

[M-NCPPC letterhead]

June [xx], 2021

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

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

Re: I-495/I-270 Managed Lanes Study – Request for Concurrence with Selection of Alternative 9: Phase I South as the New Recommended Preferred Alternative

Dear [Ms. Mar and Mr. Smith],

We are writing to respond to your request for concurrence from the Cooperating Agencies, including the Maryland-National Capital Park and Planning Commission (“M-NCPPC” or the “Commission”), on the New Recommended Preferred Alternative (“RPA”) for the I-495/I-270 Managed Lanes Study (“Study”). M-NCPPC believes that revising the preferred alternative to focus “solely on building a new American Legion Bridge and delivering two high occupancy toll (HOT) managed lanes in each direction on Phase 1 South: American Legion Bridge I-270 to I-370 with no action at this time on I-495 east of the I-270 eastern spur” is a step in the right direction. Until the State Highway Administration (SHA) takes legally dispositive action under the National Environmental Policy Act (“NEPA”), however, the Commission must reserve its right to object to the proposed project. In short, until M-NCPPC can review the Supplemental Draft Environmental Impact Statement (“SDEIS”) to determine the extent of environmental review required for future phases, the Commission cannot concur with the New RPA.

In addition, the Commission reiterates its concerns regarding the absence of a specific and binding commitment to a meaningful transit component; the failure to fully analyze opportunities for transportation demand management; the flawed scope of the project’s stated purpose and need, the inadequate consideration of environmental justice concerns; and the need to address impacts to Commission parkland and other cultural and historic resources within Phase 1. Even though SHA has indicated repeatedly that concurrence with the RPA is not an endorsement of the

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preferred alternative for purposes of the NEPA process, such concurrence certainly would provide a basis for SHA to propose limiting or eliminating analysis of other alternatives, including transit and TDM. As further explained below and in the Commission's previous correspondence with SHA, the lack of detail SHA has provided raises questions that SHA must address in the SDEIS or otherwise.

I. Background

In November 2018, SHA and the Federal Highways Administration ("FHWA") issued their Purpose and Need Statement for the Study. The Commission did not concur with the Purpose and Need Statement because its artificially narrow scope excluded substantive consideration of alternatives that would address congestion with fewer environmental and parkland impacts. On May 22, 2019, SHA issued its list of Alternatives Retained for Detailed Study – Revised ("ARDS") for the Study and requested concurrence from the Cooperating Agencies. The Commission expressed its non-concurrence and reasons for the same by letter dated June 12, 2019. The Commission provided further correspondence in which we outlined our concerns regarding the Study's deficiencies under NEPA on June 12, 2019, June 28, 2019 and July 22, 2019.

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

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

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On July 10, 2020, SHA and FHWA formally published the DEIS and Draft Section 4(f) Evaluation for the Study. On November 6, 2020, the Commission submitted public comments, again reiterating its concerns about key environmental aspects of the Study.¹

Despite offering to engage in mediation with the Commission in an attempt to resolve issues regarding the impacts of the alternatives SHA was studying, SHA announced in January 2021 it was selecting Alternative 9 as the RPA for the Study. Alternative 9 would have added four HOT lanes to I-495 and I-270—two in each direction. Several weeks later, SHA announced selection of Accelerate Maryland Partners, LLC as the Study’s P3 partner.

On May 12, 2021, SHA announced that “after several months of continuous collaboration and listening to agency partners, public officials and stakeholders, [FHWA and SHA] have identified Alternative 9: Phase 1 South as the new Recommended Preferred Alternative (RPA) for the Managed Lanes Study (MLS).” According to the announcement, the New RPA would solely involve construction of a new American Legion Bridge and two HOT lanes in each direction on the American Legion Bridge I-270 to I-370 and that there would be “no action at this time on I-495 east of the I-270 eastern spur. FHWA and SHA further announced they would issue a SDEIS for Alternative 9: Phase 1 South in late summer 2021. Of note, the notice further states that “MDOT SHA and FHWA continue to consider all comments that were received as part of the DEIS and public hearings held last fall and continue to work with agencies and stakeholders to avoid and minimize impacts to the environment and the communities in the study area. The agencies will respond to substantive comments received on both the DEIS and the SDEIS in the study’s combined Final Environmental Impact Statement/Record of Decision (FEIS/ROD).”

II. The New RPA Raises New Questions

The lack of detail provided by SHA and FHWA regarding the New RPA raises several new questions. First, it is unclear how SHA and FHWA intend to memorialize the New RPA, leaving the Commission wondering exactly what it is being asked to endorse. The Commission wants to ensure that by responding to substantive comments made by interested parties to the broader Purpose and Need, SHA and FHWA will not be able to justify conducting a less rigorous environmental review of future phases. In particular, we raise concerns that SHA and FHWA would be able to take the position that it only is required to undertake an Environmental Assessment versus an EIS for future phases and rely on the findings of the broader Purpose and Need Statement and EIS process for the Study culminating in the selection of the New RPA.

Second, it is not clear how the New RPA meets the Study’s Purpose and Need Statement, or whether the Statement now needs revision. For example, SHA should explain how movement of goods and services—one of the Study’s stated needs—is served since tractor trailers crossing the

¹ On [date], the Army Corps of Engineers (“Corps”) and Maryland Department of the Environment (“MDE”) also issued public notice of availability of the Joint Permit Application (“JPA”) for the Study. While the Commission provided comments raising objections to these permits, the Corps and MDE subsequently withdrew the Permit Application indicating it would not pursue a permit covering the entire study area.

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American Legion Bridge into Virginia would not be able to access the HOT lanes where such trucks are prohibited from using managed lanes. Additionally, some of the traffic models were flawed in their analysis of tractor trailer travel during uncongested off-peak hours.

III. M-NCPPC's Outstanding Concerns Should Be Addressed in the Supplemental Draft Environmental Impact Statement or Otherwise

Of primary concern to the Commission is that the New RPA still is expected to take or damage certain Capper Cramton Act ("CCA") parkland, i.e., the parkland surrounding the Clara Barton Parkway, in which the Commission has a significant interest. Therefore, we reiterate our previously stated concerns about the need to comply with the CCA.

Next, the New RPA still lacks specific, binding, and adequate multi-modal and transit elements that are essential for: reducing the need for additional road capacity; limiting impacts to natural, cultural and historic resources; and serving the public interest in environmental justice. The New RPA and DEIS should address funding sufficient to construct transit options developed at the local level, for example, improvements included in the Corridor Forward Plan, MARC rail improvements, and structural enhancements to the American Legion Bridge to accommodate passenger rail. By contrast, SHA's proposal to include a \$300 million contribution by Transurban, along with the other proposals for allowing buses in the managed lanes, adding bus capacity at the Shady Grove Metro station, and expanding the Park and Ride infrastructure at the Westfield Montgomery Transit Center simply are inadequate. In addition, it is essential for SHA to eliminate any impediment to the addition of new transit service between Virginia and Maryland, even if that means modifying any contractual limitations imposed on such transit under Virginia DOT's contract with its P3 vendor.

The SDEIS also should include specific analysis around the impacts of the New RPA on environmental justice, including the implications of toll charges for racial and socioeconomic equity, and fully describe the outreach the lead agencies have conducted or will conduct with relevant communities. SHA and FHWA have proceeded to date on the highly questionable assumption that HOT lanes would offer environmental justice communities the same benefits as the broader population without any drawbacks. Travel on managed lanes will be limited to those who can pay, carpool or use express buses, and the lack of meaningful outreach to environmental justice communities precludes a complete understanding of whether their needs would be served by the proposed project.

SHA also should provide the results of any traffic modelling demonstrating that the New RPA will not simply move the bottlenecks as they currently exist to a different location, e.g., on I-270 north of Rockville where the managed lanes for Phase 1 South end or at the point where I-270/495 merge. SHA's modelling should show whether any such bottlenecks can be resolved through transportation demand management approaches such as adding dynamic signage directing north-bound drivers from the American Legion Bridge to take I-270 at the split and use the ICC to points north, including Baltimore (i.e., assigning I-495 as "local serving" and I-

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270/ICC as more direct access to I-95 and north toward Baltimore), and vice versa for Baltimore-American Legion Bridge drivers. The purpose is to assure that Phase 1 is not creating a pressure point to compel construction of future phases and instead maximize use of the ICC to avoid creating such new bottlenecks. Furthermore, SHA has not explained how it plans to address the potential for disruption created by an eight-lane northbound segment of I-270 that will abruptly narrow to two lanes at the northern limit of Phase 1.

Next, financial viability concerns remain and may in fact have been exacerbated by SHA's proposed slimmed-down RPA given its reliance on toll revenue. SSHA has not provided the basic cost for the proposed project with a delivery model other than the P3 or considered the possible advantages of using federal infrastructure to provide additional transit as part of the project or reduce financial and other risks to the public that are inherent to the use of a P3.

Finally, SHA previously indicated it would analyze changes in traffic patterns due to larger numbers of commuters working from home during and after the Covid-19 pandemic. That analysis must be included in the SDEIS and support the RPA.

* * *

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

Sincerely,

Elizabeth M. Hewlett
Chair

Casey M. Anderson
Vice-Chair