



November 26, 2013

Mr. Mark Sweeney, P.E.
Michigan Department of Transportation
Brighton Transportation Service Center
10321 East Grand River Ave., Suite 500
Brighton, MI 48116

Re: Michigan Environmental Council's Concerns Regarding the Michigan Department of Transportation's Proposed Project, Hard Shoulder Running US-23

The Michigan Environmental Council is a coalition of over 65 environmental, conservation and faith-based organizations located across Michigan. These organizations place a high priority on transportation issues as key to Michigan's economic success, good quality of life, and environmental prosperity. The Michigan Environmental Council (MEC) has reviewed with interest the small amount of publicly available information regarding the Michigan Department of Transportation's (MDOT) proposed project, Hard Shoulder Running US-23 (HSR US-23). In short, this project would widen the north-bound and south-bound shoulders north of Ann Arbor for 7.3 miles and create an additional, but intermittent, travel lane on those shoulders. This proposed project raises serious environmental questions which must be addressed in a comprehensive manner.

MEC's interest in MDOT's proposed project, HSR US-23, is, at this point, to ensure that it is properly classified and presented so that an appropriate level of environmental review is undertaken. The proposal leaves unanswered a number of significant questions regarding its environmental impacts. Based on our reading of MDOT's HSR US-23 proposal, we conclude that it has the potential to cause significant adverse impacts to the environment and, therefore, warrants at the very least a Class II Environmental Assessment (EA). This basic level of environmental review required with an EA is necessary to explore the myriad unanswered questions triggered by the proposed project and will likely show the necessity of undertaking a Class I Environmental Impact Statement.

Our comments presented here focus on some of the outstanding questions this proposed project raises which need deeper investigation. We will refrain, at this point, from discussing the merits of the proposed project until sufficient documentation justifying its need is publically supplied. We start our comments by discussing why this proposed project is ill suited as a Categorical Exclusion (CE) and the need for more data to ensure proper classification. We then question whether MDOT's bunching of CEs within the corridor is appropriate given the high probability of negative impacts when

individual CEs are bundled together or rather should be more accurately considered as inextricable components of one project. Next we will explore the project's potential to negatively impact water quality and air quality. We will conclude our comments by outlining our concerns that, if operational, the proposed project raises real safety issues and that it could negatively impact a very sensible MDOT project in the exact corridor, the Wally commuter rail service.

HSR US-23 Not a Categorical Exclusion

This proposed project does not fit within a CE. According to the Council of Environmental Quality's NEPA regulations, an agency may use a CE for a "category of actions which do not individually or cumulatively have a significant effect on the human environment...and which, therefore, neither an environmental assessment or environmental impact statement is required."¹ CEs are "actions which: do not induce significant impacts to planned growth or land use for the area;...do not involve significant air, noise, or water quality impacts; do not have significant impacts on travel patterns; or do not otherwise, either individually or cumulatively, have any significant environmental impacts."² There are two types of CEs: (1) actions which fall within the enumerated activities in 23 C.F.R. §771.117 (c)(1-21) and (2) Documented Categorical Exclusions (DCE) in which the agency must demonstrate compliance with the CE criteria.³

MDOT's publically available documentation for this project is light on details. It appears as though MDOT might view HSR US-23 as fitting within the first listed DCE, highway modernization.⁴ Highway modernization is defined as "resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes...."⁵ Based on MDOT's Power Point presentation, "US 23 Active Traffic Management, 2016 Proposed Project," the HSR US-23 design consists of two currently existing 12' lanes, plus an additional 11' HSR lane, and an additional 2' shoulder. The 11' HSR lane is labeled as a shoulder, next to a 2' shoulder. If the HSR lane were indeed a shoulder, it would fall within the modernization exclusion.

However, it is not really a shoulder. A shoulder, according to FHWA is "the portion of the roadway contiguous with the traveled way for accommodation of stopped vehicles for emergency use, and for lateral support of the base and surface courses."⁶ This definition discusses both location and purpose. A shoulder is properly located on the side of the traveled way. The shoulder's purpose is for stopped vehicles and roadway support. While MDOT has labeled the HSR lane as a shoulder in its presentation, it is clear that MDOT intends for this area to be an intermittent "traveled way" and not used

¹ 40 C.F.R. §1508.4.

² 23 C.F.R. §771.117 (a).

³ *West v. Secretary of Department of Transportation* 206 F.3d 92, 927.

⁴ 23 C.F.R. §771.117 (d)(1).

⁵ 23 C.F.R. §771.117 (d) (1).

⁶ <http://www.fhwa.dot.gov/pavement/t504029.cfm>

for the “accommodation of stopped vehicles for emergency use”.⁷ We discuss the distinction here because MDOT’s proposed HSR lane is not a shoulder and, therefore, would not fall under the “adding shoulders” portion of the “modernization of highways” activities under the DCE.

Nor does MDOT’s proposed HSR lane properly qualify as an “auxiliary lane” for actions under 23 C.F.R. §771.117 (d)(1). FHWA’s Freeway Management and Operations Handbook defines “auxiliary lanes” as “the portion of the roadway adjoining the traveled way for speed change, turning, weaving, truck climbing, maneuvering of entering and leaving traffic, and other purposes supplementary to through-traffic movement.”⁸ The Handbook states that auxiliary lanes “facilitate the positioning of drivers at exits and the merging of drivers at entrances.” These examples and FHWA’s further clarification strongly suggest that auxiliary lanes are short in length and have the purpose of facilitating traffic joining and leaving the traffic flow. While the AASHTO definition used by FHWA is not limited to the enumerated treatments, we believe there is a clear distinction between the approximately 7.3 miles of HSR lane running North and South and the class of treatments listed as auxiliary lanes.⁹

Moreover, 23 C.F.R. §771.117 (a), states in part that CEs cannot be used if an action will “...have significant impacts on travel patterns.”¹⁰ MDOT’s presentation does not discuss issues of induced demand, but show a 50% increase in road capacity for 7.3 miles. The (presumed) purpose of the project is to reduce congestion and expedite travel along the corridor, which suggests a significant impact on travel patterns. An analysis of induced demand at 2016 traffic volumes is critical to determine whether the HSR lane portion of the project would have significant impacts on travel patterns.

We therefore conclude that the HSR lane portion of MDOT’s proposed HSR US-23 project does not qualify as an action properly classified in a categorical exemption based on 23 C.F.R. § 771.117 (d) (1) and 771.117 (a). Further investigation and documentation would help determine which standard of environmental review is needed. It is clear that there are enough outstanding questions to warrant a higher level of environmental review.

Cumulative Impacts of Bundled CEs

MDOT has not presented the full picture of the project. Other inextricably associated MDOT projects which are being currently considered include three bridge

⁷ Id.

⁸ http://ops.fhwa.dot.gov/freewaymgmt/publications/frwy_mgmt_handbook/chapter5.htm#5-5, Chapter 5.

⁹ We note here that the FHWA Handbook discusses in Chapter 5 HSR lanes as an acceptable congestion mitigation solution in specific situations. Whether this portion of US-23 fits within those acceptable situations is not the purpose of our comments (though there are questions about this); rather, our focus is to ensure that MDOT properly classifies the project so as not to give it the appearance that it is an action which properly fits within a CE or DCE.

¹⁰ *West v. Secretary of Department of Transportation* 206 F.3d 920.

replacements which traverse the contemplated section of US-23. These proposed bridge projects are planned to be longer to accommodate more traffic lanes on US-23 in this stretch of roadway. MDOT's proposed HSR US-23 project appears to rely on at least two CEs: 23 C.F.R. § 771.117 (d)(1), "modernization of a highway," and 23 C.F.R. § 771.117 (d) (3), "bridge rehabilitation." CEs must not "...individually or cumulatively have a significant effect on the human environment..."¹¹ Cumulative effects are further defined as "...the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions."¹² These two CEs in the current project phase represent approximately 7.3 miles of highway widening, three bridge reconstructions, and highway ramp lengthenings. When considered together, these several actions could have potentially significant adverse environmental effects, particularly on air and water quality. Failure to address these considerations would suggest the FHWA accepted MDOT's conclusory labels and did not take a "hard look" at the cumulative impacts of the project. The result would be an insufficient level of environmental review.¹³ The possibility of significant environmental impacts from these cumulative actions merits further exploration as to why these impacts, when considered cumulatively, would not be significant.¹⁴

There are several possible corridor impacts that warrant further investigation. For example, how will increased traffic flow potentially impact travel conditions below the project segment, at the M-14 interchange? When implementing HSR lanes, it is necessary that the lanes extend through the bottleneck, otherwise further congestion is possible.¹⁵ At M-14 leading into Ann Arbor, it appears that the HSR lanes would end before the Ann Arbor exits, potentially leading to a bottleneck in traffic and further congestion. Further, a June 20th MDOT letter to the FHWA shows the HSR segment ending at Joy Road to the south, a little over a mile north of the M-14 interchange. If this plan is followed, it represents a more severe risk of bottlenecking.

More regionally, we have concerns about induced demand along I-96 and M-14 as a result of US-23 being perceived as a more viable traffic option with the completion of additional lanes. Air and water quality impacts are possible along these corridors that serve US-23, which warrant further study and explanation.

Water Quality

There is a serious concern regarding water quality with the project area. In the 2009 US-23 feasibility study, it is recorded that approximately half of the South Segment – US-23 from the M-14 interchange to just south of Barker Road – is classified as

¹¹ 40 C. F. R. S. 1508.4.

¹² *id.* S 1508.7. *Brady Campaign to Prevent Gun Violence v. Salazar* 612 F.Supp.2d 1.

¹³ *Sierra Club v. Mainella* 459 F.Supp.2d 76

¹⁴ *Center for Biodiversity v. Salazar* 791 F.Supp.2d 687.

¹⁵ USDOT, FHWA, *Synthesis of Active Traffic Management Experiences in Europe and the United States*, 3.4. See: <http://ops.fhwa.dot.gov/publications/fhwahop10031/sec3.htm>

wetlands.¹⁶ There are also three inland lakes within a two-fifths of a mile radius of US-23, between M-14 and Barker Road. Slide 10 of MDOT's "US-23 Active Transportation Management 2016 Proposed Project" presentation displays a design concept which features a paved median. On top of the additional 22' of HSR pavement, this concept creates an additional 21.68' of pavement in the median plus the concrete barrier median. If this design is implemented over the 7.3 mile project, approximately 1,683,601 square feet of new impermeable surface would be added between the north- and south-bound lanes. This is a significant potential increase in storm water runoff activity from the freeway, and would likewise impact the surrounding wetlands.

Air quality

The 2009 feasibility study does address the potential induced demand that would accompany construction of a third general purpose lane in each direction. This study found that the largest impact on corridor travel demand occurs between North Territorial Road and the M-14 interchange, with an expected 1,325 additional vehicles travelling southbound in the morning peak hour and 1,025 more travelling northbound in the evening peak hour. The feasibility study states that, "Most of the induced US-23 demand under this scenario is due to local area trips that were previously using the local road system, but are now using US-23 due to the increase in capacity."¹⁷ While the scenario in this feasibility study is a third general purpose lane rather than the HSR approved by FHWA, both scenarios likely would induce an increase in capacity during peak hours, and thus will both see increased use to some degree. The extent to which induced demand will grow with the HSR should be understood and its potential negative impacts on the human health and environment should be planned for.

Safety

Another concern is driver safety. The proposed project contemplates an 11' lane, which is narrower than a typical modern interstate traffic lane. In the FHWA's report *Mitigation Strategies for Design Exception*, lane width is identified as one of the 13 controlling criteria that are of substantial importance to the operational and safety performance of a highway.¹⁸ According to the report, an 11' lane width should be accompanied by a 1.9 mph reduction in free-flow speed, versus a 12' lane width.

Wally Commuter Service

Plans are well underway to develop a commuter train to connect Ann Arbor with communities to the north, providing a much-needed alternative to traffic on US-23. The train would run for 27 miles from Ann Arbor to Howell, initially running just during peak hours in the peak direction. Great Lakes Central Railroad is an enthusiastic partner,

¹⁶ http://www.michigan.gov/mdot/0,4616,7-151-9621_11058-226949--,00.html

¹⁷ http://www.michigan.gov/mdot/0,4616,7-151-9621_11058-226949--,00.html, Page 79.

¹⁸ <http://safety.fhwa.dot.gov/geometric/pubs/mitigationstrategies/introduction/intro.htm>

ready to operate the service and provide the rail stock. Ann Arbor's transit agency, AAATA, is the authority overseeing the train service. This is an imminently sensible alternative to HSR US-23 and one that should be fully established and operational before any plans to widen the highway are carried out.

Again, the Michigan Environmental Council has concerns about MDOT's proposed project, HSR US-23. MDOT needs to address the serious environmental questions in a comprehensive manner before proceeding with the project. Thank you for the opportunity to consider our comments. As always, we are available to you to answer any questions about our comments you may have.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Fischer', written in a cursive style.

Tim Fischer
Deputy Policy Director