

Monroe Bypass Legal Saga Approaching End of Road, Could Impact Bonner Bridge Litigation

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Image from ncdot.gov

Oral arguments are set to take place before the Fourth Circuit Court of Appeals in Richmond, Virginia on March 20, 2012 in connection with an appeal asserted by several environmental groups seeking to stall construction of the Monroe Connector Bypass (commonly known as the "Monroe Bypass") in Union County. If the Fourth Circuit rejects the appeal and allows the project to move forward, a groundbreaking is expected in August of this year, [as reported late last week](#) by the Charlotte Observer.

Lawyers for the Southern Environmental Law Center ("SELC") are challenging the trial court's award of summary judgment in favor of the North Carolina Department of Transportation ("NCDOT") that allowed the project to proceed. The [SELC's appellate brief](#) argues that there are flaws in NCDOT's assessment of the project's environmental impacts that violate the National Environmental Policy Act ("NEPA"). Specifically, SELC contends that NCDOT's analysis of the "no build" option assumes that the highway already exists, resulting in an underestimation of the project's impact on subsequent development; that NCDOT failed to analyze more environmentally friendly alternatives to mitigating traffic along the US 74 corridor; and that NCDOT provided false and misleading information in the NEPA documents. [NCDOT's appellate brief](#), however, denies these contentions and insists that the agency "identified a reasonable purpose and need statement for the [p]roject and conducted a thorough analysis of the environmental impacts of the various alternatives that satisfied the [p]roject's purpose and need."

It's unclear how soon the Fourth Circuit will rule after oral arguments are heard on March 20. I'll be keeping my eyes open, so please stay tuned.



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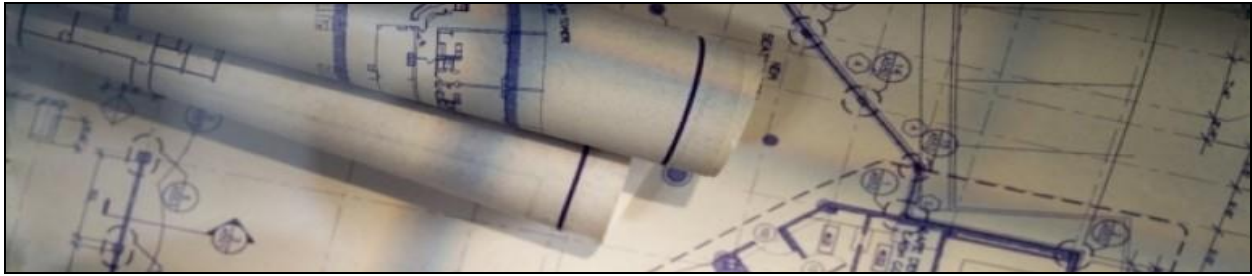


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As a sidenote, the Fourth Circuit's decision will have precedential value that could affect how the Bonner Bridge litigation proceeds. That project's legal challenge, also being asserted by lawyers from SELC, is in the discovery stage, with all summary judgment briefs due by the end of August; see attached [amended scheduling order](#). Based on that schedule, a summary judgment order from the U.S. District Court for the Eastern District of North Carolina is unlikely before late Fall 2012. Assuming the Fourth Circuit issues its opinion in the Monroe Bypass matter prior to the issuance of a summary judgment order in the Bonner Bridge matter, the Fourth Circuit opinion could cast a very long shadow over the OBX litigation.

For additional information about these two legal challenges, see my earlier blog post [here](#).

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