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Via email

Charleston County Council
Lonnie Hamilton, III Public Services Building
2nd Floor
4045 Bridge View Drive
North Charleston, SC 29405

Dear Council Members Summey, Qualey, Sass, Schweers, Darby, Pryor, Rawl, Condon, and Johnson:

On behalf of the South Carolina Coastal Conservation League, we are writing regarding the actions recently taken by Charleston County Council related to the proposed Mark Clark (I-526) Extension project. In light of the resolution passed by County Council on April 7, 2016, we thought it was an appropriate time to step back and assess where the Mark Clark Extension project currently sits. In short, this project faces an overwhelming number of difficulties that make it highly unlikely that it will ever be constructed. It is our hope that the information provided below will facilitate a productive discussion about the extension project and a path forward for addressing our region's most pressing transportation issues.

For starters, the studies that have been undertaken to date on the extension project are in need of significant supplementation or complete revision. The draft environmental impact statement ("DEIS"), which contains the environmental analysis required by the National Environmental Policy Act ("NEPA"), was released in July 2010. Many aspects of the proposal have changed since then – including a substantial increase in cost, an increase in projected wetland impacts, and modifications to the project itself – and there is still no concrete funding plan or wetland mitigation plan. Moreover, on April 18th, Representative Chip Limehouse proposed that a toll road be used to address the funding shortfall for this project. None of the environmental analyses completed to date have studied the utilization of a toll road for this project.

Under Federal Highway Administration ("FHWA") regulations, because it has been more than three years since the DEIS was released, a reevaluation of the proposed project must be conducted before the project proceeds. Given the significant changes to the project and the continuing uncertainty about key project components, we fully expect a reevaluation to conclude either that the DEIS needs significant supplementation or that the entire NEPA analysis must be redone. Further complicating the situation is the fact that the method FHWA used to forecast traffic in the DEIS has subsequently been found by a federal court to be inadequate¹ – if the

¹ See *Catawba Riverkeeper Found. v. N. Carolina Dep't of Transp.*, No. 5:15-CV-29-D, 2015 WL 1179646 (E.D.N.C. Mar. 13, 2015).

project were to proceed, FHWA would have to go back and redo its traffic forecasts before conducting the new NEPA analysis.

Even if the County decided to build a portion of the project – as some have discussed – the S.C. Department of Transportation (“SCDOT”) has made clear that such an approach would also require an entirely new NEPA review, since completing only part of the project would no longer meet the original purpose and need as defined in the DEIS.

With respect to the current fiscal picture for the project, the State Infrastructure Bank (“SIB”) has allocated \$420 million to the project, but the total cost of the extension has risen to over \$700 million. These funds were originally allocated in 2006, and the project still has not moved forward, meaning that this extraordinary sum of money has been tied up for almost a decade rather than being used to fund critical transportation projects in the Charleston area and throughout the state.

Given the lack of any meaningful progress on the project and its controversial nature, the SIB notified Charleston County in December of last year that it must develop a specific plan for funding the over \$300 million project shortfall. In response, on April 7, the County submitted a list of all *potential* funding sources, but did not provide the SIB with information about the feasibility of any potential funding plan or whether the County would actually pursue such a plan. As a result, we anticipate that the SIB will find the County’s response insufficient.

In sum, the outlook for constructing the Mark Clark Extension is very bleak. In addition, given the County’s lack of meaningful action in response to the SIB’s demand for a detailed and feasible funding plan, the Charleston region is in jeopardy of losing the \$420 million that had been set aside for the Mark Clark Extension. Although it is unlikely that the Mark Clark Extension will ever be constructed, we believe it is still possible to ensure that the funds for this project stay in the Charleston region and are reprogrammed for more meaningful projects that will provide real transportation benefits.

One way to accomplish this is to either amend the existing Intergovernmental Agreement (“IGA”) between the County, the SIB, and the SCDOT or terminate the existing IGA and negotiate a new one. Section 9.7 of the IGA contemplates amendments to the IGA, which must be made in writing and signed by each party. The parties to the IGA can replace the cost-prohibitive and controversial Mark Clark Extension with another project (or projects) that will be financially feasible and provide tangible transportation benefits for our region. In fact, the language of the existing IGA provides for amendments in the case of “material change[s]” to the project, stating that “[t]he scope of the extension project shall be as set forth in the definition of the Extension Project in Section 1 of this Agreement. Any material change from or in that scope of the Extension Project shall require an amendment to this Agreement.” IGA at § 5.4.² The

² In fact, the IGA will need to be amended one way or another regardless of how the parties decide to proceed. The Chairman of the SIB has already emphasized that even if the project were to proceed in its currently proposed form, the IGA must be amended in order to identify all sources of funding for the project (which are currently unknown) and incorporate other material changes to the project since the previous IGA was signed in 2007.

parties to the IGA could also agree to terminate the IGA and negotiate a new one, if they determine that writing a new agreement is preferable to amending the current agreement.

In other words, the parties have the flexibility to change the project – all that is necessary is that all three parties agree. Although the joint lead agencies have not always seen eye to eye on the Mark Clark Extension project during the various twists and turns it has taken over the years, there is new leadership in place at the County, the SIB, and the SCDOT and at this juncture, it appears that all of the parties share similar goals that would support redirecting the \$420 million to worthwhile transportation projects that enhance the mobility and safety of the existing system as opposed to building new roads and highways. This shared ambition to maintain and improve the current system has been driven, at least in part, by the recognition that South Carolina has a massive backlog of maintenance projects throughout its existing transportation network. *See* “Fix current roads rather than create new ones, DOT leader says,” *Post and Courier* (Jan. 25, 2016) (“The DOT announced this month it needs about \$1.2 billion extra a year for repaving, bridge work and widening to get the state’s roads and bridges to good condition.”). Secretary of Transportation Christy Hall has repeatedly pointed out that the focus should be on maintaining and improving the transportation system that is already in place as opposed to building new highways. *See id.* (quoting Sec. Hall as saying “We believe investment in the condition of the existing system is essential.”).

In addition to amending the IGA or negotiating a new one, the County could also submit a new application to the SIB for local projects that qualify as state-wide priorities. This is another way to give the SIB an opportunity to consider local alternatives and better uses of the funds currently allocated to the Mark Clark Extension project.

By amending or replacing the current IGA and/or submitting a new application to the SIB, the funds currently allocated to the Mark Clark Extension project could be reprogrammed to support other higher-priority projects in the region that would improve the condition of the existing transportation system. There are a host of projects that would both address critical transportation needs and could be supported by all of the parties to the current IGA, including, but not limited to: bus rapid transit along the I-26 corridor, construction of a flyover at the intersection of US 17 and Main Road in West Ashley, widening Main Road on Johns Island, implementation of the Rethink Folly Road Plan on James Island, I-26 capacity improvements and redesign in Charleston County, Savannah Highway redesign in West Ashley, and the original plan to improve Maybank Highway on Johns Island. By working with the SIB and the SCDOT, we believe there is a critical opportunity here for the County to pivot away from the Mark Clark Extension towards projects that will help solve significant mobility issues in the region.

As the parties continue to deliberate on the future of the Mark Clark Extension, we hope you will consider the recommendations contained in this letter. The Mark Clark Extension project is a hugely expensive, outdated idea that will not aid this region’s transportation challenges. We are confident that the County, SIB, and SCDOT can work together to re-program the available funding for more meaningful transportation projects that will actually help to address the most pressing transportation issues in our region. Please do not hesitate to contact us if you wish to discuss anything further.

Sincerely,



Christopher DeScherer

cc: Natalie Olson, Coastal Conservation League
Beverly Craven, Clerk, Charleston County Council
Vince Graham, Chairman, SIB Board
Jim Holly, SIB
Tami Reed, SIB
Christy Hall, Secretary of Transportation, SCDOT
SCDOT Commission Members