

July 20, 2018

Via Email

TxDOT Houston District Office
Director of Project Development
P.O. Box 1386
Houston, Texas 77251

Re: North Houston Highway Improvement Project – Technical Reports Review

Dear Mr. Allen, P.E., and Mr. Henry, P.E.:

We previously submitted comments regarding the Draft Environmental Impact Statement (DEIS) for the North Houston Highway Improvement Project in support of a coalition of Houston nonprofits and neighborhood groups.¹ We submit these additional comments to the draft technical reports that were posted on June 20, 2018.

We also attach and incorporate the contents of the following documents into the administrative record:

- **Exhibit A:** Comments submitted on behalf of Air Alliance Houston regarding the Draft Mobile Source Air Toxics Quantitative Technical Report;
- **Exhibit B:** Comments submitted on behalf of The Lower Brazos Riverwatch regarding the Draft Water Resources Technical Report, Draft Biological Resources Technical Report, and Draft Waters of the United States Technical Report;
- **Exhibit C:** An Impacts and Solutions Action Plan developed by the Coalition to Make I-45 Better (April 13, 2018);

¹ The Coalition Letter included participation by: Air Alliance Houston, Avenue CDC, Bayou City Waterkeeper, BikeHouston, Buffalo Bayou Partnership, Eastwood Civic Association, Freedmen's Town Preservation Committee, Friends of Woodland Park, Galveston Bay Foundation, Germantown Historic District, Greater Heights Super Neighborhood 15, Heritage Society, Hermann Park Conservancy, Houston Parks Board, I-45 Coalition, LINK Houston, Montie Beach Civic Club, Museum Super Neighborhood 66, Scenic Houston, Trees for Houston, Washington Avenue Coalition/Memorial Park Super Neighborhood 22, White Oak Bayou Association, and Woodland Heights Civil Association. The Lower Brazos Riverwatch also submits comments that are incorporated into this letter.

- **Exhibit D:** An Impacts and Solutions Powerpoint developed by the Coalition to Make I-45 Better (April 25, 2018); and
- **Exhibit E:** A White Oak Bayou Preliminary Drainage Analysis prepared by Huitt-Zollars, Inc., for the Houston Parks Board that was commissioned in support of work for the Coalition to Make I-45 Better (July 12, 2018).

We request that TxDOT review and seriously consider these comments and the attached materials as it continues to develop the North Houston Highway Improvement Project, considers the impacts of the project, evaluates required mitigation for impacts, and develops future documents pursuant to the National Environmental Policy Act (NEPA).

Comments

NEPA encourages lead agencies to make diligent efforts to involve the public in preparing and implementing NEPA procedures that involve decisions that affect the community. The North Houston Highway Improvement Project is a significant project that will change the City of Houston and surrounding communities for decades. Strict compliance with NEPA and other environmental review laws, emphasizing public involvement and mitigation for unavoidable impacts, is critical. Given the scale of the project and its location, the project must mitigate and minimize negative impacts. Specifically, the project must ensure that it does not cause or worsen flooding; must protect children in our schools and families in our neighborhoods; must avoid disproportionate adverse impacts on low-income communities and communities of color; must protect our air, water, and park spaces; and must maximize greenspace opportunities.

These comments are cumulative of those made previously on the DEIS. In commenting on the recently released reports, we reserve the right to comment on any aspect of the EIS documents until the full DEIS, revised DEIS, or supplemental DEIS record is complete.

A. Procedural Issues

In our July 27, 2017 comment letter, we identified a number of substantive deficiencies in the DEIS related to important issues, including parks; environmental issues including noise, air quality, water quality, and drainage; safety and connectivity for pedestrians and cyclists at urban interfaces; visual impacts; and community and environmental justice. Additionally, the DEIS made clear that TxDOT was deferring some substantive aspects of its review and dissemination of information until the Final Environmental Impact Statement (FEIS).

In light of these issues, we urged TxDOT to engage the public and then to publish additional documentation under NEPA, be it in the form of a revised draft EIS or a supplemental draft EIS, for public review and comment. We expressed concern that if the substantive deficiencies related to the project were not corrected until, and released with, the FEIS, then the public would not have sufficient time and opportunity to provide meaningful feedback to the agency.

Following the publication of the DEIS, TxDOT continued preparing “draft technical reports” for the Final EIS. On June 20, 2018, six of these draft technical reports were made available for public comment on the project website. As far as we can determine, no formal notice of these reports was provided in the Federal Register.

While we appreciate the opportunity to comment on these draft technical reports, we object to the process adopted by TxDOT to date, and to the format and content of the draft EIS and draft technical reports.

Federal Highway Administration (FHWA) regulations state that it is the policy of the Administration that “all environmental investigation, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental review document required by [its] regulation.”² 23 C.F.R. § 771.105; *see also* 40 C.F.R. § 1502.9 (Council on Environmental Quality (CEQ) regulation stating that environmental impact statements “shall” be prepared in two stages—draft EISs and final EISs—but may be supplemented in the form of revised drafts). These regulations also clarify what is required in a draft EIS. In addition to evaluating all reasonable alternatives, the draft EIS “shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive Orders” to the extent that it is appropriate. 23 C.F.R. § 771.123(c).

CEQ regulations and guidance contemplate the use of appendices to contain lengthier technical discussions of modeling methodology, baseline studies, or other work demonstrating compliance with environmental requirements. *See, e.g.*, 40 C.F.R. § 1502.10 (CEQ regulation requiring a standard format for environmental impact statements, including appendices, unless the agency determines there is a compelling reason to do otherwise); FHWA’s Technical Advisory on NEPA Documents (T6640.8A) (recommending the use of this format). However, if an agency does prepare an appendix, then it “shall” consist of material “prepared in connection with an environmental impact statement” and be “circulated with the environmental impact statement or be readily available on request.” 40 C.F.R. § 1502.18; *see also* 40 C.F.R. § 1502.25 (requiring that, to the fullest extent possible, agencies “shall” prepare DEISs “concurrently with and integrated with environmental impact analyses and related surveys and studies required by . . . environmental review laws and executive orders”).

These regulations contemplate and require a clear structure for environmental impact statements created in accordance with NEPA. The statute and its implementing regulations require a single environmental review document. The body of the draft EIS must include a statement of all information on environmental impacts and alternatives that the decisionmaker and public need, as well as an explanation or summary of methodologies of research and modeling, and the results of any research conducted to analyze impacts and alternatives. Council on Environmental Quality, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” Question 25, (March 1981). However, the draft EIS can include lengthy technical discussions of methodology, baseline studies, or other material in

² TxDOT has assumed the Secretary of Transportation’s responsibilities for compliance with the National Environmental Policy Act (NEPA) with respect to highway projects requiring an EIS. *See* Memorandum of Understanding Between the Federal Highway Administration and TxDOT (Dec. 16, 2014).

reports in the appendix. *See id.* But a plain language summary of these reports, their analysis, and their conclusions “should go in the text of the EIS.” *Id.* In other words, the body of a draft EIS and any accompanying technical reports should be produced concurrently and should be made public for review and comment during the formal comment period for the draft EIS, any supplemental draft EISs, and the final EIS. This process helps ensure that the public has access to all of the information required under NEPA and the studies required by environmental review laws and that supporting technical information is made public at the same time for formal review and comment.

These regulations do not support TxDOT’s piecemeal approach undertaken for the North Houston Highway Improvement Project. The draft EIS for this project contained a number of technical reports in its appendix, but many of these reports deferred substantive analysis until the creation of the FEIS. *See generally* Irvine & Conner Comment Letter (July 27, 2017). Now TxDOT is substantially updating and preparing new technical reports, purportedly for the FEIS, but is not concurrently supplementing the DEIS with an explanation or summary of this new information. The reports are being made public, but there has been no formal notice provided under NEPA in the Federal Register.

In other words, TxDOT is inventing its own procedure and process. The technical reports have notations such as “prepared for the FEIS” and references other sections of the (not-yet-completed) FEIS, making clear that these reports will be appended to the FEIS. This is not sufficient under the law. If this NEPA documentation were prepared by FHWA under its own process, then the agency would either prepare these reports in conjunction with the DEIS and take formal comments or would issue a supplemental DEIS that included these reports and take formal public comments. TxDOT’s actions do not comply with NEPA’s requirements, FHWA regulations, or CEQ regulations that the agency agreed to implement pursuant to the memorandum of understanding delegating authority to TxDOT.

The information and analysis required by environmental review laws should be included in an original or a supplemental NEPA document. An agency cannot piecemeal technical information that was omitted from, or incomplete in, the DEIS as the agency prepares the FEIS. NEPA documents produced for other major transportation projects confirms this process. *See, e.g.,* The Alaskan Way Viaduct and Sewall Replacement Project (Washington State DOT) (issuing two supplemental DEISs after considering analysis in the DEIS, public comments, agency comments, and updates and refinements to proposed alternatives before the publication of an FEIS).

NEPA’s mandate must be interpreted and applied “to the fullest extent possible.” 42 U.S.C. § 4332. TxDOT should comply with this mandate and follow the process required under FHWA and CEQ regulations.

B. Air Impacts

We support and incorporate the comments submitted on behalf of Air Alliance Houston on the Draft Mobile Source Air Toxics (MSAT) Quantitative Technical Report.

The draft report notes that there may be localized areas where ambient concentrations of MSAT could be higher under the Build Alternative than the No Build Alternative, but the magnitude and duration of these increases cannot be reliably quantified due to incomplete or unavailable information. The report aggregates emissions across the 8-county transportation management area network and fails to address more localized areas where MSATs may increase by 5% or more. It is important to understand these localized areas because they may house sensitive receptors, including schools, communities already exposed to higher levels of air pollution, and areas used for outdoor activity. We are particularly concerned with the intersection of air pollution, public health, and environmental justice. Since the EIS must analyze impacts to environmental justice communities, it is important that the final report attempt to quantify in greater detail the expected air quality impacts (and difference between no-build and build alternatives) on these communities.

We ask that TxDOT make all data used to perform its quantitative analysis public, including, but not limited to, the shapefiles used to create Figure 2 in the draft report. We also request that the final report includes more detailed and readable images, especially for areas for which the MSAT emissions may exceed a 5% difference.

C. Water Resources, Biological Resources, and Waters of the United States

We support and incorporate the comments submitted on behalf of The Lower Brazos Riverwatch on the Draft Water Resources Report, the Draft Biological Resources Report, and the Draft Waters of the United States Report.

First, the floodplains analysis continues to analyze impacts in the existing right-of-way and proposed right-of-way in terms of 100-year floodplain impacts. Previous comments on the DEIS requested that TxDOT analyze impacts in terms of the 500-year floodplain. We reassert that request here. Given, in part, the devastating effects of flooding in the Houston area, Harris County and the City of Houston have shifted their thinking when considering project plans and construction activities to the 500-year floodplains. TxDOT is aware of this fact, as other draft technical reports acknowledge that Harris County has adopted new floodplain regulations within the 500-year floodplain. *See* Draft Indirect Impacts Technical Report at 8. We ask that TxDOT's engineering standard for this project shift accordingly, and that future floodplains impact analysis and the future detailed hydraulic study analyze 500-year floodplain impacts and design for these impacts accordingly.

Second, the information provided in the Water Resource Report is very general, incomplete, and includes little project-specific information or analysis. As just a few examples:

- There is no specific discussion about the conditions of waters in the area of impact or the nature of these impacts for surface water.
- There is no detail provided as to what best management practices (BMPs) will be implemented at specific major water crossings or potential unavoidable effects despite the use of construction BMPs.

- There is no specific information provided related to the project's impact on the City's MS4 or effects of the additional load on the receiving waters. A pollutant loading analysis should be performed.

This is information and analysis standardly included in technical reports for transportation projects. We refer the agency to The Lower Brazos Riverwatch's report for additional deficiencies.

Third, there is very little to no project-specific detail provided. TxDOT should collect and review any available information regarding existing storm drainage and combined sewer systems, combined sewer overflow reduction plan documents, detailed maps of existing combined sewer systems, frequency and volumes of combined sewer overflow events, current uses of waterbodies impacted by the project, and third-party data to identify possible pollutants of concern for surface water. There are many available sources of information that could inform the agency of potential impacts to surface water. TxDOT should also undertake its own study and analysis, as is standard in the preparation of DEISs and FEISs, to provide project-specific information on impacts and proposed mitigation.

Fourth, we request that any supporting materials used in these reports be disclosed and made available to the public.

Fifth, TxDOT should provide existing drainage configurations for segments near waterbodies that will be affected by the project. For other projects, departments of transportation have provided maps of these configurations, including any storm overflow structures, shared combined sewer overflow structures, stormwater outfalls, and percentage of pollution-generating impervious surface. The agency should then provide proposed drainage configurations for each alternative along these segments of concern.

Sixth, TxDOT should also undertake further drainage analysis for waterbodies that will be impacted by the project. A recent study, attached to these comments for TxDOT's review and consideration, determined that the proposed I-45 project could potentially increase the 100-year WSE in White Oak Bayou by 0.12 feet. For a large channel like White Oak Bayou, 0.12 feet of rise in WSE is significant and could require significant measures to mitigate and meet the zero rise requirements. More study may be needed to determine potential rise in WSE in waterbodies affected by the project.

Seventh, the information in the Draft Biological Resources Report is similarly too general and insufficient to fully inform TxDOT or the public as to the impacts to biological resources. We request that further disclosure be made related to the December 2017 field survey and request that another survey be made to better determine what specific species use different areas of habitat that will be impacted by the project.

Many comments were made previously in response to the DEIS on the issues of water resources and biological resources. It is not clear if TxDOT has addressed any of these comments in the preparation of these draft technical reports. NEPA mandates a broad dissemination of information to the public and government agencies. This broad dissemination is designed to

encourage public comment and participation, to which the agency (or other applicant) must be responsive. The level of analysis in these draft technical reports, especially given the scale of this project, is wholly inadequate. The failure to consider relevant comments submitted in response to the DEIS well in advance of the publication of these technical reports is unjustifiable. We request that TxDOT consider all relevant comments previously submitted in response to the DEIS as it prepares future drafts of these technical reports.

D. Indirect Impacts

The DEIS did not include a technical report of any kind for indirect impacts but did include a short section in the body of the text concluding that the project would not induce growth. The Draft Indirect Impacts Technical Report, however, concludes that there is an existing moderate to strong potential for future growth in the area of impact (AOI) and that some project-induced land use change is probable. We make the following comments regarding the methodology and conclusions in this technical report.

First, we request that TxDOT follow-up with the agencies and districts that did not respond to the induced growth/land development questionnaire. It is not unreasonable to assume that these districts will identify additional areas of potential project-induced growth and other indirect effects in localized areas. We also ask that the agency take a hard look at any minimization or mitigation proposals identified by these agencies, districts, and other community groups that could reduce the indirect impacts identified in the report.

Second, the report identified approximately 4,804 acres of potential redevelopment that has indirect induced growth potential. The development of this land could have induced growth impacts in the form of the creation of barriers that disconnect surrounding neighborhoods from Houston's central business district, adverse impacts to environmental justice individuals and communities, impacts to vegetation and wildlife habitat, and impacts to historic resources.

Despite nearly 5,000 acres of land having the potential for indirect induced growth potential, TxDOT concludes that the requirement for mitigation of environmental impacts would be limited to mitigating only the direct impacts associated with the proposed project. The report proposes no potential mitigation for any of these indirect impacts. We understand that some areas of potential mitigation are outside the control of TxDOT. However, it is critical under NEPA that the agency consider reasonable minimization and mitigation techniques that are available to the agency that could help mitigate these significant indirect impacts. This is especially important for resources that TxDOT has already determined are at risk (*e.g.*, community resources). Courts have been clear that the type of mitigation available is an issue to consider in evaluating the severity of the indirect impacts of a proposed project.

We also request that TxDOT continue coordinating with other agencies, districts, and community groups who do have control over relevant and reasonable mitigation measures to encourage them to implement those measures.

Third, the draft technical report focuses heavily on induced growth impacts. However, the definition of indirect effects is much broader than induced growth and induced growth-

related environmental effects. The report should make clear whether any other indirect effects (e.g., encroachment-alteration effects) are reasonably foreseeable as a result of the project. Additionally, for growth-related environmental effects, TxDOT simply includes a single chart at the end of the report after devoting twenty pages to calculating induced growth potential. We request that indirect impacts to these resources be detailed with greater specificity for the public either in the discussion of the resource in the EIS document or in future drafts of the technical report.

Conclusion

We appreciate this opportunity to comment on the draft technical reports. This project represents an important opportunity for the future of the greater Houston area. It is critical that TxDOT comply with NEPA to the fullest extent and utilize the issue-based meetings and public comments to revise and improve the I-45 design to comprehensively address community-wide concerns.

Sincerely,

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