

Appendix – R-6
DEIS Comment Period Comments and Responses

Summary of Responses to General Concerns Raised by the Public

I. Purpose and Need

A. Purpose and Need Was Drafted Too Narrowly

Many comments contended that the agency’s Purpose and Need Statement (P&N) was drafted too narrowly, thereby unduly restricting the range of reasonable and feasible alternatives. The ICC project P&N presents five broad objectives that the proposed action is intended to fulfill: increase community mobility and safety; facilitate the movement of goods and people to and from economic centers; provide cost-effective transportation infrastructure to serve existing and future development patterns reflecting local land use planning objectives; help restore the natural, human, and cultural environments from past development impacts in the project area; and advance homeland security. See FEIS, Section I.A. and I.B.

The P&N Statement was drafted by SHA, MdTA and FHWA, the lead agencies on the ICC project, in June of 2003. Other federal and state agencies participated in a collaborative process for review and comment on the P&N, including consideration of public comments, during the NEPA scoping process in accordance with CEQ regulation at 40 C.F.R. § 1502.13. The P&N Statement was agreed to by each of the participating federal, state and local agencies. The interagency collaborative process began with a workshop on June 11, 2003, where the lead agencies presented the project background, proposed the study schedule and process, and discussed a wide range of issues with over 100 representatives from local, state and federal agencies with an interest in the project. Thereafter, on June 16 and July 30, 2003, the following agencies met to discuss and revise the P&N, and they reached consensus on its content. See FEIS, Section I.D:

- Maryland State Highway Administration
- U.S. Army Corps of Engineers
- U.S. Environmental Protection Agency
- Federal Highway Administration
- U.S. Fish and Wildlife Service
- Maryland Department of the Environment
- Maryland Department of Housing and Community Development
- Maryland Historical Trust/Maryland State Historic Preservation Officer
- Maryland Department of Natural Resources
- Maryland Department of Planning
- Maryland Department of Transportation
- Maryland Transportation Authority
- National Park Service

Through that process, alterations were made both to the project purpose as well as the elements of need. In accordance with the coordination process established for the project, (See FEIS, Sections I.D. and VII.A.), the U.S. Army Corps of Engineers and the Maryland Department of the Environment provided letters of concurrence on the P&N dated September 12 and November 12, 2003, respectively. See FEIS, Appendix B.

The ICC project P&N is based upon and consistent with transportation goals and objectives of the local and state governments responsible for land use and transportation planning in the study area. The Metropolitan Washington Council of Governments (MWCOG) established policy goals in 1998 that guide its long-range transportation plan. The MWCOG transportation policy calls for an interconnected multi-modal transportation system supporting the economy, protecting and enhancing the environment, and serving regional activity centers. (TPB Vision, MWCOG, 1998). Similarly, the aim of the Montgomery County General Plan and area master plans is to enhance mobility by providing a safe and efficient transportation system offering a wide range of alternatives that serve the environmental, economic, social and land use needs for the County and provide a framework for development. (General Plan Refinement of the Goals & Objectives for Montgomery County, 1993, p. 63). These transportation goals, established in the state and local planning processes, provided the foundation for the ICC project P&N. Additional information on the transportation planning process and its link to the project purpose and need may be found in the ICC study team’s *Response to the report entitled The Intercounty Connector: Performance and Alternatives* by Smart Mobility, Inc. et al. See FEIS, Appendix R-9.

B. Purpose and Need Improperly Focused on a Highway

Many comments objected to the use of the term “multi-modal east-west highway” in the P&N and asserted that the use of that term meant that the P&N Statement precluded consideration of non-highway alternatives. Even though the proposed agency action was identified as a multi-modal, limited-access, east-west highway linking I-270 and I-95/US-1, the lead and cooperating agencies agreed that the underlying P&N is related to broader transportation objectives and would not exclude consideration of a wide range of reasonable alternatives.

In order to attract public comment and suggestions for project alternatives, the draft P&N Statement was disseminated at Public Open House meetings in June and September 2003. The P&N was also posted for comment on the ICC web site in June 2003. The ICC study team considered all comments and documented its responses in a matrix that is contained in the project administrative record. During the proactive public and agency scoping process, nearly one thousand citizens and many agencies provided comments and suggestions. This process resulted in over 300 suggestions for project alternatives and various options for design or location of alternatives. The study team then supplemented these suggestions with alternatives and options considered in past studies.

The study team proceeded to combine and distill all suggestions into 18 unique alternatives—some of which had multiple sub-alternatives. The purpose of this process was to develop alternatives that would

encompass all of the suggestions which could reasonably be expected to address some element of the P&N. These alternatives involved varying combinations of road, transit, traffic management, and land use improvements. The preferred alternative would be a multi-modal highway that includes transit, bicycle, and pedestrian routes. Specifically, the preferred alternative will include express bus service, construction of at least two new park and ride lots and modification to other existing park and ride lots. Six express bus routes have been identified for detailed study. A commitment has been made to fund capital and/or operational improvements based on a transit study that will be conducted as part of this project. The project has budgeted \$20 million for the transit study and capital/operational improvements. The preferred alternative includes a commitment to complete the transit service study before the ICC opens to traffic. The study will include a more detailed investigation of both express and feeder bus routes, locations, stops, size of parking facilities and more. The remaining budget after completing the transit study would in part facilitate implementation of the transit service study recommendations. Implementation of the service study recommendations would be coordinated with appropriate transit agencies by MDOT. See *FEIS, Section IV.J* (general discussion of transit analysis).

The 18 alternatives are listed in Section III.A. of the FEIS, and the reasons for eliminating alternatives from detailed study are discussed more completely in the FEIS Chapter III “Alternatives Considered.”

None of the alternatives considered were eliminated simply because they were not a “highway.” Each alternative was evaluated against the P&N to determine whether the alternative could adequately address the underlying purpose and need for the project. In November 2003, the study team held three Public Workshops to obtain comments on the alternatives evaluation. Approximately 400 comments were received and considered before alternatives were eliminated from detailed study. The study team documented its responses to comments in a matrix that is contained in the project administrative record. The evaluation of alternatives and summary of comments received are also discussed in the *ICC Alternatives Retained for Detailed Study (ARDS)* report dated March 3, 2004. This interim report to the participating agencies presented the alternatives suggested, screening of alternatives, and evaluation of alternatives. The study team discussed the draft ARDS report with federal, state and local agencies in eight interagency meetings between September 2003 and March 2004. See *FEIS, Section VII.A*. As with the final P&N Statement, the lead agencies, as well as the U.S. Army Corps of Engineers (USACE) and Maryland Department of the Environment (MDE), concurred with three alternatives that were retained for detailed study. See *FEIS Appendix B, USACE letter dated May 18, 2004; MDE letter dated March 24, 2004*.

A Transit-Only Alternative was analyzed to determine if it would meet the ICC Purpose and Need. The Transit-Only Alternative consisted of options that only include transit systems such as a new light rail or commuter rail system on a dedicated transitway to connect origins and destinations in the I-270 and I-95 corridors. No new roadways or improvements to existing roadways associated with a new transitway were included in this alternative. The inability of transit alone to accommodate the projected passenger and goods

movements in the study area was demonstrated by detailed modeling studies conducted as part of the 1990s ICC study, in which three light rail transit alternatives were evaluated. The highest projected ridership on any of the three transit alternatives (Master Plan Transit Alternative, Randolph Road Transitway, and the White Oak Transitway) was approximately 23,400 people per day, which was estimated to provide only a 1.0 percent reduction in travel by auto. See *1997 DEIS, Page II-41, Volume 1 of 4*. Moreover, part of the purpose of the ICC is to move not only people but also goods, which cannot be done efficiently with transit.

C. Environmental Stewardship and Homeland Security Elements Should Not Be Included in P&N

Some comments questioned the inclusion of the environmental stewardship and/or homeland security elements in the ICC’s P&N Statement. (In terms of the overall public and agency coordination process that went into the drafting of the P&N Statement, see above response.) Environmental stewardship (ES) features were incorporated into the ICC project in recognition that past urban and suburban development within the study area has resulted in long term impacts that will require steps above and beyond the norm to reverse adverse trends. ES measures have been incorporated previously on many transportation projects. At the national and state levels, ES is being provided more frequently in recognition of the social and natural environmental connections that transportation projects often have. The Federal Highway Administration (FHWA) actively promotes environmental stewardship through its *Vital Few Environmental Stewardship and Streamlining Goal (Environment VFG)*. See <http://environment.fhwa.dot.gov/strmlng/vfovervw.htm>. For example, Executive Order 13274, issued by the President on September 18, 2002, directed federal agencies to “promote environmental stewardship in the nation’s transportation system” and to streamline environmental reviews for transportation projects. Including “environmental stewardship” as part of the purpose and need for the ICC is consistent with this directive. The ES features have been developed based on extensive involvement from the local, state and federal resource agencies and are being considered by the lead agencies in addition to mitigation measures that will be identified as commitments in the Record of Decision.

The types of projects considered include, but are not limited to: providing pedestrian/bicycle trails; rehabilitation of historic structures; providing sidewalks for communities and schools; riparian buffer enhancement and/or reforestation; stream restoration; storm water management improvements; and special protection area best management practices. See *ICC Environmental Stewardship Technical Memorandum, I-270 to US 1 (SHA 2004)*; see also *Table VI-6 (list of contemplated ES projects)*. Each of the build alternatives and sub-options considered contemplate adoption of the ES features described in the FEIS. Therefore, the ES features, developed in coordination with the Inter-Agency Working Group, satisfy the ES element of the P&N Statement equally for all build alternatives.

The study incorporated the Maryland State Highway Administration’s Context Sensitive Design (CSD) approach, which now has expanded into a Context Sensitive Solutions (CSS) approach. The SHA has been a national leader in this approach through its Thinking Beyond The Pavement (TBTP) initiative of

1999. This approach is a collaborative, interdisciplinary approach that involves all stakeholders to develop a transportation facility that fits its physical setting and preserves scenic, aesthetic, historic, and environmental resources, while maintaining safety and mobility. CSS/CSD is an approach that considers the total context within which a transportation improvement project will exist.

Through the CSS/CSD/TBTP initiatives, numerous policies and procedures are now integrated into the project development process as well as the design and construction process to consider the context and surroundings of a project. The environmental stewardship concepts integrated into the Intercounty Connector project development incorporate and advance the principles of the CSS/CSD/TBTP approach already in practice at the SHA. The incorporation of environmentally responsible design features and the proposal of environmentally sensitive construction features with consideration of the local context are consistent with the CSS approach. The alignments and profiles have been developed to minimize natural and community impacts, while preserving community vistas and connectivity. The team continues to develop a conceptual aesthetic theme for bridges, walls and landscape features that both supports the diverse set of communities and the driver's perspective. In addition, the identification and prioritization of environmental stewardship projects are accomplished through a collaborative and context-sensitive approach with input from local, state and federal agencies.

Regarding homeland security initiatives, the ICC would provide much needed system capacity and redundancy to the State and the National Capital region for population evacuation and emergency vehicle access. *See FEIS, Section I.E.* The study area, which lies just north of Washington, D.C., has experienced enormous planned growth over the last 40 years. In that area, no limited access east-west highway exists between the Capital Beltway and I-70, a distance of about 25 miles. The ICC was always planned to serve this growing area in Montgomery and Prince George's Counties. On September 11, 2001, it became clear that a mass evacuation can cause gridlock in the Nation's transportation network. While it is impossible to build enough capacity to accommodate the extraordinary demands of a mass evacuation, the experiences on 9/11 and the more recent experiences of New Orleans and Houston during Hurricanes Katrina and Rita highlight the need for a highway system with the flexibility and capacity to handle surges of high volume traffic in emergency events. The need for enhanced mobility between the two Interstate corridors north of the Nation's capital is thus a legitimate concern for elected officials and planners. Additionally, if there is an incident on the Capital Beltway north of the District of Columbia, no other highway exists between I-95 and I-270 to even conceivably take its place as an alternate route. *See also 23 U.S.C. § 103(b)(1)(B)* (the National Highway System "shall meet national defense requirements"), *23 U.S.C. § 103(2)(D)* (the National Highway System consists of "a network of highways that provide defense access, continuity, and emergency capabilities for the movement of personnel, materials, and equipment in both peacetime and wartime.").

MDOT, through its Office of Engineering, Procurement and Emergency Services, has noted that the biggest bottlenecks during an emergency evacuation or response effort would occur at the intersections of major radial and circumferential highways that meet at-grade. Circumferential highways with grade-

separated interchanges provide the best service during evacuations by allowing critical lateral flow and turning movements without impacting radial flow. The Capital Beltway would not have the necessary capacity to serve this purpose. In the study area there is no other continuous circumferential highway with interchanges that can serve this pressing purpose. The ICC would fill this need.

II. Tolling

A. ICC Should Not Be a Toll Road

The decision to establish the ICC as a toll road reflects important policy decisions made by the State of Maryland regarding the financing and management of its transportation system. Use of tolls on the ICC is necessary and appropriate in order to help finance the project with user revenues (thus maximizing use of other transportation funds for other needed projects) and to manage congestion on the proposed facility. *See generally, FEIS III.E., IV.J.*

The finance plan for the ICC was endorsed by the Maryland General Assembly through enactment of HB 1352 and SB 255 in the 2005 session. Under this plan, the ICC will be funded from a combination of sources. Maryland Transportation Authority (MdTA or the Authority) toll revenue-supported debt, including toll revenue bonds and, possibly, a loan under the federal Transportation Infrastructure Finance and Innovation Act (TIFIA), will cover approximately 50% of the cost of the ICC (\$1.2 billion on a \$2.15 billion project). The debt service will be paid from toll revenues collected by the Authority from its toll highways, bridges and tunnels, including the ICC. ICC toll revenues are expected to contribute up to 25% of the capital cost of the ICC (approximately \$400 to \$600 million out of a \$2.15 billion project) in addition to covering operating costs. If it were decided to build the ICC without tolls, the project could not be built as an MdTA project and, thus, would not be eligible for toll related financing. Consequently, \$1.2 billion of its capital cost, currently to be funded using toll supported financing, would have to be funded with other funding sources. This would significantly impact progress on other Maryland transportation projects. Without this contribution from tolls, it would be difficult if not impossible to finance the ICC without serious impact to the rest of the state's transportation program.

In addition to their importance as a source of revenue, tolls also are needed as a demand management tool. The ICC will be located in a region of high traffic demand and congestion. With a highly congested roadway network, it is particularly important to provide a reliable route for time-sensitive trips. By adjusting ICC toll rates based on traffic volumes, tolling can help to maintain relatively free-flowing traffic and thereby provide a predictable, relatively congestion-free route. In addition, existing local roads would continue to be available on a non-tolled basis traffic forecasts presented in the EIS take into account the potential for diversion to local roads. According to the forecasts, most of the local roads would still be less congested than they would have been without the ICC. *See FEIS, Section IV.J (Travel Analysis Technical Report (www.iccstudy.org)).*

Metropolitan Planning Organization (MPO) for the local government jurisdictions of the three-state Metropolitan Washington area. MPOs are responsible for preparing plans and programs for federally-funded transportation investments in the regions they serve. Version 2.1C of the MWCOG model was used for analysis of the TPB's 2003 Constrained Long Range Plan and the Fiscal Year 2004-09 Transportation Improvement Program. Round 6.3 Cooperative forecasts (the latest land use data approved by MWCOG at the time of analysis), were used for the No-Action and both Build Alternatives. These forecasts include projections of households and employment by Transportation Analysis Zone (TAZ) for the entire Metropolitan Washington area and were developed by MWCOG in consultation with local land use officials in the area, consistent with their standard procedures for traffic modeling.

The traffic forecasts shown in the DEIS (using the same land use assumptions for all alternatives) showed that there would be greater traffic volumes in 2030 under each of the Build Alternatives than under the No-Action Alternative. The screenline data (refer to Chapter IV.J.4) shows that building the ICC would increase mobility by accommodating over 30,000 more trips in the western portion of the study area, up to 80,000 more trips in the center of the study area, and over 10,000 more trips in the eastern portion of the study area, compared to the No-Action Alternative. This increase in VMT reflects the effect of longer trips and mode shifts, but does not reflect any increase that would result from changes in land use because, as noted, the model assumes the same land use for the Build and No-Action Alternatives.

After the DEIS was published, MWCOG updated the previous forecast (Round 6.3) to reflect the latest local plans, which took into account the recommendations of the Expert Land Use Panel (ELUP) convened by the ICC study team to assist in estimating impacts of the ICC on land use. The new forecast is referred to as Round 6.4A. The land use included in Round 6.4A reflects higher levels of development in and around the northern portions of Prince George's County, including the Konterra area, where the ICC intersects with I-95. County planners suggested this new land use forecast based upon proposed transportation improvements, assessments of economic conditions and other market forces, in addition to the work of the ICC's ELUP.

To assess the potential effect of increased development on traffic forecasts, a sensitivity analysis was conducted for the ICC using MWCOG's Round 6.4A traffic forecasts. The results of this sensitivity analysis are reported in Chapter IV.J of the FEIS and the Travel Analysis Technical Report. As expected, the results of this sensitivity test indicate a more significant change in the eastern portion of the study area, where the differences between Round 6.3 and 6.4a were more pronounced. This increased growth reflects a wide range of influences, including larger demographic and economic influences in the region. Nonetheless, the anticipated construction of the ICC is one factor that was considered by MWCOG in developing the updated land use assumptions that were used in the Round 6.4A traffic forecasts. Thus, the Round 6.4A traffic forecasts provide a reasonable approximation of the increased traffic that could result from additional development if the ICC is constructed. Travel volumes on the proposed ICC and some local roads in this portion of the study area would be expected to increase along with the more robust planned

land uses, especially in the northern portions of Prince George's County. In the case of capacity along the ICC, it would have more than enough capacity to accommodate this volume increase. Some of the local roadway network intersections would experience a greater stress from this increased volume.

As explained above, the Round 6.4A traffic forecasts assume increased growth in the ICC Study Area, concentrated primarily at the eastern end of the Study Area. These forecasts indicate, in general terms, that there would be more development, and more traffic, if the ICC is built than if the ICC is not built. *See FEIS, Section IV.J.4.a.*

VIII. Water Resources

A. Agency Did Not Adequately Review Impacts on Paint Branch and Other Sensitive Water Bodies

Some comments stated that the DEIS inadequately reviewed impacts on water bodies. The potential impacts of the project on Paint Branch and other water bodies have been extensively studied, and the mitigation measures that have been identified as a result of this evaluation will adequately address these impacts. The DEIS considered the Paint Branch watershed and the brown trout issues by devoting extensive sections to these topics. *See FEIS, Sections IV.F.5 and IV.F.6.* The DEIS analyzed direct and indirect impacts to Paint Branch and other affected water bodies, and reviewed the extensive available information about these water bodies that has been collected over many years by regulatory and public authorities, among others. Existing conditions as well as the impacts of the project are set forth in detail. In addition, the Environmental Consequences analysis offered information that goes beyond the norm by including evaluation of impervious cover, results of basic pollutant loading models, discussion of ecological functions and values of headwater streams and wetlands, and gathering of supplemental data on water quality, chemical parameters, aquatic habitat and fisheries. The FEIS expanded on this analysis to include results of basic pollutant modeling in all protected area watersheds. In addition, a hazard assessment was completed to evaluate risk to the Rocky Gorge Reservoir. *See FEIS, Section IV.F.5 (information on potential water quality impacts to the Paint Branch and other watersheds).*

While impacts cannot be completely avoided, anticipated effects on water quality in the Paint Branch watershed and other bodies of water have been greatly minimized by the many avoidance and minimization measures outlined in the DEIS. Such measures include the use of erosion and sediment control plans with redundancy of erosion and sediment controls in sensitive areas, state-of-the-art storm water management systems, shifting alignments to avoid sensitive resources such as wetlands, the incorporation of long bridges over Good Hope, Gum Springs and Paint Branch, and other design alterations and operational features to minimize impacts in these areas. *See FEIS, Sections IV.F.5 and IV.F.6.b.* In addition, mitigation will be heavily concentrated in the Paint Branch watershed in accordance with state and federal agency preferences to offset unavoidable impacts through projects aimed at improving existing

water quality and stream channel conditions. Moreover, environmental stewardship projects above and beyond mitigation are expected to also address existing water quality and stream problems in the watershed. A number of these projects would specifically address restoration priorities that have been established by local and state efforts for the Paint Branch and other affected watersheds, such as storm water management, fish blockage removal and stream rehabilitation. Both mitigation and environmental stewardship projects will be monitored to assess effectiveness. Environmental inspectors will be employed during construction of these sites, as well as during construction of the ICC itself, to ensure compliance with all environmental commitments and permit conditions. *See FEIS, Section VII.D.5.* Similar plans have worked effectively on other high-profile, environmentally sensitive projects, such as the Woodrow Wilson Bridge Project.

B. Mitigation Set Forth in the DEIS Will Not Protect Brown Trout and Other Sensitive Resources

Some comments stated that the proposed mitigation will not protect Paint Branch. SHA is committed to protecting the high water quality of the Paint Branch resource that supports the trout population. Although the ICC has the potential to impact the brown trout population in Paint Branch, SHA has coordinated closely with regulatory agencies, scientists and resource managers to identify measures to avoid and, where avoidance is not possible, to minimize direct and indirect impacts to the brown trout. This will occur primarily by implementing design and operational controls that will reduce water quality impacts. *See FEIS, IV.F.6.* These measures include reducing the roadway footprint to the extent possible with steeper side slopes, bridging stream and wetland systems beyond what is hydraulically necessary, implementing innovative storm water management to reduce potential thermal impacts, treating all runoff even from bridge decks, exceeding water quality treatment standards by treating the 1.5 inch runoff event, employing redundant sediment and erosion control measures in the Special Protection Area, and committing to the use of environmental inspectors during construction. Extensive storm water management measures will be undertaken throughout the project in order to minimize indirect impacts and thereby aid in the overall efforts already underway to protect the high quality resource. Although the design of storm water facilities will not occur until the final design phase of the project, the FEIS includes more detailed information concerning storm water Best Management Practice (BMP) effectiveness and what types of storm water BMPs are being envisioned for the ICC. *See FEIS, Section IV.F.a.* A substantial number of Environmental Stewardship and mitigation projects are proposed to offset damage from previous development in the Paint Branch watershed. These include a wide array of measures to restore aquatic habitat through stream restoration, improve water quality through storm water retrofits and micro-scale Best Management Practices, reforesting area proposed for development, and increase wetland acreage through the establishment and preservation of forested, riparian wetlands.

Some comments on the DEIS focused on potential secondary impacts to the Patuxent Reservoirs: the Tridelphia Reservoir and the Rocky Gorge Reservoir. In response, SHA sponsored an evaluation of these sensitive resources that provide an important source of drinking water to the D.C. metropolitan area. See the

summary of the Comparative Water Resources Hazard Assessment (2005) in the *FEIS, Section IV.F.5.c.* Overall, the proximity of Corridor 2 and its various sub-options to the reservoir resources would increase the risks of potable water contamination and increase the need for additional water treatment processes to maintain the integrity of these drinking water sources. Because US 29, which directly crosses the reservoir, could be considered an existing risk to the drinking water supply from hazardous materials spill, the Lead Agencies have committed to pursue designating a portion of US 29 as a HAZMAT-restricted route based on the provisions of the Hazardous Materials Transportation Act (49 U.S.C. § 5101 et seq.; 49 C.F.R. § 397.61 et seq.) under any ICC build alternative. *See FEIS, Section VII.C.2.i.*

C. DEIS Failed to Consider Total Maximum Daily Load (TMDL) Program as Part of National Pollutant Discharge Elimination System (NPDES) Permit Requirements

Some comments stated that the DEIS ignored the TMDL program of the Clean Water Act. Discharges of storm water from the construction and operation of the project will be subject to NPDES permit requirements administered by the Maryland Department of the Environment (MDE). *See FEIS, Sections IV.A and IV.F.5.* In general, such permit requirements will entail the construction, use, and long-term monitoring and maintenance of the proven and innovative storm water management techniques that are more fully described in *DEIS, Section IV.A.5.* Under the NPDES program, storm water discharges such as those associated with the project are subject to a requirement to control and reduce the discharge of pollutants to the “maximum extent practicable.” MDE, the project’s NPDES permitting authority, will define the required controls for the project in the permit, which, at a minimum, will meet and in some cases exceed the state storm water management regulations.

In addition, the NPDES permit for the project will contain requirements that the storm water discharges conform to the Clean Water Act’s provisions addressing TMDL requirements. Under current EPA and MDE programs, conformance with TMDLs is accomplished through NPDES permits and the implementation of storm water best management practices (BMPs) that reduce the discharge of pollutants to the maximum extent practicable. The future NPDES permit for this project will incorporate these TMDL and NPDES requirements. The DEIS describes many of the storm water management measures that are committed for the project. In addition, MDE will define the specific controls and requirements for the project’s storm water discharges during the NPDES permitting process for the project.

IX. Parkland and Historic Resources

A. Corridor 1 Alternatives Would Adversely Impact the Northwest Branch and Paint Branch Park Systems

Proposed Corridor 1 Alternatives would have unavoidable impacts to the Northwest Branch Park System and Upper Paint Branch Stream Valley Park. The Corridor 1 Alternatives would require the use of

between 15.2 and 47.5 acres of parkland from three parks in the Northwest Branch Park System: 2.5 acres from Layhill Local Park (7.7% of the total park area), 21.6 acres from Northwest Branch Recreational Park (3% of the total park area), and 23.4 acres from Northwest Branch Stream Valley Park - Unit 5 (6% of the total park area). It would also require the use of 6.2 acres of parkland from Upper Paint Branch Stream Valley Park (0.8% of the total park area). These impacts will be addressed through the adoption of a comprehensive mitigation package, including acquisition of replacement parklands and forest interior lands, wetlands and stream restoration and environmental stewardship features. See *FEIS, Section V.N. and Section IX.C., below.*

- Layhill Local Park -- the impacted land currently serves an active recreational function. In this location, Corridor 1 with Northwest Branch Option A would displace the park's southernmost soccer field, while Corridor 1 with Northwest Branch Option B would cross the southern portion of the park, but would not displace the soccer field.
- Northwest Branch Recreational Park -- the impacted land provides both active and passive recreational opportunities. Under both Northwest Branch Options A and B, forested land, wetlands, floodplains and a stream would be affected. In addition, Northwest Branch Option A would displace the National Capital Trolley Museum, while Northwest Branch Option B would displace a portion of the National Capital Trolley Museum's tracks and two softball fields.
- Northwest Branch Stream Valley Park - Unit 5 -- Northwest Branch Options A and B would both impact land used that is primarily forested with no man-made recreational features.
- Upper Paint Branch Stream Valley Park -- Corridor 1 would impact several small areas of parkland that contain forested land, wetlands, floodplains and streams.

Some comments focused on the potential increases in noise levels within all parklands crossed by the ICC. These potential impacts were analyzed and impact zones were identified. Information regarding noise impacts for parks can be found in the *ICC Technical Noise Report, I-270 to US 1* (SHA 2004). This analysis concluded that, while noise levels in parklands may increase as a result of the ICC, the impacted areas did not contain noise sensitive features that would warrant noise abatement measures. Per FHWA criteria and SHA Sound Barrier Policy, this analysis considers the effects of noise on human activities and does not consider the effects on wildlife. See the *Maryland State Highway Administration Noise Policy, May 11, 1998*, available at the Maryland State Highway Administration Headquarters in Baltimore.

Many comments focused on the difference between potential impacts between proposed Northwest Branch Options A and B. See *FEIS, Section V.L.2* (detailed comparison of these options). Northwest Branch Option A was developed for the purpose of minimizing impacts to natural resources. It has been

described as the “S-curve” alternative because it follows a curving path that swings outside the ICC Master Plan corridor to the north, then swings down across that corridor to the south, and then turns back north again and rejoins the ICC Master Plan corridor. See *FEIS, Section V.C.1.b.* This curving alignment allows for longitudinal crossings of floodplains and streams, which are preferable from an environmental standpoint. By contrast, Northwest Branch Option B follows a straighter path, remaining within the ICC Master Plan corridor and utilizing the Designated Transportation Area within Northwest Branch Stream Valley Park Unit 5. Because Option B remains within the Designated Transportation Area, it impacts fewer acres of Section 4(f) parkland. However, Option A would have qualitatively less impact on aquatic resources.

Northwest Branch Option A would, despite the greater acreage impacts, minimize impacts to stream and floodplain impacts in comparison to Northwest Branch Option B. The nature of the Northwest Branch Option A alignment is such that it would follow ridges and remain more in upland areas instead of crossing longitudinally through valleys and bisecting floodplains. The stream relocation associated with Northwest Branch Option B, which is avoided by Northwest Branch Option A, could also have related downstream impacts. The crossing of Northwest Branch using Option B could potentially have deleterious watershed effects downstream of the crossing. See *FEIS, Section V.L.2.b.* The Federal resource agencies (including EPA, USACE, and DOI) as well as the park owner, M-NCPPC, have all stated that Northwest Branch Option A is preferable to Northwest Branch Option B in terms of their impacts to natural resources. See *FEIS, Appendix B* (for specific correspondence from these agencies).

Various measures were evaluated during development of the alignments and sub-options in these parks to avoid and minimize adverse impacts. These include alignment shifts and other design measures such as increasing side slopes, increasing bridge lengths beyond the minimum length required, and utilizing underground stormwater management facilities. Despite the adoption of these avoidance and minimization measures, the agency concluded that Layhill Local Park, Northwest Branch Recreational Park, Northwest Branch Stream Valley Park - Unit 5, and Upper Paint Branch Stream Valley Park cannot be avoided by the selection of either of the build alternatives. See *FEIS, Section V.F.*

B. Land Within the Designated Transportation Areas and All Lands Owned by M-NCPPC Should Be Protected by Section 4(f)

Some comments suggested that certain lands adjacent to existing parkland identified in the FEIS as Designated Transportation Areas (DTAs) should be considered Section 4(f) parkland. Section 4(f) does not apply to the use of land from the DTAs because they were acquired for transportation purposes and have never been part of the surrounding parks. FHWA's *Section 4(f) Policy Paper* (March 2005) states that “...the requirements of Section 4(f) do not apply to the subsequent use of the reserved area [an area within the 4(f) resource that is reserved for highway use prior to, or at the same time the 4(f) resource was established] for its intended highway purpose. This is because the land used for the highway project was

C. Project Is Too Expensive

The cost of the 18-mile ICC as presented in Table S-2 of the FEIS is estimated to range from \$1.98 billion to \$2.15 billion. This cost is similar in overall magnitude to other major highway, bridge and transit projects in metropolitan areas nationwide (e.g., extending Metrorail 23 miles to Dulles Airport, Loudoun County, Virginia is estimated to cost \$3.84 billion, and the Woodrow Wilson Bridge project, which extends approximately 7.5 miles, is estimated to cost approximately \$2.5 billion). The cost estimate for the ICC was reviewed and approved by the FHWA's Office of Infrastructure, Major Projects Team (sometimes known as the "Mega Projects Team"). The highest cost items for the ICC project are right-of-way due to the study area's high property values, earth-moving for extensive cut and fill sections due to the study area topography, paving, and bridges associated with new highway construction. In addition, the cost estimate includes the improvements to intersecting roads (e.g., MD 97, US 29, I-95). For example, along I-95, these improvements extend from the north side of MD 212 to north of MD 198. The costs also include environmental mitigation and stewardship measures to enhance and protect the study area natural environment. Considering that the project's economic benefits are over \$300 million per year as quantified by the University of Maryland's independent analysis, that 25 percent of the project's costs will come from user tolls, and the degree to which the ICC satisfies the project's purpose and needs, both ICC Build Alternative would be cost-effective.

XIV. Public Involvement

A. The Public Had Inadequate Opportunity to Participate in the NEPA Process

Since the beginning of the process, members of the ICC study team have attended over 60 stakeholder meetings, including meeting with numerous homeowners' associations, civic groups, community organizations, business associations, etc. The interactive ICC website, www.iccstudy.org, was first opened May 2003, posting frequent detailed updates as information became available, including posting of the draft P&N Statement and later the DEIS. The ICC study team continued to communicate with and hear from the public through newsletters, postcards, DEIS summary mailers, the project website, community meetings, media briefings and the four public hearings. Mailings concerning open meetings, the availability of key documents and other important notices averaged 100,000 home and business addresses in the study area.

The study team developed a comprehensive and interactive public involvement process to ensure that comments were received and project information disseminated. See *FEIS, Section VIII.B.* (describing public involvement program). Three open houses were held between June 2003 and September 2003 during the scoping phase to inform the public about the project and solicit their comments and concerns prior to the development of alternatives. Three Alternatives Public Workshops were held in November 2003 to obtain comments and concerns on the preliminary alternatives presented. In June 2004, three additional Public

Workshops were held to present updated project information. For detailed information on open houses and workshops, please refer to *FEIS, Section VIII.B.3.*

The official comment period on the DEIS ran from December 3, 2004 to February 25, 2005. The 84-day comment period exceeded the 45-day minimum required under Federal Highway Administration (FHWA) regulation (40 C.F.R. 771.123). Public hearings were held from 5-11 P.M. on January 4 and 5 in Greenbelt and Gaithersburg, and from 9 A.M. to 6 P.M. on January 8 and 29 in Silver Spring. By providing an extended comment period as well as utilizing various methods of displaying the document for public viewing, sufficient time was allowed for public comment on the DEIS. Over 3,900 responses to the DEIS were eventually received.

Printed copies of the DEIS were available for public review at 25 locations in and around the project study area, including many libraries and government offices. Printed copies of the technical reports were also available for review at the offices of: M-NCPPC in Upper Marlboro and Silver Spring; Maryland State Highway Administration in Baltimore and Greenbelt; Maryland Transportation Authority at the Francis Scott Key Bridge; and Federal Highway Administration (FHWA) in Baltimore. The technical reports were also available at the public hearings.

Electronic versions (in PDF format) of the DEIS and technical reports were all included on the project web site for downloading in part or whole. In addition, the study team has made the DEIS, the FEIS and the technical reports available on compact disk (CD) free of charge to anyone who makes a request. Additional printed copies of the DEIS and the FEIS were provided for public loans at public offices in Silver Spring, Germantown and Upper Marlboro. Much like a library system, the documents were available for loan and were to be returned unmarked so that they could be provided to another interested person. Borrowed copies of the DEIS could be kept for up to two weeks. For those individuals or groups that wanted a printed copy of the DEIS of their own, it was provided at a reduced cost of \$390 (plus mailing if necessary), which reflected actual costs of copying the document.

The team responsible for public participation on occasion received questions concerning the availability or accessibility of certain project documents. Because many lengthy reports were posted on the project web site, several inquiries focused on a citizen's ability to download certain documents and/or maps. All questions were received through letters, the project web site, telephone calls and/or verbal and written hearing testimony, and they were responded to individually. These comments were resolved by either providing technical support to a citizen or providing alternative means to obtain copies of the requested document or information.

B. DEIS Should Have Included the Final Section 4(f) Evaluation

FHWA’s regulations do not provide for a Final 4(f) Evaluation in a DEIS. The Draft Section 4(f) Evaluation in the DEIS presented the most current information available at the time it was published. Selecting a preferred alternative in the Draft Evaluation would have been premature because the analysis must take into consideration all proposed mitigation measures. At the time of publication of the DEIS, only conceptual mitigation had been developed and negotiations with the jurisdictional agencies were beginning. These negotiations continued between publication of the DEIS and preparation of the FEIS. The proposed mitigation package was finalized and agreed to by all parties shortly before publishing the Final Section 4(f) Evaluation. This sequence is consistent with FHWA’s policy and regulations.

XV. Agency Bias or Predetermination

A. Decision Makers Exhibited Bias in Favor of a Build Alternative and of Corridor 1 Because of Adherence to the Master Plan Alignment

Some comments asserted that officials and agencies are biased toward an ICC and Corridor 1 in particular. The lead agencies, following local, regional and state land use and transportation plans and studies, initiated this project planning study. Out of the NEPA public scoping process a P&N Statement for an ICC was drafted by the lead agencies. That purpose and five major public needs were agreed to by the reviewing local, state and federal agencies. The lead agencies’ proposed action calls for a multi-modal highway linking I-95 and I-270 within Montgomery and Prince George’s Counties. It should be noted that the proposed transportation facility has been supported by local, state and federal elected and appointed officials, including the Governor of Maryland, the General Assembly of Maryland (including the delegations representing Montgomery and Prince George’s Counties), the Montgomery County Executive, the Prince George’s County Executive, the Montgomery County Council, and the Congressmen representing the two counties (the Prince George’s County Council does not support the ICC).

Corridor 1 follows the general alignment (with some deviations) shown on the counties’ master plans. A build alternative indicated on local government comprehensive plans falls within the range of reasonable alternatives. It would be highly unusual if such an alternative were not included as part of an ICC NEPA study. The P&N Statement does not prejudge a particular route, but references local land use planning objectives to provide context for the need for a multi-modal east-west highway, not some specific line on a map. Given the numerous options studied for Corridor 1 and for Corridor 2, and given the environmental, social, transportation and economic consequences laid out in detail in the DEIS for the various options in the two corridors, their benefits and their impacts, an objective study of impacts of reasonable alternatives was presented. Corridor 1 was not selected as the Preferred Alternative by SHA and MdTA until after comments on the DEIS were considered. This study also complies with the CEQ

regulations supporting consideration of local land use plans as an essential and desirable component of any NEPA analysis. *See, e.g., 40 C.F.R. § 1506.2(d).*

B. Several Agencies Found the ICC Environmentally Unacceptable in the 1997 DEIS

Some commenters questioned why the current study is moving forward since the prior Governor of Maryland halted the 1997 ICC NEPA study after issuance of the Draft EIS because of adverse reaction from several federal agencies. For example, the U.S. EPA opined in 1997 that the former ICC proposal was “environmentally unacceptable.” Since that time, the nature of the proposed ICC has changed substantially, as has the process by which the current EIS was produced. In part, the lead agencies have committed themselves to coordinate with the review agencies earlier in the study process and even more closely consistent with the President’s Executive Order on delivery of key transportation projects. Moreover, the engineering and design of the proposed ICC reflects a strong commitment to impact avoidance and minimization, measures that were not included in the 1997 DEIS. What has not changed is the need for the ICC. Even in its earlier objections, EPA acknowledged the need for congestion relief in the study area.

The prior study never progressed beyond a Draft EIS. As a result, the lead agencies never substantially considered mitigation proposals. More fundamentally, the current proposal and the current EIS are substantially different. Unlike the prior study, the current study, for example: produced a more focused purpose and need statement that placed the proposed project within the context of local and regional land use planning objectives; introduced the concept of environmental stewardship to the project study; proposed new options that avoid or minimize resource impacts; proposed design features (such as a reduced roadway footprint, variable median widths and a lower roadway profile) that also avoid or minimize resource impacts; conducted a secondary and cumulative effects analysis on possible land use changes; analyzed the proposed project in the context of Maryland’s Smart Growth laws; commissioned an economic effects study from the University of Maryland; created a substantial mitigation package to compensate for natural resource impacts; and engaged the federal, state and regional resource agencies in an on-going collaborative review process of issue-spotting and conflict resolution.

All of this reinforces a key feature of NEPA -- to build upon the study process for a proposed project through agency and public comments, followed by responses and further analysis in a Final EIS, followed by the rationale for a selected alternative in a record of decision -- all of which is aimed at making an informed and better decision.

Although the prior Governor halted the 1997 study, the government’s analysis of study area transportation demands and potential solutions did not end there. In 1998, the Governor appointed a blue-ribbon panel called the Transportation Solutions Group (TSG) to examine transportation, land use and environmental issues for the Montgomery/Prince George’s region between I-270 and I-95. The M-NCPPC Montgomery County Planning Board and County Government appointed a Transportation Policy Report

Task Force (TPR) to examine the same issue areas. The reports ultimately issued by these groups and presented to elected and planning officials called for a comprehensive package of road, transit and land use improvements, including an ICC.

The need for an ICC has not diminished over the past decade. The Maryland General Assembly passed a resolution in early 2002 calling for a renewed NEPA study, both major party candidates for Governor did the same later that year, as did the County Executives and the Congressmen for the affected counties. The lead agencies, learning from the TSG and TPR processes and reports as well as the comments received on the 1997 DEIS, initiated the new, more comprehensive, more thorough NEPA study in 2003. As a result of the very substantive project modifications, mitigation package and environmental stewardship options, no agency found the ICC as reflected in the 2004 DEIS to be “environmentally unacceptable.”