs Report*, at 9.

¹⁷ Dr. Mathew Metzgar & Dr. Craig A. Depken II, *Economic Impact of the Proposed Birmingham Northern Beltline Project*, University of North Carolina at Charlotte, 36, Sept. 2024 (hereinafter Metzgar Report).

¹⁸ *Id.*

¹⁹ *Id.* at 35.

²⁰ *Ochs Report* at 11; Regional Planning Commission, 2050 Regional Transportation Plan, August 2023, https://www.dropbox.com/scl/fi/9ss9ygjuce35wtsgwffddu/RTP2050-Final_20230810.pdf?rlkey=qpezhtixquj9wff0elkznt0l5&e=1&dl=0 (40% is planned to be built in 25 years).

²¹ *Ochs Report* at 12.

man, woman, and child moving to be near the Beltline would need to somehow create eight jobs by their presence.²² Finally, CBER's tax revenue predictions of \$54 million in new tax revenue for local governments per year after the construction are highly questionable, because they are driven by these unreliable job-creation projections.²³ In other words, the ultimate tax revenue depends entirely on whether the jobs estimates hold up. Because those are extremely exaggerated, so too is the tax revenue conclusion.

In fact, as explained in the Metzgar report, ALDOT itself only predicts 2,842 permanent jobs will occur in the build scenario of its model.²⁴ Again, this prediction is for *after* project completion. Thus, there is absolutely no guarantee that the jobs will ever materialize. And, if they do, it will be so far in the future that the economic landscape could very well be unrecognizable and the numbers entirely obsolete. Most likely, if these jobs ever come, they will likely be jobs relocated from the other areas in the Birmingham metro.²⁵

The Metzgar report emphasizes that the foundational fault with the 2010 CBER report is that it bases all its economic conclusions on the adage, "if we build it, they will come." But the economic literature shows that this adage does not apply to highway construction.²⁶ Rather, the economic literature finds that the opposite is true — instead of transportation improvements spurring economic development, economic development spurs transportation improvements.²⁷ Further, by and large, modern highways do not have a role in generating economic growth. In fact, the published evidence shows that: "highways have mostly no statistically significant impact on population and employment change. This means that highway infrastructure does not produce any significant population or employment change; rather, it plays a facilitator role for the flow of people, materials, and raw and finished products."²⁸ While unneeded highway infrastructure may not create any economic development, it is indisputable that it will cost an exorbitant amount of taxpayer dollars. In summary, building a road to nowhere wastes taxpayer dollars without creating sufficient economic growth and development.

Further, as economic experts Dr. Metzgar and Dr. Depken point out, highways themselves do not equal jobs. Consider, for example, the City of Bessemer. Bessemer is located near the I-459 beltline and I-20/59 and thus highly accessible, but it has not experienced appreciable population or business growth in the last decade (rather Bessemer suffered population decline).²⁹ Similarly, the geographic area for the Northern Beltline is projected to have low population and economic growth regardless of whether the Northern Beltline is

²² *Id.*

²³ *Id.* at 13.

²⁴ *Metzgar Report* at 34.

²⁵ *Metzgar Report* at 37-38.

²⁶ *Metzgar Report* at 26. "Studies suggest that economic development drives the need for investment in transport infrastructure, rather than the other way around (Maparu & Mazumder, 2017). This is known as Wagner's Law (Wagner & Weber, 1977)." *Id.* at 20. "Positive Externalities: The presence of factors like a skilled workforce, supportive institutions, and conducive policies are crucial. Banister & Berechman (2001) suggests that transport investment alone might not be sufficient for regional growth without these supporting elements. In fact, Bannister & Berechman (2001) state: 'In developed countries, where there is already a well-connected transport infrastructure network of a high quality, further investment in that infrastructure will not on its own result in economic growth.'"

²⁷ *Id.*

²⁸ *Metzgar Report* at 20.

²⁹ *Ochs Report* at 31.

completed or not.³⁰ Thus, there is little indication—and certainly no guarantee—that the Northern Beltline would provide any long-term economic benefit to this community. Further, even if the Northern Beltline does happen to increase the population and economic input of the area, it would likely be due to the highway pulling away growth from the City of Birmingham and relocating it to the suburbs.³¹ In other words, the Northern Beltline would simply move growth, not create it.

In sum, since 1997, there have been significant changes in the economic realities of the Northern Beltline. Nonetheless, in their 2024 Reevaluation, FHWA refused to consider new economic information, failed to adjust its cost analysis, and distorted the economic impacts of the Northern Beltline. FHWA relied solely on one significantly outdated and inherently flawed report, the 2010 CBER report commissioned by the Coalition for Regional Transportation, to conclude that there has not been a significant change in the economic and development impacts from 1997 to 2024. Before drawing these conclusions, FHWA and ALDOT should rely on and explain their own study on the project's economic impacts (from Appendix L of the 2012 Reevaluation) as well as evaluate the 2012 Ochs Report and consider the 2024 Metzgar report. In taking a “hard look” at all the economic information available, FWHA would be forced to consider the flaws in the 2010 CBER report. The economic benefits touted by the project’s proponents are unsubstantiated, exaggerated, and misleading. ALDOT has failed to consider an important aspect of the project — its purpose.

b. The 2024 Reevaluation is also arbitrary and capricious because it distorts the economic benefits of the project.

As described in detail above, in conducting its 2024 Reevaluation, FWHA has ignored important new economic information and has distorted the economic impacts of the Northern Beltline. “[I]n order to fully appraise the potential environmental harms of a proposed project, they must be weighed against the economic benefits of that project.” S. Louisiana Env’t Council Inc. v. Sand, 629 F.2d 1005, 1011 (5th Cir. 1980). Where the agency’s claims of economic benefits “were so distorted as to impair fair consideration of th[e] environmental consequences” a court will find the agency’s conclusions based on those claims arbitrary. *Id.* In refusing to analyze other significant studies on the economic impacts of the Beltline, FHWA and ALDOT have distorted the economic considerations in such a manner as to impair fair consideration of the environmental consequences of the Northern Beltline. At a minimum, the FHWA should consider and correct the 2010 CBER report’s mischaracterization of the Northern Beltline’s economic output, job creation, tax revenue, and costs of the project — explained above and meticulously laid out in the 2012 Ochs Report and the 2024 Metzgar report. Until FWHA corrects its 2024 Reevaluation it will be distorting the project’s economic considerations as to impair fair consideration of the Northern Beltline’s environmental consequences. In doing this, FHWA is acting arbitrarily and capriciously.

³⁰ *Metzgar Report* at 27.

³¹ *Id.* at 28. “The previous construction of interstates in Birmingham coincided with the city first losing population: “Between 1960 and 1970, Birmingham experienced its first population decline, coinciding with the city’s interstate construction projects, most of which were completed or underway by 1971.”

c. The Reevaluation does not provide evidence that the Northern Beltline is necessary to alleviate future traffic nor to provide additional cross-regional transportation, and therefore fails to consider an important aspect of the problem.

In addition to the unsubstantiated promises of economic development, another listed purpose of the Beltline is to respond to traffic growth in the northern portions of Jefferson County and enhance cross-regional accessibility.³² But there is no study provided that shows this project will substantially reduce current or future “traffic growth” and enhance cross-regional accessibility. In fact, the need for the Beltline is actually diminishing; the 2024 Reevaluation even admits that the Annual Average Daily Traffic after the Beltline is built is projected to be even less than what was predicted in 2012.³³

North Jefferson County does not have a traffic problem and is not predicted to experience increased traffic. Instead, North Jefferson County has low levels of congestion and many of the vehicle trips taken in the area are not at peak times.³⁴ North Jefferson County is not predicted to grow significantly in the next decade, and there is no future demand for large road infrastructure to offset traffic.³⁵ In fact, ALDOT has admitted that only 2,208 people are likely to move to the area even after the Beltline is built.³⁶ Yet ALDOT fails to grapple with this fact in the 2024 Reevaluation nor to explain what is specifically meant by “alleviat[ing] future traffic growth.” How much future traffic growth will the Beltline be alleviating?

Conversely, Shelby County and South Jefferson County are predicted to experience significant growth in the coming years.³⁷ But instead of investing in transportation infrastructure in the growing area of the Birmingham metro, ALDOT and FHWA waste taxpayer dollars by creating an excess supply of interstate transportation in an area which does not need it. Neither agency explains exactly how this project will respond to current traffic, nor specifically to what is meant by “traffic growth.”

This 2024 Reevaluation also fails to mention the Regional Planning Commission’s study that found that the Northern Beltline would only relieve 1-3% of traffic on I-20/59 through downtown Birmingham, and it will not reroute significant truck traffic.³⁸ In fact, traffic will increase on the heavily congested section of I-59 through Trussville and Argo.³⁹ This study has never been refuted, but it too was omitted from the 2024 Reevaluation.

In conclusion, there is no current nor projected evidenced need for traffic relief and cross-regional transportation in North Jefferson County. While the Reevaluation claims that traffic and cross-regional transportation is the Beltline’s purpose, it fails to consider or provide evidence

³² 2024 Reevaluation at 10.

³³ *Id.* at 69.

³⁴ *Metzgar Report* at 31.; see also 2024 Reevaluation, at 260 which shows that the projected average daily traffic in 20 years with the Beltline complete will be half or a third of the traffic of surrounding highways.

³⁵ *Metzgar Report* at 25-26.

³⁶ 2012 Reevaluation at Appendix L.

³⁷ *Metzgar Report*, at 16.

³⁸ Regional Planning Commission of Greater Birmingham. Public Involvement Meeting Documentation for 2035 RTP, April 2010 at 4-17,

https://static1.squarespace.com/static/5bfc5ef3f93fd4e73b6c10fa/t/5bfd8cb6562fa701f92353e6/1543343296860/RP_CGB-MPO-Public-Involvement-Meeting-Documents_b.pdf; Birmingham Northern Beltline Termini Analysis, September 1993, (“Exhibit 3”).

³⁹ *Id.*

that the Beltline will meet that purpose. A comprehensive traffic study showing how much traffic congestion will actually be relieved should be included in order for ALDOT to meet its obligation to take a hard look at the Beltline’s impacts. Otherwise, ALDOT is failing to consider an important aspect of the problem — the low population that is currently and will be in North Jefferson County.

d. FHWA is acting arbitrarily by omitting an important aspect of the problem by failing to show that an eight-lane road is justified.

The agencies are approving an eight-lane road, but only studied a 4-lane road in the Reevaluation. The Reevaluation states, “The current FEIS Reevaluation is studying a design to be constructed as an interim four-lane typical section (i.e. two lanes in each direction) . . .”⁴⁰ Additionally, the four-lane proposed highway is the road that was approved in the 2050 Regional Transportation Plan.⁴¹ Yet, ALDOT is planning on obtaining Right of Way (“ROW”), and subsequently grade for, an eight-lane highway from I-65 to I-59.⁴² Again, ALDOT and FHWA fail to provide traffic data or any data to show that an eight-lane road is necessary. FHWA and ALDOT are acting arbitrarily and capriciously by “fail[ing] entirely to consider an important aspect of the problem” and offering “an explanation [without studies] which runs counter to the evidence.”⁴³

The 2024 Reevaluation concludes that an eight-lane highway is unnecessary: “Based on the 2053 projections for [the Northern Beltline], the four-lane interim will provide sufficient traffic capacity for the Eastern Section from I-65 to I-59 for the foreseeable future.”⁴⁴ Despite this, the Reevaluation states that FHWA will purchase ROW for an eight-lane highway, because “due to the anticipated growth in the regional area beyond the thirty-year modeling, the ALDOT proposes to acquire ROW for the ultimate eight-lane typical section.”⁴⁵ However, neither ALDOT nor FHWA have studied nor provided evidence justifying an eight-lane highway in this Reevaluation. The geographic area for the Northern Beltline is actually projected to have low population and economic growth.⁴⁶ Instead, much of the regional area growth will come from south of Birmingham, mostly in Shelby County.⁴⁷ Therefore, the 2024 Reevaluation lacks any justification for acquiring eight-lanes of ROW.

⁴⁰ 2024 Reevaluation at 10.

⁴¹ Regional Planning Commission, 2050 Regional Transportation Plan, August 2023, 177, https://www.dropbox.com/scl/fi/9ss9ygjuce35wtsgwfddu/RTP2050Final_20230810.pdf?rlkey=qpezhitixquj9wff0elkznt015&e=1&dl=0.

⁴² 2024 Reevaluation at 14. “The ALDOT will acquire ROW and grade for the full footprint of the ultimate eight-lane typical section.”

⁴³ Sierra Club v. U.S. Army Corps of Engineers, 295 F.3d 1209, 1216 (11th Cir. 2002) Courts overturn an agency decisions as arbitrary and capricious under “hard look” review when they suffer from one of the following: “(1) the decision does not rely on the factors that Congress intended the agency to consider; (2) the agency failed entirely to consider an important aspect of the problem; (3) the agency offers an explanation which runs counter to the evidence; or (4) the decision is so implausible that it cannot be the result of differing viewpoints or the result of agency expertise.”

⁴⁴ 2024 Reevaluation at 15.

⁴⁵ *Id.*

⁴⁶ *Metzgar Report* at 27.

⁴⁷ *Metzgar Report* at 16.

ALDOT not only plans to acquire eight-lanes worth of ROW but also plans to grade for the full footprint of the ultimate eight-lane section over the next twenty years.⁴⁸ Only after purchasing the ROW and grading for eight-lanes — effectively doubling the environmental and human impacts of the project — will ALDOT examine traffic projections to determine if widening to a *six-lane* is needed: “Upon completion of the interim four-lane typical section from I-65 to I-59, the ALDOT would examine traffic projections to determine if widening to a six lane (i.e., three-lanes in each direction) typical section is needed.”⁴⁹ This plan of action evidences that ALDOT has neither the traffic projections nor economic growth projections which justify a six-lane highway let alone an eight-lane highway. Therefore, ALDOT has not studied the traffic to determine whether an eight-lane is even warranted, yet it plans on using taxpayer funds to purchase the ROW. Because ALDOT has failed to study the “traffic growth” that would justify an eight-lane grading project, it has “failed entirely to consider an important aspect of the problem” and it has offered “an explanation [without studies] which runs counter to the evidence.” Its Reevaluation, therefore, is arbitrary and capricious.

Practically, ALDOT will cause unnecessary environmental harm by grading the eastern section of the Beltline for the full footprint of an eight-lane highway when ALDOT has not even decided on whether to expand the highway to six-lanes. In the future, ALDOT may determine a six-lane or eight-lane highway is not necessary and ALDOT would have already caused unnecessary environmental harm by destroying forest, impacting Waters of the United States (“WOTUS”), increasing its sedimentation footprint, and impacting the human environment. Moreover, grading the entire footprint twenty years before construction of the six-lane highway and possibly more than forty years before the construction of the eight-lane highway wastes taxpayer dollars, because ALDOT will need to regrade and clear these areas after they undergo decades of forest growth and changes in the natural landscape.

In conclusion, before taking irrevocable steps to implement an eight-lane highway, ALDOT and FWHA need to justify and provide current studies and projections to why eight-lanes are necessary to fulfill the project purpose. Until the agencies evidence a need for an eight-lane highway, the 2024 Reevaluation is arbitrary and capricious as it fails to consider an important aspect of the project.

II. The changes in the Northern Beltline's impact on Waters of the United States (WOTUS) warrant an SEIS.

The 2024 Reevaluation shows that there has been a significant change in stream impacts from the 2012 Reevaluation. The “legal standard of the need for a supplemental EIS . . . is whether the post-[original EIS] changes in the [project] will have a ‘significant’ impact on the environment that has not previously been covered by the [original] EIS.”⁵⁰ FHWA and ALDOT should create an SEIS because, since the 2012 Reevaluation, the stream impacts have doubled and the standard for assessing Waters of the United States (WOTUS) has radically changed with

⁴⁸ 2024 Reevaluation at 14. “The ALDOT will acquire ROW and grade for the full footprint of the ultimate eight-lane typical section.”

⁴⁹ *Id.*

⁵⁰ *Nat'l Wildlife Fed'n v. Marsh*, 721 F.2d 767, 782 (11th Cir. 1983), *abrogated by Marsh v. Oregon Nat. Res. Council*, 490 U.S. 360, 109 S. Ct. 1851, 104 L. Ed. 2d 377 (1989) (quoting *Env't Def. Fund v. Marsh*, 651 F.2d 983, 991 (5th Cir. 1981)).

the Supreme Court's 2023 decision in *Sackett v. EPA*. FHWA should also clarify how many stream segments the Eastern portion of the Northern Beltline will cross.

In 2012, FHWA estimated that the eastern section of the Northern Beltline would impact 26,235 linear feet of stream; whereas, in 2024, FHWA concluded that 52,343 linear feet of stream would be impacted.⁵¹ In one section of the 2024 Reevaluation, FHWA and ALDOT attribute this doubling of stream impacts to the changing definitions of WOTUS.⁵² In another section, the 2024 Reevaluation concludes that the doubling of stream impacts is not a significant change, because the original FEIS estimation of 27.40 acres of likely stream impacts is roughly equivalent to the linear feet of stream impacts found in the 2024 Reevaluation: "Since there have been minimal land use changes since the 2012 FEIS Reevaluation, it is assumed that the 27.40 acres of impacts from the 1997 FEIS are approximately equivalent to the 32,131 linear feet of stream impacts for the 2024 FEIS Reevaluation."⁵³ FHWA and ALDOT's explanation is inadequate because it (1) equates stream acre impacts to linear feet of stream impacts without evidencing the conversion rate and (2) the explanation claims that the 2024 Reevaluation only found 32,131 linear feet of stream impacts when it found 52,343 linear feet of stream impacts. FHWA and ALDOT need to clarify their explanations and produce an SEIS to address the doubling of stream impacts from 2012 to 2024.

Additionally, with the Supreme Court's decision in *Sackett v. EPA* on May 25, 2023, FHWA and ALDOT need to conduct a new survey to assess the impact of the Northern Beltline's eastern section on WOTUS. *Sackett v. EPA* has greatly changed the landscape of what waters receive protection under the Clean Water Act. FHWA and ALDOT were aware of this change in the legal landscape before completing the 2024 Reevaluation. By failing to consider the radically different approach to WOTUS within the Reevaluation, FHWA and ALDOT failed to take a "hard look" at the changes in WOTUS impacts.

Last, the eastern section of the Northern Beltline will bridge nineteen crossings at major tributaries. The 2024 Reevaluation also says that the remaining stream crossings will be culverted or piped. FHWA fails to provide the number of streams that will be culverted, piped, or impacted from the project.⁵⁴ FHWA should provide the total number of stream crossings.

In conclusion, FHWA and ALDOT should create an SEIS, because of the significant environmental changes to the project due to the doubling of stream impacts and the new approach to WOTUS under *Sackett v. EPA*. FHWA and ALDOT should also clarify how many stream segments will be crossed.

III. ALDOT must clarify when it plans to clear trees in known Gray bat habitat, in order to avoid a taking of a Gray bat.

The Reevaluation clearly states that the only Fish and Wildlife Service ("FWS") approved section of road that can be legally built at this point is between US 79 and US 75, but even this clearance is questionable.⁵⁵ ALDOT and FHWA must reinstate consultation with FWS

⁵¹ 2024 Reevaluation at 31, 75.

⁵² Id. at 31.

⁵³ Id. at 72.

⁵⁴ Id. at 57. In total, the project will have nineteen bridged crossings at major tributaries. All the other crossings will be culverted or piped.

⁵⁵ Id. at 81.

to assess whether the current tree harvesting strategy could have an adverse impact on the Gray bat.

ALDOT's contractors conducted an acoustic presence/absence study for threatened and endangered bat species within SR-79 to SR-75 from August 5, 2022 to August 8, 2022.⁵⁶ The findings of the study indicated that it was improbable that the Northern long-eared and Indiana bats were in the vicinity but that there was a probable presence of the Gray bat.⁵⁷

However, the FWS found that constructing the section between 79 and 75 was unlikely to adversely impact Gray bats because they assumed that ALDOT would be clearing trees in the summer: "Since gray bats do not use trees for *summer* roosting ALDOT does not expect tree removal activities to have an adverse effect on these bat species. Based on this information [FWS] concur[s] with ALDOT's determination . . ." (emphasis added).⁵⁸ But FWS does not discuss the possibility that the Gray bat could use trees in this area as migration roosts in the spring and fall.

The Gray bats have been reported using trees diurnally as day roosts during their spring and fall migrations.⁵⁹ While FWS explains that Gray bats are not known to use trees for summer roosting, it says nothing about whether they use the trees during the fall and spring migrations.⁶⁰ Therefore, while any tree harvesting during daylight hours in the summer months may be unlikely to adversely affect the Gray bat, tree harvesting during daylight hours during spring and fall migration may adversely affect migrating Gray bats.

Informal consultations should "identify adverse effects [on species] and suggest ways to avoid them."⁶¹ FWS needs to explicitly address the Gray bat's migration roosting possibility and more explicitly suggest avoidance strategies. ALDOT and FWS should reinitiate consultation and (1) explicitly discuss the Gray bat possibility of tree roosting within the project area in fall and spring and (2) clarify if tree clearing is restricted to the summer months. Additionally, it is still possible that the Gray bat may not be the only endangered bat within SR-79 to SR-75. As summer tree clearing is problematic for other endangered bat species, ALDOT must take proper precautions and upon finding another endangered bat, immediately stop clearing and initiate Section 7 consultation with FWS. ALDOT must be careful not to illegally take any listed bat species.

IV. ALDOT should focus on other highway projects instead of wasting limited resources on the Northern Beltline.

ALDOT should use the money allocated for the Northern Beltline on other highway projects such as Corridor V in Huntsville and Corridor X (Interstate 22) here in Birmingham. ALDOT and the Regional Planning Commission have explained that approximately 10-miles (of

⁵⁶ *Id.* at 118.

⁵⁷ 2024 Reevaluation, Stanley C. Biddick Letter to FWS, pdf page 349.

⁵⁸ *Id.*

⁵⁹ Stephen T. Samoray et al., *Gray Bat (Myotis grisescens) Use of Trees as Day Roosts*, *Southeastern Naturalist* 19(3) (Aug. 2020), <https://bioone.org/journals/southeastern-naturalist/volume-19/issue-3/058.019.0309/Gray-Bat-Myotis-grisescens-Use-of-Trees-as-Day-Roosts/10.1656/058.019.0309.short>.

⁶⁰ 2024 Reevaluation, William J. Pearson to ALDOT, pdf page 347.

⁶¹ U.S. Fish & Wildlife Service & National Marine Fisheries Service, *Endangered Species Consultation Handbook: Procedures for Conducting Consultation and Conference Activities Under Section 7 of the Endangered Species Act* (March 1998) <https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>.

the 20-mile section) of the Northern Beltline will be funded through the Appalachian Development Highway System (ADHS).⁶² The Infrastructure Investment and Jobs Act (IIJA) allocated a large portion of funding to the Appalachian Development Highway System funds in Alabama (about \$369.3 million over five years),⁶³ but this funding was not allocated specifically to the Northern Beltline. This funding could be spent on other ADHS projects, such as Corridor V in Huntsville and Corridor X (Interstate 22) here in Birmingham. According to the Cost to Complete for the ADHS, Alabama still desires to upgrade Corridor V and build a new interchange on this road.⁶⁴ Additionally, Corridor X needs an upgrade to an eight-lane section and a welcome center.⁶⁵ Upgrades and maintenance to these roads should be completed first in order to meet the national goal of “maintaining the highway infrastructure asset system in a state of good repair” per 23 U.S.C. §150(b) before wasting money on projects that are not a priority.

ALDOT claims that the other half of the funding that will build this 20-mile eastern stretch of the 52-mile Northern Beltline will come from GARVEE bonds.⁶⁶ However, ALDOT should not go into debt or waste these GARVEE bonds on this frivolous project, but instead invest in needed projects throughout the state. TRIP, a national transportation research organization, completed a list of Alabama’s 50 highway projects needed most to support economic growth; the Northern Beltline was not on the list.⁶⁷ (The Business Council of Alabama endorsed this list.⁶⁸) And in fact, *all* the projects on that list could be completed for less than the cost of the Northern Beltline. Additionally, construction of the Northern Beltline has been ranked 36th in priority by the Birmingham Regional Planning Commission,⁶⁹ yet it is being prioritized by ALDOT over much-needed fixes for current traffic and safety problems. In conclusion, ALDOT should focus its money and effort on necessary upgrades to priority highway projects instead of wasting its resources on the Northern Beltline.

⁶² Regional Planning Commission, 2050 Regional Transportation Plan, August 2023 at 178, https://www.dropbox.com/scl/fi/9ss9ygjuce35wtsgwffdu/RTP2050-Final_20230810.pdf?rlkey=qpezhtixquj9wff0elkznt015&e=1&dl=0.

⁶³ USDOT, FY 2022 - FY 2023 Actual and FY 2024 - 2026 Estimated State-by-State Federal Aid Highway Program Apportionments Under the Infrastructure Investment and Jobs Act, https://www.fhwa.dot.gov/bipartisan-infrastructure-law/docs/Est_FY_2022_026_Formula_Programs_Infrastructure_Investment_State-by-State_Year-by-Year.pdf (last visited Sept. 30, 2024).

⁶⁴ ADHS, Appalachian Development Highway System - 2021 Cost-to-Complete Estimate Report, March 2021, <https://www.arc.gov/wp-content/uploads/2021/03/ADHS-2021-Cost-to-Complete-Estimate-Report-March-2021-FINAL-1.pdf> (last visited Sept. 30, 2024).

⁶⁵ *Id.*

⁶⁶ Regional Planning Commission, 2050 Regional Transportation Plan, August 2023 at 178, https://www.dropbox.com/scl/fi/9ss9ygjuce35wtsgwffdu/RTP2050-Final_20230810.pdf?rlkey=qpezhtixquj9wff0elkznt015&e=1&dl=0.

⁶⁷ TRIP, The Top 50 Highway Projects to Support Economic Growth and Quality of Life in Alabama, Feb. 2016, https://tripnet.org/wp-content/uploads/2018/08/AL_Economic_Development_TRIP_Report_February_2016.pdf.

⁶⁸ BCA, *Local and National Speakers Highlight Alabama’s Road Needs and Solutions*, Feb. 15, 2017, <https://www.bcatoday.org/local-and-national-speakers-highlight-alabamas-road-needs-and-solutions/>,

⁶⁹ Regional Planning Commission of Greater Birmingham, *Birmingham 2035 Regional Transportation Plan*, April 2010, Appendix 5D.

V. Conclusion

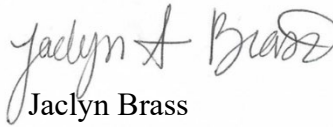
As shown above ALDOT and FWHA have failed to take a hard look at the changes in the Northern Beltline project from 1997 to 2024. Until the ALDOT and FHWA address the issues laid out above and provide an SEIS, they will be acting arbitrarily and capriciously.

If you have any questions about the above comments, please contact Sarah Stokes at sstokes@selcal.org or call at 205-745-3060. If there are any revisions to this Reevaluation, please send the revised Reevaluation to Sarah as well.

Sincerely,



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