



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Asheville Field Office
160 Zillicoa Street
Asheville, North Carolina 28801

August 18, 2011

Mr. John F. Sullivan, III, P.E.
Division Administrator
Federal Highway Administration
310 New Bern Avenue, Suite 410
Raleigh, North Carolina 27601

Dear Mr. Sullivan:

Subject: Request for Clarification Regarding Potential Impacts to Federally Listed Species for the Proposed Monroe Connector/Bypass Project, Mecklenburg and Union Counties, North Carolina, TIP Nos. R-3329 and R-2559

In our letter of July 29, 2010, in accordance with the provisions of section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1543) (Act), we concurred with your determination of "Not Likely to Adversely Affect" regarding construction of the subject project and associated impacts to the federally endangered Carolina heelsplitter (*Lasmigona decorata*) and its designated critical habitat. In that letter, we also stated the following:

However, obligations under section 7 of the Act must be reconsidered if: (1) new information reveals impacts of this identified action that may affect listed species or critical habitat in a manner not previously considered, (2) this action is subsequently modified in a manner that was not considered in this review, or (3) a new species is listed or critical habitat is determined that may be affected by the identified action.

We are concerned that the first criterion (new information) has been triggered for this project, and we are requesting further information and clarification.

We have been involved with proposals to construct a bypass of Monroe for more than a decade, and we have consistently stated our concerns about impacts to the Carolina heelsplitter and its designated critical habitat from the indirect and cumulative effects of induced growth in the Goose and Duck Creek watersheds. In past analyses for the North Carolina Department of Transportation (NCDOT) and, most recently, the North Carolina Turnpike Authority (NCTA), we provided comments and suggestions regarding the biological parameters we thought

important to determine the project's potential impacts. Our concurrence with your determination of "Not Likely to Adversely Affect" for the Carolina heelsplitter was based on the analyses and conclusions you generated and provided to us in your biological assessment. Your data showing only minor changes in impervious surface and water quality degradation between the build and no-build scenarios were critical to our concurrence.

In the fall of 2010, questions arose regarding the baseline information for your analysis of indirect and cumulative impacts and whether or not the Monroe Bypass and Connector facility was included in the no-build scenario. We repeatedly asked for clarification from both your staff and the NCTA regarding the model inputs and assumptions, and we were assured that the project was not included in the baseline for analysis of the no-build scenario. Further questioning of the local planners appeared to confirm the assertions by the NCTA staff.

On August 1, 2011, we received electronic copies of briefs from the Southern Environmental Law Center that were submitted to the U.S. District Court by the U.S. Attorney on behalf of the Federal Highway Administration (FHWA). In the June 30, 2011, "Memo of Law in Support of Defendant's Motion . . .," pages 33-34 state: "To the extent one statement regarding the content of the no-build model is incorrect . . ." Thus, it appears that the FHWA acknowledges the Monroe Bypass and Connector project was included in the basis for the no-build scenario. The State's June 30, 2011, brief to the court (on page 12) states: "The project was in MUMPO's long-range transportation plan roadway network," and further goes on to explain that although the project was included in the network, it is not an important factor. In addition, this same brief (on page 29) states: "Defendants took extensive steps to ensure the project did not unduly influence . . ." We believe these statements contradict statements that were made to us earlier regarding the project's inclusion in the no-build scenario and thus require clarification.

As we stated previously, your data showing minimal differences in key factors between the background of growth in the area and growth induced from your project was critical to our concurrence. We believe that including the project and its land-use impacts in the no-build scenario confounds any attempt to compare growth attributable to the project to the background development of the area. We request detailed answers to the following questions:

1. Is the project a component of the no-build scenario presented as the baseline for your analysis?
2. If the project is included, how was it determined that it is not an important factor as stated in the court documents?
3. Can you remove the project and its influence from the no-build scenario to make a true comparison between the build and no-build scenarios?

Our concurrence with your "Not Likely to Adversely Affect" determination was based on the analysis you provided. We do not understand how a fair comparison of impacts can be made between the build and no-build scenarios without removing the project from the baseline and reanalyzing project impacts. Upon submission of a new analysis, we will review it and your determination of effect and provide our conclusion.

If you have any questions about this request, please contact Ms. Marella Buncick of our staff at 828/258-3939, Ext. 237. We would appreciate being informed of your intent regarding this request. In any future correspondence concerning this project, please reference our Log Number 4-2-07-132.

Sincerely,



Brian P. Cole
Field Supervisor

Electronic copy to:

Ms. Liz Hair, Asheville Regulatory Field Office, U.S. Army Corps of Engineers, 151 Patton Avenue, Room 208, Asheville, NC 28801-5006

Mr. Chris Militscher, U.S. Environmental Protection Agency, 1313 Alderman Circle, Raleigh, NC 27603

Ms. Marla J. Chambers, Western NCDOT Permit Coordinator, North Carolina Wildlife Resources Commission, 12275 Swift Road, Oakboro, NC 28129

Mr. Brian Wrenn, North Carolina Division of Water Quality, Central Office, 2321 Crabtree Boulevard, Suite 250, Raleigh, NC 27604

Ms. Jennifer H. Harris, P.E., Staff Engineer, North Carolina Turnpike Authority, 1578 Mail Service Center, Raleigh, NC 27699-1578

Mr. Rudy Renfer, U.S. Department of Justice, Raleigh, NC

Mr. Jeff Weller, Ecological Services Division, U.S. Fish and Wildlife Service, Atlanta, GA

