

February 7, 2020

TxDOT Houston District Office
Director of Project Development
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Via Email to HOU-piowebmail@txdot.gov

Re: North Houston Highway Improvement Project – Public Comments to be Added to Administrative Record on the Draft “Final” Community Impacts Technical Report and Draft “Final” Cumulative Impacts Technical Report

Dear Ms. Eliza Paul, P.E. and Mr. Henry, P.E.:

We write on behalf of the undersigned organizations that have reviewed the draft Cumulative Impacts and draft Community Impacts Technical Reports for the North Houston Highway Improvement Project (NHHIP). These organizations, as expressed by these comments, continue to have serious concerns that the Texas Department of Transportation (TxDOT) is not complying with the mandate of the National Environmental Policy Act (NEPA).¹ Specifically, in the conclusion of the Cumulative Impacts report (a report that incredibly finds no adverse air or water quality impacts from this \$7 billion infrastructure project), TxDOT states:

The proposed project maintains urban development trends that result in both beneficial and adverse impacts to community resources from large infrastructure projects; those trends are not likely to be substantially changed by this project.

The trends referenced in the conclusion were discussed in detail in the Community Resources RSA where TxDOT agreed that a history of inherent racism in infrastructure decisions have negatively impacted these same communities. TxDOT then fails to make a connection to the way that the “Preferred Alternative” would repeat those grave mistakes:

During the booming 1950s, parts of the Community RSA, particularly the Third, Fourth, and Fifth Wards, remained without adequate paving and drainage (Shelton 2017b). These predominantly black communities received little public support, if any, for improvements to their parks, schools, or hospitals, and the construction of freeways threatened their already vulnerable communities. The construction of I-45 through downtown Houston started in the 1950s, with the Pierce Elevated opening in 1967. This section of I-45 displaced nearly 560 residences and businesses through Downtown and parts of the Third Ward, in addition to causing

¹ In addition, we adopt and incorporate by reference into these comments the comments provided by the Sierra Club on January 31, 2020. In particular, we adopt and incorporate the Sierra Club’s references to the failure by TxDOT to abide by the procedural and regulatory framework articulated for compliance with NEPA.

widespread turnover of neighborhood land uses (Shelton 2017b). Most of the displaced residents in the Third Ward were renters with little legal power to contest the displacements. Overall, much of the right-of-way for Houston’s downtown freeways consisted of residential structures, with smaller impacts on commercial and industrial enterprises (Slotboom 2013).²

Similarly, in the Cumulative Impacts draft report, TXDOT agrees that “major construction of infrastructure in downtown areas . . . may have created adverse impacts on community facilities.”³ The report goes further by stating “[w]ithin the temporal analysis timeframe, Houston has seen a continued trend of population and economic growth that has generated infrastructure construction and urban development. Such development prompted the gradual mobilization of community activism in opposition to past unjust development practices and inequitable infrastructure projects.”⁴ Yet, after all of this, these technical reports fail to articulate the implied conclusion that this infrastructure project simply repeats the historical racism, and negative consequences for these environmental justice communities, instead relying on the idea that economic development in the area will be viewed as a net positive to communities *not even impacted by this proposal*.

Rather than using this project or the environmental impact statement process to right past wrongs or provide for infrastructure in line with that requested in various Livable Center studies or other community focused plans, TxDOT has concluded that the selected alternative is the *only* alternative and has begun investing dollars into mitigation.

NEPA is not meant to simply be a report—but a study to influence and provide guidance to decisionmakers *prior to them making the decision*. These reports demonstrate that TxDOT has failed in meeting NEPA’s mandate to propose alternatives with less impacts for decision makers to consider.

Continued Failure to Abide by Council on Environmental Quality (CEQ) Guidance

The reports acknowledge severe negative impacts, for example, with anticipated flooding, displacement, air quality concerns, and community concerns yet ignores the value and guidance of various publications that support technical modeling, economic analysis or other tools that can better inform decision makers.

CEQ guidance specifically states that “analyzing cumulative effects on human communities requires **specific economic impact analysis** and social impact analysis methods.”⁵ Both reports fail to provide any detailed methodology to discuss whether the displacement of over 1,000 individuals would negatively impact the communities, resulting in the possible further destruction

² The report cites to the draft “final” Cumulative Impacts Technical Report as CITR. The quoted language is found at CITR page 30.

³ *Id.* at 53 and 30.

⁴ *Id.* at 40.

⁵ www.ceq.doe.gov/docs/ceq_publications/ccnepa/sec5.pdf at p 53. See also 40 C.F.R. § 1502.25(a) (“To the fullest extent possible, agencies shall prepare draft environmental impact statements concurrently with and integrated with environmental impact analyses and related surveys and studies required by the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), the National Historic Preservation Act of 1966 (16 U.S.C. 470 et seq.), the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.), and other environmental review laws and executive orders [including .

of community cohesion. This is particularly important when, as here, TxDOT alludes to the systematic racism and segregation policies of past infrastructure decisions but does not then utilize existing research to demonstrate the perpetuation of those negative consequences should this project go forward. Again, CEQ's own guidance discusses the importance of utilizing models, and particularly econometric models that use time-series data to showcase the harm to communities. *See* Attachment 1, CEQ Appendix A: Summaries of Cumulative Effects Analysis Method at A-44. TxDOT's failure to inform decision makers in this way is a fatal flaw to this technical report and any Environmental Impact Statement (EIS) that relies on it.

Because of these past negative consequences clearly articulated in these draft reports, TxDOT is authorized to consider programmatic mitigation plans that could encompass all of the prior impacts and move forward with holistic plans to address the past issues as well as those potentially caused by this project should it go forward. *See* 23 U.S. Code § 169 *et seq.*

The undersigned organizations specifically ask that TxDOT begin a process to run in parallel with this proposed NEPA review that will provide for programmatic mitigation regarding past harm.

Failure to Account for Air, Water Quality, Displacement, Environmental Justice and Induced Demand Impacts on a \$7 billion Infrastructure Project.

Air Impacts

Air Alliance Houston previously submitted detailed comments on the Draft Mobile Source Air Toxics (MSAT) Quantitative Technical Report and those comments remain applicable to these current technical drafts. At page 8 of the CITR, TxDOT states that "an approved conformity determination is expected prior to the environmental decision" even though in the same table, TxDOT states that "encroachment alteration effects to air quality would be evaluated in the regional conformity analysis, traffic air quality analysis and quantitative MSAT analysis during the preparation of the Final EIS." Again, we are particularly concerned with the intersection of air pollution, public health, and environmental justice for communities that are immediately adjacent to the proposed project. It is inappropriate for TxDOT to aggregate and rely on emissions across the 8-county transportation management area network while stating that no adverse impacts would occur in the ROI (an area that is more localized and objectively includes sensitive populations such as schools). Since and draft or final EIS must analyze impacts to environmental justice communities, it is important that these technical reports attempt to quantify in greater detail the expected air quality impacts in the immediate area (and difference between no-build and build alternatives) on these communities.

Air Alliance Houston commissioned and attaches here a Health Impact Study demonstrating acute pollution impacts to communities immediately adjacent to this project and within TxDOT's own area of concern (the ROI). *See* Attachment 2, AAH Health Impact Report_June 2019.

This is particularly important because TxDOT's CITR incorrectly states that our region is classified as moderate for the 2008 8 hour ozone standard, when in actuality the region has been re-classified as "serious" since 9/23/2019.⁶ This creates fundamental flaws throughout both reports. For

⁶ CITR at 11.

example, the number of exceedance days has increased – a public health impact not appropriately accounted for within the document. In the Community Impacts Assessment Technical Report (Community Report or CIA), the underlying assumptions of a decrease in air pollution is fatally flawed because of the region’s recent reclassification. For example, in the Community Report, at page 5-195, it is simply not true that air quality trends are improving since the region has been reclassified from moderate to serious in the fall of 2019. This is mirrored at page 5-195, when the report admits that the build alternative is associated with an increase in MSAT emissions in comparison with the not build alternative, but which TxDOT simply refers to as “minor” without any methodology. Similarly, at page 5-196, it is not true that criteria pollutants have been declining in the region, and specifically in the region of impact for this project, since the broader region has been reclassified. This continues to show the disconnect between TxDOT’s limited modeling of this project and actual monitoring and concern articulated by the local metropolitan planning organization under the Clean Air Act. Finally, again at page 5-199, TxDOT incorrectly assumes that ozone is declining because it does not take into consideration the region’s recent reclassification. Since there is clearly a disconnect between modeling and monitoring (and TxDOT’s current understanding of the air quality concerns for this particular region), it is absolutely inappropriate for TxDOT to state that the NHHIP project is not going to cause adverse health or air quality impacts.

This also skews the beneficial commitments then provided by TxDOT because for example, TxDOT only lists air quality monitoring and reporting for one segment of the construction instead of all the segments in the Table found at page 96 of the CITR. We ask that this specifically be amended and that the air quality monitoring and reporting be included for all segments and for all construction activities and that TxDOT model air pollution impacts from this proposal.

Thus, again, the draft technical reports fail in that the assumptions presume no adverse impact for air quality to the communities immediately adjacent or in the region and states that any conformity analysis will be done after the fact and the final EIS is moved forward.

Water Resources and Flooding

Incredibly, while TXDOT acknowledges the severe impact Hurricane Harvey had on the immediate area closest to Buffalo Bayou, White Oak Bayou and Little White Oak Bayou, it states that no adverse water quality or flooding would occur assuming this project moves forward.

TxDOT acknowledges that there are six (6) impaired waterways impacted by this proposed project, but declines to review the cumulative impact of its own discharge into those waters. This is completely unacceptable and has been found by at least one Court to violate the Clean Water Act. In *U.S. v. Washington State Dept. of Transportation*, a District Court in Washington found Washington’s Department of Transportation liable for hazardous waste in waterways because the department had direct knowledge when designing its roadways—all of its roadways—that it sought to direct stormwater runoff to the first available ditch, tributary or stream. 716 F. Supp. 2d 1009 (W.D. Wash. 2010). It found:

It is undisputed that WSDOT designed the drainage systems at issue. Designing is an action directed to a specific purpose. The purpose was to discharge the highway runoff into the environment. WSDOT had knowledge that the runoff contained hazardous substances and

there was an actual release of the hazardous substances into the environment. WSDOT argues that it did not have control of the hazardous substances. However, it did have control over how the collected runoff was disposed of. WSDOT did design the drainage system and, as noted by the U.S., WSDOT has the ability to redirect, contain, or treat its contaminated runoff.

Id. at 1015. TxDOT has direct knowledge that it designs roadways to collect water and shift it to man-made or natural ditches and drainages that lead to waters of the U.S. Yet, the current cumulative impact report appears to shift the responsibility of TxDOT's design flaws to the surrounding communities. The Clean Water Act as well as NEPA do not permit that to occur.

Further regarding surface water quality, TxDOT ignores the issue of floatables completely. TxDOT should through this process examine to what extent additional vehicular capacity will increase floatables in the six (6) stream segments throughout the project area. As such, TxDOT should consider whether a program to actually reduce the discharge rate of floatables in the Municipal Separate Storm Sewer System (MS4) by utilizing source controls or structural controls would lessen the adverse impact from this proposed project. In support, attached is a decades old litter survey conducted by TxDOT and demonstrating that all parties are well aware of the problem Texas has with floatables and litter from roadways. *See* Attachment 3, An Evaluation of the Factors Affecting the Quality of Highway Runoff in the Austin, Texas area 1995. TxDOT should conduct a study similar to but taking advantage of the increased awareness and options regarding stormwater management prior to stating that no water quality impact occurs. Should TxDOT be permitted to completely ignore this issue, it places an unmanageable burden on Harris County and improperly shifts the financial burden from the entity that created the pollution source (the roadway) to cities and counties, and ultimately, Texas's rivers and streams. As one suggested solution, TxDOT should as part of its mitigation strategy to the adverse impacts to water quality agree to mitigate those impacts with language such as the following in Corpus Christi's MS4 permit number WQ0004200000 when it describes the storm water management program:

Floatables: The permittees shall ensure the implementation of a program to reduce the discharge of floatables (e.g. litter and other human generated solid refuse) into the MS4 which shall include source controls and where necessary structural controls and other appropriate controls.

For flooding, nearly 500 acres of right of way are in "currently" mapped floodplains yet TxDOT articulates that no adverse impacts to floodplains are included in the cumulative impacts analysis. According to the Memorandum of Understanding dated December 16, 2014 and executed by Federal Highway Administration (FHWA) and TxDOT, TxDOT is obligated to comply with the Flood Disaster Protection Act, 42 U.S.C. §§4001– 4130. As such, TxDOT should be required to review the impacts this project will have prior to the design phase, particularly when, as here, TxDOT recognizes that Hurricane Harvey greatly impacted this same area, and that the current proposed design is below grade—meaning it will become a collection point.

Attached is a November 2019 report from Harris County Flood Control District (HCFCD) to the Harris County Commissioner's Court in reviewing on-going coordination between TxDOT and HCFCD on this project. (Attachment 4). The issue of concern for the undersigned organizations however, remains that TxDOT is not utilizing any hydrological modeling for its proposed

alternative even though a portion is below grade—putting lives at risk with this simple design choice because the below grade sections will hold water and flood. By completing ignoring this safety hazard being created by this initial design choice, TxDOT fails in its mandate to provide reasoned guidance to decision makers who may instead chose visual impairments over putting lives at risk. *Please see also* Attachment 5, FHWA’s Integrating Road Safety into NEPA.

Again, we ask that TxDOT’s engineering standard for this project shift, and that future floodplains impact analysis and the future detailed hydraulic study analyze 500-year floodplain impacts and design any proposed alternatives for these impacts accordingly. The recently released National Oceanic and Atmospheric Administration (NOAA) Atlas 14 Rainfall Frequency data (fall of 2018) must be used for environmental impact analyses and mitigation measure effectiveness analyses. While HCFCD will re-map all watershed floodplains in Harris County due to the updated information found in Atlas 14, CEQ guidance specifically calls for TxDOT to consider *known* hazards such as this increased flooding potential. It is widely accepted that areas currently mapped in the 500-year floodplain will be in the 100-year floodplain after re-mapping. It is crucial that TxDOT state how it has accounted for this major expansion of 100-year floodplains in watersheds that will be affected by the project and what mitigation measures will be used to prevent flooding and flood waters due to this project.

Displacement and Environmental Justice

As discussed earlier in this letter’s introduction and discussed further in the procedural issues section of this letter, the NHHIP Preferred Alternative will have significant and adverse impacts on environmental justice populations.

Along the length of the Preferred Alternative, the majority of the adjacent residential areas include environmental justice populations (minority and/or low-income) as measured at both the census block level (for race) and census block group level (for income) as well as at the super neighborhood level.⁷

Displacement of residences (single family and multifamily), businesses (i.e., jobs), schools, and other important community resources (i.e., churches, social services, etc) by NHHIP will revisit and indeed expand the harm to communities begun when IH-45 North was first constructed in the 1950s-60s. The December 2019 CIA provides update counts of resources displaced:

- 919 multi-family residences will be displaced (including public and low-income housing) – a decrease from 1,067 noted in March 2017.
- 160 single-family residences will be displaced – a decrease from 168 in March 2017.
- 344 businesses will be displaced – an increase from 331 in March 2017.
- 2 schools will be displaced – a decrease from 8 in March 2017.

The displaced people and land uses noted in the updated CIA are due to additional increases in right-of-way required in Segment 1 (Beltway 8 to IH-610 North Loop) and Segment 2 (IH-610 North Loop to Downtown) as compared to the initial draft of the CITR from March 2017, specifically:

⁷ CIA, Section 5.9.1.1, page 255

- Segment 1: displacement for additional right-of-way increased from ~212 acres to ~246 acres.
- Segment 2: displacement for additional right-of-way increased from ~19 acres to ~44 acres.
- Segment 3: no change, displacement for additional right-of-way remains ~160 acres.

TxDOT’s explanation for the additional right-of-way centers on storm water detention.

The Preferred Alternative would require new right-of-way, which would displace single- and multi-family homes, schools, places of worship, businesses, billboards, and other structures. ...The estimated number of displacements has changed since the 2017 NHHIP CIA Technical Report and Draft EIS due to changes in the proposed project right-of-way, including the addition of storm water detention basins, and changes in existing land use and occupancy.⁸

TxDOT is willing to acquire additional right-of-way to improve the project in one dimension, mitigating water runoff, but has not demonstrated a willingness or ability to significantly alter the project to prevent the harm to communities caused by displacement and need for additional right-of-way in the first place. Reducing or eliminating altogether the need for additional right-of-way is the appropriate course of action. TxDOT must protect community integrity by addressing impacts of the past by improving conditions for the immediately impacted communities, including for the significant environmental justice populations detailed in the CITR.

TxDOT describes the expectation that complying with environmental justice regulations includes “mitigation and enhancement measures and potentially offsetting benefits for affected minority and/or low-income populations”.⁹ However, the CIA essentially only describes how TxDOT will take mitigative action to offset impacts – which turns out to mean essentially only relocation assistance and offers of advance acquisition. The text generously describes in some places how relocation may turn to benefit some but does not describe how TxDOT believes it “may” do so, or the criteria for why or how mitigative measures could benefit only some of the displaced individuals.

For example, the relocation of a medical service provider that caters to low-income patients would be dependent on what access to those services would be after the medical office moves. It is possible that, with the relocation benefits provided by TxDOT, the medical office would relocate locally and the new location would be more convenient for some patients.¹⁰

Instead, TxDOT uses ephemeral hypotheticals that always seem to hint of possible benefits while ignoring similarly likely negative impacts. The project needs a fundamental reboot that actually provides proactive transportation benefits to the immediately impacted communities, which essentially all have significant environmental justice populations.

⁸ CIA, Section 5.1, page 52.

⁹ CIA, Section 5.9.4, page 5-219.

¹⁰ CIA, Section 5.9.4, page 5-220.

After considering the benefits of the proposed project along with mitigation, the Build Alternative may cause disproportionately high and adverse effects to minority or low-income populations but a substantial amount of these effects have been minimized through a variety of commitments and programs that will be implemented by TxDOT.¹¹

There is very little variety in the commitments and programs TxDOT proposes to utilize. The mitigation actions TxDOT is referring to are nearly exclusively the result of following the minimum required practices for relocating people and businesses displaced by public infrastructure projects.

5.9.3.1 Displacements – Relocations

5.9.3.2 Displacements – Affordable Housing

5.9.3.3 Displacements – Public Housing

5.9.3.4 Displacements – Businesses and Community Facilities

5.9.3.5 Noise and Visual

5.9.3.6 Noise and Air

5.9.3.7 Air Quality Monitoring

Relocation is the lowest, most harmful and disruptive form of mitigation and can never be construed as the meaningful “enhancement measure[] and potentially offsetting benefit[]” expected as a result of proactive, best-practice compliance with federal environmental justice regulations.¹² There is no evidence of potentially offsetting benefits. There is no evidence of hard decisions to reduce the project footprint to prevent repeating the injurious displacements of past decades. In fact, the CIA notes the negative impacts of disrupting community cohesion through displacement – for communities at-large and displaces:

In general, displacement of residences can affect the cohesion of a community, especially if that community has a history and a culture that gives it a unique identity. From the information and analysis in Sections 5.1 and 5.2 it is apparent that most of the environmental justice communities indicated in Table 5-16 have a history and culture that is identifiable in the community today. For example, the Independence Heights community has a history that goes back over 100 years and has indicated through community planning studies the desire for historic and cultural preservation. As indicated in Table 5-16, the potential effects to community cohesion related to residential displacements could be expected to be felt more so in the neighborhoods of Northside/Northline, Independence Heights, Near Northside, Greater Fifth Ward, Downtown, Second Ward, and Greater Third Ward.

From a community-wide perspective, the loss of residents might be recurrent or cumulative with other activities that have affected, or are affecting, a community and thereby creating a cumulative effect that is more adverse than the individual effect associated with the project. Other associated effects occurring in these neighborhoods (to varying degrees) include impacts from flooding and floodplain buyout programs, previous transportation projects, as well as housing affordability associated with gentrification.

¹¹ CIA, Section 5.9.4, page 5-220.

¹² CIA, Section 5.9.4, page 5-219.

...

From the displacee's perspective, the disruption associated with moving can affect a resident's access to a social structure to which they have become familiar over time. This social structure can include community activities (church and school) and other regular routines such as grocery shopping, childcare and medical services. Individual circumstances will vary making it difficult to assess the extent of adverse effects related to residential displacements, however; low-income and limited English proficiency populations may be especially vulnerable to such effects.

The proposed project would impact public housing communities and privately-owned housing projects for low-income families and individuals and persons with disabilities.¹³

TxDOT's over reliance, over confidence, or over assertion that complying with relocation regulation is somehow adequate to justify disproportionate impacts on environmental justice communities is not acceptable. The agency's over-reliance on relocation as the primary form of mitigation is iterated in the draft CITR also released in December 2019. The following is just one example of the heavy reliance on relocation (instead of preventing the need to relocate in the first place):

For all impacts in the Northside/Northline super neighborhood, TxDOT intends to follow through with implementing mitigation through relocation to ensure that cumulative adverse impacts are not significant in this super neighborhood or significant to Environmental Justice populations.¹⁴

Induced Demand Discussion Arbitrarily Decided

At page 12 of the CITR, TXDOT repeatedly states that “[t]he potential for induced development is low” but provides no rationale nor economic study nor research to demonstrate that conclusion.¹⁵ Because it is well documented that roadway construction projects such as this do not mitigate congestion and instead often induce further traffic, the failure of TxDOT to acknowledge these studies is fatal. Moreover, TxDOT should consider conducting a renewed demand model analysis in light of current mobility trends within the region—trends that show an increase in other forms of mobility to the detriment of car travel. Finally, the movement of goods while often proposed as a need for this project is no longer demonstrated within the MPO's modeling since the trend for mobility of goods is to go further outside the urban core. Any modeling that relies on an increase in goods movement should be reexamined as flawed based on current trends.

Procedural Issues Require a Revised Draft EIS

¹³ CIA, Section 5.9.1.3, page 5-207-8.

¹⁴ CITR, Table 8 Summary of Impacts to Community Facilities and Mitigation Efforts in the RSA, page 51.

¹⁵ See e.g., City Lab University: Induced Demand found at <https://www.citylab.com/transportation/2018/09/citylab-university-induced-demand/569455/> and Induced Demand and Rebound Effects in Road Transport, UC Davis, 2010 found at http://socsci-dev.ss.uci.edu/~ksmall/Rebound_congestion_27.pdf. Compare Texas Transportation Institute Latent Demand Modeling, at <https://static.tti.tamu.edu/tti.tamu.edu/documents/1120-1F.pdf>

In our July 27, 2017 comment letter and July 2018 letter, we identified a number of substantive deficiencies in the DEIS related to important issues, including parks; environmental issues including noise, air quality, water quality, and drainage; safety and connectivity for pedestrians and cyclists at urban interfaces; visual impacts; and community and environmental justice. Additionally, the DEIS made clear that TxDOT was deferring some substantive aspects of its review and dissemination of information until the Final Environmental Impact Statement (FEIS).

In light of these issues, we urged TxDOT to engage the public and then to publish additional documentation under NEPA, be it in the form of a revised draft EIS or a supplemental draft EIS, for public review and comment. We expressed concern that if the substantive deficiencies related to the project were not corrected until, and released with, the FEIS, then the public would not have sufficient time and opportunity to provide meaningful feedback to the agency.

Following the publication of the DEIS, TxDOT continued preparing “draft technical reports” for the Final EIS. On June 20, 2018, six of these draft technical reports were made available for public comment on the project website. As far as we can determine, no formal notice of these reports was provided in the Federal Register.

While we appreciated the opportunity to comment on those draft technical reports, we objected to the process adopted by TxDOT to date, and to the format and content of the draft EIS and draft technical reports. In December, TXDOT issued these additional technical reports, and again, while we appreciate the opportunity to comment, we have real concerns that this disassociated release of documents does not comply with NEPA. Moreover, while NEPA regulations provide for a tiering effect, this provision has never been used by the federal government or to our belief, any other state government, to release documents in this way. *See generally* 43 C.F.R. § 46.140 (Using Tiered Documents) (referring to tiering individual actions to programmatic EIS’s so long as the broader document sufficiently and conclusively reviews the environmental impact). Thus, again, this current procedure is inadequate and violative of the procedural process that is the backbone of every NEPA process engaged in since the 1970’s.

Specifically, we add the following comments that we articulated back in July for the other technical reports as well. Federal Highway Administration (FHWA) regulations state that it is the policy of the Administration that “all environmental investigation, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental review document required by [its] regulation.”¹⁶ 23 C.F.R. § 771.105; *see also* 40 C.F.R. § 1502.9 (Council on Environmental Quality (CEQ) regulation stating that environmental impact statements “shall” be prepared in two stages—draft EISs and final EISs—but may be supplemented in the form of revised drafts). These regulations also clarify what is required in a draft EIS. In addition to evaluating all reasonable alternatives, the draft EIS “shall also summarize the studies, reviews, consultations, and coordination required by environmental laws or Executive Orders” to the extent that it is appropriate. 23 C.F.R. § 771.123(c).

¹⁶ TxDOT has assumed the Secretary of Transportation’s responsibilities for compliance with the National Environmental Policy Act (NEPA) with respect to highway projects requiring an EIS. *See* Memorandum of Understanding Between the Federal Highway Administration and TxDOT (Dec. 16, 2014).

CEQ regulations and guidance contemplate the use of appendices to contain lengthier technical discussions of modeling methodology, baseline studies, or other work demonstrating compliance with environmental requirements. *See, e.g.*, 40 C.F.R. § 1502.10 (CEQ regulation requiring a standard format for environmental impact statements, including appendices, unless the agency determines there is a compelling reason to do otherwise); FHWA’s Technical Advisory on NEPA Documents (T6640.8A) (recommending the use of this format). However, if an agency does prepare an appendix, then it “shall” consist of material “prepared in connection with an environmental impact statement” and be “circulated with the environmental impact statement or be readily available on request.” 40 C.F.R. § 1502.18; *see also* 40 C.F.R. § 1502.25 (requiring that, to the fullest extent possible, agencies “shall” prepare DEISs “concurrently with and integrated with environmental impact analyses and related surveys and studies required by . . . environmental review laws and executive orders”).

These regulations contemplate and require a clear structure for environmental impact statements created in accordance with NEPA. The statute and its implementing regulations require a single environmental review document. The body of the draft EIS must include a statement of all information on environmental impacts and alternatives that the decisionmaker and public need, as well as an explanation or summary of methodologies of research and modeling, and the results of any research conducted to analyze impacts and alternatives. Council on Environmental Quality, “Forty Most Asked Questions Concerning CEQ’s National Environmental Policy Act Regulations,” Question 25, (March 1981). However, the draft EIS can include lengthy technical discussions of methodology, baseline studies, or other material in reports in the appendix. *See id.* But a plain language summary of these reports, their analysis, and their conclusions “should go in the text of the EIS.” *Id.* In other words, the body of a draft EIS and any accompanying technical reports should be produced concurrently and should be made public for review and comment during the formal comment period for the draft EIS, any supplemental draft EISs, and the final EIS. This process helps ensure that the public has access to all of the information required under NEPA and the studies required by environmental review laws and that supporting technical information is made public at the same time for formal review and comment.

These regulations do not support TxDOT’s piecemeal approach taken here. The draft EIS for this project contained a number of technical reports in its appendix, but many of these reports deferred substantive analysis until the creation of the FEIS. *See generally* Irvine & Conner Comment Letter (July 27, 2017). Now TxDOT is substantially updating and preparing new technical reports, purportedly for the FEIS, but is not concurrently supplementing the DEIS with an explanation or summary of this new information. The reports are being made public, but there has been no formal notice provided under NEPA in the Federal Register.

In other words, TxDOT is inventing its own procedure and process. The technical reports have notations such as “prepared for the FEIS” and references other sections of the (not-yet completed) FEIS, making clear that these reports will be appended to the FEIS. This is not sufficient under the law. If this NEPA documentation were prepared by FHWA under its own process, then the agency would either prepare these reports in conjunction with the DEIS and take formal comments or would issue a supplemental DEIS that included these reports and take formal public comments. TxDOT’s actions do not comply with NEPA’s requirements, FHWA regulations, or CEQ regulations that the agency agreed to implement pursuant to the memorandum of understanding delegating authority to TxDOT.

The information and analysis required by environmental review laws should be included in an original or a supplemental NEPA document. An agency cannot piecemeal technical information that was omitted from, or incomplete in, the DEIS as the agency prepares the FEIS. NEPA documents produced for other major transportation projects confirms this process. *See, e.g.,* The Alaskan Way Viaduct and Sewall Replacement Project (Washington State DOT) (issuing two supplemental DEISs after considering analysis in the DEIS, public comments, agency comments, and updates and refinements to proposed alternatives before the publication of an FEIS).

NEPA’s mandate must be interpreted and applied “to the fullest extent possible.” 42 U.S.C. § 4332. TxDOT should comply with this mandate and follow the process required under FHWA and CEQ regulations by instead issuing a revised draft EIS.

We ask that TxDOT make all data used to perform its quantitative analysis public.

Title VI LEP Access Issues Require Translation of NHHIP-Related Documents, Including Technical Documents, and Re-Noticing Those Documents for Public Comment

TxDOT has not provided sufficient access for persons with Limited English Proficiency (LEP) to its federally funded NHHIP as required under Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d,¹⁷ the Department of Transportation’s implementing regulations 49 CFR 21.5(b)(vii)(2), 23 CFR 771.105(g), and TxDOT’s own *Environmental Handbook: Community Impacts, Environmental Justice, Limited English Proficiency and Title VI Compliance* (January 2015).

LEP populations are prevalent in the Census Profile Areas for this proposed project:

Segment	Percent LEP	Percent LEP: Spanish	Percent LEP: Other
1	51.7%	98.9%	1.2%
2	21.5%	96.2%	3.6%
3	11.3%	83.2%	16.8%

Overall, 89.9% of the population in the Census Profile Areas has limited English Proficiency.¹⁸ The Department of Transportation’s LEP Guidance states that “[we] must ensure that federally assisted programs and activities aimed at the American public do not leave individuals behind simply because they face challenges communicating in English. This is of particular importance because, in many cases, LEP individuals form a substantial portion of those who particularly benefit from federally assisted programs and activities.” 70 Fed. Reg. 74087, 74091. TxDOT must provide the full range of materials related to the NHHIP, including the draft EIS and draft Cumulative Impacts and Community Impacts Technical Reports, in Spanish, and potentially in other languages as well.

¹⁷ When federal funds are passed through to a subrecipient, the recipient and/or subrecipient are also subject to Title VI LEP requirements. 70 Fed. Reg. 74087, 74091.

¹⁸ Table C-2.

Even basic information regarding the NHHIP is not available to LEP individuals. For example, on TxDOT's project website, public hearing presentations and exhibits are not available in Spanish, visualization maps are not labeled in Spanish, and only three documents are labeled in Spanish. LEP persons only had access to public information about the project and the EIS if they happened to attend a hearing at which a translator was present. This is not meaningful access and TxDOT has not complied with Title VI, the Department of Transportation's implementing and other regulations, or its own Guidance.

TxDOT's own *Environmental Handbook: Community Impacts, Environmental Justice, Limited English Proficiency and Title VI Compliance* (January 2015) states that "preparing technical reports or other project documentation in languages other than English" is a potential accommodation for LEP populations. When nearly 90% of the affected population is LEP, this is a mandatory accommodation.

The starting point for a recipient determining the need for written LEP access is an individualized assessment by program or project that balances the following four factors:

1. The number or proportion of LEP persons eligible to be served or likely to be encountered by a program, activity, or service of the recipient or grantee;
2. The frequency with which LEP individuals come in contact with the program;
3. The nature and importance of the program, activity, or service provided by the recipient to people's lives; and,
4. The resources available to the recipient and costs.

(See 70 FR 74087, 74091). TxDOT has either not conducted this analysis or not included it in the CIA; it provides no justification for its failure to provide full translation of all documents related to the NHHIP. As demonstrated below, all four of these factors require TxDOT to provide the draft EIS and all other documents related to the NHHIP in Spanish and potentially other languages.

First, nearly 90% of the population affected by this project, in the service area defined by TxDOT, are LEP persons. Second, the planning, including drafting EIS, has been a multi-year process involving frequent contact with LEP persons. Third, the nature and importance of the program are critical and have some of the severest possible consequences for the persons affected. The proposed project will result in the demolition of homes and business, relocation to other areas of the City, disruption of communities, exposure to increased air pollution that causes severe health impacts, reduces life expectancy, and reduces school performance, increased vulnerability to flooding, displacement and destruction of historic communities of color, decreased housing affordability, and a loss of intergenerational family wealth. Fourth, the proposed NHHIP is a \$7 billion dollar project; there are clearly substantial resources available to TxDOT.

TxDOT need not even reach this analysis in order to determine that it is obligated to translate all NHHIP documents and information into other languages:

DOT has adopted DOJ's Safe Harbor Provision, which outlines circumstances that can provide a "safe harbor" for recipients regarding translation of written materials for LEP populations. The Safe Harbor Provision stipulates that, if a recipient provides written translation of vital documents for each eligible LEP language group that constitutes five percent (5%) or 1,000 persons, whichever is less, of the total population of persons eligible to be served or likely to be affected or encountered, then such action will be considered strong evidence of compliance with the recipient's written translation obligations.¹⁹

Again, almost 90% of the affected population is LEP, and while the majority of those persons are Spanish-speakers, in Segment 3 there are two other language groups that constitute more than 5% of the affected population in that segment, and one language group that constitutes 4.8% of the affected population. No written documents were translated for these three language groups despite the fact that two of these LEP populations were outside the "safe harbor" percentage for translation of written documents. These groups did not even receive notice of the opportunity for public comment, let alone access to the relevant documents in their own language.

These safe harbor provisions apply to the translation of written documents only. They do not affect the requirement to provide meaningful access to LEP individuals through competent oral interpreters. The CIA states that TxDOT "made accommodations for individuals speaking Spanish" including publishing meeting notices in Spanish and having staff that were fluent in Spanish at meetings. (CIA 5.10) Simultaneous translation, and translation into more than one language, were only provided at two meetings that took place at HHA developments Kelly Village and Clayton Homes.

At a minimum, TxDOT must translate all NHHIP-relevant documents, including the draft EIS and technical reports, into Spanish, and conduct an analysis of whether it needs to translate these documents and other relevant material into additional languages. The Draft EIS and Technical Reports must be re-noticed for public comment when the translated draft EIS and Technical Reports Review for Community Impacts and Draft Cumulative Impacts are published and the affected population has meaningful access to the vital documents on which they are entitled to comment.²⁰

Community Impacts regarding Civil Rights Specifically Are Not Addressed

¹⁹ DOT, Federal Transit Administration, *Title VI Requirements and Guidelines for Federal Transit Administration Recipients*, FTA C 4072.1b (October 1, 2012) Ch. III-9. We note that the Texas General Land Office translated the *State of Texas Action Plan for Disaster Recovery: Hurricane Harvey – Round 1*, all subsequent amendments, and the *State of Texas CDBG Mitigation (CDBG-MIT) Action Plan*, into five languages other than English – Spanish, Vietnamese, Chinese, Arabic, and Urdu - based on the 5% safe harbor standard. Action Plans available at: <https://recovery.texas.gov/action-plans/index.html>

²⁰ TxDOT's failure to comply with the language access requirements of Title VI of the Civil Rights Act of 1964 has been ongoing, by its own admission, for at least eight years. It is probable that TxDOT must repeat the preceding steps of the planning and EIS process for the NHHIP because the majority of the affected population has been denied even minimal access to documents on which they were entitled to comment.

“A community impacts assessment (CIA) is “a process to evaluate the effects of a transportation action on a community and its quality of life” (Federal Highway Administration [FHWA] 1996). Through this process, community considerations are incorporated into the planning and development of major transportation projects.”²¹ The CIA must comply with Title VI of the Civil Rights Act of 1964, EO 12898, EO 13166, the National Environmental Policy Act (NEPA), and the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act).

The Department of Transportation’s Environmental Justice Strategy defines environmental justice as “the fair treatment and meaningful involvement of all people, regardless of race, ethnicity, income, national origin, or educational level with respect to the development, implementation and enforcement of environmental laws, regulations and policies. For the purpose of this strategy, **fair treatment means that no population, due to policy or economic disempowerment, is forced to bear a disproportionate burden of the negative human health and environmental impacts, including social and economic effects, resulting from transportation decisions, programs and policies** made, implemented and enforced at the Federal, State, local or tribal level.”²² (emphasis added) The NHHIP DEIS clearly states that the proposed project will have a “disproportionate impact on low-income and disadvantaged communities”. The CIA and CIR make it extremely clear that low-income and minority communities will bear almost the entire burden of the negative effects of the proposed NHHIP. Neighborhoods that are not environmental justice communities will have the fewest displacements and be less impacted generally.

Not only whether the EIS process is compliant, but whether the NHHIP as a whole violates Title VI of the Civil Rights Act of 1964 must be evaluated in the context of the history of governmental discrimination that deliberately disadvantaged communities of color while providing resources and legal advantages to white communities. A meaningful cumulative impact analysis also must identify:

- (1) the area in which effects of the proposed project will be felt;
- (2) the impacts that are expected in that area from the proposed project;
- (3) other actions—past, proposed, and reasonably foreseeable—that have had or are expected to have impacts in the same area;
- (4) the impacts or expected impacts from these other actions; and
- (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.

Fritiofson v. Alexander , 772 F.2d 1225 (5th Cir. 1985). The requirement to assess cumulative impacts and the effects of an action within the context of other existing and foreseeable effects in the same area yields “a realistic evaluation of the total impacts” and ensures that an environmental analysis does not impermissibly “isolate a proposed project, viewing it in a vacuum.” *Grand*

²¹ CIA at I-2

²² Available at: <https://cms8.dot.gov/civil-rights/civil-rights-awareness-enforcement/environmental-justice-strategy>

Canyon Trust v. FAA, 290 F.3d 339, 345 (D.C. Cir. 2002).

Historically, in Houston as in other metropolitan areas, new highway construction was deliberately routed through African-American communities, displacing, destroying, and isolating them from white communities. These communities are environmental justice communities now because of deliberate government policies that created and perpetuated segregation, and artificially depressed home and land values. The NHHIP as currently proposed will perpetuate and exacerbate these impacts.

For example, while Houston famously has “no zoning”, it in fact has private zoning. Higher-income (and largely white) neighborhoods used deed restrictions to exclude non-Caucasian residents, multi-family housing, and undesirable land uses. In TxDOT’s DEIS Technical Report, areas that were less than 50% residential or had “potential for commercial development” because they included vacant land, were not considered for noise barriers. Because low-income communities and communities of color had fewer resources to limit and homogenize land uses, this TxDOT decision would have a disparate impact on the basis of race, color, and national origin in violation of Title VI of the Civil Rights Act of 1964.

USDOT regulations provide that “[w]here prior discriminatory practice or usage tends, on the grounds of race, color, or national origin to exclude individuals from participation in, to deny them the benefits of, or to subject them to discrimination under any program or activity to which this part applies, **the applicant or recipient must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage.**” 49 CFR 21.5(b)(7) (emphasis added). Thus, because of the legacy of discriminatory practices impacting African-American and Hispanic/Latinx communities - including the construction of I-45 through those communities in the first place—TxDOT has an affirmative responsibility to not only avoid discriminating against its residents today, but also to overcome the legacy of its past discrimination.²³

TxDOT acknowledges that the proposal will have a disproportionately high impact on the environmental justice population, and relies on the mitigation measures to avoid that impact, yet the mitigation measures fall short. Even if all of mitigation proposals in Table 6-1 of the CIA were carried out, NHHIP would still have disproportionately high and adverse impacts on environmental justice populations protected under Title VI. For example, TxDOT “will develop a program” to provide weatherization and energy efficiency for low income homeowners affected by air and noise pollution during construction, and coordinate with the schools to “avoid construction in the school

²³ A state agency’s discriminatory action need not be intentional to violate Title VI. Rather, “actions having an unjustifiable disparate impact on minorities [can] be redressed through agency regulations designed to implement the purposes of Title VI.” *Alexander v. Choate*, 469 U.S. 287, 293 (1985) (discussing *Guardians Ass’n v. Civil Serv. Comm’n of N.Y. City*, 463 U.S. 582 (1983)). “Title VI . . . delegated to agencies in the first instance the complex determination of what sorts of disparate impacts upon minorities constituted sufficiently significant social problems, and were readily enough remediable, to warrant altering the practices of the federal grantees that had produced those impacts.” *Id.* at 293–94; accord DOJ Title VI Manual § VIII(B) (discussing *Villanueva v. Carere*, 85 F.3d 481 (10th Cir. 1996)).

vicinity during STAAR testing.” CIA Table 6-1. TxDOT is not committing to provide weatherization and energy efficiency (which one assumes will improve air quality and reduce noise within affected homes); it is only committing to “set up a program” without any guarantee that affected homeowners will qualify or setting aside any funding. Even if TxDOT reduces construction noise during STAAR testing, it does not intend to mitigate a noise level that would make it difficult to concentrate during testing at any other time, and there is no suggestion that it will mitigate air pollution, despite findings that the installation of air filters improves school performance even in the absence of a major increase in pollution.²⁴ The potential mitigation effect of any of these measures, of course, would require people to stay indoors for however many years construction went on. TxDOT has not even evaluated the health risks of increased air pollution from an expanded freeway, let alone proposed mitigation measures.

TxDOT’s suggested commitments related to displacement and relocation raise specific civil rights concerns, under both Title VI and the Fair Housing Act. The burden of displacement falls almost entirely on low-income people of color, including public housing tenants and tenants with housing subsidies. TxDOT’s blithe assertion that “there is sufficient replacement housing available” is unsupported by data. According to ACS data, there are only 29 available and affordable housing units for every 100 extremely low income renter households.²⁵ The affordable housing crisis in Houston has been exacerbated by Hurricane Harvey, which both destroyed affordable rental housing, and drove up rents because of increased demand from higher income households, all of which TxDOT acknowledges in the Impacts of the Preferred Alternative section of the CIA:

Currently, Houston is facing population growth; many people are moving to the area and more are expected in the future. The region is also facing an affordable housing shortage; many affordable and public housing developments have been affected by Hurricane Harvey, and the remaining affordable housing stock is too sparse to meet the growing demand. Repairs and rebuilding efforts for housing in Houston are still ongoing, but these efforts are running months behind the pace of other comparable disaster recovery work, such as in New York after the 2012 Super Storm Sandy and in Baton Rouge after the flooding in 2016. There is still a significant need for repairs, reconstruction, and more affordable housing (particularly for renters and low-income families).²⁶

However, providing relocation assistance when there is no available housing to which to relocate does not mitigate the adverse impact of displacement. We have serious concerns about the fact that TxDOT has already begun acquiring property when there is not yet a FEIS, let alone a Record of Decision, particularly given the agency’s failure to comply with LEP requirements.

Using the fair market value of a home to determine an acquisition amount often has a discriminatory impact on the basis of race or ethnicity as well. Following Hurricane Katrina, a lawsuit was filed

²⁴ <https://www.vox.com/2020/1/8/21051869/indoor-air-pollution-student-achievement>

²⁵ <https://nlihc.org/housing-needs-by-state/texas>

²⁶ CIA 5.94

against the State of Louisiana and the U.S. Department of Housing and Urban Development (HUD) alleging racial discrimination in the State's CDBG-DR funded Road Home Program, which provided grants to homeowners to repair or rebuild their homes. The original grant formula was based on the pre-storm value of a home, which resulted in African-American homeowners receiving less repair money than White homeowners, because their homes were located in neighborhoods with lower home values due to market discrimination and the legacy of segregation.²⁷ The CIA does not discuss how relocation programs will ensure that this discriminatory effect does not happen.

Another barrier to relocation for LMI homeowners, particularly African-Americans, may be inability to show clear title because of heirs' property ownership.²⁸ TxDOT must provide lawyers and title clearing assistance to homeowners it intends to relocate.

Low-income households across Houston are being displaced by competition for affordable housing and rising property taxes; displacement is a particularly critical issue for historically African-American neighborhoods, who have seen neighborhoods like Freedman's Town turn into majority white and high-income neighborhoods, often facilitated by government subsidies and investments. Based on the rapidly increasing home and rental prices across the metro area, it is possible that displaced residents will be unable to find new housing in Houston, or even the Houston MSA, regardless of relocation assistance mandated by the URA. The displacement of churches, schools, service providers, and hundreds of residents, and the expansion of a highway which already divides historically disinvested communities of color, will have community cohesion impacts that cannot be mitigated.

Black and Hispanic/Latinx neighborhoods in Houston are already disproportionately impacted by inadequate drainage infrastructure. In the City of Houston, 88% of the open ditch drainage is in minority communities and 43% of that drainage is inadequate. The EDIS explains how flooding on I-45 will be addressed by the project, but says nothing about potential flooding impacts on the adjoining neighborhoods, which already flood frequently because of inadequate public infrastructure, imposing additional costs for insurance and repairs, and reducing the property value of local residents. This has not been addressed in the CIA and CIR. The conclusions of the [EIS] must be supported by "some quantified or detailed information," and the underlying environmental data relied upon to support the conclusions in the [EIS] must be made available to the public. *Klamath-Siskiyou Wildlands v. BLM*, 387 F.3d 989, 993, 996 (9th Cir. 2004).

²⁷ For example, redlining by the Federal Housing Administration in the 1930s, GI Bill loan guarantee requirements that forced developers to build all-white neighborhoods, discriminatory zoning that placed environmental hazards and industrial uses in communities of color, failure to provide adequate infrastructure or public services in communities of color, etc.

²⁸ Heirs' property is created when a landowner dies without a probated will, creating divided ownership of property between multiple heirs, creating a situation in which all the heirs must agree, for example, in order to sell the land, obtain a mortgage, or access programs like CDBG-DR home repair and rebuilding programs. Heir's property ownership is particularly prevalent in African-American communities. See, e.g.: Kuris, Gabriel, "'A Huge Problem in Plain Sight': Untangling Heirs' Property Rights in the American South, 2000-2017," 2018, Innovations for Successful Societies, Princeton University, <http://successfulsocieties.princeton.edu/>

The CIA and CIR fail to analyze the impacts that the NHHIP is likely to have on the viability of residential neighborhoods and on the value of properties adjacent to the highway. The analysis ignores current studies documenting the community severance and lowered property values caused by highway infrastructure, particularly elevated highways.²⁹

Historical Impacts Require Antiquities Permits and Further Review

Three designated historic districts are located along I-45 south of North Main Street. The project's effect on the National Register-listed Near Northside Historic District on the east side of I-45 must be addressed as part of the review process along with potential impacts on two city-designated historic districts on the west side of I-45: Germantown and Woodland Heights. Both of the city-designated districts are potentially eligible for listing in the National Register. The Brooke Smith Addition on the west side of I-45 and the north side North Main Street is also potentially eligible for listing in the NRHP. The project's potential impact on historic resources in the First Ward, on the west side of I-45 south of I-10, should also be considered, particularly the National Register-listed Jefferson Davis Hospital (1925). Independence Heights was added to the National Register of Historic Places in 1997.

In addition, the CTR states that antiquities permits related to the on-going archeological review of Frosttown were continued but that an additional antiquities permit was sought but due to access restrictions was cancelled. We specifically ask that TxDOT renew its process for further review of known historical sites within this study area by seeking additional guidance from the Texas Historical Commission.

Under 40 CFR 1508.14, "human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. While culturally valued aspects of the environment generally include historic properties other culturally valued pieces of real property, cultural use of the biophysical environment and "intangible" sociocultural attributes like social cohesion, social institutions, religious practices and cultural institutions are likewise included for review. These impacts are usually analyzed either as impacts on cultural resources or as social impacts or as both. Here, the CIA and CTR do not include this analysis or specific information regarding the antiquities permits sought and then canceled for access issues, or TxDOT's on-going concerns and programs regarding Frosttown. This should be amended in the same way as many of these other issues in that TxDOT should re-issue an updated and more conclusive draft EIS with renewed technical reports that actually provide the underlying methodology for TxDOT's assumptions of no adverse impacts.

²⁹ Grisolia, Jose Maria, Lopez, Francisco & de Dios Ortuzar, Juan, *Valuing Amenities to Reduce Community Severance*, Paper at the European Association of Environmental and Resources Economists (June-July 2011); Institute for Transportation and Development Policy, *The Life and Death of Urban Highways* (March 2012), https://www.itdp.org/wp-content/uploads/2014/07/42.-LifeandDeathofUrbanHighways_031312.pdf; Cervero, Robert, *Freeway Deconstruction and Urban Regeneration in the United States*, Paper Prepared for the International Symposium for the 1st Anniversary of the Cheonggyecheon Restoration Seoul, Korea (Oct. 2006).

Conclusion

Various organizations have previously submitted comments regarding the Draft Environmental Impact Statement (DEIS) for the North Houston Highway Improvement Project in support of a coalition of Houston nonprofits and neighborhood groups.³⁰ We submit these additional comments to the draft technical reports entitled Community Impacts Assessment Technical Report and Draft Cumulative Impacts Technical Report originally published on December 11 and 19, 2019 respectively. These comments are cumulative of those made previously on the DEIS and we reserve the right to comment on any aspect of the EIS documents until the final EIS, revised DEIS, or supplemental DEIS/FEIS record is complete.

We also attach and incorporate the contents of the following documents into the administrative record:

- **Attachment 6:** Publications regarding on-going community concerns regarding the negative impacts to environmental justice communities and others
- **Attachment 7:** An Alternatives Analysis and Solutions Plan developed by the City of Houston presented in December 2019

We request that TxDOT review and seriously consider these comments and the attached materials as it continues to develop the North Houston Highway Improvement Project, considers the impacts of the project, evaluates required mitigation for impacts, and develops future documents pursuant to NEPA.

In sum, specifically we ask that TXDOT

1. seek to begin a process that provides for programmatic mitigation in environmental justice communities across the state in light of 28 USC 169 with the intent to rectify past discriminatory actions;
2. reconsider air quality modeling regarding the increase in car traffic and the impact of vehicles on this non-attainment region;
3. add/increase TxDOT's beneficial commitment so that air quality monitoring and reporting be included for all segments and for all construction activities (*See e.g.*, CITR at 96);
4. conduct an additional study evaluating the affects of highway runoff to include taking advantage of the increased awareness and options regarding stormwater management;

³⁰ The Coalition Letter included participation by: Air Alliance Houston, Avenue CDC, Bayou City Waterkeeper, BikeHouston, Buffalo Bayou Partnership, Eastwood Civic Association, Freedmen's Town Preservation Committee, Friends of Woodland Park, Galveston Bay Foundation, Germantown Historic District, Greater Heights Super Neighborhood 15, Heritage Society, Hermann Park Conservancy, Houston Parks Board, I-45 Coalition, LINK Houston, Montie Beach Civic Club, Museum Super Neighborhood 66, Scenic Houston, Trees for Houston, Washington Avenue Coalition/Memorial Park Super Neighborhood 22, White Oak Bayou Association, and Woodland Heights Civil Association.

5. create and analyze additional economic impact analyses regarding the community impacts as well as the detrimental impact to sales tax and growth the city of Houston will experience during the approximate 5-10 years this project will take to construct;
6. address floatables and the specific MS4 best management practices necessary to minimize the adverse impacts to surface water;
7. reconsider the below grade portion of the proposed project that will act as a flood zone, putting lives at risk;
8. and that TXDOT issue an amended DEIS with all the proposed “final” technical reports, to include additional modeling, prior to issuing the Final Environmental Impact Statement or the Record of Decision and that it comply with the translation requirements as articulated above.

Sincerely,

Air Alliance Houston and

LINK Houston
Monti Beach Civic Club
Bayou Preservation Association
Stop TxDOT Coalition
Super Neighborhood 83
Fifth Ward Super Neighborhood
Hermann Park Conservancy
Asakura Robinson
Houston Freedman's Town Conservancy
Texas Appleseed
Friends of Woodland Park, Inc.
Avenue CDC