



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

6611 Kenilworth Avenue • Riverdale, Maryland 20737

August 2, 2022

Gregory Murrill  
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U.S. Department of Transportation  
Federal Highway Administration  
Maryland Division  
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31 Hopkins Plaza  
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Baltimore, MD 21201

Tim Smith  
Administrator  
Maryland Department of Transportation  
State Highway Administration  
Mailstop C-400  
MDOT State Highway Administration  
PO Box 717  
Baltimore, MD 21203-0717

Re: I-495 & I-270 Managed Lanes Study – Supplemental Draft Environmental Impact Statement

Dear Mr. Murrill and Mr. Smith:

The Maryland-National Capital Park and Planning Commission (“M-NCPPC” or “the Commission”) submits the following request to allow additional time for issuance of the Record of Decision (“ROD”) by the Maryland Department of Transportation State Highway Administration (“MDOT SHA”) and the Federal Highway Administration (“FHWA”) (collectively the “Lead Agencies”) for the I-495 & I-270 Managed Lanes Study (the “Project”). The Commission is concerned that there is not enough time between the release of the Final Environmental Impact Study (“FEIS”) and FHWA’s issuance of the ROD to allow for the Mandatory Referral process to occur, as mandated by Maryland law.<sup>1</sup> The FEIS was released to the public on June 17, 2022 and according to the Permitting Dashboard website, the ROD is due to be released on August 5, 2022.<sup>2</sup> As of today’s date, the Commission still has not received a

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<sup>1</sup> Md. Ann. Land Use Code §20-301 et seq.

<sup>2</sup> According to the Permitting Dashboard, <https://www.permits.performance.gov/proj/i-495i-270->

Mandatory Referral application to review the FEIS as required by Maryland law. We are concerned that the ROD may be issued before the Mandatory Referral, in contravention of both the letter and spirit of the law.

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.<sup>3</sup> The Lead Agencies engaged M-NCPPC as a Cooperating Agency to provide input regarding the environmental impacts of the Project. To fulfill its role as a Cooperating Agency, M-NCPPC must ensure that the Project is undertaken in compliance with NEPA and that M-NCPPC complies with its own mandates under state and federal law. As a Cooperating Agency, M-NCPPC staff has taken its responsibilities seriously by fully engaging with the Lead Agencies and the Interagency Working Group established by the Lead Agencies during every stage of review of the Project.

Mandatory Referral is a statutory review process in which all public sector development projects (federal, state, and local governments) and public and private utilities that are proposed in the Regional District are referred to the Planning Board for review. The statute allows the Commission no more than 60 days to complete the review and issue its decision and recommendations. The Planning Board's decision and recommendations are advisory only. An applicant is simply required to respond to the Planning Board's recommendations, and then the public agency may proceed with the proposed project.

The Mandatory Referral statute states:

Subject to §§ 20-303 and 20-304 of this subtitle, a public board, public body, or public official **may not conduct any of the following activities** in the regional district unless the proposed location, character, grade, and extent of the activity is referred to and approved by the Commission:

- (1) acquiring or selling land;
- (2) locating, constructing, **or authorizing:**

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[managed-lanes-study/environmental-impact-statement-eis-0](#)

<sup>3</sup> The Maryland Court of Appeals has outlined M-NCPPC's regional functions as follows:

The [M-NCPPC], as its name suggests, administers parks, public recreation, and, in conjunction with the governments of Prince George's and Montgomery counties..., participates in the planning of development within the [Maryland-Washington Regional District]. Among other things, [a Maryland statute] authorizes the MNCPPC to: (1) acquire property for parks, forests, roads, and other public spaces; (2) rename streets and highways and number and renumber houses within the district to fix mistakes, remove confusion, and establish uniformity; (3) acquire, improve, and manage land for flood control purposes; (4) establish road grades in Montgomery County; and, (5) recommend amendments to the zoning laws and subdivision regulations.

*Cty. Council of Prince George's Cty. v. Zimmer Dev. Co.*, 120 A.3d 677, 699 (2015) (internal citations omitted).

- (i) a road;**
- (ii) a park;**
- (iii) any other public way or ground;**
- (iv) a public building or structure, including a federal building or structure; or**
- (v) a publicly owned or privately owned public utility; or**
- (3) changing the use of or widening, narrowing, extending, relocating, vacating, or abandoning any facility listed in item (2) of this section. (emphasis added).**

Clearly, Mandatory Referral applies to the Managed Lanes project and it applies at every stage of the project including “locating, constructing, or authorizing.” As it is with many complex public projects with multiple stages in their development and implementation – more than one Mandatory Referral application may be necessary to consider, for example, the change in use of an existing facility or site selection for a new facility, and later to consider detailed design and construction proposals. Each stage in the life of a project raises different issues for the community, many of which are unknown at the earlier stages of development.

Commission staff has raised these issues and explained the Mandatory Referral process to the MDOT/SHA project team several times and in many forums, including in our official comments submitted for administrative and final drafts of the ARDS, DEIS, SDEIS and the administrative draft FEIS. Several MDOT/SHA responses to our comments throughout the review process have deferred resolution of issues to the FEIS. Many transportation, environmental justice and historic preservation (Section 4(f) and Section 106) comments were deferred to the FEIS in this manner. As a result, in several notable instances,<sup>4</sup> the FEIS presented new information with no opportunity for public or agency comment.<sup>5</sup> This is exactly the outcome that we anticipated in our previous comments and which we found ill-advised. The Commission had thought the Mandatory Referral could fill this gap by providing an opportunity for public comment on the FEIS, while also fulfilling the Commission’s statutory role to review the “authorization” of this Project before it officially occurs.

A relatively short delay in issuance of the ROD would allow time for comments on the FEIS noted by the Commission and others to be fully vetted in a public forum prior to the ROD. A delay for this purpose would seem to be in the best interest of all stakeholders, not just M-NCPPC.

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<sup>4</sup> See MNCPPC letter to MDOT/SHA and FHWA dated November 30, 2021.

<sup>5</sup> Another example of an outstanding item is the issue of the direct connection from the proposed shared use path along the American Legion Bridge to MacArthur Boulevard. MDOT/SHA has suggested that we resolve this after the ROD is issued, which in our view is simply too late in the process. See email from Caryn Brookman dated July 28, 2022 re: American Legion Bridge Connections.

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M-NCPPC appreciates the Lead Agencies' continued consideration of the comments we have provided throughout this process. The Commission will continue to work with the Lead Agencies to ensure that the Project's impacts to parkland, stream, and wetland resources are avoided, minimized, and mitigated to the maximum extent possible. The Commission simply requests that the Lead Agencies allow time to engage in the required 60-day Mandatory Review process in the proper sequence so that any recommendations generated from the process may be included in the ROD, along with the Lead Agencies' response to those recommendations.

Sincerely,

A handwritten signature in black ink, appearing to read 'Casey Anderson', with a stylized flourish extending to the right.

Casey Anderson  
Chair

CC: Stephanie Pollock, Acting Administrator, Federal Highway Administration  
Jeanette Mar, Environmental Program Manager, Federal Highway Administration,  
Maryland Division