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Texas Department of Transportation

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October 20, 2023

Dear Judge Brown and Commissioners Travillion, Shea, Howard, and Gomez:

The Texas Department of Transportation (TxDOT) has received your letter dated September 26, 2023 to Executive Director Marc Williams, and Mr. Williams has asked me to respond on his behalf to the three requests contained in this letter within the context of our current status, as well as summarizing the communications our district team has had with members of your court throughout this process.

***Travis County Request #1** – That TxDOT specifically address all of our previously submitted concerns, including specific analysis requested, prior to moving forward with the project.*

The Texas Department of Transportation recently issued a Final Environmental Impact Statement (FEIS) and Record of Decision (ROD) under the National Environmental Policy Act (NEPA) on August 18, 2023 for the I-35 Capital Express Central Project (Project). TxDOT's evaluation of the Project under NEPA is concluded. The analysis of environmental impacts in the FEIS/ROD is thorough and goes above and beyond what is required by applicable federal regulations. This was one of the most exhaustive environmental reviews ever conducted by TxDOT. The FEIS alone is nearly 500 pages long, which is 200 pages longer than the 300-page soft limit "for proposals of unusual scope or complexity" in the Council on Environmental Quality's (CEQ's) regulations.[1] It is supported by multiple technical appendices, including studies of air quality and greenhouse gas impacts, community impacts, water resources, and other subject areas. It took three years to complete, which is a year longer than the intended two-year time frame for an EIS in CEQ's regulations.[2]

In preparing the FEIS/ROD, TxDOT made a number of changes compared to the December 2022 Draft Environmental Impact Statement (DEIS) in consideration of both the comments you provided in your February 28, 2023 letter, and the comments provided by other agencies and thousands of members of the public. For example, in the Summary of the FEIS we explained how optimization and alignment shifts were made to reduce right-of-way impacts where possible, including a new outfall site that would minimize residential impacts. We also identified in this summary more than a dozen new commitments and mitigation proposed after publication of the DEIS, including design changes to accommodate a potential locally funded deck plaza between 38th ½ Street and Airport Boulevard, additional affordable housing mitigation, and stormwater treatment. And in Section 3.10.6 of the FEIS, we expounded on the discussion of how stormwater will be discharged from the Project and proposed additional treatment measures.

[1] 40 CFR 1502.7.
[2] 40 CFR 1501.10.

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We appreciate the Travis County Commissioners Court's input, as well as that of the other agencies and members of the public who commented. This feedback resulted in a substantially improved proposed project.

NEPA reviews are not intended to be endless in scope or duration. Rather, they are governed by a "rule of reason," which CEQ recently explained as follows:

> "Inherent in NEPA and the CEQ Regulations is a 'rule of reason' that allows agencies to determine, based on their expertise and experience, how to consider an environmental effect and prepare an analysis based on the available information. The usefulness of that information to the decision-making process and the public, and the extent of the anticipated environmental consequences, are important factors to consider when applying that 'rule of reason.'"[3]

TxDOT assures you that potential environmental impacts of the Project were studied and considered before selecting an alternative in the ROD. Courts sometimes refer to NEPA as requiring agencies to take a "hard look" at the environmental impacts of their actions before proceeding. We have certainly done that, and the next phases of developing this important transportation project are underway, so that we can improve this critical local, regional, national, and international thoroughfare. Continuing to study the Project's impacts is neither warranted nor appropriate.

More specifically, I'd like to address comments that have been received from various correspondence with Travis County and the communications we have had throughout this process. TxDOT's I-35 Capital Express Central team has been working very closely with elected officials and community stakeholders for many years. We have had numerous meetings and correspondence throughout this time, including addressing questions and concerns brought by Travis County. The following summarizes the questions we've received from the county and responses provided through these many meetings and communications with various members of the Travis County Commissioner's Court.

- *Travis County – Palm School – requested that TxDOT reconsider its decision that the Palm School not be recommended for the National Register of Historic Places (NRHP); and that the access point (driveway) to the Palm School property along the I-35 frontage road be maintained (it appears blocked in Modified Build Alternative 3).*

  TxDOT – TxDOT forwarded the package of information Travis County provided to the Texas Historical Commission for review and guidance. The THC recommended that TxDOT treat the property as eligible for listing in the National Register in the final EIS. The schematic design between the DEIS and FEIS was updated to more clearly show that the driveway connection at Palm School and access to the southbound frontage road will be maintained.

[3] 88 Fed. Reg. 1199, left-hand column (January 9, 2023).

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- *Travis County – The I-35 Capital Express Central Project should conduct a study of existing and future particulate matter 2.5 ($PM_{2.5}$) in the I-35 corridor, with monitors placed directly adjacent to the highway and throughout the region. $PM_{2.5}$ is a significant public health threat. Children and the elderly are especially vulnerable. This study should specifically analyze existing and future $PM_{2.5}$ at schools and elder care facilities within 2 miles of I-35. This study should be included in the final EIS and inform this project moving forward.*

  TxDOT – TxDOT follows and adheres to the Clean Air Act (CAA) conformity process for addressing the Criteria Pollutants, including $PM_{2.5}$, at the project level. The CAA has contributed to the significant improvement in all of the Criteria Pollutant concentrations nationwide over the last thirty years. For the transportation sector, this has been accomplished by federal tailpipe and fuel controls along with fleet turnover and technological improvements. Travis County is currently classified as attainment/unclassifiable for $PM_{2.5}$ based on the data from the monitoring network maintained by the Texas Commission on Environmental Quality (TCEQ) on behalf of the Environmental Protection Agency (EPA). Note that two of these monitors are very close to the I-35 corridor in Travis County. In addition, these monitors have shown relatively consistent $PM_{2.5}$ design values below the National Ambient Air Quality Standards (NAAQS) for $PM_{2.5}$, even with increases in population and traffic. These $PM_{2.5}$ concentrations in Travis County are expected to continue into the future based on a report from TCEQ called the Trends Report, which also projects that $PM_{2.5}$ levels from vehicles are expected to continue decreasing into the future even assuming increased vehicle miles traveled (VMT) over that same timeframe. Since the $PM_{2.5}$ design value in Travis County has been continually monitored as below the applicable health-based NAAQS which are set by EPA at levels protective of sensitive populations (including children and the elderly), a specific study of this pollutant is not required by regulation as it would not be expected to identify a potential impact.

- *Travis County – The I-35 Capital Express Central Project should ensure that air quality projections in the final EIS are at least within up-to-date $PM_{2.5}$ attainment levels at the point that the final EIS and Record of Decision are issued and should anticipate future changes.*

  TxDOT – TxDOT follows the very successful CAA regulatory process for addressing $PM_{2.5}$ at the project level and we are fully compliant with all applicable NAAQS requirements for the I-35 Capital Express Central Project. EPA has proposed a range of possible reductions in the annual $PM_{2.5}$ NAAQS but has not yet finalized this proposal. Once they do finalize the rule, it will take up to two years for EPA to designate areas as nonattainment to the new lower $PM_{2.5}$ NAAQS, and Travis County may very well be in attainment of this new standard as well. Even if Travis County is designated nonattainment for the lower $PM_{2.5}$ NAAQS, it will still be another year after that before the conformity process would be required at the project level. Although, if this new standard does lead to the worst outcome of a $PM_{2.5}$ nonattainment designation for Travis County, any environmental decisions, including reevaluations of this project, that occur after this timeframe will have to address all regulatory requirements associated with the new nonattainment designation. Any decisions made prior to this potential nonattainment designation and conformity applicability timeframe will be made based on the current designation status of the area at the time of the decision in accordance with applicable law, and not based on speculation of future regulatory requirements.

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- *Travis County – The I-35 Capital Express Central Project should conduct a study of existing and future air pollution in addition to carbon monoxide (CO). This study should also include nitrogen oxides (NOx), which causes Ozone, as well as other pollutants that affect the population. Air pollution represents a significant public health threat. This study should specifically analyze existing and future air pollutant levels both adjacent to the highway and across the region and should be included in the final EIS and inform this project moving forward.*

  TxDOT – TxDOT is fully compliant with all applicable NAAQS requirements relative to NOx and other pollutants for the I-35 Capital Express Central Project. NOx is considered important because it is a precursor to ozone formation, as are volatile organic compounds (VOCs). Although NOx and VOCs are directly emitted from tailpipes, ozone is not; rather, ozone forms away from the source on hot and sunny days from the combination of NOx and VOCs in the atmosphere. Since ozone is not directly emitted from tailpipes, it does not have the same potential to produce hot spots as pollutants directly emitted from tailpipes, like carbon monoxide (CO). For this reason, an analysis of NOx similar to the CO project level analysis would not be useful or appropriate to determining where ozone is likely to occur or to the accurate prediction of ozone concentrations. Ozone is one of the six Criteria Pollutants under the CAA, and TxDOT does follow the CAA conformity process for addressing the Criteria Pollutants, where applicable. Travis County is categorized as attainment/unclassifiable for EPA's health-based ozone NAAQS as well as all other NAAQS, which are set at levels protective of human health including sensitive populations such as children, the elderly, and the environment.

- *Travis County – The I-35 Capital Express Central Project should conduct a full study of non-tail pipe pollutants from traffic, including but not limited to brake dust, tire friction, and the impacts of a shift from internal combustion engines (ICEs) to electric vehicles (EVs). The expected proliferation of electric vehicles, as outlined in the draft EIS, are not guaranteed to reduce overall pollution levels from traffic. Pollution from tire friction and wear, for example, may worsen with an increase in EVs due to increase in vehicle weight from electric batteries. Research in this field is new and increasing each day, and TxDOT's study should take into account the most up to date research as of February 2023. This study should be included in the final EIS and inform this project moving forward.*

  TxDOT – Brake dust and tire friction are addressed in the environmental review process as part of the analysis of PM emissions because these typically contribute to PM_{10} and, to a lesser extent, $PM_{2.5}$ concentrations. Like the other Criteria Pollutants, TxDOT addresses particulate matter through the CAA's conformity process, where applicable. TxDOT uses EPA models, including MOVES3 and AP-42, and as EPA is constantly updating its models based on better science and new regulations in effect, any changes in the science of brake dust and tire friction emissions are expected to be captured under future model versions, as appropriate. Fortunately, Travis County is currently classified as attainment/unclassifiable for EPA's health-based PM NAAQS, which are set at levels protective of human health including sensitive populations such as children, the elderly, and the environment. Therefore, additional study unwarranted at this time.

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- ***Travis County – The I-35 Capital Express Central Project should mitigate future air pollution. This expansion represents 42 lane-miles of added highway capacity. This will lead to an increase of 320 million vehicle miles driven every year, burning the equivalent of 17 million more gallons of gasoline every year, and generating 150,000 tons of CO_2.***

  TxDOT – The calculations provided by Travis County do not match the data in Appendix V of the FEIS. For criteria pollutants and greenhouse emission reductions, the proposed project design provides pollution mitigation through the HOV managed lanes that support HOV and bus-rapid transit and through active transportation improvements. Unfortunately, it is not possible to accurately predict the emission benefits of these proposed improvements due to limits in the ability to accurately forecast mode shift. GHG/CO_2 estimation analyses are very new in the transportation field and are associated with substantial uncertainty and therefore inconclusive. For instance, the following were unable to be accounted for in the GHG analysis for this project, but are expected to offer additional benefits beyond those documented in the EIS:

  - Likely paradigm-shift changes in fleet mix and fleet turnover throughout the next 20-30 years with potential for substantial increases in electric vehicles and further improvements in fuel efficiency beyond current regulations. For example, EPA projected that rules proposed earlier this year could result in Model Year (MY) MY2032 being 67% battery electric, but TxDOT is not able to estimate those reductions for this project until EPA updates their Motor Vehicle Emissions Simulator (MOVES) estimator of GHG and other pollutants from on-road sources.
  - The FEIS documents the increased average daily VMT for the no build alternative between 2018 to 2050 from 1.70 million (M) VMT to 2.51M VMT and the build alternative is calculated at 2.55M VMT in 2050, but this minor increase in vehicle miles traveled under the build alternative does not account for the increase in people moving capacity.
  - Mode shift from single occupant vehicle travel to: 1) high occupancy vehicle options such as carpool/vanpool/bus rapid transit, 2) active transportation walking, biking or scooting, or 3) options that do not require commutes such as teleworking. The population of Travis County is expected to increase in the future, so much of the future traffic on this proposed road will come regardless of this project.
  - The managed HOV lanes may attract drivers to carpool or to take bus-rapid transit to take advantage of the more reliable managed lanes.
  - The project's bicycle and pedestrian improvements and increased connectivity will offer options to travel without using a vehicle that do not exist in the no-build alternative.

  Future estimated GHG analyses is further discussed in Appendix V (Section 5) of the FEIS/ROD.

<u>Travis County Request #2</u> – That all actions taken regarding this project be requested by TxDOT to comply with CAMPO's process for public hearing and vote by the CAMPO TBP, not by CAMPO administrative amendment, and be fully transparent and held at public CAMPO TPB meetings.

Your letter references that the Capital Area Metropolitan Planning Organization's (CAMPO's) vote to advance the Project occurred before the FEIS/ROD and asserts that "many significant changes have been proposed since that vote."

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The environmental review process has resulted in many improvements to the project, including dozens of mitigation commitments.[4] There is nothing unusual about an MPO's inclusion of a project in its planning and programming documents prior to the NEPA review. In fact, federal statute and guidance requires this order of events as it directs agencies like TxDOT to confirm planning consistency by inclusion in the regional long-range plan before issuing the FEIS/ROD.[5]

TxDOT can confirm that the Project has fully complied with CAMPO's process for project approvals, including public hearings and votes by the CAMPO TPB. There are no further actions needed by the CAMPO TPB. CAMPO has approved, and recently reaffirmed, the policies and procedures by which it addresses amendments to the regional long-range plan and Transportation Improvement Program. CAMPO and TxDOT have different roles and responsibilities regarding transportation projects. CAMPO is responsible for transportation planning on a regional basis, and TxDOT is responsible for project development and implementation, both of which includes extensive stakeholder and public input on the parts of TxDOT and CAMPO. The Project was approved by CAMPO, and now TxDOT is moving forward with developing and implementing it. TxDOT, not CAMPO, has authority over remaining Project "actions" including right-of-way acquisition, engineering, construction, and operation of the Project.

***Travis County Request #3** – That TxDOT provide a timely briefing to the Travis County Commissioners Court to address these issues.*

Throughout the development of the project, TxDOT has worked hard to keep all stakeholders up to date on the project and address questions that you may have. We will continue to work to keep Travis County Commissioners updated on this project.

If you have any further questions or requests, please reach out to me at tucker.ferguson@txdot.gov.

Sincerely,

DocuSigned by:
Tucker Ferguson
78974EBCB5244BE...

Tucker Ferguson, P.E.
Austin District Engineer

[4] *See* the FEIS at Table 3.25-1: *Benefits Associated with the Implementation of the Proposed Action (Preferred Alternative)*, Table 3.25-2: *Commitments Required by Policy or Regulation for the Preferred Alternative*, and Table 3.25-3: *Proposed Mitigation for Preferred Alternative*.

[5] *See* FHWA guidance, "Transportation Planning Requirements and Their Relationship to NEPA Approvals," Supplement to January 28, 2008 Transportation Planning Requirements and their Relationship to NEPA Process Completion (2/9/2011) Distribution Memo - TPR and NEPA - Planning - FHWA (dot.gov).