

November 1, 2021

Mr. Mack Frost
Virginia Division
Federal Highway Administration
400 North 8th Street, Suite 750
Richmond, VA

BY EMAIL

Ms. Angel Aymond
Environmental Division
Virginia Department of Transportation
1401 East Broad Street
Richmond, VA

Re: Martinsville Southern Connector Study Final Environmental Impact Statement

Dear Mr. Frost and Ms. Aymond:

The Southern Environmental Law Center (SELC), on behalf of the 20 organizations listed below, offers the following comments on the Final Environmental Impact Statement (EIS) for the Martinsville Southern Connector Study prepared by the Virginia Department of Transportation (VDOT) and Federal Highway Administration (FHWA).

Although the Final EIS responds to some of the issues raised in public comments throughout this process, we continue to have serious concerns with VDOT's proposed Preferred Alternative, as well as with major shortcomings of the EIS analysis identified in public comments submitted to VDOT as part of this study process that have still not been adequately addressed. These previous comments are incorporated by reference into these comments on the Final EIS.¹

VDOT's Preferred Alternative to build an 8-mile, \$744.8 million new highway primarily through greenfield areas around the existing Route 220 south of Martinsville would destroy hundreds of acres of forest and farmland, cross numerous streams and wetlands, and relocate many homes, along with potentially significant indirect effects from induced development spurred by the project. It would also substantially increase vehicle miles traveled (VMT) in the study area, and likely result in increased emissions of greenhouse gases (GHGs) and other air pollutants, harming the environment, communities, and public health. This proposal flies in the

¹ See Letter submitted by Trip Pollard and Travis Pietila, SELC on behalf of itself and 16 other organizations to Angel Aymond, VDOT, "Comments on the Martinsville Southern Connector Study Draft Environmental Impact Statement" (Aug. 3, 2020) (hereinafter "August 3, 2020 Joint Letter"); Letter from Trip Pollard and Travis Pietila, SELC to Angel Aymond, VDOT, "Martinsville Southern Connector Study Draft Environmental Impact Statement" (June 26, 2020) (incorporating a report prepared by Walter M. Kulash, P.E., "Review of Preferred Alternative C Martinsville Southern Connector Study" (hereinafter "Kulash Report")) (hereinafter "June 26, 2020 SELC Letter"); Letter from Trip Pollard and Travis Pietila, SELC to Scott Smizik, VDOT, "Martinsville Southern Connector Study – Route 220 Environmental Impact Statement Recommended Preferred Alternative" (Aug. 25, 2019).

face of positive steps Virginia has taken in recent years to prioritize innovative and context-sensitive transportation solutions, as well as the goals established to reduce GHG emissions across the Commonwealth's economy to address the climate crisis.

Despite the considerable cost and impacts, both the Draft and Final EIS indicate that building VDOT's Preferred Alternative would fail to meet the purpose and need of this project and would provide minimal benefits in addressing the legitimate traffic and safety issues identified along the Route 220 corridor. Instead, it would simply bypass many of these problems, leaving the majority of drivers projected to continue using the existing Route 220 facing many of the same problems they face today, even after the proposed new highway is in place. As discussed further below, the minimal traffic benefits VDOT's proposal would provide in relation to its exorbitant cost indicate that the Preferred Alternative would be an extremely poor use of the Commonwealth's transportation funds.

Given the many problems with the Preferred Alternative, it is imperative that VDOT and FHWA remedy the central shortcoming of the EIS—the utter failure to provide any meaningful analysis of reasonable alternatives to satisfy the project's purpose and need (in whole or in substantial part) through less-costly and less-damaging options focused on upgrading the existing Route 220 corridor. Under the National Environmental Policy Act (NEPA), agencies must “rigorously explore and objectively evaluate all reasonable alternatives to a proposed action” in an EIS.^{2,3} Previous comments submitted on the Draft EIS outlined its woefully inadequate review of these reasonable alternatives, particularly improvements VDOT itself has recommended for the study area as part of its Arterial Preservation Plan for Route 220.⁴ Since the Final EIS likewise fails to provide this analysis required by NEPA, we briefly reiterate these concerns in Section III below.

We urge FHWA and VDOT to scrap this outdated, destructive, and unnecessary proposal, and instead focus on advancing more cost-effective and context-sensitive upgrades to Route 220, which are also much more likely to be funded under the Commonwealth's SMART SCALE funding prioritization process. At the very least, a Record of Decision (ROD) cannot be issued for this study until the EIS's inadequate review of reasonable alternatives and various other deficiencies outlined in our previous comments and in our further comments below,

² 40 C.F.R. § 1502.14 (1978); *see also* 42 U.S.C. § 4331 et seq.; 23 C.F.R. § 771.123(c) (“The draft EIS must evaluate all reasonable alternatives to the action and document the reasons why other alternatives, which may have been considered, were eliminated from detailed study.”).

³ In 2020, the Council on Environmental Quality (CEQ) under the Trump administration adopted new NEPA regulations that substantially modified the CEQ regulations that had been in place for over 40 years. However, the Biden administration has since expressed “substantial concerns” about the legality and substance of the 2020 NEPA regulations, *Deadline for Agencies to Propose Updates to NEPA Procedures*, 86 Fed. Reg. 34,154, 34,155 (June 29, 2021), and CEQ has begun “a series of rulemakings” to propose revisions to them. *National Environmental Policy Act Implementing Regulations Revisions*, 86 Fed. Reg. 55,757, 55,759 (Oct. 7, 2021). The 2020 regulations are also still under judicial review. FHWA and VDOT can continue to apply CEQ's longstanding pre-2020 regulations to the review of this project since the NEPA process for this study was initiated well before September 14, 2020 (the date after which the 2020 NEPA regulations state that agencies must use the new regulations). 40 C.F.R. § 1506.13 (2020). It would be wise to do so given the substantial concerns and legal uncertainty surrounding the 2020 regulations, and we have therefore continued to cite to CEQ's 1978 NEPA regulations in these comments.

⁴ *See* August 3, 2020 Joint Letter at 2-3; June 26, 2020 SELC Letter at 9-12; Kulash Report at 8-12.

including the satisfaction of FHWA’s fiscal constraint requirements, are sufficiently addressed. Preparation of a Revised or Supplemental EIS is needed to ensure that this is adequately done.⁵

I. The Final EIS Continues to Provide Inadequate Analysis of Environmental Impacts

Although the Preferred Alternative presented in the Final EIS reflects design changes that have reduced some of the adverse effects that were estimated for VDOT’s previously-preferred “Alternative C” in the Draft EIS, the Final EIS nevertheless shows that the Preferred Alternative would still have significant direct and indirect impacts on the environment and communities in the study area—and it appears some of these impacts would be even greater than those of Alternative C. In addition, the Final EIS still fails to provide adequate analysis of environmental impacts in a number of respects.

A) Direct Environmental and Community Impacts

The Final EIS shows that building VDOT’s Preferred Alternative would require the destruction of 298 acres of forests (a substantial increase over Alternative C’s 221 acres), as well as 292 acres of farmland.⁶ It would also impact 17,835 linear feet of streams (and involve 61 stream crossings⁷), 3.24 acres of wetlands, and 4.7 acres of 100-year floodplains.⁸ Despite reductions in relocation effects compared to Alternative C, the Preferred Alternative would still require the relocation of 21 homes and directly impact 52 residential properties,⁹ not to mention likely indirect and proximity effects on many other properties. While many of these impact figures are lower than the other Build Alternatives under consideration, they are nonetheless substantial, and this comparison is also somewhat misleading since the EIS’s alternatives analysis continues to exclude consideration of any reasonable low-build options focused on upgrading the existing Route 220 corridor—options that could potentially result in far fewer direct impacts, as discussed in Section III below.

B) Indirect and Induced Growth Effects

Under NEPA, agencies are also required to consider “indirect” effects such as induced growth resulting from the project.¹⁰ As with the Draft EIS, the Final EIS’s analysis of potential

⁵ See 40 C.F.R. § 1502.9(a) (1978) (“If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion.”); see also *Cowpasture River Pres. Ass’n v. United States Forest Serv.*, 911 F.3d 150, 170 (4th Cir. 2018); 40 C.F.R. §1502.9(c) (1978) (providing that agencies shall prepare a Revised or Supplemental EIS if: “(i) [t]he agency makes substantial changes in the proposed action that are relevant to environmental concerns; or (ii) [t]here are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts”); 23 C.F.R. § 771.130(a).

⁶ Final EIS at 2-45.

⁷ *Id.* at 3-77.

⁸ *Id.* at 2-45.

⁹ *Id.*

¹⁰ 40 C.F.R. § 1508.8 (1978) (“Effects” is defined to include: “Indirect effects, which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.”). See also 40 C.F.R. § 1502.16(b) (1978); *Senville v. Peters*, 327 F. Supp. 2d 335, 348 (D. Vt. 2004); *North Carolina Alliance for Transp. Reform, Inc. v. U.S. Dept. of Transp.*, 151 F. Supp. 2d 661, 695 (M.D.N.C. 2001).

induced growth effects focuses on the extent of “land available for development” (defined to include “forests, grasslands, and pastures”) within an “Induced Growth Study Area” extending one mile from proposed interchanges and up to two miles along feeder roads.¹¹ The Final EIS estimates that 7,297 acres fall within this “land available for development” category for the Preferred Alternative,¹² and that based on existing land cover “it is reasonable to conclude that any induced growth that does occur would likely involve the clearing of land rather than infill or redevelopment.”¹³ As a result, the impacts to farmland, forests, and aquatic resources from the Preferred Alternative are likely to be much greater than the sizable direct effects noted above.

Yet the Final EIS continues to lack any information on the potential extent of these additional effects. While we understand it is impossible to predict exactly how future land development will occur, similar to the Draft EIS¹⁴ the Final EIS lacks even basic estimates of the amount of natural resources (forests, wetlands, streams, etc.) that exist within the Induced Growth Study Area that may be impacted.¹⁵ Instead, the Final EIS simply identifies the amount of land zoned for various uses within this area, which is helpful but provides little insight into the extent and types of threatened resources.¹⁶ Further analysis is needed to provide an adequate analysis of the potential indirect effects of this proposal.

C) Greenhouse Gas Emissions and Carbon Sinks

The information and analysis provided about the potential GHG effects of the Preferred Alternative and other alternatives is also inadequate, but even the limited information contained in the Final EIS indicates that these impacts could be substantial. The Final EIS estimates that by 2025, the Preferred Alternative would increase VMT along the existing and proposed new Route 220 corridors by 26,106 miles per day (9.5 million miles per year) over the No-Build condition—a 17.9% increase.¹⁷ By 2040, the Preferred Alternative would increase daily VMT by 31,513 miles over the No-Build—an increase of 18.4% that translates into a staggering increase of 11.5 million miles of driving per year.¹⁸

The transportation sector is the largest source of GHG emissions in Virginia, comprising 48.6% of the Commonwealth’s total carbon dioxide (CO₂) emissions in 2018.¹⁹ Recognizing the need to drastically cut GHG emissions to meet the climate crisis, the General Assembly has established a goal to achieve net-zero GHG emissions across Virginia’s economy by 2045, which

¹¹ Final EIS at 3-133.

¹² *Id.* at 3-145.

¹³ *Id.*

¹⁴ See June 26, 2020 SELC Letter at 3.

¹⁵ See Final EIS at 3-168 to 3-171.

¹⁶ *Id.*

¹⁷ See Final EIS, *Air Quality Technical Report* at tbl. 14 (July 2021).

¹⁸ *Id.* Moreover, we note that even these significant VMT increases are well below those estimated by the Rocky Mountain Institute’s “SHIFT Calculator” (*available at* <https://shift.rmi.org/>), a modeling tool specifically focused on potential induced travel effects of highway expansion. For a project with the proposed Martinsville Southern Connector’s characteristics (i.e., a new 8-mile, 4-lane principal arterial built in Henry County, Virginia), the SHIFT Calculator estimates a VMT increase of 23 to 34 million per year in the 5 to 10 years after construction.

¹⁹ U.S. Energy Information Administration, *State Carbon Dioxide Emission Data Tables*, tbl. 4 (Mar. 2, 2021), *available at* <https://www.eia.gov/environment/emissions/state/>.

includes the transportation sector.²⁰ Yet the Final EIS completely fails to mention these important points, which provide critical context for assessing GHG emissions from the project. The expected 18.4% increase in VMT from the Preferred Alternative compared to the No-Build Alternative in 2040,²¹ as well as its 56.7% increase compared to existing conditions,²² are very concerning in light of the Commonwealth’s determination that dramatic *reductions* in GHG emissions are needed over this time period. It is troubling to see the Final EIS’s responses to public comments frame the 56.7% expected VMT increase of the Preferred Alternative over existing conditions as only “slightly above” the U.S. Energy Information Administration’s projected 38% nationwide VMT growth between 2012 and 2040,²³ despite reflecting a 50% *increase* over this projected national rate.

Further, despite the substantial increase in driving expected to result from the project, the Final EIS still does not attempt to quantify the GHG emissions of this increase—a concern raised in SELC’s comments on the Draft EIS.²⁴ Even if the U.S. Environmental Protection Agency has not yet established significance thresholds for GHG emissions (as noted in the Final EIS’s response to comments²⁵), this information is highly pertinent to decision-makers who must weigh the considerable GHG-increasing potential of new highway projects such as this against the Commonwealth’s GHG reduction goals. This analysis must be conducted before a ROD is issued for this project—and it should address both the Preferred Alternative and how it compares to alternatives, including additional reasonable alternatives to upgrade existing Route 220 discussed in Section III below.

The Final EIS’s assessment of GHG emissions also completely fails to mention the project’s potential effects in eliminating existing carbon sinks such as forests, farmland, wetlands, and other natural areas that help to absorb and store CO₂ from the atmosphere. As noted above, the Final EIS shows that the Preferred Alternative would have considerable effects on these resources in the study area, including the destruction of nearly 600 acres of forests and farmland.²⁶ Information and analysis on the potential exacerbation of GHG emissions effects from the project related to the destruction of carbon sinks in the study area—in addition to the further information and analysis discussed above—is needed to provide decision-makers with a more complete picture of the potential GHG emissions-related effects of this proposal and in relation to alternatives.

II. The Preferred Alternative Continues to Fail to Satisfy the Purpose and Need or Justify Its Considerable Cost

The identified “purpose” and “need” of the Martinsville Southern Connector Study are carried forward unchanged from the Draft EIS. The purpose is stated as to “enhance mobility for both local and regional traffic traveling along Route 220 between the North Carolina state line

²⁰ Va. Code § 45.2-1706.1(A).

²¹ Final EIS, *Air Quality Technical Report* at tbl. 14 (July 2021).

²² *Id.*

²³ Final EIS, app. E at 4-16.

²⁴ June 26, 2020 SELC Letter at 3-5.

²⁵ Final EIS, app. E at 4-16

²⁶ Final EIS at 2-45.

and Route 58 near Martinsville, Virginia.”²⁷ And the three identified “need” elements continue to be to “accommodate regional traffic,” “accommodate local traffic,” and “address geometric deficiencies and inconsistencies.”²⁸

Previous comments submitted by SELC on the Draft EIS and the report prepared by traffic engineer Walter Kulash that was attached to those comments explained in detail why the Draft EIS’s “Alternative C” (VDOT’s initial preferred alternative) would not meet the purpose and need, and also why it would provide insufficient benefits to justify its tremendous cost.²⁹ Since the traffic analysis provided in the Final EIS for VDOT’s new Preferred Alternative is almost exactly the same as that in the Draft EIS due to the new Preferred Alternative’s substantially similar makeup and alignment to Alternative C, we briefly summarize some of the key points raised in that prior analysis below, along with additional issues specific to the Final EIS.

A) Failure to Meet the Needs of Existing Route 220 Users

While VDOT has identified legitimate traffic and safety issues along Route 220 in the study area (including geometric deficiencies, access management concerns, and substantial traffic volumes that exacerbate these issues), the Preferred Alternative would do little to fix these problems and would instead simply bypass most of them. This is particularly concerning given that a substantial majority of the corridor’s automobile and truck traffic is expected to continue to use the existing, largely-unimproved highway even if the new Preferred Alternative is built.³⁰ The Draft EIS estimated that the majority of drivers remaining on the existing route would save just 18 seconds traveling through the project corridor in the year 2040 with Alternative C in place compared to the No-Build scenario,³¹ and this figure appears to be even lower—a scant 2.6 seconds—in the Final EIS’s analysis for the Preferred Alternative.³² The Final EIS also makes clear that the Preferred Alternative would not address several of the geometric deficiencies along Route 220 that have been identified as a key element of the project’s purpose and need.³³

In addition, while the Draft EIS identified significant existing delays to drivers entering Route 220 from stop sign-controlled side roads and showed some improvement to these conditions if Alternative C were built, it also showed that substantial delays would remain despite construction of this new highway.³⁴ The findings of the Final EIS are similar, with many intersections continuing to operate at failing levels-of-service (both in 2025 and 2040) after the Preferred Alternative is constructed based on the “one-step” turning assumption analysis conducted for the Draft EIS.³⁵ Although the Final EIS also introduces a reasonable new “two

²⁷ *Id.* at 1-10.

²⁸ *Id.*

²⁹ See June 26, 2020 SELC Letter at 5-9; Kulash Report at 1-8.

³⁰ June 26, 2020 SELC Letter at 6; Kulash Report at 2-3; see also August 3, 2020 Joint Letter at 2.

³¹ June 26, 2020 SELC Letter at 6; Kulash Report at 1-2.

³² See Final EIS, *Traffic and Transportation Technical Report* at tbl. 3-7 (July 2021) (averaging the year 2040 southbound and northbound AM and PM peak period travel times for the No-Build condition versus the Preferred Alternative) (hereinafter “*Traffic Technical Report*”).

³³ See, e.g., Final EIS at 2-44.

³⁴ June 26, 2020 SELC Letter at 6; Kulash Report at 3.

³⁵ Final EIS, *Traffic Technical Report* at tbl. 3-1.

step” analysis—in which drivers are expected to utilize the corridor’s wide medians for a two-stage turn movement—that shows these delays being drastically reduced for the Preferred Alternative, it is highly problematic that this very favorable new analysis is only presented for the benefit of the Preferred Alternative.³⁶ It is not shown for either the No-Build or other Build alternatives, which would presumably show much more favorable conditions under a two-step analysis as well. Moreover, the Final EIS still fails to provide any analysis of how the Preferred Alternative would compare to making more targeted improvements to these intersections, such as those recommended in VDOT’s Arterial Preservation Plan discussed further in Section III below.³⁷

B) Insufficient Overall Benefits to Justify the Preferred Alternative’s Enormous Cost

Previous comments also raised concerns about the minimal overall benefit the construction of a new highway in this location would provide for the study area.³⁸ Similar to the Draft EIS, the Final EIS’s *Air Quality Technical Report* shows that the Preferred Alternative would only increase average vehicle speeds across the study area from 51.3 to 51.7 miles per hour compared to the No-Build (in both the 2025 and 2040 time periods).³⁹ In addition, Walter Kulash’s report included a basic estimate of the monetized travel benefits across the study area of Alternative C based on traffic data presented in the Draft EIS, and estimated the net present value of Alternative C to be approximately \$111.5 million—just a fraction of Alternative C’s \$615.9 million cost, and translating into a benefit-to-cost ratio of 0.18.⁴⁰ Yet this figure is likely to be even lower for VDOT’s current Preferred Alternative, which the Final EIS shows would cost \$744.8 million⁴¹—considerably more than Alternative C while providing even fewer travel time savings.⁴²

While previous comments acknowledged that this benefit-cost analysis relied on a number of basic assumptions, we also noted that if anything, it likely *overstated* the relative benefits of Alternative C, since maintenance costs, non-mitigated environmental costs, and health costs were not included, and the Draft EIS traffic analysis upon which it was based does not account for the improvements recommended in VDOT’s Arterial Preservation Plan for Route 220 that would further reduce the expected benefits of building a new highway.⁴³ Overall, these preliminary findings suggest that this proposal would be an extraordinarily poor use of the state’s limited transportation dollars and is very unlikely to be recommended for funding under SMART SCALE. Even if it is not strictly required as part of NEPA, we strongly suggest that a more robust analysis of the relative costs and benefits of the Preferred Alternative be conducted and provided to decision-makers before this project is advanced any further. It is also important that this be completed before a ROD is issued given potential concerns about issuing a ROD for a project that may never be advanced and the problems this can create for home- and business-

³⁶ *Id.* at tbl. 3-1, 3-2.

³⁷ See June 26, 2020 SELC Letter at 6 (raising this issue in relation to the analysis of Alternative C in the Draft EIS).

³⁸ June 26, 2020 SELC Letter at 7; Kulash Report at 3-4.

³⁹ Final EIS, *Air Quality Technical Report* at tbl. 15.

⁴⁰ See Kulash Report at tbl. 3.

⁴¹ Final EIS at 2-46.

⁴² See Final EIS, *Traffic Technical Report* at 23.

⁴³ June 26, 2020 SELC Letter at 7-8; Kulash Report at 8.

owners along the proposed route, such as adverse impacts on property values and the marketability of these properties.

III. VDOT Has Continually Failed to Analyze Reasonable Alternatives Based on Upgrading the Existing Route 220 Corridor

The most glaring failure of the Final EIS—and the entire EIS process for this proposal—is VDOT’s failure to analyze reasonable alternatives based on upgrading the existing Route 220 corridor in the study area.⁴⁴ Under NEPA, agencies are required to “rigorously explore and objectively evaluate all reasonable alternatives” in an EIS,⁴⁵ yet neither the Draft nor Final EIS provide any meaningful analysis of options focused on the existing corridor other than clearly untenable proposals to double the width of the existing highway by adding frontage roads. In order to satisfy NEPA, much greater analysis is needed of the reasonable alternatives to improve the existing Route 220 corridor outlined in previous comments on the Draft EIS and summarized again below before a ROD is issued for this study.

A) Unreasonable Focus on Frontage Road Options

The Final EIS continues to only provide substantial analysis of two alternatives focused on improving the existing Route 220 corridor—Alternatives D and E, which both involve doubling the width of the existing right-of-way to 275 feet.⁴⁶ While it is understandable that these options were eliminated from further study due to their incredibly high costs and the many residential and commercial relocations they would require, these options should not have been selected for further analysis in the first place. The Final EIS, as well as VDOT’s responses to public comments, suggest that VDOT focused on these “full access control” options as a “worst-case scenario” of potential environmental impacts.⁴⁷ Although it often makes sense to consider worst-case environmental impacts once reasonable alternatives are selected for review, the decision to limit the initial range of alternatives to these full access control options essentially foreclosed consideration of any reasonable, context-sensitive approaches to improve existing Route 220. This is inexplicable in light of requirements under NEPA that “all reasonable alternatives” be considered in an EIS.⁴⁸ It also cannot be justified in light of the project’s purpose and need statement, which merely identifies the needs to “accommodate” (not “separate”) local and regional traffic.⁴⁹

B) Insufficient Analysis of TSM and TDM Solutions

Among the reasonable alternatives to upgrade existing Route 220 that the Final EIS still fails to adequately consider is an alternative focused on making transportation system management (TSM) and transportation demand management (TDM) improvements in the

⁴⁴ See August 3, 2020 Joint Letter at 2-3; June 26, 2020 SELC Letter at 9-12; Kulash Report at 8-12.

⁴⁵ 40 C.F.R. § 1502.14 (1978); see also 42 U.S.C. § 4331 et seq.; 23 C.F.R. § 771.123(c) (“The draft EIS must evaluate all reasonable alternatives to the action and document the reasons why other alternatives, which may have been considered, were eliminated from detailed study.”).

⁴⁶ See Final EIS at 2-46 et seq.

⁴⁷ See, e.g., Final EIS at 2-3; Final EIS, app. E at 4-26.

⁴⁸ 40 C.F.R. § 1502.14 (1978); 23 C.F.R. § 771.123(c).

⁴⁹ Final EIS at 1-10.

corridor. As in the case of the Draft EIS, the Final EIS only provides a brief and dismissive discussion of this alternative and no analysis of its potential traffic and safety benefits. This alternative is only vaguely described as a smattering of non-specific TSM and TDM improvements that “may” or “could” be implemented in the corridor,⁵⁰ so it is not too surprising that the Final EIS is devoid of any analysis of such a poorly developed alternative. Neither the Draft EIS nor the Final EIS attempts to organize or optimize these possible improvements into a package of solutions that could be evaluated for its ability to meet the purpose and need, either in whole or in substantial part. This remains problematic since the types of TSM and TDM improvements noted but not developed (including reducing conflict points, geometric improvements, access management, and strategies to reduce driving in the corridor⁵¹) go to the heart of the purpose and need of this study. Before a ROD is issued, a much more specific and robust analysis of TSM and TDM improvements must be conducted, both as a standalone alternative and in combination with the other reasonable solutions discussed below.

C) Failure to Analyze Arterial Preservation Plan Recommendations

The most notable omission from the alternatives analysis is the Final EIS’s continuing failure to provide any meaningful analysis of the recommendations VDOT itself has made to improve this stretch of highway in its recent Arterial Preservation Plan (APP) for the Route 220 corridor.⁵² In the Final EIS’s brief discussion of the APP, these improvements are dismissed as only offering “localized benefits” that would “focus primarily on signal timing and intersection improvements in the study area.”⁵³ However, as explained more fully in previous comments and Walter Kulash’s report,⁵⁴ this is simply not the case. The APP includes a wide range of improvements that squarely address the purpose and need and directly target many of the problems identified in the Final EIS along the existing Route 220 corridor. This includes recommendations to alleviate existing geometric deficiencies, specific turn lane and access management improvements, and upgrades to most—if not all—of the intersections that have been identified as problem areas in the EIS (including innovative intersection solutions at Morehead Road, Soapstone Road, and Water Plan Road).⁵⁵

Given the significant potential of these APP recommendations to meet the purpose and need of this project, and at much lower cost and with far fewer impacts than the Preferred Alternative, a comprehensive analysis of this reasonable alternative is still needed to comply with NEPA before a ROD is issued for this study. This analysis will also be crucial to inform decision-makers as part of their determination of whether to proceed with the \$744.8 million Preferred Alternative, or to instead focus on pursuing these more targeted and far less expensive recommendations that will have a much greater likelihood of being recommended for funding under SMART SCALE.

⁵⁰ See *id.* at 2-6.

⁵¹ See *id.*

⁵² See VDOT, *Route 220 Arterial Preservation Plan - Recommendations* (November 2019), https://www.virginia.gov/Projects/Salem/asset_upload_file87_131034.pdf; VDOT, *US 220 Corridor Recommendations*, https://www.virginia.gov/Projects/Salem/asset_upload_file846_131034.pdf.

⁵³ Final EIS at 2-59.

⁵⁴ August 3, 2020 Joint Letter at 2-3; June 26, 2020 SELC Letter at 10-11; Kulash Report at 11-12.

⁵⁵ See VDOT, *supra* note 52.

D) Additional Options to Upgrade the Existing Route 220 Corridor

In addition, the Final EIS fails to adequately consider other potential improvement options to upgrade the existing Route 220 corridor identified in SELC's comments on the Draft EIS and Walter Kulash's report, including potential innovative solutions to reconfigure the Route 220/58 interchange (such as a diverging diamond interchange or ramp terminal roundabouts) and new local road network connections that would help local drivers reduce their reliance on Route 220 and avoid key delay-prone intersections.⁵⁶ These are examples of the types of additional improvement options that warrant further analysis in this study, both in addition to and in concert with the TSM/TDM and APP improvements discussed above.

IV. **VDOT Has Not Satisfied FHWA's Fiscal Constraint Requirements to Issue a ROD**

Finally, VDOT has not sufficiently satisfied FHWA's fiscal constraint requirements to enable issuance of a ROD for this project. Federal law provides that a State Transportation Improvement Program (STIP) "shall include a project, or an identified phase of a project, *only if full funding can reasonably be anticipated to be available for the project.*"⁵⁷ FHWA's 2017 guidance interpreting this requirement further provides that a state "may start the environmental review process for a project without demonstrating fiscal constraint; however, *funding for a subsequent phase of the project...must be shown in the STIP/TIP before FHWA can sign a [ROD].*"⁵⁸ This guidance further provides examples of what it means for full funding to be "reasonably available" for a project, including extrapolation of formula funds as well as expected new tolls, new or increased taxes, or new bonds—provided there is clear evidence of political and/or decision-maker support for such measures.⁵⁹

Despite the \$744.8 million price tag for VDOT's Preferred Alternative for the Martinsville Southern Connector Study, it appears the only funding allocated in relation to this project to date—other than the funds to conduct this environmental study—is the \$2.5 million allocated by Virginia's Commonwealth Transportation Board (CTB) this summer to advance targeted safety upgrades to the existing Route 220.⁶⁰ No evidence has been provided of sufficient support for new tolls, taxes, bonds, or other new sources to fund the remainder of the project, and the proposal's exorbitant cost and limited benefits make it highly unlikely to be funded under Virginia's SMART SCALE process. With only \$2.5 million allocated thus far to advance the project beyond the environmental study, this raises serious questions about whether "full funding can reasonably be anticipated" for this project.

Even more problematic, however, is that it seems VDOT's only basis for satisfying FHWA's further requirement that "funding for a subsequent phase of the project...be shown in the STIP" to enable issuance of a ROD comes from the CTB's recent \$2.5 million allocation for targeted safety upgrades along 3 miles of existing Route 220. While we do not doubt the need for

⁵⁶ June 26, 2020 SELC Letter at 11-12; Kulash Report at 4 and Figure 1.

⁵⁷ 23 U.S.C. § 135(g)(5)(E) (emphasis added); *see also* 23 C.F.R. § 450.218(o).

⁵⁸ FHWA, *Clarifying Fiscal Constraint Guidance* (May 15, 2017) (emphasis added), https://www.fhwa.dot.gov/planning/clarify_fiscal_constraint_guidance.cfm.

⁵⁹ *Id.*

⁶⁰ *See* CTB Resolution, "Approval of Next Phase of the Martinsville Southern Connector Project" (July 21, 2021), <https://www.ctb.virginia.gov/resources/2021/july/reso/6.pdf>.

these upgrades, it makes a mockery of FHWA's fiscal constraint requirement that these peripheral improvements representing just over 1/300th of the total cost of VDOT's Preferred Alternative—focused primarily on building a highway on new location—should qualify as a “subsequent phase” sufficient to issue a ROD for the entire \$744.8 million project. To allow fiscal constraint to be satisfied in this manner would essentially render it a dead letter, and would undermine one of the main purposes behind this requirement—to avoid creating a situation like this where a costly infrastructure project may be left on the books indefinitely with little hope of ever coming to fruition. We therefore strongly urge FHWA to find that this requirement has not been met and that a ROD cannot be issued at this time.

Conclusion

In sum, there continue to be serious problems with VDOT's Preferred Alternative to build an expansive 8-mile, \$744.8 million new highway through this area, and with the analysis of this alternative. This proposal would have significant impacts on natural resources and communities in the study area, it would undermine the Commonwealth's efforts to address the climate crisis, and it is highly unlikely to be funded under SMART SCALE—potentially creating uncertainty for homeowners and businesses along the proposed route for years to come. It is also clearly unnecessary given the availability of less-costly and much less-damaging options to upgrade the existing Route 220 that have not been adequately considered in this study. And it falls far short of meeting FHWA's fiscal constraint requirement. In order to comply with NEPA, at a minimum further analysis is needed of the reasonable alternatives and other issues identified in these comments before a ROD can be issued for this project, and preparation of a Revised or Supplemental EIS is necessary to ensure this is adequately done.

Thank you for your consideration of these comments.

Sincerely,



Trip Pollard
Senior Attorney



Travis Pietila
Senior Attorney

On behalf of:

ACTIVE PRINCE WILLIAM

ALLIANCE FOR THE SHENANDOAH VALLEY

CENTER FOR SUSTAINABLE COMMUNITIES

CLEAN FAIRFAX

COALITION FOR SMARTER GROWTH

GREEN NEW DEAL VIRGINIA
PIEDMONT ENVIRONMENTAL COUNCIL
PRESERVATION VIRGINIA
RAIL SOLUTION
ROCKBRIDGE AREA CONSERVATION COUNCIL
SCENIC VIRGINIA
SIERRA CLUB VIRGINIA CHAPTER
SIERRA CLUB VIRGINIA CHAPTER, ROANOKE GROUP
SOUTHERN ENVIRONMENTAL LAW CENTER
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VIRGINIA CLINICIANS FOR CLIMATE ACTION
VIRGINIA CONSERVATION NETWORK
VIRGINIA GRASSROOTS COALITION
VIRGINIA LEAGUE OF CONSERVATION VOTERS
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cc: Robert Berg, Norfolk District, Corps of Engineers
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