

September 25, 2013

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**Re: ANC 6D Commissioners' Response on the Draft Environmental Impact Statement for the Virginia Avenue Tunnel Reconstruction**

We, the undersigned Advisory Neighborhood Commissioners from Advisory Neighborhood Commission 6D, wish to express our serious and urgent concerns about deficiencies in the July 2013 Draft Environmental Impact Statement (“DEIS”) prepared by the District of Columbia Department of Transportation (“DDOT”) and the Federal Highway Administration (“FHWA,” and collectively with DDOT, the “Agencies”) pursuant to the the planned reconstruction and expansion of the Virginia Avenue Tunnel (the “VAT”) by CSX Transportation Inc. (“CSX”) in the Navy Yard neighborhood of Southeast DC.

We strongly urge the Agencies to address the following specific concerns about the DEIS and to establish a deliberate and purposeful means of consultation with the public to enable the ANC and the constituents whom we represent to provide meaningful input into the planning process for this major construction process.

**1. Under what authority does CSX have the right to expand the VAT current footprint and right of way?**

Neither the Agencies nor CSX have produced a map, survey, plat, or other means to demonstrate how much federal or DC land will be transferred to CSX to conduct the

proposed project.<sup>1</sup> The currently proposed build alternatives shift the existing tunnel footprint between 7 and 25 feet south from occupied space.<sup>2</sup> The Agencies must be transparent about interpretations, negotiations, and decisions associated with the right of way process. The DEIS does not provide any factual information on what the current right of way is, who will make a determination regarding expansion of a right of way, and what the city or DC residents may receive in return for any additional grant of right of way. The ANC urges FHWA and DDOT to provide transparency on these matters and to share the process by which the public or other Agencies may participate in or appeal a final decision.

**2. The DEIS contains factual inaccuracies, inconsistencies, and questionable statements that undermine its credibility.**

- a. The vibration study says that there will be no impact to existing structures during construction<sup>3</sup> yet it also states that it does not have sufficient information to predict overall vibration levels.<sup>4</sup> The noise study implies that operation of a freight train through an open trench will not increase the noise disruption, which defies common sense.
- b. The traffic patterns discussed within the DEIS do not reflect an accurate picture of the area's increased traffic volume during games and other public events at, or the ever-increasing numbers of residents and workers living and moving into the community (*e.g.*, Park Chelsea apartments at 880 New Jersey Avenue, Twelve12 apartments at 1212 4<sup>th</sup> Street SE, and others that are planned but not yet under construction). The traffic patterns and Construction Haul Routes discussed in the DEIS do not accurately reflect other ongoing or planned infrastructure changes, such as the planned reconnection of both I Street SE and H Street SE between New Jersey Avenue SE and 2<sup>nd</sup> Street SE.
- c. The DEIS relies upon outdated 2010 census data that does not take into account the expansive growth in this community or the already-constrained parking situation for current residents of and workers and visitors commuting to the area. The DEIS does not address the impact of this project on the large number of residents, including senior citizens, and workers (*e.g.* the 1,200 workers at 225 I Street SE who will be affected by this project during daytime hours).

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<sup>1</sup> The existing tunnel is owned by CSX on a right of way that was granted to CSX's predecessors in interest by Congress in 1901. This right of way cannot be expanded without clear authority from a properly authorized government entity.

<sup>2</sup> Page 3-2 in Chapter 3 of the DEIS indicates that (i) Alternative 2 would shift the center line of the existing tunnel 7 feet south, (ii) Alternative 3 would shift the center line 25 feet south, and (iii) Alternative 4 should shift the center line 17 feet south. These measurements, however, do not consider the temporary run-around track that would be built even further south of the existing VAT for the duration of 4-6 years while the project is ongoing.

<sup>3</sup> Appendix F, Page 21

<sup>4</sup> Appendix F, Executive Summary, Page V: ...“because detailed construction activities and types of equipment that will be utilized for each phase are not available at this time, overall vibration levels from each construction phase cannot be predicted”

**3. What alternatives to the current options were considered, and why were they accepted or rejected?**

The DEIS must transparently list and assess consider all reasonable alternatives, including rerouting concepts 7A, 7B, 11 and other potential options. This document fails to provide any substantive or fact-based justification for why these concepts were excluded. The Southeast community will be greatly affected by this project, but a reduced period of construction and non-expansion of the CSX right of way would minimize the short- and long-term effects of this project, including keeping any newly constructed tunnel and rail structures further from the location of existing residences, businesses, public buildings and park spaces. The DEIS fails to consider any alternative that abides by a phased-construction approach that minimizes the risk, disturbance, and quality of life for DC residents, business/agency workers, and others along the construction zone. The phases proposed in all alternative builds, for example, begin west to east, where the majority of current residents, senior citizens, and more than 1,200 workers at 225 I Street will be most affected during the entire length of the process. We urge the Agencies, in coordination with CSX, to review the Phase I/II assessments to determine more appropriate ways to minimize construction time required for this project, should it be approved.

**4. Why does the DEIS does not adequately address the broader safety and environmental concerns that the National Environmental Policy Act of 1969 (“NEPA”) contemplates for such level of review, including specific plans for mitigation of the negative effects on the residents of the community that will be immediately and negatively impacted by this project?**

We are deeply concerned that both construction to expand the tunnel and the subsequent increase in rail traffic -- especially the transport of hazardous materials -- would place people, homes, businesses, public parks, and fragile historic resources at risk both during the proposed construction process and during normal operation after the proposed construction. *We cannot support any build alternative that requires an open trench during construction nor can we endorse a plan that places second, permanent tunnel just steps away from existing residences, historic resources, and public spaces.* Section 101 on the NEPA requires the federal government to “assure for all Americans safe, healthful, productive, and aesthetically and culturally pleasing surroundings,” and “attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences.” This DEIS does not meet this minimum threshold of addressing and mitigating even health and safety risks. Additional detail related to these deficiencies can be found in Attachments I and II, which are included as part of this official communication.

The rules promulgating NEPA (found at 40 CFR § 6.203(a)(5)) require that the DEIS “ensure meaningful public participation throughout the NEPA process.” CSX’ plans to relocate all public utilities located in the Limit of Disturbance may cause serious service disruptions, and we strongly urge appropriate consultation with providers such as PEPSCO, Washington Gas, DCWASA, Verizon, and Comcast take place and reported upon in a public and transparent manner.

It is not apparent to ANC 6D or our constituents that the proposed massive construction project to rebuild the Virginia Avenue Tunnel will bring any functional benefit to the immediate community or the District of Columbia more generally. If this project is to move forward, it will be imperative for the Agencies and CSX, with proper community discussion and planning, to make improvements on and around Virginia Avenue to the extent possible to help ameliorate the pain and disruption to the residents, buildings, infrastructure, landscape, and historic resources within and adjacent to the project area. We ask that CSX institute a community benefits process parallel with the EIS process to deliver benefits such as:

1. Reconstruction of Virginia Avenue as a linear park, with facilities for walking, bicycling, gathering, exercising, and relaxing within a safe and landscape architect-designed setting;
2. Replacement and sustained maintenance of trees in number and size to compensate for trees removed to support construction trees in place today;
3. Commitment to fund the establishment and maintenance of landscape improvements within the construction boundary;
4. Construction of a permanent, separated bicycle track along the rebuilt Virginia Avenue SE roadway;
5. Funding of artistic and safety improvement to underpasses beneath the Southeast Freeway between the Navy Yard and Capitol Hill neighborhoods (2<sup>nd</sup> Street SE, 3<sup>rd</sup> Street SE, 4<sup>th</sup> Street SE, 5<sup>th</sup>/6<sup>th</sup> Street SE, 7<sup>th</sup> Street SE);
6. Completion of the H Street SE roadway on CSX-owned property between New Jersey Avenue SE and South Capitol Street SE;
7. Creation of public recreation facilities (a la Arlington, VA’s Long Bridge Park) between the above new H Street SE roadway and the area beneath the Southeast Freeway, between New Jersey Avenue SE and South Capitol Street SE;
8. Restoration and enhancement of skateboard park facilities beneath the Southeast Freeway, between Garfield Park and Virginia Avenue SE / H Street SE;
9. Creation of a more seamless connection between Garfield Park north of the VAT and Canal Park south of the VAT, via landscape and streetscape improvements.

We urge the Agencies and CSX to address the deficiencies in the DEIS and provide additional information, analysis, and opportunities for public engagement to allow the affected populations to make informed decisions about this major construction project and possible alternatives to those currently proposed.

Sincerely,

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*cc:*

*Delegate Eleanor Holmes Norton  
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Council of the District of Columbia*

## Attachment I

### **ANY CONSTRUCTION ACTIVITY MUST PROTECT AND SUPPORT THE SAFETY, HEALTH, QUALITY OF LIFE, AND CONTINUED GROWTH OF THE COMMUNITY, REGARDLESS OF CONCEPT OR ALTERNATIVE**

Our primary concerns relate to the safety, health, and quality of life for our diverse community; the economic and physical well-being of our businesses, parks, religious institutions, private homes, public housing, and historic buildings; and the preservation of north-south access across Virginia Avenue for all existing modes of transportation.

Residents on both the north and south sides of the VAT use and cross Virginia Avenue daily to walk, bike, bus, and drive their children to school, enjoy recreational amenities, work, worship, eat, park, and shop. Building a trench between the emerging neighborhood south of Virginia Avenue and the more established areas north of it will instantly sever the ties that we have worked tirelessly to build.

Without diminishing the concerns raised in Section I above, in the event that construction does come to our community, it is absolutely imperative that the health and safety of our many residents, the economic and physical well-being of our businesses, parks, religious institutions, homes, and historic buildings, and the north-south access for all existing modes of transportation be preserved and enhanced. Therefore, regardless of the construction alternative chosen, certain specific construction mitigation efforts and post-construction community benefits must be included in the scope of this project.

The following list represents a minimum set of mitigation efforts which the Agencies and CSX – either separately or together – must put in place before construction begins:

- 1) Noise and vibration mitigation
  - a) Minimize the impact of train schedules on residents and businesses.
  - b) Place sound barriers along both sides of I-695, along the entire length of the LOD to reduce ambient noise and airborne particulate matter during construction.
  - c) Establish and chair a review committee, composed of representatives from CSX and local agencies and residents, to decide on work restrictions, operating hours, and safety issues. CSX should fund 3<sup>rd</sup> party arbitration for issues that cannot be resolved by the committee.
  - d) Fund comprehensive baseline home assessments for any local homeowner or business prior to commencement of construction in order to identify any damage to homes as a result of VAT construction, and directly address the responsibility for anticipated loss of property value to property owners.
- 2) Traffic and Parking mitigation

- a) Nearly all residents and businesses proximate to the LOD rely on street parking in order to live, work, and conduct business in Southeast DC. DDOT must ensure that adequate parking is available for residents for the duration of the construction period.
- b) DDOT and CSX will ensure all residents retain access to all parts of their residences, including vehicle access to garages where applicable, throughout the construction period.

### 3) Health and Safety mitigation

- a) CSX shall ensure there are no rodent, insect, or other pest infestations as a result of construction, and will fund any/all eradication efforts.
- b) CSX must not transport any hazardous, flammable, or toxic materials along Virginia Avenue tracks for the duration of the tunnel expansion.
- c) CSX will fund a 3<sup>rd</sup> party survey of the existing Virginia Avenue Tunnel, both prior to and during construction, to identify all toxic and hazardous materials present in the tunnel, the results of which will be made publicly available to all residents, along with a plan for their abatement.
- d) CSX shall provide 24/7 security along the construction site for the safety of residents and visitors to the area.
- e) CSX shall provide a 10' tall stockade-type fence with noise blanket and particle windshield between 2<sup>nd</sup> St SE and 6<sup>th</sup> St. SE, with a dedicated pedestrian sidewalk must along the fence line.
- f) DDOT and CSX must provide for access to emergency services for all residences and businesses along the construction zone.

### 4) Residential and Business Quality of Life mitigation

- a) DDOT and CSX shall establish a planning committee for residents who live along the LOD to provide input and prioritization on final street layout, and on any post-construction improvements proposed.
- b) The Agencies and CSX shall ensure that residents and businesses are afforded uninterrupted services and utilities during and after construction.

### 5) Accountability and dialogue

- a) The Agencies and CSX must establish a working group that will allow ANC 6D commissioners and residents to receive input on the status of construction, and provide public record reports on a monthly basis to document any issues that arise and the status of mitigation efforts.
- b) CSX must undertake to resolve all claims made against them by property owners within 30 days of the claims being raised, or otherwise surrender the full amount claimed. The

burden of proof should be on CSX to prove that the damage was not caused by their activities, and payments made by CSX may not in any way be construed as a waiver of rights to seek damages under applicable law.

- c) CSX should consider incentives for early completion of construction and penalties for delays in construction.
- d) The Agencies and CSX should maintain a robust website to provide current information on construction activities, including regular progress reports on the multi-year project and a public forum for interested parties to communicate areas of concern.

## Attachment II

### HEALTH AND SAFETY CONCERNS IGNORED IN THE DEIS

#### Concerns Related to the Transportation of Hazardous Materials

On July 6, 2013, a runaway train derailed near the town of Lac-Megantic, Quebec resulting in an explosion and inferno that took 47 lives. This disaster was a preventable tragedy that highlights the potential dangers of crude oil cargoes, which are becoming increasingly common in the West-to-East rail shipments across all of North America.

Such a disaster must not happen in our nation's capital. CSX has planned a multi-year project to expand its right of way through the Virginia Avenue Tunnel, mere yards from the U.S. Capitol building. Given the location of Washington, DC as a transit point for both West-to-East and North-to-South rail lines, this project poses clear risks to the District. The ANC urges that the Agencies and CSX publicly answer the following questions:

1. Have District officials been provided with current information about exactly which HAZMAT cargoes they are now re-routing around the District under H.R. 1, Section 1551 from 2007?
2. Have District officials been informed about alternative routing that is being used for these cargoes?
3. Have District officials been informed of the annual totals of the rail hazmat cargoes the railroads are still bringing through the District? [See the AAR publication urging its member major and minor railroads to respond to such requests: AAR Circular OT-55-I Ops for TIH cargoes including notification to communities, LEPCs, secrecy: [http://www.csx.com/share/wwwcsx\\_mura/assets/File/Customers/Safety\\_and\\_Security/cpc-1220\\_ot-55-1.pdf](http://www.csx.com/share/wwwcsx_mura/assets/File/Customers/Safety_and_Security/cpc-1220_ot-55-1.pdf)]
4. Is crude oil, or "dilbit" -- diluted bitumen, from various Western sources -- among these cargoes the railroads are or can bring through the District?
5. Have District officials been informed of the Worst Case Scenarios for the top 25 most dangerous rail hazmat cargoes?
6. Have District officials paid special attention to the implications of the Lac-Megantic rail crude oil disaster on July 6, 2013 for the newly-appreciated transportation risks of such cargoes through the District, e.g., using the standard DOT-111 tank cars long known by Federal officials to be "expected" to release its contents in a serious collision or derailment?
7. Have District officials done any full-scale or table-top drills [whether open or closed to public and media attendance] on potential releases of rail hazmat cargoes at the Virginia Avenue Tunnel site:

- a. Assuming an open-trench situation with chemical releases, which could impact nearby populations?
  - b. Assuming a closed-trench situation as may be employed by CSX during construction or even permanently?
8. Have Washington DC's disaster evacuation plans been updated to reflect this period of construction and post-construction operation?