

# The Committee of 100 on the Federal City



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June 26, 2014

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The Honorable Vincent C. Gray  
Mayor of the District of Columbia  
1350 Pennsylvania Avenue  
Washington, DC 20004

By post and email: [eom@dc.gov](mailto:eom@dc.gov)

Re: Virginia Avenue Tunnel Expansion

Dear Mayor Gray:

We are writing with deep concern that the D.C. Department of Transportation (DDOT) is not in compliance with its own environmental laws, in particular the requirement for DDOT's independent assessment of the DC-specific aspects of this project. At the January 16th public meeting about the Virginia Avenue Tunnel expansion you told us that you had delegated responsibility for the Environmental Impact Statement to DDOT. We assumed that meant that DDOT would address concerns that you heard from the neighborhood and other DC-specific concerns in DDOT's version of the Final Environmental Impact Statement. The DC Environmental Manual provides for a 45-day period between the Final EIS and DDOT submitting the draft ROD to FHWA, "to accommodate the comment period on the FEIS." We thus believed that we would have an opportunity to review how DDOT addressed the DC-specific issues and have an opportunity to comment on the DDOT version before it was sent to FHWA. <sup>1</sup>

But under the procedures announced in the Final EIS, we will not have that opportunity. The Final EIS states at page 1-9:

Ordinarily, the requirements of the District of Columbia Environmental Policy Act (DCEPA) would apply to the DDOT role and responsibility. However, because the Project is already subject to the requirements of NEPA, no additional action is needed under DCEPA. In addition, DDOT will provide oversight and inspection of the Project's construction activities.

Numerous issues arose at the November 23<sup>rd</sup> and January 25th community meetings organized by Congresswoman Norton that were not answered

because the federal official explained they could not be addressed because of the requirement of the federal NEPA process. Similar issues also arose at the April 30 Council hearing (PR20-601) and CSX repeatedly refused to answer, citing -- as DDOT and FHWA have -- the inability to provide information before the FEIS was issued. Chairman Mendelson urged CSX to request that the agencies lift what he called their "gag order." Many of those issues are DC-specific issues and they need to be answered from the DC perspective by DDOT as well as from the federal perspective by the FHWA. To the extent that DC has home-rule authority, DC needs to exercise that authority when DC-specific issues are involved, as they are in this case

DDOT cannot abdicate its own responsibility for environmental review, in accordance with DC law, by relying exclusively on FHWA compliance with NEPA. The DDOT manual (and the applicable NEPA regulations) suggest the need for an integrated approach, but do not excuse DDOT from complying with the separate requirements of DC law. [EPA's website](#) indicates that NEPA takes into account state and local law and regulation: <sup>2</sup>

For projects undergoing NEPA analysis, it is also very common for there to be additional requirements from many different agencies and levels of government, including compliance with other federal, state and local regulations. Normally, the federal agency tries to include the full range of government decisions and regulations that apply to a project within the NEPA analysis. In fact, the CEQ regulations encourage Federal agencies to integrate all of the required environmental reviews into the environmental documents that are prepared pursuant to NEPA. Sometimes the environmental analyses for other agency decisions and requirements (the ones that does not invoke NEPA) are handled separately from the NEPA analysis. Even though an EIS may include analyses of the proposed action's compliance with state and local law and regulation, the Federal agency may have no practical way of insuring that the proposal complies with state or local law and regulation. For example, if the proposed action is a regulatory action such as deciding whether and how to issue a Federal permit, the Federal agency may have no legal ability to compel compliance with applicable state or local law. On the other hand, the Federal agency may have the discretion under its legal authority to reject a permit application if the applicant refuses to commit to compliance with local and state law.

On Tuesday, Congresswoman Norton wrote to Secretary Foxx about the need to extend the public review period of the FEIS. During that extended review period DDOT needs to prepare a revised FEIS that addresses DC-specific concerns and discharges the responsibility that you delegated to them. The Committee of 100 respectfully requests that:

- DDOT revise the FEIS to provide a section(s) that addresses DC concerns, as required by DC and Federal law.
- A Council hearing be scheduled to review the DDOT revised FEIS.
- Comments be submitted on the FEIS after that Council hearing for consideration when preparing the draft ROD.
- That DDOT respond to those comments in the draft ROD that they then submit to FHWA

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Thank you for your attention to this and we look forward to a meaningful review and consideration of the Virginia Avenue Tunnel NEPA process that takes into account DC-specific issues from the DC perspective of our own DDOT.

Sincerely,



Monte Edwards  
Vice Chair

Cc: Congresswoman Eleanor Holmes Norton: [Lauren.Dudley@mail.house.gov](mailto:Lauren.Dudley@mail.house.gov)  
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<sup>1</sup> The DDOT environmental manual (and corresponding NEPA regulations, applicable to FHWA-funded projects) apply here, and there are numerous sections in the manual that suggest an opportunity for comment, following publication of the DDOT-issued FEIS and before the ROD is issued:

- § 8.6.6 (page 135) of the manual states that “All substantive comments received on the Final EIS should be identified and given appropriate responses. Other comments should be summarized and responses provided where appropriate.
- § 8.6 (page 134) states “A Draft ROD should be prepared by DDOT and submitted to FHWA no sooner than 30 days after the submission of the Final EIS (45 days if a Section 4(f) is included) to accommodate the comment period for the Final EIS”
- § 11.7 (page 169) states “FHWA cannot sign either the FONSI following an EA or the ROD following a Final EIS until after the comments received in the public hearing and by other means are fully considered, responses are prepared, and public input is incorporated, as appropriate, into the EA or EIS.” (restated on page 166)
- § 11.5 (page 166) states “Public hearings will be held for all transportation projects that involve the development of an EIS under the NEPA. The disposition of both oral and written comments will be included in the final approved NEPA document that constitutes FHWA approval.”

<sup>2</sup> New York requires its own environmental review law (called SEQR) be enforced regardless of NEPA: <http://www.dec.ny.gov/permits/50607.html>.

Minnesota and California have similar requirements that the requirements of state law remain operable:

- <http://news.dnr.state.mn.us/2013/12/06/state-and-federal-agencies-release-northmet-supplemental-draft-environmental-impact-statement-opening-public-comment-period/>
- [http://www.whitehouse.gov/sites/default/files/nepa\\_and\\_ceqa\\_draft\\_handbook.pdf](http://www.whitehouse.gov/sites/default/files/nepa_and_ceqa_draft_handbook.pdf).