



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.

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