



May 21, 2021

Carlos M. Hunt, Director
US Environmental Protection Agency
Office of Civil Rights (1201A)
1200 Pennsylvania Ave NW
Washington, DC 20460
Via mail and email to Hunt.JuanCarlos@epa.gov

Dear Mr. Hunt:

We are writing to you to make EPA aware of an important Title VI and environmental justice issue in the highly polluted, ozone nonattainment Houston region, and to urge EPA to exercise its authority regarding aspects of the project in a way that will advance the goals of Title VI and environmental justice.

The Project's Title VI and Environmental Justice Issues

On January 18, 2021, the undersigned organizations wrote the Texas Department of Transportation expressing our concern that issuing a Record of Decision for the North Houston Highway Improvement Project (NHHIP) as proposed in the Final Environmental Impact Statement (FEIS) would violate Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§2000d to 2000d-7, as well as federal regulations and the state agency's own Title VI/Nondiscrimination plan as well as state and federal civil rights and environmental justice requirements. Texas DOT issued a ROD for the Project on February 3, 2021.

On February 22, 2021, the Federal Highway Administration informed us that our letter to the Texas DOT was being treated as a Title VI complaint and had been assigned to that agency's Office of Civil Rights. In response, we have prepared and submitted a lengthy, more detailed, formal Title VI complaint to the Federal Highway Administration Office of Civil Rights. A copy of that complaint is attached, as Exhibit 1 to this complaint. A few highlights are included below for your reference:

- TxDOT FEIS openly acknowledges that its actions have a discriminatory effect, and it has not committed to sufficient mitigation measures to even reduce the "high and severe" effects on protected classes under Title VI.
- The project will cause displacement of people and businesses protected under Title VI including over 1,000 residences, 344 businesses, 5 places of worship, and 2 schools.
- As a result of the expansion, twenty-six schools will be within 500 feet of the freeway increasing exposure to harmful air pollution. These schools primarily serve Black and brown children who already suffer higher rates of asthma than their white peers.

EPA's Title VI and Environmental Justice Responsibilities

On January 20, 2021, Inauguration Day, President Biden issued Executive Order 13990, entitled “Protecting Public Health and the Environment and Restoring Science To Tackle the Climate Crisis.” It directed all executive departments and agencies to implement the following policies:

Section 1. *Policy.* Our Nation has an abiding commitment to empower our workers and communities; promote and protect our public health and the environment; and conserve our national treasures and monuments, places that secure our national memory. Where the Federal Government has failed to meet that commitment in the past, it must advance environmental justice. In carrying out this charge, the Federal Government must be guided by the best science and be protected by processes that ensure the integrity of Federal decision-making. It is, therefore, the policy of my Administration to listen to the science; to improve public health and protect our environment; to ensure access to clean air and water; to limit exposure to dangerous chemicals and pesticides; to hold polluters accountable, including those who disproportionately harm communities of color and low-income communities; to reduce greenhouse gas emissions; to bolster resilience to the impacts of climate change; to restore and expand our national treasures and monuments; and to prioritize both environmental justice and the creation of the well-paying union jobs necessary to deliver on these goals.

To that end, this order directs all executive departments and agencies (agencies) to immediately review and, as appropriate and consistent with applicable law, take action to address the promulgation of Federal regulations and other actions during the last 4 years that conflict with these important national objectives, and to immediately commence work to confront the climate crisis.

Title VI of the Civil Rights Act and its implementing regulations prohibit recipients of federal funds, including state agencies, from taking actions that have the intent or effect of discriminating on the grounds of race, color, or national origin. 42 U.S.C. § 2000d; 40 C.F.R. § 7.30, 7.35.

President Clinton’s 1994 Executive Order 12898, regarding environmental justice, directed federal agencies to identify and address the disproportionately high and adverse human health or environmental effects of their actions on minority and low-income populations, to the greatest extent practicable and permitted by law. The order also directs each agency to develop a strategy for implementing environmental justice. The order also intended to promote nondiscrimination in federal programs that affect human health and the environment, as well as provide minority and low-income communities access to public information and public participation.

The difference between environmental justice and Title VI is explained on the EPA website as follows:

Title VI of the Civil Rights Act prohibits recipients of federal financial assistance (states, grantees, etc.) from discriminating based on race, color, or national origin in any program or activity.

Executive Order 12898, on the other hand, directs federal agencies to identify and address, as appropriate, disproportionately high adverse human health and environmental effects of their programs, policies, and activities on minority populations and low-income populations.

However, a Title VI civil rights complaint may raise environmental justice issues when challenging a recipient's activity. For instance, if a state agency receives funds from EPA to run a clean air program, that state recipient is legally prohibited from discriminating on the basis of race, color or national origin under Title VI when engaging in clean air enforcement activities.

The EPA, in complying with Executive Order 12898, can also ensure the programs it funds consider disproportionately high adverse human health and environmental effects on minority and low income populations.

(<https://www.epa.gov/environmentaljustice/title-vi-and-environmental-justice>)

On April 7, 2021, EPA Administrator Michael S. Regan directed all EPA offices to clearly integrate environmental justice considerations into their plans and actions, stating:

Too many communities whose residents are predominantly of color, indigenous, or low-income continue to suffer from disproportionately high pollution levels and the resulting adverse health and environmental impacts. We must do better. This will be one of my top priorities as Administrator, and I expect it to be one of yours as well.

On April 23, 2021, in conjunction with President Biden's Leaders Summit on Climate, Administrator Regan stated:

The climate crisis is an urgent threat and President Biden has set forth an ambitious commitment to confront it. EPA will be at the center of delivering on this agenda, and in doing so, we are lifting up overburdened communities while creating new jobs and building a 21st Century clean economy. The Leaders Summit is a statement that the United States is once again a global climate leader. America is back, and we are committed to empowering the people who've been left out of the conversation for too long – the same communities who are on the frontlines of pollution, who suffer disproportionately from the impacts of climate change.

The NHHIP

The NHHIP is a massive highway project, which is primarily a responsibility of the Federal Highway Administration, from a federal perspective. However, it would have impacts far beyond the transportation sphere, including significant environmental and environmental justice impacts, and increases in greenhouse gas emissions. For that reason we are submitting this Title VI and/or Environmental Justice complaint to the EPA.

The Project would convert approximately 450 more acres of Houston's land to highway use.¹ About 120 acres of non-urban vegetation that may provide suitable habitat for eight state-listed species will be removed.² It would impact 26 acres of waterways and wetlands,³ and all waterway segments within the project corridor are categorized as impaired, suffering from beneficial use impairments. It would displace thousands of predominantly minority residents and community services and assets.⁴ In Segment 1 approximately 87% of residents are minorities; in Segment 2 83.5% are minorities; and in

¹ FEIS, p. ES-19.

² FEIS, p. ES-9

³ FEIS, p. ES-21

⁴ FEIS, p. ES-19

Segment 3 73.6% are minorities.⁵ Houston currently is a serious nonattainment area for the 2008 Ozone National Ambient Air Quality Standards (NAAQS), and a marginal nonattainment area for the 2015 Ozone NAAQS, though it continues to violate both standards, with its attainment deadlines passing later this summer.⁶ Motor vehicle emissions, including air toxics such as VOCs, contribute to ozone formation. The FEIS for the project acknowledges that modeling of Mobile Source Air Toxics would decrease by 1-3% more by 2035 and 2040 under the No Build alternative compared to the Preferred Alternative.⁷ The FEIS entirely ignores the increased vehicle trips that adding multiple travel lanes to these urban highways would induce,⁸ and ignores the resulting additional adverse health impacts that would be suffered by the overwhelmingly minority residents of the neighborhoods adjacent to the Project.⁹ Recently published research documents that highway emissions from light duty gas vehicles and heavy duty diesel vehicles are major contributors to the disproportionate exposure to PM2.5 of Blacks and Hispanics in urban areas (Whites 31%; Blacks 71%; Hispanics 71%).¹⁰ In addition, the construction of more than 150 additional miles of highway lanes alone will necessitate large volumes of greenhouse gas emissions, and the spending of billions of dollars to encourage and subsidize multiple decades of driving more millions of miles in single-occupancy vehicles is directly contrary to the Nation's, this Administration's, and this agency's commitments to address climate change.¹¹

There are certain issues, and certain of the impacts of the Project, that fall under EPA's authority and responsibility. These include making determinations along with the Army Corps of Engineers under the Clean Water Act regarding the extent of waters of the United States being impacted, and permitting and/or conditioning the Project's impacts on those resources, as well as evaluating appropriate mitigation measures. Another area of EPA authority arises under the Clean Air Act, including assessing the impact of the Project as it relates to compliance with National Ambient Air Quality Standards, and to emissions of Mobile Source Air Toxics. The impact of the Project on greenhouse gas emissions, and of removing 120 acres of vegetated habitat are additional issues within the EPA's realm of authority.

We request that EPA carefully exercise its authorities and responsibilities relating to these issues raised by the NHHIP, with a focus on assuring not only that the minimum substantive and procedural requirements of federal law are complied with, but also ensuring, in coordination with the Civil Rights Office of the Federal Highway Administration, that the Project's deficiencies from an environmental

⁵ FEIS pp. 3-5, 3-6

⁶ FEIS, p. 3-30

⁷ FEIS, Appendix C MSAT Table 1

⁸ "The VMT estimated for the Build Alternative is slightly higher than that for the No Build Alternative, because the additional capacity increases the efficiency of the roadway and attracts rerouted trips from elsewhere in the transportation network." FEIS, Appendix C MSAT, p. 7. Thus, only rerouted otherwise existing nearby trips are considered, contrary to decades of experience that adding travel lanes in highly urbanized areas results in additional newly convenient trips that end up leading to congestion on the added lanes. See, The Congestion Con, (<https://t4america.org/maps-tools/congestion-con/>).

⁹The FEIS argues at length in Appendices C that it is not currently possible to determine the quantitative impact on the health of people living near high-volume highways from increases or decreases in toxic vehicular emissions, but it cannot be denied that larger amounts of these emissions lead to more adverse health outcomes.

¹⁰ "PM2.5 polluters disproportionately and systemically affect people of color in the United States," Tessum *et al.*, *Sci. Adv.* 2021; **7** : eabf4491 28 April 2021, at page 2 and Figures 2B and 3H-J. See also, "Deadly air pollutant 'disproportionately and systematically' harms Americans of color, study finds: Black, Latino and Asian Americans face higher levels of exposure to fine particulate matter from traffic, construction and other sources," The Washington Post, April 28, 2021, accessed on April 29, 2021 at <https://www.washingtonpost.com/climate-environment/2021/04/28/environmental-justice-pollution/>

¹¹ See Exhibit 1 for more detailed information regarding the impacts of the NHHIP, and regarding environmental justice and Title VI issues.

justice perspective and TxDOT's noncompliance with Title VI be fully investigated and satisfactorily corrected and mitigated. Only thus can the requirements of Title VI, of Executive Order 12898, and of Executive Order 13990 be satisfied, in view of the extraordinarily high proportion of minority residents in the neighborhoods adjoining the Project corridor.

Respectfully submitted,

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cc: Via mail and email Tejada.Matthew@epa.gov, Matthew Tejada, Director of Environmental Justice, US
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Enc. Exhibit 1 FHWA Title VI Complaint Letter