



Bakeyah S. Nelson, PhD
Executive Director
Air Alliance Houston
2520 Caroline Street
Suite 100
Houston, Texas 77004

James M. Bass, Executive Director
Texas Department of Transportation
125 East 11th Street
Austin, TX 78701
Via email: James.Bass@txdot.gov

January 18, 2021

Dear Mr. Bass:

The undersigned organizations write to express our concern that issuing a Record of Decision (ROD) for the North Houston Highway Improvement Project (NHHIP), and Segment Three in particular, 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, the U.S. Department of Transportation's ("USDOT") implementing regulations, 49 C.F.R. pt. 21 and The Texas Department of Transportation's own Title VI/Nondiscrimination Plan and assurances submitted to the federal government, as well as other state and federal civil rights and environmental justice requirements. The Texas Department of Transportation (TxDOT) should not issue a ROD until the civil rights and environmental justice issues identified in the FEIS and otherwise present are properly analyzed, addressed, and resolved.

Under Title VI of the Civil Rights Act of 1964 (Title VI), "[n]o person in the United States, on the ground of race, color, or national origin, shall be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance." TxDOT is a recipient of federal financial assistance and submits annual Nondiscrimination Statements and Assurances required by 49 C.F.R §21.7, to U.S. Department of Transportation, as a condition of its eligibility for federal financial assistance.

The NHHIP as proposed in the FEIS will have a severe and disparate impact on generational Black and Hispanic/Latinx neighborhoods and Black and Hispanic/Latinx individuals. TxDOT's

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own analysis documents these disparities and the negative impacts NHHIP will have on these communities, as well as persons with disabilities, the elderly, and children, and low-income families and communities.

In addition, Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” 59 F.R. 7626, provides:

To the greatest extent practicable and permitted by law, . . . each Federal agency shall make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States . . .

Moreover, where prior discriminatory practice or usage has tended to subject individuals to discrimination under any program or activity to which Title VI applies, the applicant or recipient “must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.” 49 C.F.R. § 21.5(b)(7). Construction of the original I-45 project concluded in 1967, building the highway through historically Black and Hispanic/Latinx neighborhoods and communities, creating ongoing disproportionate negative impacts on low-income communities and communities of color. As documented in the FEIS, the Project would continue this pattern by significantly widening the highway through these communities, which would displace residents and businesses, eliminate jobs, and impose serious and even deadly health effects on communities of color. Rather than taking affirmative action to remove or overcome the effects of the prior discrimination, as required under 49 C.F.R. § 21.5(7), the NIFFP described in the FEIS would instead repeat and perpetuate the wrongs of previous siting and expansion decisions and the decades of significant adverse impacts on these neighborhoods.

TxDOT is clear in the draft environmental impact statement (section 3.2.4, page 3-17) that the effects of the project “would be predominantly borne by minority and low-income populations” and that those effects could be “more severe than adverse effects that could be suffered by the non-minority population and/or non-low-income population.” TxDOT 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 proposed mitigation measures are completely insufficient to reduce the disproportionate negative impact on “minority and low-income populations”. The inadequacy of these proposed measures was also documented in comments on the FEIS, which we incorporate by reference. TxDOT should not issue a ROD without conducting an analysis of disproportionate impact and environmental justice consistent with federal law and its own regulations, and taking sufficient actions to address those violations. Approving a ROD without doing so would violate Title VI of the Civil Rights Act of 1964, its implementing regulations, other federal civil rights and environmental justice requirements, and its own regulations and civil rights commitments.

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Respectfully submitted,



Bakeyah Nelson
Executive Director
Air Alliance Houston

Oni Blair
Executive Director
LINK Houston

Robert Bullard, PhD
Co-Chair
National Black Environmental Justice Network

Katy Caldwell
Chief Executive Officer
Legacy Community Health

Molly Cook
Stop TXDOT I-45

Joe Cutrufo
Executive Director
Bike Houston

Iris Gonzalez
Coaliton Director
Coalition for Environment, Equity, and Resilience (CEER)

Joy Horak-Brown
President and CEO
New Hope Housing

Nathan Marquez
EaDo Bike Company

Johnny Mata
Director
Greater Houston Coalition for Justice (GHCJ)

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Zoe Middleton
Southeast Texas Co-Director
Texas Housers

Adrian Shelley
Healthy Port Communities Coalition (HPCC)

Adrian Shelly
Director
Public Citizen

Madison Sloan
Director, Disaster Recovery and Fair Housing Project
Texas Appleseed

Joetta Stevenson
President
Fifth Ward Super Neighborhood

Doreen Stoller
President
Hermann Park Conservancy

Stephanie Thomas
Houston Climate Movement

CC: Jeff Graham, General Counsel
Michael Bryant, Civil Rights Division Director
Christopher Amy, Title VI Program Administrator

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