

SOUTHERN ENVIRONMENTAL LAW CENTER

Telephone 828-258-2023
Facsimile 828-258-2024
djgerken@selcnc.org

29 NORTH MARKET STREET, SUITE 604
ASHEVILLE, NC 28801-2934

Charlottesville, VA
Chapel Hill, NC
Atlanta, GA
Asheville, NC
Charleston, SC
Richmond, VA
Washington, DC

March 10, 2010

SENT VIA ELECTRONIC AND REGULAR MAIL

Wesley N. Huguen
Region 2 Project Management Office
P.O. Box 22368
Chattanooga, Tn. 37422-2368

Re: Comments on February 2010 Public meeting, Ocoee River Gorge Section, ADHS Corridor K (Relocated U.S. 64) in Polk County, TN

Dear Mr. Huguen:

These comments on the Context Sensitive Solutions and Transportation Planning Report processes for the Ocoee River Gorge section of Corridor K/US 64 in Polk County, TN are submitted on behalf of WaysSouth, the Western North Carolina Alliance, and the Southern Environmental Law Center. WaysSouth is a grassroots nonprofit organization working to promote responsible transportation practices that preserve the unique heritage and environment of Southern Appalachia. With more than forty organizations working with us, we represent over 1.2 million citizens, many of whom live, work, and recreate in Southeastern Tennessee and the surrounding region. The Western North Carolina Alliance is a non-profit organization with the primary goals of protecting and preserving the natural environment and mountain streams of Western North Carolina. The Western North Carolina Alliance is actively working to minimize the impact of regional transportation projects, like Corridor K, on Western North Carolina. SELC is a regional nonprofit organization working to protect the health and environment of the Southeast (Tennessee, Virginia North and South Carolina, Georgia, and Alabama). These comments should be considered supplemental to any other comments submitted by any of these organizations.

We welcome the opportunity to comment early in the planning process for the Ocoee River Gorge Section of Corridor K and appreciate TDOT's commitment to an inclusive and open public process for this project. We applaud TDOT for presenting a wide range of options to the public for comment and we strongly support Option 2a as a sensible approach to meeting the traffic need of Polk County without excessive cost or environmental degradation.

Purpose and Need Statement

We believe the purpose and need statement proposed for the Transportation Planning Report (TPR) warrants further consideration and refinement.

At the outset, we note that the heavy reliance on economic development as both a purpose and need for the TPR places a substantial burden on TDOT to study a range of economic development options in addition to highway development. The requirements of the National Environmental Policy Act will require TDOT to consider and study other strategies for fostering economic development in the tri-state region identified by the proposed TPR purpose statement.

In addition, the economic development “need” for this project is described almost entirely in generalities about the Appalachian Development Highway System (“ADHS”) and Corridor K as a whole, rather than specifics about this particular segment and whether any benefits that might be gained could justify the enormous financial and environmental costs.

For example, the 2008 Corridor K Economic Development Transportation Study, cited by the need statement, highlights some potential economic benefit for improving Corridor K, but it does not provide sufficient detail on the issue to enable informed selection among the Options under consideration. For example, the Wilbur Smith study emphasized that high shipping costs were a significant limitation on economic development and a major factor supporting the economic case for the project. (See Economic Development Transportation Study at 4.) Because the Options under consideration provide only a negligible difference in travel times, and thus transportation costs, however, TDOT will be hard pressed to select among those options based on that criteria. TDOT will need substantial additional study to help it differentiate among options with respect to the stated purpose and need of economic development.

The purpose of this project cannot be to provide a shorter or faster transportation route as none of the options under consideration provide any substantial benefit in that regard. Instead, the real purpose of this project is largely about safety and reliability of the existing roadway. Those concerns can be addressed on the existing footprint of US64 without cutting roadbed on a new path through the Cherokee National Forest.

The project purposes of providing a (1) safe and (2) reliable transportation route, in turn, are more achievable and better understood. Indeed, documentation already compiled by TDOT reveals that Option 2a likely will provide a more reliable travel experience than the current route under normal circumstances. Every option under consideration, including 2-lane versions of Options 2 and 2a, provides, after statistical accounting for terrain and truck volumes under the Highway Capacity Manual, acceptable Levels of Service (C or better) for the design year.

The purpose and need of improving safety has featured heavily in outreach related to this project, and we agree it is important. The extent of the remaining safety concern, however, is not clear. The data presented at the public meeting summarized crash data compiled as part of the 2006 Safety Audit prepared by TDOT. That Safety Audit went

on to make specific recommendations for improvements to the safety of the corridor, however, including spot improvements, clearer signage, turn lanes, passing lanes, pavement markings, bridge improvements and traffic signals. The Wilbur Smith study noted that some number of those suggested improvements were implemented, but the data presented at the public hearing does not identify which of those have been implemented and what impact they have had on safety concerns along US64. The University of Tennessee study which led to TDOT's recommendation to abandon its prior effort to construct a portion of Corridor K along US 64 noted particularly that "[a] more thorough analysis of the safety problem . . . is warranted. If isolated safety problems are the only real justification (and can be documented), a more limited scope project may be a better solution to address these specific problems."

The project purpose of improving system linkage requires further refinement and has the potential to be somewhat circular in its application. Despite suggestions to the contrary, there exists an east-west connector in the region – Highway 64. If Highway 64 provides inadequate transportation service for shipping traffic and residents of the region, then TDOT must assess whether those deficiencies can be improved, as proposed in Options 2 and 2a, or whether a new roadway is required. In addition, if TDOT's goal is to create more transportation options for an economic development region that, according to the purpose and need statement, expressly includes North Carolina and Georgia, TDOT must consider options that consider alternative routes through Georgia to provide the desired supplementary East-West linkage. Indeed, anecdotal evidence suggests that many residents and business in the region already are turning to those routes during the current rock slide remediation.

Finally, several of the project goals identified by the TPR provide little value to TDOT as it weighs competing options moving forward. For example, supporting the Strategic Highway Network is unobjectionable as an objective, but offers little guidance for choosing between alternatives as any of the options under consideration would be consistent with the requirements, such as they are, of the Strategic Highway Network. Designation as part of the Strategic Highway Network imposes no engineering restrictions which limit selection of any of the options under consideration. Similarly, serving the needs of the National Truck Network, not stated as an objective but frequently cited by TDOT, place geometrical requirements on design of the roadbed, but places no limits on the lanes or design speed of the project.

Options Considered

Option 2a stands out as a cost effective alternative for meeting the needs of Polk County and the region. In these hard budget times, ARC and TDOT must be judicious in the application of tax dollars to new road construction. According to the 2007 Cost-to-Complete report for the ADHS, TDOT needs an additional \$285.2 million in federal funds, above and beyond the multi-year authorization already provided by SAFETEA-LU, to complete unfinished sections of Corridor K in Tennessee. Meanwhile, Governor Bredesen's recent State of the State Address underscored that Tennessee faces a \$1.15 billion budget shortfall.

At public hearings and in presentations to the Citizen Resource Team, TDOT has suggested that targeted improvements to US64 necessary to bring it to a standard suitable for designation as a completed segment of Corridor K are not eligible for ARC funding, a possibility which would make Option 2a less financially attractive to TDOT, if not to taxpayers. We do not believe TDOT's concern on that point is warranted or, in any event, should serve as a limiting factor on the range of alternatives from which TDOT selects for this project.

First, while ARC funds are cost-to-complete funds not eligible for improvements to the ADHS system once completed, that prohibition applies to roadways completed with ARC funds in the first instance. (See ARC ADHS Q&A) Nothing in the Appalachian Regional Development Act (40 U.S.C. § 14501(a)) or even in the ARC Policy limits expenditure of ADHS funds to ADHS projects of a particular scope or prohibits use of ADHS funding on spot improvements to bring an existing roadway, built without ARC funds, to ADHS standards.

Second, if ARC has made a policy choice, not required by its authorizing legislation, to deny ADHS funding for focused improvements to existing roadways necessary to bring those roadways up to ADHS standards for final inclusion in the network, that decision to exclude alternatives which otherwise meet the purpose and need of a project carries potentially significant impacts to the human environment and is subject to NEPA documentation and decision-making procedures.

Third, even if ARC funds are unavailable to the state to complete spot improvements to Route 64, federal-aid highway funds are available as the segment is designated part of the National Highway System and a Strategic Highway Corridor. In any event, the state's 20% match on the more expensive options may well rival or exceed the full cost of conducting focused improvements to Highway 64 under Option 2a, especially after detailed construction and mitigation costs are assessed.

Indeed, it bears emphasis that all federal and state laws applicable to this project afford TDOT the flexibility and discretion needed to choose Option 2a with spot improvements on an existing two-lane footprint. Nothing in federal law or policy mandates that Corridor K be built as a four-lane highway or requires that it be constructed on a new footprint. Indeed, the Appalachian Regional Development Act places no restrictions on the scope and design of corridors in the ADHS. ARC Policy itself affords ample flexibility to design a two-lane roadway on the existing footprint. ARC policy directs only that the ADHS shall provide a "safe, economical transport network, adequate for the predicted type and volume of traffic to be served by the respective segments." (ARC Policy at 9.1) As noted, all the options, including a 2-lane Option 2a, achieve acceptable levels of service for the design year. Furthermore, ARC's objective of attaining an average travel speed of 50 miles per hour between major termini in the system can be met through targeted improvements to the existing US 64 even though some discrete segments through rugged terrain may fall below a design speed of 50mph.

TDOT has committed itself to exercising all the flexibility afforded to it in the design of roads like Corridor K to minimize cost and environmental degradation.

TDOT's commitment statement to Context Sensitive Solutions states that "Context Sensitive Solutions balances safety and mobility and the preservation of scenic, aesthetic, historic, environmental and other community values." (TDOT Environmental Procedures Manual at 2-2) A key principal of CSS directs TDOT to "[a]pply the flexibility inherent within national design standards." (Id.) The TPR should reflect this commitment and the flexibility allowed by state and federal law with respect to the appropriate design of Corridor K to choose Option 2a. In particular, TODT must ensure that the alternative is given a full decision-making context and that data gaps related to the economic development impact of this particular segment and any lingering safety concerns are flagged as priorities for ongoing study and disclosure.

Sincerely,

A handwritten signature in black ink that reads "DJ Gerken". The signature is written in a cursive, flowing style.

Austin DJ Gerken
Senior Attorney
On Behalf Of

WaysSouth
Jim Grode, Executive Director
1074 Arbor Drive
Lakemount, GA 30552

Western North Carolina Alliance,
Julie Mayfield, Executive Director
29 N. Market St., Suite 610
Asheville, NC 28801