

Transportation in Western North Carolina: Paving the Way for Corridor K

R. Kyle Evans

Introduction

In an effort to boost social and economic development in rural areas in the Appalachian region, the Appalachian Regional Commission (ARC) has proposed plans to link the cities of Chattanooga, Tennessee, and Asheville, North Carolina, with a four-lane highway known as Corridor K.¹ For North Carolina, this means relocating sections of U.S. 74 from Robbinsville to Stecoah in Graham County, N.C.² The U.S. 74 relocation is part of the North Carolina Department of Transportation's (NCDOT) Transportation Improvement Project No. A-9.³ Estimates for the projected cost to North Carolina for the A-9 project are between \$334 million and \$383 million, depending on which of four alternatives the NCDOT advances.⁴ The project is currently in development, and there are several studies and regulatory requirements to complete before the A-9 project can move forward to the construction phase.⁵

Since its inception, the A-9 project has run into some resistance from environmental advocacy groups. The Southern Environmental Law Center (SELCL), for instance, argues that the relocation is unnecessary and a threat to the local environment as it would require paving highway through national forests and tunneling into mountains.⁶

¹ Southeast Industrial Development Association, *Corridor K Economic Development and Transportation Study: Final Report*, 15 (last visited Oct. 10, 2012), available at <http://www.tdot.state.tn.us/corridork/FinalReport.pdf>.

² *US 74 Relocation, Executive Summary*, N. C. DEP'T OF TRANSP. S-1, <http://www.ncdot.gov/projects/US74Relocation/download/ExecutiveSummary.pdf> (last visited Oct. 10, 2012).

³ *US 74 Relocation Project*, N. C. DEP'T OF TRANSP. S-1., <http://www.ncdot.gov/projects/US74Relocation/> (last visited Oct. 10, 2012).

⁴ *Executive Summary*, *supra* note 2, at S-13.

⁵ *US 74 Relocation Project*, *supra* note 3.

⁶ *Corridor K: Putting the Brakes on an Outdated Highway Proposal*, S. ENVTL. L. CENTER (Sept. 13, 2010), http://www.southernenvironment.org/cases/corridor_k/.

History of Corridor K and the A-9 Project

The Appalachian Development Highway System (ADHS) is a product of the ARC's 1964 report to Congress that the Appalachian region was isolated, both economically and socially, because of its dismal road systems.⁷ Corridor K will be a part of the ADHS, conceived with the express purpose of alleviating the economic isolation and unsafe road conditions in the region.⁸

The NCDOT originally conducted environmental impact studies for the A-9 project in the 1970s and 1980s, with the studies completed in 1984.⁹ The Corridor K development in North Carolina consists of four parts: A, B, C, and D.¹⁰ The B and C sections are currently being evaluated for development, with the A section to be completed last.¹¹ A new environmental impact study completed in 2008 reevaluated summarized the B and C sections and is current through 2012.¹²

As it exists now, U.S. 74 is subject to heavy traffic during rafting season and the four-lane proposal seeks to help alleviate that congestion.¹³ Furthermore, U.S. 74 often experiences rockslides which are both dangerous and inconvenient for the residents of Graham County.¹⁴

⁷ *Appalachian Development Highway System*, APPALACHIAN REG'L COMM'N, <http://www.arc.gov/adhs> (last visited Oct. 10, 2012).

⁸ SUZANNE ORENSTEIN & JOAN CALCAGNO, U.S. INST. FOR ENVTL. CONFLICT RESOLUTION, NORTH CAROLINA TRANSPORTATION CORRIDOR K, A-9 PROJECT ASSESSMENT OF THE POTENTIAL FOR INTERAGENCY COLLABORATION 3 (April 15, 2011), available at http://www.regiona.org/wp-content/uploads/2011/06/NC-Corridor-K-Summary-Assessment-Report_4-15-11-21.pdf.

⁹ *Relocation Project*, *supra* note 3.

¹⁰ *Id.*

¹¹ *Id.*

¹² *See id.*

¹³ *Frequently Asked Questions*, N.C. DEP'T OF TRANSP.

<http://www.ncdot.gov/projects/US74Relocation/download/A9BCFAQs.pdf> (last visited Oct. 10, 2012).

¹⁴ *Id.*; see also Laura L. Woodring, *Rock slide reroutes U.S. 19/74*, CHEROKEE SCOUT (April 7, 2009, 8:05 PM), <http://www.cherokeescout.com/articles/2009/04/07/news/doc49dbc1b6a77ba675517745.txt>.

The U.S. 74 relocation proposal includes wider shoulders and larger “rock catchment zones” which would serve to reduce the impact of any rockslides that may occur.¹⁵

Economic Impact

The U.S. 74 relocation is expected to have significant long and short-term effects on the economic conditions in Graham County.¹⁶ A third party evaluation of the project predicts that short-term employment in Graham County will increase, creating over \$1.7 billion.¹⁷ The planned five-year construction schedule is also projected to create roughly 2,300 jobs.¹⁸

In the long run, the expected effects of the U.S. 74 relocation are less tangible but still substantial.¹⁹ The NCDOT believes that the completion of the A-9 project should result in increased access to medical facilities for residents of Graham County, more housing and employment opportunities, a boost to the tourism industry, and increased industrial and manufacturing employers because of the ease of transporting materials.²⁰ The proposed highway’s design aims to reduce the number of accidents resulting from dangerous road conditions, and such reduction will reduce economic burden on the residents of Graham County.²¹

¹⁵ *Id.*

¹⁶ N.C. DEP’T OF TRANSP., DRAFT SUPPLEMENTAL FINAL ENVIRONMENTAL IMPACT STATEMENT 4–62 (June 2008), available at <http://www.ncdot.gov/projects/US74Relocation/download/DSFEIS.pdf>.

¹⁷ *Id.* at 4-63,64.

¹⁸ *Id.* at 4-63.

¹⁹ *Id.* at 4-64.

²⁰ *Id.*

²¹ *Id.* at 4-67.

Environmental Impact

The NCDOT found that the proposed A-9 project will have various environmental effects on the surrounding environment.²² The new highway will increase the danger of habitat loss and fragmentation.²³ It will separate “several tracts of land south of N.C. 143 and N.C. 28” and reduce the “connectivity of habitats.”²⁴ Water quality is another important area of concern: increased development in the A-9 project region could result in non-point source pollution, which is a leading cause of water degradation.²⁵

The proposed highway will also require tunneling under the Appalachian Trail through the Stecoah Gap.²⁶ The Appalachian Trail is a Section 4(f) resource, which requires that any proposed project that interferes with the resource must show that there is “no feasible and prudent alternative to the use of the land” and the “action includes all possible plans to minimize harm to the property resulting from such use.”²⁷ The tunnel, which would be approximately 575 feet underground,²⁸ does not have to meet the Section 4(f) requirements as long as the tunnel does not disturb any archaeological sites, cause permanent harm to the resource’s purpose, or impair the resource’s historical value.²⁹ The project must also concern itself with constructive use, in which the project’s “proximity impacts are so severe” that the resource is significantly impaired.³⁰ The NCDOT’s plan claims to not “substantially diminish” the Appalachian Trail’s

²² N.C. DEP’T OF TRANSP., DRAFT SUPPLEMENTAL FINAL ENVIRONMENTAL IMPACT STATEMENT 4–68 (June 2008), available at <http://www.ncdot.gov/projects/US74Relocation/download/DSFEIS.pdf>.

²³ *Id.* at 4-68,69.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.* at 4-6.

²⁷ *Id.* at 4-8 (quoting 23 C.F.R. § 774.3 (2008)).

²⁸ *Frequently Asked Questions*, *supra* note 13.

²⁹ N.C. DEP’T OF TRANSP., *supra* note 22, at 4-8.

³⁰ *Id.*

qualities, although they do not fully explore whether the A-9 project will harm the aesthetic quality of the Trail.³¹

The construction will also require extensive sediment loading and acidic inputs, which can have a serious impact on the watersheds near the area.³² The addition of paved roads to previously undeveloped areas increases the amount of impervious surfaces and dramatically raises the amount of runoff and storm pollution.³³ Increased runoff from the U.S. 74 relocation would impact aquatic life in the area and have adverse effects on species, such as the salamander.³⁴ The possible harm to these communities would adversely affect the forest's "genetically diverse breeding populations," which could have far-reaching effects for the region.³⁵

The increased sediment loading would also have an effect on bottom-dwelling, non-mobile organisms and on photosynthetic species, which are the primary producers in the food chain.³⁶ Suspension feeders, an important part of the aquatic food web, also suffer when sediments increase.³⁷ The proposed road construction will lead to increased sediment loads, higher water temperatures, decreased levels of dissolved oxygen, and the increased possibility of toxins entering the waterways.³⁸ The A-9 project could seriously harm the aquatic communities in the proposed relocation area, and the NCDOT believes it can minimize that harm by careful planning and construction.³⁹

³¹ *Id.* at 4-9.

³² *Id.* at 4-29.

³³ *Id.* at 4-31.

³⁴ N.C. DEP'T OF TRANSP., *supra* note 22, at 4-31.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* (using bridges to reduce stream impact, taking extra precautions in storing and disposing of waste material)

Project Funding

The B and C sections of the A-9 project, which will cost more than \$300 million to complete, will be funded by an unspent ADHS balance of \$235 million with much of the rest coming from a match from North Carolina.⁴⁰ Currently, the North Carolina match is only at \$58.8 million.⁴¹ Federal funding standards require that any federal money given to the ADHS be used on ADHS projects with a match of 20% from the host state.⁴²

Regulatory Requirements

The U.S. 74 relocation project would require several permits in order to move forward into the construction phase. The United States Army Corps of Engineers (Corps) must also grant a Section 404 permit for any activity that would “discharge dredged or filled materials into Waters of the United States.”⁴³ This permit will have to be reviewed by the U.S. Fish and Wildlife Service, National Marine Fisheries Service, and the U.S. Environmental Protection Agency.⁴⁴ In order to obtain a Section 404 permit, the NCDOT must show that the A-9 project mitigates impact through “avoidance, minimization, and compensation measures” as outlined in the Clean Water Act Section 404(b)(1).⁴⁵

In conjunction with the Section 404 permit from the Corps, the project must also have a Section 401 Water Quality Certification permit from North Carolina’s Division of Water Quality

⁴⁰ *Frequently Asked Questions*, *supra* note 13.

⁴¹ *Id.*

⁴² *Id.*

⁴³ N.C. DEP’T OF TRANSP., *supra* note 22, at 4-53.

⁴⁴ *Id.*

⁴⁵ *Id.*

(NCWQ).⁴⁶ The NCDWQ may deny the certification if they deem the A-9 will have “permanent adverse effects on existing or designated uses.”⁴⁷ The A-9 project must also obtain permits from the NC Division of Forest Resources, the NC Division of Land Resources, and the Tennessee Valley Authority.⁴⁸ The A-9 project has not been granted any of the requisite permits at this time. In fact, it would seem that some agencies are reluctant to grant the permits at all, as they are concerned about the environmental damage caused and the exorbitant cost of the project.⁴⁹

Project Controversy

The Corridor K project is not without controversy. The A-9 project has drawn criticism for being outdated, unnecessary, and environmentally dangerous.⁵⁰ Several conservation groups have joined together to advocate against the project and have enjoyed some mild success.⁵¹

In a letter to the Corps, the SELC outlined just how the proposed A-9 project fails to meet the guidelines for a Section 404 permit.⁵² Citing the NCDOT's 2008 Draft Supplemental Final Environmental Impact Study, the SELC points out that the data presented show "no real transportation need requiring . . . a massive four-lane divided highway."⁵³ The SELC also criticized the NCDOT for failing to examine two-lane alternative, which they claim would

⁴⁶ *Id.*

⁴⁷ *Id.* at 4–54

⁴⁸ *Id.* at 4–55

⁴⁹ Becky Johnson, *Corridor K debate going nowhere*, SMOKY MOUNTAIN NEWS, (Mar. 15, 2012, 3:06), <http://www.smokymountainnews.com/news/item/6472-corridor-k-debate-going-nowhere>.

⁵⁰ See *Corridor K: Putting the Brakes on an Outdated Highway Proposal*, *supra* note 6; Wally Smith, *Road Proposal Stirs Controversy Along the Appalachian National Scenic Trail*, NATIONAL PARKS TRAVELER, <http://www.nationalparkstraveler.com/2010/01/road-proposal-stirs-controversy-along-appalachian-national-scenic-trail5214> (last visited Oct. 10, 2012); *Corridor K in North Carolina*, WAYSSOUTH <http://www.wayssouth.org/campaigns/corridor-k/corridor-k-in-north-carolina/> (last visited Oct. 10, 2012).

⁵¹ Letter from Southern Environmental Law Center to David K. Baker, US Army Corps of Engineers (Sept. 2, 2009) available at http://www.southernenvironment.org/uploads/fck/file/corridor_k/SELC%20comments%20to%20Corps%20Sep%202009.pdf.

⁵² *Id.*

⁵³ *Id.* at 3.

contribute less environmental damage and meet the NCDOT's stated goals for the U.S. 74 relocation.⁵⁴

To grant a Section 404 permit, the USACE must consider the “probable impacts, including cumulative impacts,” of any project on the public interest.⁵⁵ The SELC argues that the monetary costs of the project combined with the plan’s proposal to cut through the Nantahala National Forest and drill through the Stecoah Gap surpass any benefit expected by the NCDOT.⁵⁶ In a memorandum to the SELC, a transportation engineer claims that the NCDOT misrepresents the Level of Service (LOS) currently provided by the roads in the project area, and that the LOS of the current roads is sufficient to handle the traffic needs of the area through 2030.⁵⁷

Conclusion

The Corps has not granted a Section 404 permit to the NCDOT. The Corps has, instead, asked them to complete an environmental study of the effects of a possible widening of two two-lane roads in the project area.⁵⁸ The NCDOT has completed the study, but is still recommending a four-lane alternative for the A-9 project.⁵⁹ The NCDOT planned to begin right-of-way

⁵⁴ *Id.*

⁵⁵ General policies for evaluating permit applications, 33 C.F.R. § 320.4(a)(1) (2012).

⁵⁶ Letter from SELC to David K. Baker, US Army Corps of Engineers, 11 (Sept. 2, 2009) *available at* http://www.southernenvironment.org/uploads/fck/file/corridor_k/SELC%20comments%20to%20Corps%20Sep%202009.pdf.

⁵⁷ Memorandum to SELC from Walter Kulash, Traffic Engineer (October 11, 2000) *available at* http://www.southernenvironment.org/uploads/fck/file/corridor_k/SELC%20comments%20to%20Corps%20Sep%202009.pdf.

⁵⁸ *US 74 Relocation Project*, *supra* note 3.

⁵⁹ N.C. DEP’T OF TRANSP., *supra* note 22, at 2-76.

acquisition in 2014, with construction to start in 2016, but is now rescheduling plans in order to evaluate the proposal.⁶⁰

⁶⁰ *US 74 Relocation Project*, *supra* note 3.