THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
6611 Kenilworth Avenue • Riverdale, Maryland 20737

June 12, 2019

Ms. Jeanette Mar
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Maryland Division
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Baltimore, MD 21201

Ms. Lisa Choplin, Director
Maryland Department of Transportation
State Highway Administration
I-495 & I-270 P3 Office
707 North Calvert Street
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Baltimore, MD 21202

Re: I-495/I-270 Managed Lanes Study - Alternatives Retained for Detailed Study

Dear Mses. Choplin and Mar:

On May 22, 2019, the Maryland Department of Transportation State Highway Administration ("SHA") issued the list of *Alternatives Retained for Detailed Study – Revised* ("ARDS") for the I-495/I-270 Managed Lanes Study ("Study") and requested concurrence from the Cooperating Agencies by June 12, 2019. The Maryland-National Capital Park and Planning Commission ("M-NCPPC"), as a Cooperating Agency, has reviewed the ARDS and does not concur with the document for the reasons presented herein.

Before turning to the merits of this notice, however, our Commission members want to assure SHA that our agency's substantive objections to the proposed ARDS should not be mistaken as a decision by this body to oppose or to support the project itself. Rather, as the governing body of this Cooperating Agency, we have carefully focused our attention on the key park and planning policies, and related opportunities for public recreation, that are within our jurisdiction and at stake in this process. Toward that end, we look forward to engaging SHA in a sincere, respectful and productive collaboration to address appropriately our comments and the reasons we cannot concur today.

SHA has previously been advised of M-NCPPC's many issues with the ARDS.[1] In M-NCPPC's experience, these concerns are attributable mostly to SHA's approach that omits a comprehensive analysis; fails to incorporate best practices in transportation, environmental protection, and land use planning; and also works at odds with M-NCPPC's statutory obligation to make well-reasoned and informed decisions regarding parkland, cultural resources, and historical resources held in trust for residents of Montgomery and Prince George's Counties. The ARDS also represents SHA's imprudent narrowing of the scope of environmental review—which contravenes the revised Purpose and Need Statement that must guide and inform its review— such that further environmental review will not adequately assess the impacts of the project on protected parkland managed by M-NCPPC, including parkland protected under the Capper-Cramton Act of 1930 ("CCA" or "Act").

Without in any way limiting M-NCPPC's right to comment and raise objections further in the National Environmental Policy Act ("NEPA") process, this letter outlines M-NCPPC's concerns with the ARDS at this time. M-NCPPC remains committed to assisting the lead agencies as they continue their environmental reviews for this project.

M-NCPPC

The Maryland General Assembly created M-NCPPC in 1927 to plan for the orderly development, acquisition and maintenance of parkland and open space, and to protect natural resources in Prince George's and Montgomery Counties.[2] Because of M-NCPPC's integral role as a planning agency and steward of the natural and built environments, SHA and the Federal Highway Administration ("FHWA") have engaged M-NCPPC as a Cooperating Agency to provide input on both the Study and ARDS. To fulfill its role as a Cooperating Agency, M-NCPPC must ensure that the Study and ARDS reflect a comprehensive and reasonable list of alternatives that SHA and FHWA will further evaluate in the draft Environmental Impact Statement ("EIS"). As a Cooperating Agency, M-NCPPC staff has taken its responsibilities seriously, having engaged fully with SHA and the Interagency Working Group ("IAWG") during every stage of review in the Study.

Purpose and Need

NEPA requires the lead agency to publish a Purpose and Need Statement that specifies "the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."[3] The Purpose and Need Statement informs the entire NEPA

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[1] *See, e.g.*, Letter from Carol S. Rubin, Special Project Manager, M-NCPPC Montgomery County Planning Department, and Debra Borden, Principal Counsel, M-NCPPC Office of the General Counsel, to Lisa Choplin, Director, MDOT SHA I-495 & I-270 P3 Office, Jeffry T. Folden, Deputy Director, MDOT SHA I-495 & I-270 P3 Office, and Caryn Brookman, Environmental Program Manager, MDOT SHA I-495 & I-270 P3 Office (May 1, 2019) (on file with M-NCPPC); Letter from Carol S. Rubin, Special Project Manager, M-NCPPC Montgomery County Planning Department, and Crystal S. Hancock, Acting Planning Supervisor, Prince George's County Planning Department, to Caryn Brookman, Environmental Program Manager, MDOT SHA I-495 & I-270 P3 Office (May 29, 2019).

[2] Md. Code Ann., Land Use § 15-101.

[3] 40 C.F.R. § 1502.13.

process, serving as a "cornerstone of whether an alternative is reasonable."[4] The proposed alternatives must be consistent with and flow from the Purpose and Need.[5]

The lead agencies issued the Study's Purpose and Need Statement in or around July 2018, revising it in November 2018 to reflect comments received from M-NCPPC and others.[6] The November 2018 revision includes an additional purpose: "enhance[ment of] existing and planned multimodal mobility and connectivity."[7] However, the ARDS fails to adequately address these key purposes; simply allowing buses to use the Managed Lanes is inadequate and insufficient under NEPA.

Alternatives Selection Under NEPA

Proper selection and analysis of the ARDS is crucial to the environmental review process for the project. Following adoption of the ARDS, SHA, and FHWA will issue a draft EIS, which must "rigorously explore and objectively evaluate all reasonable alternatives" and "[d]evote substantial treatment to each alternative considered in detail . . . so that reviewers may evaluate their comparative merits."[8] Additionally, "for alternatives which were eliminated from detailed study, [the EIS should] briefly discuss the reasons for their having been eliminated."[9] While the lead agencies may study a "reasonable range" of alternatives in an EIS, the range must cover the "full spectrum" of potential reasonable alternatives.[10] Reasonable alternatives include those that are

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[4] *Stand Up for Cal.! v. United States DOI*, 919 F. Supp. 2d 51, 78 (D.D.C. 2013)

[5] *Id.* at 79 ("it was rational for the Secretary to reject potential alternatives if they would not…meet the purpose and need of the proposed action").

[6] *Welcome to the Public Workshop for the I-495 & I-270 Managed Lanes Study*, U.S. DOT FED. HIGHWAY ADMIN. AND MARYLAND DEPT. OF TRANSP. STATE HIGHWAY ADMIN. 4, https://495-270-p3.com/wp-content/uploads/2019/04/I-495_I-270_Workshop_Handout_2019_4_10_Low_Res_FINAL.pdf; Letter from Carol S. Rubin, Special Project Manager, M-NCPPC Montgomery County Planning Department, to Montgomery County Planning Board (May 20, 2019), https://montgomeryplanningboard.org/wp-content/uploads/2019/05/MMCPB-5.23.19-Item-2.pdf.

[7] Letter from Carol S. Rubin, Special Project Manager, M-NCPPC Montgomery County Planning Department, to Montgomery County Planning Board (May 20, 2019), https://montgomeryplanningboard.org/wp-content/uploads/2019/05/MMCPB-5.23.19-Item-2.pdf.

[8] 40 C.F.R. § 1502.14(b); *see also Fund for Animals v. Norton*, 294 F. Supp. 2d 92, 109 (D.D.C. 2003) (agencies' "painstaking" review not sufficient because no alternatives considered an entire facet of issue); *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1991) (proposed alternatives should be "measured by whether [they] achieve… the goals the agency sets out to achieve"); *Save Our Sound OBX, Inc. v. N.C. DOT*, 914 F.3d 213, 218 (4th Cir. 2019); *Mt. Lookout - Mt. Nebo Prop. Prot. Ass'n v. FERC*, 143 F.3d 165, 172 (4th Cir. 1998).

[9] 40 C.F.R. § 1502.14(a); *see also Fund for Animals*, 294 F. Supp. 2d at 109.

[10] Council on Environmental Quality; Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (Mar. 16, 1981) at Question 1b; *See also Sierra Club v. Watkins*, 808 F. Supp. 852, 872 (D.D.C. 1991) (agencies' selection of port sites was "quite calculating and qualifies as an abuse of discretion" for not covering the "full spectrum" of possible site locations); *Cutonilli v. Fed. Transit Admin.*, Civil Action No. ELH-13-2373, 2015 U.S. Dist. LEXIS 39981, at *65 (D. Md. Mar. 30, 2015) (reversed on other grounds).

"practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant."[11]

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).[12] If there are many reasonable alternatives, the screening process also can be used as the basis for defining a reasonable range that represents the full spectrum of reasonable alternatives.[13] In that same vein, it is well established by law that lead agencies may not define the objectives of their action "in terms so unreasonably narrow that only one alternative . . . would accomplish the goals" of their actions, rendering the EIS a preordained formality.[14]

The Capper-Cramton Act

The lead agencies must also consider legislation that may affect their alternatives screening and analysis.[15] With respect to this project, SHA and FHWA must consider the Capper-Cramton Act since much of the land that may be needed for the project was acquired with federal funding appropriated under the Act. Congress passed the Act to provide for the acquisition of land in Maryland and Virginia for development of a comprehensive park, parkway, and playground system in the National Capital area. A subsequent 1931 Agreement between the National Capital Park and Planning Commission ("NCPC")[16] and the M-NCPPC provides that "no part of any land purchased for park or recreational purposes with the funds provided [under the Act], in whole or in part, shall at any time be conveyed, sold, leased, exchanged, or in any manner used or developed for other than park purposes by the [M-NCPPC], and the development and administration of said lands shall be under the [M-NCPPC] but the development thereof shall be in accordance with plans approved by the National Commission, or the necessary approval of the Congress of the United States."[17]

M-NCPPC's review focuses on protecting the character and setting of the parks and ensuring that any improvements are compatible with existing park use. Projects that provide public benefits

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[11] *See id.* at Question 2a (interpreting 40 C.F.R. § 1502.14); *see also Sierra Club v. Marsh,* 714 F. Supp. 539, 574 (D. Me. 1989) (MDOT's preferred expansion plan for a terminal facility does not warrant exclusion of otherwise reasonable alternatives unless the agency's preference bears a "rational relationship to the technical and economic integrity of the project").

[12] *AASHTO Practitioner's Handbook,* AM. ASS'N OF STATE HIGHWAY AND TRANSP. OFFICIALS 5-6 (Aug. 7, 2007), http://www.environment.transportation.org/pdf/programs/PG07.pdf; *see also Sierra Club v. Mainella,* 459 F. Supp. 2d 76, 83 (D.D.C. 2006) ("The scoping analysis is, in substance, an abbreviated assessment of environmental impacts to screen out insubstantial topics from the . . . analysis.").

[13] *AASHTO Practitioner's Handbook, supra* note 7, at 5-6.

[14] *Citizens Against Burlington, Inc. v. Busey,* 938 F.2d 190, 196 (D.C. Cir. 1991).

[15] *Cf. Kilroy v. Ruckelshaus,* 738 F.2d 1448, 1454 (9th Cir. 1984).

[16] Among other things, the National Capital Planning Act, 40 U.S.C.A. §§ 8701 et seq., renamed the "National Capital Park and Planning Commission" as the "National Capital Planning Commission."

[17] Basic Agreement between Nat'l Capital Park and Planning Comm'n and the Maryland-Nat'l Capital Park and Planning Comm'n at § 5 (Oct. 16, 1931) (attached hereto as Exhibit A).

such as improving the water quality of streams along with improving park accessibility and park resources are encouraged. Examples of compatible improvements include improving pedestrian and bike connections and incorporating pedestrian and bike lanes into improvements for the American Legion Bridge.

Elemental Reasons Supporting M-NCPPC's Non-Concurrence

1. Segmentation and Phasing

Identifying the need and scope of improvements to the constrained portion of I-495 east of I-270 to I-95 is dependent upon addressing whether by-pass or through traffic can be diverted to I-270 and drawn off of that constrained area of I-495. Phasing is an important factor because diverting traffic to use the Inter-County Connector ("ICC") requires completion of the I-270 Managed Lanes expansion and south on I-495 through the bottleneck over the American Legion Bridge before the expansion to the constrained areas of I-495. The projected traffic volumes for 2018, 2025, and 2040 are consistently higher on 1-270 than on I-495. Furthermore, the American Legion Bridge is the destination for approximately 30% of I-270 southbound passenger vehicles and approximately 20% of southbound I-95 vehicles (via I-495).

We requested at each stage of the Study that SHA pursue a revised approach to the segmentation and phasing of the Study, and we continue to do so. SHA's approach to segmenting the project demonstrates inadequate accounting for the local transportation problems, travel demands and constraints on I-495 and I-270. When viewed from a long-range need, the I-270 section of this Study with the addition of the northern portion of I-270 from the Frederick County line and connection along I-495 between the I-270 Western Spur and over American Legion Bridge is the priority corridor in Montgomery County (Western Corridor).

In Prince George's County, the segmented approach being advanced by SHA fails to account for significant land use and transportation plans that already exist within the development pipeline and, for example, how those plans will impact SHA's interchange locations. One such development is the new University of Maryland Capital Region Medical Center, located in Largo Town Center with access from the Arena Drive exit off I-495. The Center will have 205 private rooms, a Level 2 Trauma unit with 45 treatment bays and include the Mount Washington Pediatric Hospital with an additional 15 beds. The ability to access this new facility from a Managed Lane under any Alternative is of paramount importance to first responders, patients, visitors and staff, and must be addressed directly in any Alternative considered.

2. The Study Area

The Study Area in Montgomery County omits I-270 north of I-370 (from Rockville to Frederick), and in Prince George's County omits I-495 from MD-5 to the Woodrow Wilson Bridge. The eventual EIS for the project must "succinctly describe the environment of the area(s) to be affected

or created by the alternatives under consideration."[18] The EIS must discuss "the environmental impacts of the alternatives including the proposed action," as well as direct, indirect, and cumulative effects.[19] By not considering impacts to these stretches of the project at this stage in their NEPA review, the eventual EIS will include incomplete conclusions of environmental impact.

3. Transit and Transportation Demand Management

The purpose of the Study—to develop a travel demand management solution that addresses congestion and trip reliability and enhances existing and planned multimodal mobility and connectivity—requires solutions for both regional and local travel needs. The ARDS must include meaningful transit elements that serve both needs. Simply allowing buses to use the Managed Lanes is insufficient to address a NEPA required multimodal solution[20] or a publicly desired local-serving transit alternative. Reducing I-495 and I-270 congestion can and should be handled through a combination of added capacity where appropriate and providing the means to reduce the number of vehicles travelled. Accommodating existing traffic and long-term traffic growth is about moving people, not just moving vehicles.

Express buses on the Managed Lanes are limited in their service in the same way that other vehicles are limited by the Managed Lanes. Direct access on and off the Managed Lanes, and access between the Managed and general-purpose Lanes, indicate that the Managed Lanes are applied more as a regional traffic solution than a solution for local highway users. Therefore, in addition to addressing the deficiencies in appropriate access to and from the Managed Lanes, each of the selected ARDS should incorporate a local serving transit system, both as a critical element to the overall design and as a supplementary component for detailed study of the ARDS as the Study moves toward a Preferred Alternative. These elements could include planning and funding planned route service such as the Corridor City Transitway and the MD-355 bus rapid transit (BRT), and a meaningful commitment of a portion of the toll revenue to fund public transit investments. To similar effect, Prince George's County has developed a series of Sector Plans and Master Plans to anticipate parallel roadways and accommodations for multimodal uses in an effort to help alleviate congestion, as required by the Purpose and Need Statement.[21]

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[18] 40 C.F.R. § 1502.15.

[19] *Id.* § 1502.16; *id.* § 1508.8; *id.* § 1508.9.

[20] *See Audubon Naturalist Soc'y of the Cent. Atl. States, Inc. v. United States DOT*, 524 F. Supp. 2d 642, 663 (D. Md. 2007) (noting the need for proposed development areas between the I-270 and I-95/US-1 corridors within Montgomery and Prince George's Counties to feature "a state-of-the-art, multimodal, east-west highway that limits access and accommodates passenger and goods movement"); *see also Twp. of Belleville v. Fed. Transit Admin.*, 30 F. Supp. 2d 782, 804 (D.N.J. 1998) (describing FHWA's policy of using "FHWA planning and research funds to meet highway and multimodal transportation planning").

[21] *See* Letter from Carol S. Rubin, Special Project Manager, M-NCPPC Montgomery County Planning Department, to Montgomery County Planning Board (May 20, 2019), https://montgomeryplanningboard.org/wp-content/uploads/2019/05/MMCPB-5.23.19-Item-2.pdf (identifying "develop[ment] of a travel demand management solution(s) that addresses congestion"); *see also Vill. of Barrington v. Surface Transp. Bd.*, 636 F.3d 650, 672 (D.C. Cir. 2011) (NEPA requires agencies to evaluate "alternatives that would reasonably and feasibly accomplish [the] purpose and need").

4. Parkland Management

The public value in parkland extends to both passive and active impacts—recreation, stormwater management, water quality, etc. The ARDS narrows the scope of the Managed Lanes Study to the point that these impacts are ignored early in the NEPA process. It is imperative that the lead agencies consider both M-NCPPC's parkland—whether acquired under the CCA or otherwise—and its statutory obligations to improve, develop, maintain, and operate parks, forests, roads, and other public ways, grounds, and spaces,[22] when developing the Alternatives. As currently drafted, the ARDS have nearly identical impacts to parkland and natural resources, which effectively removes consideration of these impacts from future evaluation of the build alternatives. The ARDS should be expanded to provide alternatives with a range of environmental impacts such that the ARDS can reasonably address the Purpose and Need's goals of improving traffic management *and* protecting the environment.

Other Comments and Concerns

In addition to the four elemental reasons for non-concurrence enumerated above, M-NCPPC also has identified other substantive comments and concerns pertaining to the ARDS proposed. In the interest of full disclosure, those additional comments are included in the Appendix attached and incorporated as part of this letter. We are hopeful that the lead agencies will be able to address these concerns during this process as well.

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Should you have any questions regarding the concerns raised above, please contact our agency liaisons designated for this project, Debra Borden and Carol Rubin, respectively. Thank you for your consideration in this matter.

Sincerely,

Elizabeth M. Hewlett
Chair

Casey M. Anderson
Vice-Chair

[22] Md. Code Ann., Land Use § 17-101.

Appendix

cc: Adrian R. Gardner, General Counsel
Andree M. Checkley, Director
Prince George's County Planning Department
Darin D. Conforti, Director
Prince George's County Department of Parks and Recreation
Michael F. Riley, Director
Montgomery County Department of Parks
Gwen Wright, Director
Montgomery County Department of Planning
Debra S. Borden, Principal Counsel
Carol S. Rubin, Special Project Manager
Montgomery County Planning Department

Appendix: Related Comments and Concerns of M-NCPPC

In addition to the seminal reasons upon which M-NCCPC has based its decision not to concur with the proposed ARDS, the M-NCPPC has compiled the comments included in this appendix ("Appendix") in response to SHA's request for comments and concerns.

1. The ARDS do not take into account local planning needs.

The access plan for the Managed Lanes does not provide any rationale for the locations selected except for a statement at the IAWG that it is to reduce impact. The access plan must also take into account existing and future origin-destination patterns, planned land use, economic development considerations, social equity, access to emergency services, and safe and efficient access to major transit centers. These considerations are clearly lacking as evidenced by the large gaps between access locations, including:

- I-270 between Gude Drive and Montrose Road. This 3.4-mile gap creates a challenge for drivers originating or terminating in Rockville to use the Managed Lanes. A vehicle accessing I-270 at either MD-28 or MD-198 would only be able to access the Managed Lanes at River Road on the Outer Loop of I-495, or at Old Georgetown Road on the I-270 Eastern Spur for drivers headed to the Inner Loop of I-495.

- I-495 between MD-185 (Connecticut Avenue) and US-29 (Colesville Road). This 2.7-mile gap omits an access location at MD-97 (Georgia Avenue). Access location "O" as identified on page 18 of the ARDS paper, Figure 3, is located on I-495 just east of the I-495 bridges over Jones Mill Road. This access point would be used by traffic headed from Virginia, Bethesda/Potomac, and the I-270 corridor to reach Silver Spring and Wheaton. Given existing congestion levels and the vertical and horizontal geometry on this section of I-495, it is difficult to understand how traffic will take this access slip ramp from the Managed Lanes into the general purpose lanes in the Inner Loop direction, and then merge over to exit at MD-97, a distance of one-half mile before the start of the MD-97 off ramp and one mile total before the exit. The projected level of service in this weaving section with the addition of this access location compared to No-Build conditions is likely to reach failing status, be unsafe, and result in significant weaving congestion solely to accommodate Managed Lane traffic demands.

- I-495 between US-29 (Colesville Road) and I-95. This 3.6-mile gap omits access locations at MD-193 (University Boulevard) and MD-650 (New Hampshire Avenue). MD-650 provides primary access for the FDA White Oak facility located one mile north of I-495, which will be substantially expanded in the next decade and lead to approximately 8,000 new jobs. Without access to the Managed Lanes from MD-650, drivers on I-495 destined for FDA would likely enter and exit the Managed Lanes at US-29 and drive through the Four Corners area in eastern Montgomery County, creating a significant shift in local transportation patterns. When this issue was raised at the IAWG, the response was that MD-650 is located too close to I-95; however, US-1 is even closer to I-95 than MD-650 and has an access location proposed. Managed Lane access at MD-650 should be prioritized to support a major Montgomery County economic development initiative.

- I-495 between US-50 and Ritchie-Marlboro Road. This 5.5-mile gap omits access to MD-202 (Landover Road), Arena Drive, and MD-214 (Central Avenue). The MD-202 and Arena Drive exits represent some of the most significant and impactful planned development in Prince George's County – including residential, commercial and institutional facilities.

These gaps in access to and from the Managed Lanes also fail to account for the need for reliable travel times for emergency services to Holy Cross Hospital in Silver Spring and the University of Maryland Capital Region Medical Center in Largo, which will be the second largest shock trauma center in the state. Direct access from US-50 to the New Carrollton Transit Center also creates an inefficient and unsafe merge. Both New Carrollton and Largo Town Center have been identified as Downtowns as they are planned to be economic engines of Prince George's County.

By not considering the major traffic origin-destination pairs and major traffic generators that the Managed Lane system is designed to serve, the access plan proves deficient. Similarly, by not considering access needed to accommodate existing and planned commercial centers in the project area, the access plan has glaring shortcomings. The access plan as proposed seems to focus on the through traffic, longer-distance travel pairs rather than shorter distance commuting needs, or simply addresses the necessary albeit limited focus on reducing physical impacts to the surrounding land.

The ARDS states: "Direct access at or near major transit centers is proposed at the following Metro Stations: Silver Spring Metro (US-29), Shady Grove (I-370), Greenbelt Metro (Cherrywood Lane), New Carrolton Metro (US-50), Branch Avenue Metro (MD-5)." The same unsafe merge as outlined above is expected to occur at the US-50 exit to access the New Carrollton Transit Station due to insufficient distance between the Managed Lanes exit and the Transit Station entry, thereby requiring drivers to overshoot the Transit Station entrance and enter by MD-450. No access is provided at MD- 450, which is the most efficient entry point for that transit station. Had SHA consulted with the local transportation planners at an early stage in the planning level design, a more feasible plan and better assessment of probable impacts would have been developed.

2. The ARDS recommendations do not include an Environmental Justice analysis as required by NEPA.

None of the materials released to the public address how equity and environmental justice will be achieved in both the construction and operations of the Managed Lanes and their interchanges.

The Managed Lane access locations proposed are inconsistent with the provision of an equitable transportation network. An overlay of the Metropolitan Washington Council of Governments' Equity Emphasis Areas ("EEAs") with these access locations makes it abundantly clear that no equity analysis was undertaken to develop or refine these access locations. The project should address social equity as required under NEPA[1] in various ways, none of which was done. First,

[1] *See* 40 C.F.R. § 1508.8 (defining "effects" or "impacts" to include "ecological…aesthetic, historic, cultural, economic, *social* or health, whether direct, indirect or cumulative") (emphasis added); *Sierra Club v. FERC*, 867 F.3d 1357, 1368 (D.C. Cir. 2017) (NEPA requires agencies to take a "hard look" at environmental justice issues); Final Environmental Justice Guidance Under the National Environmental Policy Act, Council on

the access plan should be revised to allow easy access to the Managed Lanes from the EEAs. Second, the project should include a public transit element as an integral part of the Preferred Alternative (see further discussion below). Finally, discussion on equity in the development of tolling strategies with a consideration of equity mitigation or accommodations, including reduced fare EZ-pass programs or tax rebates, would go a long way to address these concerns. As indicated in comment #1, Staff reviewed the proposed access points (new interchanges) for the HOT /ETL lanes across the ARDS and compared them to MWCOG's EEAs, which are small geographic areas that have significant concentrations of low-income and minority populations, or both. The purpose of the EEAs is to aid planning agencies throughout the region to evaluate how future transportation projects could benefit low-income and minority communities. Staff determined that out of a total 17 access points, about half are located within EEAs.

Interstate	Recommended Interchange for HOT/ETL Lanes	Equity Emphasis Area
I-270	I-370	Yes
	Gude Drive	No
	Montrose Road	No
	Westlake Terrace	No
	Democracy Boulevard	No
I-495	I-270/I-495 Spur (both)	No
	Old Georgetown Road	No
	Connecticut Avenue	No
	Colesville Road	Yes
	I-95	Yes
	Baltimore Avenue	Yes
	Cherrywood Lane	Yes
	Baltimore/Washington Parkway	No
	US 50	Yes

Envtl. Quality, at 8-9 (Dec. 10, 1997) (setting forth general principles for agencies to identify and address environmental justice issues in NEPA analyses); Exec. Order No. 12898, 59 Fed. Reg. 7629 (1994) ("each Federal agency shall analyze the environmental effects, including human health, *economic and social effects*, of Federal actions, including effects on minority communities and low-income communities…") (emphasis added).

	Ritchie Marlboro Road	No
	Pennsylvania Avenue	Yes
	Branch Avenue	Yes

Another issue with the proposed interchange locations is their spacing. While there appears to be a fairly even split between the two counties, the distance between HOT/ETL interchanges in Prince George's County are significantly further apart than those in Montgomery County— in some cases as far as 5 miles. Thus, drivers in Prince George's County will experience substantially less access to the Managed Lanes. SHA should review the interactive mapping tool[2] created by the Metropolitan Washington Council of Governments and identify locations for interchanges within equity emphasis areas in both Montgomery and Prince George's Counties. Additionally, applying origin and destination data when deciding where to locate interchanges would not only improve the likelihood of success of the project, it would also be a more defensible and equitable approach over impacts and costs.

Another significant equity issue is the tolling component of each of the Build Alternatives. Based on a review of the materials provided to date, it appears the only motorists who will benefit from the project will be those who can afford to pay the tolls. To address issues of equity, the project should include information as to how the costs of tolling can be discounted or offset for low-income populations, so they can also make use of the Managed Lanes. Some potential operational strategies could include:

- Rebates for tolls paid by motorists of a qualifying income;
- Tax deductions for tolls paid by motorists of a qualifying income; and
- An EZ-Pass device that waives or charges a lower fee for motorists of a qualifying income.

3. Parkland impacts have been underestimated.

M-NCPPC is reviewing existing land records to identify any discrepancies between existing rights-of-way ("ROW") identified by SHA and what M-NCPPC understands to be parkland along the Study corridor. Any discrepancies confirmed as parkland will likely alter the proposed parkland impact acres presented in the ARDS Paper. It is critical that SHA and M-NCPPC reach a mutual understanding of property ownership and acceptable highway improvements within existing perpetual easement areas before the Preferred Alternative is selected and any parkland impact and the strategies to address the impacts is determined. Moreover, even beyond the expected onsite impacts to public park assets associated with any construction of the project within the ROW, the ARDS and EIS must take into proper account the relative impacts expected from offsite mitigation projects anticipated for M-NCPPC parkland.

[2] Metropolitan Washington Council of Governments, Maps & GIS, https://www.mwcog.org/transportation/data-and-tools/maps-and-gis/.

In the Purpose and Need Statement, SHA "recognizes the need to plan and design this project in an environmentally responsible manner;" however, all of the Build Alternatives that SHA has proposed have very similar, almost indistinguishable (and significant) impacts to natural resources. A major component of the NEPA process is to identify environmental impacts and to utilize the environmental information to inform the selection of an Alternative that avoids and minimizes the impacts that any Build Alternative would create.[3] By only providing ARDS that have similarly significant resource impacts, SHA is effectively removing any environmental consideration from future evaluation of the Build Alternatives. In other words, SHA cannot reasonably address both the traffic management goals of the Purpose and Need and adequately protect parkland with the ARDS with which SHA has chosen to move forward. Thus, by narrowing the ARDS to those SHA has chosen, the agency has failed to consider the differential impacts from its proposed alternatives in violation of NEPA's mandate to "consider fully the environmental effects" of the proposed action.[4] Instead, the weight of environmental impact against the other criteria must be appropriately balanced due to the highly developed nature of the Study Area, where the remaining environmental resources are finite and, in many cases, irreplaceable. Any reduction in environmental impact must be weighed heavily in narrowing the Alternatives to be studied and eventual selection of the Preferred Alternative.

The considerable environmental impacts described in the ARDS will result in irreparable impacts to natural resources along multiple reaches of the Study Area. For example, all the Build Alternatives propose impacting at least 9.4 acres just in Rock Creek Stream Valley Park Unit 2 in Montgomery County. Those impacts are not comprehensive to the entirety of the Rock Creek Stream Valley Park and include loss of floodplain forest and the need for substantial relocation of the stream channel, which would also have follow-on impacts to recreational resources. Suitable mitigation in the vicinity of these impacts simply does not exist, and any Build Alternative selected will result in a permanent loss of forest, stream, wetland, and recreational resources for this portion of Montgomery County, an area already constrained by development. Several parkland resources in Prince George's County are also of critical concern, including Cherry Hill Road Community Park, Southwest Branch Stream Valley Park, Douglas Patterson Park, and Andrews Manor Park.

SHA should seriously consider the implications of these staggering impacts on natural resources and the loss of recreational opportunities before selecting a Preferred Alternative by considering

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[3] *See* 40 C.F.R. § 1505.2 ("each agency shall…[s]tate whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not."); *Pub. Employees for Envtl. Responsibility v. Beaudreu*, 25 F. Supp. 3d 67, 130 (D.D.C. 2014) (U.S. Fish & Wildlife Service did not make an independent determination about whether a feathering operational adjustment was a reasonable and prudent measure necessary or appropriate to minimize a wind project's impact on listed species); *Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 176, 183 (4th Cir. 2018) (U.S. Forest Service "abdicated its responsibility to preserve national forest resources" in part by reversing its decision on whether mitigation measures would effectively minimize environmental impacts to groundwater and surface waters).

[4] *Theodore Roosevelt Conservation P'ship v. Salazar*, 616 F.3d 497, 503 (2010) (D.C. Cir. 2010); *see also Matthews v. United States Dep't of Transp.*, 527 F. Supp. 1055, 1057 (W.D.N.C. 1981) (agencies cannot "eliminate from discussion or consideration a whole range of alternatives, merely because they would achieve only some of the purpose of a multipurpose project"). Although "the range of alternatives an agency must consider and discuss under NEPA" is within the agency's discretion, the agency's choice of alternatives should be "evaluated in light of its reasonably identified and defined objectives." *Ctr. for Food Safety v. Salazar*, 898 F. Supp. 2d 130, 146 (D.D.C. 2012).

additional alternatives with differential impacts on protected parkland and the broader environment. In fact, SHA can do so at this stage in the NEPA process, which serves as an initial step toward the development of the EIS.[5] If a Build Alternative is selected and approved, SHA must "strive to avoid and minimize community, natural, cultural, and other environmental impacts, and mitigate for these unavoidable impacts at an equal or greater value," as SHA committed to in the Purpose and Need document. M-NCPPC will work with SHA to employ techniques to achieve this goal with any ARDS that are moved forward in this process.

4. Stormwater management along the entire Study corridor must be considered as part of the selection of the Preferred Alternative.

The vast majority of the existing network of I-495 and I-270 is absent of any stormwater management controls, contributing significant amounts of pollutants to local streams and waterways. The ARDS references a "Stormwater Management Report" that was used to develop the preliminary design for on-site stormwater management. SHA has indicated that this report will not be available until after the ARDS are finalized. SHA's commitment to simply follow MDE requirements for new and redeveloped impervious surfaces does not adequately address the statement that "[a]ny build alternatives will adequately offset unavoidable impacts while prioritizing and coordinating comprehensive mitigation measures near the study area which are meaningful to the environment and the community," unless the Stormwater Management approach is expanded to include consideration of opportunities for treatment of all the existing conditions along these highway corridors. M-NCPPC cannot adequately determine the scope of the proposed stormwater improvements until this Report is provided for review.

5. Public transportation must be considered as an integral element in design of the Preferred Alternative.

M-NCPPC has previously commented that public transportation elements should be included as integral components of the Preferred Alternative and should be studied as part of each of the Alternatives identified in the ARDS. The I-66 Transform project is one local example where transit is included—public transit infrastructure and operations are being subsidized by the toll revenue. The citizens and local agencies have strongly advocated for public transit to be included in this project, and the rationalizations not to address public transit as part of this project are road-centric and not responsive to community desires that are profoundly reasonable. Simply allowing buses to use the Managed Lanes is not enough to address a NEPA required and publicly desired multimodal solution. Any transportation system, including the Preferred Alternative, should be designed to incorporate transit as an integral element to allow transportation choices and efficiently move people through the region.

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[5] *See Sierra Club v. Watkins*, 808 F. Supp. 852, 871 (D.D.C. 1991) (steps prior to the filing of an EIS, including the seeking of alternatives, are "initial step[s]" toward an EIS); *see also Welcome to the Public Workshop for the I-495 & I-270 Managed Lanes Study*, U.S. DOT FED. HIGHWAY ADMIN. AND MARYLAND DEPT. OF TRANSP. STATE HIGHWAY ADMIN. 4, https://495-270-p3.com/wp-content/uploads/2019/04/I-495_I-270_Workshop_Handout_2019_4_10_Low_Res_FINAL.pdf (setting timeline for drafting an EIS for "Early 2020").

6. Evaluation of property impacts should address whether partial takings result in nonconforming uses under current environmental and zoning laws.

SHA should provide more specific criteria and explanation regarding its determination whether a taking results in a "displacement" versus a partial taking. For example, the Build Alternatives eliminate the Silver Spring YMCA indoor and outdoor pool facilities (east of US-29), yet this parcel is not identified as a "displacement." In addition, property owned by the Prince George's County Board of Education located east of Knollwood Park may not be available for the Managed Lanes project because it was previously identified for a new school in the Board of Education's master plan. Many other properties in both counties will be similarly affected, resulting in underestimated impacts.

Closer scrutiny is needed for the interchange at MD-450 and the CSX Railroad crossing to account for any of the Build Alternatives. The existing condition features two separated piers supporting the highway over the tracks and would not accommodate additional width without reconstructing the bridge and access ramps. As such, the proposed ROW as shown on the SHA Map is insufficient.

With respect to individual property owners, the ARDS identified only 34 residential property displacements, yet between 1,457 and 1,496 properties were identified where ROW takings would be needed. More detail is needed to identify the specific impacts. For example, it is unclear whether the ROW takings include space needed for noise barriers or conformance for environmental impact or zoning restrictions.

7. The impacts from any of the Build Alternatives will be incomplete without a local road system/interchange analysis.

The increased capacity of any Build Alternative will likely lead to significant traffic increases on the roads that feed onto and off of both I-495 and I-270, particularly where access locations to the Managed Lanes are proposed. Without a comprehensive local road system analysis, SHA's reporting is incomplete and misleading. The impacts of any Build Alternative to the local road network must be clearly analyzed, and in particular:

- Interchange traffic flows and intersection, ramp, merge/diverge, and weaving areas during peak hours should be evaluated for all interchanges within the Study area on I-495 and I-270. This evaluation will inform the need for interchange reconfiguration or the addition of direct access ramps.

- Traffic flows on parallel streets and intersection operations during the morning and evening peak hours (at a minimum) should be conducted for roads projected to experience significant traffic volume increases. The placement of selected access locations for the Managed Lanes will result in diverted trips on the surrounding roadway network and change the traffic patterns considered in local land use recommendations. Whether these roads can handle these traffic shifts and still provide acceptable traffic operations must be determined. No mitigation factors have been proposed to address these conditions.

Given the current complications in stormwater control at many existing interchanges, SHA has failed to identify how it will address this ongoing problem that will clearly be exacerbated with the additional impervious surfaces of the Managed Lane roadways.

8. Commitment to the Corridor Cities Transitway

During Secretary Rahn's briefing to the Montgomery County Council in April 2019, the Corridor Cities Transitway (CCT) was specifically identified as an element of this project. M-NCPPC was informed by SHA at the May 2019 IAWG meeting that this inclusion was in error and that the CCT is not part of the I-495/I-270 Managed Lanes Study. Rather, funding for the CCT would be considered only if there are sufficient revenues coming from the private partner. This is another example of a public commitment from high-level administration officials that is later retracted by technical staff. The CCT should be included as part of the public transit element for this Study, whether as part of the I-495 and I- 270 Managed Lanes Study or combined with the Phase 2A expansion of the Managed Lanes on I-270 up to Frederick. Simply suggesting that some funding may be available is not sufficient. Providing better transportation solutions for citizens in Upcounty Montgomery County should include public transit solutions, as currently Upcounty residents have few options.

9. The Interactive ArcGIS Mapping Tool needs enhancements and improvements.

The ArcGIS mapping tool provided by SHA (SHA Map) needs refinements to assist property owners in locating their properties, and, more particularly, to measure the impacts to their homes as a result of proposed ROW encroachments, including projected noise receptor impacts. The addition of a measuring tool would facilitate this effort. In addition, the M-NCPPC has parcel layers available to access information particular to each parcel of property for both Montgomery County and Prince George's County. SHA should add this GIS layer to its SHA Map. Additionally, the SHA Map uses solid black lines to denote revised interchange geometry at existing interchanges. It is unclear whether these modifications are assumed only for the Build Alternatives; what improvements, in addition to the I-270 ICM project were assumed for No-Build conditions at these locations; and whether the traffic impacts of these proposed interchange modifications have been evaluated and incorporated into the traffic operations analysis for this project.

10. Travel demand assumptions and methodology are necessary to properly evaluate the ARDS selections.

The transportation results presented in the ARDS are summaries of the model results and omit any detail about how the Managed Lanes were simulated and modeled. Technical information should be provided on how the toll rate structure was developed and how it varies based on general purpose lane congestion. References to state of practice tolling on similar facilities, including I-495 and I-66 in Virginia, would be useful to compare against what was assumed for this project, whether there is a maximum toll rate or cap proposed, and whether the toll rates change on the HOT versus ETL Alternatives (this was discussed generally during the IAWG meeting, however, no details were provided).

11. More detail is needed on the noise impact evaluation process, including mitigation measures to address project impacts.

While the Interactive Mapping Tool includes a 66dB contour line, there is no discussion on the noise analysis in the ARDS, including whether the 66dB contour line includes existing noise measurement, existing noise modeling estimates, or future noise estimates with or without the Alternatives. Information should be provided that discusses how the noise analysis was conducted, and when noise mitigation is required per state or Federal law. The ARDS includes a summary of sensitive receptors impacted, but no proposed action/mitigation. SHA should explain why the noise 66dB contour line disappears in the following locations, and, if other innovative approaches are proposed here, provide examples of such approaches:

- I-270 between I-370 and Shady Grove Road (east side);
- I-270 Western Spur between Democracy Boulevard and I-270 split/Tuckerman Lane:
- I-270 Eastern Spur between I-270 split and Old Georgetown Road (west side),
- I-270 Eastern Spur between I-495 and Grosvenor Lane (west side),
- I-495 between Linden Lane and Seminary Road (outer loop side),
- I-495 in the Greenbelt Metro vicinity (inner and outer loop sides),
- I-495 between Annapolis Road and Ardwick Ardmore Road (inner loop side),
- I-495 between Evarts Street and Continental Place (inner loop side)
- I-495 between Evarts Street and Hampton Overlook (outer loop side)
- I-495 between Castlewood Drive and Fernwood Drive (outer loop side),
- I-495 between Richie Station Court and Robert M Bond Drive (outer loop side),
- I-495 at the MD-4 Interchange (inner loop side) along Marlboro Pike, and
- I-495 between MD-5 and Temple Hill Road (inner loop side).

12. <u>The elimination of local/express lanes on I-270 was not sufficiently evaluated.</u>

Although M-NCPPC asked that elimination of the collector-distributor ("C/D") lane system be considered with the ARDS, a bias toward the Build Alternatives has been created without an independent analysis of the transportation benefits. The Build Alternatives were <u>all</u> modified due to this elimination, which hides the actual benefit of simply eliminating the C/D Lane system. SHA should conduct a supplemental analysis on I-270 with the elimination of the C/D lane system without Managed Lane improvements over what exists today (one-lane HOV lanes). This alternative (C/D Lane system elimination) should have been included as a reasonable Preliminary Alternative. Without independent evaluation, it is unclear whether the Managed Lanes are addressing congestion that was artificially created by elimination of the C/D Lanes system. SHA should also explain how stormwater management systems will be designed to address the elimination of the C/D Lane system.

13. Traffic Operations Evaluation provided no detail as to how the existing traffic congestion was calibrated on connecting roads and on I-495 and I-270.

The ARDS fails to explain how existing traffic congestion has been simulated and calibrated at key interchanges and intersecting cross streets that now experience extremely congested conditions, including I-495 at MD-355, MD-185, MD-97, MD-650, I-95, US-50, MD-4, and MD-5. In particular, existing congestion in the vicinity of the Bethesda BRAC facility results in significant backups on MD-355, MD-185, and Jones Bridge Road that impacts I-495 interchanges today. Congestion on the I-495 Inner Loop at MD-450, MD-202, MD-4, MD-337 and MD-5 is also severe during the evening peak hour, often resulting in backups onto I-495. How and whether these have existing congestion chokepoints been evaluated and mitigated is sorely lacking. During the IAWG meeting, it was mentioned that an online app or website would be provided to allow users to select start and end points and determine travel time savings with the Managed Lanes. Although this tool was available during the Public Workshops, it has not been made available as part of SHA's website, which would provide some information to the public in real time.

14. The project phasing plan, preliminary capital cost estimates, and detailed breakdowns by construction items must be included.

On March 19, 2019, SHA briefed the Montgomery County Council about the status of the Study in anticipation of releasing the ARDS to the public and holding public workshops. During that presentation, the project phasing was shown with Phase 1 – I-495 from the George Washington Parkway in Virginia, including improvement of the American Legion Bridge, to I-95, and Phase 2A – I-270 from I-495 to north of I-370. Secretary Rahn indicated that the rationale for the phasing was that Phase 2A was financially dependent on the revenues to be collected from Phase 1. Since financial viability is one of the criteria for selection of the ARDS, the ARDS studies must include the financial analysis that supports the project phasing as suggested. Additionally, more information is needed on the components of the preliminary capital cost estimates with a complete breakdown by roadway segments and by general cost type. There is no discussion on what these estimates include or do not include. The breakdown should include new bridge costs, bridge reconstruction costs (as needed), paving costs, traffic management costs, environmental costs including all environmental mitigation, noise walls or other noise mitigation, and stormwater management improvements.

15. Design of the American Legion Bridge should provide designated space for transit and walking and bicycling.

All means of public transit in the Preliminary Alternatives, except allowing buses to access the Managed Lanes, were eliminated from the ARDS. The American Legion Bridge does not appear to accommodate either a pedestrian/bicycle connection or a future heavy/light rail connection on the structure. More detailed information on the planned components of the proposed American Legion Bridge are necessary to determine a Preferred Alternative from the ARDS. As this screening process is intended to be a conservative assessment for environmental and feasibility purposes, a maximum bridge footprint should be assumed. Specifically, M-NCPPC expects that the design of the American Legion Bridge will include multimodal elements similar to the Woodrow Wilson Bridge, where space has been reserved/designed into the structure for a future

heavy rail line and where a pedestrian and bicycle trail now spans the Potomac River connecting the City of Alexandria to National Harbor. The American Legion Bridge Trail should be a minimum of 14 feet wide and connect to the two National Parks on each side of the Potomac River, the MacArthur Blvd Sidepath and the C&O Canal Trail.

16. Tie-in from the eastern terminus south of MD-5 across the Woodrow Wilson Bridge merits more information and should accommodate future transit and bicycle/pedestrian connections.

The ARDS document omits any discussion of transition between the existing I-495 local and through lanes from the Woodrow Wilson Bridge and the terminus of the Managed Lanes south of MD-5. M-NCCPC staff has requested this information on several occasions and have not received any meaningful response. According to statements made by Secretary Rahn, the Virginia Department of Transportation (VDOT) will determine the design of this transition at some point in the future. The State of Maryland apparently intends to rely upon the Commonwealth of Virginia to design and implement a segment of I-495 that provides access to the most significant economic assets in Prince George's County. It is unclear what incentive the Commonwealth of Virginia has to ensure safe, accessible and reliable travel to and from the MGM casino-hotel and the adjacent commercial/recreation/entertainment complex at National Harbor. It is also unclear what interim condition that segment of I-495 will experience between the completion of improvements terminating south of MD-5 and the implementation of a design Alternative determined by VDOT.

17. Bicycle and pedestrian connections should be included to provide safe and efficient crossings of the corridors.

There was no information provided on how bicycle and pedestrian travel will be accommodated or enhanced with any of the Build Alternatives. I-495 and I-270 are significant barriers to bicycle and pedestrian connectivity. When Managed Lane access is proposed within existing interchanges, and when existing interchanges are modified to accommodate a wider interstate, it is critical that the connecting street be improved for both vehicular traffic operations and for bicycle and pedestrian accommodations.

The project should include an evaluation of safe and direct pedestrian and bicycle crossings at the following locations:

- New interchanges that are expected to be constructed as part of the project;
- Existing interchanges that are expected to be modified as part of the project;
- State and local roads that cross I-495 and I-270 outside of an interchange (such as Ardwick Ardmore Road and Bradley Boulevard); and
- Independent master-planned bicycle and pedestrian infrastructure alignments identified in the Montgomery County Bicycle Master Plan and other master plans (such as I-495 Bike/Ped overpass east of US-29).

Safe and direct pedestrian and bicycle crossings must include:

- Grade-separated or signalized crossings of interstate ramps;
- Two-way separated bike lanes, sidepaths, and trails with a minimum effective width of 11 feet, plus two-foot-wide offsets from vertical elements;
- Sidewalks with a minimum effective width of 5 feet, plus two-foot-wide offsets from vertical elements;
- Buffers between roads and two-way separated bike lanes/sidepaths/trails/sidewalks with a minimum width of six feet.

The following is a list of key recommendations from the Montgomery County Bicycle Master Plans that should be included in the I-495 phases of this project:

- American Legion Bridge across the Potomac River – off-street trail;
- Persimmon Tree Road – sidepath on west side of the road;
- Seven Locks Road – sidepath on east side of the road and bikeable shoulders on both sides of the road;
- River Road – sidepaths on both sides of the road;
- Bradley Boulevard – sidepath on north side and bikeable shoulders on both sides of the road;
- Fernwood Road – sidepath on one side of the road;
- Old Georgetown Road – sidepath on east side of the road;
- MD-355 – sidepath on east side of the road;
- Cedar Lane – sidepath on the west side of the road;
- Kensington Parkway – sidepath on east side of the road;
- Jones Mill Road – bikeable shoulders on both sides of the road;
- Seminary Road – striped bike lanes on both sides of the road;
- I-495 Bike/Ped Overpass east of MD-97 – off-street trail on east side of MD-97 crossing I-495;
- I-495 Bike/Ped overpass east of US-29 – off-street trail connecting Fairway Avenue with US-29;
- MD-193 – sidepaths on both sides of the road; and

- MD-650 – sidepaths on both sides of the road.

The Strategic Trails Plan, endorsed by the Prince George's County Planning Board in November 2018, identified a number of major barriers to development of a countywide trail network; primary among them is I-495. The Strategic Trails Plan identified specific locations along I-495 where bicycle, pedestrian and trail crossing accommodations are needed to support Prince George's County's plans for a connected network of trails and set of roadways that will support the trail system.

Regardless of which Alternative is selected, modification or replacement of the many existing culverts, bridges and underpasses at crossings and interchanges will provide opportunities to design and install new and appropriate types of bicycle and pedestrian infrastructure that will greatly reduce the barrier effect of this major highway and allow communities an opportunity to grow in a unified way on both sides of this important artery.

18. Four-Hour analysis periods are inadequate given the seven to ten hours of congestion identified in the Purpose and Need Statement.

The selection of a four-hour analysis period is inadequate to fully evaluate the extent of congestion on I-270 and I-495 when the Purpose and Need document clearly states that both roads are typically congested for seven to ten hours each day. The four-hour period was used to simulate and analyze the two commuter peak periods. A supplemental analysis is necessary to qualitatively assess the impact of each of the ARDS alternatives on all congested hours. This study could be performed using more qualitative assessment tools than the VISSIM multi-modal traffic flow simulation software package. Peak hour freeway Levels of Service, Delay, Density, and Speed can all be calculated using the Highway Capacity Manual methods. This is particularly critical to evaluate the impact of losing a lane of general-purpose travel on I-270 when the off-peak HOV lane use is eliminated, which is proposed in Alternatives 5, 8, 9 and 13B. Considering that the HOV lane is now enforced for only 3 hours per day, it is clear that the off-peak use of this HOV lane is at or near capacity for more than one additional hour per day per direction. Peak-hour congestion in these sections where the existing HOV lane is proposed to be eliminated must not suffer increased congestion as a result of transferring the off-peak capacity the Managed Lanes System. Managed Lanes can address congestion but should not do so by artificially creating more congestion.

19. An evaluation is needed of the metrics that were recommended in our review of the Purpose and Need Statement.

In submitted comments concerning the Purpose and Need Statement, M-NCPPC recommended that the Study team "develop more rigorous objectives that better differentiate among Alternatives to appropriately address the needs of the project." As part of those comments, M-NCPPC committed to identify objectives and metrics for the team's consideration. These objectives and metrics were submitted on February 6, 2019, and they draw heavily from the analysis that was conducted for the Intercounty Connector (MD-200) project.

This analysis was not conducted as part of the ARDS Study. Therefore, M-NCPPC has insufficient information to make well-reasoned and informed decisions with regard to the use of

its parkland that is clearly needed to implement a Preferred Alternative, regardless of which of the ARDS is selected.

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BASIC AGREEMENT BETWEEN NATIONAL CAPITAL PARK AND PLANNING COMMISSION AND THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

THIS AGREEMENT, hereinafter called "Basic Agreement", made in triplicate, (each executed copy to be regarded as an original) and entered into this nineteenth day of November in the year nineteen hundred and thirty-one, by and between the National Capital Park and Planning Commission, created by Act of Congress of April 30, 1926, (44 Stat. 374), hereinafter called the "National Commission," of the first part, and The Maryland-National Capital Park and Planning Commission, created by act of the General Assembly of the State of Maryland, known as Chapter 448 of the Laws of Maryland of 1927, hereinafter called the "Maryland Commission", of the second part.

(1) WHEREAS, by the provisions of paragraph or subsection (b) of Section 1 of the Act of Congress of the United States, known as Public Act No. 284, of the 71st Congress, approved May 29, 1930, (46 Stat. 482) entitled "An Act for the acquisition, establishment, and development of the George Washington Memorial Parkway along the Potomac from Mount Vernon and Fort Washington to the Great Falls, and to provide for the acquisition of lands in the District of Columbia and the States of Maryland and Virginia requisite to the comprehensive park,

EXHIBIT A

parkway and playground system of the National Capital," commonly called and hereinafter referred to as the "Capper-Cramton Act," the National Commission is authorized to advance and/or contribute to the Maryland Commission certain sums of money upon the terms and conditions set forth in said Capper-Cramton Act for the purpose of enabling the said Maryland Commission to acquire specifically described units of land for park purposes within the State of Maryland lying in Montgomery and Prince George's Counties, said sub-section (b) of the Capper Cramton Act providing:

> "For the extension of Rock Creek Park into Maryland as may be agreed upon between the National Capital Park and Planning Commission and the Maryland-National Capital Park and Planning Commission, for the preservation of the flow of water in Rock Creek, for the extension of the Anacostia Park system up the valley of the Anacostia River, Indian Creek, the Northwest Branch, and Sligo Creek, and of the George Washington Memorial Parkway up the valley of Cabin John Creek, as may be agreed upon between the National Capital Park and Planning Commission and the Maryland-National Capital Park and Planning Commission, $1,500,000; Provided, That no appropriation authorized in this subsection shall be available for expenditure until a suitable agreement is entered into by the National Capital Park and Planning Commission and the Washington Suburban Sanitary Commission as to sewage disposal and storm water flow; Provided further, That no money shall be contributed by the United States for any unit of such extensions until the National Capital Park and Planning Commission shall have received definite commitments from the Maryland-National Capital Park and Planning Commission for the balance of the cost of acquiring such unit of said extensions deemed by said commission sufficiently complete, other than lands now belonging

to the United States or donated to the United States; Provided further, That in the discretion of the National Capital Park and Planning Commission upon agreement duly entered into with the Maryland-National Capital Park and Planning Commission to reimburse the United States as hereinafter provided, it may advance the full amount of the funds necessary for the acquisition of the lands required for such extensions referred to in this paragraph, such advance, exclusive of said contribution of $1,500,000 by the United States, not to exceed $3,000,000, the appropriation of which amount from funds in the Treasury of the United States not otherwise appropriated is hereby authorized, such agreement providing for reimbursement to the United States of such advance, exclusive of said Federal contributions, without interest within not more than eight years from the date of any such expenditure. The title to the lands acquired hereunder shall vest in the State of Maryland. The development and administration thereof shall be under the Maryland-National Capital Park and Planning Commission and in accordance with plans approved by the National Capital Park and Planning Commission. The United States is not to share in the cost of construction of roads in the areas mentioned in this paragraph, except if and as Federal aid highways."

(2) AND WHEREAS, the said Maryland Commission has been authorized and empowered by an Act of the General Assembly of Maryland, known as Chapter 370 of the Laws of Maryland of 1931, hereinafter called "Chapter 370," on its own account and as the representative of the State of Maryland, to contract and/or enter into definite commitments and agreements with the National Commission for the purpose of obtaining and/or securing advances of such sums as may be available under the provisions of the Capper Cramton Act, said Chapter 370 providing that "The Commission (Maryland Commission) is hereby authorized and empowered to

enter into any contract or commitment with the United States or any bureau or agency thereof or the National Capital Park and Planning Commission for the purpose of securing any advance authorized to be allotted to it or to the State of Maryland under the provisions of paragraph or subsection (b) of Section 1 of Public Act 284 of the 71st Congress of the United States in any amount not exceeding $1,200,000 on account of lands to be acquired within Montgomery County, and is authorized to pledge the repaying of the same within the time required by said Act; and in the event said Commission receives any part of the funds authorized to be advanced by said Act, it is hereby directed that before the time of repayment, it shall issue and sell the bonds hereinbefore authorized in an amount sufficient to repay the same"; and Sections 8 and 9 of said Act further provide that said Maryland Commission is authorized to issue its bonds in an amount not exceeding $1,200,000.00 for Montgomery County, the proceeds of the sale of which shall be used for the purpose of repaying or retiring the amount loaned to the Commission under the provisions of said Public Act 284; and provide further that "said bonds shall be guaranteed as to the payment of principal and interest by the County Commissioners of Montgomery County," and they are further authorized and directed to levy "an annual tax in a sum sufficient to pay the interest on said bonds and to pay the principal of these said bonds upon

maturity." And said Chapter 370 further provides as to lands acquired in Prince George's County -

> "Said Commission may, with the consent of the County Commissioners of Prince George's County, apply for and receive under said Paragraph or Subsection (b) of Section 1 of Public Act 264 such additional sums or sums not to exceed $800,000.00 as may be legally allotted or can be advanced to said Commission for the purpose of purchase of park land within said county and if such funds are advanced to said Commission it may enter into the same commitment or contract as to funds for park purchases in Prince George's County, and is authorized and directed to repay the same by the issuance and sale of bonds in the same manner as herein provided for as to Montgomery County, in which event all of the provisions of this section and Section 8 shall apply equally to both counties as to the respective amounts advanced for each county. All or any of the bonds issued under this Act shall be guaranteed by the County Commissioners of Montgomery County, as herein provided for, in so far as the proceeds thereof are required for the repayment of advances by the Federal Government for the purchase of park land within Montgomery County, and by the County Commissioners of Prince George's County in so far as the proceeds thereof are required for the repayment of advances by the Federal Government for the purchase of park land in Prince George's County."

(3) AND WHEREAS, it is the immediate purpose and intent of the said Maryland Commission to forthwith begin the acquisition of land for park purposes within its district, and to this end it has prepared a general Park Plan of parks to be acquired and developed within said district, which general Park Plan is to be divided into certain specifically described and designated units of land marked and outlined on said general Park Plan, the first unit being part of the extension of Rock Creek Park in Maryland, plans for said first unit having been duly

approved by the National Capital Park and Planning Commission on the 16th day of October, 1931, copies of which general Park Plan and plans for said first unit are herewith annexed and made a part hereof.

(4) AND WHEREAS, the National Commission stands ready to carry out the terms and conditions of the said Capper-Cramton Act in order to enable the Maryland Commission to acquire park lands according to said plans and designs from time to time and in conformity with Chapter 370 of the Laws of Maryland of 1931, and the National Commission stands ready to advance to the Maryland Commission an aggregate amount not exceeding $1,200,000.00 for the acquisition of said park lands in Montgomery County, and an aggregate amount of not exceeding $800,000.00 for the acquisition of said park lands in Prince George's County, and to contribute an amount equal to one-third of the moneys expended or to be expended, including the advances aforesaid, in the acquisition of said park lands by the said Maryland Commission.

(5) AND WHEREAS, the National Commission and the Maryland Commission, in accordance with the provisions of the Capper-Cramton Act, have under the date of the first day of August, 1931, duly entered into a suitable agreement as to sewage disposal and storm water flow with the Washington Suburban Sanitary Commission, hereinafter called the "Sanitary Commission", copies of which are herewith annexed and made a part hereof.

(6) AND WHEREAS, in the opinion of the Maryland Commission, the execution of this Basic Agreement and of Supplementary agreements, as herein provided for, is necessary to obtain and secure advances and contributions under the Capper-Cramton Act;

NOW, THEREFORE, THIS BASIC AGREEMENT WITNESSETH, that the said National Commission, of the first part, and the said Maryland Commission, of the second part, in consideration of the premises and the mutual agreements herein contained and for other valuable considerations moving from one to the other, receipt of which is hereby acknowledged by each, do covenant and agree to the following definite commitments, conditions, and terms of this contract:

1. That the National Commission does hereby agree to advance, from time to time, to the Maryland Commission, a sum or sums not exceeding in the aggregate $1,200,000.00 for the acquisition of park lands in Montgomery County, by way of an advance under the provisions of said Capper-Cramton Act and under Chapter 370 of the Laws of Maryland of 1931 and to pay and deliver from time to time to the Maryland Commission as a contribution or contributions under the provisions of the said Capper-Cramton Act further sums of money equal to one-half of the amount so advanced to the said Maryland Commission and/or one-half of any other sums of money expended by the said Maryland Commission for the acquisition of park lands; provided the total amount to be contributed and advanced

by said National Commission shall not exceed at any time the appropriations made by Congress for said purposes when and as the same are available, and when and as the Maryland Commission shall comply with the provisions of this Basic Agreement respecting the repayment of said advances and when and as the said Maryland Commission shall certify that it is prepared to complete the acquisition of park land within any designated area or specifically described unit of park lands in Montgomery County heretofore approved and/or hereafter to be approved by the parties hereto. Upon such certification by the Maryland Commission and the approval and acceptance thereof by the National Commission, the National Commission will pay to the Maryland Commission, when and as available, the full amount agreed upon, both as to advances and contributions, upon the execution by the parties hereto of a Supplementary Agreement, to become a part of this Basic Agreement, setting forth and specifically describing the unit designated, the amount to be paid, and such other information or data as may be deemed necessary or desirable, which said Supplementary Agreement shall thereupon become a part of this Basic Agreement and subject to all of the terms and conditions thereof.

2. The Maryland Commission hereby covenants and agrees to repay to the National Commission, or to such other official bureau or division of the United States Government as may be designated by an Act of Congress to receive the

same, all such advances made by the said National Commission under the terms of this Basic Agreement and the provisions of the said Capper-Cramton Act. Whenever the National Commission shall advance a stated sum to the Maryland Commission, the Maryland Commission will deliver to the National Commission serial bonds of the par value of the amount equal to that advanced by the National Commission, said serial bonds to be issued in conformity with the provisions of Chapter 370 of the Laws of Maryland of 1931; said bonds bearing rate of interest at 4-1/2 per cent, payable semi-annually, and to mature not more than sixty years from date; said bonds shall be guaranteed by the County Commissioners of Montgomery County as to payment of principal and interest; and the said County Commissioners of Montgomery County shall levy a tax to provide for interest and sinking fund on said bonds; interest upon said bonds shall commence to run eight years from the date of their issue, respectively, and the first interest payment on said bonds shall be eight years and six months from date of their issue respectively; at any time before the said bonds shall have been sold by the said National Commission, the said Maryland Commission shall have the privilege to redeem the said bonds by payment of the principal thereof at par and accrued interest, if any. However, the National Commission agrees not to sell said bonds within eight years of date

of said bonds without the consent, in writing, of the Maryland Commission. In the event of the sale of said bonds any premium on such sale shall be paid to the Maryland Commission and any deficiency, that is, sale below par, and accrued interest, shall be made up by the Maryland Commission by the payment in cash within 90 days of such sale of such deficiency; that if for any reason full reimbursement shall not be had by the National Commission or the United States out of or through the said bond issue heretofore referred to, then the said Maryland Commission covenants and agrees to pay to the National Commission and the United States, any deficiency in reimbursement resulting from the failure of the said bond issue to reimburse the National Commission and the United States; but in order to make the Maryland Commission liable for any such deficiency, said bonds shall be sold, or attempted to be sold, by the National Commission not later than one year after the expiration of eight years from the date of such bonds. No sale at any time shall be made until after 30 days' notice to the Maryland Commission.

3. It is covenanted and agreed between the parties hereto that there shall be filed herewith, and become a part of this Basic Agreement, a general Park Plan of the lands proposed to be acquired by the Maryland Commission within or constituting all of the units of

Park lands to be acquired under this Basic Agreement, said general Park Plan to be approved by both the parties hereto, which general Park Plan may be altered or amended by a Supplementary Agreement of the parties hereto at any time without affecting the provisions of this Basic Agreement; and that when a plan specifically describing any individual unit of such lands shall be certified to the National Commission by the Maryland Commission as ready for purchase or acquisition, all of the properties within said individual unit shall be appraised by two appraisers, one to be appointed by each Commission; and when said appraisals are filed with and approved by the respective Commission and the other details herein provided for are completed, the National Commission shall pay to the Maryland Commission by way of an advance, two-thirds of the appraised value, and by way of a contribution, one-third of the appraised value of such land. It is further understood and agreed that in the event that all of the land in such individual unit is acquired for less than the amount paid by the National Commission to the Maryland Commission, the excess shall be taken as a credit to the next individual unit to be acquired, and that in the event that the cost of acquisition of lands in such unit exceeds the amount advanced and contributed by the National Commission, the National Commission may in its discretion advance and contribute such other sums as may be necessary to complete the acquisition of such unit. The Maryland Commission agrees to submit

quarterly, or more frequently if desired, to the National Commission, a complete and accurately itemized statement or report of the disbursement or expenditure of all moneys received by it from the National Commission, whether by advance or contribution, said statement to contain such information as the National Commission may require from time to time. It is further understood and agreed that the amount expended "for the purchase of land for park purposes" shall include the cost of the necessary surveys or topographical work, cost of condemnation proceedings, if any, cost of the examination of titles, or other necessary costs incurred by the Maryland Commission in connection therewith, and the pro rata of the cost of appraisals for said park land or lands.

4. It is further understood and agreed that the terms of this Basic Agreement shall apply equally to the acquisition of land in Prince George's County to an advance of not exceeding $800,000 and a contribution of one-half of such advance and one-half of any additional amount expended in the acquisition of park lands in Prince George's County by the said Maryland Commission, whenever the County Commissioners of Prince George's County and the members of the Maryland-National Capital Park and Planning Commission from Prince George's County take the affirmative action provided for in Chapter 370, and whenever the Maryland Commission submits definite and satisfactory commitments

for such advances and contributions as provided in said Chapter 370.

5. It is further understood and agreed, in accordance with the Capper-Cramton Act and said Chapter 370, that the title to all lands acquired under the provisions of this Basic Agreement or any Supplementary Agreement shall vest in the State of Maryland, and that no part of any land purchased for park or recreational purposes with the funds provided by the National Commission, in whole or in part, shall at any time be conveyed, sold, leased, exchanged, or in any manner used or developed for other than park purposes by the Maryland Commission, and the development and administration of said lands shall be under the Maryland Commission but the development thereof shall be in accordance with plans approved by the National Commission, or the necessary approval of the Congress of the United States.

6. It is further understood and agreed that the provisions of this Basic Agreement shall constitute and be adopted by the Maryland Commission as the rules and regulations under which the bonds authorized by paragraph (r) of Section 8 of said Chapter 370 and not exceeding the aggregate amount of $1,200,000 shall be sold.

7. It is further understood and agreed that this Basic Agreement shall not be effective until it shall have received the approval of the President of the United States of America, the Governor of the State of Maryland, and the

County Commissioners of Montgomery County, witnessed by the signatures of said President of the United States of America, of the said Governor of the State of Maryland, and of the President and Clerk respectively of the Board of County Commissioners of Montgomery County.

IN WITNESS WHEREOF the said parties have hereunto caused these presents to be executed and their seals affixed the day, year and month aforesaid.

NATIONAL CAPITAL PARK AND PLANNING COMMISSION

BY (Signed) U. S. Grant 3rd (SEAL)

ATTEST:

(S) NETTIE M. BENSON

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

BY (Signed) IRVIN OWINGS (SEAL)

ATTEST:

(S) THOMAS HAMPTON

APPROVED:

(Signed) HERBERT HOOVER, President of the United States of America

(Signed) ALBERT C. RITCHIE, Governor of the State of Maryland

APPROVED:

(Signed) LACY SHAW, President of the Board of County Commissioners of Montgomery County.

(Signed) BERRY P. CLARK, Clerk of the Board of County Commissioners of Montgomery County.

(SEAL)

MARYLAND DEPARTMENT
OF TRANSPORTATION

STATE HIGHWAY
ADMINISTRATION

Larry Hogan
Governor

Boyd K. Rutherford
Lt. Governor

Pete K. Rahn
Secretary

Gregory Slater
Administrator

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.

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,

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, MDOT SHA
Jeffery T. Folden, P.E., DBIA, Deputy Director, I-495 & I-270 P3 Office, MDOT SHA

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
6611 Kenilworth Avenue • Riverdale, Maryland 20737

July 22, 2019

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

Ms. Lisa Choplin, Director
Maryland Department of Transportation
State Highway Administration
1-495 & 1-270 P3 Office
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Baltimore, MD 21202

Re: I-495/I-270 Managed Lanes Study – Issues with NEPA Process to Date and Request for Principals Meeting

Dear Mses. Choplin and Mar:

We are in receipt of your June 28, 2019 letter (the "June 28 Response") that purports to respond to concerns we raised in our June 12, 2019 letter regarding our basis for declining to concur with the Maryland Department of Transportation State Highway Administration's ("MDOT SHA") Alternatives Retained for Detailed Study ("ARDS") for the I-495 & I-270 Managed Lanes Study ("Study"). We also acknowledge the second letter dated July 9, 2019, (the "Follow Up Response") authored by Ms. Choplin and addressed to our Vice-Chairman Anderson only; however, we note that your Follow Up Response actually was not delivered to Chairman Hewlett despite the indication that a copy was transmitted to her attention. Therefore, she was not able to review it before late last week.

As discussed in more detail below, nothing in the June 28 Response or Follow Up Response palliates the fact that MDOT SHA has eliminated alternatives that would have no impacts to property subject to the Capper-Cramton Act ("CCA") or, in any event, fewer impacts than the retained alternatives. Eliminating alternatives that would have no impacts or fewer impacts than retained alternatives is also inconsistent with the National Environmental Policy Act ("NEPA") and Section 4(f) of the Department of Transportation Act ("Section 4(f)"). As we stated in our

June 12 letter, the Maryland-National Capital Park and Planning Commission's ("M-NCPPC") objections to the NEPA process and review of alternatives does not represent a decision on our part to support or oppose the project. M-NCPPC is simply carrying out its statutory duties to protect and enhance the parks and recreation land within its constituent agencies' jurisdiction. To that end, M-NCPPC also requests a principals meeting to discuss these important issues.

Right-of-Way Acquisition in Furtherance of the Project Will Likely Violate the Capper-Cramton Act

The Capper-Cramton Act authorized the federal government to acquire land in Maryland and Virginia for development of a comprehensive park, parkway, and playground system in the National Capital area. M-NCPPC is charged with protecting and being the steward of CCA-acquired property in Maryland, in accordance with plans approved by the National Capital Planning Commission ("NCPC").[1] M-NCPPC is, therefore, justified in its concern that all of the so-called "build alternatives" retained for detailed study would require the acquisition of property purchased with federal funds authorized under the CCA. Property acquired under the CCA and managed by M-NCPPC's constituent departments is governed by the "Basic Agreement" in 1931 between M-NCPPC and NCPC. Section 5 of the Basic Agreement states as follows:

> It is further understood and agreed, in accordance with the [CCA and Maryland enabling legislation] that the title to all lands acquired under the provisions of this Basic Agreement or any Supplementary Agreement shall vest in the State of Maryland, and that *no part of any land purchased for park or recreational purposes* with the funds provided by the [NCPC], in whole or in part, *shall at any time be conveyed, sold, leased, exchanged, or in any manner used or developed for other than park purposes* by the [M-NCPPC], and the development and administration of said lands shall be under the [M-NCPPC] but the development thereof shall

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[1] As the Maryland Court of Appeals recently described this statutory role of M-NCPPC:

> MNCPPC is responsible for protecting lands under the Capper-Cramton Act, which was enacted by Congress in 1930 to "protect land on both sides of the Potomac River as an integrated park and parkway system known as the George Washington Memorial Parkway." Land Use § 15-302(3) provides MNCPPC with the authority to act as the representative of this State in fulfilling the mandate of the Capper-Cramton Act in Maryland. The Act enables MNCPPC to enter into agreements with the National Capital Park and Planning Commission ("NCPPC") for extending and developing protected lands in Maryland. Therefore, the Capper-Cramton Act provided for cooperation between NCPPC and MNCPPC, enabling MNCPPC to act as administrator over preserved lands.

Town of Forest Heights v. Maryland-Nat'l Capital Park & Planning Comm'n, 463 Md. 469, 518–19, 205 A.3d 1067, 1096 (2019). (Internal citations omitted.)

> be in accordance with plans approved by the [NCPC], or the necessary approval of the Congress of the United States.

(emphasis added).

In February 1951, NCPC and M-NCPPC entered into their first Amendatory Agreement to the Basic Agreement, which, among other things, increased funding available for parkland acquisition, amended the General Park Plans, and limited M-NCPPC's ability to issue bonds. The Amendatory Agreement also restated and clarified the 1931 agreement's restriction on the disposition and use of parkland acquired pursuant to the CCA. The amendatory agreement stated that where M-NCPPC acquires, prior to advance funding by the NCPC, parcels included in the General Park Plans and threatened by encroaching subdivision development that would greatly increase the expenses incurred in acquiring such parcels, such parcels "must ... be acquired under the Capper-Crampton program ... so as to eliminate any possibility that any such unit may in the future be rendered incomplete by the sale, disposition or use of any such parcels by the [M-NCPPC] for other than park purposes ... to the end that all such parcels shall be subjected to the limitations and restrictions contained in said Capper-Cramton Act and in said Basic Agreement."

Maryland Law reinforces the federal requirement to protect CCA land from development. Section 17-205 of the Land Use Article provides that M-NCPPC "may transfer any land that it holds under this title and determines is not needed for park purposes or other purposes authorized under this title," indicating that only M-NCPPC may transfer park property and that it can only do so when the property is no longer "needed for park purposes." Similarly, section 17-206(b)(1) allows M-NCPPC to exchange playground or recreational land held or acquired by the M-NCPPC for other public land that it determines to be more suitable for playground and recreational purposes, "[e]xcept for parkland acquired under an agreement with the [NCPC]."

Furthermore, it is a longstanding principal that a government agency cannot "override the expressed will of Congress, or convey away public lands in disregard or defiance thereof."[2] Indeed, using lands for purposes other than those provided by law is actionable.[3] Relevant to the matter at hand, the Maryland Court of Appeals ruled that a subdivision plat in which land was dedicated to public use as part of a large regional park by M-NCPPC could not be abandoned because the developer seeking abandonment could not show that abandonment would not damage the public interest.[4]

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[2] *Am. Sch. of Magnetic Healing v. McAnnulty*, 187 U.S. 94, 108 (1902) (citing *Burfenning v. Chi., S. P., M. & O. R. Co.*, 163 U.S. 321 (1896)).

[3] *See, e.g., Sportsmen's Wildlife Def. Fund v. Romer*, 73 F. Supp. 2d 1262, 1274 (D. Colo. 1999) (placing rock quarry, signs, and motion detectors on public lands constituted misuse under 50 C.F.R. § 80.14(b)(2) and the Pittman-Robertson Act, since the land was purchased with federal funds for wildlife purchases).

[4] *Md.-Nat'l Capital Park & Planning Comm'n v. McCaw*, 246 Md. 662, 686-87 (1967).

In light of the CCA restrictions on property that MDOT SHA would need to take under the alternatives it has retained for further study, MDOT SHA should consider alternatives that would have no or fewer impacts on the property.

The Environmental Review Process Undertaken by MDOT SHA Has the Potential to Violate NEPA and Section 4(f)

As stated in its June 12 letter, MDOT SHA has taken the position is that its decision to phase the Project satisfies NEPA because 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." This position may subject the agency to a future NEPA or 4(f) challenge since MDOT SHA may not be able to satisfy the requirement to fulfill its NEPA obligations "to the fullest extent."[5] A lead agency must consider reasonable alternatives that meet the project purpose and need, cumulative project impacts, and transportation systems management alternatives. Without limiting M-NCPPC's right to comment and raise objections later in the NEPA process and in the interest of satisfying our duties as a cooperating agency and facilitating MDOT SHA's satisfaction of its duties as a co-lead agency, M-NCPPC outlines below certain deficiencies in MDOT SHA's review in the hope that MDOT SHA will make the necessary adjustments prior to and during the draft environmental impact statement ("DEIS") stage.

1. MDOT SHA has construed the purpose and need so narrowly as to exclude from consideration a number of reasonable alternatives.

Lead agencies must consider all reasonable alternatives that could meet the purpose and need outlined at the inception of the NEPA review process.[6] Although MDOT SHA enjoys deference in determining the project's purpose and need and need not study alternatives that are not consistent therewith, NEPA requires MDOT SHA to define the purpose and need broadly enough to ensure that the review does not eliminate from consideration otherwise reasonable alternatives.[7] This is particularly important at the early (pre-DEIS) stage of the NEPA review process when agencies must consider all alternatives that are "practical or feasible from a technical and economic standpoint."[8] Despite this statutory mandate, MDOT SHA has defined

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[5] *Calvert Cliffs' Coordinated Comm., Inc. v. Atomic Energy Comm'n*, 449 F.2d 1109, 1114-15 (D.C. Cir. 1971) (quoting 42 U.S.C. § 4332(a)).

[6] Council on Envtl. Quality; Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (Mar. 16, 1981) at Question 1b. *See also* 49 U.S.C. §303(c)(1) (Secretary of Transportation must consider all "prudent and feasible alternatives"); *Airport Neighbors Alliance, Inc. v. United States*, 90 F.3d 426, 432 (10th Cir. 1996) ("An agency decision concerning which alternatives to consider is necessarily bound by a rule of reason and practicality"); *Sierra Club v. Watkins*, 808 F. Supp. 852, 872 (D.D.C. 1991) (agencies' selection of port sites was "quite calculating and qualifies as an abuse of discretion" for not covering the "full spectrum" of possible site locations).

[7] *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir. 1997) (finding it is a violation of NEPA to "contrive a purpose so slender as to define competing 'reasonable alternatives' out of consideration").

[8] Council on Environmental Quality; Forty Most Asked Questions Concerning CEQ's National Environmental Policy Act Regulations, 46 Fed. Reg. 18026 (Mar. 16, 1981) at Question 2a. *See also Sierra Club v.*

the project's purpose and need so narrowly as to exclude from consideration a number of reasonable alternatives. As a result, MDOT SHA has reduced its evaluation of alternatives such that it is giving serious consideration only to six build alternatives and a no-build alternative and ignoring alternatives that are reasonable, could have fewer environmental impacts, and warrant further consideration at the DEIS stage.[9] Although not exhaustive, MDOT SHA has failed to grant sufficient consideration to reasonable alternatives that include the following elements:

a. Local serving public transit systems (beyond simply allowing buses to use the Managed Lanes), such as planning and funding route service via the Corridor City Transitway and the MD-355 bus rapid transit, as well as committing a meaningful portion of toll revenue to fund public transit investments;

b. Parallel roadways and accommodations for multimodal uses to alleviate congestion in Prince George's County;

c. Additional access locations that would better accommodate Managed Lane traffic demands by increasing safety, reducing weaving congestion, supporting major economic development initiatives, addressing short-distance commuting needs, and providing efficient entry points for popular destinations, including medical centers, institutional facilities, and transit stations;[10]

d. Easy access to the Managed Lanes from the Metropolitan Washington Council of Governments' Equity Emphasis Areas;

e. Reduced fare E-ZPass programs and toll or tax rebates for motorists of qualifying incomes;

f. Differential (including reduced) impacts to protected parkland and natural resources, particularly Rock Creek Stream Valley Park, Cherry Hill Road Community Park, Southwest Branch Stream Valley Park, Douglas Patterson Park, and Andrews Manor Park;

Marsh, 714 F. Supp. 539, 574 (D. Me. 1989) (MDOT's preferred expansion plan for a terminal facility does not warrant exclusion of otherwise reasonable alternatives unless the agency's preference bears a "rational relationship to the technical and economic integrity of the project").

[9] 49 U.S.C. §303(c)(1) (Secretary of Transportation must consider all "prudent and feasible alternatives"); *Airport Neighbors Alliance, Inc. v. United States*, 90 F.3d 426, 432 (10th Cir. 1996) ("An agency decision concerning which alternatives to consider is necessarily bound by a rule of reason and practicality"); *Colo. Envtl. Coal. v. Dombeck*, 185 F.3d 1162, 1174-75 (10th Cir. 1999).

[10] In our previous letters, we have identified several locations at which access points would be viable and address our concerns: I-270 between Gude Drive and Montrose Road; I-495 between MD-185 (Connecticut Avenue) and US-29 (Colesville Road); I-495 between US-29 (Colesville Road) and I-95; and I-495 between US-50 and Ritchie-Marlboro Road.

g. The study of portions of I-270 and I-495, including I-270 north of I-370 (from Rockville to Frederick) in Montgomery County and I-495 from MD-5 to the Woodrow Wilson Bridge in Prince George's County;

h. Expanded stormwater management control to treat existing conditions along highway corridors;

i. Alternative right-of-way acquisitions, such as bolstered noise barriers and conformance with existing environmental impact and zoning restrictions;

j. Elimination of the collector-distributor lane system without accompanied Managed Lane improvements;

k. A pedestrian/bicycle connection or a future heavy/light rail structure on the American Legion Bridge;

l. Joint participation with the Virginia Department of Transportation in designing and implementing the transition between the existing I-495 local and through lanes from the Woodrow Wilson Bridge and the terminus of the Managed Lanes south of MD-5; and

m. Pedestrian and bicycle crossings at new interchanges, existing interchanges, state and local roads that cross I-495 and I-270 outside of interchanges, and independent master-planned bicycle and pedestrian infrastructure alignments.

2. MDOT SHA should continue to evaluate transit, travel demand management, and transportation systems management alternatives.

In its June 28 letter, MDOT SHA states that it will consider transit elements in the Study but that it is not required to evaluate stand-alone transit alternatives since those alternatives do not meet the project's purpose and need. However, MDOT SHA must, at the very least, include transportation systems management ("TSM") and travel demand management ("TDM") alternatives where applicable, including ridesharing, signal synchronization, and other actions.[11] Also, a lead agency should consider mass transit options where appropriate.[12] With the exception of high-occupancy vehicle lanes, the ARDS do not reflect adequate consideration of TSM and TDM elements.

Similarly, Section 4(f) requires that the lead agencies provide "compelling reasons for rejecting . . . proposed alternatives as not prudent."[13] Put another way, Section 4(f) property "may not be put to non-park uses unless there is no feasible and prudent alternative to the non-park use of the

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[11] FED. HWY. ADMIN., NEPA IMPLEMENTATION: PROJECT DEVELOPMENT AND DOCUMENTATION OVERVIEW (1992), *available at* https://www.environment.fhwa.dot.gov/legislation/nepa/overview_project_dev.aspx.

[12] *Id.*

[13] *Hickory Neighborhood Def. League v. Skinner*, 910 F.2d 159, 163 (4th Cir. 1990).

land."[14] MDOT SHA's restricted review will not satisfy Section 4(f)'s "substantive restraints on agency action."[15]

3. MDOT SHA's unreasonably narrow purpose and need statement and ARDS will prevent full consideration of the project's direct, indirect, and cumulative impacts.

Under NEPA, MDOT SHA must consider the project's impacts—direct, indirect, and cumulative—on the environment, urban quality, historic and cultural resources, and the built environment, among others.[16] By narrowly defining the project's purpose and need and ARDS, MODT SHA will not be able to evaluate the alternatives' impacts, including impacts to the following:

a. The area surrounding I-270 north of I-370 (from Rockville to Frederick) in Montgomery County;

b. The area surrounding I-495 from MD-5 to the Woodrow Wilson Bridge;

c. Existing and future origin-destination patterns;

d. Planned land use;

e. Economic development;

f. Social equity and environmental justice;

g. Access to emergency services;

h. Safe and efficient access to major transit centers;

i. Protected parkland;

j. Protected natural, historical, and cultural resources;

k. Local streams and waterways;

l. Property uses under current environmental and zoning laws, both state and local;

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[14] *Defs. of Wildlife v. N.C Dep't of Transp.*, 762 F.3d 374, 399 (4th Cir. 2014) (quoting *Coal. for Responsible Reg'l Dev. v. Brinegar*, 518 F.2d 522, 525 (4th Cir. 1975)).

[15] *Defs. of Wildlife*, 762 F.3d at 398.

[16] 40 C.F.R. §§ 1502.16, 1508.7, 1508.8. *See also Davis v. Mineta*, 302 F.3d 1104, 1110 (10th Cir. 2002) (FHWA's single-traffic study to analyze the impacts from the phased construction of a highway project was not sufficient to satisfy the agency's burden to take a "hard look" under NEPA because, among other reasons, the study did not consider the cumulative impacts of transportation systems management and mass transit together in conjunction with an alternative road expansion as a means of meeting project goals); *Defs. of Wildlife*, 762 F.3d at 384 (upholding segmentation with respect to five studied parallel bridge alternatives because agency properly analyzed cumulative impacts).

m. Local road networks that feed onto and off of both I-495 and I-270;

n. Noise levels at homes located near the project;

o. Traffic congestion chokepoints;[17]

p. Congestion during peak and off-peak hours;

q. Commercial, recreational, and entertainment interests at the MGM casino-hotel and National Harbor; and

r. Bicycle, pedestrian, and trail crossings of the corridors.

M-NCPPC recognizes that MDOT SHA will complete additional analysis at a later stage in the NEPA process and does not expect MDOT SHA to conduct EIS-stage analysis at this stage in the process. However, by failing to consider the lack of differential impacts in the ARDS, MDOT SHA risks foreclosing its obligation to undertake a meaningful evaluation of the project's imminent and far-reaching impacts in the later stages of the NEPA process.

4. MDOT SHA has failed to consider the project's impacts from phasing.

In its June 28 letter, MDOT SHA contends that "[p]roject or construction phasing is irrelevant to the analysis of whether alternatives should be retained for detailed study in the DEIS." We disagree. "The potentially significant impacts from phasing . . . must be adequately studied" during the NEPA process, particularly for projects such as this one that may span many years from start to finish.[18] In addition, when the planning of future phases progresses beyond the "speculative" or "mere proposal" stage, lead agencies have reason to consider impacts from phasing.[19]

Here, MDOT SHA's approach to phasing the project does not adequately account for local transportation issues, travel demands, and constraints on I-495 and I-270 in Montgomery County. It also fails to account for Prince George's County's land use and transportation plans, such as the development of the University of Maryland Capital Region Medical Center off of I-495. As MDOT SHA's planning process moves towards completion, so must the lead agencies' consideration of the phased project's impacts from diverting traffic to use the Inter-County Connector, which requires the completion of the I-270 Managed Lanes expansion and south on I-

[17] In particular, the ARDS fail to consider adequately the Project's impacts on traffic congestion chokepoints at key interchanges and intersecting cross streets that currently experience extremely congested conditions, including I-495 at MD-355, MD-185, MD-97, MD-650, I-95, US-50, MD-4, and MD-5; the area surrounding the Bethesda BRAC facility on MD-355, MD-185, and Jones Bridge Road; and the I-495 Inner Loop at MD-450, MD-202, MD-4, MD-337, and MD-5.

[18] *Davis v. Mineta*, 302 F.3d at 1123-24, *abrogated on other grounds by Dine Citizens Against Ruining Our Env't v. Jewell*, 839 F.3d 1276 (10th Cir. 2016).

[19] *See, e.g., O'Reilly v. U.S. Army Corps of Eng'rs*, 477 F.3d 225, 237 (5th Cir. 2007).

495 through the bottleneck over the American Legion Bridge before the project can expand to the constrained areas of I-495.

5. MDOT SHA's analysis fails to satisfy the burden imposed on projects that impact parkland and other protected areas, including those protected by the CCA.

MDOT SHA stated in its June 28 letter that "impacts to sensitive resources including parkland and the means to avoid and minimize those impacts is of utmost importance." M-NCPPC appreciates MDOT SHA's desire to work collaboratively to identify appropriate avoidance and mitigation measures. Nevertheless, M-NCPPC reiterates its position that the appropriate time to identify avoidance and mitigation measures is before eliminating reasonable alternatives that have fewer environmental impacts than the retained alternatives, not after. NEPA requires—and courts have recognized—that agencies must take a "hard look" at impacts to sensitive resources throughout the environmental review process, even prior to rejecting alternatives.[20] To satisfy its NEPA obligations, MDOT SHA must consider alternatives with a range of environmental impacts that meet the project's purpose and need, regardless of which build alternative it eventually chooses.

6. MDOT SHA's analysis uses vague, unsupported conclusions and inadequate, incomplete analysis.

NEPA's mandate to consider reasonable alternatives to meet the project's purpose and need requires lead agencies to base their evaluation on concrete, complete, and adequate analyses.[21] To date, however, MDOT SHA's analysis has relied on flawed premises, inaccurate data, and incomplete information, as follows:

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[20] *See Davis v. Mineta*, 302 F.3d at 1120 (NEPA review failed to take a "hard look" by rejecting avoidance alternatives and failing to consider transportation systems management, mass transit, and various build alternatives by simply concluding that they were unfeasible); *see also Ass'ns Working for Aurora's Residential Env't v. Colo. Dep't of Transp.*, 153 F.3d 1131 (10th Cir. 1998) ("§4(f) requires the problems encountered by proposed alternatives to be truly unusual or to reach extraordinary magnitudes if parkland is taken." (internal quotation marks and citation omitted)); *Ass'n Concerned About Tomorrow, Inc. (ACT) v. Dole*, 610 F. Supp. 1101, 1113 (N.D. Tex. 1985) (requiring supplementation of a NEPA analysis when a road would have traversed public parkland containing relatively unique vegetation); *Klein v. U.S. Dep't of Energy*, 753 F.3d 576, 584 (6th Cir. 2014) (NEPA review must consider the unique characteristics of a region); *Ohio Valley Envtl. Coal. v. U.S. Army Corps of Eng'rs*, 479 F. Supp. 2d 607, 634 n.33 (S.D. W. Va. 2007) (same), *rev'd and remanded on different grounds sub nom. Ohio Valley Envtl. Coal. v. Aracoma Coal Co.*, 556 F.3d 177 (4th Cir. 2009).

[21] *Davis v. Mineta*, 302 F.3d at 1118-19; *see also N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, 677 F.3d 596, 603 (4th Cir. 2012) (remanding NEPA review of Monroe Connector toll road because the North Carolina Department of Transportation and FHWA failed to disclose assumptions in their data, provided the public with erroneous information, and improperly assumed that the project already existed in assessing the no-build alternative); *Hwy. J Citizens Grp. v. U.S. Dep't of Transp.*, 656 F. Supp. 2d 868, 887 (E.D. Wis. 2009) (finding NEPA review deficient because it did not include a "thorough analysis" of the indirect effects of highway expansion project on growth).

a. MDOT SHA has failed to incorporate into the Study a comprehensive local road analysis, including consideration of impacts from stormwater which may be exacerbated by the impervious surfaces of the Managed Lane roadways;

b. MDOT SHA has failed to refine the ArcGIS Mapping Tool to allow homeowners to locate their properties and determine whether and what impacts are proposed on their properties;

c. The ARDS' transportation results fail to detail how MDOT SHA simulated the Managed Lanes Study, rendering it impossible for any participating agency or the public to replicate the Study or assess its accuracy;

d. MDOT SHA has not provided sufficient detail on the noise impact evaluation process, such as a description of how it conducted the analysis and the circumstances under which state or federal law require noise mitigation;

e. The ARDS reflect a bias toward build alternatives without an independent analysis of transportation benefits, leaving it unclear whether the Managed Lanes will simply address artificially created congestion due to elimination of the connector/distributor lanes system or instead address already existing congestion;

f. The Traffic Operations Evaluation does not explain how MDOT SHA has simulated existing traffic congestion or calibrated congestion at key interchanges and intersecting cross streets;

g. MDOT SHA has not provided the exact project phasing plan, preliminary capital cost estimates by roadway segment and general cost type, or detailed cost breakdowns by construction item;

h. The ARDS do not discuss the transition between the existing I-495 local and through lanes from the Woodrow Wilson Bridge and the terminus of the Managed Lanes south of MD-5; instead, MDOT SHA has apparently abdicated its responsibility to do so to the Virginia Department of Transportation despite the roadway's access to the most significant economic assets in Prince George's County; and

i. MDOT SHA's plan to use four-hour analysis periods—as opposed to a longer analysis period with more qualitative assessment tools than the VISSIM multi-modal traffic flow simulation software— to evaluate congestion is squarely at odds with the purpose and need's statement that both I-270 and I-495 remain congested for seven to ten hours each day.

Despite M-NCPPC raising the aforementioned points in previous correspondence, MDOT SHA has failed to consider our recommendations. Instead of developing more rigorous data analysis, MDOT SHA has eschewed the insight gleaned from the Intercounty Connector (MD-200) project, leaving the cooperating agencies and public without sufficient information to ensure that

the NEPA review process achieves the Study's goals and protects parkland and other sensitive resources.

Again, M-NCPPC acknowledges the necessarily more limited role of the initial stages of NEPA review and fully expects MDOT SHA to perform a complete and thorough alternatives and impacts analysis through the development of the EIS. Still, the groundwork for that full analysis should have been laid in defining the purpose and need and selecting the ARDS; MDOT SHA should employ a rigorous approach backed by accurate and reliable analysis prior to eliminating from further consideration alternatives that will have no or a lesser impact on parkland and other sensitive resources. Having retained for further study only alternatives with similar impacts to parkland, MDOT SHA has failed to meet its burden to take a "hard look" throughout the NEPA review process.[22]

7. MDOT SHA has withheld material information from cooperating agencies and the public.

By law, MDOT SHA must "make information available to the participating agencies as early as practicable in the environmental review process regarding the environmental and socioeconomic resources located within the project area and the general locations of the alternatives under consideration."[23] Congress has specifically recognized that, in the context of large transportation projects, the essential information that agencies may make available includes "geographic information systems mapping."[24] Despite statutory requirements and repeated requests by M-NCPPC staff, MDOT SHA has not provided the available geographic information systems mapping coordinates that are used to refine the project's limits of disturbance beyond the rudimentary map published on the project's website.[25] As a result, M-NCPPC staff and the public cannot identify the footprint of the project's disturbance with any meaningful degree of precision. Similarly, MDOT SHA has refused to provide origin/destination data that would allow M-NCPPC staff and the public to understand MDOT SHA's basis for studying the terminus at MD-5. By refusing to provide this essential information to M-NCPPC, other participating agencies, and the public, MDOT SHA has fallen woefully short in its duty to disclose promptly the information upon which it bases its major decisions.[26]

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[22] *See Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 170 (4th Cir. 2018) (Forest Service violated NEPA by failing to study alternative off-forest routes at the alternatives stage and failing to consider landslide risks, erosion, and degradation of water quality in FEIS); *see also Great Basin Res. Watch v. BLM*, 844 F.3d 1095, 1100 (9th Cir. 2016) (BLM failed to address plaintiff environmental groups' concerns throughout the NEPA review process, including concerns about impacts to water quality and funding for long-term mitigation and reclamation).

[23] 23 U.S.C. § 139(h)(2).

[24] *Id.*

[25] Md. Code Ann., Land Use § 15-304(a) (State officials are obligated to furnish the M-NCPPC with information required for its work "[w]ithin a reasonable time after the [agency] makes a request").

[26] *See Conservation Law Found. v. FHA*, 630 F. Supp. 2d 183, 214 (D.N.H. 2007) (agencies may not "withhold information from the public that leaves it with the mistaken impression that the selected alternative will be substantially more effective in achieving" a project goal than may actually be the case); *Sierra Nev. Forest Prot. Campaign v. Weingardt*, 376 F. Supp. 2d 984, 992-93 (E.D. Cal. 2005) (agency's failure to "provide essential

8. MDOT SHA has not convened the required principals meeting with M-NCPPC in this case.

MDOT SHA insinuates in the Follow Up Response that a "Principals Plus One" meeting occurred recently on June 3. That characterization is untenable for several reasons.

First, MDOT SHA has never provided the M-NCPPC Chair and Vice-Chair with any notice that a Principal Plus One meeting was being scheduled or convened. To the contrary, as you are aware, the June 3 meeting was convened on a core premise that our staff would meet with MDOT SHA staff to accommodate your desires to discuss an informal "sneak preview" of the staff recommendations to the agency's governing body. Any *post hoc* attempt to re-characterize the significance of the June 3 meeting would run afoul of the mandate that M-NCPPC's participation in the scoping process must be meaningful.[27] Second, even during the meeting, Vice Chair Anderson and others attending it expressly disclaimed that they had any authority to attend a Principal Plus One meeting before M-NCPPC's governing body had taken a formal position. Third, given the context and extremely rushed timing of MDOT SHA's request to meet on June 3, it would have been unreasonable *per se* to expect the M-NCPPC to participate fully in a Principal Plus One meeting on such short notice and, for that reason alone, our staff would not have agreed to take the meeting under any such understanding.

Accordingly, this letter also constitutes our formal request that MDOT SHA convene a meaningful Principal Plus One meeting with M-NCPPC, and otherwise comply with its obligation to "[u]se the environmental analysis and proposals of [M-NCPPC] to the maximum extent possible consistent with [MDOT SHA's joint] responsibility as [a] lead agency."[28]

* * *

Should you have any questions regarding the concerns raised above, please contact our agency liaisons designated for this project, Debra Borden and Carol Rubin, respectively. Also, please

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information, already in the hands of the agency" violated the requirement in 40 C.F.R. §1501.4(b) to "involve environmental agencies, the applicant, and the public, to the extent practicable."); U.S. DEPT. OF TRANSP., COLLABORATIVE PROBLEM SOLVING: BETTER AND STREAMLINED OUTCOMES FOR ALL 5.3, App'x F (rev. 2006), *available at* https://www.environment.fhwa.dot.gov/Pubs_resources_tools/resources/adrguide/adrguide.pdf (agencies should "[b]e open and forthcoming; [and] share information, ideas and concerns," while exercising "good faith" to "provide information and decisions when promised").

[27] *See e.g. International Snowmobile Mfrs. Ass'n v. Norton*, 340 F. Supp. 2d 1249, 1263 (D. Wyo. 2004) (court rejected lead agency's "*pro forma* compliance with NEPA procedures [and] *post hoc* rationalizations as to why and how the agency complied with NEPA"). (Citations omitted.)

[28] 40 C.F.R. §§ 1501.6 (a)(2)-(3) and 1508.5; *see also, e.g., Colorado Envtl. Coal. v. Office of Legacy Mgmt.*, 819 F. Supp. 2d 1193, 1215-16 (D. Colo. 2011) (recognizing that a state agency may be a cooperating agency), *amended on reconsideration*, No. 08-CV-01624, 2012 WL 628547 (D. Colo. Feb. 27, 2012); Council on Envtl. Quality, *Designation of Non-Federal Agencies to Be Cooperating Agencies in Implementing the Procedural Requirements of the National Environmental Policy Act* (July 28, 1999), *available at* https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ceqcoop.pdf (same).

contact us regarding scheduling the appropriate Principals Plus One meeting as soon as possible. Thank you for your consideration in this matter.

Sincerely,

Elizabeth M. Hewlett

Elizabeth M. Hewlett
Chair

Casey M. Anderson
Vice-Chair

cc: Adrian R. Gardner, General Counsel
M-NCPPC
Andree M. Checkley, Director
Prince George's County Planning Department
Darin D. Conforti, Director
Prince George's County Department of Parks and Recreation
Michael F. Riley, Director
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Montgomery County Planning Department
Diane Sullivan, Director,
Urban Design & Planning Review Div, , National Capital Planning Commission

THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION
6611 Kenilworth Avenue • Riverdale, Maryland 20737

November 27, 2019

Ms. Jeanette Mar
Environmental Program Manager
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Ms. Lisa Choplin, Director
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Re: I-495/I-270 Managed Lanes Study – Alternatives Retained for Detailed Study

Dear Mses. Mar and Choplin,

We are writing to respond to your request for the Maryland-National Capital Park and Planning Commission ("M-NCPPC" or "the Commission") to state whether as a Cooperating Agency for the I-495 & I-270 Managed Lanes Study ("Study") we concur with the revised *Alternatives Retained for Detailed Study* ("ARDS") Paper issued by the Maryland Department of Transportation State Highway Administration ("SHA") and the Federal Highway Administration (FHWA) on October 16, 2019. For the reasons described below, we are unable to provide our concurrence to the revised ARDS paper in light of the lack of response to our previous comments or requests for additional information.

I. Background

On May 22, 2019, SHA issued the list of *Alternatives Retained for Detailed Study – Revised* 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, reviewed the ARDS and expressed its non-concurrence and reasons for the same by letter to you dated June 12, 2019. We exchanged further correspondence in which we outlined our concerns regarding the Study's deficiencies under the National Environmental Policy Act ("NEPA") on June 28, 2019 and July 21, 2019.

On October 16, 2019, SHA and FHWA issued a "Revised ARDS Paper." The Paper eliminated from further study Alternative 5, which would add one High Occupancy Toll ("HOT") managed lane in each direction on I-495 and convert 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 its MD 200 Diversion Alternative Analysis, which 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, SHA officials briefed the Commission at a public meeting regarding the revised ARDS list. At that meeting, Commissioners reaffirmed their previous concerns regarding project segmentation, project termini, the failure to consider transit and Transportation System Management ("TSM") alternatives and the failure to consider a range of alternatives. Commissioners also reiterated their requests for information that would enable M-NCPPC to exercise its responsibilities as a Cooperating Agency and determine whether to concur or raise objections to the ARDS.

II. Comments

As an initial matter, the Revised ARDS Paper does not address the concerns we raised regarding the previous version of the ARDS Paper. First, the project termini do not adequately account for local transportation problems or travel demands and constraints on I-495 and I-270. Second, the Study Area fails to consider impacts to key stretches of I-270 (from Rockville to Frederick) and I-495 (from MD-5 to the Woodrow Wilson Bridge). Third, the Revised ARDS lack meaningful transit and TSM elements. Fourth, you have not expanded the ARDS to include alternatives that would have fewer impacts on parkland.

Rather than address our concerns and broaden the list of ARDS, you have narrowed the list by eliminating Alternative 5, which is the alternative that presumably would have the fewest environmental impacts. You also declined to add the MD 200 Diversion Alternative to the list of ARDS, which also presumably would have fewer environmental impacts while providing some traffic relief. In rejecting these two alternatives, you make broad assertions that the alternatives would not meet the project's Purpose and Need because they would not address traffic relief and are not financially viable, when compared with the other alternatives.

By eliminating these alternatives from further study, MDOT SHA effectively forecloses any hope of assessing whether the benefit of fewer environmental impacts objectively may outweigh the cost in traffic relief or funding. Further, as we elaborate below, because MDOT SHA is not providing us with the documentation upon which its conclusions are based, we are not able to fulfill our statutory mandate and independently assess whether your statements are correct and

whether you should study these and other alternatives that would have fewer environmental impacts, including impacts on parkland.

III. Request for Necessary Information

As you know, for purposes of the project, the Commission is a Cooperating Agency "with jurisdiction by law" because of its statutory planning responsibilities within the State of Maryland's Regional District, as well as obligations prescribed by the Capper-Cramton Act and other provisions of Maryland law. [1] To enable us to fulfill our mandate, our agency needs information that has not been provided despite several requests, and we accordingly renew those requests again now. For a complete list of the information necessary for our team to proceed with all due diligence, please see Attachment A to this letter which incorporates several previous document requests that remain outstanding as well as a handful of new ones.

* * *

As we have previously stated, our objective is to work with you to advance the I-495/I-270 Managed Lanes Study. To do that, however, we require material information that is essential to meeting our responsibilities as a Cooperating Agency. Please provide the requested information with reasonable dispatch.

Sincerely,

Elizabeth M. Hewlett
Chair

Casey M. Anderson
Vice-Chair

[1] 23 C.F.R. § 771.111(d) (designation of cooperating agencies); Md. Code Ann., Land Use Art. § 15-302 (1) and (3) ("Commission is the representative of the State for purposes of… "developing [certain] land or other property" [and] "complying with § 1(a) and (b) of the Capper-Cramton Act, Public Law 71-284, 46 Stat. 482"); Md. Code Ann., Land Use Art. § 20-301 (mandatory review by Commission required for "changing the use of or widening, narrowing, extending, relocating, vacating, or abandoning" any highway, park and certain other public projects within the Maryland-Washington Regional District).

cc: Adrian R. Gardner, General Counsel
M-NCPPC
Andree M. Checkley, Director
Prince George's County Planning Department
Debbie Tyner, Acting Director
Prince George's County Department of Parks and Recreation
Michael F. Riley, Director
Montgomery County Department of Parks
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Urban Design & Planning Review Div., National Capital Planning Commission

Attachment A
Letter to Mses. Mar and Choplin
Dated November 27, 2019
Re: Revised ARDS Paper Released on October 16, 2019

1. Terminus Concerns/Logical Termini documentation, including correspondence, notes or reports of any communications between MDOT and the Virginia Department of Transportation with regard to the logical terminus of the I-495 & I-270 Managed Lanes Study concerning connecting I-495 managed lanes to the Woodrow Wilson Bridge.
2. All Origin/Destination data
3. Financial Data with regard to segmentation of the various project areas, including the basis for the I-270 North study on a stand-alone basis, data supporting MDOT SHA's financial conclusions for the ICC Alternative, Alternative 5, and the ARDS as a comparison.
4. Traffic and revenue analyses, including financial and tolling information produced internally, procured from consultants, or outside sources, or prospective bidders all related to various parts of the project, including for each of the ARDS, Alternative 5 and the MD 200 Diversion Alternative, with assumptions about which parts are necessary to subsidize other parts of the project.
5. Inputs that were assumed or outputs of the algorithm calculated to establish what tolls are necessary to keep the managed lanes running at minimum speeds of 45 mph.
6. Written "commitments" for access points to the Managed Lanes.
7. Correspondence or other documentation between FHWA and MDOT SHA concerning removal of Alternative 5 from the ARDS.
8. GIS ROW Layer (We need these updated as they create them based on our ongoing impact meetings.)
9. GIS LOD layer for alternatives (We need these updated as they create them based on our ongoing impact meetings.)
10. SWM Report, including existing and proposed SWM impacts to Park property
11. Design files and GIS Layers that show LOD, SWM, edge of pavement, property lines, grading, outfall repairs, retaining walls, culverts and other specific coordinates for purposes of determining impacts to parkland.
12. Updated Plan sheets/PDFs/CAD Files for all Park impacts. These are similar to the design files that SHA has provided for *some* of the park areas.
13. Forecasted vehicle data (peak hour trips using the ML facilities by segment) and projected travel time savings supporting MDOT SHA's financial conclusions for the ICC Alternative, Alternative 5, and the ARDS as a comparison
14. Traffic Modelling with detailed information on the modeling process used to simulate the Managed Lanes and the resulting peak hour vehicle flows on the Managed Lanes

facilities by segment, where they reach their peak flow/speed (45 mph travel speed) based on this demand estimation

15. Archaeological and historic resource survey forms, analyses, and reporting