Coordinating Committee, Inc. v. United States Atomic Energy Commission, 449 F.2d 1109, 1112 (D.C. 1971). Writing for the Court of Appeals for the First Circuit, then-Judge Breyer explained (*Massachusetts v. Watt*, 716 F.2d 946, 952 (1st Cir. 1983)):

> NEPA is not designed to prevent all possible harm to the environment; it foresees that decisionmakers may choose to inflict such harm, for perfectly good reasons. Rather, NEPA is designed to influence the decisionmaking process; its aim is to make government officials notice environmental considerations and take them into account. Thus, when a decision to which NEPA obligations attach is made without the informed environmental consideration that NEPA requires, the harm that NEPA intends to prevent has been suffered.

B. THE DEPARTMENT OF TRANSPORTATION ACT

Section 4(f) of the Department of Transportation Act, 49 U.S.C. 303(c), provides:

> The Secretary [of the Department of Transportation] may approve a transportation program or project (other than any project for a park road or parkway under section 204 of title 23) requiring the use of publicly owned land of a public park, recreation area, or wildlife and waterfowl refuge of nation, State, or local significance, or land of an historic site of national, State, or local significance (as determined by the Federal, State, or local officials having jurisdiction over the park, area, refuge, or site) <u>only if</u> –
>
> (1) there is no prudent and feasible alternative to using that land; and
>
> (2) the program or project includes all possible planning to minimize harm to the park recreation area, wildlife and waterfowl refuge, or historic site resulting from the use. [emphasis added]

This provision bars the use of federal funds for construction of highways that use parkland or historic sites except in "the most unusual situations * * *." *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 411 (1971). The Supreme Court has explained (*id.* at 412-413):

> [T]he very existence of the statute[] indicates that protection of parkland was to be given paramount importance. The few green havens that are public parks were not to be lost unless there were truly unusual factors present in a particular case or the cost or community disruption resulting from alternative routes reached <u>extraordinary magnitudes</u>. If the statute[] [is] to have any meaning, the Secretary cannot approve the destruction of parkland unless he finds that alternative routes present unique problems. [emphasis added]

"The term 'use' is to be construed broadly, not limited to the concept of a physical taking, but includes areas that are significantly, adversely affected by the project." *Adler v. Lewis*, 675 F.2d 1085, 1092 (9th Cir. 1982) (citing Department of Transportation Order No. 5610.1A, para. 9(c)(1), 36 Fed. Reg. 23681 (1971)).

"An alternative is feasible unless 'as a matter of sound engineering' it should not be built." *Hickory Neighborhood Defense League v. Skinner*, 893 F.2d 58, 61 (4th Cir. 1990) (quoting *Citizens to Preserve Overton Park, Inc. v. Volpe, supra*, 401 U.S. at 411). DOT must provide "strong and compelling reasons" that the alternatives present unique problems before rejecting alternatives on the ground that they are not prudent. *Hickory Neighborhood Defense League v. Skinner, supra*, 910 F.2d at 164.

C. NATIONAL HISTORIC PRESERVATION ACT

Congress has declared that the preservation of this Nation's historic heritage "is in the public interest so that its vital legacy of cultural, educational, aesthetic, inspirational, economic, and energy benefits will be maintained and enriched for future generations of Americans * * *." 16 U.S.C. 470(b)(4). Section 106 of the National Historic Preservation Act, 16 U.S.C. 470f, provides:

> The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federal assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any licence, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under part B of this subchapter a reasonable opportunity to comment with regard to such undertaking.

Based on this statutory background, we respectfully submit the following comments.

CHAPTER 1: PURPOSE OF AND NEED FOR ACTION

COMMENT: The DEIS Provides Inadequate Information Concerning Accident Rates

The Draft Environmental Impact Statement (hereafter "DEIS") states that the purposes of this project are to (1) improve traffic flow on U.S. 321 and (2) reduce accidents on U.S. 321 within Blowing Rock. DEIS, p. 1-2. According to the DEIS, U.S. 321 in the project area has a higher accident rate than statewide rates for similar roads. *Id.*, p. 1-1. However, the DEIS does not identify the roads on which this statement is based. As the DEIS (p. 1-7) notes, U.S. 321 passes along mountainous terrain with steep grades and sharp curves. It is therefore important that the accident rate of U.S. 321 be compared to roads with similar grades and curves. Since information on the roads on which the DEIS relies for its comparison has not been provided, the DEIS's claim that U.S. 321 has higher rates of accidents cannot be verified.

CHAPTER 2: ALTERNATIVES

COMMENT: The DEIS Fails to Examine Adequately the Alternative of Redesignating U.S. 321

According to the DEIS (p. 2-38), the Concerned Citizens of Blowing Rock (hereafter "Concerned Citizens") proposed that a different highway route between Lenoir, North Carolina, and Hampton, Tennessee, be designated as U.S. 321. The DEIS states that this route was studied in 1992 and that the study "found no particular roadway design or environmental issues that would make the redesignation" difficult. DEIS, p. 2-38. Furthermore, the DEIS notes that the route between Lenoir and Hampton is only three miles longer than the current route. *Ibid.* Nonetheless, the DEIS does not analyze this route in any detail because (1) the amount of traffic that would shift to the redesignated route would be small and (2) the capacity and safety needs of the current U.S. 321 between Patterson and Blowing Rock, North Carolina, would not be changed. *Ibid.* However, the DEIS does not provide sufficient information as to either of these reasons to support the decision not to analyze this alternative.

The DEIS admits that the widening of U.S. 321 will "use" Section 4(f) properties. DEIS, p. 4-76. Therefore, this project can proceed only if there are no feasible and prudent alternatives. The DEIS also admits that the Redesignation Alternative is feasible, *i.e.*, it can be done as a matter of sound engineering policy. *Id.*, p. 2-38. Therefore, the only question is whether that alternative is a prudent one, *i.e.*, whether it presents truly unusual factors that reach, in the words of the Supreme Court, "extraordinary magnitudes." Based on the current information in the DEIS, it is not possible to reach this conclusion.

First, the DEIS claims that not much traffic would shift if a different route were designated as U.S. 321. However, this conclusion is not supported by any evidence. To the contrary, it is our understanding that DOT's Origin and Destination study shows that 88 percent of traffic on U.S. 321 consists of traffic traveling through Blowing Rock. If that is correct, there is every reason to believe that most traffic would shift to the newly designated U.S. 321.

Second, the DEIS says that the Redesignation Alternative would not change the capacity and safety of the current U.S. 321. This statement seems to be largely dependent on the accuracy of the statement that the traffic would not shift. If, to the contrary, the shift in traffic would be substantial, the amount of congestion on the current U.S. 321 would obviously diminish and, with less traffic, there would be fewer accidents.

We note that there are no environmental issues with the Redesignation Alternative. This makes it particularly imperative that DOT analyze the Redesignation Alternative in more detail to

vehicles. The Concerned Citizens' proposal also involved a different route than the DEIS's Bypass Alternatives in order to reduce the steep (25 percent) grades in Alternatives 4A and 4B to 6 percent or less, thereby improving safety and traffic flow. *See* Attachment 1. Since the Concerned Citizens' proposal has substantial benefits over Alternatives 4A and 4B, that proposal should be analyzed as a Bypass Alternative rather than alternatives which are less beneficial and therefore more easily dismissed.

The alternatives section "is the heart of the environmental impact statement." 40 C.F.R. 1502.14. In this section, DOT must "rigorously explore and objectively evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated." 40 C.F.R. 1502.14(a). Here, DOT eliminated the Concerned Citizens' bypass proposal without giving its reasons for doing so. This violation of the CEQ's regulations is particularly egregious because DOT must demonstrate that "there is no prudent and feasible alternative" to its use of an historic site.

COMMENT: An Adequate Origin and Destination Study Should Be Carried Out

According to the DEIS, the Origin and Destination study was conducted on a single day in September 1998. DEIS, pp. 2-5 to 2-6. The DEIS does not provide any more information as to what day of the week and over which hours of the day the study was conducted. We submit that a one-day study does not provide a sufficient benchmark to determine where most of the traffic is originating and heading.

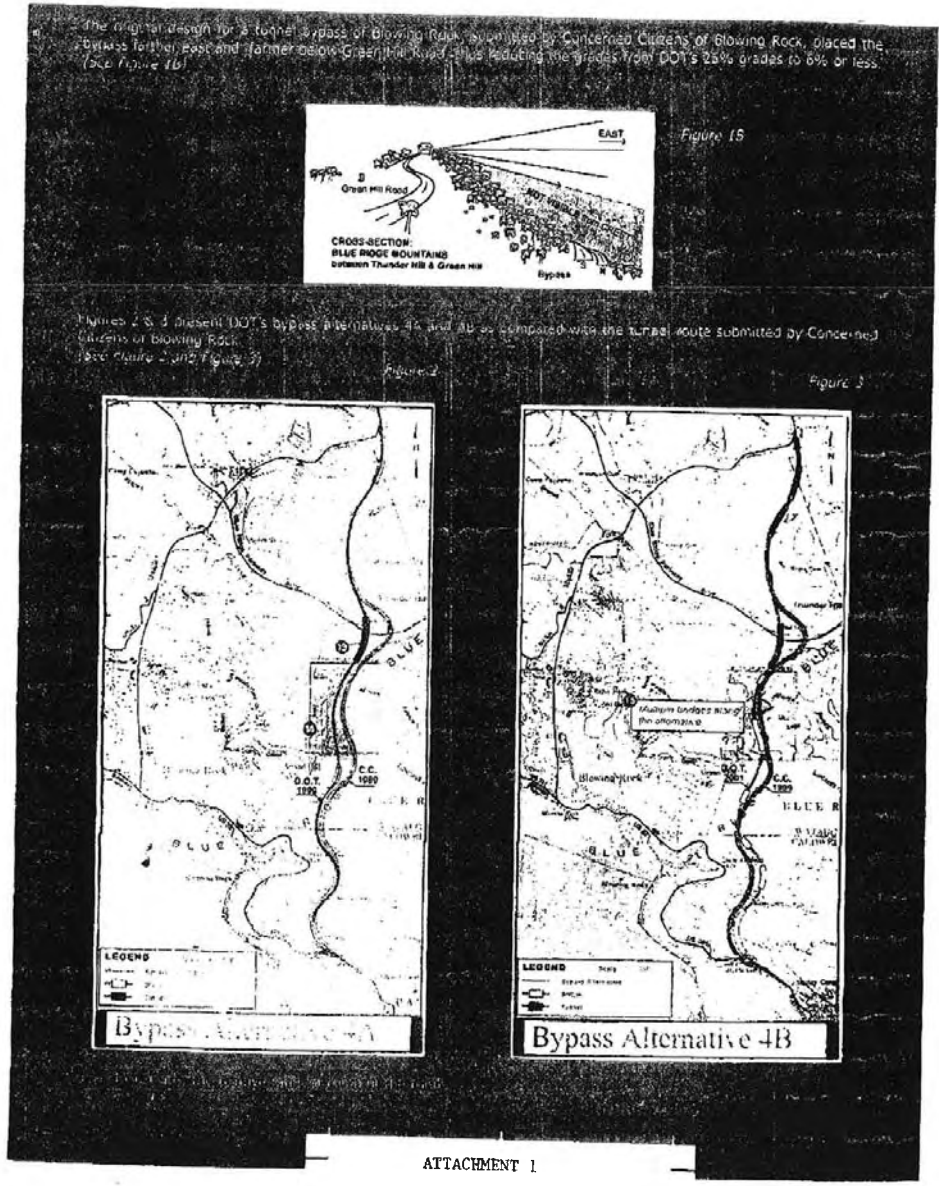
This is particularly true here since Blowing Rock is a resort town. It has a permanent population of 1,300 residents which jumps to about 10,000 during the summer months. DEIS, p. 3-3. This change appears to be due to the large number of people who vacation in Blowing Rock

during those months and part-time residents who return each summer. Thus, there is almost certain to be a substantial disparity between the level of traffic during the tourist season and during the offseason. Furthermore, the destinations of drivers during the tourist season may substantially differ from those of the drivers during the non-tourist season. Accordingly, an Origin and Destination study should be done that considers the seasonal fluctuations.

We appreciate the opportunity to submit these comments.

Bruce J. Terris
Demian A. Schane
Terris, Pravlik & Millian, LLP
1121 12th Street, NW
Washington, D.C. 20005-4632
(202) 682-2100
(202) 289-6795 (facsimile)

September 26, 2002



ATTACHMENT 1

COMMENT SHEET

US 321 Improvements

Corridor Public Hearing

R-2237C Project 6.739001T Caldwell and Watauga Counties

August 26, 2002

NAME: Barbara Scott

ADDRESS: 3020 Redford Dr. Greensboro, NC 27408-3116

COMMENTS AND\OR QUESTIONS:

Comments may be mailed to:
C. B. Goode, Jr., P. E.
Manager of the Office of Human Environment
1583 Mail Service Center
Raleigh, NC 27699-1599 Phone: (919) 250-4092 Fax: (919) 250-4208
E-mail: cgoode@dot.state.nc.us

Dear Mr. Goode,

The DOT still just doesn't get it! The Blowing Rock Bypass is not a "Not in my backyard" issue. It is also not an issue of "us" versus "them". The present widening, 1A, 1B, 4A, and 4B alternatives do not meet the needs of anyone. After 12 years, the DOT has yet to come up with an innovative solution that would serve the needs of the traveling public as well as the daily commuting of citizens. We are getting the same decade old recycled plans.

I support looking for a creative alternative. I lived in Blowing Rock for seven years and spend most of the summer there. Therefore, I have had an opportunity to observe traffic problems in the area. I support the suggestion of one attendee at the hearing in August. Three lane (turn lane) the present By Pass. Making U-turns would be very difficult. I also think turning lanes with a seasonal light at Green Hill Rd / Gideon Ridge is necessary. This light could be set on a trigger. I have counted 23 cars coming up the mountain before there is a break in traffic. It is extremely difficult especially for tourist returning from The Blowing Rock to turn left toward Blowing Rock. There also needs to be at least turning lanes in both directions into the Blowing Rock Country Club. The line of sight exiting the Country Club is extremely limited in both directions. Many members of the CC are intimidated by the heavy traffic. A left turning lane out of the Club would allow those cars to exit and then merge into traffic. Seasonal lights like the one at Appalachian Ski Mountain in the winter and Grandfather in the summer would be helpful.

I propose turning lanes with seasonal lights and three laning of the By Pass. I also encourage DOT to look at a 4 lane road through the valley in the NC 268 area to connect US 321 to US 421. Construction would be a lot less expensive and disruptive.

The 4-laning of US 421 is almost complete (I hope). Once that road is open and additional construction of US 321 begins, it will not take long for the traveling public and trucks to realize it is easier to go up I 77 at 65/70 mph to US 421 at 55/60 mph. This will be preferable to US 321 with 18 stop lights between Hickory and Simon and a speed limit of 55 mph at best.

Finally, especially after 9/11, what's the hurry? We might get to our destination 5 minutes sooner. However, if the destination has been destroyed, what's the hurry?

I do want to commend and thank the DOT for heeding one suggestion proposed by citizens in the area. The left turning lane on US 321 South onto Possum Hollow Road will help prevent back-up in that area. Yes we can work together.

Sincerely,
Barbara Scott
3020 Redford Dr.
Greensboro, NC 27408
Email Scott-G50@worldnet.ATT.Net

PO Box 56
Blowing Rock, NC 28605

John Guerard Scott
313 Mockingbird Lane

Blowing Rock, NC 28605

August 28, 2002

Mr. William Gilmore, Manager
PDEA Branch, NCDOT
1548 Mail Service Center
Raleigh, NC 27699-1548

Re: Highway 321 Bypass

Dear Mr. Gilmore:

The N.C. Department of Transportation (DOT) seems to be leaning toward a decision to widen Highway 321 through Blowing Rock rather than build a bypass around our little town.

I attended the workshop sponsored by the DOT on August 26th in Blowing Rock. Many people expressed their opinions on this project. Virtually all of those who favored widening the existing 321 road did so because the bypass alternatives would adversely affect them *personally*. Those who spoke in favor of the bypass alternatives did so because *they felt that was best for the future of the town.*

Even though the widening proposal might be a cheaper alternative, the disruption, noise, and mess created inside the town by the construction process is simply not acceptable. After the construction is complete in three-to-five years, the increased traffic, congestion, and noise will still be very disruptive.

Blowing Rock is a tourist destination in the summer and many weekends. *We need a road that takes traffic headed somewhere else around the town, not through it!*

My family strongly urges you to influence the DOT to build a bypass around Blowing Rock!

Sincerely,

John G. Scott

ORIGINAL
RECEIVED
SEP 12 2002

John Guerard Scott
313 Mockingbird Lane
Post Office Box 2620
Blowing Rock, NC 28605

SEP 0 2002

August 28, 2002

Mr. Carl Goode
NCDOT
PO Box 25201
Raleigh, NC 27611-5201

Re: Highway 321 Bypass

Dear Mr. Goode:

The N.C. Department of Transportation seems to me to be leaning toward a decision to widen Highway 321 through Blowing Rock rather than build a bypass around our little town.

I attended the workshop sponsored by DOT on August 26th in Blowing Rock. Many people expressed their opinions on this project. Virtually all of those who favored widening the existing 321 road did so because the bypass alternatives would adversely affect them *personally*. Those who spoke in favor of the bypass alternatives did so because *they felt that was best for the future of the town.*

Even though the widening proposal might be a cheaper alternative, the disruption, noise and mess created inside the town by the construction process is simply not acceptable. After the construction is complete in three-to-five years the increased traffic, congestion and noise will still be very disruptive.

Blowing Rock is a tourist destination in the summer and many weekends. *We need a road that takes traffic headed somewhere else around the town, not through it!*

My family strongly urges you to build a bypass around Blowing Rock!

Sincerely,

John G. Scott

Mr. And Mrs. John Guerard Scott
313 Mockingbird Lane
P. O. Box 2620
Blowing Rock, North Carolina 28605

CITIZENS
RECEIVED
SEP 25 2002

September 21, 2002

Mr. Len Hill, P.E.
NC DOT
P. O. Box 25201
Raleigh, NC 27611

Dear Mr. Hill:

Re: Highway 321 By-pass route suggestion

We have recently explored some of the existing routes from Lenoir to Boone.

In our opinion a relatively flat and very picturesque 321 By-pass could be designed from near Patterson through the Yadkin Valley to somewhere around the Elkville/Ferguson area then connecting with the terrific new Highway 421 near Champion.

This by-pass would utilize the existing four-lane Highway 421 improvements and eliminate the need to do the very expensive widening of Highway 321 from north of Patterson through Blowing Rock.

This route seems to us to solve the problem of providing a four-lane route for Highway 321 from Lenoir to Boone without disrupting Blowing Rock, the Blue Ridge Parkway or Blackberry Gorge, and it could be less expensive than any of the build alternatives under consideration.

We are very sympathetic to all of the hard work that has been done over the past ten years as well as the needs of Blowing Rock and the residents in Blackberry and Aho.

This route looks to us like a better way to solve the problem.

Sincerely,

John G. Scott
Lyphenee L. Scott

cc: Secretary Lyndo Tippett
Mr. Carl Goode
Mr. Sam Erby
Mr. Doug Galyon

From: Missy Dickens [mdickens@dot.state.nc.us]
Sent: Thursday, August 29, 2002 10:04 AM
To: Carl Goode
Cc: Reggie Scales
Subject: [Fwd: Hwy. 312 Blowing Rock]

Hearing comment

-------- Original Message --------
Subject: Hwy. 312 Blowing Rock
Date: Mon, 26 Aug 2002 14:32:02 -0400
From: "Setzer, Barry" <BSetzer@worldtexinc.com>
To: <mdickens@dot.state.nc.us>

I am a permanent resident of Blowing Rock, N.C. I commute daily to Hickory, N.C. via Hwy. 321. I support the widening of Hwy 321, but I absolutely oppose widening the present route through Blowing Rock, N.C. I am offended by the strong arm tactics D.O.T. is using to bring the widening project through my town.

Barry D. Setzer
Worldtex Inc.

Subject: FW: Concerned Citizens of Blowing Rock,Inc.
Date: Tue, 27 Aug 2002 15:24:56 -0400
From: "Page, John"<PageJ@pbworld.com>
To: "Missy Dickens PE (mdickens@dot.state.nc.us)" <mdickens@dot.state.nc.us>, "Carl Goode (NCDOT) (cgoode@dot.state.nc.us)" <cgoode@dot.state.nc.us>

-----Original Message-----
From: Bonnie Setzer [mailto:Biffi7@bellsouth.net]
Sent: Monday, August 26, 2002 3:40 PM
To: blowingrock321@dot.state.nc.us
Subject: Concerned Citizens of Blowing Rock,Inc.

I'm a permanent resident of Blowing Rockland I'm absolutely apposed widening the present route of highway 321 through our town. I plan to attend the meeting tonight at the Blowing Rock Assembly Grounds to express my outrage for the way D.O.T. is handling this project.

Bonnie P. Setzer
727 Laurel Lane
Blowing Rock, NO.C. 28605
Bonnie Setzer

August 21, 2002

AUG 26 2002

Dr. and Mrs. Robert E.L. Shirley
PO Box 1808
Blowing Rock, NC 28605

Mr. William Gilmore
PDEA Branch, NCDOT
1548 Mail Services Center
Raleigh, NC 27699-1548

Dear Mr. Gilmore:

Eight years ago we moved permanently to Blowing Rock because of the lifestyle available here. We believe that widening the highway on the existing 321 route would negatively impact our village atmosphere. We feel that it would also increase congestion and noise and endanger many historic structures.

Although it would be more expensive initially, we believe that a true bypass around Blowing Rock through Blackberry Gorge is the best solution.

Thank you for your attention to our concerns.

Sincerely,

Robert and Joan Shirley

Joan B. Shirley

RECEIVED
AUG 27 2002

Mr. Graf,

I would strongly encourage you to push for widening the existing portion of 321, south from Blowing Rock into Caldwell county.

Respectfully,
Mike Shore
P.O. Box 1065
Boone, NC 28607

Mr. Gilmore,

I would strongly encourage you to push for widening the existing portion of 321, South from Blowing Rock into Caldwell county.

AUG 26 2002

Respectfully,
Mike Shore
P.O. Box 1065
Boone, NC 28607

The Shore Horseshoe

RECEIVED
AUG 27 2002

COMMENT SHEET

US 321 Improvements

Corridor Public Hearing

R-2237C Project 6.739001T Caldwell and Watauga Counties

August 26, 2002

NAME: Rob Slack

ADDRESS: Blackberry Rd.

COMMENTS AND\OR QUESTIONS:

The road should follow the natural grade and progression that has existed for years. The most cost effective / cost savings approach should also be adopted. The widening alternative would also have the least environmental impact.

Comments may be mailed to:
C. B. Goode, Jr., P. E.
Manager of the Office of Human Environment
1583 Mail Service Center
Raleigh, NC 27699-1599 Phone: (919) 250-4092 Fax: (919) 250-4208
E-mail: cgoode@dot.state.nc.us