APPENDIX I:
STAKEHOLDER LETTERS
Scoping Comments
April 25, 2008

Via U.S. Mail and E-Mail

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Re: Mark Clark Expressway – Scoping Comments

Dear Messrs. Kinard and Lee:

The Southern Environmental Law Center ("SELC") submits these comments on behalf of the Coastal Conservation League ("League") in response to the request by the South Carolina Department of Transportation ("SCDOT") and the Federal Highway Administration ("FHWA") for "scoping" comments on the draft Environmental Impact Statement ("EIS") to be prepared for the proposal to extend the Mark Clark Expressway (Interstate 526) by approximately 7.1 miles from Savannah Highway (U.S. 17) to the James Island Expressway (S.C. 30).

Introduction

The expansion of the Mark Clark Expressway will have a substantial impact on the environment. The impacts of this project include, but are not limited to, the potential filling of more than 100 acres of wetlands; two major crossings and accompanying degradation of the Stono River (a river already impaired for excessive amounts of pollution); fragmentation of important wildlife habitat, such as salt marsh; and the taking and degradation of the James Island County Park – one of the most important public recreation areas in Charleston County. In addition, the expansion of I-526 will have far-reaching secondary impacts through the inducement of substantial new development on Johns Island and its concomitant impact on the landscape and surrounding natural resources.
According to SCDOT, the purpose of the I-526 expansion project is to improve mobility in the surrounding areas by serving the anticipated future traffic growth. Preliminary needs identified for the project are to improve safety, connectivity, traffic flow, and hurricane evacuation routes on area roadways. See Draft Agency Coordination and Public Involvement Plan for Mark Clark Expressway at p. 2 (hereinafter referred to as the “Draft Agency Coordination and Public Involvement Plan”); see also 73 Fed. Reg. 1666 (Jan. 9, 2008).

Due to the acknowledged congestion of area roads and the significant environmental impacts associated with the expansion of I-526, the League has devised a different alternative to the proposed project with the goal of meeting the same project purpose of enhancing mobility, safety (less left turns and slower speeds), and connectivity on area roads. It is a “functional alternative,” meaning it is an option other than constructing another highway corridor within which to expand I-526. As opposed to constructing seven new miles of interstate highway to connect Savannah Highway and the James Island Expressway, the League proposes a far cheaper and more effective means of addressing traffic problems. Pursuant to this alternative, the existing local road network would be redeveloped at key locations to provide increased connectivity of local surface streets, giving drivers more choices for purposes of avoiding congestion on major thoroughfares. By giving drivers additional options for moving through the area, local traffic can be reduced on overburdened arterial roads and highways, which will enhance the mobility of vehicles needing to travel through these corridors.

Pursuant to the National Environmental Policy Act of 1969, it is clear that an Environmental Impact Statement for the expansion of a highway, like I-526, must carefully evaluate potentially viable functional alternatives to new highway construction. We believe a fair consideration of this new alternative will reveal that such an approach can address congestion more effectively – for less than half the price of the Mark Clark expansion – and in a shorter timeframe while, at the same time, providing even greater economic and redevelopment possibilities for the region.

Background regarding the Proposed Project

The proposed project includes the construction of approximately 7.1 miles of new roadways and bridges. The proposal is to build a four-lane, divided interstate highway with a median width of 48 feet. The expansion would begin at the present terminus for I-526 at S.C. 7 / U.S. 17 and would connect to S.C. 700 (Maybank Highway), S.C. 171 (Folly Road), and S.C. 30 (James Island Expressway). The proposed extension would cross the Stono River at two locations. Importantly, as discussed in more detail below, the Stono River is listed as “impaired” by the S.C. Department of Health and Environmental Control (“DHEC”) because of pollution problems relating to fecal coliform, dissolved oxygen, and copper. In addition to crossing the Stono twice, the construction would require the filling of approximately 91 to 109

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1 A copy of the Draft Agency Coordination and Public Involvement Plan for Mark Clark Expressway can be found at http://www.dot.state.sc.us/526/default.shtml.

2 The Stono River is designated as the Intracoastal Waterway at the northernmost crossing of the new highway.

The origins of the proposed project date back to the 1960s. In the mid-1960s, a transportation study was undertaken for the Charleston region by a number of local and federal agencies. FEIS, No. FHWA-SC-EIS-79-01-F at p. 8 (1981). The study culminated in 1968 with the development of a “Recommended Transportation Plan” for the region, which included what would later come to be known as the Mark Clark Expressway. Id. An EIS was finalized in 1972 for the portion of the project beginning at Virginia Avenue in North Charleston and extending westerly across I-26 and the Ashley River. Id. In 1981, an EIS was completed for the segment of the highway from Virginia Avenue in North Charleston easterly across the Cooper and Wando Rivers to a terminus with U.S. 17 in Mount Pleasant. Id. In 1995, a Draft Supplemental EIS was submitted for the same portion of proposed highway that is at issue now. The SEIS recommended the same alignment that had been chosen in the 1972 FEIS with a few adjustments due to the presence of the James Island County Park, which opened in 1990. This alignment did not move forward at the time due to a lack of funding. Draft Agency Coordination and Public Involvement Plan at p. 2 (Apr. 8, 2008). Now, SCDOT and the FHWA seek to move forward and address modern day congestion and growth issues with a plan that was hatched in the early 1970s, an era when new highways were seen as the exclusive answer to mobility issues.

According to SCDOT, the “purpose of the project, as defined in the previous environmental studies...is to improve the mobility in the surrounding areas by serving the anticipated future traffic growth.” Draft Agency Coordination and Public Involvement Plan at p. 2. Further, SCDOT has stated recently that the following “preliminary needs have been identified” for the project: “improve hurricane evacuation routes; improve safety; provide connectivity; and improve traffic flow on area roadways.” Id. SCDOT has also indicated that alternatives to be evaluated will include a no-build alternative; transportation system management approaches; alternative modes of transportation; upgrades to existing roads; and new corridors for this portion of I-526 that have not been studied previously. Id.

Financial Context

The financial context for the Mark Clark extension proposal is that SCDOT has a severe funding crisis. SCDOT has recently identified over $48 billion in highway and local mass transit needs for the period from 2010 to 2030. At the same time, the agency found that federal and state transportation funds are expected to provide approximately $19 billion during this same timeframe, leaving a 20-year shortfall of over $29 billion. This situation has been exacerbated recently by high gasoline prices, which many fear will lead to a decrease in driving and consequent drop in tax revenues for highway construction. Thus, it is essential that available resources be used wisely to fund projects that are cost effective and address legitimate transportation needs with long-term solutions.

3 See Draft South Carolina Comprehensive Multimodal Long-Range Transportation Plan (the “Multimodal Plan”), Executive Summary at p. 2. A copy of the Executive Summary can be found at http://www.scdot.org/inside/multimodal/multimodal_transplan.shtml.
Part of the reason for this funding crisis is that SCDOT has identified an urgent need for safety improvements on existing highways in the state. Id. at 11. According to SCDOT, nearly one-third of South Carolina’s primary and interstate highways and over one-half of the state’s secondary roads are currently in poor or mediocre condition. \(^4\) In addition, 1961 South Carolina bridges are obsolete and need to be replaced at an anticipated cost of $3.0 billion. Multimodal Plan at pp. 2, 9. Overall, there is a “significant backlog” of maintenance needs, totaling $20 billion for the period between 2010 and 2030. Id. at 2. Due in part to conditions on these poorly maintained roads, South Carolina has the eighth highest highway fatality rate in the nation. \(^5\)

According to a 2005 estimate made by Charleston County, the expansion of I-526 would cost approximately $420 million to build. See Charleston County Application to the South Carolina State Transportation Infrastructure Bank at p. 35 (hereinafter referred to as the “SIB Application”). As SCDOT itself has explained, the cost of highway construction projects can be expected to rise due to escalating costs. Based on price increases for the construction of highways over the past three years, including the rising cost of materials such as oil and asphalt, the cost of this project may climb to between $900 million and $1.3 billion by the time it is completed. In light of SCDOT’s budgetary problems and rising costs, it is unclear how the additional funds that will be needed to complete this project will be raised.

Moreover, limited funds for SCDOT projects will now be prioritized based on the Department of Transportation reform legislation, which was enacted by the South Carolina Legislature in 2007 to encourage sound infrastructure investments by requiring that such decisions be made in the context of a statewide plan. Following the new mandate to prioritize infrastructure investments, and in light of the substantial statewide transportation funding needs, the deteriorating state of South Carolina’s existing highways and roads, and the budget shortfall, cost effective alternatives to the expansion of I-526 that meet the project’s purpose of enhancing mobility deserve careful consideration.

**Overview of Regulatory Requirements**

Pursuant to the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332 (2006), the EIS must explore a reasonable range of potential alternatives to meet the primary objective of the Mark Clark project. In fact, the primary purpose of the EIS is to carefully explore a reasonable range of location and functional alternatives that meet some or all of the primary project purposes, including a “no-action” alternative and compare their overall relative direct and indirect environmental impacts. 40 C.F.R. §§ 1502.14(d), 1508.25(b). Harm to the environment, and the relative degree to which each alternative will meet the project purpose over time, including foreseeable induced development as a result of this major highway construction project must be considered as part of this study. 23 C.F.R. §§ 771.105 (b), 771.123 (c).  


The EIS is a prerequisite to, and the basis for, the review by the U.S. Army Corps of Engineers ("Corps") of any eventual permit application SCDOT may seek for the Mark Clark project. Once the EIS has been completed, pursuant to the Clean Water Act ("CWA"), a Section 404 wetlands fill permit may be issued only for the "least damaging practicable alternative" that will meet the basic purpose and need for the project. Also noteworthy, the U.S. Environmental Protection Agency ("EPA") may issue a veto of a permit proposal, even one claimed to be the "least damaging," when its adverse environment impacts are unacceptably high. 33 U.S.C. § 1344(c) (2006).

As stated recently by SCDOT, the "purpose of the project, as defined in the previous environmental studies...is to improve the mobility in the surrounding areas by serving the anticipated future traffic growth." Draft Agency Coordination and Public Involvement Plan at p. 2. Thus, to the extent the purpose of the project is ultimately determined to be increased mobility in the area of concern, the environmental study for the project must look at all reasonable potential options for improved mobility, including alternative strategies such as the League's, in addition to constructing new highway corridors between Savannah Highway and the James Island Expressway. Ultimately, only the least environmentally damaging new road corridor or functional alternative that facilitates increased mobility in this area can be permitted.

Closely related to Section 404 of the CWA is the Section 401 certification process. Pursuant to this process, DHEC must certify that the project will not harm water quality, taking into account feasible alternatives, wildlife habitat in the area, and other factors. A Section 401 water quality certification is a prerequisite to the issuance of a Section 404 permit, and may be denied when the project will have unacceptably high adverse impacts on aquatic resources. S.C. Code Regs. 61-101 (F)(5); see also S.C. Code Regs. 61-101 (F)(3)(c). Here, it will be particularly difficult for SCDOT to demonstrate that the short and long term impacts of the project will not result in unacceptable adverse impacts where the proposal threatens to exacerbate already present water quality problems in the Stono River, which currently fails to meet water quality standards for dissolved oxygen, fecal coliform, and copper. See South Carolina's 303(d) List (2006) and Draft 303(d) List (2008).

In addition to NEPA and the CWA, there are other important federal laws relevant to this project that must be taken into account for purposes of the alternatives analysis to be conducted in the EIS for this project. Section 4(f) of the Federal Highway Transportation Act is relevant here because the proposed alternative highway routes for the extension of I-526 may well bisect a publicly-owned land established for conservation purposes, such as James Island County Park or the West Ashley Greenway. In fact, of the four alternative routes studied in the SEIS in 1995, three of the four alternatives, including the preferred alternative, bisected the park and resulted in the taking of as much as 45 acres of parkland. In addition, all four of the alternatives identified in the SEIS traversed the West Ashley Greenway. SEIS at pp. V-1 through V-6. Pursuant to Section 4(f), the consideration of any such route would require a showing that there is no "prudent and feasible" alternative means of addressing the identified transportation need. Thus, crossing any protected property, such as James Island County Park and the West Ashley Greenway, with a highway would be illegal unless a compelling case can be made demonstrating

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6 The 2006 and 2008 lists of impaired waters can be found at http://www.scdhec.net/environment/water/tmdl/.
that there is no other option to alleviate traffic congestion in the targeted areas.

Another important potential impediment to a new highway is the Endangered Species Act, 16 U.S.C. § 1531, et seq., which prohibits issuance of a federal permit for a project that would “take” endangered species, regardless of the potential lack of feasible alternatives. Numerous endangered species may be affected by the proposed highway project including wood storks, bald eagles, manatees, and short-nose sturgeon. Potential impacts to the habitat for these species must be carefully evaluated to ensure that the project is not likely to jeopardize the continued existence of any listed species.

In addition to natural resource impacts, it is important that the EIS carefully consider the short and long term impacts on the human environment in the project area. The EIS must consider the foreseeable development impacts of the proposed project on impacted communities, such as Johns Island and James Island. A recent study forecasts that “Johns Island will experience significant increases in the number of households and residential-serving uses in the years ahead” due in part to “improved interstate access” and that “Johns Island will see 20 to 40 percent more population growth than predicted” by local officials. Mark Clark Community Impact Assessment, EDAW AECOM at pp. 2, 15 (hereinafter referred to as the “EDAW Study”). The EIS must carefully evaluate this type of growth, which will be induced by the proposal, and its accompanying impacts.

In evaluating impact to local communities, the EIS must consider the effects on minority populations. The Executive Order on Environmental Justice, Exec. Order No. 12898, 59 Fed. Reg. 7629 (1994) requires that any highway that affects a minority community must be evaluated for disproportionate adverse impacts on such communities. According to the EDAW Study, over 25 percent of James Island’s population is African American, and 50 percent of Johns Island’s population is comprised of minority communities. Id. at p. 4. The recent history of the coast of South Carolina is filled with examples of minority communities that have been displaced when bridges or highways lead to intensified development pressure and the loss of “heirs property” due to increased taxes and other factors.

**NEPA and Purpose and Need**

The project purpose and need statement is a key component of an EIS because it establishes the universe of alternatives to be considered to satisfy the fundamental reason for the project. To ensure consideration of a reasonable range of alternatives, and the eventual identification of the least damaging practicable alternative, it is essential that the project purpose be stated neutrally and without an artificial level of specificity. In this situation, with the proposed project having to comply with both NEPA and Section 404 of the CWA, it is even more important that the basic project purpose be properly articulated so as not to artificially constrain the Corps from exercising independent judgment in identifying the basic purpose of the project and using it as the touchstone for evaluating the feasibility of the various potential alternatives. Satisfying these basic legal requirements for the alternatives analysis will maximize the chance of a permit being issued without further delay at the end of the EIS process.
As discussed previously, SCDOT has recently suggested that the “purpose of the project...is to improve the mobility in the surrounding areas by serving the anticipated future traffic growth.” Draft Agency Coordination and Public Involvement Plan at p. 2. The League recognizes that traffic problems do, in fact, exist on area roads, such as Savannah Highway, Folly Road, Maybank Highway, and Main Road, and therefore would not object to a project purpose that focuses on the enhancement of mobility in the area. A further refined statement of project purpose might be drafted in the following way: “To provide increased mobility to serve residents, businesses, and tourists traveling in or through western Charleston County on Savannah Highway, Maybank Highway, Folly Road, and Main Road in a manner that protects the environment, provides economic opportunity, and preserves the historic and social setting of the affected region.”

It would not, however, be appropriate to establish the completion of the Mark Clark Expressway as the purpose of the project. Such a statement of project purpose would be overly narrow because it could be used to foreclose the consideration in the EIS and the 404/401 permitting process of other solutions for addressing mobility in the area that do not involve the construction of a highway connecting Savannah Highway and the James Island Expressway. Further, the statement of purpose should not include secondary purposes, such as hurricane evacuation, for a proposed project that will lead to increased development and population growth on barrier islands such as Johns Island and that, when completed, is projected by the Berkeley-Charleston-Dorchester Council of Governments (“BCD COG”) to provide a failing level of service. See BCD COG 2030 Scenario with Mark Clark (attached hereto as Exhibit A).

The Professional Transportation Planner’s Proposed Functional Alternative

Due to the environmental and financial constraints involving the expansion of I-526 from Savannah Highway to the James Island Expressway, we believe the EIS should include a rigorous examination of the functional alternatives that can achieve the same project purpose of enhancing mobility in the area. Because the League recognizes that a number of roads in the study area are, in fact, congested, and that the congestion will continue to get worse over time, the League hired Glatting Jackson Kercher Anglin, a leading, nationally recognized transportation consulting and design firm,7 to recommend viable alternatives to the extension of the Mark Clark Expressway. Glatting Jackson was directed to find an alternative that would solve the traffic problems on the most congested roads west of the Ashley and on James Island and Johns Island; would have less impact on the community and the environment than the proposed extension of I-526; and would provide economic opportunities to local communities.

After six days of interviewing more than 400 interested stakeholders, Glatting Jackson presented its alternative to the public.8 The central concept of the alternative is to redevelop problem areas along the existing road network in West Ashley, James Island, and Johns Island to give drivers more choices to get to their destinations than they currently have. By reconnecting

7 Information about Glatting Jackson and the services they provide can be found at http://www.glatting.com/.

8 A more complete description of Glatting Jackson’s functional alternative, including drawings, can be found at http://www.newwaytowork.com/.
existing surface streets, the alternative enables drivers to avoid choke points on congested streets that are meant to be used as throughways. These connected secondary streets give drivers traveling locally opportunities to get off the main arterial roads and, in this way, reduce traffic congestion on arterial roads. This enables commuters to more easily travel throughout the region. The consultants devised this alternative approach by examining the types of trips that drivers on roads, such as Savannah Highway, Folly Road, and Maybank Highway, are currently making.

Based on figures from the BCD COG, the majority of vehicles traveling on the area’s most congested arterial roads are making local trips – trips that either originate and/or terminate on these high-use corridors. There are two reasons for the dual use of these roadways. First, commercial destinations are highly concentrated on arterial roads like Savannah Highway, Maybank Highway, and Folly Road. Second, there are no secondary streets for travelers making local trips to use in order to avoid the congested arterials. As a result, through trips needing to travel longer distances on these roadways are slowed down by local drivers who need to run daily errands or travel to and from work or school on the same roadways. These two types of trips are incompatible with each other and require two different types of transportation networks to help all drivers travel efficiently.

Savannah Highway (U.S. 17)

According to the BCD COG, by 2030 only 44 percent of the vehicles traveling on Savannah Highway will be moving all the way through the area of concern. The remaining 56 percent of the traffic on Savannah Highway will be comprised of local trips that begin and/or terminate at destinations along the road itself. Currently, the neighborhood streets on either side of U.S. 17 do not provide a connected parallel street network to Savannah Highway. Therefore, there are no options for reaching local destinations along the Savannah Highway corridor other than U.S. 17, itself. For example, if a resident living in the neighborhood behind the Kmart on Savannah Highway wants to drive to Kmart, he or she must drive onto U.S. 17 in order to access the store. If the secondary streets along the U.S. 17 corridor were redesigned to provide more connectivity and additional choices for reaching desired destinations, local residents could travel to Kmart on neighborhood streets and could avoid using Savannah Highway. By connecting the secondary streets, Glatting Jackson’s functional alternative could enable as much as 56 percent of the projected 2030 vehicle traffic to reach necessary destinations without using Savannah Highway. This is particularly important to heavily traveled intersections, like the intersection of Main Road and U.S. 17. Alleviating traffic congestion at this heavily traveled intersection by providing alternative intersections for travelers could significantly reduce the number of accidents that occur at this location annually. The nodes identified by Glatting Jackson along Savannah Highway that would have the most functional benefits are the intersection of U.S. 17 and Main Road, the current terminus of I-526 and U.S. 17, U.S. 17 at the location of the Kmart shopping center, U.S. 17 at the St. Andrews shopping center, and U.S. 17 at the Ashley River Bridges.
Folly Road

According to the BCD COG, by 2030 50 percent of the traffic on Folly Road between the James Island Connector and the Wappoo Bridge will be local traffic, and 50 percent will be through traffic. Providing a street network is important for Folly Road, but even more important are the benefits that this street network would provide to the overburdened intersections, including the intersection of Folly Road and Maybank Highway and the intersection of the James Island Connector and Folly Road. Glatting Jackson has redesigned these intersections and proposed enhancing the street networks in a way that could significantly reduce the stress on these current and future pressure points.

Maybank Highway

According to the BCD COG traffic models, traffic on Johns Island will get worse if I-526 is constructed. In particular, traffic on Maybank Highway will get significantly worse. In fact, if I-526 is built, Maybank Highway and River Road will both become Level of Service F roadways. See Exhibit A. The City of Charleston has created a plan for Johns Island (the “Johns Island Plan”) that evaluates future land use and transportation options for the island in order to find a way to address projected future traffic problems on Maybank Highway. The Johns Island Plan, which was passed by City Council in the fall of 2007, provides for the enhancement of the network of streets that support Maybank Highway. The Plan recognizes that by 2030 the COG projects that 62 percent of the trips on Maybank will be local trips; and therefore, City Council has adopted a functional approach like that of Glatting Jackson’s, to build a network of streets to allow drivers making local trips to use an alternative to Maybank Highway. This will result in a significant alleviation of congestion for those commuters traveling through the corridor to a destination off of Johns Island.

Summary of the Professional Transportation Planner’s Proposed Functional Alternative

As proposed by Glatting Jackson, enhancement of the local network of streets that support Savannah Highway, Folly Road, and Maybank Highway would have minimal to no impact on residential or commercial properties, unlike the construction of the 7.1-mile proposed I-526 extension. Moreover, many of the commercial centers along these major arterial roads where traffic congestion currently exists are ripe for redevelopment. As these commercial centers redevelop, it would be relatively simple for these areas to connect to the local street grid. By establishing connections to neighborhood streets, redevelopment of this kind can not only reduce traffic on major thoroughfares, but it can also bring more jobs, shopping, and services closer to residents. In doing so, such redevelopment can address the urban blight of deteriorating strip mall development of the previous generation and spur new economic growth for West Ashley, James Island, and Johns Island. In the SIB Application, Charleston County cites anticipated economic benefits from the expansion of I-526 to support its request for funding, yet the functional alternative set forth herein can more effectively spur economic growth in community centers at less than half the cost of the Mark Clark Expansion ($207 million versus

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9 A copy of the Johns Island Transportation Plan is attached hereto as Exhibit B.
Further, as proposed by Glatting Jackson, the redevelopment of these areas will also provide dense residential and commercial development that could easily support public transit, further reducing the traffic demands on the arterial roads.

Although a functional approach to solving traffic problems is a relatively new strategy, it is not simply theoretical. It can and has achieved real, on-the-ground results. In fact, these same concepts have been applied successfully in many other contexts. In Atlanta, for example, EPA and the state of Georgia studied to constructing a major segment of a proposed outer beltline project. The Northern Sub-Area Study and Georgia 400 Corridor Analysis, prepared for the Georgia Regional Transportation Authority and the Georgia Department of Transportation by Parsons Brinckerhoff Team (Nov. 2003). The study concluded that strengthening the existing road network with increased connectivity combined with better coordinated land use and transportation planning in the area would more effectively relieve congestion at less cost to the taxpayers than the proposed beltway — and the beltway project was ultimately taken out of the Atlanta area long range transportation plan. Id. Not only has this type of approach proven effective in similar settings, but the City of Charleston has applied these same concepts for redevelopment in its own planning efforts, such as the improvement project described above for Maybank Highway.

In sum, Glatting Jackson’s alternative more effectively addresses mobility, costs less, could be implemented much sooner, and would cause only a small fraction of the environmental damage of the proposed new highway, which would require the filling of vast areas of wetlands, impacts to water quality, and the likely destruction of valued public spaces, such as James Island County Park and the West Ashley Greenway. Furthermore, the alternative proposed by Glatting Jackson would provide significantly more economic development opportunities to the area within Charleston County’s Urban Growth Boundary than the extension of I-526 would.

**Potential Viable Functional Alternatives Must be Considered in the EIS**

It is beyond question that the EIS for the expansion of I-526 must carefully evaluate a potentially viable functional alternative to a new highway in the project area. CEQ regulations mandate that “all reasonable alternatives” be considered in an EIS. 40 C.F.R. § 1502.14 (a), (c) (2006); 23 C.F.R. §§ 771.123(c), 771.125(a)(1); 33 C.F.R. § 325, App. B § 9(b)(5). The range of alternatives that must be included in an EIS is dictated by the stated primary purpose of the proposed action, which here is the promotion of mobility in the area of concern. See Sierra Club v. U.S. Dept. of Transportation, 310 F. Supp. 2d 1168 (D. Nev. 2004); NRDC v. Callaway, 524 F.2d 79, 93 (2d Cir. 1975).

Caselaw has further clarified the requirement to consider functional alternatives in the context of a proposed new highway. As the court found in Keith v. Volpe, 352 F. Supp. 1324, 1336 (D. Cal. 1972), a highway project’s EIS “should consider all possible alternatives to the proposed freeway, including changes in design, changes in the route, different systems of transportation and even abandonment of the project entirely.” The central consideration is whether the functional alternative will actually meet the project’s goals, thereby making it reasonable to consider. For example, in Rankin v. Coleman, 394 F. Supp. 647 (E.D.N.C. 1974) the court declared an EIS deficient for failure to consider functional alternatives. That case
involved a proposal to improve and replace portions of a state highway on the Outer Banks of North Carolina. The agency was reprimanded for failing to adequately consider improving an existing mainland road, constructing a bridge to ease traffic flow, and widening existing island roads. Id. at 658-59. The court also stated that “[e]ach alternative should be presented as thoroughly as the one proposed by the agency, each given the same weight so as to allow a reasonable reviewer a fair opportunity to choose between the alternatives.” Id. at 659.

Similarly, in Coalition for Canyon Preservation v. Bowers, 632 F.2d 774 (9th Cir. 1980), an EIS for proposed new highway construction was held insufficient for failing to consider the functional alternative of upgrading existing highways. The court held that “the alternative of an improved and widened two-lane facility was both reasonable and obvious, and that therefore the EIS is deficient.” Id. at 784. Also, in Davis v. Mineta, 302 F.3d 1104 (10th Cir. 2002), the court invalidated a highway project NEPA document for “summarily” rejecting various functional alternatives. The agency discarded the alternatives because “standing alone [they] would not meet the purpose and need of the Project.” Id. at 1120 (emphasis in original). The court disagreed, holding that the traffic studies relied upon by the agency provided an “insufficient basis for failing to consider” functional alternatives. Id.

**Direct, Secondary, and Cumulative Impacts Must Be Carefully Considered in the EIS**

In addition to scoping issues related to purpose and need and alternatives, we urge that the impact analysis be suitably broad to be able to fully and fairly compare the potential location, mode, and functional alternatives. To ensure that an EIS fulfills the purposes underlying NEPA it “shall provide a full and fair discussion of significant environmental impacts and shall inform decision makers and the public of the reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R § 1502.1. A full and fair discussion of environmental impacts includes a discussion of direct, indirect, and cumulative impacts for a given project. Id. § 1508.25(c)(3).

Here, the construction of more than seven miles of new interstate highway would result in significant direct, secondary, and cumulative impacts to the environment. The direct impacts alone would be substantial. According to the SEIS, up to 109 acres of wetlands would be filled by the expansion of I-526, including up to 62 acres of freshwater wetlands and up to 47 acres of salt marsh and other coastal wetlands. SEIS at p. ii. In addition, any new highway corridor selected to connect Savannah Highway and the James Island Expressway would require two crossings of the Stono River, which is already listed as impaired for a number of parameters, including fecal coliform, dissolved oxygen, and copper. The expansion of I-526 will directly worsen already existing water pollution problems in a number of ways, including the filling of aquatic resources and runoff from the road itself.

In addition to aquatic impacts, approximately 67 to 77 acres of upland habitat including live oak/mixed hardwood, pine/mixed hardwood, pine forest, and human dominated areas will be eliminated. Some of the 45 acres of wetlands and uplands to be affected are likely to come from within the boundaries of James Island County Park as three of the four alternative routes evaluated in the SEIS bisected the park with varying degrees of impact. James Island County, which is a Section 4(f) property, is the most popular park in Charleston County with over
300,000 visitors every year. In addition to its recreational benefits, the park generates a significant amount of revenue for the county due to the presence of its marsh-front cottages, which can be rented, and the Holiday Festival of Lights. According to the Charleston County Park and Recreation Commission, campground visitors to the park spend $4 million in the local economy annually. The construction of an interstate through the park would obviously destroy these benefits to the community.

The freshwater wetlands, marshes, tidal creeks, the Stono River, and terrestrial habitats in the project area also contribute greatly to the recreational, aesthetic, and fish and wildlife resources of the area, and the expansion of I-526 in this area would result in significant effects. In terms of wildlife, the EIS must carefully evaluate impacts to species of concern that may inhabit the area such as wood storks, painted buntings, manatees, shortnose sturgeon, the island glass lizard, bald eagles, and others. In addition, the loss of so many wetlands raises substantial concerns regarding impacts to estuarine dependent and anadromous fishery resources.

In addition to these impacts, the SEIS explained that noise levels would increase substantially at 65 to 95 residences and that federal noise abatement criteria would be exceeded at 19 to 31 receptor locations. SEIS at pp. ii. Due to continued growth since the completion of the SEIS, the numbers of residences affected by the expansion of I-526 has no doubt increased. In addition to affecting residences, noise from the highway will also affect nearby schools and businesses.

In addition to evaluating direct impacts of the project, the EIS must consider the project’s secondary, growth-inducing impacts. These include both induced traffic demand and changes in development patterns on a vast scale. These impacts can equal or exceed the direct impacts of a highway project, especially if the chosen route opens up rural areas, like Johns Island. For example, as previously noted, the EDAW Study reveals that the expansion of I-526 will lead to 20 to 40 percent more population growth than predicted by local officials. EDAW Study at p. 15. This induced growth on Johns Island and its accompanying impacts to surrounding resources may well have a greater negative impact on Johns Island and its environment than the direct impacts from the mere construction of the highway. These secondary impacts and their resulting effects on air quality, water quality, wildlife habitat, open space, and farmland must be carefully evaluated and compared for all proposed alternatives.

In comparing the construction of a new highway corridor with the type of functional alternative recommended by the League, it is clear that the new highway would dramatically increase both the direct and secondary adverse environmental impacts relative to redevelopment of existing road networks. The increased direct impacts include increased habitat fragmentation, especially of larger, more valuable blocks, and disruption of wildlife migration, greater interruption of water flow, reduced surface water connectivity, increased human access into previously inaccessible areas, new pathways for invasive species and water quality degradation from highway runoff and chemical spills into previously undisturbed areas. See Road Ecology, Science and Solutions, Island Press at p. 389 (2003). Even though much of the new highway corridor here would traverse developed areas in West Ashley and James Island, it would also directly impact large expanses of marshlands and would lead to substantial secondary, induced development-related impacts on Johns Island.
We believe that a full and fair consideration of the functional alternative is required by NEPA and that such an evaluation can be expected to show that the redevelopment of existing road networks at key locations throughout the project area can accomplish the project purpose of enhancing area-wide mobility, can spur substantial economic opportunities in much needed areas, and can be completed in less time and for substantially less money than the construction of 7.1 miles of new interstate highway. Moreover, in light of the fact that the functional alternative involves the redesign of already developed areas as opposed to constructing a highway through undeveloped marshes, freshwater wetlands, and popular public recreation areas, it can be expected that any new highway corridor connecting Savannah Highway and the James Island Expressway will involve a far greater impact on the environment, especially when the induced secondary impacts of increased development are taken into account. In these circumstances, federal statutes, such as the Clean Water Act and the Department of Transportation Act, require the selection of the least damaging practicable alternative.

**Conclusion**

We appreciate the opportunity to submit these comments at the scoping phase for the I-526 expansion project and look forward to following closely the development of the EIS for this highly controversial proposal. It is our expectation that the functional approach advanced here will receive the same careful evaluation as the construction of seven new miles of interstate highway, as the National Environmental Policy Act, the Clean Water Act, the Department of Transportation Act, and other federal and state laws mandate. We believe that a fair vetting of the reasonable and feasible alternatives, and their relative positive and negative impacts, will reveal that a functional approach to the current traffic issues will provide the greatest opportunity for solving the transportation, economic, environmental, and social issues presented for careful study in the EIS.

Sincerely,

[Signature]

Christopher K. DeScherer
Senior Attorney

cc: Chuck Hightower, DHEC
    Mark Giffin, DHEC
    Susan Davis, SCDNR
    Bob Perry, SCDNR
    Kay Davy, NOAA Fisheries
    Mark Caldwell, USFWS
    Michael Patrick, USACE
    Ramona McConney, USEPA
    Robert Lord, USEPA
    Megan Desrosiers, CCL
    Julie Hensley, Charleston County Park & Recreation Commission

Enclosures

* Not admitted to practice in South Carolina
June 26, 2008

Mr. Randall D. Williamson  
Environmental Engineer  
P. O. Box 191  
Columbia, SC  29202-0191

Dear Mr. Williamson:

First of all, I apologize for the late response to your May 13, 2008 letter to Mayor Riley inviting the City of Charleston to be a participating agency in the environmental review process for the Mark Clark Expressway project. The City is indeed interested in being a participant in the review process for the Mark Clark Expressway and we would welcome the opportunity to work with SCDOT on this project. Please don’t hesitate to contact me should you have any questions regarding this matter.

Sincerely,

[Signature]

Hernan E. Peña, Jr.  
Director

HEP, Jr.:jc

c:  David Kinard  
    Dan Hinton
Dear Jennifer,

Thanks again for taking my call this morning concerning the possible routes for the Mark Clark Expressway and our Dill Sanctuary. As mentioned, we will appreciate being apprised of any meeting at which the issue of roadway construction on our Dill property may be discussed. My contact information is below:

Best, John

John R. Brumgardt, Director
The Charleston Museum
On Charleston's Museum Mile!
360 Meeting Street
Charleston, SC 29403-6297
(843) 722-2996, Ext. 222
FAX: (843) 722-1784
October 23, 2008

Via U.S. Mail and E-Mail

Mr. David A. Kinard, P.E.
Project Manager
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P.O. Box 191
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kinardda@scdot.org

Mr. Robert Lee
Division Administrator
Federal Highway Administration
1835 Assembly Street, Suite 1270
Columbia, SC 29201
bob.lee@fhwa.dot.gov

Re: Mark Clark Expressway – Comments on Draft Purpose and Need Statements

Dear Messrs. Kinard and Lee:

On behalf of the Coastal Conservation League ("League"), the Southern Environmental Law Center ("SELC") submits these comments on the draft purpose and need statements for the proposed expansion of the Mark Clark Expressway that were circulated during the agency coordination meeting on October 14, 2008. We have the following concerns and recommendations.

1. References to "regional mobility" and the "regional transportation system" in the statement of project purpose should be deleted. As explained in our scoping comments, the project’s purpose and need statement is a key component of an Environmental Impact Statement ("EIS") because it establishes the universe of alternatives to be considered to satisfy the fundamental reason for the project. As such, an agency’s failure to properly define the project’s purpose makes proper consideration of alternatives impossible. See City of New York v. Dept’ of Transportation, 715 F.2d 732, 743 (2d Cir. 1983) (it is arbitrary for an agency “to narrow the objective of its action artificially and thereby circumvent the requirement that relevant alternatives be
considered”); Simmons v. United States Army Corps of Eng’rs, 120 F.3d 664, 666 (7th Cir. 1997) (“One obvious way for an agency to slip past the strictures of NEPA is to contrive a purpose so slender as to define competing ‘reasonable alternatives’ out of consideration (and even out of existence). . . . If the agency constrains the definition of the project’s purpose and thereby excludes what truly are reasonable alternatives, the EIS cannot fulfill its role”).

In its draft statement of project purpose, the South Carolina Department of Transportation (“SCDOT”) and the Federal Highway Administration (“FHWA”) identify “[i]mproving regional mobility” as a primary concern to be addressed by the project and provide that a purpose “of the project is to increase the capacity of the regional transportation system.” See Draft Statement of Purpose and Need at p. 3 (emphasis added). We are concerned about the focus on regional mobility and the regional transportation system because this statement of project purpose could be interpreted in a manner that would limit the range of alternatives considered to the construction of a major expressway-type highway segment connecting to a similar existing highway in the Charleston region. This approach would eliminate consideration of project alternatives that could address congestion, safety, and mobility in a specific part of the greater Charleston region, which is the actual central underlying purpose of this project.

It is impermissible for an EIS to articulate the project purpose in a way that essentially mandates only the consideration of expressway alternatives that link “Point A to Point B.” By including the references to regional mobility, the draft purpose and need statement artificially constrains the consideration of a reasonable range of alternatives and strays from the core project purpose to deal with congestion in a defined geographic area. After all, if enhancing regional mobility were the true central purpose of the project, the geographic and functional range of alternatives to be considered would be almost limitless. This would render the EIS useless as a decision-making and public disclosure tool. See Citizens Against Burlington, Inc. v. Busey, 938 F.2d 190, 196 (D.C. Cir. 1991) (an agency may not “frame its goals in terms so unreasonably broad that an infinite number of alternatives would accomplish these goals and the project would collapse under the weight of the possibilities”).

To ensure a full consideration of project alternatives, we request that all references to regional mobility and the regional transportation system be deleted and that the statement of project purpose focus on solving congestion, safety, and mobility issues in a defined geographic area, such as West Ashley, James Island, and Johns Island.

1 Although we support a project purpose of enhancing mobility in a specific geographic area in order to solve traffic congestion and to facilitate efficient access to residences, businesses, and other services, it would not be appropriate to have a goal of simply increasing vehicle miles traveled in the region for its own sake.
2. References to hurricane evaluation should be deleted from the statement of project purpose. The inclusion of hurricane evacuation as a component of the statement of purpose for this project also should be omitted. Although hurricanes pose an obvious danger to coastal areas throughout the Southeast and other coastal regions of the country, it is unwise to assume that this threat can always best be addressed simply by building more highways. In fact, here the opposite is true. As opposed to aiding evacuation efforts, the construction of new highways in rural areas like Johns Island will put even more people and infrastructure at risk by fueling more development in the areas most vulnerable to severe weather. In addition, the project will not likely aid overall regional hurricane response by funneling even more traffic onto I-26 and exacerbating the existing chokepoint at the intersection of I-526 and I-26.

There are far more effective and financially sound ways to enhance hurricane response. If this purpose were to be included in the EIS, it would require examination of non-highway solutions and other components of emergency response to address evacuation needs. This would greatly expand the range of alternatives that must be considered in the EIS.

Further, including hurricane evacuation in the statement of project purpose leaves the impression that the agencies may be using fear tactics to sell this project to the public. Such an approach would distract attention from more practical and cost-effective hurricane response strategies and more effective long-term solutions to traffic congestion in the project area.

3. The section of the purpose and need statement describing the “history of the Mark Clark Expressway project” biases the EIS in favor of the highway expansion. NEPA requires federal agencies to implement NEPA in an unbiased manner. *Washington County v. United States Dep’t of the Navy*, 317 F. Supp. 2d 626, 631 (E.D.N.C. 2004) (“before making a decision that will affect the environment, an agency must take into account the effects of its action on the environment, providing … fair and impartial consideration”) (emphasis added).

In discussing the history of the Mark Clark Expressway, SCDOT and FHWA state that the project, which was envisioned in an EIS prepared in 1972, “was determined to be a key link in the network of freeways” in the Charleston metropolitan area; “was determined essential to the Charleston Area Transportation Study (CHATS) plan”; and that “several other vital segments of the transportation plan hinged upon a freeway being constructed in this locality.” Draft Purpose and Need Statement at p. 1 (emphasis added). The document goes on to explain that a draft Supplemental Environmental Impact Statement (“DSEIS”) was prepared for the currently proposed expansion of the Mark Clark Expressway in 1995, and the agencies note that the DSEIS “recommended the same alignment that had been chosen in the 1972 FEIS, with a few adjustments.” *Id.* (Emphasis added). Further, the only reason provided for why this highway segment has not already been constructed is a lack of funding. The agencies then explain that the
current NEPA process has been undertaken because the project has now been funded. *Id.* at 2.

The plain implication of this historical recitation is to make clear to the public that for more than 35 years the state transportation agency and others have believed that this project alternative is critical to the Charleston region and that the project should be built as conceived decades ago as soon as it could be funded, regardless of current needs and potential innovative new transportation solutions. Casting the project in this manner violates NEPA’s mandate to evaluate the project in a “fair and impartial” manner. No matter what the history of this project may be, it is now up to the agencies to conduct a fair and unbiased analysis of the proposal in light of current conditions in the region. We therefore recommend that this discussion be rewritten in a more balanced way.

We appreciate the opportunity to submit these comments on the draft statement of purpose and need for the I-526 expansion project and look forward to reviewing the revised version of this document.

Sincerely,

Christopher K. DeScherer
Senior Attorney

cc: Chuck Hightower, DHEC
    Mark Giffin, DHEC
    Susan Davis, SCDNR
    Bob Perry, SCDNR
    Kay Davy, NOAA Fisheries
    Barbara Neale, OCRM
    Kurt Taylor, Charleston County
    Mark Caldwell, USFWS
    Michael Patrick, USACE
    Ramona McConney, USEPA
    Robert Lord, USEPA
    Julie Hensley, Charleston County Park & Recreation Commission
    Megan Desrosiers, CCL
    David Farren, SELC
Public Information Meeting #1
Comment Period
December 11, 2008

Via U.S. Mail and E-Mail

Mr. David A. Kinard, P.E.
Project Manager
South Carolina Department of Transportation
P.O. Box 191
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kinardda@scdot.org

Mr. Daniel Hinton
Federal Highway Administration
1835 Assembly Street, Suite 1270
Columbia, SC 29201
daniel.hinton@fhwa.dot.gov

Re: Mark Clark Expressway – Follow-Up to December 2, 2008 Meeting

Dear Messrs. Kinard and Hinton:

Please accept this letter in substitution for the letter I sent yesterday. I am writing to thank you for taking the time to meet with Josh Martin, Alex Dadok, and me on Tuesday, December 2nd. We know you are busy with many other projects, and we appreciate your giving us the opportunity to present and discuss the Coastal Conservation League’s proposed alternative to the extension of I-526 with the Mark Clark Expansion project team.

To ensure that the League’s proposal is evaluated as part of the National Environmental Policy Act’s (NEPA) alternatives analysis going forward, I want to confirm our understanding of the information you have requested that we submit to you. First, it is our understanding that by January 9th you would like us to prepare aerial images to provide additional details regarding the League’s alternative so that the agencies can better understand the changes to the street network that the League is proposing. We intend to give these aerial images to you by January 9th. In addition, we have asked representatives from Glatting Jackson to make themselves available to formally present their work to you in person. We hope to be able to schedule a meeting with Glatting Jackson and the project team in order to answer any questions at that time.
Second, although you have not asked that it be submitted by January 9th, you have requested additional information relating to the League’s alternative, such as land use assumptions, right-of-way data, road characteristics. After submission of the aerial images on January 9th, the League will continue to work with the agencies to provide sufficient detail regarding the League’s proposal to ensure that it is considered as part of the NEPA process. However, as we explained at the December 2nd meeting, the League cannot be expected to carry out the agencies’ own duty to study “all reasonable alternatives” in the Environmental Impact Statement. 23 C.F.R. §§ 771.123(c), 771.125(a)(1) (2008). It is the obligation of the lead agencies to evaluate the League’s alternative, which we believe is significant and viable, in the same manner as they would analyze their own alternatives.

Third, a number of concerns not germane to NEPA were also raised at the meeting. Questions included whether the funding for the project from the South Carolina State Transportation Infrastructure Bank could be used for the League’s alternative and whether any relevant governmental entities supported the New Way to Work. As we expressed at the meeting, we would like to work with you over the course of this project to resolve any practical considerations the agencies might have. That said, issues such as whether the State Infrastructure Bank will fund the League’s alternative are irrelevant for purposes of the required alternatives analysis under NEPA.

Moreover, the extension of I-526 from Savannah Highway to the James Island Expressway will ultimately require a permit to fill wetlands under Section 404 of the Clean Water Act. 33 U.S.C. § 1344 (2008). The Corps’ Section 404(b)(1) Guidelines allow permit issuance for only the least environmentally damaging practicable alternative. 40 C.F.R. § 230.10(a). The Guidelines establish rebuttable presumptions that (1) alternatives for non-water dependent activities that do not involve wetlands exist; and (2) alternatives that do not involve wetlands have less adverse impact on the aquatic environment. 40 C.F.R. § 230.10(a)(3). Alleviating traffic problems is not a water-dependent activity, and the burden will be squarely on the applicant to demonstrate that alternatives that avoid or minimize wetland impacts are not available. This analysis will control the permitting process, as opposed to ancillary considerations such as the relative political support for the project.

Again, we appreciate your willingness to work with us to further evaluate the League’s proposal, and we are optimistic that a fair evaluation of the League’s alternative by the agencies will confirm its merit for solving traffic issues west of the Ashley. In fact, we believe the recent collaborative effort among the S.C. Department of Transportation, Charleston County, the City of Charleston, the League, and others shows that the approach embodied in the New Way to Work can alleviate traffic problems for less money than expanding I-526 and in a way that minimizes impacts to the environment and strengthens our communities.

As this process moves forward, we will continue to strive to comply with the agencies’ requests for information, but ultimately it is the agencies’ responsibility to
comply with NEPA, the CWA, and other relevant laws by fully evaluating and comparing the New Way to Work with other reasonable alternatives that meet the project’s purpose and need.

Finally, in order to further develop the League’s proposal, representatives of Glatting Jackson are planning to visit Charleston on December 17th through December 19th to conduct field verifications for drawings of the proposed alternative. We would like to invite you or your representatives to meet with Glatting Jackson, and we have scheduled two meeting for this purpose. The first meeting will be held on Thursday, December 18th at 10:00 a.m. at the League’s office in Charleston (328 E. Bay Street), and the second meeting will be held on Friday, December 19th at 11:00 a.m. at the same location. We understand that representatives of the Department of Transportation are already planning to attend the first meeting, and we hope that other members of the agency project team will join us at one of these meetings as well. We hope to see you soon, and we look forward to continuing this dialogue at that time.

Sincerely,

[Signature]

Christopher K. DeScherer
Senior Attorney

cc: Chuck Hightower, DHEC
    Mark Giffin, DHEC
    Susan Davis, SCDNR
    Bob Perry, SCDNR
    Kay Davy, NOAA Fisheries
    Barbara Neale, OCRM
    Kurt Taylor, Charleston County
    Mark Caldwell, USFWS
    Michael Patrick, USACE
    Ramona McConney, USEPA
    Robert Lord, USEPA
    Julie Hensley, Charleston County Park & Recreation Commission
    Megan Desrosiers, CCL
    Josh Martin, CCL
    David Farren, SELC
Mr. David Kinard, PE
Project Manager
Mark Clark Expressway Project
SC Department of Transportation (SCDOT)
Post Office Box 191
Columbia, SC 29202-0191

and

Ms. Jennifer Pearson
Senior Environmental Planner
Wilbur Smith Associates (WSA)
1301 Gervais Street
Columbia, SC 29201

December 16, 2008

Re: Mark Clark Expressway (I-526) Extension:
   Opposition by The Charleston Museum to Prospective Placement of
   Roadway(s) on the Museum’s Dill Sanctuary (James Island)

Dear Mr. Kinard and Ms. Pearson,

To assist the above-referenced study, we are pleased to submit the attached Comments and supporting documents. Following my telephone conversation with Ms. Pearson of December 15, I am sending both to Mr. Kinard’s office.

Our Comments address the inevitable damaging impacts to The Charleston Museum’s Dill Sanctuary to be expected from construction/operation of prospective roadways which your current study considers for possible placement there. Recognizing that additional pertinent information may subsequently come to light, or that changes in your plans may occur, we submit our remarks as “including but not limited to” all possible harmful potential effects.

The Museum strongly opposes the proposed roadways—for simplicity, our Comments refer to them as the “northern” (apparently a combination of three different routes) and “southern” routes. Either would have substantial, negative impact on the Sanctuary’s multiple cultural and natural resources. Accordingly, we respectfully request that the proposed roadways be promptly removed from consideration in your current (and any future) study.
As you know, our position has remained unchanged since we first learned of this study. Our submittal is therefore consistent with our prior communications on this subject, including our meeting (in the SCDOT Summerville office) on October 28, and—at public meetings held at Fort Johnson and West Ashley High Schools—in conversations with Ms. Pearson, Ms. Jennifer Humphreys (WSA), Mr. Chad Long (SCDOT) and assorted representatives of the federal highway administration. I confirmed same in writing to Mr. Kinard in my letter of November 17, saying we would be present at the Stakeholders meeting on December 4, and reiterated our position in handwritten comments which I submitted for your review at that meeting.

Thank you for the opportunity to submit this information. We will be glad to share with you any related information which may be helpful to your decision. Should any additional prospective routes across the Dill Sanctuary be considered, please advise us immediately so that we can respond appropriately. In the meantime, I remain

Sincerely yours,

[Signature]
John R. Brumgardt
Director

cc: Board of Trustees
    Members of Council, Charleston County
    Mr. Jim Armstrong, County of Charleston
    Mr. Kurt Taylor, County of Charleston
    Mr. Steve Thigpen, County of Charleston
    Dill Cemetery Perpetual Care Group
    Museum Staff
Comments:

Impact of Prospective SCDOT Roadways on the Cultural and Natural Resources of The Charleston Museum’s Dill Sanctuary (James Island)

Submitted by The Charleston Museum
December 16, 2008

Summary

The Charleston Museum strongly opposes prospective roadways currently under consideration for placement on, through and across its Dill Sanctuary, a wildlife refuge and cultural preserve located on James Island. As noted in the attached Comments and appendices, these roadways would, at minimum:

(1) Have substantial, negative impact on multiple, important, documented natural and cultural resources located on this actively-managed property;

(2) Impair ongoing scientific, historical and archaeological research and related Museum educational programming on the Sanctuary; and

(3) Diminish and possibly ruin the property’s established use as a sanctuary for wildlife and cultural resources.

The Museum accordingly opposes the proposed roadways and any similar or related intrusions. We respectfully request that they be promptly removed from consideration in the current SCDOT/County of Charleston study and that the Dill Sanctuary be considered an inappropriate location for roadways or intrusions of any kind in future planning project(s).
City of Charleston
Joseph P. Riley, Jr.
Mayor
December 19, 2008

Mr. H. B. Limehouse, Jr.
Secretary of Transportation
South Carolina Department of Transportation
P.O. Box 191
Columbia, SC 29202-0191

Dear Buck:

As you well know, the City of Charleston has been supportive of the concept of the completion of I-526 between its existing terminus at Highway 17 South and the James Island Connector to downtown Charleston. We understand that the FHWA has required that a new EIS be conducted for this segment and we are interested in having an alternative type of road analyzed as part of that process.

The road we would like included in this alternative (please see attached map) would be a parkway facility that would provide the same type of connection that the proposed I-526 would, but it would provide it via grade level intersections and a design speed in the neighborhood of 35 miles per hour. By virtue of these design parameters, we feel that this alternative would require substantially less right-of-way and would potentially be less costly to build. It also could potentially have less environmental impact to wetlands and waterways, and fewer noise impacts to neighborhoods along its route.

The route proposed for this parkway would be very similar to the earlier approved route for I-526, and would utilize all existing right-of-way acquired by SCDOT, as well as improvements and upgrades to area roadways, such as Central Park Road on James Island. It would have signalized intersections at Folly Road, Riverland Drive, and Maybank Highway, as well as at grade intersections with a number of smaller routes along its path. Should traffic signals be warranted at these other intersections as development in the area proceeds, other signals would be added. The requisite Coast Guard required bridges over the Stono River would be included, and the road would feed back into the originally planned interchange at US 17 South in West Ashley. The proposed route would not impact James Island County Park.

P.O. Box 638 Charleston, South Carolina 29408
843-577-6970 Fax 843-720-3827
I think there could be many positives to this proposed alternative, but we also realize there may be traffic handling impacts as well. Thus we would like to see this alternative get the full study that will be conducted for the other EIS alternative routes.

Please let us know of any additional information or presentations from our staff such an analysis might require. I would be happy to answer any questions you, your staff, or the consultants working on the EIS might have.

With kindest regards, I remain

Most sincerely yours,

Joseph P. Riley, Jr.
Mayor, City of Charleston

JPR,jr/rd
C: Hernan Pena, Director Traffic and Transportation
January 9, 2009

Via U.S. Mail and E-Mail

Mr. David A. Kinard, P.E.
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Mr. Daniel Hinton
Federal Highway Administration
1835 Assembly Street, Suite 1270
Columbia, SC 29201
daniel.hinton@fhwa.dot.gov

Re: Mark Clark Expressway – A New Way to Work: Implementation Analysis

Dear Messrs. Kinard and Hinton:

As promised in our letter dated December 11, 2008, we have prepared the enclosed report (A New Way to Work: Implementation Analysis), which contains the additional information you have requested for purposes of further evaluating the Coastal Conservation League (League)'s proposed alternative to the extension of the Mark Clark Expressway. In making this submittal, we ask that you keep the following considerations in mind.

First, as we have discussed previously, the Federal Highway Administration (FHWA) and the South Carolina Department of Transportation (SCDOT) are required by the National Environmental Policy Act (NEPA) to study "all reasonable alternatives" in the environmental impact statement for this project. 23 C.F.R. §§ 771.123(c), 771.125(a)(1) (2008). We believe the League has already provided sufficient information to trigger the agencies’ duty under NEPA to evaluate the New Way to Work. Nevertheless, FHWA and SCDOT have requested additional information, and the League, in the spirit of cooperation, has hired Glatting Jackson to prepare the enclosed implementation analysis, which provides greater detail regarding the League’s alternative, including, but not limited to, the specific location of new streets, driveways, and medians; the dimensions of these features; and the timing of the proposed build-out for the project.

100% recycled paper
Second, the agencies must understand that the feasibility of the proposed alternative does not hinge upon the completion of all of the specific recommendations made in the enclosed report. In order to be responsive to the agencies’ requests for information, the implementation analysis aims to provide as much detail as possible at this point in time. The effectiveness of A New Way to Work, however, does not depend on the redevelopment of each of the properties identified, for example. It should be expected that specific properties identified for redevelopment, acquisition, or consolidation as a result of the infrastructure investment alternative (and other specific design details) will likely be revised over time as the overall approach is further evaluated and refined.

Third, we have worked hard over the holidays in order to provide the information you have asked for by today’s deadline. As the permitting process moves forward, we may decide to supplement our report to provide additional details regarding the proposed alternative. In fact, we are already planning to submit a new chapter, which will focus more on land use issues and should be of interest to local governments and property owners in the area.

We look forward to continuing to work with you on this project. In the meantime, please do not hesitate to contact me if you have any questions or wish to discuss the enclosed report.

Sincerely,

[Signature]

Christopher K. DeScherer
Senior Attorney

cc: Chuck Hightower, DHEC
    Mark Giffin, DHEC
    Susan Davis, SCDNR
    Bob Perry, SCDNR
    Kay Davy, NOAA Fisheries
    Barbara Neale, OCRM
    Kurt Taylor, Charleston County
    Mark Caldwell, USFWS
    Michael Patrick, USACE
    Ramona McConney, USEPA
    Robert Lord, USEPA
    Julie Hensley, Charleston County Park & Recreation Commission
    Megan Desrosiers, CCL
    Josh Martin, CCL
    David Farren, SEIC
February 19, 2009

Via U.S. Mail and E-Mail

Mr. David A. Kinard, P.E.
Project Manager
South Carolina Department of Transportation
P.O. Box 191
Columbia, SC 29202-0191
kinardda@scdot.org

Re: Mark Clark Expressway – Follow-Up to February 10, 2009 Meeting

Dear Mr. Kinard:

Thank you for arranging the meeting on February 10th to continue our discussions regarding the evaluation of the Mark Clark Extension project. We are writing this letter to confirm our understanding of what was discussed and to express concerns about some of the topics raised at the meeting.

1. For purposes of the portion of the New Way to Work alternative (“NWTW alternative”) that would be constructed on Johns Island, you have requested that the Coastal Conservation League (“League”) submit details (similar to those already provided for other components of the alternative) identifying the portions of the NWTW that would be publicly-funded and those that would be privately-funded. That information was submitted to you yesterday via e-mail and is also included as Attachment A to this letter.

2. In response to concerns expressed by the S.C. Department of Transportation (“SCDOT”) and its consultants, the League has agreed to remove the “West Ashley Bridge District” as a publicly-funded component of the New Way to Work alternative. Although the League agrees that the West Ashley Bridge District need not be included as a publicly-funded component of this project, the League will continue to advocate in support of this redevelopment as a separate yet related project that would augment the benefits of implementing the New Way to Work.

3. At the meeting on February 10th, the League raised concerns with respect to SCDOT drawings that identify the public and privately-funded aspects of the NWTW alternative. The League identified several instances in which the drawings may not have accurately reflected the manner in which the proposed network of streets would connect with existing roads. We request that the lead agencies allow us to review these drawings once they are modified, before the networks are modeled, to ensure the proper corrections are made. Enclosed as Attachment B is a
copy of our notes regarding the aforementioned corrections.

Further, Jenny Humphreys of Wilbur Smith Associates ("WSA") confirmed at the meeting that SCDOT has established new centroid locations for the Savannah Highway corridor in order to demonstrate trips accessing the secondary street network. We request that SCDOT provide us with more detailed information, including a copy of a diagram or illustration that identifies these new centroid relocations. In particular, we would like to review the coded network going into the Regional Transportation Model, such as TAZ data and a zone map.

4. At the meeting, we discussed the widths of streets proposed in the New Way to Work alternative. As stated previously, we do not object to the agreed upon assumptions for the total widths of the streets discussed for purposes of the ongoing evaluation for the Environmental Impact Statement ("EIS"), yet we request the opportunity to review (and to object to if necessary) the specifics (lane width, planter width, sidewalk width, building placement, etc.) of the cross-sections that comprise these streets when they are further refined as this process moves forward.

5. We have the following comments relating to the use of land use assumptions for purposes of the EIS. First, we were told by WSA and SCDOT that the same land use assumptions will be used for all of the alternatives to be modeled. We are very concerned that this decision will lead to inaccurate results and traffic projections. For example, a study by EDAW released in 2005 indicated that there would be 40 percent more development on Johns Island as a result of the construction of the I-526 extension. Portions of the EDAW study are attached hereto as Attachment C. It would be irresponsible for the lead agencies not to weigh the results of this study as part of its analysis of various alternatives for the project in the EIS. After all, the lead agencies should apply the fairest and most appropriate approach to testing each alternative, which would include different land use assumptions for the NWTW alternative. Second, we request a copy of the source information that is being used by WSA for Johns Island (please note that specific densities were not denoted in the Johns Island Community Plan, and, as we understand it, the Johns Island Regulating Plan and SmartCode is still in draft form and has not even been publicly released by the City of Charleston).

6. We are concerned that the decision to segment the evaluation of alternatives into Tier I and Tier II may disadvantage alternatives that never make it into the Tier II evaluation. For example, by choosing not to evaluate many of the environmental and socio-economic factors until the Tier II stage, alternatives that are eliminated after the application of the Tier I criteria will never be evaluated for purposes of the Tier II criteria, even if these alternatives would perform well for purposes of the Tier II factors. For this reason, we recommend that all alternatives be evaluated on all Tier I and II criteria before the agencies further refine the range of alternatives.

7. We have concerns regarding the manner in which the agencies are evaluating the alternatives for purposes of safety. First, although it appears that the Tier I criteria are intended to measure regional mobility, the project’s stated goals of “improve[ing] safety, and enhance[ing] mobility in West Ashley, James Island, and Johns Island” are not adequately
measured. In fact, we are not aware of any plans by the agencies to conduct any analyses that would be indicative of safety. We request that the lead agencies clarify how this core element of the proposed project will be quantified.

Second, SCDOT has stated that although the factors used to evaluate alternatives are supposed to include vehicular safety, such as the number of crashes, the alternatives will not be evaluated for purposes of other relevant safety concerns, such as safety for pedestrians and cyclists in the project area. We believe a proper evaluation of how the alternatives address safety should include analysis relating to pedestrians and cyclists. Leaving pedestrians and cyclists out of this evaluation would be inconsistent with the principles adopted in the Comprehensive Plans of Charleston County and the City of Charleston (Century V Plan and Johns Island Community Plan). Highlighted portions of these plans are attached hereto as Attachment D. Moreover, the unduly narrow focus on cars for purposes of safety only highlights our larger concern that the overall analysis for the EIS fails to include a multi-modal perspective in its evaluation of alternatives that satisfy the project purpose.

8. You explained that during the EIS modeling process you would be analyzing the alternatives in an “existing plus committed” scenario. In applying this standard, you have stated that the lead agencies are assuming for purposes of the ongoing analysis that Maybank Highway on Johns Island will be widened despite the fact that there is growing momentum to replace the widening proposal with a network approach to enhancing mobility in this area. In fact, just last week, the Urban Land Institute’s Technical Assistance Panel (ULTAP) concluded that the portion of the New Way to Work’s network approach to re-developing Johns Island is preferable to the proposed widening of Maybank Highway due to goals expressed in the City of Charleston’s Johns Island Community Plan and the Johns Island SmartCode, which emphasize integrating land use and transportation as part of the transportation planning process. See Attachment D and Attachment E, which includes the “Settlement Patterns” of the City of Charleston’s John’s Island Community Plan.

If the lead agencies ignore the probability that a network approach as opposed to a widening will be implemented on Johns Island, there is a substantial risk that the final EIS will fail to comply with the National Environmental Policy Act, (“NEPA”), 42 U.S.C. § 4321, et seq. (2009), by including a skewed evaluation of alternatives. To avoid creating a flawed EIS and inefficient use of agency resources, we recommend that the lead agencies conduct additional analyses, including modeling runs, to evaluate alternatives under all alternate scenarios – with the widening project and with the network approach. As discussed at the meeting, Rick Hall, who developed the network approach for Johns Island, has dealt with this issue before and can make recommendation to the lead agencies for how they can conduct the necessary additional modeling and analysis in an efficient manner.

In response to the probability that the network approach will be adopted and developed on Johns Island, the League has agreed to remove the “Johns Island Network” as a publicly-funded component of the New Way to Work alternative. Although the League agrees that the

1 See “What is the purpose of the project?”, available at http://www.dot.state.sc.us/1526/pdfs/project_purpose.pdf (last visited Feb. 18, 2009).
Johns Island Network need not be included as a publicly-funded component of this project, the League will continue to advocate in support of this development as a separate yet related project that would augment Johns Island as proven by the Hall Planning & Engineering analysis and supported by the ULI TAP in early February.

9. A key component of the New Way to Work alternative is the addition of a median and the combining and redesign of access points along the Savannah Highway corridor. By improving management of access, the League believes the NWTW alternative could provide significant mobility enhancements along this corridor. Nevertheless, SCDOT stated at the meeting that it is unable to analyze this component of the alternative proposal due to legal impediments.

Although an analysis of SCDOT's ability to construct a median, consolidate driveways, and provide alternative means of access to Savannah Highway may vary depending on the particular property that is at issue and who owns that property, as a general matter, we believe SCDOT has the authority to carry out this important aspect of the NWTW alternative. Caselaw in South Carolina establishes that the SCDOT can construct a median, limiting the direction that drivers can access individual properties without even using its condemnation power. See Hardin v. S.C. Dept. of Transp., 641 S.E.2d 437, 442 and n.2 (2007) (saying there is no taking "[s]o long as a landowner has access to the public road system" and "a landowner has no right to access abutting roads in more than one direction"). Moreover, even if physical invasion of property along Savannah Highway is necessary to allow alternate access to Savannah Highway, we believe that SCDOT has the authority to use the power of eminent domain to carry out this element of the alternative. See S.C. Code Ann. § 57-5-320 (saying SCDOT "may acquire an easement or fee simple title to real property by gift, purchase, condemnation or otherwise as may be necessary, in the judgment of the department, for the construction, maintenance, improvement or safe operation of highways in this State").

At the close of our conservation on this topic, you promised to consult with others at SCDOT to better understand any legal obstacles that may prevent the lead agencies from evaluating this aspect of the NWTW alternative. Once you determine if there are any significant barriers to evaluating this approach, we request that you explain these obstacles to us. Moreover, we would welcome the opportunity to speak directly with the SCDOT's lawyers or counsel for the other joint lead agencies to discuss this point further. In the meantime, we urge SCDOT, the Federal Highway Administration, and Charleston County to evaluate this aspect of the alternative.

10. As you mentioned at the meeting, the New Way to Work represents an atypical alternative. It is unlike the other alternatives under consideration in that it does not involve the expansion of an interstate highway and embodies a functional approach to accomplishing the project's stated goals of enhancing mobility, safety, etc. Because the NWTW utilizes different assumptions, it is necessary to utilize different tools in order to fairly evaluate and compare it with other proposals under consideration. Yet, you told us that the SCDOT intends to model and analyze this alternative applying the same methodology as will be used for the other, more typical alternatives. We find this alarming given your acknowledgement that the Regional Transportation Model will not be able to accurately assign traffic to the various new streets
included in the NWTW alternative. This regional modeling approach will also overlook the benefits of the increased multi-modal opportunities for the areas identified in the NWTW alternative.

In response to concerns expressed by the SCDOT and its consultants, we request that a different approach be utilized to accurately analyze the NWTW alternative. Synchro® software (version 7; TrafficWare, Ltd.), which analyzes intersection and link performance, provides a far better program for analyzing the effectiveness of fine grain networks, like those proposed in the NWTW alternative. In short, a decision to apply a modeling approach that fails to accurately evaluate a network solution will unfairly prejudice the NWTW alternative in violation of NEPA. See Rankin v. Coleman, 394 F. Supp. 647, 660 (E.D.N.C. 1975) (explaining that “[e]ach alternative should be presented as thoroughly as the one proposed by the agency, each given the same weight so as to allow a reasonable reviewer a fair opportunity to choose between the alternatives”) (emphasis added).

For these reasons, as we offered at the February 10th meeting, we propose that the SCDOT retain Hall Planning & Engineering, Inc. (“HPE”) to assist in the evaluation of alternatives by modeling and analyzing the walkable, fine-grained networks proposed in the NWTW alternative. Their experience providing this type of analysis globally, which includes recent work on Maybank Highway on Johns Island, uniquely qualifies them for this task. If the SCDOT does not choose to retain HPE, the League will offer to pay for HPE staff to meet with the project team and its consultants for purposes of further developing and refining the appropriate methodology and level of monitoring for this project. Although it is more expensive to conduct additional modeling now, we believe that it will be worth the investment because it will allow for a fuller and fairer evaluation of the alternatives for a project that will have a major impact on the future of the area.

In sum, for the reasons described in this letter, we are concerned that the lead agencies for this project are unwilling to ensure that the NWTW alternative is fairly evaluated in comparison with the other preliminary alternatives under evaluation. Although SCDOT has stated that it understands that the NWTW’s functional approach is a unique strategy for achieving the project’s stated purpose, the lead agencies are nevertheless not planning to undertake the type of analysis that will allow for a fair evaluation. If the lead agencies choose not to utilize appropriate modeling tools or to consider the reconfiguration of driveways or the addition of a median along Savannah Highway, for example, this process will result in the preparation of a flawed EIS. The failure to adequately consider the NWTW alternative in these ways and others disregards the requirement to consider a reasonable range of alternatives, including functional alternatives under NEPA. See 40 C.F.R. § 1502.14 (2009); see also Keith v. Volpe, 352 F. Supp. 1324, 1336 (D. Cal. 1972) (saying a highway project’s EIS “should consider all possible alternatives to the proposed freeway, including changes in design, changes in the route, different systems of transportation and even abandonment of the project entirely”).
We appreciate the opportunity to submit these comments on behalf of the Coastal Conservation League and look forward to continuing to participate in this process. In the meantime, please do not hesitate to contact me if you have any questions or would like additional information.

Sincerely,

Christopher K. DeScherer
Senior Attorney

cc: Daniel Hinton, FHWA
    Chuck Hightower, DHEC
    Mark Giffin, DHEC
    Susan Davis, SCDNR
    Bob Perry, SCDNR
    Kay Davy, NOAA Fisheries
    Barbara Neale, OCRM
    Kurt Taylor, Charleston County
    Mark Caldwell, USFWS
    Michael Patrick, USACE
    Ramona McConney, USEPA
    Robert Lord, USEPA
    Julie Hensley, Charleston County Park & Recreation Commission
    Megan Desrosiers, CCL
    Josh Martin, CCL
    David Farren, SELC
Public Information Meeting #2
Comment Period
TOWN OF SEABROOK ISLAND  
RESOLUTION 2009-04  

Adopted: April 28, 2009  

WHEREAS, the Town of Seabrook Island recognizes the need to enhance the safety and mobility to and from West Ashley, Johns Island and James Island; and

WHEREAS, the proposed I-526 Extension of the Mark Clark Expressway addresses this issue; and

WHEREAS, several alternate routes for the proposed I-526 Extension have been advanced; and

WHEREAS, Charleston County has requested the SC Department of Transportation to conduct an environmental impact study of the various alternatives; and

WHEREAS, the Town of Seabrook Island has previously resolved to support the construction of a cross-island limited access road and improvement of all roads on Johns Island that will benefit its citizenry, Charleston County and the low country region.

NOW, THEREFORE, BE IT RESOLVED that the Town of Seabrook Island supports the I-526 Extension along any route with an interchange on Johns Island determined most reasonable by Charleston County and SC Department of Transportation; recognizing that the I-526 Extension does not replace but supplements the need for a cross-island limited access road on Johns Island.

TOWN OF SEABROOK ISLAND  

[Signature]  
Mayor
RESOLUTION NO. R23-09

A RESOLUTION BY THE FOLLY BEACH CITY COUNCIL STRONGLY OPPOSING THE PROPOSED I-526 MARK CLARK EXPRESSWAY PROJECT AND URGING THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION TO SEEK A REASONABLE ALTERNATIVE, WHICH WOULD BE LESS INVASIVE.

WHEREAS, since the early 1970s, the original plan for the Mark Clark Expressway included a connection between West Ashley, Johns Island and James Island, which would add approximately seven miles of new roadway; and

WHEREAS, in November 2004, the voters of Charleston County approved a half-cent sales tax for transportation, public transportation and greenbelt projects in the county; and

WHEREAS, to complete the plan for the Mark Clark Expressway, Charleston County officials used these sales tax transportation projects as a local match to apply for funding from the South Carolina Transportation Infrastructure Bank (SIB) in 2006; and

WHEREAS, the Charleston County SIB application proposes completion of I-526, which would add approximately seven miles of new roadway between its current endpoint at US 17 (Savannah Highway) and the James Island Expressway Interchange at Folly Road.

WHEREAS, there has been overwhelming public outcry from various communities and individuals opposing this plan and urging S.C. Department of Transportation (SCDOT) to seek reasonable alternative plans; and

WHEREAS, SCDOT is having a series of public meetings on this subject and will present nine alternative plans for consideration and for public input; and

WHEREAS, Folly Beach City Council is opposed to the proposed I-526 Mark Clark Expressway Project and feels a reasonable alternative plan, which would be less invasive, would be more feasible and resolve the inherent problems.
NOW, THEREFORE, BE IT RESOLVED, by the Folly Beach City Council that:

Section 1.  Folly Beach City Council wants to go on record as strongly opposing the I-526 Mark Clark Expressway Project, which proposes the completion of I-526 and would add approximately seven miles of new roadway between its current endpoint at US 17 (Savannah Highway) and the James Island Expressway Interchange at Folly Road.

Section 2.  A copy of this resolution is to be sent to the following individual at the stated address:

David A. Kinard, P.E.
Project Manager
South Carolina Department of Transportation
955 Park Street
Columbia, South Carolina 29202

RATIFIED this 28th day of April, 2008 at Folly Beach, South Carolina, in City Council duly assigned.

Carl B. Beckmann, Jr., Mayor

ATTEST:

Mary Cunningham, CMC
Mary Cunningham
Municipal Clerk
Re: Mark Clark Expressway (I-526) Extension: Opposition by The Charleston Museum to Placement of Prospective Roadway Alternatives on the Museum’s Dill Sanctuary (James Island)

Dear Mr. Kinard and Ms. Pearson,

We were highly disappointed to learn recently that two proposed alternative roadways (Nos. 1 and 8) across the Museum’s Dill Sanctuary remain possible options in your process of selecting a route for extension of I-526. We hope your current review of guiding criteria will remove these from consideration.

Neutral concerning the I-526 project, the Museum strongly opposes any roadway across any portion of the Dill Sanctuary, to whose preservation as a sanctuary for wildlife and cultural components it is firmly committed. Because of this, the property contains limited structures and other “built” features; archaeological sites unveiling early habitation are protected and progressively investigated; and the wildlife population—particularly birdlife, our principal focus—has flourished.

The current “reasonable alternatives” in question, we believe, endanger the integrity of the Sanctuary, threaten both cultural and natural resources, and promise degradation or complete ruin of the six-acre wildlife pond with its three nesting islands. Built in 1995 and the Sanctuary’s primary source of fresh water for animals, the pond is intended as a permanent, protected haven for many species of birds now including endangered Wood Storks, whose population has grown substantially in the past year.
Mr. David Kinard
Ms. Jennifer Pearson
May 26, 2009

For more detailed information, and to assist the current phase of the above-referenced study, we ask your attention to:

a. **Our written Comments and supporting documents submitted to you in December 2008 to address the evaluative criteria now under consideration** (also now temporarily available at: http://www.box.net/shared/pg5l1hb2bi.) These discuss the Sanctuary’s resources and the threats to them from construction and operation of proposed roadways. Sections relating to the northern portion of the property directly apply to the alternatives currently under consideration.

and

b. **The attached Update: Current Status of Waterbird Colonies at The Charleston Museum’s Dill Sanctuary (May 2009),** which provides most-recent information concerning birdlife and Wood Storks at the Sanctuary’s wildlife pond. This supplements information provided in our *Comments* of December 2008.

Either of the current proposed alternative roadways would have substantial, negative impact on the Sanctuary’s multiple cultural and natural resources. Accordingly, we again respectfully request that the proposed roadways be promptly removed from consideration in your current (and any future) study.

Thank you for the opportunity to submit this information. We will be glad to share with you any related information which may be helpful to your decision. Should any additional prospective routes across the Dill Sanctuary be considered, please advise us immediately so that we can respond appropriately. In the meantime, I remain

Sincerely yours,

[Signature]

*For and by permission of the Board of Trustees*

Dr. John Rashford, President

[Signature]

John R. Brungardt

Director

cc: Board of Trustees
Members, Charleston County Council
Mr. Jim Armstrong, County of Charleston
Mr. Kurt Taylor, County of Charleston
Mr. Steve Thigpen, County of Charleston
Dill Cemetery Perpetual Care Group
Museum Staff
Update: Current Status of Waterbird Colonies
at
The Charleston Museum’s Dill Sanctuary - 7 May 2009

Note: This report is submitted as a supplement to detailed information concerning the Dill Sanctuary’s cultural and natural resources, and the Museum’s objections to the negative impact on some of proposed alternative roadways across the Sanctuary, which were provided to the South Carolina Department of Transportation and Wilbur Smith Associates in December 2008.

Wildlife Pond, Dill Sanctuary (New Town Cut to north)
Update: Current Status of Waterbird Colonies at The Charleston Museum’s Dill Sanctuary – 7 May 2009

Dr. Will Post, Curator of Ornithology, The Charleston Museum

The Dill Sanctuary waterbirds colonies, located on the northern side of the Stono Plantation section of the Sanctuary, next to New Town Cut, now feature a breeding population of about 500 pairs of Wood Storks, Anhingas, White Ibises, and herons (Black-crowned Night-Heron, Green Heron, Little Blue Heron, Tricolored Heron, Great Egret, Snowy Egret.)

The number of Wood Stork nests has already increased by a factor of 4—in contrast to the seven pairs of Wood Storks that nested in the Sanctuary pond last year (2008), we now have 27 pairs on nests. (See photos on following page.) All nests appear to contain eggs. We have monitored the stork nests daily; all the original nests built in April appear to be viable.

Since mid-April 2009, additional pairs of storks have been arriving and are courting or building nests. If this trend continues, we expect about 50 pairs of Wood Storks will have settled in the rookery by early July.
The pond, which contains three nesting islands, was designed specifically to provide predator-free breeding habitat for colonial waterbirds. Presently, the bulk of the population is nesting on the western-most island. Although this is the main nesting site, many birds are also building nests on the central island. Other pairs appear to be prospecting for nest sites on the east island as well. In all, we believe the pond has the capacity to support 1,000 or more pairs of storks, herons and anhingas.
As expected, White Ibis numbers are starting to build up in response to the current rains. This species depends on crayfish as food for their young. Sufficient numbers of these freshwater crustaceans become available as ground-water levels rise after spring-summer rains. Cattle Egret nesting is also synchronized with summer rains. With these rains, grasshoppers, their main food, become abundant in the pastures and fields where the egrets feed.

Overall rookery size will remain stable or increase this year if rainfall is similar to that of 2008. We should be able to provide a final estimate of the size of the breeding population by mid-June 2009.
May 29, 2009

David A. Kinard, PE
SC DOT Project Manager
PO Box 191
Columbia, SC 29202-0191

Dear Mr. Kinard:

The Kiawah Island Community Association, in conjunction with representatives of the Town Council of Kiawah Island, has prepared the attached comments on the various alternatives under consideration. In preparing these comments we have also worked closely with both members of the Seabrook Island Town Council and the Seabrook Island Property Owners Association.

We believe that it is important to be able to coordinate the extension of I-526 with other projects that are being planned or proposed for the improvement of transportation on Johns Island. These include the improvements being formulated for Maybank Highway, the pitchfork design being discussed for the street system, Mayor Riley’s proposed boulevard design for the Mark Clark Extension, and the frequently recommended road down the middle of Johns Island. Thorough analysis of all of these potential projects and how they fit together is critical to the future of the island and to its transportation system.

These comments summarize our position on the Mark Clark Expressway, which we are solidly in favor of completing at the earliest possible date. They further show the possibilities for a smooth connection to the needed road down the middle of Johns Island, which we have referred to as the Johns Island Greenway because of its design features. It would relieve the pressure on Maybank Highway and serve those that live or work in the middle or lower part of Johns Island. Constructing this roadway to connect smoothly with the Mark Clark Extension would carry half of the traffic entering or leaving Johns Island at the Stono gateway.

We believe that only by carefully coordinating these projects will the rural character of Johns Island be saved for future generations.

Sincerely,

[Signature]

Paul O. Roberts, Chairman of the Board
Kiawah Island Community Association

enclosure
Comments on the I-526 Mark Clark Expressway Alternatives Presented at the Public Information Meeting
Spring 2009

Submitted to SCDOT by the
Town of Kiawah Island
and the
Kiawah Island Community Association

May 2009
Introduction
The residents of the Sea Islands (Kiawah, Seabrook, Wadmalaw, and Johns Islands) travel throughout the Charleston metro area. Building the proposed I-526 extension would make travel both easier and safer. It would also facilitate hurricane evacuation for island residents. Consequently, we are fully in favor of building the new I-526 extension to the Mark Clark Expressway. Our principal concern with its location is how it would connect with a badly needed new road down the middle of Johns Island. This road, called by various names—Sea Islands Expressway, Cross Island Parkway and now the Johns Island Greenway—has been under discussion for almost 20 years. In fact, over the years, six previous studies, all done by professional engineers, have each recommended that a road serving the central part of the Island was needed to improve travel on the island. Allowing the Greenway to interchange smoothly with I-526 is key to solving the difficult traffic problem at the Stono River/Maybank Highway to Johns Island. This presentation shows alternative approaches to solving this design problem.

Objective
As part of a comprehensive plan for the improvement of Johns Island roads, Kiawah and Seabrook believe that the region needs a new road down the middle of the island, between the Stono Bridge and Betsy Kerrison Parkway. The road should be designed in a right-of-way that will accommodate four lanes. The road should be access-controlled in order to discourage unwanted development on Johns Island. Otherwise, strip malls, convenience stores, new housing developments and entry from residential driveways along the route are likely to occur. We believe that the best way to limit access is to place the right-of-way in a wide swath of parkland and build the road as a Greenway, with associated bike paths, walking trails, etc. Parkland would be placed under conservation easement.

The road could be mostly at-grade, with entry only at the major intersections (Maybank, River, Plowground, Edenvale, and Bohicket/Betsy Kerrison). If built in this manner, the road would be comparatively inexpensive relative to the cost of a controlled access expressway with grade separated interchanges. Accommodating the flow of traffic between this new road and that from Maybank and the planned I-526 extension will pose design problems, but they can be overcome with creative planning.

Key Points
- The Tri-County Council of Governments forecasts show that in 2030 the number of vehicles entering or leaving Johns Island at the Stono gateway to the Island will be 60,000 vehicles per day.
- This is a larger volume of traffic than a two-lane Maybank Highway can handle. For comparison, the traffic data available for Glenn McConnell Parkway showed that in 2007, the parkway carried only 30,000 vehicles per day—twice the volume forecast by COG to use Maybank.
- Half of these trips forecast to use Maybank Highway at the Stono River are either residents of lower Johns Island—Kiawah, Seabrook, Freshfield, Betsy Kerrison, lower River Road, and lower Bohicket Road—or workers commuting to jobs on lower Johns Island.
- An alignment down the middle of Johns Island would divert half of these 60,000 vehicles per day coming onto the island at the Stono gateway to the Greenway, freeing up the other roads on the island so they can remain beautiful tree-covered routes with dramatically lower traffic volumes.
- A new road located down the middle of Johns Island is shorter (10.4 miles versus 20.5 miles) than widening both Bohicket and River. It would also be far less disruptive to Johns Island residents and businesses (55 properties affected versus 363 properties, and a single building taken, versus 77 buildings). Proposals also have been made to widen Main Road as well. None would have to be widened if the Greenway were built instead.
- Twice as many vehicles destined to or from Kiawah, Seabrook and the lower part of Johns Island use the Maybank and Bohicket route as use the Main Road and Bohicket route. The COG's traffic figures for 2007 show that building the Greenway on this route down the middle of Johns Island would divert two-thirds of current traffic from both Maybank and Bohicket.
• If the Greenway had been built in 2007, it would have been the most heavily travelled road on Johns Island. Furthermore, in excess of 50% of Johns Island residents favor a solution down the center of Johns Island rather than widening Bohicket or River.

• With the design parameters of an “at-grade” Greenway instead of a “grade-separated” expressway, the cost for building the new road would be substantially less. We believe that the road can be built for around $30 to $40 million rather than the $150 million estimated for the road designed as a grade-separated expressway.

• Building the Greenway down the middle of Johns Island will not only solve many of the traffic problems on the island, it will also solve the congestion where I-526 interchanges with Maybank Highway at the Stono River.

Recommended Action

We believe that the County Council should: 1) approve the concept of a new road down the center of Johns Island, 2) take steps to place the road back into the Metropolitan Transportation Improvement Plan, and 3) ask the SCDOT to initiate a preliminary engineering location and design study. This would allow the precise location of the facility to be determined and accurate costs to be estimated.

Regardless of the final location of the I-526 extension on Johns Island, it is important that it be designed to interchange smoothly with the Greenway across Johns Island. The Greenway has the potential to divert half of the daily traffic from the existing Johns Island roads, primarily Maybank, Bohicket and River.

The Design Alternatives

The volumes on each of the alternative interchange designs are based on road count figures from the Tri State COG for the latest year available to us (2007), or the CHATS traffic models for the region for the 2030 forecasts. The origins and destinations of traffic traveling to the Freshfields traffic circle on Seabrook Island are based on a survey of the zip code home address of vehicles entering or leaving Kiawah Island, where a record is maintained of property owners, contractors, suppliers and others requesting access to Kiawah Island. Using this methodology it was possible to determine that 66.2 percent of origins for Kiawah destined trips originate from Charleston, Mount Pleasant, James Island and the eastern end of West Ashley. About 15 percent of trips originate in Summerville, North Charleston and the western end of West Ashley. Only 5 percent of the trips originate in Ravenel, Hollywood, and communities to the north and west of Johns Island. Trips from Wadmalaw account for 0.6 percent of originations and trips originating on Johns Island account for the remaining 13.2 percent. Trips originating on Johns Island with destinations elsewhere were assumed to use this same regional distribution.

A major finding using these origin and destination figures is that about 50 percent of all trips crossing the Stono River on Maybank highway have origins or destinations on lower Johns Island. This region, consisting of Kiawah, Seabrook, Freshfields, Betsy Kerrison Parkway, lower River Road and lower Bohicket Road is a major residential area in which there is also a large resort and a growing commercial center at the Freshfields Shopping Center. The amount of commercial and service traffic is large and continuing to grow. The traffic volumes assigned to use the Greenway are based on the sum of the road volumes observed on Bohicket, River and the Betsy Kerrison Parkway in the 2030 traffic estimates from the CHATS traffic models.
Slide 1 (2007 Traffic on Greenway) shows 2007 volumes on the roads involved if the Greenway is connected directly to Maybank using a boulevard design. This is, of course, what would happen if the “no-build” alternative is adopted. It incorporates the beginning of the “pitchfork” design scheduled for the improvement of Maybank Highway. Using the A.M. Peak Hour for design allows the left turn from Maybank onto the Greenway Boulevard to be examined closely. The volumes reveal that the intersection would be near capacity during the peak period. Note however, that for southbound traffic on Maybank, the signal can be bypassed and left turns made at River instead. Volumes at other points in the area are easily accommodated.
Slide 2 (2030 Traffic on I-526 with Greenway) shows how the parkway concept of Alternative 36 could be integrated with both the Greenway and the pitchfork design for Maybank favored by the City of Charleston. Placing the Greenway in a boulevard design, would allow the properties alongside the roadway on either side to be served at the designated crossing points of the pitchfork roads. Note that because the traffic is spread over several fully synchronized intersections, there are multiple opportunities for turns. Consequently, the volume levels can be handled throughout. Note also, the through volumes on the Mark Clark are not shown in this diagram.
Slide 3 (2030 Traffic on Grade Separated I-526), also designated Interchange Design 1, uses the Greenway in a boulevard design that functions as an upscale frontage road. This design could be used for any of the four alternatives that interchange with Maybank at the southern end of the Stono River Bridge. These include Alternatives 1, 10, 11, and 11A, but not Alternative 8, which interchanges with Maybank to the southwest of the River Road/Maybank Highway intersection. The Greenway follows the same horizontal alignment that it did in the previous two slides. I-526 is located in the median of the boulevard design. This is the path currently followed by the high tension electric transmission line through the area. There is one section of the Greenway that is subject to weaving. This involves the 1110 westbound vehicles from the Greenway destined to Stono and westbound on I-526 west having to cross over the 394 vehicles from I-526 eastbound headed southbound on the Greenway.
Slide 4 (2030 Traffic on Grade Separated I-526), also designated Interchange Design 2, solves the weaving problem by moving the off ramp from I-526 east further to the west after the westbound section of the Greenway crosses under the mainline roadway. Note that both Maybank and the Pitchfork road are shown as two way/two lane roadways, in order to retain the tree canopy and the rural nature of these roads. Having both the Pitchfork road and Maybank Highway available in both directions spreads the traffic out, keeps volumes low and allows flexibility in connecting to the Maybank corridor. This would not be possible if the Greenway were not available to allow the traffic not destined to points in the Maybank corridor.

2030 Traffic on Grade Separated I-526

A.M. Peak Hour

Interchange Design 2
Slide 5 (2030 Traffic on Grade Separated I-526), also designated Interchange Design 3, shows the change in volume levels on Maybank and the Pitchfork road if they are converted to one way/two lane roads. This appears to place more pressure on the two most westerly intersections, and particularly at the center intersection, the one serving the Pitchfork road. This design also forces Maybank traffic to the other streets in the pitchfork design and away from Maybank. Volume levels on these roads are higher than on the previous design.

2030 Traffic on Grade Separated I-526

A.M. Peak Hour

Interchange Design 3
June 5, 2009

Via U.S. Mail and E-Mail

Mr. David A. Kinard, P.E.
Project Manager
South Carolina Department of Transportation
P.O. Box 191
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Re: Mark Clark Extension – Comments on Identification of Reasonable Alternatives

Dear Messrs. Kinard, Hinton, and Taylor:

The Southern Environmental Law Center ("SELC") submits these comments on behalf of the Coastal Conservation League ("League") in response to the lead agencies’ identification of reasonable alternatives, including six build alternatives, in connection with the proposal to extend the Mark Clark Expressway (Interstate 526) from Savannah Highway (U.S. 17) to the James Island Expressway (S.C. 30).

Because the League and its nearly 5,000 members share the agencies’ concerns regarding traffic congestion along major roads west of the Ashley River, such as Savannah Highway, Maybank Highway, and Folly Road, and because the League believes this project will shape the way in which West Ashley, Johns Island, and James Island grow in the coming decades, the League has devoted substantial resources towards devising an alternative to expanding I-526, called a New Way to Work ("NWTW"), which involves the redevelopment of the existing road network at key locations to provide increased connectivity of local surface streets, allowing drivers to avoid congestion on major roadways. By giving drivers additional choices for moving
through the project area, traffic can be reduced on overburdened arterial roads and highways at a much reduced cost and with far fewer impacts to existing communities and the environment than the expansion of an interstate highway would cause.

The NWTW embodies a different approach to solving transportation needs than the expansion of an interstate highway, and, as explained below, the agencies would have to employ other tools than those typically relied upon in order to conduct a fair evaluation process. Unfortunately, the agencies have failed to give serious consideration to the NWTW and have now rejected it on the basis of one improperly modeled factor: that it showed less hours of delay improvements on network links than the average improvements of the other alternatives tested. Draft Alternatives Analysis at p. 8. As described herein, we believe that the decision to eliminate the alternative developed by the League on this basis at this early stage of the permitting process violates the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4332 (2009), and will ultimately present additional, significant problems under the federal Clean Water Act, the Endangered Species Act, Section 4(f) of the Federal Transportation Act, and South Carolina state law in the following ways.

1. **The Tier I Criteria Have Disadvantaged the NWTW.** As an initial matter, it does not make sense to discard the NWTW based on one factor when it is clear that this alternative would perform well for purposes of other important criteria. The agencies have segmented the evaluation of alternatives into different phases (Tier I and Tier II), and as we have commented previously, this phased approach skews the analysis and has the potential to eliminate alternatives that would perform consistently for many factors and merit strong consideration. Even within Tier I, it does not appear as if the agencies attempted to determine how the alternatives performed in the aggregate for each of the Tier I criteria. Instead, the NWTW was eliminated after performing poorly with respect to improvements in regional mobility (and as discussed below, only performed poorly because it was modeled incorrectly). Draft Alternative Analyses Tier I Criteria Evaluation at p. 1. In this way, the agencies have constructed an evaluation process in which criteria applied in Tier I are given disproportionate weight and alternatives that may perform well for purposes of important Tier II criteria, such as cost, are eliminated before those criteria are even applied. Because the NWTW was eliminated at such an early stage of the process, there will be no consideration given to how cost effective the NWTW might be as compared with other, far more expensive alternatives.

2. **Failure to Consider the NWTW’s Access Management Strategies.** Because the agencies have only provided a cursory summary of the Tier I evaluation process, it is not possible for the League to fully understand why the NWTW was eliminated. That said, the lead agencies have previously expressed their unwillingness to evaluate the construction of medians and consolidation and redesign of access points on problem roadways, which is one of the NWTW’s key strategies for solving traffic problems on Savannah Highway. In the event the League’s alternative was eliminated due to the unwillingness of the agencies to evaluate this strategy, then the evaluation was flawed.

As we have explained previously, it is clear that the South Carolina Department of Transportation ("SCDOT") has the authority to carry out this important aspect of the NWTW alternative. See letter from SELC to David Kinard, SCDOT, dated February 19, 2009 at p. 4. And despite offering to provide an explanation for why the agencies believe they are unable to evaluate this aspect of the NWTW, the agencies have failed to provide any such explanation, and
we do not know whether these key components of the NWTW were evaluated. What we do know is that the failure of the agencies to consider these components of the League’s alternative would undermine the NEPA process. See Roosevelt Campobello Int’l Park Comm’n v. U.S. Envtl. Protection Agency, 684 F.2d 1041, 1047 (1st Cir. 1982) (saying courts generally agree that an agency’s “duty under NEPA is to study all alternatives that appear reasonable and appropriate for study at the time of drafting the EIS, as well as significant alternatives suggested by other agencies or the public during the comment period”) (internal quotation marks omitted); see also Dubois v. U.S. Dep’t of Agric., 102 F.3d 1273, 1286 (1st Cir. 1996) (same); Oceana, Inc. v. Evans, 384 F. Supp. 2d 203, 241 (D.D.C. 2005) (acknowledging that “agencies have a duty to consider ‘significant and viable alternatives’ identified through public comments.”).

3. **Inadequate Modeling.** On February 10, 2009, members of the project team explained to us that the lead agencies planned to model and analyze the NWTW using the same methodology as would be employed for evaluating the highway expansion alternatives. In our February 19 letter, we expressed our concern regarding the agencies’ position on modeling because the Regional Transportation Model would be unable to accurately assign traffic to the various new streets included in the NWTW alternative. To accurately model the NWTW, we recommended that the agencies use Synchro® software (version 7; TrafficWare, Ltd.), which is an appropriate tool for modeling a network approach. In addition, the League offered at the February 10th meeting and again by letter on February 19 to pay for the agencies to hire a consulting firm with expertise in modeling network solutions – Hall Planning & Engineering, Inc. – to assist the project team for purposes of further developing and refining the appropriate methodology and level of monitoring for this project. The League’s offer to pay for additional consulting was rejected by the agencies, and it now appears as if the agencies have eliminated the NWTW based on modeling tools that cannot capture the benefits of the NWTW. Such an approach unfairly prejudices the NWTW in violation of NEPA. See Rankin v. Coleman, 394 F. Supp. 647, 659 (E.D.N.C. 1975) (explaining that “[e]ach alternative should be presented as thoroughly as the one proposed by the agency, each given the same weight so as to allow a reasonable reviewer a fair opportunity to choose between the alternatives”) (emphasis added).

4. **The Agencies Have Ignored the Benefits of the NWTW.** By failing to evaluate the NWTW’s approach for improving access management and by opting not to employ appropriate modeling tools, the evaluation process appears to have ignored the major transportation benefits that could be derived from the NWTW. For example, the lead agencies have failed to recognize that the NWTW will substantially improve the efficiency of Savannah Highway, which none of the selected alternatives do. By constructing a street network in key locations and managing access through the construction of a median and the consolidation of driveways, the NWTW would remove a significant percentage of vehicles making local trips from the highway and would increase its overall capacity. In light of the agencies’ stated purpose for the project, which makes clear that mobility should be enhanced for West Ashley, James Island and Johns Island, and the Tier I criterion that evaluates an alternative’s “ability to improve congestion on existing roads,” the decision to dispose of the only alternative that improves conditions on Savannah Highway is puzzling.

Further, as previously noted, the agencies have not yet provided detailed information on how the NWTW and other alternatives were evaluated, so we do not know how the agencies have treated the privately-funded components of the NWTW. However, it is worth noting that a failure to evaluate the transportation and other benefits to be derived from these reasonably
foreseeable, privately-funded components of the NWTW would violate NEPA.

5. **A Fair Evaluation Process Would Show that the NWTW Performs Strongly as Compared with the Six Selected Alternatives.** If the agencies compared the NWTW with the six selected alternatives, the agencies would find that the NWTW compares favorably, especially in terms of the project’s impact on the environment and important recreation areas.

   **Clean Water Act**

   The six alternatives will have far greater negative impacts to wetlands and water quality. Each of the six alternatives involve two crossings of the Stono River, which is already listed as impaired for a number of parameters, including fecal coliform, dissolved oxygen, and copper. The NWTW alternative does not require any river crossings. Moreover, the NWTW would involve impacts to far fewer wetlands because it involves redevelopment in already urbanized areas, as opposed to the construction of a new highway corridor. According to the Supplemental Environmental Impact Statement (“SEIS”) that was prepared in 1995, between 91.6 and 108.9 acres of wetlands would be filled in order to extend I-526, including up to 62 acres of freshwater wetlands and up to 47 acres of salt marshes and other coastal wetlands. SEIS at p. ii. Despite these findings in the SEIS, the Draft Alternatives Analysis indicates that the six build alternatives would involve between 6.8 and 26.4 acres of wetland impacts. Draft Alternative Analyses Tier I Criteria Evaluation at p. 2. We think the agencies’ preliminary analysis severely underestimates wetlands impacts, and we expect that the draft Environmental Impact Statement will reveal far greater impacts to wetlands.

   Because the six build alternatives involve significant wetland impacts, it is important to be cognizant of permitting requirements with respect to wetlands under Section 404 of the Clean Water Act. 33 U.S.C. § 1344 (2008). The Corps’ Section 404(b)(1) Guidelines allow permit issuance for only the least environmentally damaging practicable alternative. 40 C.F.R. § 230.10(a). The Guidelines establish rebuttable presumptions that (1) alternatives for non-water dependent activities that do not involve wetlands exist; and (2) alternatives that do not involve wetlands have less adverse impact on the aquatic environment. 40 C.F.R. § 230.10(a)(3). As we have commented previously, alleviating traffic problems is not a water-dependent activity, and the burden will be squarely on the applicant for this project to demonstrate that alternatives that avoid or minimize wetland impacts are not available. The premature elimination of an alternative with far fewer wetland impacts will undermine the CWA permitting process in addition to the ongoing NEPA process.

   **Endangered Species Act**

   The six build alternatives will also have significant impacts to wildlife. In particular, alternatives 1 and 8 appear to traverse through or adjacent to an important rookery for the federally endangered wood stork and other birds, including egrets, herons, and anhingas. Section 7 of the Endangered Species Act (“ESA”) requires that each federal agency “shall insure that any action authorized, funded or carried out by such agency . . . is not likely to jeopardize the continued existence of any” listed species “or result in the destruction or adverse modification of” the species’ critical habitat. 16 U.S.C. § 1536(a)(2). If it is determined that the agency action may affect listed species, formal consultation is required unless the U.S. Fish and Wildlife Service or the National Marine Fisheries Service determines, based on the best available
scientific evidence, that the action is “not likely to adversely affect” the species at all. 50 C.F.R. § 402.14(a) and (b). Here, a decision to move forward with alternatives 1 or 8 would clearly require formal consultation under the ESA. By comparison, the NWTW would not impact any federally-listed species.

**Section 4(f) of the Federal Highway Transportation Act**

Of the six build alternatives identified, two – Alternatives 11 and 11A – would be constructed through the James Island County Park, which is the most popular park in Charleston County with over 300,000 visitors every year. Section 4(f) of the Federal Highway Transportation Act requires a showing that there is no “prudent and feasible” alternative means of addressing the identified transportation need. We believe an even-handed evaluation process would show that the NWTW is a prudent and feasible alternative, and the decision by the agencies not to fairly evaluate it violates Section 4(f) of the Transportation Act.

As opposed to evaluating alternatives that will present major obstacles under the Clean Water Act, the Endangered Species Act, and Section 4(f) of the Federal Highway Transportation Act, the agencies should evaluate other, more feasible alternatives, such as the NWTW.

6. **The Six Selected Build Alternatives Are Not Feasible.** South Carolina law provides that “[i]n every case of a proposed permanent improvement, construction, reconstruction, or alteration by the Department [of Transportation] of any highway or highway facility within a municipality, the municipality may review and approve the plans before the work is started.” S.C. Code Ann. § 57-5-830 (2008). Notably, on April 7, 2009, the James Island Town Council voted unanimously to oppose any extension of I-526 that would be constructed through the town.¹ Each of the six build alternatives selected by the agencies would have to be built through the Town of James Island, and, as such, these alternatives cannot be constructed under state law and therefore are not reasonable for purposes of NEPA. See 46 Fed. Reg. 18026, 18027 (CEQ guidance on NEPA regulations saying “[i]n determining the scope of alternatives to be considered, the emphasis is on what is ‘reasonable’. . . . Reasonable alternatives include those that are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant.”). (Emphasis in original). In light of the Town of James Island’s position regarding the extension of the highway, it does not make sense for the agencies to continue to expend resources to move these alternatives forward. Instead, the agencies should continue to study those alternatives, like the NWTW, that are practical and feasible.

On April 28, 2009, the Town of Folly Beach also voted unanimously to oppose the construction of I-526 onto James Island.² Although the vote by the Town of Folly Beach does not have the same legal significance because none of the six selected alternatives would be constructed within the Town of Folly Beach, this vote helps to illustrate the growing public opposition to a project that many residents west of the Ashley River believe will worsen – as

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opposed to improve – area roadways and communities.

Moreover, it is the NWTW – not the extension of I-526 – that is more in line with the region’s transportation goals. The Charleston Area Regional Transportation Study (“CHATS”) Long Range Transportation Plan articulates a vision and set of objectives, which includes the following: “Create a system of interconnected streets – improve mobility and distribute traffic efficiently based on purpose and function”; “Enhance the efficiency of the existing transportation system – implement low cost improvements and incorporate innovative techniques (such as congestion management strategies)”; “Enhance the quality of life – minimize adverse impacts and/or positively affect the natural and social environments”; “Support ‘mixed-use’ development – encourage bicyclists and pedestrians by promoting context-sensitive roadway design”; and “Promote a pedestrian-friendly environment – fill in gaps and improve interconnection within the sidewalk system.” CHATS Long Range Transportation Plan at p. 2-4 (Apr. 2006). 3 The NWTW meets each of these objectives.

7. **Cost.** Perhaps the most surprising factor missing from the agencies’ Tier I evaluation process is cost. In 2005, Charleston County stated that the extension of I-526 would cost approximately $420 million, and the cost of highway construction is rising. See Charleston County Application to the South Carolina State Transportation Infrastructure Bank at p. 35. Given the current economic climate, it is difficult to see how the extension of I-526 can be completed, and it is surprising that the agencies are unwilling to seriously evaluate an alternative that could achieve the stated purpose and need for the project at a significantly lower cost.

8. **Protective Buying.** Our review of the SCDOT’s file for this project indicates that during this ongoing NEPA process SCDOT has been pursuing the acquisition of properties that lie in the path of a number of the build alternatives. For example, it appears that in January 2009, SCDOT reached an agreement with Stonoshields, LLC to purchase 21.04 acres of land on Johns Island, known as Sabal Palms for $2 million because a number of the selected build alternatives would have to be constructed through this property. It also appears that SCDOT has pursued other properties, including 25.2 acres of property on Johns Island that is part of The Retreat – Phase IV, and a home in the West Ashley area that was located along a previously identified alignment in the West Ashley area.

Although federal regulations provide for early protective acquisition during the NEPA process under certain, exceptional circumstances “to prevent imminent development of a parcel which may be needed for a proposed transportation corridor,” it must be shown “that such development is imminent” and “[a]dvance acquisition is not permitted for the sole purpose of reducing the cost of property for a proposed project.” 23 C.F.R. § 771.117(d)(12)(ii). We are concerned that purchases of these properties would not fall within these exceptional circumstances and would bias the ongoing NEPA process in favor of extending the highway to the detriment of other alternatives, such as the NWTW.

In sum, we are disappointed that the lead agencies have eliminated the NWTW at this early juncture of the NEPA process. We believe the failure to seriously and fairly consider the

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League's alternative violates NEPA and will present additional difficulties as this project is evaluated for compliance with other statutes, such as the Clean Water Act, the Endangered Species Act, and Section 4(f) of the Federal Transportation Act. Moreover, in light of the Town of James Island's opposition to this project, the six build alternatives selected by the agencies are neither practical nor feasible. By comparison, the NWTW is practical, feasible, far less expensive, and we believe a balanced and thorough examination will show that it outcompetes all of the other alternatives in satisfying the purpose and need for this project. For these reasons, the agencies should revisit the NWTW and carry it forward for further evaluation in this process.

Sincerely,

[Signature]

Christopher K. DeScherer
Senior Attorney

cc: H. B. Limehouse, Jr., Secretary of Transportation, SCDOT
    Chuck Hightower, DHEC
    Mark Giffin, DHEC
    Susan Davis, SCDNR
    Bob Perry, SCDNR
    Kay Davy, NOAA Fisheries
    Barbara Neale, OCRM
    Mark Caldwell, USFWS
    Michael Patrick, USACE
    Ramona McConney, USEPA
    Robert Lord, USEPA
    Julie Hensley, Charleston County Park & Recreation Commission
    Megan Desrosiers, CCL
    Josh Martin, CCL
    David Farren, SELC
June 5, 2009

The Honorable H. B. Limehouse, Jr.
Secretary of Transportation
South Carolina Department of Transportation
P.O. Box 191
Columbia, South Carolina 29202-0191

Dear Buck:

I am writing to you to comment on the six proposed “build” alternatives that have been identified in the I-526 EIS process. I would like to go on record with my comments for these alternatives.

Alternative 1 is an expressway with impacts to the cherished Dill Sanctuary on James Island. Because of these impacts it is not an alternative I can endorse.

Alternative 8 is also an expressway that not only impacts the Dill Sanctuary, but also areas designated for “town center” type development near the intersection of Maybank and River Road on Johns Island. I can not endorse this alternative.

Alternative 10 is an expressway with a route similar to the route endorsed in the mid 1990s, except that it does not traverse the James Island County Park. I like the idea of not impacting the park, but I still feel that the impacts of a high speed expressway could be damaging to the character of James Island and Johns Island.

Alternative 11 is an expressway with two small interchanges on either side of Maybank Highway on Johns Island, and a spur that traverses land between Maybank and River. I feel this plan will have similar negative impacts to our Johns Island “town center” as Alternative 8 would, and thus I can not endorse this alternative.

Alternative 11A is an expressway with one interchange on Johns Island north of Maybank, and it also has a spur running between Maybank and River. I can not endorse this alternative for the reasons stated above.
The Honorable H. B. Limehouse, Jr.
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Alternative 36 is a modification of the City’s proposed “Parkway” concept. I would like to endorse this alternative over the other five “build” alternatives, but would like to continue working with the SCDOT staff and the EIS consultants on concerns the City has with this route. While we understand the traffic implications of the at grade intersection we had proposed at Maybank, we would like to ask for continued study of different configurations and alternatives here. We completely support the idea of connections to the proposed Maybank “Pitchfork” at River Road, but have concerns about the interchange proposed north of Maybank (between Headquarters and Rushland Plantation) as to how it would impact this area of Johns Island, and especially how this traffic would interface with River Road. We would also like to continue to explore two lane at-grade connections to any road or systems of roads that could lead to an alternate route to Kiawah and Seabrook.

I appreciate all of the study and dialogue the SCDOT staff has maintained with us during this process, and hope to have continued good discussion to refine the above alternatives.

With kindest regards, I remain

Most sincerely yours,

Joseph P. Riley, Jr.
Mayor, City of Charleston

JPR jr./dm
cc: Hernan Pena, Director
Traffic and Transportation
Christopher Morgan, Director
Planning and Neighborhoods Division
October 20, 2009

Via U.S. Mail

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Re: Mark Clark Extension – Submission of Revised New Way to Work Report

Dear Messrs. Kinard, Hinton, and Taylor:

On January 9th, 2009, we submitted on behalf of the Coastal Conservation League (“League”) “A New Way to Work: Implementation Analysis” in connection with the above-referenced project. This report, which was prepared by Glatting, Jackson, Kercher, and Anglin, Inc., provided information on the functional alternative to extending the Mark Clark Expressway that the Coastal Conservation League has set forth in the ongoing process under the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4332 (2009).

At the time of the report’s initial submission, we explained that as the NEPA process moves forward, the report might be updated to provide additional details regarding the New Way to Work alternative, including a new chapter to describe the alternative’s land use benefits.
Accordingly, enclosed please find a revised version of the report, including a new chapter four, which serves to replace the original submission. Please feel free to contact me if you have any questions or would like to discuss the updated report.

Sincerely,

[Signature]

Christopher K. DeScherer
Senior Attorney

cc: Chuck Hightower, DHEC
    Mark Giffin, DHEC
    Susan Davis, SCDNR
    Bob Perry, SCDNR
    Kay Davy, NOAA Fisheries
    Barbara Neale, OCRM
    Mark Caldwell, USFWS
    Michael Patrick, USACE
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    Robert Lord, USEPA
    Julie Hensley, Charleston County Park & Recreation Commission
    Josh Martin, League
    Kate Parks, League
    David Farren, SELC