

Monroe Bypass

Summary of Legal Proceedings, Right of Way and Construction Update & Next Steps



Agenda

- Welcome and Introductions
- Legal and Environmental Review
- Right of Way Update
- Next Steps and Schedule
- Questions and Answers

History of the Case

- Nov. 2, 2010 lawsuit filed by Southern Environmental Law Center (“SELC”).
- Nov. 23, 2010, SELC files motion for preliminary injunction to stop project from moving forward during the lawsuit.
- Dec. 30, 2010 Judge James C. Dever, III DENIED SELC’s request for a preliminary injunction.

- Oct. 24, 2011, Judge Dever ruled in favor of NCDOT. NCDOT *did not* violate the law.
- Oct. 31, 2011, SELC files appeal to the 4th Circuit Court of Appeals in Richmond, Va.
- March 21, 2012, the 4th Circuit hears the arguments of the parties.

- May 3, 2012, the 4th Circuit renders opinion that NCDOT/FHWA failed to disclose assumptions underlying their decision to build the road and included incorrect information to a public comment.
- June 15, 2012, NCDOT filed a petition for rehearing with the 4th Circuit asking for a rehearing due to facts and law the Court overlooked and misunderstood.

What does the law require?

National Environmental Policy Act (“NEPA”).

Government agencies must study the environmental impacts of a project before building the project.

The government must take a “hard look” at the human and natural environmental impacts of a project.

NEPA Studies

Government must study the:

Direct Impacts – What will the road impact in its proposed location?

Indirect Impacts – What impact will the road create in the future?

Cumulative Impacts – What impact will the road and all other planned projects have on the environment?

Indirect Impacts

NCDOT tries to predict how many people, households, and jobs will exist in the Project area in future years (up to the year 2030).

(These are called socio-economic projections)

NCDOT tries to predict the future socio-economic conditions with the road and without the road.

(“no-build” vs. “build” scenario)

Predicting the Future

- There is always uncertainty.
- NCDOT follows established guidance on how to study the Indirect Impacts.
- NCDOT stands behind their study and methodology.



Mecklenburg-Union Metropolitan Planning Organization (“MUMPO”)

MUMPO is the local organization that develops a long-range transportation plan.

MUMPO uses a tool to develop the plan called a Travel Demand Model.



NCDOT used MUMPO’s Model & socio-economic projections in the Indirect Impacts analysis.

NCDOT researched the MUMPO projections before using them

NCDOT went to MUMPO and the localities that created the socio-economic projections and asked:

1. How were the socio-economic projections created?
2. Does the long-term land use plan represent the future with or without the Monroe Connector?

What did NCDOT Determine?

NCDOT found that the MUMPO projections best represent the project area without the project (i.e. the “no-build” scenario).

After comparing the “no-build” to the “build,” NCDOT found that the Monroe Project would induce very little additional growth in the Project area.

Why won't the project induce growth?

Existing growth in Union County.

- The fastest growing county in NC.
- 14th fastest growing county in the US.



However, there are factors that resist growth as well.

- Lack of Water/Sewer availability, moratoriums.
- 200 foot buffers on streams.

SELC Disagrees

SELC says the project was included in the “no-build” projections and therefore NCDOT compared “building the road” with “building the road.”

Was the Project in the “no-build” projections?

1 out of 8 variables used to create the model that was used to measure the impacts included a 2,400 mile roadway network that had 20 miles of the Monroe Bypass.

The Project represented less than 1% (.82) of the long-range transportation plan roadway network in that 1 variable.

Judge Dever agreed with NCDOT’s conclusion that the less than 1% inclusion did not rise to the level of significance and didn’t interfere with the conclusion.

Less than 1% is Insignificant

In a “perfect” no-build scenario the project would have 0% inclusion.

NCDOT made the determination that the MUMPO projections best represent the “no-build” scenario despite the project being technically included in the data.

Public Comments

During the environmental study, NCDOT receives comments from the public and responds to those comments.

U.S. Fish and Wildlife Service

The USFWS is in charge of making sure the Project does not adversely affect any endangered species.

The Carolina Heelsplitter mussel is an endangered species with habitat in the project area.

NCDOT VERIFIED ITS ASSUMPTIONS

USFWS requested additional verification regarding the “no-build” scenario.

NCDOT went back to MUMPO and the local planning experts and asked:

Would you agree with our assumption that these forecasts represent the “no-build” scenario? If not, why?

MUMPO and the Local Experts Agreed

MUMPO and the local experts agreed that the socio-economic projections were a reasonable representation of the “no-build” scenario.

Less than 1 % is Insignificant

The District Court judge agreed with NCDOT.

- The Judge said:

NCDOT determined it was reasonable to use the MUMPO projections “with several ample investigations into the propriety of using the data.”

4th Circuit Court of Appeal

The 4th Circuit Court of Appeals disagreed with the District Court Judge.

Court of Appeals found that the statement regarding the inclusion of the Project was incorrect and the government should have done a better job of disclosing the information to the public.

NCDOT feels that the Court of Appeals did not consider why the “inclusion” is insignificant.

Next Steps

NCDOT is asking the 4th Circuit Court of Appeals to rehear the case.

Hopefully, the Court will agree to rehear the case.

Next Steps

- NCDOT/Turnpike is moving forward with further environmental study and address the concerns raised by the Court.
- We requested our permits be suspended until we address these issue in Court or through our environmental review.
- We hope to address these concerns and restart the project in the early 2013.

Right of Way and Construction Update

ROW & Construction Update

Agenda

- Turnpike Authority Right of Way Process
- Initiatives taken for Monroe
- Where we are today
- Hardship Acquisition Requests
- FAQs

Right of Way Process

- Receive final ROW plans
- Initial contact – Acquisition/Relocation
 - Contractor prioritization
- Order title report & appraisal
 - Appraisal inspection
 - Appraisal preparation
 - Appraisal review & approval (agency)
 - 60-90 days

Right of Way Process

- Replacement housing calculation (RHP)
 - Locate three available comparables
 - DS&S inspections
- RHP review & approval (agency)
- Initiation of Negotiations
 - Present acquisition offer
 - Present relocation eligibility – 90-day Letter

Right of Way Process

- Agreement
 - Over \$500,000 – NCTA Right of Way Review Board
 - Over \$1,000,000 – DOT Secretary's Right of Way Review Board
- Prepare final report package
- Final report review and approval (agency)
- Request closing funds
- Clear title encumbrances
- Closing (subject and replacement)

Right of Way Process

- Deliver 30-day Notice to Vacate
- Property vacated & inspected
- Disconnect utilities
- Asbestos inspection and abatement
- Remove site improvements
- Payment of relocation claims

Right of Way Process

WHY DO WE FILE CONDEMNATION CASES? (Eminent Domain)

- Opinion of value
- Multiple property owners
- Title encumbrances
- Project schedule

Right of Way Process

- Condemnation recommendation & review
- NCTA Right of Way Review Board
- Prepare final report package
- Final report review and approval (agency)
- Request deposit check (appraised value)
- Filing map prepared

Right of Way Process

- Final report package submitted to Attorney General's office
- Review file documentation & prepare pleadings
- File condemnation – Clerk of Superior Court
- Court deposit (appraised value)
- Title transferred

Right of Way Process

- Deliver 30-day Notice to Vacate
- Property vacated & inspected
- Disconnect utilities
- Asbestos inspection and abatement
- Remove site improvements
- Payment of relocation claims

Right of Way Process

- Owner's right to withdraw deposit
- One year to file answer
- Ongoing negotiations
- Mediation
- Jury trial

Initiatives taken for Monroe

- ✓ Established right of way field office
- ✓ Identified parcels that could be acquired in their entirety
 - 84 “priority” parcels identified
 - Whole acquisition / Uneconomic remnants / Landlocked parcels
 - Voluntary acquisition
 - No condemnation until final ROW plans are available / revise appraisal

Monroe Bypass Right of Way Office



Located at 5419 Indian Trail Fairview Road,
Indian Trail, NC 28079
Office: 704-893-0131

Website www.monroeconnector-bypass.com

Monroe Initiatives

- ✓ WEEKLY DESIGN-BUILD TEAM MEETINGS
 - Address property owner / community concerns
 - Access roads
 - Driveways
 - Design revisions / right of way impacts

Where we are today

- Telephone contacts with all owners / displacees
- Complete parcels with offers as of May 3rd
- Offers between May 3rd and May 21st – case by case basis (hardship)

What constitutes a hardship?

- Illness
- Financial distress
- Job transfer

HARDSHIP REQUEST PROCESS

- Submit a letter explaining hardship
- Provide backup documentation
- Review committee
- Approval by Board of Transportation



NORTH CAROLINA DEPARTMENT OF TRANSPORTATION

How do I request hardship acquisition ?

The property owner shall submit a request for hardship acquisition in writing informing the Department of his/her hardship and the location of the property they feel encumbered by the project. The Right of Way Branch requires the property owner to submit information documenting the basis for the hardship acquisition request prior to requesting authorization.

Before any request for hardship acquisition can be approved, there are three conditions that must be met to meet Federal Highway Administration and Department of Transportation guidelines.

- 1) The Department must determine that a severe hardship exists for the property owner, which makes it unreasonable for the State to wait until the scheduled acquisition date to begin acquisition.
- 2) The Department must determine that the subject property is needed for the proposed project.
- 3) The Department must have available sufficient project funds to reimburse the property owner for the property acquired.

Examples of acceptable documentation to qualify for hardship acquisitions may include, where appropriate:

- 1) Doctor's statement: A doctor's statement clearly and fully describing why an owner or patient should relocate from the property from a medical viewpoint.
- 2) Financial statement: Where financial difficulties constitute the reason for acquisition, a reliable, accurate and complete discussion is appropriate.
- 3) Letter from employer: A letter from the employer certifying that the affected owner has been transferred to a specific location. A similar certification regarding loss of employment would likewise constitute adequate documentation.
- 4) Court records: Copies of documents relating to any legal actions, i.e., pending mortgage foreclosure, probate of estate, etc., which would provide support for the indicated hardship.
- 5) Income tax return: Verification by Department of Transportation personnel of that part of the return necessary to support the hardship situation will suffice in lieu of copies of the return.

In addition to the health, safety and/or financial hardship, the owner must also document and support an inability to sell the property for fair market value within a typical period of time. A letter from a realtor or listing service may provide this documentation. The price at which the property is offered for sale must be representative of fair market value. If the property has been offered at an unrealistic price, then the requirements of the Federal regulations have not been met.

Please submit your request for hardship acquisition and documentation to:

Jane C. Nelson
NCTA Right of Way Program Manager
1578 Mail Service Center
Raleigh, NC 27699-1578
(919) 707-2716

Thank you for your time
and attention.

Questions?