

February 3, 2010

BY E-MAIL AND HAND DELIVERY

Mr. Kenneth Kendall  
Montgomery County Dept. of Transportation  
Division of Transportation Engineering  
100 Edison Park Drive, 4th Floor  
Gaithersburg, MD 20878

Subject: MD 355/Rockville Pike Crossing Project, NEPA Scoping

Dear Mr. Kendall:

Attached are the comments of the Action Committee for Transit, in response to the call for public comments on the scoping of the NEPA process for the MD 355/Rockville Pike Crossing Project.

Links to supporting documentation are included in the text.

Sincerely,

/signed/

Ben Ross  
President

cc: D. Scherkoske, FHWA  
K. Mazzara, Maryland SHA  
A. Scott, MDOT  
DAR  
L. Schiffer, NCPC  
R. Wilson, NIH  
D. Wheeland, NIH  
A. Johnson, NIH  
D. Oliveira, NNMC  
R. McElhenny Smith, WMATA

## **NEPA Scoping Comments of the Action Committee for Transit On the “MD 355/Rockville Pike Crossing Project”**

The Action Committee for Transit believes that the draft Purpose and Need Statement has several fatal flaws. MCDOT has already decided that it wants to build an underpass for motor vehicles, which would be the first phase of a much larger project. The draft statement disguises this as a project to benefit pedestrians, bicyclists, and transit riders.

Moving ahead on the current track would be a clear violation of NEPA. We recommend a Purpose and Need statement that directs this project solely to improving pedestrian and bicycle access to transit. (In any case, the bulk of the BRAC transportation budget will be spent on motor vehicles.) This will allow the project to move forward expeditiously by focusing the analysis on the alternatives already identified by WMATA's "[Medical Center Station Access Improvement Study](#).”

1. The draft statement “tilts the playing field” in order to obtain a predetermined outcome.

This project has a long and tortured history. What was [first announced](#) as a plan to improve access from NNMC to the Medical Center Metro station has been turned into a road-building project. WMATA, with Montgomery County's blessing, conducted the Medical Center Station Access Improvement study, aimed at improving access from Navy Med to the Medical Center Metro station. The alternatives developed for this study were a pedestrian underpass, pedestrian bridge, better crosswalk, and/or a new elevator entrance on the Navy side. The elevator in particular would enable the thousands of workers who take Metro to Navy Med to exit on the Navy Med side instead of having to cross Rockville Pike at grade. The idea was to use the WMATA study as substantiation for DAR certification. Other money could then be sought.

Meanwhile, Montgomery County transportation officials were secretly promoting an entirely different plan developed by a major highway contractor, Clark Construction. County officials have kept this plan secret from the public, making the [questionable assertion](#) that it is confidential business information. After the Navy rejected Clark's plan once, the county came back a second time and presented a scaled-back version to state and Navy officials at a July 8, 2009, meeting. According to a [project timeline](#) we were given by MCDOT, the project that MCDOT now seeks to build is a variant of what Clark proposed at this meeting.

The county proceeded to seek TIGER grant funding for this project. In a July 15, 2009, [presentation](#) to the COG Transportation Planning Board, the project was described as a “pedestrian tunnel.” We understand that MCDOT was instructed orally by the TPB at this meeting to reword the grant application to leave open all options in the WMATA study, including the new elevator entrance. On August 3, the county again [told the public](#) that the

purpose of the project was to build “a new east-side entrance to the Metro station” using one of the alternatives in the WMATA study. However, the [grant application](#) as actually submitted stated that all options in the WMATA study were unacceptable. MCDOT changed the project description to “multimodal underpass.” This foreclosed the possibility of building elevators with TIGER money.

MCDOT then initiated the NEPA process for this project. On Jan. 6, 2010, MCDOT director Arthur Holmes [wrote](#) to the TPB to request approval of a “MD 355 Multimodal Crossing Project Study.” In his letter, Mr. Holmes explained that “The study funds will provide for environmental studies to satisfy Federal requirements for the design and construction of an underpass....” The [project description](#) that MCDOT submitted to the County Council similarly describes the project as “the MD355 underpass.”

A public meeting was [called](#) for Jan. 19 to “present the Purpose and Needs Summary and obtain input from the community” for this study. However, MCDOT did not bring the draft text of the Purpose and Needs that it summarized at the meeting. Attendees [were told](#) that all options are open and MCDOT has not yet decided whether the project will be an underpass or something else. Our organization attended and submitted [written comments](#).

The draft Purpose and Needs Statement was issued on Jan. 26, seven days *after* the meeting that was ostensibly called to get public reaction to it. The project title has now been changed to “MD 355/Rockville Pike Crossing Project.” But this is just optics; the text of the statement still predetermines the outcome as a roadway. The purpose is stated as improving movement “between the west and east sides of MD 355.” Since the Metro station is directly *underneath* MD 355, this statement excludes options that improve access to Metro.

Despite the secrecy that has enveloped this project, enough information has emerged to make it clear that MCDOT's rhetoric about pedestrian and bicycle access is nothing more than a smokescreen for a road-building project:

- A [photograph](#) of the Clark Construction Company's rendering shows that the proposal would construct the roadway so as to provide a direct connection while it would take pedestrians and cyclists out of their way (that is, zig-zag north then south, then double back to the north). The direct connection for cars and circuitous routing for pedestrians makes it clear that the emphasis is for vehicles – not pedestrians and cyclists.
- The text of the ARRA grant application says that “conflict between vehicles and pedestrians” at the grade crossing of 355 is dangerous and must be eliminated at great cost. It adds that “Existing transportation choices will be improved by eliminating at-grade pedestrian crossings.” In other words, the purpose is to prevent pedestrians from crossing the street in order to move cars faster on 355.
- MCDOT continues to create “conflicts between vehicles and pedestrians” at other intersections by building free right turn lanes. MCDOT is not troubled by intersections where car traffic obstructs pedestrians, but when pedestrians obstruct cars there is suddenly a safety problem.

- The draft Purpose and Need statement omits vital background information. It does not even mention that the Metro is underground. Missing information – that the Metro is located directly beneath 355 – is essential because it means that crossing 355 is not how most people access transit.
- The draft Purpose and Need statement is written in a way that rules out non-infrastructure means of improving transit access. Examples would be secure bicycle parking systems and moving bus stops to the NNMC side of Rockville Pike.

In its effort to disguise its road-building project as something it is not, MCDOT has violated the requirements of NEPA repeatedly. MCDOT has misinformed the public about the nature of its project. MCDOT has withheld information that the public needs to make informed judgements. MCDOT has abused approval procedures. And MCDOT has tailored its Purpose and Need statement to rule out alternatives that are not merely reasonable, but clearly superior.

## 2. Segmentation of roadway alternatives is impermissible.

There is strong evidence that the roadway alternative that MCDOT plans to choose is part of a larger road project that would connect both NIH and NNMC directly to I-270 and I-495. The reasons given by MCDOT for including motor vehicles in this project are inconsistent and entirely implausible:

- The underpass is described in the county's [ARRA TIGER grant application](#) as a facility for pedestrians and emergency vehicles, but [MCFRS comments](#) on the BRAC EIS state that the traffic of emergency vehicles between NIH and the expanded NNMC will be 2 trips per week.
- MCFRS' recommendations for improvements in emergency vehicle movement were for shoulders along the major roads, not for a crossing at Medical Center Metro, because the main access problems are in the corridors rather than at the crossing.
- The photograph of the Clark Construction rendering shows a roadway approximately 60 feet wide. This is much wider than needed for two lanes, and a four-lane roadway is inconsistent with the claimed purpose.
- The ARRA grant application (p. 9) rejected WMATA's shallow tunnel alternative on the grounds that it “would not attract many Metro riders who would continue to walk across MD 355,” yet the zigzag tunnel MCDOT wants to build instead is longer and would be even less attractive to pedestrians.
- The choice of route made by Clark only makes sense if the purpose is to move vehicles. The alignment is necessary as part of a larger part of a larger roadway project in order to avoid interfering with the NNMC helipad, but it is not a sensible choice for pedestrian movement.
- County officials [argue](#) that a multimodal project can obtain federal funding that would not be available for a pedestrian project. But MCDOT's use of the term “multimodal” to describe this project is simply ludicrous. Just because a road or a street has a pedestrian

sidewalk does not make it “multimodal.” Every urbanized street has a sidewalk for pedestrians, but we do not call such a street “multimodal.”

Clearly, these are just excuses. The planned four-lane roadway is the first phase of something bigger. This is explicitly admitted by Montgomery County in its TIGER grant application, which states: “This project has long-range potential... the footprint of the pedestrian underpass can be used in the future as a grade-separated vehicular roadway... Short access roads would enable convenient vehicular ingress and egress for NNMC and NIH personnel...”

Even this is only a segment of the Clark Construction project. Because of the secrecy that MCDOT has used to undermine the NEPA process, we have not been able to determine the full scope of the planned roadway. However, useful information comes from a [letter describing the July 8, 2009, meeting](#) at which this project was initiated, which we obtained under a Freedom of Information Act request from the Navy. The subject of that letter, from the Navy to a Clark Construction subsidiary called Edgemoor Real Estate Services, is “355 & 270 / 495 Roadway Designs.”

If the roadway for which the so-called “multimodal” pedestrian/bicycle underpass is part of a larger road project to provide direct access to I-270/ 495, then the County is sternly warned that it violates the National Environmental Policy Act with respect to segmentation. If the roadway is part of a larger project, then an environmental assessment must be made of the entire project. The project may not be segmented into smaller projects to circumvent studying the impacts of the overall larger project. Segmentation also violates Section 771.1(f) of Title 23 of the Code of Federal Regulations, which provides general principles for properly framing a highway project.

The County is reminded of two court cases where the issue of segmentation was settled against the proponents of road projects:

- Named Individual Member of the San Antonio Conservation Society v. Texas High Department [446 F.2d 1013 (1973)]
- Hawthorn Environmental Preservation Association et al v. William T. Coleman, U.S. Department of Transportation et al [551 F. Supp. 1091 (1976)]

3. Improved emergency evacuation of the Medical Center Metro station should be among the project objectives.

The Medical Center Metro Station lacks adequate means of escape in case of fire or terrorism. The WMATA "Medical Center Station Access Improvement Study" has identified this issue and the relative merits of its proposed options as a solution on pages 29 and 30 of the report. Medical Center Station was built before there was an NFPA standard on escape. Currently, escape takes 3 times longer than the standard requires and will get far worse due to

increased passenger loads from the BRAC expansion. The bank of high speed elevators and stairwell in the WMATA designs make the station safer in the 2020 passenger loads scenarios than exist today. The study did not address what additional tweaks to the designs might make the station fully compliant with the NFPA 130 standard.

Underground Metrorail fires or rescues are beyond just rare and challenging events for the fire and rescue service. The prevailing wisdom in the Fire Service is that an underground Metro fire or act of terrorism involving a train car with passengers would almost assuredly become a body recovery operation. This is borne out by the requirements of NFPA 130 and WMATA procedures in using rescue trains to evacuate stranded passengers. The risk to fire fighters would be extreme. Thus the importance of passenger self-rescue via adequate and hopefully, redundant escape infrastructure and procedures.

The Medical Center Station is an undefended potential terrorist target located between two well defended targets that acknowledge this risk by their expensive investments in security. Why not address the issue of better access to NNMC with a design that achieves that goal and addresses an essential safety deficit for the same effort and taxpayer's dollar (or 60 million of them)? Improved emergency evacuation of the Metro station should be part of the Purpose and Need of this project.

#### 4. Procedures for public participation have not been followed.

The public participation in the scoping process has fallen far short of the spirit of NEPA requirements. In particular, MCDOT has not complied with Section 1506.6(b) of Title 40 of the Federal Regulations, which requires notice to potentially interested community members:

- The public meeting to discuss the summary was poorly publicized. Aside from a limited distribution of a last-minute email, only members of a handpicked advisory committee (on which we fruitlessly requested membership some time ago) were notified.
- No transcript was made of the public meeting.
- The Purpose and Need was summarized at the meeting, but the statement was not made available.
- When the draft statement was finally made public, only 11 days were allowed for comments.
- The Clark Construction plans which are the basis for MCDOT's decision to rule out the WMATA study alternatives are not available under FOIA, as required by 40 CFR 1506.6(f).
- One of the documents used to justify the Purpose and Need, the "Feasibility Study on Emergency Access Between Partnership Facilities" (the report that the last paragraph says "identified in 2004 a critical need for improved transportation access") has not been made public. We have repeatedly requested this document, without success.