
June 28, 2019

Ms. Elizabeth M. Hewlett, Chair
Mr. Casey Anderson, Vice-Chair
Maryland-National Capital Park and Planning Commission
8787 Georgia Avenue
Silver Spring MD 20910

Dear Ms. Hewlett and Mr. Anderson:

On behalf of the Maryland Department of Transportation State Highway Administration (MDOT SHA), we want to thank you for your continued participation in the I-495 & I-270 Managed Lanes Study (MLS). The MDOT SHA has led a robust and collaborative effort with over 25 cooperating and participating Federal, State and local agencies to assist in the preparation of an Environmental Impact Statement (EIS) for the study. To date, the cooperating agencies have worked with MDOT SHA to advance the Study's Purpose and Need, the preliminary screening of alternatives, and now, the evaluation of alternatives which will be retained for detailed study (ARDS) in the Draft EIS (DEIS).

To reiterate the alternatives development and screening process, MDOT SHA actively engaged the agencies starting in July 2018 with development of the Preliminary Range of Alternatives to recommendations on the ARDS in May 2019. The alternatives screening process has been iterative and agency comments were sought on multiple occasions and in numerous ways including on two alternative screening papers and at the monthly Interagency Working Group (IAWG) meetings. In response to agency comments, MDOT SHA revised the draft ARDS paper, prepared a more traditional "errata sheet" document to address the majority of comments submitted, and will be revising the Alternatives Technical Report and incorporating the information in the DEIS.

First, it's important to explain MDOT SHA's approach to addressing comments received from your agency and in particular the most recent comments you provided on the ARDS in your letter dated June 12, 2019. The MDOT SHA has already provided, in multiple instances, detailed responses to the same concerns you continue to raise. In other instances, your comments reflect a lack of understanding of the National Environmental Policy Act (NEPA) process and seek a degree of analysis which is not completed at this stage but, as we have informed Maryland-National Capital Park and Planning Commission (M-NCPPC) staff numerous times, will be completed as part of the DEIS.

As we have informed your staff numerous times, the NEPA process is designed to efficiently utilize Federal, State, and local resources so that lengthy, costly, detailed studies are not performed on alternatives that do not meet the project purpose and need or are otherwise not reasonable alternatives. Despite continued explanation from both MDOT SHA and the Federal Highway Administration (FHWA) that many of the studies you seek will be completed at the proper time, M-NCPPC has led the public and other officials to believe this analysis either is not forthcoming or should have already been completed. As the FHWA process is defined, MDOT SHA has properly completed the level of analysis appropriate for each stage of the process: 1) Preliminary Screening of alternatives; and 2) ARDS. We will be completing more detailed analysis for DEIS and then finally we will refine that analysis for the Final EIS (FEIS).

Moreover, many of your comments are not amenable to the sort of brief and focused responses usually found in traditional errata documents. These comments clearly represent a philosophical difference between your views of whether the MDOT SHA's proposed action is appropriate or necessary. Disagreements over policy should not be mistaken for comments on technical documents supporting a DEIS. They are not easily addressed in an errata sheet and we will not be restricted to responding in that fashion.

To address the recent comments received via letter on June 12, which followed M-NCPPC's vote for non-concurrence on the ARDS on June 6, we offer the below responses. We would like to note that a second issue resolution meeting was held with leaders of M-NCPPC, MDOT SHA and FHWA on June 3 in an attempt to resolve the issues your agency brought forth as staff recommendations in a memo dated May 29.

NEPA Process

Many of the issues your agency continues to bring forward show a fundamental lack of understanding of NEPA and the process by which a decision is ultimately made under this Federal law. The 'elemental reasons' cited in M-NCPPC's recent correspondence for supporting non-concurrence clearly reflect a cursory understanding of NEPA and its implementing procedures.

The first 'elemental reason' noted identifies "phasing and segmentation" as reasons for your non-concurrence. The NEPA and the FHWA's implementing regulations expressly permit dividing up a larger project into logical, smaller units. "Segmentation," as that term has developed under NEPA common law, refers to inappropriately constraining the scope of study to a smaller section of a larger proposed action, usually in an effort to minimize potential impacts of the larger action. The FHWA regulations plainly establish the acceptable procedures under which a project proponent can study smaller units of a larger project. Specifically, 23 CFR § 771.111(f) provides that in order to assure meaningful consideration of alternatives the actions evaluated in an EIS shall:

1. Connect "logical termini" and be of sufficient length to address environmental matters on a broad scope

2. Have independent utility; and
3. Not restrict consideration of alternatives for other reasonable foreseeable transportation improvements.

The MDOT SHA has repeatedly demonstrated, and FHWA agrees, that the MLS meets each of these requirements as explained more fully below. The project has logical termini, independent utility and does not preclude consideration of additional transportation enhancements either along the I-270 corridor, the Capital Beltway or elsewhere in the surrounding transportation network.

Logical Termini

As noted above, MDOT SHA worked with FHWA to analyze and identify logical termini and independent utility for the I-495 & I-270 Managed Lanes Study. The evaluation of logical termini for a transportation system affecting the interstate falls within the broader expertise of the FHWA. In order to ensure meaningful evaluation of alternatives and to address environmental matters on a broad scope, MDOT SHA is analyzing 48 miles of improvement within a 70-mile congestion relief program. The termini were identified largely due to points of major traffic generation and travel patterns. In addition, operational restrictions related to connectivity to the Beltway in Virginia limit the scope of what can be currently studied and potentially built in the Prince George's County end of the Beltway and across the Woodrow Wilson Bridge. This is similar to VDOT ending their I-495 Express Lanes south of the American Legion Bridge, until Maryland was prepared to study improvements across the bridge. The needs of Prince George's County are of paramount importance, but the logical termini evaluation required existing or planned connections to Virginia, which do not exist and are not currently planned for that portion of the study area. It should be noted that under all build alternatives, there is significant improvement of travel times to and from National Harbor, which we clearly understand is of great importance to Prince George's County.

Regarding the I-270 terminus, the Study currently ends at I-370 which feeds into the Intercounty Connector (ICC), a major east-west tolled highway. The traffic analysis results showed that a significant portion of traffic enters and exits at the ICC. It should be noted that the traffic analysis for each terminus includes the next interchange to demonstrate that the study would not be forcing improvements beyond the identified limits.

Lack of Data or Comprehensive Analysis

The M-NCPPC continues to contend that it will not concur on the proposed ARDS because 'more detail is needed and that a comprehensive analysis has not been completed to-date'. This comment again highlights a fundamental misunderstanding of the process. As correctly stated in your letter, "the primary purpose of the alternatives screening process is to assess reasonableness; screening provides a means of separating unreasonable alternatives (which can be eliminated without detailed study) from reasonable alternatives (which must be carried forward for detailed study).” Detailed traffic modeling, engineering, financial and environmental analyses are completed once “reasonable alternatives” are identified, and not before. The basis for concurring on ARDS is to acknowledge that certain alternatives are reasonable to be *carried forward for detailed analysis*.

Purpose and Need/Transit

Lead agencies are given significant deference in determining a specific project's purpose and need. The purpose and need of the MLS was developed after significant discussion and input from all participating and cooperating agencies, solicitation of comments from the public and other interested parties, and the evaluation of the transportation needs of the study area identified through review of local, State, and regional studies. The range of alternatives considered were evaluated in the context of whether they met the project purpose and need. The ARDS advanced clearly meet this requirement.

Your letter asserts that the ARDS as defined are insufficient under NEPA because of their lack of dedicated transit, which is incorrect. The M-NCPPC suggests that meaningful transit and travel demand management be integral components of the study for any alternative carried forward. The MDOT SHA agrees and this is reflected in the study's Purpose and Need which states "The purpose of the I-495 & I-270 Managed Lanes Study is to develop a *travel demand management* solution(s) that addresses congestion, improves trip reliability on I-495 and I-270 within the study limits and *enhances existing and planned multimodal mobility and connectivity*". Standalone transit was dropped from further analysis due to standalone transit alternatives' inability to meet several of the Study's needs including addressing long-term traffic growth. Furthermore, MDOT SHA has repeatedly stated its commitment to incorporate transit elements, including:

- Allowing full access to the managed lanes at no cost for public transit providers;
- Providing direct and indirect access to existing transit stations and transit-oriented development; and
- Initiating a Transit Work Group with local transit providers to further identify opportunities for enhancing existing and planned transit connectivity and mobility along the managed lanes.

These transit elements will be incorporated into the Study regardless of the alternative. Further, it is worth pointing out that previous studies of the Capital Beltway and regional transit resulted in recommending the Purple Line which is under construction now. Any additional standalone transit alternatives would also require additional right-of-way and potentially result in significant environmental impacts while serving less people.

The M-NCPPC's objections continue to reflect its desire that MDOT SHA conduct a very different study – one more broadly focused on regional transportation issues and solutions. That is simply not this Study's focus. Nevertheless, this Study will take into account a wide variety of transportation solutions identified in the I-495 and I-270 corridors. All projects included in the constrained long-range plan are modeled in the no-build and the build conditions. This means that all local serving transit projects identified in the constrained long-range plan are included in our analysis. As this Study began prior to the adoption of the 2045 constrained long range plan, the current analysis includes all projects in the 2040 constrained long range plan including the Purple Line, Corridor Cities Transitway, US 29 Bus Rapid Transit (BRT), North Bethesda Transitway, and Randolph Road BRT. Even assuming the completion of all these local serving transit projects, our analysis shows significant congestion on both I-495 and I-270.

We are well aware that the 2045 constrained long range plan has been approved and includes additional transit projects such as MD 355 BRT, Veirs Mill BRT, and New Hampshire Avenue BRT. As NEPA requires consideration of new information that becomes available, MDOT SHA will conduct a sensitivity analysis to compare modeling assumptions and raw outputs from the 2040 and 2045 models. Differences in background project assumptions and land use assumptions and differences in resulting projected traffic volumes on I-495, I-270 and the surrounding arterials will be documented in a technical memorandum to conform that any changes would not impact decision-making for the preferred alternative.

Regardless of the preferred alternative ultimately recommended, all these other projects are separate and distinct from the I-495 and I-270 MLS and cannot be combined with this Study as part of the NEPA decision, for funding, or for other purposes. The MLS is a project-level study, not a regional transportation plan.

Project Phasing

Again, this comment reflects a fundamental lack of understanding of the NEPA process. The M-NCPPC contends that construction phasing be considered as a factor for concurring on which alternatives should be carried forward for detailed study in the DEIS. Project or construction phasing is irrelevant to the analysis of whether alternatives should be retained for detailed study in the DEIS. The MDOT SHA is analyzing 48 miles of improvements in the DEIS and alternatives are considered end-to-end. The purpose of the ARDS concurrence process is to determine, using available information and data, whether the recommended alternatives meet the Study's purpose and need and are, therefore, considered reasonable to study in detail in the DEIS. The phasing of construction may be relevant to the assessment of a project's impacts, but such phasing has no impact on the identification of alternatives retained for detailed analysis during NEPA.

We note that at the last minute the M-NCPPC offered its belief that certain portions of the proposed action could be reduced or eliminated by diverting traffic off the northern portion of I-495 from I-95 to I-270 to the ICC. We are reviewing that suggestion and will respond to it appropriately when we have additional information to share.

Parkland Management

Consideration of impacts to sensitive resources including parkland and the means to avoid and minimize those impacts is of utmost importance in the NEPA process and as part of the Section 4(f) evaluation that must be completed for the Study. The MDOT SHA appreciates M-NCPPC's concern over those resources and will continue to work with your agency to identify appropriate avoidance and minimization measures as well as mitigation of appropriate value when impacts cannot be avoided. This process, however, can only be completed once identification of the ARDS is made so an assessment of impacts can be advanced to a stage sufficient to share information with the agencies and public stakeholders. As with other considerations and analysis, the analysis begins with a broader scope and becomes increasingly focused as the alternatives are narrowed to a reasonable range. With the DEIS, FEIS and Section 4(f) evaluation, the level of detail and analysis will be developed to identify appropriate avoidance, minimization and mitigation measures.

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Regardless of M-NCPPC's unwillingness to concur on the ARDS, MDOT SHA remains committed to working jointly with your agency as the Study progresses to bring much needed congestion relief to the citizens of Maryland and to do so in an environmentally responsible manner. If you have any questions, please do not hesitate to contact me or Jeffrey T. Folden, P.E., DBIA, Deputy Director, I-495 & I-270 P3 Office at 410-637-3321 or jfolden1@mdot.maryland.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa B. Choplin", followed by a horizontal line.

Lisa B. Choplin
Director, I-495 & I-270 P3 Office

cc: Ms. Jeanette Mar, Environmental Program Manager, FHWA
Mr. Jitesh Parikh, Program and Planning Manager, FHWA
Ms. Keilyn Perez, Area Engineer, FHWA
Ms. Carol S. Rubin, Special Project Manager, M-NCPPC
Ms. Caryn J. G. Brookman, Environmental Manager, I-495 & I-270 P3 Office,
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