



April 21, 2021

Ms. Jeanette Mar
Environmental Program Manager
Federal Highway Administration
Maryland Division
George H. Fallon Federal Building 31 Hopkins Plaza
Suite 1520
Baltimore, MD 21201

Mr. Tim Smith
Administrator
Maryland Department of Transportation
State Highway Administration
I-495 & I-270 P3 Office
707 North Calvert Street
Mail Stop P-601
Baltimore, MD 21202

Re: I-495/I-270 Managed Lanes Study – Notice of Non-Concurrence with Selection of Alternative 9 as the Recommended Preferred Alternative

Dear Ms. Mar and Mr. Smith,

On January 27, 2021, the Maryland Department of Transportation State Highway Administration (“SHA”) released its Recommended Preferred Alternative (“RPA”) for the I-495/I-270 Managed Lanes Study (“Study”), and requested concurrence from the Cooperating Agencies. The Maryland-National Capital Park and Planning Commission (“M-NCPPC” or the “Commission”), as a Cooperating Agency, has reviewed the RPA and does not concur with it for the reasons set forth below.

Since the inception of the Study, M-NCPPC has stated repeatedly and consistently that SHA should consider alternatives that avoid impacts to parkland under M-NCPPC’s jurisdiction as well as consider multimodal solutions, among other things. SHA has declined to adequately consider and address M-NCPPC’s concerns. Unless and until SHA agrees to include only the Phase 1 project approved by the Board of Public Works and currently in procurement in the Final Environmental Impact Statement (“FEIS”), along with a commitment to include meaningful transit funding and to minimize impacts to parkland under M-NCPPC’s jurisdiction, M-NCPPC will be compelled, both by its statutory mission and principles of good public policy, to continue to object to the Study’s advancement.

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I. Background

In November 2018, SHA and FHWA issued their Purpose and Need Statement for the Study. The Commission did not concur on the Purpose and Need Statement because its narrow drafting excluded substantive consideration of alternatives that would address congestion with fewer environmental and parkland impacts. On May 22, 2019, SHA issued its list of Alternatives Retained for Detailed Study – Revised (“ARDS”) for the Study and requested concurrence from the Cooperating Agencies. The Commission, as a Cooperating Agency, reviewed the ARDS and expressed its non-concurrence and reasons for the same by letter to you dated June 12, 2019. We provided further correspondence in which we outlined our concerns regarding the Study’s deficiencies under the National Environmental Policy Act (“NEPA”) on June 12, 2019, June 28, 2019 and July 22, 2019.

On October 16, 2019, SHA and the Federal Highways Administration (“FHWA”) issued a “Revised ARDS Paper” eliminating from further study Alternative 5, which would have added one High Occupancy Toll (“HOT”) managed lane in each direction on I-495 and converted the one existing High Occupancy Vehicle (“HOV”) lane in each direction on I-270 to a HOT managed lane, on grounds that the alternative was not financially viable and did not meet the project’s purpose and need in terms of congestion relief and trip reliability. On October 22, 2019, SHA and FHWA issued their evaluation of the MD 200 Diversion Alternative, put forth by M-NCPPC and other stakeholders as an alternative that would avoid many of the most significant impacts of the Build Alternatives. SHA and FHWA summarily determined not to carry forward that alternative in the Draft Environmental Impact Statement (“DEIS”) on grounds that it would not be financially viable and would perform worse than many of the screened metrics used to evaluate the reasonableness of the alternatives.

On November 20, 2019, SHA officials briefed the Commission at a public meeting regarding the Revised ARDS. At that meeting, M-NCPPC Commissioners reaffirmed their concerns regarding parkland impacts from various alternatives and failure to study transit options, among others, and reiterated their requests for key information, such as origin/destination data, certain GIS layers, and traffic and vehicle data and modeling. On November 27, 2019, M-NCPPC informed SHA and FHWA that it did not concur with the Revised ARDS, and submitted further comments and renewed requests for data and information regarding the same. All of this previous correspondence is incorporated by reference herein. We note that SHA did not address the Commission’s requests for data and information or comments regarding the impacts of the retained alternatives.

On July 10, 2020, SHA and FHWA formally published the DEIS and Draft Section 4(f) Evaluation for the Study. The Army Corps of Engineers (“Corps”) and Maryland Department of the Environment (“MDE”) also issued public notice of availability of the Joint Permit Application (“JPA”) for the Study. On November 6 and November 9, 2020, the Commission submitted public comments on those documents, again reiterating its concerns about key environmental aspects of the Study.

Concurrently, SHA and the Commission explored mediation as a method of learning more about our substantive disagreements, and Commission Chair Casey Anderson accepted Secretary Slater’s proposal to mediate. On October 6, 2020, SHA provided its list of potential mediators for the Commission’s review and feedback. After much discussion and candidate interviews, on

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November 12, 2020 the Commission and SHA agreed to engage mediator Dan Dozier. Meanwhile, SHA also announced the formation of several conflicting initiatives -- a Collaborative Leadership Summit, an Executive Steering Committee and an Environmental Justice Workgroup -- all purported to resolve or mediate agency comments and issues with the DEIS. But after a single meeting with Mr. Dozier, SHA abruptly announced the RPA on January 29, 2021, effectively deciding several of the most critical issues to be discussed in the mediation. Under these circumstances, for the reasons discussed with the mediator, the Commission could no longer justify devoting the considerable time or effort required to continue following SHA's mediation process that was so clearly leading nowhere.

At this point, SHA has identified Alternative 9 as the RPA for the Study. The RPA would add a total of four HOT lanes to I-495 and I-270—two in each direction. Several weeks later, SHA announced selection of Accelerate Maryland Partners, LLC as the Study's P3 partner. While SHA has stated that it only will award a contract for Phase 1 of the project, the DEIS covers the entire project, potentially obviating the requirement for further environmental review of future phases.

II. M-NCPPC Does Not Concur with the RPA

Although SHA has made the decision to enter into a contract with the P3 partner for Phase 1 only and indicated that it will seek permits only for that first phase, M-NCPPC must express its non-concurrence since the FEIS will purport to cover the entire project. As M-NCPPC has stated on several occasions, the Environmental Impact Study and the ROD should cover only Phase 1 or consider alternatives that avoid impacts to parkland. In our view, because the SHA is trying to sweep so many profound impacts and problems with future phases under the convenient rug of an initial phase, approval of the FEIS or issuance of the ROD on that basis would be unlawful *per se*.

Selecting Alternative 9 as the RPA ignores M-NCPPC's comments as discussed more fully in our DEIS and JPA comments. Of note:

- The Project's Purpose and Need Statement presupposes managed lanes at the expense of multimodal alternatives, including transit, such that the Lead Agencies rejected reasonable alternatives from detailed study that would have fewer environmental impacts than the RPA.
- SHA and FHWA failed to study in detail the MD 200 Diversion Alternative—a practicable alternative that has fewer environmental impacts than the RPA and any other Build Alternative.
- The RPA will not provide sufficient flexibility to address the Study's Purpose and Need due to system-wide travel needs, transportation patterns, and physical constraints. SHA and FHWA should consider more of an “a la carte” approach that considers all alternatives.
- Right-of-Way Acquisition in furtherance of the RPA—and all other Build Alternatives—runs afoul of the Capper-Cramton Act (“CCA”). Similarly, work performed under the requested environmental permits would require use of the Commission's CCA properties, which SHA cannot authorize.

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- SHA materially underestimated the Limits of Disturbance for the RPA and all other Build Alternatives, to the detriment of aquatic and other natural, cultural, and historic resources that will be impacted without adequate study or mitigation.
- The RPA fails to satisfy the burden imposed on projects that impact parkland and other protected areas, including those protected by the CCA.
- The stormwater impacts of the RPA continue to be poorly assessed and accounted for.

While SHA and M-NCPPC have had some preliminary conversations about addressing specific DEIS comments related to certain segments of the project, no formal commitments or responses have been provided to M-NCPPC. These serious concerns and information gaps—and the other concerns and information gaps previously shared with you—continue to preclude us from concurring with the RPA at this time.

III. SHA and FHWA's Timeframe Is Not Realistic

Finally, SHA has indicated that it expects to publish the FEIS in October 2021, with the Record of Decision following in November. Based on the discussions of the DEIS comments to date, it is unlikely that SHA will be able to meaningfully resolve many of the comments and concerns that M-NCPPC has raised with the DEIS within that timeframe, including identification and avoidance, minimization, or mitigation of impacts to natural, cultural, and historic resources.

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As we have stated throughout this process, our objective is to work with you to advance the I-495/I-270 Managed Lanes Study while also meeting our responsibilities as a Cooperating Agency and under applicable law. To that end, we look forward to your response and would welcome re-opening a dialogue to address these concerns and requests for information.

Sincerely,



Elizabeth M. Hewlett
Chair



Casey B. Anderson
Vice-Chair