



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

AUG 20 2013

Joseph DaVia
U.S. Army Corp of Engineers
Baltimore District
P.O. Box 1715
Baltimore, Maryland 21203-1715

RE: CENAB-OP-RMN (Mid-County Corridor Study) Public Notice 2007-07102-M15,
MidCounty Highway (M83), Montgomery County Department of Transportation, Montgomery
County, Maryland.

Dear Mr. DaVia:

The U.S. Environmental Protection Agency (EPA) has completed its review of the Public Notice (PN) 2007-07102-M15 for Montgomery County Department of Transportation's (MCDOT) MidCounty Corridor Study (MCS) located in Montgomery County east of I-270 between Clarksburg and Gaithersburg. The applicant proposes to place fill material into waters of the United States to construct a highway project. The purpose of MCS is to develop transportation improvements that will relieve projected congestion, improve safety and efficiency, improve vehicular, pedestrian, and bicycle access to destinations within the study area, and be implemented in an environmentally sensitive manner. Our comments herein are based upon the Public Notice and the May 2013 MCS Draft Environmental Effects Report (EER) that have been made available for review.

EPA's review is intended to ensure that the proposed project meets the requirements of the Clean Water Act (CWA). The CWA Section 404(b)(1) Guidelines (40 C.F.R. Part 230) provide the substantive environmental criteria against which this application must be considered. Fundamental to the Guidelines is the premise that no discharge of dredged or fill material may be permitted if: (1) it causes or contributes, after consideration of disposal site dilution and dispersion, to violations of any applicable state water quality standard; (2) a practicable alternative to the proposed discharge exists that would have a less adverse impact on the aquatic environment; or (3) the discharge would cause or contribute to significant degradation of the waters of the United States (WOUS), including wetlands and streams. EPA's comments are also provided for the Corps' consideration during their public interest review.

During the review, EPA identified several areas of concern. These include: alternatives analysis, avoidance and minimization of impacts, compensatory mitigation, environmental justice, and secondary and cumulative impact analysis. The enclosure describes EPA's review in greater detail and provides specific comments and questions.

Project Description

The EER prepared by MCDOT evaluated six alternatives including the no-build alternative. All of the build alternatives included a design speed of 40 miles per hour (mph), a divided highway with a minimum of four through lanes, and sidewalk and shared use path elements. No preferred alternative has been identified at this time. Alternative 1 represented the no build alternative assuming all programmed transportation improvements within the study area have been completed by the year 2030 except the extension of the Midcounty Highway. Alternative 2 included transportation system management/travel demand management (TSM/TDM) improvements at 16 intersections in the study area. Alternative 4 modified represented an upgrade of existing roads, which included a 7.5 mile widening of Ridge Road, Brink Road, Wightman Road, Snouffer School Road, and Muncaster Mill Road. Alternative 5 included a 6.6 mile widening along MD 355. Alternative 8 included the creation of new highway along the County's Master Plan alignment truncated at Watkins Mill Road. Alternative 9 included the creation of new highway along the County's Master Plan alignment that is not truncated. Alternatives 8 & 9 would require the selection of one of three northern terminus options; all from Watkins Mill Road to Ridge Road. Northern Terminus Option A included the creation of new highway bisecting Brink Road and crossing Northern Germantown Stream Valley Park, Seneca Crossing Local Park, Dayspring Church Silent Retreat Center, and All Souls Cemetery. Northern Terminus Option B included the creation of new highway crossing North Germantown Stream Valley Park then follows a widened Brink Road to Ridge Road. Northern Terminus Option D included the creation of a new highway through North Germantown Stream Valley Park crossing Brink Road then bisecting two farm properties and cross Wildcat Road and All-Souls Cemetery.

The proposed permanent wetland impacts associated with the evaluated action alternatives range from zero acres to 0.87 acres. Proposed wetland conversion from action alternatives ranges from zero to 1.70 acres. The proposed action alternatives would temporarily impact between zero and 0.82 acres of wetland. Permanent impacts to streams, including relocation, range from zero to 1,639 linear feet (lf). Proposed action alternatives 8 & 9 would impact forest interior dwelling species (FIDS) ranging from 9.92 to 19.08 acres; remaining alternatives would result in zero FIDS impacts. Proposed alternatives would result in permanent impact to FEMA floodplain ranging from zero to 4.8 acres. Proposed parkland impacts range from zero to 48.1 acres. The applicant proposes to conduct permittee responsible compensatory mitigation for wetlands and streams.

Project Purpose and Need, Alternatives, and Avoidance and Minimization

To identify the least environmentally damaging practical alternative (LEDPA) (40 C.F.R. § 230.10(a)), a range of practicable alternatives must be considered. The range of alternatives should include not only geographical siting of the project, but also functional alternatives such as

design modifications that avoid or further minimize impacts, and even the no action alternative. An alternative is practicable if it is available and capable of being done after taking into consideration cost, existing technology and logistics, in light of overall project purposes (40 C.F.R. § 230.3(q)). The applicant should be aware that neither increased costs of an alternative nor an unwillingness to pursue an alternative necessarily renders that alternative not practicable. While we recognize the importance of the County's Master Plan to this project and to the County, for the purposes of the Clean Water Act Section 404 the Corps must evaluate a suite of practicable alternatives based on the overall project purpose and associated impacts regardless of the vision presented in the Master Plan, although the applicant's needs and the type of project being proposed should be considered. The overall project purpose is used to evaluate the LEDPA and should be specific enough to define the applicant's needs, but not so restrictive as to constrain the range of alternatives that must be considered under the CWA 404(b)(1) Guidelines.

The applicant appears to have applied screening criteria beyond the purpose and need, as applied in Sections 3.5 & 3.6 of the EER and shown in Table 3-9. Each alternative has been rated high, moderate or low for each purpose and need element. While not identified in the P&N it appears that the Master Plan may have been a consideration in the screening process. It hasn't been stated how the rating has been objectively identified or assigned. While some supporting evidence has been provided for each alternative and need, it isn't clear that the rating value itself represents anything more than the applicant's subjective opinion. Screening criteria is frequently used, however EPA recommends that additional detail and explanation be provided in order for the Corps to conduct a impartial and neutral analysis of how each alternative presented meets the elements of the purpose and need, as well as the overall project purpose.

EPA understands that under the Corps' Regulations a public interest review is to be conducted. EPA is concerned that the documentation provided may not be sufficient for the Corps to conduct a thorough review of their identified public interest review factors. Especially in light of significant public interest and controversy, we recommend that additional information be provided by the applicant in order for the Corps to adequately conduct the required public interest review, which may include noise, air and community facilities.

It is unclear whether all potential impacts associated with the project alternatives have been identified and evaluated. Potential components of the project that may result in impacts to aquatic resources do not appear to have been evaluated, including identification of stormwater management control, increased limits of disturbance for noise abatement features, and additional temporary construction impacts including but not limited to stream crossings. EPA is also concerned whether impacts to wetlands and/or streams have been fully avoided to the maximum extent practicable. No discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem (40 C.F.R. §230.10(d)). With some level of uncertainty of whether the impact figures are complete and accurate, it is difficult to evaluate whether impacts have been fully avoided and whether unavoidable impacts have been fully minimized. Several bridges are included in the action alternatives, including the proposed creation of new bridges over WOUS which are associated with Alts 8 & 9. EPA requests a clear list or table of stream crossings locations, including but not limited to bridges, dimensions, including lengths, widths and heights, and a quantification of WOUS to be crossed. This information is not only important

to demonstrate efforts taken to avoid and minimize impacts to WOUS, but also to ensure that impacts are accurately characterized, which is especially important for indirect and cumulative impacts to be assessed. EPA is concerned that efforts taken to reduce direct permanent impacts to WOUS, while possibly effective at this goal, may still result in diminished water quality or habitat.

Ultimately, the permit issued by the Corps should reflect the LEDPA. 40 C.F.R. § 230.10(a). The EER states that the preferred alternative could be a combination or portion of the alternatives presented; however analysis was not presented for any combination. Based on the information provided in the EER and given the applicant's stated purpose and need, it appears that a combination of alternatives presented may represent the LEDPA. For example, consideration should be given to Alternative 5 in combination with Alternative 2. Both Alternatives 2 & 5 have zero temporary and permanent impact to wetlands. Alternative 2 includes zero permanent impact to streams. Alternative 5 would permanently impact 85 lf of perennial/intermittent stream. These alternatives would also require the least amount of compensatory mitigation based on their impacts. Table 3-2 on congestion analysis at 2030 conditions shows that Alt 2 would allow 88% of total intersections to have an acceptable level of service; Alt 5 would have 89% of the total intersections with an acceptable level of service, which is the highest among alternatives. Alternative 5 has the second lowest projected crash rates as shown on Table 3-4, and it could be assumed that with the additional implementation of Alt 2 crash rates would also decrease thereby improving vehicular safety. The combination of Alternatives 2 & 5 appears to be practicable and capable of being completed while achieving the project purpose. EPA recommends that the Corps and the applicant evaluate whether combinations of alternatives, such as Alternatives 2 & 5 meet the overall project purpose. We further suggest that the applicant make the selection their preferred alternative known to the public, resource agencies and interested stakeholders upon full and careful consideration of comments received.

Compensatory Mitigation

At this time the compensatory mitigation plan (CMP) outlined by the applicant does not provide sufficient information for review. EPA recognizes that neither a preferred alternative nor the LEDPA have been identified, and as alternatives have a range of project impacts it is difficult to prepare a detailed CMP without this selection. The applicant has presented a collection of potential stream and wetland sites that could be used to offset unavoidable impacts to WOUS. Until an alternative is selected and a detailed CMP is prepared, it is difficult for EPA to provide comprehensive mitigation comments. When a detailed CMP in compliance with the 2008 Compensatory Mitigation is available, EPA requests the opportunity to review and provide comments on that document.

Cumulative Impacts

The Section 404(b)(1) Guidelines direct consideration of cumulative and secondary impacts. Cumulative impacts are defined as "the changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual discharges of dredged or fill material. Although the impact of a particular discharge may constitute a minor change in itself,

the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems.” 40 C.F.R. § 230.11(g)(1); *see also id.* §§ 230.1, 230.11 and 230.12. The indirect and cumulative effects analysis provided in the EER does not appear to be complete. Given the current, past and reasonably foreseeable future activities within the project area, EPA recommends that the Corps conduct an independent and objective review of indirect and cumulative impacts. We suggest an approach that would manage and link proposed projects to overall water quality and habitat on a sub-basin and sub-watershed basis, as well as allow for a full evaluation of public and community impacts that need to be evaluated in the Corps public interest review. Additional comments on indirect and cumulative impacts are provided in the enclosure to this document.

Consistent with Executive Order 12898 entitled “Federal Actions to Address Environmental Justice In Minority Populations and Low-income Populations,” the accompanying Presidential Memorandum, and the August 4, 2011 Interagency Memorandum of Understanding on Environmental Justice and Executive Order 12898, EPA recommends that the Corps conduct additional analysis on the potential for disproportionate effects on low-income and/or minority populations in the study, as well as ensure meaningful engagement of affected communities. Environmental justice (EJ) is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to development, implementation, and enforcement of environmental laws, regulations, and policies. There should be proactive steps taken to assure the early, timely and meaningful involvement of the community stakeholders in this project. While the EER did include some EJ evaluation, EPA is concerned that environmental justice issues may not have been adequately addressed, that populations may not have been adequately characterized, additional documentation of impacts on populations of EJ concern may be needed, and that there may be impacts to populations of concern. Additional comments on EJ in consultation with EPA’s Regional Environmental Justice Coordinator are provided in the enclosure to this document.

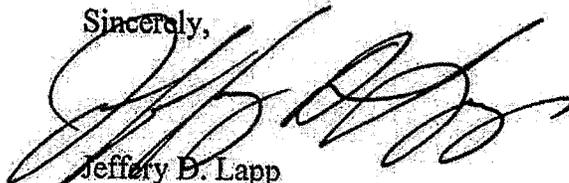
Conclusion

EPA requests that the Corps consider the provided comments in order to aid in the identification of the LEDPA. While EPA recognizes that the MCS EER has been prepared in the spirit of the National Environmental Policy Act (NEPA), the EER cannot take the place of the Corps required independent NEPA analysis. When a LEDPA is identified the Corps should evaluate the LEDPA against the CWA Section 404(b)(1) Guidelines and the public interest review. The Corps should ensure that adequate information has been provided to sufficiently address public interest review factors, including but not limited to conservation, general environmental concerns, wetlands, historic properties, fish and wildlife values, floodplain values, land use, recreation, water quality, safety, consideration of property ownership, and the needs and welfare of the people. Once a LEDPA is identified, EPA requests that the Corps put this selected alternative out on Public Notice in order for EPA and the public to provide detailed comments specific to the LEDPA.

Thank you for the opportunity to provide comments. We look forward to working with you and the applicant to identify the LEDPA and develop a more refined analysis on that

selected alternative. EPA also looks forward to the opportunity to provide additional detailed comments on the LEDPA. If you have any questions please do not hesitate to contact Alaina McCurdy, staff contact, at 215-814-2741 or Barbara Rudnick, NEPA Team Leader, at 215-814-3322.

Sincerely,

A handwritten signature in black ink, appearing to read 'Jeffrey B. Lapp', written over the printed name.

Jeffery B. Lapp
Associate Director
Office of Environmental Programs

Enclosure

Enclosure- Detailed comments on MidCounty Highway Public Notice

Alternatives Analysis & Purpose and Need

- Descriptions of alternatives should read evenly and provided conclusions should reference or include supporting documentation. Discussion and presentation of each alternative should be similar in presentation, even if that requires departure from prepared text or previous documents. Equal or equivalent data and documentation should be fairly presented in each section. As no preferred alternative has been identified, equal analysis and supporting documentation should be provided for each alternative and represented in similar formats throughout the document for comparison.
- Section 2- Alternatives details and rationale for alternatives dismissed should be able to be presented without drawing conclusions on their merit. If the applicant wishes to express why alternatives have been retained, we suggest this discussion be moved into a separate section from the detailed descriptions of alternatives, so that it can be more clearly explained for all alternatives.
- Minimum footprints for facilities, including medians, on-road bike facilities, sidewalks, shared use paths, or overall project footprint, should be provided. It should be explained why footprints on different alternatives would be different from one another and from the minimum requirement, for example explain why one alternative would have a substantially greater footprint and specific dimensions for above facilities than others. EPA understands the County's desire and interest in the mentioned "Complete Street" policy; however, EPA recommends that the Corps consider the minimum dimensions as it is needed for a comparison across alternatives, documentation of avoidance and minimization, and to aid in the identification of the LEDPA. Suggest consideration be given to modify the dimensions/footprints for alternative 4 modified. Specific dimensions do not appear to be supported by the P&N. As presented, Alternative 4 does not appear to be the LEDPA. It has not been evaluated if Alternative 4 modified with a reduced/ 'right sized' footprint, similar to what has been presented and evaluated for the Master Plan alignments, could be a viable alternative. Additionally, it should be evaluated if portions of a reduced Alternative 4 Modified in combination with Alternative 2 could have merit against the P&N and improve intersection operations throughout the study area.
- Stormwater management (SWM) facilities should be included in the footprint for each build alternative, as it has been EPA's experience that when is added later in design unanticipated adverse impacts to WOUS sometimes occur. Without including this expanded footprint, an accurate representation of total adverse impacts to natural resources cannot be determined or used to accurately compare alternatives. Stormwater management controls should not be located in wetlands and/or streams. EPA is concerned that additional adverse impacts to aquatic resources may result from the inclusion of stormwater management facilities. It is not clear how impacts associated with alternatives can be used to identify the LEDPA if the full project footprint is unknown. EPA suggests that the Corps consider a worst-case scenario or rough prediction of full project footprint from SWM controls and associated impacts for a complete evaluation of alternatives.

- Pg 2-32- Three intersection concepts are presented for Alternative 8- Master Plan Alignment truncated at Watkins Mill Road. Could the intersection options that were eliminated have resulted in alternate or decreased aquatic resources impacts? Include concept drawings and impact estimates. If dismissed truncation concepts can operate at an acceptable level of service (i.e., a CLV of 1425 vehicles) and result in fewer impacts to aquatic resources they should be retained for detailed study. Clarify if there would have been any difference in impact between these options.
- Pg 2-32- What criteria was used to evaluate the need for auxiliary service lanes along 355, between Watkins Mill Road and Montgomery Village? Explain whether or not the use of ASL was evaluated on Alternative 4 modified, especially as it may reduce the number of driveway/entry conflicts on Alt 4 modified. Clarify if the same criteria used to evaluate Alt 5 could also be used to evaluate ASL on Alt 4 modified. We understand that there may be significant challenges associated with the use of ASL on Alt 4 modified, however we suggest that some analysis or documentation be included in the document.
- Pg 2-34 and 2-35- Northern Terminus Options appear to be compared to one another on these pages, however this section is to include a brief summary of the refinements of the ARDS. Suggest limiting information presented on options to the refinements that were made during preliminary engineering phase.
 - It should be noted that the P&N does not specify controlled access as a requirement.
- Pg 2-37- it is noted that the selection of Preferred Alternative will attempt to satisfy many objectives, one objective listed is “within the fiscal constraints of Montgomery County”. If possible, please clarify what the approval process by the County council would be depending on which alternative is ultimately revealed to be the preferred alternative.
- Pg 3-1- Section 3.1 Montgomery County’s Vision for the MD355/ I-270 Technology Corridor. It is not clear how section 3.1 relates to the overall Section III- ability of the alternatives to satisfy the purpose and need, especially as a large portion of this Corridor is outside of the study area. This information, while important, may be better served to be identified as background information, or this information may be more useful to be included in Section IV Economic Resources. While Section 3.1 may accurately describe the County’s vision, it does not tie directly to the P&N or with Section 3 Transportation Comparison of Alternatives.
- Pg 3-15/16, Alt 8 is compared to Alt 9. Generally, it would be a more objective analysis if action alternatives were compared to baseline conditions or the no action alternative. In this section which is about the ability of alternatives to meet the purpose and need, it would be more beneficial to actually relate the congestion analysis back to the P&N, instead of comparing alternatives, which does not help aid in the determination of an alternatives ability to meet the purpose and need. Overall, alternatives throughout the document should be compared to the no action to determine the degree to which the alternative meets the P&N.
- Section 3, Need No. 2: Consider providing additional detail to this need if equal accident information can be given for each segment in this section, including total number of crashes, injury related crashes, state average, section average, and most common crash type. If available, please provide available State and/or County data. This project study has been underway for a long period of time; has consideration been given during that time to collect unavailable crash data?

- Please provide in a table the projected vehicle miles traveled for each alternative.
- Pg 3-20- Need 3 analysis includes information on quickest route, number of driveways, and traffic diversion. These items appear to be more directly related to need 1- congestion.
 - This need mentions mobility frequently. It is not clear that the term mobility directly equates to network efficiency and connecting economic centers. Please clarify.
- Pg 3-22- Need 4 should be analyzed against each alternative, including the no action. Each Need presented in Section IV should be analyzed again each alternative, including the no action. Supporting data and documentation should be provided for any conclusions drawn.
 - Need 4 include information on traffic reductions, which seems better suited to address Need 1- Congestion.
 - Need 4 is about accommodating planned land use and future growth, however limited information about future growth and land use is presented. Without this information it would be difficult to draw conclusions as how well each alternative meets this need.
- Pg 3-28 Need 6-Homeland Security was not analyzed as much as other needs, and evaluation of this need include as much supporting data or documentation. Information that is presented seems to focus on traffic incidents and emergency vehicle passage along these roadways, as opposed to emergency response/evacuation as is noted in the purpose and need. It is not clear how the degree to which the action alternatives meet this need than the no action alternative.
 - Additionally, Pg 3-28 notes that cars can pull over into the bike lanes to allow emergency vehicles to pass, emergency vehicles can pass cars using bike lanes; and disable vehicles can pull into bike lanes. However, these movements do not account for on-road cyclists which appear to be forced into lanes of traffic in order to maneuver around these obstacles.
- Pg 3-34 Need 7 Improve Quality of Life- the EER notes that quality of life can include a large number of factors; however analysis was only focused on travel time. While travel time is certainly an important data to include in the EER, it may best be included under Need 1 or 3. Suggest expanding analysis of this need to factors beyond transportation, specifically travel time in order to have a more comprehensive study including topics/concerns raised by the public and interested stakeholders.

Natural and Community Resources

- Pg 5-12- Section 5.5 Water Quality and Aquatic Habitat describes the Maryland COMAR Sub-Basin in which the study area is located. It is also stated that the study area is located in the Middle Great Seneca Creek watershed and the Upper Rock Creek watershed. Consider making the watershed location more clear, especially as Maryland defined watershed boundaries do not always overlap with USGS hydrologic unit code boundaries as well as have different code numbers. Please consider clarifying that the Great Seneca Creek and Upper Rock Creek subwatersheds are USGS 12 digit HUC's and provide the HUC codes. Watershed boundaries and HUC's are also relevant to discussions regarding compensatory mitigation, especially in light of the watershed

approach outlined in the 2008 Compensatory Mitigation Rule. Additionally, watershed boundaries may be useful to the Corps indirect and cumulative impact assessment. This assessment would require the identification of a cumulative impact area study boundaries not limited by the overall study area, which may utilize the watershed boundaries to evaluate potential cumulative impacts to WOUS and other resources.

- Pg 5-17- This section notes that effects would be minimized through the use of SWM, which further supports EPA's above concern that these facilities be identified, particularly in identified Special Protection Areas. Beyond permanent SWM controls to be utilized when the facility is open, EPA is also concerned that even though SWM will be required during construction, especially should a new highway be constructed, streams and benthic communities may be adversely impacted. Corps should consider how each alternative may affect water quality, especially for alternatives that involve a new alignment. EPA is concerned that there may be potential impacts associated with bridges and culverts, and suggests that the Corps consider effects of shading, effects on macroinvertebrate communities, temperature impacts and other affects associated with decreased canopy over the stream, and effects of sediment, TDS, and TSS. This information may also be relevant to the Corps' indirect and cumulative impacts analysis.
- Pg 5-76 states that to avoid further fragmentation of wildlife habitat and to reduce collisions between wildlife and motorists that new stream valley crossings will include bridges that are high enough and long enough to allow wildlife passage beneath the highway. While it may be possible for wildlife to physically be contained by the proposed bridges, it is not clear that these structures have been designed with wildlife crossings in mind or with the intention that they adequately or effectively allow for wildlife passage. As wildlife passage may be considered by the Corps as part of their public interest review, EPA suggests that the Corps and applicant consider at a minimum wildlife passage techniques employed by the similar and adjacent Inter-County Connector project as well as scientific peer-reviewed literature on wildlife passage. Additionally, EPA suggests that the Corps consider potential impacts to Green Infrastructure hubs and corridors in their public interest review, which may also be relevant to the Corps' indirect and cumulative impact analysis.
- Numerous community facilities are located along the various alternatives. EPA is concerned that some facilities may be adversely impacted by some of the proposed action alternatives. Should the Corps find it helpful for their public interest review, EPA suggests that the size of each facility and amount of facility impacted by the each alternative may be relevant, especially to evaluate the level of impact on facilities or if any of these facilities may be significantly impacted. This information may also be relevant to the Corps indirect and cumulative impact analysis.
- EPA requests that the Corps consider noise impacts on the community when conducting their public interest review, as well as consider concerns regarding noise raised by the community. To the extent the Corps may find the following information useful to their review, EPA suggests additional noise mapping be provided which shows the existing and no action 2030 67dBA noise contour as well as action alternative alternatives noise contours. EPA further suggests that a map showing properties impacted by noise, including those counted on Table 4-11, map showing areas that may be quality for noise abatement, and a table showing the number of new residential properties that contained in

the 67dBA above the no action be provided. Noise impact information may also be relevant to the Corps indirect and cumulative impact assessment.

Indirect and Cumulative Impacts

- EPA suggests that the Corps indirect and cumulative impact assessment begin with defining the geographic and temporal limits of the study; this is generally broader than the study area of the project. Geographic boundaries are typically shown on a map; and a historic baseline is often set at a major event changing the local environment, perhaps in this case the opening of the airfield. Appropriate maps should be provided showing the geographic boundary, as well as identified past, present and reasonably foreseeable projects.
- EPA recommends that the Corps' indirect and cumulative impact assessment include analysis specific to resources. The indirect effects analysis in the EER is limited to agricultural reserves and businesses. EPA recommends that the Corps' indirect effects analysis include other resource topics analyzed in the EER, topics relevant to the public interest review, and secondary and induced growth and development. EPA also recommends that the Corps utilize a trend analysis for resources that may be adversely affected by the proposed alternatives.
- All past, present and reasonably foreseeable projects in the project area should be included in the Corps' cumulative impact analysis. Limited direct documentation was provided in the EER and only referenced that the InterCounty Connector Draft Environmental Impact Statement/Draft Section 4(f) Evaluation. While the ICC DEIS may have provided a comprehensive list of past, present and reasonably foreseeable projects that were relative to the ICC and ICC study cumulative impact study area, EPA recommends that the Corps provide a separate assessment of cumulative impacts relevant to this permit action. The ICC project is not related to this project, and the project proponent is not the same. The ICC cumulative impact study area would not be the same as the cumulative effects study area for this project. Additionally, the DEIS was released in November 2004. Since 2004 it is reasonable to assume that area conditions have changed, which may include newly proposed projects, new construction etc that would not have been available at the time the DEIS was developed. While the ICC cumulative effects analysis may serve this project as a guide or reference, it should not be used by the Corps in place of an objective cumulative impact analysis for this project.
- The cumulative analysis provided in the EER puts heavy emphasis on the MD 355 Technology Corridor, yet improvements and development in the Technology Corridor was not adequately addressed throughout the entire EER. EPA suggests that the Corps consider additional information related to the MD 355 Technology Corridor as it pertains to their review.

Environmental Justice

- Provide a clear definition and/or boundary for the term "Economic Study Area", provide parameters or documentation used to identify it, and define how it may be different than the study area. Tracks identified as part of the economic study area should be shown in a table and depicted on a map.

- EPA is concerned regarding the manner in which the identification of areas of potential Environmental Justice concern was conducted. Suggest altering text on page 4-27 to more accurately represent the CEQ Guidance, which states, “Minority population: Minority populations should be identified where either: (a) the minority population of the affected area exceeds 50 percent or (b) the minority population percentage of the affected area is meaningfully greater than the minority population percentage in the general population or other appropriate unit of geographic analysis. In identifying minority communities, agencies may consider as a community either a group of individuals living in geographic proximity to one another, or a geographically dispersed/transient set of individuals (such as migrant workers or Native American), where either type of group experiences common conditions of environmental exposure or effect. The selection of the appropriate unit of geographic analysis may be a governing body’s jurisdiction, a neighborhood, census tract, or other similar unit that is to be chosen so as to not artificially dilute or inflate the affected minority population. A minority population also exists if there is more than one minority group present and the minority percentage, as calculated by aggregating all minority persons, meets one of the above-stated thresholds.”
- It should be first of all noted that CEQ has not identified a method for identification of low income populations; however the applicant is inappropriately applying the method that CEQ used to identify minority populations for assessing low income populations. EPA is concerned with the methodology selected to identify low income populations, which used the Montgomery County Percent below poverty plus an additional 100% of that total. Doubling the low income population benchmark seems inappropriate and seems to dilute the low income census tracts that would be identified as being in areas of Environmental Justice concern. We do not agree that the selected benchmark, which is double the percentage of low income residents in Montgomery County, is appropriate and should be revised. EPA suggests utilizing a commonly used benchmark that is simply set as exceeding the state or county average, because the population figure that we are using are not the most accurate and up to date figures since there is continuing dynamic movement within the population. If the suggested method were to be used for conducting an assessment of the low income populations in the study area, then the following census tracts would need to be included: Census Tract 7003.04, Census Tract 7007.13, Census Tract 7007.16, Census Tract 7007.21, Census Tract 7008.11, Census Tract 7008.13, Census Tract 7008.33, and Census Tract 7008.34. EPA recommends including these census tracts in a labeled and shaded map.
- Please note that communities of potential Environmental Justice concern are those minority and/or low income populations that exceed the respective benchmarks, there are now a total of 20 total census tracts (instead of 19) that are in areas of potential Environmental Justice Concern (exceeding either minority and/or low income benchmarks). They are: 7001.03, 7001.04, 7001.05, 7003.04, 7007.10, 7007.13, 7007.15, 7007.16, 7007.19, 7007.21, 7007.22, 7008.10, 7008.11, 7008.12, 7008.13, 7008.30, 7008.32, 7008.33, 7008.34, and 7008.35.
- Figure 4.4 is very difficult to read. We recommend revising this figure, highlighting the areas of potential Environmental Justice concern.
- Documentation presented should be strong enough to support the finding that no impact will occur within areas of Environmental Justice concern. We recommend the focus of the assessment look at the overall project and identify who may be at risk, what those

risks may be, and how those risks may be addressed. EPA is concerned as the project study area has a large population of at risk residents and many of those impacted will be members of the population of potential EJ concern. EPA requests that the Corps analysis ensure that these populations will not be adversely impacted.

- EPA recommends that the Corps carefully consider all of the potential impacts that may take place during the course of this project, and take appropriate steps to assure that these at risk populations are protected from adverse impacts and are recipients of any benefits of the project. Corps analysis should ensure that community input regarding noise impacts, exposure to fugitive dust, displacements, takings of land, impacts on views, traffic and construction, and disruption of services is taken into consideration.