

**McKeel, Dale**

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**From:** McKeel, Dale  
**Sent:** Friday, July 22, 2016 8:54 AM  
**To:** 'pnorman@ncdot.gov'  
**Cc:** 'Stanley, Mike'; 'jhopkins@ncdot.gov'; 'dpkeilson@ncdot.gov'; Kneis, Michael J (mkneis@ncdot.gov); Beckmann, Ellen; Poole, Bryan; Felix Nwoko (Felix.Nwoko@dchcmpo.org); Smart, Lindsay; Andrew Henry (Andrew.Henry@dchcmpo.org); Crutchfield, Harmon; 'Hoops, George (FHWA)'; 'Edward.Dancausse@dot.gov'; David Bonk  
**Subject:** Earmark Repurposing Request

Patrick:

The SAFETEA-LU legislation included an earmark for Durham for the acquisition of rail corridors for use as bicycle and pedestrian trails. The earmark funds were to be used for the purchase of the Duke Belt Line rail corridor from Norfolk Southern.

Programming of the Earmark in the STIP

The City of Durham would prefer that this earmark be programmed in the STIP so that the funds would be available for the purchase of the Duke Belt Line rail corridor. At the time that the earmark was requested, there appeared to be an agreement in place between the City of Durham, Durham County, the NCDOT Rail Division, and Norfolk Southern for the purchase of the rail corridor. However, shortly after the passage of SAFETU-LU, the agreement fell apart.

For several years the earmark was programmed in the STIP as project EL-4999. Project EL-4999 was removed from the FY 2012-18 STIP because, after several years of on-going negotiations for right-of-way acquisition by the City of Durham and the NCDOT Rail Division, a cost could not be agreed upon by all parties. The project was removed from the STIP at the request of the NCDOT Rail Division, and at the time the City was not aware that there would be additional hurdles in place before the project could not be added back to the STIP (see below).

The project has remained a priority for the City of Durham. The City has been awarded a TIGER grant to prepare the Duke Belt Line Trail Master Plan (programmed in the STIP under project U-4727). It now appears that the City will be in a position to purchase the Belt Line corridor in the near future. The adopted City of Durham FY 2016-17 budget includes \$2.5 million for the purchase of the Duke Belt Line corridor. The City's desire, therefore, is that the earmark be programmed into the STIP so that the funds would once again be available to the City for its original intent.

However, NCDOT has previously determined that the earmark does not meet the definition of "competitive/discretionary" under the Strategic Transportation Investments law, because of the way the enabling legislation was crafted by Congress (i.e., it is a "below the line" earmark). Therefore, NCDOT has determined that the project cannot be programmed in the STIP. Instead, the project would need to be submitted in P4.0 for prioritization and score competitively, in order to be programmed in the STIP. The Duke Belt Line project was submitted by the City of Durham in P4.0. The project was not submitted in P3.0 because right-of-way acquisition was not an eligible expense for bike/ped projects in P3.0.

## Proposed Repurposing of the Earmark

The Consolidated Appropriations Act of 2016 included a provision allowing states to “repurpose” earmarks that are more than 10 years old. The Durham earmark is eligible for repurposing under this provision. NCDOT has stated its intention to repurpose the Durham earmark to the U-3308, Alston Avenue (NC 55) project.

NCDOT staff did not consult with the Durham-Chapel Hill-Carrboro MPO (DCHC MPO) or the City of Durham before deciding to repurpose the earmark to U-3308. The Durham earmark was also not included on the list of proposed repurposed earmarks presented to the N.C. Association of MPOs in May.

If the Durham earmark is to be repurposed, the City of Durham requests that the original intent of the earmark should be considered. Since the original request was for a non-highway mode project, we request that the earmark be repurposed to a non-highway project. There are several non-highway projects in the current STIP to which the earmark could be repurposed.

The DCHC MPO’s adopted 2040 Metropolitan Transportation Plan (MTP) includes approximately 50 percent funding for highway projects and 50 percent for non-highway projects. Due to the limitations of funding available for transit and other non-highway modes under STI, the DCHC MPO dedicates nearly all of its directly allocated funding to non-highway projects to attempt to meet the MTP’s identification of needs. Repurposing federal funding that was intended for a non-highway project to a highway project would be in conflict with the adopted 2040 MTP.

The Consolidated Appropriations Act of 2016 does not require the Durham earmark to be repurposed. If an earmark is not repurposed, it will remain unchanged and available for obligation.

If NCDOT is intent on repurposing the Durham earmark, please consider repurposing the funds toward the construction of STIP Project EB-4707B, Old Durham-Chapel Hill Rd (SR 2220), from Pope Road (SR 1113) to Garrett Road (SR 1116), in Durham County. We believe this project meets the requirements for repurposing, including that the project is within 50 miles of the original earmark, and that the funds can be obligated by September 30, 2019. EB-4707B is scheduled to be let soon for construction.

Thank you for your consideration of this request and please let me know if you have any questions or need additional information.

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***Dale McKeel, AICP***

*Bicycle & Pedestrian Coordinator*

*Department of Transportation*

City of Durham/DCHC MPO

101 City Hall Plaza, 4th Floor

Durham, NC 27701

P 919-560-4366. ext. 36421

F 919-560-4561

[Dale.McKeel@DurhamNC.gov](mailto:Dale.McKeel@DurhamNC.gov)

[www.DurhamNC.gov](http://www.DurhamNC.gov)

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