



SIERRA CLUB

MARYLAND CHAPTER

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January 4, 2022

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Jeff Folden, Project Director
I-495 and I-270 P-3 Project Office
Maryland Department of Transportation State Highway Administration
707 North Calvert Street, Mail Stop P-601
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Dear Ms. Mar and Mr. Folden,

We write in regard to the I-495 & I-270 Managed Lanes Study Supplemental Draft Environmental Impact Statement (SDEIS). The SDEIS deferred required evaluations of key impacts and failed to identify or discuss mitigation measures for many significant adverse impacts. Therefore, proceeding directly to a Final Environmental Impact Statement (FEIS) with no additional formal review period will not be adequate to fulfill statutory requirements of several agencies and would run afoul of several federal laws.¹ A revised SDEIS is needed due to the deferral of impact analyses and lack of discussion of mitigation measures. Additionally, a 90-day public review period on the FEIS is needed to allow the EPA and other stakeholders to discharge their statutory responsibilities.²

Regarding the SDEIS, the EPA on November 30, 2021 stated: "EPA looks forward to reviewing project details that were deferred to the Final EIS and seeing development of mitigation to offset unavoidable impacts." Concerns about the

¹ Including NEPA, Clean Air Act, and Section 4(f) of the U.S. Department of Transportation Act of 1966, as raised by multiple agencies and groups, including M-NCPPC and Sierra Club et al. in their 2021 SDEIS comments.

² Stakeholders have relied on FHWA's statement in the SDEIS that it "does not intend to issue a combined FEIS/ROD." SDEIS at PDF p.2. However, FHWA should also commit to an adequate public review period on an FEIS.

deferral of analyses and mitigation measures have been raised as issues by other agencies and stakeholders.³

The EPA is charged under Section 309 of the Clean Air Act to review the environmental impact statements of other federal agencies and to comment on the adequacy and the acceptability of the environmental impacts of the proposed action. EPA's recently issued draft strategic plan commits the Agency to "promote robust consideration of climate change mitigation, adaptation, and resilience in review of proposed actions, such as . . . transportation projects" and "promote robust consideration and mitigation of environmental impacts on overburdened communities with environmental justice concerns in the review of . . . transportation related projects," two areas of which evaluation was particularly deficient in the Draft Environmental Impact Statement (DEIS) and SDEIS.⁴

EPA's statutory functions cannot be discharged with an insufficient comment period on a megaproject whose key safety, environmental justice, and impact evaluations and mitigation measures had been deferred to the FEIS and even later (in the case of safety). The mandated 30-day review period before issuance of a Record of Decision (ROD) is not sufficient. Without issuance of either another SDEIS or a longer formal review period on the FEIS, EPA may need to refer the project to the Council on Environmental Quality, potentially causing larger delays. The Nov. 30, 2021 SDEIS comment letter of the Maryland-National Capital Park and Planning Commission (M-NCPPC) has also warned that lack of progress in key identified deficiencies in the SDEIS could "endanger the aggressive schedule" set forth for the project.

Serious concerns have been raised in the comments submitted by Sierra Club et al. regarding the accuracy of the traffic modeling, the results of which bear on impact estimates pertaining to safety, air quality, and environmental justice, all areas that the EPA has a statutory requirement and special interest⁵ in reviewing. The traffic model issues have also been raised by multiple stakeholders,⁶ including the

³ M-NCPPC SDEIS Comment Letter, Nov. 30, 2021, https://montgomeryplanningboard.org/wp-content/uploads/2022/01/SDEIS-MNCPPC-Comment-Cvrltr_11.30.21.pdf; Sierra Club et al. I-495 & I-270 SDEIS comments, Nov. 30, 2021. <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/maryland-chapter/2021-12-27%20-%20Sierra%20Club%20et%20al.%20SDEIS%20comments.pdf>.

⁴ FY 2022-2026 EPA Strategic Plan Draft, EPA, at 11, 23, Oct. 1, 2021, <https://www.epa.gov/system/files/documents/2021-10/fy-2022-2026-epa-draft-strategic-plan.pdf>.

⁵ Laurie A. Shuster, What does infrastructure have to do with social justice and equity? ASCE, Nov. 1, 2021, <https://www.asce.org/publications-and-news/civil-engineering-source/civil-engineering-magazine/issues/magazine-issue/article/2021/11/what-does-infrastructure-have-to-do-with-social-justice-and-equity>; see also footnote 4.

⁶ Bruce DePuyt, Seizing on MDOT's Own Analysis, Toll Lane Foes Urge Feds to Reject Project Study, Maryland Matters, Oct. 21, 2021,

majority of the Montgomery County Council⁷ and U.S. Senators Ben Cardin and Chris Van Hollen and U.S. Representatives Anthony Brown and Jamie Raskin.⁸ Without a valid traffic model, it is impossible to determine the extent to which the project satisfies the purpose and needs identified in the SDEIS and therefore the extent to which project alternatives meet those needs.

M-NCPPC has also flagged numerous concerns with the traffic model that require action prior to issuance of the FEIS:

Additionally, there are a number of inconsistent conclusions and assumptions in the SDEIS's transportation modeling and forecasts. The Project claims to improve traffic congestion, but its analysis finds that there are significant segments where the General Purpose lanes worsen significantly as a result of this Project. While the cause of these issues may be subject to debate, **MDOT SHA surely has a responsibility to explain or reanalyze the transportation model, its assumptions, and conclusion to resolve these inconsistencies.** The purpose and need cannot be achieved if the very basis of the Project, to relieve congestion, is called into question.⁹

The absence from the SDEIS of a valid traffic model made it impossible for agencies and the public to comment meaningfully on (1) whether the preferred alternative satisfies the purpose and need and the extent to which project alternatives meet those needs; and (2) impacts that are dependent on traffic

<https://www.marylandmatters.org/2021/10/21/seizing-on-mdots-own-analysis-toll-lane-foes-urge-feds-to-reject-project-study/>. Sierra Club et al. I-495 & I-270 SDEIS Comments, Nov. 30, 2021, at 18-84,

<https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/maryland-chapter/2021-12-27%20-%20Sierra%20Club%20et%20al.%20SDEIS%20comments.pdf>; Letter from MTOC, CABE, and DontWiden270 to Acting FHWA Administrator S. Pollack, Oct. 18, 2021, attached to the SDEIS comments submitted by MTOC and ten other organizations, <https://transitformaryland.org/sites/default/files/pollackletter.pdf>.

⁷ Letter from Montgomery County Council to FHWA and MDOT, Oct. 27, 2021,

<https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/maryland-chapter/Extension%20Letter.pdf>. Quoting from the letter: "Serious questions have been raised about the validity of the traffic modeling that underpins the SDEIS, which focuses on the new project scope (Phase 1 South). The traffic modeling feeds into toll rate assumptions, financial assumptions, and congestion, air quality, and noise impacts, so errors in the traffic modeling affect determination of impacts across a wide range of types. We need time for our county's transportation and planning staff to independently analyze the traffic effects of this project."

⁸ Letter to FHWA and MDOT from U.S. Sens. Ben Cardin and Chris Van Hollen and U.S. Reps. Anthony Brown and Jamie Raskin, Oct. 28, 2021,

https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/maryland-chapter/270_495%20Comment%20Extension%20%20Letter_Final_10.28.21.pdf. The letter references "traffic model issues" needing to be addressed by the agencies (FHWA and MDOT).

⁹ M-NCPPC SDEIS Comment Letter, at 9-10 (emphasis added) (footnotes omitted).

volumes and speed, including road safety, air quality, climate emissions, and environmental justice. These issues are at the heart of an environmental impact analysis.

In addition, the comments of M-NCPPC, a cooperating agency, identify several other topics on which agencies and the public were unable to make meaningful comment because the analysis was deferred to the FEIS.

In its November 30, 2021 letter, M-NCPPC cites the “Lead Agencies’ failure to undertake a comprehensive analysis of reasonable alternatives, impacts, and mitigation measures.”¹⁰ The letter states: “The SDEIS does not consider adequately environmental justice, equity, and historic resource preservation concerns.”¹¹ It goes on to say,

Consistent with its statutory duties, M-NCPPC will require a thorough and implementable mitigation package to include park enhancements, extensive parkland replacement, and consideration of the valuable natural, cultural, and historic resources present in the Project’s vicinity. As currently drafted, meaningful mitigation commitments and progress are absent from the SDEIS.¹²

Environmental justice is a specific issue identified in the M-NCPPC letter that requires further formal review:

[T]he SDEIS indicates that environmental justice issues omitted from the SDEIS will be remedied in the FEIS. This . . . obstructs public comment and community input. Waiting until after selection of a preferred alternative to evaluate impacts to minority communities means that disproportionate impacts will not be considered in the formulation of the preferred alternative and thus do not receive the attention NEPA and Title VI of the Civil Rights Act of 1964 (“Title VI”) demand from the Lead Agencies. This course of action also runs afoul of Department of Transportation Order 5610.2(a), which commits the Department to promote the principles of environmental justice “by fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies, and activities, using the principles of the National Environmental Policy Act of 1969 . . .” FHWA Order 6640.23A espouses a similar theme, committing FHWA to “identify and prevent discriminatory effects . . . to ensure that social impacts to communities and people are recognized early and continually throughout the

¹⁰ M-NCPPC SDEIS Comment Letter, Nov. 30, 2021, at 2.

¹¹ M-NCPPC SDEIS Comment Letter, Nov. 30, 2021, at 6.

¹² M-NCPPC SDEIS Comment Letter, Nov. 30, 2021, at 17.

transportation decision-making process—from early planning through implementation.” Acting later, after the Lead Agencies have already responded to stakeholder concerns and continued designing the Project, would violate Title VI, these orders, and fundamental environmental justice principles.¹³

Another important issue in the M-NCPPC comments relates to project-caused bottlenecks, which are a major safety issue.¹⁴ M-NCPPC makes the following observations on the lack of analysis and proposed mitigations for the new traffic bottlenecks the project would create.

[T]he Preferred Alternative does not eliminate congestion in the corridors studied but and instead shifts it from the vicinity of the ALB (e.g., McLean and Potomac) to other areas in Maryland. . . . **the degree of congestion resulting from the proposed project is severe on I-270 north of I-370, on the Inner Loop on the top side of the Beltway, and on the Inner Loop in Prince George’s County. These bottleneck shifts are Project-related impacts,** and so the Lead Agencies should address mitigation measures to minimize these projected deficiencies in the SDEIS and incorporate them into the Project design. NEPA requires the Lead Agencies to consider mitigation measures that address adverse impacts, including, among others, areas of traffic congestion points.

Specifically, if the construction of Phase 1A is likely to shift congestion in a way that logically requires construction of Phase 1B (currently the subject of the I-270 Pre-NEPA Study) in order to avoid creation of new bottlenecks, then it follows that any decision to proceed with Phase 1A must await completion of the NEPA analysis for Phase 1B. MDOT SHA should further consider the implications of language in the FEIS concerning the impact of Section 27.3 of the Phase Public Private Partnership Agreement (the “P3 Agreement”). Section 27.3 is entitled Financial Viability of an Uncommitted Section and it explicitly states that future phases may be cut based upon a financial viability formula applied to a prior phase of the project. . . . In other words, **the traffic analysis raises serious questions about how a decision on Phase 1A can or should be made in the absence of a comprehensive analysis that assesses the impact of building this segment on future phases.**¹⁵

¹³ [M-NCPPC SDEIS Comment Letter](#), Nov. 30, 2021, at 7 (emphasis added) (footnote omitted).

¹⁴ See [Sierra Club et al. SDEIS Comments](#) on bottlenecks and safety, Nov. 30, 2021, at 70-76 (emphasis added).

¹⁵ M-NCPPC SDEIS Comment Letter, Nov. 30, 2021, at 8-9 (emphasis added) (footnotes omitted).

In an interview with Transurban North American President Pierce Coffee published in *The Washington Post* on December 30, 2021, Coffee admits that bottlenecks will be created and that the remedy requires further construction beyond the project limits. Coffee states:

My former boss used to say that the worst thing about the express lanes is when they end. So that is a problem, and that's something we'll have to work on with Maryland. . . . When the 495 Express Lanes first opened, there was a choke point right before Georgetown Pike where the express lanes were coming into the regular lanes, and that was causing backups. . . . After the I-95 express lanes opened, relatively quickly it became apparent that two lanes going back into the regular lanes was causing a choke point. So [the Virginia Department of Transportation] and Transurban worked on a one-lane extension to the [I-95] express lanes that would allow that merge to be smoother.¹⁶

These comments indicate that the SDEIS was incomplete and insufficient in terms of both required analysis and information presented for agency and public review. For a controversial project of this magnitude and sensitivity, complete analysis and meaningful opportunity for agency and public review are essential.

That such project-critical analysis is incomplete and insufficient and not presented for public review and comment shows the need for a further formal review and comment opportunity for agencies and the public.

For all these reasons, moving forward on this project without an additional SDEIS and/or without a meaningful public review period on any FEIS would not allow EPA and other agencies to discharge their statutory functions or the project to meet statutory requirements under NEPA, the U.S. Department of Transportation Act of 1966, Section 309 of the Clean Air Act, and other laws and regulations.

Therefore, we ask the FHWA to confirm by February 15, 2022 that it will issue another revised SDEIS with a 60-day review period reconciling the conflicting information in the DEIS and SDEIS, providing the deferred impact analyses, revising the seriously flawed traffic model and all analyses that are reliant on traffic modeling, including the project's purpose and need and alternatives, and identifying and discussing mitigation measures. In any case, we ask that the FHWA confirm that any FEIS will be issued with a 90-day public review period before issuance of any ROD.¹⁷

¹⁶ Katherine Shaver, Transurban leader Pierce Coffee calls Maryland toll lanes 'transformative', *The Washington Post*, Dec. 30, 2021, <https://www.washingtonpost.com/transportation/2021/12/30/transurban-pierce-coffee-maryland/>.

¹⁷ Recent examples of 60-day or more FEIS review periods: FEIS for I-26 Connector, 2020, 60 days, <https://www.ncdot.gov/news/press-releases/Pages/2020/2020-02-04-i-26->

The EPA and other stakeholders must have an adequate formal opportunity to review and comment on ignored, deferred, and traffic model-associated project impacts and on proposed mitigation measures, including their adequacy and effectiveness. Affording only the regulatory minimum public review period is insufficient in the case of this complex and highly controversial project.

Respectfully,

Josh Tulkin, Director
Sierra Club Maryland Chapter

Cc:

Stephanie Pollack, Acting Administrator, FHWA
Adam Ortiz, Regional Administrator for USEPA Region III, EPA
Barbara Rudnick, NEPA Program Coordinator, EPA
Timothy Whitman, Environmental Assessment Branch, EPA
Adrian Gardner, General Counsel, M-NCPPC
Debra Borden, Deputy General Counsel, M-NCPPC
Casey Anderson, Chair, Montgomery County Planning Board, M-NCPPC
Gerald Cichy, Commissioner, Montgomery County Planning Board, M-NCPPC
Tina Patterson, Commissioner, Montgomery County Planning Board, M-NCPPC
Carol Rubin, Commissioner, Montgomery County Planning Board, M-NCPPC
Partap Verma, Commissioner, Montgomery County Planning Board, M-NCPPC
Marc Elrich, County Executive, Montgomery County
Gabe Albornoz, Montgomery County Council President
Evan Glass, Montgomery County Council Vice President
Tom Hucker, Chair, Montgomery County Council Transportation & Environment
Committee
Senator Ben Cardin
Senator Chris Van Hollen
Congressman Anthony Brown
Congressman Jamie Raskin
Delegate Marc Korman, District 16
Delegate Jared Solomon, District 18

[connector-feis.aspx](https://community.impact.com/houston/heights-river-oaks-montrose/transportation/2020/10/28/public-comment-period-extended-on-i-45-environmental-report/); FEIS for I-45, Sept. 25-Dec. 9, 2020, 75 days, <https://community.impact.com/houston/heights-river-oaks-montrose/transportation/2020/10/28/public-comment-period-extended-on-i-45-environmental-report/>.



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January 26, 2022

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Mr. Jeff Folden, Project Director
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Dear Ms. Mar and Mr. Folden:

We are writing to express our strong concerns about the many significant inadequacies of the Supplemental Draft Environmental Impact Statement (SDEIS) for the I-495/I-270 Managed Lanes Study, to urge that these inadequacies be rectified and that the SDEIS be reissued for public comment. We also request a formal comment period when the Final Environmental Impact Statement is issued.

Local public agencies, such as the City of Rockville, rely on the environmental review to understand how the project would impact our community and residents and to understand what steps the City would have to take to address harmful consequences. But we are hindered by the omission or deferral of key analyses and the absence of State mitigation plans to address impacts.

Environmental Justice

For example, the SDEIS did not include an environmental justice analysis. Instead, this analysis is being deferred until the FEIS. Rockville is a diverse City with many communities immediately adjacent to I-270 and many residents who travel on I-270 and I-495. If there are disparate impacts on environmental justice communities in Rockville, it is critical to understand those impacts while the City and our residents have an opportunity to comment on them and help shape the final project.

Furthermore, deferring the environmental justice analysis until the FEIS is not consistent with [Department of Transportation Order 5610.2\(a\)](#), which sets forth a policy for the Department and its agencies for “fully considering environmental justice principles throughout planning and decision-making processes in the development of programs, policies and activities...” Providing an environmental justice analysis at the end of the environmental review process, after there is no longer opportunity for formal comment, fails to meet the requirements of Order 5610.2(a).

Local Roads

As noted in [comments](#) by the Maryland-National Capital Park and Planning Commission, the Preferred Alternative would shift the bottleneck at the American Legion Bridge to other locations, including to I-270 north of I-370 and to the top of

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Ms. Jeanette Mar and Mr. Jeff Folden

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the Beltway, where toll lanes end and merge into general lanes. This analysis is consistent with the experience of toll lanes in Virginia. In a 2014 [letter](#) from the Virginia Department of Transportation (VDOT) to the Virginia Office of Public-Private Partnerships, VDOT described the need to address a bottleneck on I-495 near Old Dominion Drive, where Express Lanes merged with general purpose lanes. Bottlenecks where toll lanes and general lanes merge is also the general experience of Transurban. In a recent [interview](#) with the *Washington Post*, Transurban's President of North America, Pierce Coffee noted that "the worst thing about the express lanes is when they end. So that is a problem, and that's something we'll have to work on with Maryland."

However, the SDEIS did not include a plan for mitigating the bottlenecks that the toll lanes would create. Because these bottlenecks would cause more traffic to spill over onto local Rockville roads, our local roads would become more congested and less safe. It is vital to the City of Rockville that we understand the impact on local roads and the mitigation steps that the State would take to address them. But first, we must be given the opportunity to review and comment on the mitigation plan before a decision is made on this project.

Greenhouse Gas Emissions

The SDEIS failed to provide an analysis of the impact of the operation of the lanes on greenhouse gas emissions. An analysis of the impact of greenhouse gas emissions during construction is being deferred until the FEIS. The failure to provide an analysis of greenhouse gas emissions from the operation of the lanes is inconsistent with [Executive Order 13990](#) which states in Section 1 that it is the policy of the Administration to "reduce greenhouse gas emissions." Such a policy cannot be implemented if an analysis of greenhouse gas emissions is not included in the environmental review of a major project.

In publishing its notice of actions taken to follow up on Executive Order 13990 in the [February 19, 2021 *Federal Register*](#), the Council on Environmental Quality stated that:

NEPA (National Environmental Policy Act) requires Federal agencies to consider the environmental effects of its proposed actions and involve the public in its decision-making processes.

The Council on Environmental Quality went on to state that:

Federal courts consistently have held that NEPA requires agencies to disclose and consider climate impacts in their reviews.

Failing to analyze greenhouse gas emissions from the operation of the toll lanes and deferring an analysis of greenhouse gas emissions from construction until the Final Environmental Impact Statement is not consistent with the requirements of NEPA. To meet the NEPA standards, the SDEIS must be reissued with an analysis of greenhouse gas emissions from both operation and construction of the toll lanes. Moreover, a formal public comment period must be provided following the release of a complete SDEIS.

Ms. Jeanette Mar and Mr. Jeff Folden

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It is also important that a formal public comment period be provided following the release of the Final Environmental Impact Statement. Nearly 3,000 comments were submitted following the release of the Draft Environmental Impact Statement for the toll lanes. Another 2,000 comments were submitted following the release of the Supplemental Draft Environmental Impact Statement. Given the strong public interest and the substantial impact of the proposed toll lanes project, it is imperative that the agencies provide formal public review before finalizing a decision on the project.

Sincerely,


Bridget Donnell Newton, Mayor


Monique Ashton, Councilmember

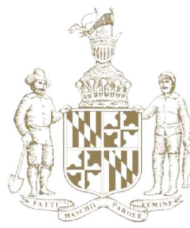

Beryl L. Feinberg, Councilmember


David Myles, Councilmember


Mark Pierzchała, Councilmember

Rockville Mayor and Council

cc: Senator Benjamin Cardin
Senator Christopher Van Hollen
Congressman Jamie Raskin
District 17 Delegation



THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401

February 22, 2022

Mr. Gregory Murrill, Division Administrator
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Mr. James F. Ports, Jr., Secretary
Maryland Department of Transportation
707 North Calvert Street, Mail Stop P-601
Baltimore, MD 21202

Dear Mr. Murrill and Mr. Ports:

As members of the Maryland General Assembly, we write to express our grave concerns over the plan to move forward with the I-495 and I-270 Managed Lanes Study, despite the omission of important analyses in the Supplemental Draft Environmental Impact Statement (SDEIS) issued on October 1, 2021. Therefore, we urge that a completed Supplement Draft Environmental Impact Statement be issued for public comment. Given the size of this transportation project and the impact it would have on the environment and Maryland communities, we also urge you to provide a formal public comment process for the Final Environmental Impact Statement (FEIS).

The goal of the National Environmental Policy Act is to ensure informed decision-making. Agencies are required to study the impacts of a proposed action, consider alternatives that are less harmful, describe mitigation measures for unavoidable impacts and provide this information to the public and other stakeholders so that they can raise concerns, make suggestions and help shape a project. Contrary to the requirements of the National Environmental Policy Act, the environmental review for this project has been marked by a failure to provide critical analyses needed for the public and policymakers to provide input that would help ensure informed decision-making.

In particular, we are alarmed that the SDEIS omitted an assessment of the impact of the I-495 and I-270 project on greenhouse gas emissions once the toll lanes are completed. This omission is inconsistent with [Executive Order 13990](#), issued on January 20, 2021, which states in Section 1 that it is the policy of the Administration to “reduce greenhouse gas emissions...” and directs all federal agencies to “...immediately commence work to confront the climate crisis.” In publishing notice of actions taken to follow up on Executive Order 13990 in the [February 19, 2021 Federal Register](#), the Council on

Environmental Quality stated that, “Federal courts consistently have held that NEPA requires agencies to disclose and consider climate impacts in their reviews.”

This disclosure is critical for the Maryland General Assembly as well as federal agencies, as we seek to address climate change. Transportation is the number one source of greenhouse gas emissions in the State. The General Assembly set out specific goals for reducing greenhouse gas emissions through the 2016 Greenhouse Gas Emissions Act and is currently working to update these goals. Without a greenhouse gas emissions analysis on a major transportation project, our ability to address climate change is hindered. Moreover, the public is prevented from providing input that could shape final decisions about the I-495/I-270 toll lanes.

The SDEIS also did not include an analysis of greenhouse gas emissions from construction activities. Instead, this analysis is being deferred until the FEIS. Delaying this analysis until after the formal public comment process also prevents policymakers and the public from providing input, including steps to mitigate emissions.

The environmental justice analysis was omitted from the SDEIS. Instead, it has been deferred until the FEIS. The purpose of an environmental justice analysis is to determine whether the harmful effects of a project will disproportionately burden low-income communities and communities of color. Deferring the analysis until after the close of the public comment process blocks environmental justice communities and other stakeholders from providing input and helping to inform final decisions about the project.

The failure to include the environmental justice analysis in the SDEIS is also inconsistent with current [U.S. Department of Transportation Order 5610.2\(a\)](#), established following the issuance of Executive Order 12898 in 1994. Order 5610.2(a) states that, “It is the policy of DOT to promote the principles of environmental justice (as embodied in the Executive Order) through the incorporation of those principles in all DOT programs, policies and activities. This will be done by fully considering environmental justice principles *throughout planning and decision-making processes* in the development of programs, policies and activities, using the principles of the National Environmental Policy Act of 1969 (NEPA), Title VI of the Civil Rights Act of 1964 (Title VI)...and other DOT statutes...” Providing an environmental justice analysis at the close of the environmental review process and after the opportunity for formal public comment, fails to meet the U.S. DOT standard.

The environmental review process for the I-495/I-270 toll lanes project must ensure that the public and policymakers understand all of its impacts and have the opportunity to provide input that will help ensure informed decisions. We urge you to issue a complete SDEIS, including an environmental justice analysis and analyses on greenhouse gas emissions from the operation and construction of the toll lanes. Because of the substantial impacts of this project, we also urge that stakeholders be given an opportunity to provide formal comment after the FEIS is issued.

Sincerely,

Senator Pamela Beidle
Senator Joanne Benson
Senator Jill Carter
Senator Arthur Ellis
Senator Shelly Hettleman
Senator Cheryl Kagan
Senator Benjamin F. Kramer
Senator Clarence Lam
Senator Susan Lee
Senator Paul G. Pinsky
Senator Jim Rosapepe
Senator William C. Smith, Jr.
Senator Jeff Waldstreicher
Senator Mary Washington
Senator Ronald Young

Delegate Dalya Attar
Delegate Vanessa Atterbeary
Delegate Heather Bagnall
Delegate Ben Barnes
Delegate J. Sandy Bartlett
Delegate Kumar Barve
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Delegate Bonnie Cullison
Delegate Debra Davis
Delegate Eric Ebersole
Delegate Jessica Feldmark
Delegate Wanika Fisher
Delegate Catherine M. Forbes
Delegate Anne Healey
Delegate Shaneka Henson
Delegate Terri Hill
Delegate Julian Ivey

Delegate Jay Jalisi
Delegate Steve Johnson
Delegate Dana Jones
Delegate Rachel Jones
Delegate Anne Kaiser
Delegate Ariana Kelly
Delegate Kenneth P. Kerr
Delegate Marc Korman
Delegate Cheryl S. Landis
Delegate Mary A. Lehman
Delegate Robbyn Lewis
Delegate Brooke Lierman
Delegate Mary Ann Lisanti
Delegate Lesley Lopez
Delegate Sara Love
Delegate Eric Luedtke
Delegate Maggie McIntosh
Delegate David Moon
Delegate Julie Palakovich Carr
Delegate Edith J. Patterson
Delegate Joseline Pena-Melnyk
Delegate Shane Pendergrass
Delegate Susie Proctor
Delegate Pamela Queen
Delegate Kirill Reznik
Delegate Mike Rogers
Delegate Samuel Rosenberg
Delegate Sheila Ruth
Delegate Emily Shetty
Delegate Jared Solomon
Delegate Dana Stein
Delegate Vaughn Stewart
Delegate Jen Terrasa
Delegate Kriselda Valderrama
Delegate Geraldine Valentino-Smith
Delegate Alonzo T. Washington
Delegate Courtney Watson
Delegate Jheanelle Wilkins
Delegate Nicole A. Williams
Delegate Karen Lewis Young
Delegate Pat Young

cc: Ms. Stephanie Pollack, Deputy Administrator
Federal Highway Administration

Ms. Jeanette Mar, Environmental Program Manager
Federal Highway Administration, Maryland Division

Mr. Jeffrey Folden, Project Director
I-495/I-270 Project Office
Maryland Department of Transportation

February 26, 2022

Gregory Murrill, Division Administrator
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James F. Ports, Jr., Secretary of Transportation
Maryland Department of Transportation
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Dear Mr. Murrill and Mr. Ports,

The undersigned Mayors of Prince George's County write you today with concerns about the inadequacy and incompleteness of the previously issued National Environmental Policy Act (NEPA) documents for the I-495 & I-270 Managed Lanes Study Public-Private Partnership Project ("Project").

Concerns over the serious environmental harm to communities, parks, and natural resources in Prince George's County was a central issue in comments on the first NEPA document for the Project, the Draft Environmental Impact Statement (DEIS), but proposed phasing was subsequently adapted to omit Prince George's County from Phase 1 of the Project and the subsequent Supplemental Draft Environmental Impact Statement (SDEIS). Nevertheless, it is clear that toll lanes are intended to be extended through Prince George's County (Phase 2) in the not distant future. Due to the clear harm Phase 2 poses to Prince George's County and known deficiencies in the environmental impact analysis for the federally-mandated NEPA process, we join the City of Rockville Mayor and Council,¹ 82 state legislators,² and others³ in asking that the agencies issue revised draft NEPA documents. This is essential so that agencies and the impacted and concerned public can have the necessary information upon which to review and comment.

¹ Rockville Mayor and Council Letter to FHWA and MDOT, 1/26/2022, <https://static1.squarespace.com/static/5b72c6a8da02bc640472bf8c/t/61fee871b03f6828336629d3/1644095602555/FHA+Letter+FINAL+012622%281%29.pdf>

² Maryland General Assembly Legislator Letter to FHWA and MDOT, 2/22/2022, https://mcusercontent.com/6cdc39da7c0238a0521e24885/files/932d6527-1fc6-5b38-81ac-cba0cf957ae1/FWHA_Letter.pdf

³ Sierra Club Maryland Chapter Letter to FHWA and MDOT, 1/4/2022, <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/maryland-chapter/SC-Letter-495270MLS-SDEIS-FEISReviewPd-2022Jan4.pdf>

Indeed, it appears to be the state and private sector partner's intent to extend toll lanes through Prince George's County starting as soon as within the next five years.⁴ The pressure to extend toll lanes through our area would come from both the Montgomery County side, where I-495 & I-270 toll lanes would create new and worsening bottlenecks, and from the Virginia side, where problems have already surfaced.⁵ Given these pressures, moving forward without further public review is imprudent, notwithstanding valid concerns that the Project will not reduce traffic congestion on the general purpose lanes,⁶ that tolls will be unaffordable⁷ for many residents of Prince George's County, and that the toll lanes themselves will be costly, harmful, and severely underutilized.⁸

The Maryland-National Capital Park and Planning Commission, which represents both Prince George's County and Montgomery County, has stated that the SDEIS failed to adequately address issues pertaining to new traffic bottlenecks, cumulative impacts, environmental justice, equity, historic places, parkland, and stormwater management.⁹ Key impact analyses were deferred by the Maryland Department of Transportation and absent from the SDEIS, and so those missing analyses still require agency and public review.

Therefore, it is imperative that the agencies complete the analyses and provide meaningful opportunities for public review and comment both on a revised SDEIS and on the Final Environmental Impact Statement for this controversial private toll lane project.

Respectfully,

Mayor Sadara Barrow, Town of Colmar Manor

Mayor Celina Benitez, City of Mt. Rainier

Mayor Lenford Carey, Town of University Park

Mayor Amanda Dewey, PhD, Town of Berwyn Heights

⁴ Toll lanes on I-495 east of I-270 were put on hold, but remain in overall plan, *Bethesda Magazine*, 11/1/2021, <https://bethesdamagazine.com/bethesda-beat/opinion/opinion-toll-lanes-on-i-495-east-of-i-270-were-put-on-hold-but-remain-in-overall-plan/>

⁵ Virginia looks to expand toll road network to Prince George's, Md., *Washington Post*, 12/24/2021, <https://www.washingtonpost.com/transportation/2021/12/24/virginia-express-lanes-wilson-bridge/>

⁶ Maryland toll lanes: Beltway, I-270 lanes wouldn't improve worst evening traffic in regular lanes, study says, *Washington Post*, 10/1/2021, <https://www.washingtonpost.com/transportation/2021/10/01/maryland-toll-lanes-traffic/>

⁷ TOLLS: Drivers could pay \$50 for a trip around The Beltway, *LocalDVM*, 7/1/2021, <https://www.localdvm.com/news/maryland/tolls-drivers-could-pay-50-for-a-trip-around-the-beltway/>

⁸ Opinion: Use Caution. I-495 Toll Lanes Not as Advertised, *Maryland Matters*, 1/14/2022, <https://www.marylandmatters.org/2022/01/14/opinion-use-caution-i-495-toll-lanes-not-as-advertised/>

⁹ M-NCPPC SDEIS Comment-Letter, 11/30/2021, https://montgomeryplanningboard.org/wp-content/uploads/2022/01/SDEIS-MNCPPC-Comment-Cvrltr_11.30.21.pdf.

Mayor Takisha James, Town of Bladensburg

Mayor Emmett Jordan, City of Greenbelt

Mayor Craig Moe, City of Laurel

Mayor Jeffrey Schomisch, Town of Landover Hills

Mayor Alan Thompson, Town of Riverdale Park

Mayor Patrick Wojahn, City of College Park

Cc.

Ms. Stephanie Pollack, Acting Administrator, Federal Highway Administration

Ms. Jeanette Mar, Environmental Program Manager, Federal Highway Administration,
Maryland Division

Mr. Jeffrey Folden, Director, I-495/I-270 Project Office, Maryland Department of
Transportation State Highway Administration



OFFICE OF THE COUNTY EXECUTIVE


Marc Elrich
County Executive

MEMORANDUM

March 10, 2022

TO: Gregory Murrill, Division Administrator
Federal Highway Administration, Maryland Division

James F. Ports, Jr., Secretary of Transportation
Maryland Department of Transportation

FROM: Marc Elrich, County Executive 

SUBJECT: I-495 and I-270 Opportunity Lanes / Managed Lanes Study Supplemental Draft
Environmental Impact Statement (SDEIS)

This communication is in follow-up to Montgomery County's November 29, 2021, comments to the Maryland Department of Transportation (MDOT) on the SDEIS for the I-495 and I-270 Opportunity Lanes / Managed Lanes Study ("the Project") prepared by MDOT.

I continue to have substantial concerns with the process that the Project appears to be following, particularly regarding traffic and environmental impacts, and I urge that these concerns be addressed through the issuance of an additional SDEIS prior to the Final Environmental Impact Statement (FEIS). To achieve its intended purpose, this additional SDEIS should have, at minimum, a 90-day public review period.

The comments provided last November are consistent with input we have provided throughout the development of the Project since its initiation in early 2018, including comments dated November 9, 2020, in response to the initial Draft Environmental Impact Statement (DEIS). Below is a list of Montgomery County's most pressing ongoing and unaddressed concerns:

Local Road Impacts

The SDEIS should, but does not, carefully consider traffic conditions at interchange ramps, cross-streets, nor along local roadways. The analysis of local roadways groups all roadways together, which averages those that may benefit (such as MD 355 outside the Beltway) with those that may worsen (such as the radial arterials within the Beltway). The analysis also uses daily values, which overlooks issues associated with peak hours and peak directions. Averages and generalities hide potentially important information with potential to have meaningful impact on the public.

Delays, speeds, and travel time information for the local network is extremely important information that needs to be known at this stage of the SDEIS. Delaying availability of and consideration of this specific level of information until the FEIS does not allow the public the opportunity to review and comment on this fundamental information that could have substantial impacts on these other roadways.

Transportation Analysis Inconsistencies

Based on the State's analysis, multiple core components of the Purpose and Need do not appear to be achieved by the proposed project. The Purpose and Need references efficiently moving "*goods, services, and people*" but the SDEIS does not appear to address freight movement and the State has expressly refused to evaluate person throughput.

There are multiple segments where the General Purpose Lanes worsen significantly, particularly due to the shifting of bottlenecks on segments of I-270 and I-495 beyond the Project limits. Legal precedents have been established that the National Environmental Policy Act (NEPA) requires mitigation measures to be considered for these adverse impacts. The SDEIS appendices contain numerous examples of significant traffic impacts that are not mentioned in the main document, which means that these impacts are unlikely to be noticed or understood by the public in a review of the SDEIS.

Several performance metrics combine the General Purpose Lanes and Opportunity Lanes together or are missing metrics for the Opportunity Lanes entirely, again limiting the capabilities of public review. A review of Appendix A revealed multiple other apparent errors and inconsistencies that were detailed in the County's November 2021 comments.

Transportation Alternatives

The absence of an analysis of Project alternatives in the SDEIS fails to meet the requirements of NEPA and prevents consideration of alternatives that could better reduce congestion and greenhouse gas emissions. The Project prematurely eliminated transit alternatives and alternatives focused on Transportation System Management and Travel Demand Management. The County has consistently contested that these alternatives were

eliminated based on flawed reasoning, as noted also in our November 2020 comments on the DEIS.

A [2017 report](#) by the National Capital Region Transportation Planning Board found that the most effective measure to reduce congestion would be traffic demand management, including substantial telework. While the SDEIS reported on levels of traffic during the pandemic, it did not explore how public policies encouraging telework could be an alternative to constructing toll lanes. The Project did not give any consideration of the federal government's decision to permanently increase telework and flexible work schedules. As the largest single employer in the metropolitan region, this policy change could have significant effects on the region. Employer incentives and other policies that encourage telework in the private sector could also reduce congestion and should be considered more seriously in the consideration of potential alternatives.

Environmental Justice; Equity

This corridor has a highly diverse population, with 23% of census tracts (9 of 39 tracts) immediately adjacent to the corridor designated as Equity Emphasis Areas or Equity Focus Areas by the Metropolitan Washington Council of Governments and the Montgomery County Planning Department. Many additional Equity Emphasis/Focus Areas are located a short distance away from the corridor.

[Department of Transportation Order 5610.2\(a\)](#) states that environmental justice principles shall be fully considered throughout the planning and decision-making processes. [Guidance issued by FHWA in December 2021](#) as well as [Executive Order 13985](#) both similarly reiterate the importance of environmental justice analysis and considerations of equity impacts. The worsened General Purpose lanes as well as the physical impacts of the Project's construction prompt environmental justice considerations that do not appear to be considered in the SDEIS. Deferring these analyses to the FEIS does not comply with Federal requirements as it deprives the public the opportunity to review and provide feedback on these impacts or any proposed mitigation measures. An environmental justice analysis needs to be included in the SDEIS.

Environmental Impacts

The consideration of many other environmental impacts and associated mitigation resulting from the construction and operation of the Project are similarly deferred until the FEIS. The analysis is therefore missing substantial information on emissions and other air & water quality metrics, despite the policy under [Executive Order 13990](#) to "reduce greenhouse gas emissions" and a requirement to achieve the Order's policies by including "*input from the public and stakeholders, including State local, Tribal, and territorial officials, scientists, labor unions, environmental advocates, and environmental justice organizations.*" This requirement was reiterated by the Council on Environmental Quality (CEQ) when it published in the [February 19, 2021, Federal Register](#) its notice of

actions taken to follow-up on Executive Order 13990, stating that “[NEPA] requires Federal agencies to consider the environmental effects of its proposed actions and involve the public in its decision-making processes. ... Federal courts consistently have held that NEPA requires agencies to disclose and consider climate impacts in their reviews.”

Environmental metrics will be affected by other elements that have not been considered and reviewed by the public, including the aforementioned impacts to local roadways, increases in Vehicle-Miles Traveled, increased congestion in multiple segments, and how this Project will affect mode share targets included in our County Code and area master plans.

Withholding this information until the FEIS prevents an assessment of the project’s consistency with the County’s Climate Action Plan, as required by NEPA under 40 CFR § [1502.16\(a\)\(5\)](#) and [1506.2\(d\)\(2020\)](#). Greenhouse gas emissions are a key concern of the County, and the Climate Action Plan sets a goal of cutting greenhouse gas emissions 80% by 2027 and 100% by 2035. Reducing travel by automobiles and increasing the use of transit and greater use of transportation demand management to achieve trip reductions are key strategies of the County’s plan for achieving our ambitious goals.

The Project also appears to treat environmental impacts included in the DEIS and proposed by the SDEIS to be shifted to future phases of work as Project savings and benefits. Deferring this analysis until the FEIS prevents the County from understanding the project’s full impacts for its residents and providing meaningful comments about the project, including design and mitigation measures. However, these negative impacts still exist in the long term and should be associated with the Project. This approach of using future negative impacts in a way to advantage today’s project is a highly concerning contorting of the intent and spirit of the NEPA process that does not reflect any actual environmental benefits.

Financial Analysis

The SDEIS fails to include financial information, including an estimate of public subsidies, that could be necessary to support this project. Our concern has been heightened by a lawsuit challenging the award of the predevelopment work to Accelerate Maryland Partners (AMP) This lawsuit generated by another bidder, Capital Express Mobility Partners (CEMP) has been allowed to move forward by the Montgomery County Circuit Court. CEMP argues that AMP assumed unrealistic construction costs in its bid. If CEMP is correct, Montgomery County residents could be forced to fund substantial subsidies for the selected concessionaire.

Higher costs could lead the State to reduce funding for future County transportation priorities. We have also continued to express concern, including in our comments on the DEIS, with the risk of potentially competing projects being given lower funding priority

from the State. Projects that are high priority for the County and risk negative funding impacts may include improving transit services within the Opportunity Lanes, constructing our master planned Bus Rapid Transit network, or operational improvements to the General Purpose lanes.

Ultimately, based on the lack of appropriate analysis as well as other remaining inconsistencies and shortcomings detailed in our November 2020 and November 2021 comments, the County feels that the information in the DEIS and SDEIS does not comply with NEPA. The lack of opportunity for public input and agency consideration of the FEIS warrants requiring an additional SDEIS. The SDEIS we are requesting should address these substantive issues relating to local road impacts and other issues with the transportation analyses, environmental justice and equity impacts, other environmental impacts including those relating to air and water quality, and financial and contracting considerations.

Should you have any questions regarding these comments and requests, please feel free to contact me or Mr. Chris Conklin, P.E., Director of Transportation, at christopher.conklin@montgomerycountymd.gov.

cc: Stephanie Pollack, Acting Administrator, Federal Highway Administration
Jeanette Mar, Environmental Program Manager, Federal Highway Administration
Jeffrey T. Folden, Director, I-495 and I-270 Project Office, Maryland Department of Transportation
Meredith Wellington, Land Use Planning Policy Analyst, Office of County Executive
Chris Conklin, Director, Maryland Department of Transportation
Glenn Orlin, Senior Analyst, Montgomery County Council
Debra Borden, Principal Counsel, Legal Department, Maryland-National Capital Park and Planning Commission

June 3, 2022

The Honorable Pete Buttigieg
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Ave. SE
Washington, DC 20590

Dear Mr. Secretary:

Our organizations write to urge you to reject the I-495 and I-270 Managed Lanes Study because the environmental review does not meet requirements of the National Environmental Policy Act, policy guidelines of the U.S. Department of Transportation, the Federal Highway Administration and the Council on Environmental Quality, and priorities established by President Biden. Specifically, the Draft Environmental Impact Statement (DEIS) and the subsequent Supplemental Draft Environmental Impact Statement (SDEIS) failed to provide analyses for greenhouse gas emissions and environmental justice impacts.

An outright rejection of the Managed Lanes Study is appropriate given the failure of the Maryland Department of Transportation to meet federal requirements. But at the very least, we urge the USDOT to require that a complete and correct SDEIS, with a 90-day public comment period, be issued to address deficiencies. Moreover, we urge that a similar formal public comment process be held for the release of the Final Environmental Impact Statement (FEIS) which is expected to include substantial new information in response to 5,000 DEIS and SDEIS comments from the public and local officials.

Greenhouse Gas Emissions

Contrary to federal policy, there has been no analysis of greenhouse gas (GHG) emissions from the operation of the toll lanes. [Executive Order 13990](#), issued by President Biden on January 20, 2021, states in Section 1 that it is the policy of the Administration to “reduce greenhouse gas emissions.” A policy to reduce GHG emissions cannot be implemented if there is no analysis of these emissions.

Moreover, when the Council on Environmental Quality (CEQ) issued a notice of actions in the [February 19, 2021 Federal Register](#) to follow up on Executive Order 13990, it stated that, “NEPA requires Federal agencies to consider the environmental effects of its proposed actions and involve the public in its decision-making processes.” The CEQ went on to state that, “Federal courts consistently have held that NEPA requires agencies to disclose and consider climate impacts in their reviews. *See, e.g., Ctr. for Biological Diversity v. Nat’l Highway Traffic Safety Admin.*, 538 F.3d 1172 (9th Cir. 2008).”

While the addition of lanes would increase vehicle miles traveled, there are other design features that indicate that GHG emissions will increase. In [comments](#) on the SDEIS, the Maryland-National Capital Park and Planning Commission (M-NCPPC) noted that the Preferred Alternative would shift the bottleneck at the American Legion Bridge to other locations. They stated that, “While some of the bottleneck shifts were expected, the degree of congestion resulting from the proposed project is severe on I-270 north of I-370, on the Inner Loop on the top side of the Beltway, and on the Inner Loop in Prince George’s County.” The “severe” congestion noted by the M-NCPPC would be a source of increased GHG emissions. Yet there has been no analysis.

The SDEIS also did not include an analysis of GHG emissions from construction activity. Instead, this analysis is being deferred until the Final Environmental Impact Statement (FEIS). By postponing the issuance of this analysis until after the close of the formal public comment process, the public is being denied its right to consider the impact of the emissions and to propose measures to mitigate them.

Environmental Justice

Contrary to USDOT policy, the SDEIS did not include an environmental justice analysis to determine whether low-income communities and communities of color would bear a disproportionate burden of the harmful impacts of the I-495/I-270 toll lanes. Instead, this analysis is being deferred until the FEIS.

[U.S. Department of Transportation Order 5610.2\(a\)](#) commits the Department to advance the principles of environmental justice “by fully considering environmental justice principles throughout the planning and decision-making processes in the development of program, policies and activities using the principles of the National Environmental Policy Act...” Similarly, the [Federal Highway Administration \(FHWA\) Order 6640.23A](#) delineates a policy committing the Agency to “identify and prevent discriminatory effects...to ensure that social impacts to communities and people are recognized early and continually throughout the transportation decision-making process—from early planning through implementation.”

Despite policies requiring that environmental justice be addressed early and throughout the decision-making process, the environmental justice analysis for the toll lanes will not be made available to the public until the FEIS is issued, more than six months after the close of the formal public comment process. Blocking the public from understanding and influencing the environmental justice impacts of the toll lanes is a stunning failure to meet USDOT and FHWA requirements.

Public Comment Process for FEIS

Adding private toll lanes to I-495 and I-270 is a large and controversial project that would have substantial impacts on the environment and our communities. The FEIS will need to respond to approximately 5,000 public comments submitted in response to the DEIS and the SDEIS combined.

In addition, many substantial concerns with the SDEIS have been raised by local officials which will presumably be addressed in the FEIS. For example, in a [letter](#), Montgomery County Executive Marc Elrich criticized the failure to include an estimate of public subsidies in the SDEIS, noting that higher costs could lead to reductions in state funding for future County transportation priorities. The County Executive also criticized the failure of the SDEIS to adequately study the impact on local roadways. In its SDEIS comments, the M-NCPPC cited the “Lead Agencies failure to undertake a comprehensive analysis of reasonable alternatives, impacts and mitigation measures.”

The M-NCPPC also raised serious concerns about the traffic modeling, stating that:

Additionally, there are a number of inconsistent conclusions and assumptions in the SDEIS’s transportation modeling and forecasts. The Project claims to improve traffic congestion, but its analysis finds that there are significant segments where the General Purpose lanes worsen significantly as a result of this Project. While the cause of these issues may be subject to debate, MDOT SHA surely has the responsibility to explain or reanalyze the transportation model, its assumptions and conclusion to resolve these inconsistencies. The purpose and need cannot be achieved if the very basis of the Project, to relieve congestion, is called into question.

Given the extensive new information which is expected to be included in the FEIS, it is imperative that there be a formal public review and comment process. There are precedents for holding a public comment process for the FEIS, including for the I-45 North Houston Highway Improvement Project and the I-26 Connector in Asheville, NC.

Conclusion

The hallmark of the I-495/I-270 Managed Lanes Study has been an utter lack of transparency on vital concerns. It would be a failure of federal oversight for the USDOT to approve a study which has failed to identify and address environmental justice and greenhouse gas emissions impacts that are required by NEPA and set forth in policies of the Department of Transportation, the Federal Highway Administration and the Council on Environmental Quality and which are priorities specified in Executive Order 13990. We urge you to reject the study.

At the very least, we urge you to require that the SDEIS be reissued for public comment and that a public comment process be imposed for the issuance of the FEIS.

Sincerely,

American Federation of State, County and Municipal Employees, Maryland Council 3
Anacostia Riverkeeper
Audubon Naturalist Society
Bikemore
Cedar Lane Unitarian Universalist Church Environmental Justice Team
Central Maryland Transportation Alliance
Chesapeake Bay Foundation
Citizens Against Beltway Expansion
Coalition for Smarter Growth
DontWiden270.org
DoTheMostGood
Forest Estates Community Association
Friends of Sligo Creek
Glen Echo Heights Mobilization
Greater Farmland Civic Association
Greenbelt Climate Action Network
Howard County Climate Action
Indivisible Howard County
League of Women Voters of Maryland
Maryland Conservation Council
Maryland Sierra Club
Montgomery County Faith Alliance for Climate Solutions
NAACP Maryland State Conference, Environmental and Climate Justice Committee
National Parks Conservation Association
Northern Virginia Citizens Association
Service Employees International Union Local 500
Takoma Park Mobilization Environment Committee
The Ocean Foundation
The Climate Mobilization, Montgomery County Chapter
Washington Biologists' Field Club
West Montgomery County Citizens Association
Woodside Forest Civic Association

c: The Honorable Polly E. Trottenberg, Deputy Secretary, USDOT
The Honorable Stephanie Pollack, Deputy Administrator, FHWA

The Honorable Gregory Murrill, Division Administrator, FHWA

Congress of the United States
House of Representatives
Washington, DC 20515–2004

June 13, 2022

The Honorable Pete Buttigieg
Secretary
U.S. Department of Transportation
1200 New Jersey Avenue, S.E.
Washington, D.C. 20590

Dear Secretary Buttigieg:

We write to express our concerns over the plan to move forward with a Final Environmental Impact Statement (FEIS) on the I-495 and I-270 Managed Lanes Study when the Supplemental Draft Impact Statement (SDEIS) lacked comprehensive environmental justice and greenhouse gas emissions analyses. Given the size of this transportation project and the impact it would have on the environment and Maryland communities, it is critical that these factors are closely analyzed and addressed before the FEIS is issued. We ask that you thoroughly take into account the potential harm the project could have on environmental justice and greenhouse gas emissions, before publishing the FEIS and Record of Decision (ROD).

The environmental review for this project has been marked by a failure to provide critical analyses needed for the public and policymakers to provide input that would help ensure informed decision-making. Since the SDEIS omitted an assessment of the impact of the I-495 and I-270 project on greenhouse gas emissions once the toll lanes are completed, we are alarmed that this information will not be included in the FEIS. Executive Order 13990, “Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis,” directs the Federal Government to protect the environment and reduce greenhouse emissions through regulations and other actions. The Council on Environmental Quality specified in a notice of action that agencies must consider environmental effects, including greenhouse gas emissions impacts, and engage the public in the decision-making process. Without a comprehensive greenhouse gas emissions analysis in the FEIS on this major transportation project, our ability to address climate change is hindered.

Additionally, the SDEIS did not provide any substantial evidence that environmental justice issues would be addressed. Delaying disclosure of the environmental justice analysis until the

end of the process does not comply with both USDOT and FHWA Order's, which require that environmental justice impacts be assessed and disclosed to the public early and continually throughout the environmental review process. Deferring the disclosure of the environmental justice analysis prevents important facts about the potential harmful impacts to low-income communities and communities of color from being part of the public discussion.

We have heard from countless constituents, local groups and organizations regarding their concerns over the lack of environmental justice and greenhouse gas emission information in the SDEIS. The National Environmental Policy Act (NEPA) process is in place to ensure that federal agencies assess the environmental effects of their proposed actions prior to making decisions. We hope that the FEIS is completely thorough, and these concerns are properly addressed.

Sincerely,



Anthony G. Brown
Member of Congress



Jamie Raskin
Member of Congress



June 30, 2022

The Honorable Pete Buttigieg
Secretary of Transportation
U.S. Department of Transportation
1200 New Jersey Avenue, SE
Washington, DC 20590

Dear Secretary Buttigieg,

On Friday June 17, the Maryland Department of Transportation (MDOT) and the Federal Highway Administration (FHWA) released with a 30-day availability period the I-495 & I-270 Managed Lanes Final Environmental Impact Statement (FEIS) and appendices, totaling 26,500 pages in 74 separate files.¹ The undersigned organizations request an additional formal 60-day review period be provided, up to and including September 17, 2022, to allow the public and commenting agencies a meaningful opportunity to review this new document – which most notably includes a revised traffic model that was used to evaluate key alternatives and estimate various impacts – that have not previously been released to the public.

The FEIS, when added to the over 19,000-page draft environmental impact statement (DEIS) and over 8,000-page supplemental draft environmental impact statement (SDEIS) that it incorporates by reference, represents 53,500 pages, which is roughly equal to almost four full 2022 sets of the *World Book Encyclopedia*. It is simply not possible to meaningfully review much less comment on four encyclopedia sets worth of information over 18 work days in a 30-day availability period. We therefore ask that you reconsider the early decision by the FHWA division office not to provide a longer review period. More time is necessary to carry out NEPA's core goal of ensuring meaningful public participation.

¹ After years-long review process, final report on I-495/I-270 widening project is released Nearly 500-page 'environmental impact statement' has more than 26,000 pages of appendices, Louis Peck, June 18, 2022, <https://bethesdamagazine.com/bethesda-beat/transportation/after-years-long-review-process-final-report-on-i-495-i-270-widening-project-is-released/>

According to MDOT's own FEIS press release, it has "modified analysis methodologies, conducted new analyses, studied new or modified existing alternatives, refined design ... , and identified ... mitigation ... [and] unavoidable impacts." The FEIS also includes a new environmental justice analysis never before released to the public. This is not the subject matter of a final EIS but of a supplemental DEIS, which must have a meaningful and proportional public comment period. Finally, with 5,000 comments submitted on the project and MDOT's responses to those comments of varying length and complexity, it is a substantial effort to review those responses for sufficiency and technical accuracy and merit.

With those kinds of significant changes entailing voluminous new material, with new questions about Maryland constructing toll lanes in Virginia,² and with a contentious two-state project that will open up Maryland to 70+ miles of privatization of public transportation infrastructure, it is imperative that the FHWA exercise its oversight role to require that this document receive no less than an additional 60-day review period as was provided for the SDEIS.

As is underscored by the MDOT press release, federally required analyses were not presented to the public with a formal comment period.³ Some key analyses previously presented were incorrect,⁴ and the current versions presented as correct do not explain how the previous errors occurred or how they were fixed. So, the public has no basis on which to verify their accuracy.

The National Environmental Policy Act (NEPA) and relevant DOT and FHWA Orders require accurate environmental analyses and meaningful public participation throughout the NEPA process. These requirements can only be met if

² MDOT's Plan to Build Toll Lanes in Fairfax is an Unwelcome Surprise to Some Virginians, Bruce DePuyt, June 16, 2022, <https://www.marylandmatters.org/2022/06/16/mdots-plan-to-build-toll-lanes-in-fairfax-is-an-unwelcome-surprise-to-some-virginians/>

³ In a notice of actions following the issuance of President Biden's Executive Order 13990 on January 20, 2021, the Council on Environmental Quality made clear that decisions must consider environmental effects of proposed actions, including greenhouse gas emissions, and must involve the public in the decision-making process. The SDEIS for this project did not include a GHG emissions analysis, deferring it to the FEIS, seven months after the close of the formal public comment process.

⁴ The significant critiques of flawed traffic modeling were admitted to "have merit" in the 69th file of the FEIS. T.2.B, Volume 2_SDEIS Community Organization Comments and Responses at CO-828, https://oplanesmd.com/wp-content/uploads/2022/06/68_MLS_FEIS_App-T-DEIS-SDEIS-CR_T.2.B_Volume-2_June-2022p.pdf

the document issued on June 17 is re-designated to be an interim rather than final document and allotted a meaningful and proportional comment period. As noted before, an FEIS for this project should also have a public comment period of at least 60-90 days.⁵ Adequate formal public review periods are needed for both an interim document and for an FEIS to ensure that the public has adequate time for meaningful review of the project's impacts.

The undersigned urge you to uphold federal regulations and provide a meaningful review period that will afford the public an adequate opportunity to review and comment on the new information prior to the issuance of a Record of Decision. This issue has been flagged for FHWA and MDOT repeatedly since January 2022 in letters from Sierra Club Maryland Chapter,⁶ the Mayor and Council of Rockville,⁷ 82 legislators in the Maryland General Assembly,⁸ 10 Prince George's County mayors,⁹ the Montgomery County Executive,¹⁰ 32 civic and environmental groups,¹¹ multiple members of Congress,¹² and now dozens more groups.

We look forward to your prompt action on this critical, time-sensitive issue.

Sincerely,

⁵ Sixty and 75-day FEIS review periods have been provided for other recent highway projects, such as the I-26 Connector in Asheville, NC and the I-45 in Houston, TX.

⁶ Sierra Club Maryland Chapter letter to FHWA and MDOT, January 4, 2022, <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce/maryland-chapter/SC-Letter-495270MLS-SDEIS-FEISReviewPd-2022Jan4.pdf>

⁷ Mayor and Council of Rockville letter to FHWA and MDOT, January 26, 2022, <https://static1.squarespace.com/static/5b72c6a8da02bc640472bf8c/t/61fee871b03f6828336629d3/1644095602555/FHA+Letter+FINAL+012622%281%29.pdf>

⁸ Maryland General Assembly letter to FHWA and MDOT, February 22, 2022, https://mcusercontent.com/6cdc39da7c0238a0521e24885/files/932d6527-1fc6-5b38-81ac-cba0cf957ae1/FWHA_Letter.pdf

⁹ 10 Prince George's County mayors letter to FHWA and MDOT, February 26, 2022, https://9cb12f8b-0595-4233-98ce-142d43d80a5c.usrfiles.com/ugd/9cb12f_feceda725e324136bb9f7cd6f54b9f33.pdf

¹⁰ Montgomery County Executive letter to FHWA and MDOT, March 10, 2022, https://9cb12f8b-0595-4233-98ce-142d43d80a5c.usrfiles.com/ugd/9cb12f_5ea4194f64224e46b8a0a4706f543f59.pdf

¹¹ 32 civic and environmental groups letter to Secretary Buttigieg, June 3, 2022, https://www.cabe495.com/_files/ugd/9cb12f_3ea64a8478ba48438955d198aefc629f.pdf

¹² Letter addressed to Secretary Buttigieg.

Sierra Club Maryland Chapter
Anacostia Watershed Community Advisory Committee
Audubon Mid-Atlantic
Audubon Naturalist Society
Beaverdam Creek Watershed Watch Group
Biodiversity for a Livable Climate
Brandywine TB Southern Region Neighborhood Coalition
Cabin John Citizens Association
Canoe Cruisers Association
Carderock Springs Citizens Association
Cedar Lane Ecosystems Study Group
Central Maryland Transportation Alliance
Chesapeake Climate Action Network
Citizens Against Beltway Expansion
Clean Water Action
Climate Xchange
Coalition for Smarter Growth
Defensores de la Cuenca
Delegate Lorig Charkoudian, Maryland General Assembly
DontWiden270.org
DoTheMostGood
Downtown Residents Advocacy Network (Baltimore)
Environmental Justice Ministry Cedar Lane Unitarian Universalist Church
Friends of Moses Hall and The Board of Trustees of Morningstar Tabernacle
Number 88, Incorporated
Friends of Sligo Creek
Greenbelt Climate Action Network
Glen Echo Heights Mobilization

Greater Farmland Civic Association
HoCo Climate Action
Indivisible Howard County
ISCA - Do Not Expand 495
Maryland Coalition for Responsible Transit
Maryland Conservation Council
Maryland League of Conservation Voters
Maryland Legislative Coalition
Maryland Native Plant Society
Maui Wowi
Mayor Bridget Donnell Newton, City of Rockville
Mayor Patrick Wojahn, City of College Park
National Parks Conservation Association
Neighbors of the Northwest Branch
North Hills of Sligo Creek Civic Association
Our Revolution Maryland
Prince George's County Peace and Justice Coalition
Promenade Towers Mutual Housing Corporation
Rock Creek Conservancy
Rock Creek Hills Citizens' Association
Rogue Tulips LLC
Save BARC
Strong Future Maryland
Takoma Park Mobilization Environment Committee
The Climate Mobilization, Montgomery County Chapter
The Ocean Foundation
Transform Maryland Transportation Coalition

Transit Choices

Union of Concerned Scientists

Unitarian Universalist Legislative Ministry of Maryland

Urban Breezes

Washington Area Bicyclist Association

Washington Biologists' Field Club

Well Mind Association of Greater Washington

Woodside Forest Civic Association

Cc:

Ms. Polly Trottenberg, Deputy Secretary, U.S. Department of Transportation

Ms. Stephanie Pollack, Acting Administrator, Federal Highway Administration

Mr. Gregory Murrill, Division Administrator, Federal Highway Administration

Mr. James Ports, Maryland Secretary of Transportation

Mr. Adam Ortiz, Division Administrator, U.S. Environmental Protection Agency

Ms. Tammy Stidham, Deputy Associate Area Director - Lands and Planning,
National Park Service

U.S. Congressman Anthony Brown

U.S. Congressman Jamie Raskin

U.S. Senator Ben Cardin

U.S. Senator Chris Van Hollen

SENATOR BENJAMIN F. KRAMER
SENATE DELEGATION CHAIR

SENATOR SUSAN C. LEE
SENATE DELEGATION VICE CHAIR

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DELEGATE MARC KORMAN
HOUSE DELEGATION CHAIR

DELEGATE ALFRED C. CARR, JR.
HOUSE DELEGATION VICE CHAIR

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THE MARYLAND GENERAL ASSEMBLY
ANNAPOLIS, MARYLAND 21401
MONTGOMERY COUNTY DELEGATION

July 8, 2022

Mr. Gregory Murrill
Division Administrator
Federal Highway Administration
U.S. Department of Transportation
31 Hopkins Plaza, Suite 1520
Baltimore, Maryland 21201

Dear Mr. Murrill:

As members of the Montgomery County Delegation to the Maryland General Assembly, we write to express our grave concerns over limitations imposed on the public by the June 17, 2022, release of the I-495 & I-270 Managed Lanes Final Environmental Impact Statement (FEIS). Montgomery County, the most populous jurisdiction in the state, contains the entire Maryland geographic footprint of the Preferred Alternative.

The FEIS and its appendices total 26,500 pages in 74 files. Much of the material is new and all of it is important, given the enormity of the 50-year project, its multi-billion-dollar cost, major environmental and human impacts, and controversial nature. Yet the public is permitted only 30 days to review and understand this massive documentation – an impossible task – with no formal opportunity permitted for comment.

We ask that the Federal Highway Administration (FHWA) require the Maryland Department of Transportation (MDOT) to add an additional review and public comment period of 60 days, up to and including September 17, 2022.

The need for extended review and formal comment is essential because of certain decisions made by MDOT. The Department chose to defer the release of federally mandated analyses and other missing information until issuance of the FEIS. As a result, the public, its representatives, and reviewing agencies can only now begin examining long-requested environmental justice and greenhouse gas emissions analyses, mitigation plans, the project's recently changed traffic model, and MDOT's responses to the 5,000 comments it received during the public comment periods for the Draft EIS and Supplemental Draft EIS.

In a February 22, 2022, letter to the FHWA and MDOT, over 80 members of the Maryland General Assembly called for a redo of the project's Supplemental Draft EIS to include the key

missing analyses. Now that the analyses seem to have been included in the FEIS, we ask that you allow the public sufficient time to meaningfully review and evaluate what has been provided, and the opportunity to react to the material through formal public comments.

Sincerely,

Delegate Marc Korman
Chair, Montgomery County
House Delegation

Senator Ben Kramer
Chair, Montgomery County
Senate Delegation

Delegate Kumar Barve
Chair, Environment & Transportation
Committee

Senator Brian Feldman

Senator Cheryl Kagan

Delegate Al Carr

Senator Susan Lee

Delegate Lorig Charkoudian

Senator Will Smith

Delegate Bonnie Cullison

Senator Jeff Waldstreicher

Delegate Linda Foley

Delegate Anne Kaiser

Delegate Ariana Kelly

Delegate Lesley Lopez

Delegate Sara Love

Delegate Eric Luedtke

Delegate David Moon

Delegate Julie Palakovich Carr

Delegate Kirill Reznik

Delegate Emily Shetty

Delegate Jared Solomon

Delegate Vaughn Stewart

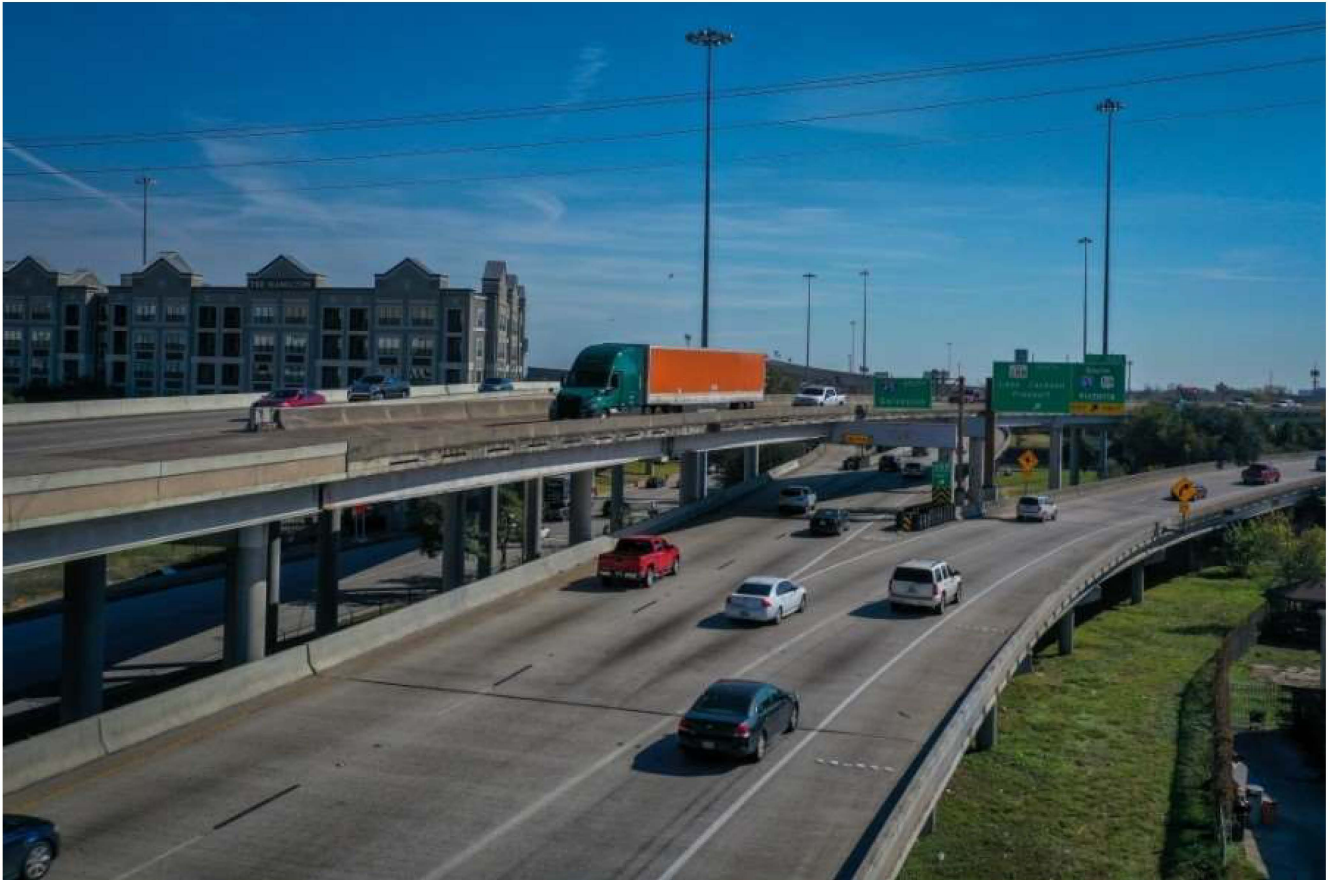
Delegate Jheanelle Wilkins

cc: Mr. Pete Buttigieg, Secretary, U.S. Department of Transportation
Ms. Polly Trottenberg, Deputy Secretary, U.S. Department of Transportation
Ms. Stephanie Pollack, Acting Administrator, Federal Highway Administration
Mr. Adam Ortiz, Division Administrator, U.S. Environmental Protection Agency



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Public comment period extended on I-45 Environmental Report



The North Houston Highway Improvement Project proposed rerouting I-45 through the East End and Fifth Ward, leaving the Pierce Elevated abandoned. (Nathan Colbert/Community Impact Newspaper)

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By [Emma Whalen](#) | 7:46 PM Oct 28, 2020 CDT | Updated 7:46 PM Oct 28, 2020 CDT

At activists' and local officials' request, the Texas Department of Transportation extended the public comment period on the forthcoming [I-45 project's Final Environmental Impact Statement](#).

"TxDOT wishes to assure the public that our team will continue to engage with the stakeholders and seek meaningful opportunities to enhance this project," an Oct. 28 release from the agency stated.

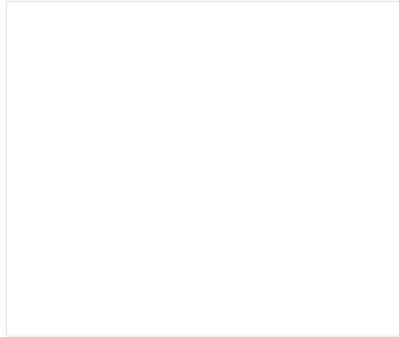
The project, which plans to overhaul much of I-45's path through downtown Houston, has received significant public attention. Advocacy groups, such as transportation equity advocacy group Link Houston, wanted more than one month to review the 8,000-plus page document. The original deadline for comments that was set for Nov. 9 was extended to Dec. 9.

“The FEIS is 8,189 pages across three volumes. That would be impossible to read in the 30 days,” Link Houston Director Oni Blair said. “At first glance, we don’t see any major changes, especially ones of the magnitude that Mayor [Sylvester] Turner identified.”

Some, including Sylvester Turner, wanted to see a 60-day extension.

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The project has solicited strong reactions from some Houston residents and elected officials for its proposal to reroute and expand the highway through the East End while abandoning its path through Midtown. Advocacy groups such as Stop I-45 and The Make I-45 Better Coalition claim the project will have disproportionately negative impacts on communities of color in the East End, Fifth Ward and Northside.

According to the environmental impact report, the project, as currently designed, will displace 160 single-family homes, 433 multifamily residences, 486 public and low-income housing units, 344 businesses, five places of worship and two schools.

Proponents of the project have said it will alleviate congestion, flooding and safety issues on the over 50-year-old highway.

Comments can be submitted by mail to the Texas Department of Transportation, Director of Project Development, P.O. Box 1386, Houston, Texas 77251 or by email to [hou-piowebmail@txdot.gov](mailto:houston@txdot.gov).

[I-45](#) [TXDOT](#) [LINK HOUSTON](#) [ONI BLAIR](#) [SYLVESTER TURNER](#) [HOUSTON METRO](#) [HOUSTON METRO TRANSPORTATION](#)

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By [Emma Whalen](#)

Emma is Community Impact Newspaper’s Houston City Hall reporter. Previously, she covered public health, education and features for several Austin-area publications. A Boston native, she is a former student athlete and alumna of The University of Texas at Austin.

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Final Environmental Impact Statement Signed for I-26 Connector

Updated on March 20, 2020

N.C. Department of Transportation officials are extending the Final Environmental Impact Statement comment period by 14 days, to April 17, due to disruptions caused by COVID-19. The FEIS is [available online](#), and a hard copy is available for review by appointment at the Division 13 office. Contact Division 13 Project Team Lead Brendan Merithew at 828-250-3024 or bwmerithew@ncdot.gov to schedule an appointment.

ASHEVILLE – The N.C. Department of Transportation, in conjunction with the Federal Highway Administration (FHWA), has released the Final Environmental Impact Statement (FEIS) for the proposed [I-26 Asheville Connector](#) in Buncombe County.

[The FEIS](#) confirms the Preferred Alternative for all three sections of the project from the I-40/I-26/I-240 interchange to Future I-26 near Broadway Street.

Final federal approval of the project (I-2513) is anticipated this summer when the FHWA issues its Record of Decision. Right of way acquisition for parts of the project may begin this year, and transportation officials anticipate starting phased construction in the next few years.

“The release of the FEIS is a major milestone for this project, which will reduce traffic congestion, increase commerce in the region, provide an improved gateway into Asheville, and include bicycle and pedestrian facilities,” NCDOT Division 13 Engineer Mark Gibbs said. “Our local partners have helped us reach this critical step which brings the project closer to becoming a reality.”

NCDOT has also finalized the I-26 Connector Traffic Noise Report. It documents the project's preliminary traffic noise analysis and can be found on the [project website](#). Areas where noise abatement is preliminarily feasible have been added to the [public hearing maps](#). A more detailed analysis will be completed during project final design.

The FEIS, submitted pursuant to the National Environmental Policy Act, addresses comments received on the project's Draft Environmental Impact Statement (EIS). The public now has the opportunity to review and comment on the contents of this document.

Comments must be received within 60 days in order to be included as part of the public record for the Final EIS comment period. Comments may be sent to Senior Project Manager Kevin Moore, PE, at kemoore2@ncdot.gov or at 1582 Mail Service Center, Raleigh, NC 27699-1582.

The FEIS and supporting documents are available on the project website. A printed copy may be viewed by appointment at the NCDOT Division 13 Office, 55 Orange Street in Asheville. Additional copies are available at the following locations:

- State Library of North Carolina, 109 East Jones Street, Raleigh, NC 27601
- Pack Memorial Library, 67 Haywood Street, Asheville, NC 28801
- West Asheville Library, 942 Haywood Road, Asheville, NC 28806
- Buncombe County Law Library, 60 Court Plaza , Asheville, NC 28801
- D. Hiden Ramsey Library, University of North Carolina Asheville, One University Heights, CPO #1500, Asheville, NC 28804
- French Broad River MPO, 339 New Leicester Highway, Suite 140, Asheville, NC 28806

NCDOT

Last updated 10:38 a.m. on Mar. 20, 2020

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July 15, 2022

Mr. Gregory Murrill, Division Administrator
 Federal Highway Administration
 U.S. Department of Transportation
 31 Hopkins Plaza, Suite 1520
 Baltimore, Maryland 21201

Dear Mr. Murrill,

Rockville’s Mayor and Council join the Montgomery County State Delegation in asking that the Federal Highway Administration (FHWA) require the Maryland Department of Transportation (MDOT) to add an additional review and public comment period of 60 days, up to and including September 17, 2022 for the Final Environmental Impact Statement (FEIS) for the I-495 & 1-270 Managed Lanes Study. As you know, Rockville is the municipality that would be most impacted by this phase of the project. We seek time to understand the numerous impacts on Rockville and its residents.

The document released June 17, 2022 is well over 26,000 pages long. It contains new material that was not available for public comment in any of the previous releases. These include federally mandated analyses for greenhouse gas emissions, environmental justice, mitigation plans, and replies to over 5,000 public comments. Additionally, we understand a new traffic model has been used and that differences in traffic numbers between the SDEIS and the FEIS are not well explained or explained at all.

The City of Rockville believes it is imperative that public comment be accepted for any new or substantially revised material. This includes all input and output data to and from the FEIS traffic modeling process and all appropriate documentation. We and our partners require this time to read and understand the material.

Sincerely,

Bridget Donnell Newton
 Bridget Donnell Newton, Mayor

Monique Ashton
 Monique Ashton, Councilmember

Beryl L. Feinberg
 Beryl L. Feinberg, Councilmember

David Myles
 David Myles, Councilmember

Mark Pierzchala
 Mark Pierzchala, Councilmember

MAYOR
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CITY MANAGER
 Robert DiSpirito

CITY CLERK/DIRECTOR OF
 COUNCIL OPERATIONS
 Sara Taylor-Ferrell

CITY ATTORNEY
 Robert E. Dawson

Mayor and Council of Rockville

cc: District 17 Delegation
 Marc Elrich, Montgomery County Executive
 Montgomery County Council

*Enclosure: Montgomery County Delegation FWHA Comment Period