

September 15, 2022

U.S Secretary of Transportations
US Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

Secretary Buttigieg:

On behalf of the hundreds of residents of West Baltimore neighborhoods represented herein, and the thousands more that will be impacted, we are writing to express concern regarding the proposed B&P Tunnel Replacement Program (“the Program”) in Baltimore City and the environmental injustices that will result.¹ We are concerned that the Program has the potential to cause structural damage to historic homes, cause physical injury as a result of structural damage, pollute air quality, and create years of noise and vibration disturbances for local residents throughout the Program’s anticipated decade-long construction and long-term, high-volume operation.² Each of these potentially harmful effects will also disproportionately impact Baltimore’s Black communities, raising significant environmental justice concerns. It is our position that the U.S. Department of Transportation (DOT), Federal Railroad Administration (FRA), Amtrak, and Maryland Department of Transportation (MDOT) must seriously consider the risk of harm the Program presents.

In order for our concerns to be addressed, the federal and state agencies involved must increase their transparency with community members in the impacted neighborhoods. We specifically request the following:

- a. Disclose information to the community:

¹See Residents Against the Tunnels, <https://www.residentsagainstthetunnels.org/ratts-objections-to-the-bp-tunnel-project.html> (detailing concerns of many local residents); *see also* Amtrak, B&P Tunnel Replacement Program, <https://www.amtrak.com/bptunnel> (outlining the nature of the Program).

² Fed. R.R. Admin., Final Environmental Impact Statement (Nov. 2016) 111, 120 (noting in Table VI-35, anticipated 388 daily bi-directional frequencies by 2040).

- i. Engage with the impacted West Baltimore communities regarding mitigation measures currently proposed in the Record of Decision (ROD)³ regarding potential home damage, construction pollution, diesel train pollution, noise pollution, hazmat and emergency management, and community impacts;
 - ii. Provide greater transparency and a commitment in writing to the changes to the Program as described in Amtrak’s June 2021 press release⁴;
 - iii. Respond to the FOIA and MPIA requests sent by the community group “Residents Against the Tunnels” to Amtrak, U.S. DOT, and MDOT in May 2020.
 - b. Develop new environmental impact statements:
 - i. Conduct a re-evaluation, Supplemental Environmental Impact Statement, or new Environmental Impact Statement: Conduct a National Environmental Policy Act (NEPA) re-evaluation pursuant to 23 CFR § 771.129 on the analysis contained in the Final Environmental Impact Statement (FEIS) and ROD and address the deficiencies outlined in this letter below, including inadequate assessment of pollution, a lack of emergency plans for hazardous events, and a failure to identify construction schedules and limitations in a highly residential area.
 - c. Increase transparency regarding the status of Title VI assessment and funding:
 - i. Conduct a Title VI assessment: Comply with Title VI requirements pursuant to DOT Order 1000.12C, which outline procedures to ensure that all DOT-assisted programs are implemented in compliance with Title VI.⁵ If not already complete, conduct a Title VI assessment and require a Title VI plan from Amtrak.

I. BACKGROUND: The Impacted West Baltimore Communities

³ FED. R.R. ADMIN., *Record of Decision For The B&P Tunnel Project Baltimore, Maryland* (Mar. 2017) 62, https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT_Record-of-Decision_March2017_Signed.pdf.

⁴ Press Release, AMTRAK, *Amtrak and MDOT Announce New Approach for Baltimore and Potomac Tunnel Replacement Program* (June 18, 2021), <https://media.amtrak.com/2021/06/amtrak-and-mdot-announce-new-approach-for-baltimore-and-potomac-tunnel-replacement-program/>.

⁵ DOT Order 1000.12C (June 11, 2021), available at: https://www.fhwa.dot.gov/civilrights/programs/title_vi/title_vi_order_1000_12C.pdf.

The Program will run underneath established West Baltimore City neighborhoods including, but not limited to: Shipley Hill, Midtown-Edmonson, Easterwood, Sandtown-Winchester, Penn North, Reservoir Hill, and the Jones Falls Area (“impacted communities”).⁶ In 2015, a group of local residents became aware of the B&P Tunnel Replacement proposals and the potential negative impacts of the proposed construction. The residents formed the registered non-profit 501(c)(3) organization Residents Against the Tunnels (RATT), which has grown to over 450 members. Many RATT members and other community residents attended B&P Tunnel Replacement Program public meetings and testified at hearings on the Draft Environmental Impact Statement.⁷ Another resident group, the Reservoir Hill Association (RHA), was formed in 2020 to unite the efforts of various groups already existing within the Reservoir Hill community, with the mission of unifying the neighborhood, “harnessing the power of co-operation in its collective voice,” and serving as the representative for the neighborhood’s position on a variety of topics.⁸ Both RATT and RHA are signatories to this letter.

Residents of the impacted communities have expressed numerous concerns about the effects of the Program.⁹ For example, these concerns include the health and safety risks that come with using Tunnel Boring Machines (TBMs) and explosives under densely populated residential neighborhoods.¹⁰ TBMs also carry the risk of causing home damage and creating air pollution that will come from years of heavy construction.¹¹ Moreover, conversations between community leaders and local residents suggest that many residents are not even aware of the Program and its impending major impact, implicating procedural justice concerns.

Overall, this Program raises significant environmental justice (“EJ”) concerns. As acknowledged by the ROD for the Program, “FRA has determined that the Selected Alternative

⁶ See FED. R.R. ADMIN., *Final Environmental Statement, Chapter 5: Affected Environment* (Nov. 2016) Table V-11: Neighborhoods within the Study Area, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Chapter-5.pdf>.

⁷ See FED. R.R. ADMIN., *APPENDIX I: Draft Environmental Impact Statement Comments And Responses*, 11, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Appendix-I.pdf> (last visited Apr. 6, 2022).

⁸ About the Reservoir Hill Association, <https://www.reservoirhillassociation.org/about-the-rha/what-we-represent/>.

⁹ Residents Against the Tunnels, *RATT’s Objections to the B&P Tunnel Project*, <https://www.residentsagainsthettunnels.org/ratts-objections-to-the-bp-tunnel-project.html>.

¹⁰ A.H. Thomas & J.P. Banyai, *Risk Management of the construction of tunnels using Tunnel Boring Machines (TBMs)*, TAYLOR & FRANCIS GROUP (2007) (noting that despite technological improvements for TBMs, surface collapses still do occur above TBM tunnels).

¹¹ *Id.*

would have disproportionately high and adverse effects to EJ populations.”¹² The U.S. Department of Transportation’s NEPA Final Environmental Impact Statement (FEIS), completed in 2016, included a demographic study of the area surrounding the proposed tunnel construction (“Study Area”).¹³ The total population of the Study Area – representing the number of individuals who may be impacted – was approximately 65,762.¹⁴ The study notes that the majority of the Study Area population was African American or Black Alone (81.2 percent), which is higher than that of Baltimore City (63.0 percent) and substantially higher than Maryland (29.4 percent). For those people with race or ethnicity status identified in the Study Area in the ACS 2009-2013 dataset, 57,362 (87.2 percent) were identified as minorities, which was higher than Baltimore City’s average of 72.0 percent.¹⁵ The annual median household income was \$23,834 for a family of four in the study area. Further, the percentage of the Study Area population that had income below the poverty line in the past 12 months was 30.6 percent, compared to 23.8 percent in Baltimore City and 9.8 percent for Maryland.¹⁶

The ROD addresses EJ concerns by referring to the proposed mitigation measures and stating that no reasonable alternatives would have avoided minority and low-income communities.¹⁷ Taking this approach to EJ fails to take into account the centuries of

¹² FED. R.R. ADMIN., *Record of Decision For The B&P Tunnel Project Baltimore, Maryland* (Mar. 2017) 62, https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT_Record-of-Decision_March2017_Signed.pdf.

¹³ FED. R.R. ADMIN., *FEIS Executive Summary* (Nov. 2016) 1-2, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Executive-Summary.pdf> (demonstrating map of the Study Area).

¹⁴ Fed. R.R. Admin., *FEIS Chapter V* (Nov. 2016) 1-2, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Chapter-5.pdf>.

¹⁵ FED. R.R. ADMIN., *Final Environmental Impact Statement, Chapter 5: Affected Environment* (Nov. 2016) V-4, Table V-1 Racial Composition of the Study Area, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Chapter-5.pdf>.

¹⁶ FED. R.R. ADMIN., *Final Environmental Impact Statement, Chapter 5: Preferred Alternative*, (Nov. 2016) <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Chapter-5.pdf>.

¹⁷ FED. R.R. ADMIN., *Record of Decision For The B&P Tunnel Project Baltimore, Maryland* (Mar. 2017) 62, https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT_Record-of-Decision_March2017_Signed.pdf.

environmental racism faced by Baltimore residents.¹⁸ Historically, these West Baltimore neighborhoods have already been impacted by the creation of multi-lane roads such as US-40. In the 1960s, a new federal “Interstate 170” was proposed to slice across Baltimore from west to east.¹⁹ While the larger project was abandoned in the 1980s, a 1.39-mile portion was already completed and is now U.S. 40, which *only* cuts through West Baltimore; an area inhabited primarily by low-income, Black residents.²⁰ The Program risks producing significant negative impacts that will further the destruction of low-income minority neighborhoods in Baltimore.

Regardless of the stated “necessity” of changes to the current tunnel, the Program will have a significant, long-term impact on residents of West Baltimore. Several life-long residents of impacted neighborhoods such as Easterwood and Penn North have expressed concerns regarding the impact of the Program, particularly in light of issues the residents are already facing. Marvin “Doc” Cheatham, an African American resident and community leader who has been living in the Easterwood neighborhood for over 70 years, has watched the community struggle with issues ranging from vocational rehabilitation, to food deserts, to mental health. When interviewed regarding the changes he has seen in his neighborhood over the years, he remarked that “[t]his is the worst condition my community has been in my lifetime.”²¹ He points to issues with housing, unemployment, education, and crime, and blames a lack of government responsiveness at all levels. The B&P Tunnel Replacement Program will compound issues the community is already facing. Mr. Cheatham expressed concern that, based on the current lack of government support, the health and well-being of local residents would not be taken into account. He also questioned the necessity of developing a project that will impact several schools. Mr. Cheatham noted that local buildings are over 100 years old, and he cannot imagine that the buildings will not be damaged by the Program’s impact, whether in the short-term or long-term. In terms of overall quality of life, he noted that he already has to “block noise out all night and all day . . . I’m hearing train horns all night long. I wonder how people will live with it – living even closer to it. I imagine you will hear the rumbling and noise.”

¹⁸ See, e.g., M. Grove et al, *The Legacy Effect: Understanding How Segregation and Environmental Injustice Unfold over Time in Baltimore*, 108 ANNALS OF THE AMERICAN ASSOCIATION OF GEOGRAPHERS 524 (2018), https://www.fs.fed.us/nrs/pubs/jrnl/2017/nrs_2017_grove_001.pdf.

¹⁹ Larry Stafford, *Baltimore, Environmental Justice, and Biden’s Build Back Better Agenda*, MARYLAND MATTERS (Oct. 12, 2021), <https://www.marylandmatters.org/2021/10/12/opinion-baltimore-environmental-justice-and-bidens-build-back-better-agenda/>.

²⁰ *Id.*

²¹ Appendix A, *Interview with Marvin “Doc” Cheatham*.

Another resident, the acclaimed African American artist and MacArthur Fellow Joyce J. Scott, has been living in Penn North for 48 years. Ms. Scott has seen a slow decline in her neighborhood throughout her nearly five decades living in the community. She has noted a loss of population in the city, an increase in vacant homes, food deserts, drug-related crime, and a general sense of disenfranchisement, lack of government support. She expressed that her neighborhood has not just been ignored, but “washed away.” She remarked that the blocks surrounding her have been “allowed . . . to lay fallow while others prosper.” In addition to the current issues faced by her community, Ms. Scott raised concerns regarding the B&P Tunnel Program, including the safety of cargo, proximity of schools to the Program, and whether local residents would reap employment or other economic benefits. Overall, residents such as Mr. Cheatham and Ms. Scott have conveyed issues their neighborhoods are already grappling with while feeling disregarded by elected officials. Their concerns regarding the effects of the Program include safety, home damage, the health impacts of pollution, impacts on local schools, and the distribution of economic benefits. It is vital to recognize that these concerns cannot be viewed in isolation, but as compounding the existing issues faced by West Baltimore residents.

II. Requests

The B&P Tunnel Replacement Program has been underway for over seven years.²² Even so, many community members have been left out of participation in decisions that will directly affect them as this project is built beneath or adjacent to their homes. In addition, the community members who want to participate are often unsure to whom they should voice their concerns. Between MDOT, FRA, and Amtrak, it is unclear to many residents which agency and individual contacts are actually in charge of this project. The community members who did contact agency representatives often felt that their concerns went unaddressed, or found themselves continually re-directed to other officials. These challenges regarding communication and transparency have affected the communities’ ability to let their voices be heard and ensure proper regulations and procedures have been followed by everyone involved in the Program. In fact, despite the efforts of community groups and Amtrak’s own “community engagement,” many residents in the surrounding areas of the Program, including Mr. Cheatham and Ms. Scott, are still to this day unaware of what the Program is and how it will affect them.

²² FED. R.R. ADMIN., *B&P Tunnel Project Draft Environmental Impact Statement* (Dec. 2015), <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-DEIS-Executive-Summary-Table-of-Contents-Chapters-I-II-III.pdf>.

The U.S. Department of Transportation’s order addressing EJ states that “steps shall be taken to provide the public, including members of minority populations and low-income populations, access to public information concerning the human health or environmental impacts of programs, policies, and activities, including information that will address the concerns of minority and low-income populations regarding the health and environmental impacts of the proposed action.”²³ Multiple categories of public information related to the Program, such as technical reports, are not currently available via Amtrak’s website, creating a lack of transparency for impacted communities who are comprised of minority and low-income populations.²⁴ As mitigation measures are developed and new statements are made by Amtrak, the impacted community members need to be informed regarding agency actions pertaining to the Program. This can be achieved by requiring Amtrak to commit to its previously non-binding statements, conducting re-evaluations and new environmental impact statements, conducting Title VI assessments, and completing unanswered FOIA requests.

A. Community Disclosure

i. Long-term Mitigation

The ROD currently lists mitigation measures that serve as binding commitments for Amtrak, required by FRA in order for the Program to enter the final design and construction phase.²⁵ These mitigation measures include: the establishment of a fund to support community development within affected communities; establishment of a fund for maintenance and improvement of publicly owned parks and recreation facilities; funding to support the improvement of community gardens; and plans for natural resources, such as a Stormwater

²³ U.S. DEPT OF TRANSP., Order 5610.2C, *Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (May 16, 2021), <https://www.transportation.gov/mission/us-department-transportation-actions-address-environmental-justice-minority-populations-and>.

²⁴ Amtrak updated its website for the Program (<https://www.amtrak.com/bptunnel>) and did not share Technical Reports, copies of which were previously uploaded to its site, including air quality reports, noise and vibration technical reports, and a hazardous materials assessment. See FEIS, Appendix C for a list of the technical reports and supporting documents that do not currently appear on Amtrak’s website, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Appendix-C.pdf>.

²⁵ FED. R.R. ADMIN., *Record of Decision For The B&P Tunnel Project Baltimore, Maryland* (Mar. 2017) 48, https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT_Record-of-Decision_March2017_Signed.pdf.

Management Plan.²⁶ Other categories of mitigation include emergency management, construction, noise, vibration, and historic properties.²⁷

As these mitigation plans are developed and implemented, the 65,000 residents in the Study Area who may be impacted by construction, vibration, hazmat safety, and long-term pollution in their local communities must continue to be engaged and informed by Amtrak and DOT. For example, clarity needs to be provided regarding the budget for funds to support community development and the services that will be offered. Furthermore, the ROD does not explicitly state that funds will be offered to the community in the case of home damage, home value depreciation during the anticipated 10-year construction period, or an inability to sell affected homes. Nor does it address mitigation and funding for long-term issues that arise following the completion of tunnel construction. Once the Program is complete, an estimated 388 train trips will occur on a daily basis – a tremendously high-volume operation underneath residential homes.²⁸ Moreover, while Amtrak has instituted community investment meetings as of February 2022, such meetings have only proposed vague and superficial mitigation measures such as community gardens and support of public services. Amtrak and FRA must provide greater transparency and communication regarding the specific details and implementation of mitigation measures required by the ROD.

ii. Committing to Press Release Statements

In June 2021, Amtrak released new plans for the B&P tunnel through media and press releases.²⁹ On the 150th anniversary of the B&P tunnel, Amtrak announced they would rename the new tunnel The Frederick Douglass Tunnel, after the late abolitionist leader.³⁰ Within the press release, Amtrak committed to a new plan by switching to a phased implementation approach, where the new implementation would include new high-capacity tunnel tubes for electrified passenger trains but defer the construction of two additional freight tubes³¹ However, this change in plans has not been committed to writing in a more formal, binding context with

²⁶ *Id.* at 50.

²⁷ *Id.* at 48–52.

²⁸ FED. R.R. ADMIN., Final Environmental Impact Statement, Chapter VI (Nov. 2016) 111, 120.

²⁹ Press Release, AMTRAK, *Amtrak and MDOT Announce New Approach for Baltimore and Potomac Tunnel Replacement Program* (June 18, 2021), <https://media.amtrak.com/2021/06/amtrak-and-mdot-announce-new-approach-for-baltimore-and-potomac-tunnel-replacement-program/>.

³⁰ *Id.*

³¹ *Id.*

articulated parameters and accountability - including clarity around whether or when two additional tunnels may be constructed for freight trains. Furthermore, it is unclear whether additional Program changes or mitigating steps will be taken and how Amtrak will respond to the concerns that are not addressed in the press release. If Amtrak is proposing this mitigation measure, it needs to be documented beyond the press release, agreed to by the community, and understood to be just one mitigation measure amidst a number of community concerns. Amtrak needs to be more transparent and do more than highlight the Program through name changes, and actually communicate with the communities that the Program will impact.

iii. Freedom of Information Act (FOIA)

FRA and MDOT have failed to respond to the FOIA and Maryland Public Information Act (MPIA) requests filed by RATT in May 2020.³² The requests were for a variety of written communications between FRA and CSX, Norfolk Southern, and the National Railroad Passenger Corporation, regarding the operation of freight trains in the proposed B&P Tunnel Program, as well as written communications between FRA and MDOT. Further, the FOIA requests included information that would substantively help address concerns included in this letter, such as any re-evaluations or communications regarding the consideration of re-evaluations of any NEPA environmental studies prepared by the FRA for the B&P Tunnel Program. A complete lack of response regarding the FOIA and MPIA requests for nearly two full years is completely unacceptable. This information must be provided to the community so that they are fully informed, as required under FOIA and the Department of Transportation’s regulations.³³

B. National Environmental Policy Act

The Federal Railroad Administration’s NEPA regulations require that the FRA “re-evaluate” environmental documents or decisions when major steps to advance the Program have not occurred within three years after the approval of the final EIS or the last major FRA approval or grant.³⁴ In addition, the FRA should investigate what changes have occurred in the Program including “changes in the design or scope of a project” or new information in general.³⁵ The

³² Appendix B.

³³ 49 CFR Section 7.31.

³⁴ 23 CFR § 771.129, Re-evaluations.

³⁵ *Id.*

purpose of a re-evaluation is to determine whether the FEIS remains valid, or a Supplemental Environmental Impact Statement (SEIS) is necessary.³⁶

The last major FRA approval for the Program was the Record of Decision published five years ago, in March 2017.³⁷ Thus, the re-evaluation of the Program should have already been conducted. However, due to a lack of transparency, we are unaware of the steps taken by FRA to re-evaluate the Program. We strongly urge that FRA share its re-evaluation with the public so that impacted residents in Baltimore may see it. If FRA has not completed the re-evaluation, we ask that the Program not proceed until the re-evaluation is complete. When conducting the re-evaluation for this project, we also ask that a new EIS or SEIS be made to reflect changes in the project, as well as unanswered questions left out of the original EIS.

i. Re-evaluation

Amtrak’s Press Release in June of 2021 demonstrates that there is a substantial change in the design and scope of the Program, triggering a need for a re-evaluation. According to the ROD, the need for the Program is due to a lack of capacity in the existing tunnel “to support existing and projected demands for regional and commuter passenger service along the NEC,” and because existing B&P Tunnel “is not suited for modern high-speed usage due to the current horizontal and vertical track alignment.”³⁸ Amtrak chose its final alternative based on factors such as the capacity to accommodate four tracks, which Amtrak states will “meet the long-term rail passenger needs on the NEC and provide increased reliability for passenger rail operations for both Amtrak and MARC.”³⁹ Additionally, it was determined that the four tracks will be “necessary to alleviate the existing bottleneck and accommodate future demands as predicted by the NEC FUTURE program.”⁴⁰ However, as stated in the June 2021 press release and at community meetings with Amtrak, the B&P tunnel will now mainly focus on the construction of two tracks.⁴¹ Deferring two of the tunnels for future consideration brings into question the

³⁶ *Id.*

³⁷ As stated during Amtrak’s community meeting, they were still in the process of anticipating funding and in the property acquisition phase of their project. This indicates that the last major decision by DOT was approving the Record of Decision, since nothing else has been publicly announced by DOT on this project.

³⁸ FED. R.R. ADMIN., *Record of Decision For The B&P Tunnel Project Baltimore, Maryland* (Mar. 2017) 4, https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT_Record-of-Decision_March2017_Signed.pdf.

³⁹ *Id.* at 15.

⁴⁰ *Id.* at 5.

⁴¹ *Supra* note 24.

validity of requiring a four-track design. One of the possible alternatives, Alternative 2, was not chosen specifically because it could only accommodate two tracks.⁴² In the comment period, community members, including members of RATT, raised the issue that the alternatives did not address the fact that the purpose and need of the Program could be met with less than four tracks.⁴³ This comment was refuted by Amtrak who stated the minimum required tracks was four.⁴⁴ As per FRA regulations, a re-evaluation should be conducted to investigate the validity of the ROD, given Amtrak’s new position to focus on two tracks instead of the previously-emphasized four-track option.⁴⁵

The change in design and scope from four tunnels to two warrants a re-evaluation. Since Amtrak’s chosen alternative was based on the capacity for four tracks, changing the focus to two tracks defeats the purpose and need of the Program. As described in the ROD, Amtrak found that four tracks would meet long-term passenger needs.⁴⁶ Given that Amtrak stated the two additional tubes could be designed to accommodate freight, this does not support their finding that choosing four tracks is for passenger needs. Additionally, the original capital cost estimated to construct the Selected Alternative is \$4.52 billion, which is for the construction of four tunnels.⁴⁷ Since Amtrak has decided to focus on two tracks instead of four, this will drastically cut the funding needed since any funding given would only be used for the two tunnels.

Lastly, there have been several proposed or upcoming projects that could further change the purpose and need of the Program. These include the Howard Street Tunnel Project,⁴⁸

⁴² *Id.* at 9.

⁴³ FED. R.R. ADMIN., *APPENDIX I: Draft Environmental Impact Statement Comments and Responses*, 11, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Appendix-I.pdf> (last visited Apr. 6, 2022).

⁴⁴ *Id.* at 112.

⁴⁵ 23 CFR § 771.129, Re-evaluations.

⁴⁶ *Supra* note 30, at 15.

⁴⁷ FED. R.R. ADMIN., *Final Environmental Statement, Chapter 4: Preferred Alternative*, (Nov. 2016) 34, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Chapter-4.pdf>.

⁴⁸ *Howard Street Tunnel Project*, MD DEP’T OF TRANSP. PORT AUTH., <https://mpa.maryland.gov/pages/hst.aspx> (last visited Apr. 6, 2022).

AmeriStarRail’s Crosstown Rail proposal,⁴⁹ and the potential Maglev project.⁵⁰ The Howard Street Tunnel Project focuses on the accessibility of double-stack trains and freight, which takes away the need to make the B&P Tunnel accessible to freight, which was a major portion of the ROD.⁵¹ AmeriStarRail’s Crosstown proposal advances four high capacity, high-speed railroad tunnels for passenger trains, eliminating the alternative route chosen for the B&P tunnel.⁵² Maglev would create a high-speed train that would improve redundancy in transportation between Baltimore and Washington, which would likely change passenger rates for Amtrak and eliminate the need for the Program completely.⁵³

In addition, the purpose and need of the Program should be re-evaluated within the context of the larger Northeast Corridor improvement project. Further construction would be required in Baltimore City in order to truly achieve the Program’s goal of improving travel time. For example, as noted in FRA’s 2017 Record of Decision for the Northeast Corridor, “[c]urve modifications and new track projects east of Baltimore Penn Station are necessary to eliminate the chokepoint associated with the Union Tunnel.”⁵⁴ For all these reasons, a re-evaluation should be completed to reassess the purpose and need for the Program.

ii. Environmental Impact Statements

In addition to the issues of timeliness and the June 2021 press release causing confusion regarding the Program’s scope, the ROD and the FEIS have two key deficiencies that should be addressed in re-evaluation. First, there is nothing in any of the NEPA documents that details the hours of operation for construction throughout the Program, whereas other FEIS’s do include such details.⁵⁵ This deficiency leaves many important questions unanswered. Who is responsible

⁴⁹ Letter from Scott R. Spencer, Chief Operating Officer, AmeriStarRail, to Holly Arnold, Administrator, MDOT Maryland Transit Administration (Feb. 16, 2022), <https://ameristarail.com/s/ASR-Baltimore-Crosstown-Rail-Tunnel.pdf>.

⁵⁰ *Baltimore-Washington Superconducting Maglev Project*, <https://bwmaglev.info/index.php> (last visited Apr. 6, 2022).

⁵¹ *Supra* note 40.

⁵² *Supra* note 41.

⁵³ *Supra* note 42.

⁵⁴ Fed. R.R. Admin., Record of Decision: NEC Future (July 2017) 37, <https://www.fra.dot.gov/necfuture/pdfs/rod/rod.pdf>.

⁵⁵ See FED. R.R. ADMIN., *Record of Decision For The B&P Tunnel Project Baltimore, Maryland* (Mar. 2017) 15, https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT_Record-of-Decision_March2017_Signed.pdf. FED. R.R. ADMIN., *Final Environmental Statement, Chapter 4: Preferred Alternative*, (Nov. 2016)

for the damage done by the construction operations to the streets themselves? What trucks will they be using in the Program? Do they meet EPA diesel emission standards? How many hours a day will the tunnel boring machines and the construction trucks be operating? For example, the selected alternative mentions “minor impacts to Mary Ann Winterling Elementary School recreational facilities.”⁵⁶ How exactly will construction impact students at Mary Ann Winterling? These important questions must be answered so that the residents who are passive victims of the Program know what the impact will be on their environment.⁵⁷

Secondly, there is nothing in any of the NEPA documents that discusses a contingency plan if there is a hazardous chemical spill in the tunnel.⁵⁸ Since there are ventilation shafts designed to be located near Carver Vocational-Technical High School⁵⁹ and near Dorothy I. Height Elementary School (listed in the FEIS as John Eager Howard Elementary School), impacting a combined total of over 1,200 students,⁶⁰ there needs to be an emergency plan in place for worst-case scenarios.⁶¹ In the ROD, the preparing agency mentioned the ventilation

<https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Chapter-4.pdf>; contrast with FERC, *Final Environmental Impact Statement*, Rover Pipeline, Panhandle Backhaul, and Trunkline Backhaul Projects (Jul. 2016) (noting construction schedule details).

⁵⁶ FED. R.R. ADMIN., *Final Environmental Statement, Chapter 3: Alternatives Development*, (Nov. 2016) 14, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Chapter-3.pdf>.

⁵⁷ See 42 U.S.C.A. § 4332 (requiring agencies to utilize a systematic, interdisciplinary approach which will ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on man's environment).

⁵⁸ The possibility of such a spill is not mere speculation. Indeed, other locations in the United States have recently experienced disastrous spills from trains. See, e.g., *Derailed Train in Oklahoma Spills Toxic Chemical, Spurs Evacuations*, INSURANCE JOURNAL (June 15, 2020),

<https://www.insurancejournal.com/news/southcentral/2020/06/15/572246.htm>; *Train derails in Ames, spills hazardous chemical onto tracks*, NEWS7 KWWL (June 25, 2021), https://www.kwwl.com/news/train-derails-in-ames-spills-hazardous-chemical-onto-tracks/article_d91aa79e-04a8-5d93-bf20-878460ddf5c5.html, Ashley Osborne, *Train derailment causes chemical spill of hydrochloric acid & hydrogen peroxide*, WJBF (Jan. 7, 2019), <https://www.wjbf.com/csra-news/train-derailment-causes-chemical-spill-of-hydrochloric-acid-hydrogen-peroxide/>.

⁵⁹ Carver Vocational-Technical High School, Baltimore City Public Schools, <https://www.baltimorecityschools.org/schools/454>.

⁶⁰ Dorothy I. Height Elementary School, Baltimore City Public Schools, <https://www.baltimorecityschools.org/schools/61>. According to the June 2021 press release, emissions at this facility may be eliminated under the new Program approach (see supra, note 4).

⁶¹ For information on the proposed ventilation shafts, see FEIS, Chapter IV, <https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT-FEIS-Chapter-4.pdf>.

shafts do not pose a significant health risk to nearby students.⁶² In making this finding, they relied on NAAQs which focus on the larger region and not on the specific area.⁶³ Thus, there has been inadequate analysis on what these shafts’ air emissions will do to the children in this specific area. Additionally, emergency responses are said to adhere to national passenger standards. However, there is nothing outlining what would happen if there were to be an unforeseen freight disaster.⁶⁴ As mentioned above, freight is still very much a part of this project. By not including a plan for evacuation in the case of a hazardous spill, fire, or other disasters, the preparing agencies have shown a lack of foresight and potentially caused further environmental justice issues if a disaster were to occur. The preparing agencies should include a contingency plan in the Program’s description of environmental impact. Similarly, emissions on each of the ventilation shafts should be carefully monitored. If the emissions from this “site of concern” shaft reach a predetermined level, DOT and Amtrak should agree to manage emissions and emit somewhere that doesn’t impact 900 children.⁶⁵

C. Title VI

Pursuant to DOT regulations, DOT must complete Title VI Civil Right Act compliance assessments for applications for federal financial assistance and projects with continuing federal financial assistance.⁶⁶ Under this regulation, DOT is not allowed to award financial assistance to a project until a Title VI assessment is complete, and the applicant signs the DOT Title VI Assurance.⁶⁷ In addition, US DOT Order 1000.12C (“the Order”) from June 11, 2021, outlines policy direction in order to ensure all DOT-assisted programs are implemented in compliance

⁶² FED. R.R. ADMIN., *Record of Decision For The B&P Tunnel Project Baltimore, Maryland* (Mar. 2017) 31, https://www.amtrak.com/content/dam/projects/dotcom/english/public/documents/bptunnel/BPT_Record-of-Decision_March2017_Signed.pdf.

⁶³ *Id.*

⁶⁴ *Id.* at 30.

⁶⁵ See Diesel Emissions Health and Environmental Effects, MD DEP’T OF THE ENV., <https://mde.maryland.gov/programs/air/MobileSources/Pages/DieselHealthandEnvironmentalEffects.aspx> (last visited Apr. 7, 2022) (outlining MDE’s commitment to combatting diesel emissions in Maryland).

⁶⁶ 49 C.F.R. Part 21; *see also* DOT Order 1000.12C where a title VI assessment must be completed for each applicant for Federal Financial assistance as well as ongoing projects that have no Title VI plan on file with the OA, or where the plan is older than 3 years.

⁶⁷ 49 CFR § 21.7.

with Title VI.⁶⁸ Under the Order, the Operating Administrator (OA) is directed to conduct a Title VI Assessment of each applicant for Federal financial assistance.⁶⁹

The Order also requires that each recipient of federal funding develop and adopt a Title VI Plan that outlines the recipients' measures to ensure compliance with Title VI. We ask that DOT complies with regulations and ensure that Amtrak provides an adequate Title VI plan. According to the Order the plan should include information as to whether the program may have a disparate impact on the basis of race, color, or national origin. Where a disparate impact is found the OA should ensure that mitigation measures are recorded in the plan to reduce the disparity. Further, the plan should contain information on how the recipient will notify beneficiaries of protections provided by Title VI. A separate plan, called the Community Participation Plan is also a required condition to receive a federal financial award.

To our knowledge, DOT has not yet completed a Title VI assessment or assessed a Title VI plan from Amtrak. Further, the community is unaware of the current federal funding status of the Program. On November 15, 2021, President Biden signed the \$1 trillion transportation infrastructure bill.⁷⁰ The bill will invest \$66 billion federal dollars into freight and passenger trains, including upgrades to Amtrak.⁷¹ We ask for more transparency in the federal funding of the Program. If the Title VI assessment and funding has been completed, we ask for a copy of the assessment. If DOT has not completed the Title VI assessment, we ask that the Program not proceed until the required Title VI assessment is complete. Finally, we ask that DOT ensures that Amtrak is meaningfully engaging the community and providing mitigation efforts before providing any federal financial awards.

III. Conclusion

At this point, numerous members of impacted West Baltimore neighborhoods do not feel that their concerns regarding the significant, long-term impacts of this Program have been addressed. We strongly urge Amtrak, the U.S. Department of Transportation, and the Maryland Department of Transportation to seriously consider this request for (1) NEPA re-evaluation in accordance with the U.S. Department of Transportation's own regulations, (2) a Title VI

⁶⁸ DOT Order 1000.12C

⁶⁹ *Id.*

⁷⁰ Jacob Pramuk, *Biden signs \$1 trillion bipartisan infrastructure bill into law, unlocking funds for transportation, broadband, utilities*, CNBC, Nov 15, 2021, <https://www.cnbc.com/2021/11/15/biden-signing-1-trillion-bipartisan-infrastructure-bill-into-law.html>.

⁷¹ *Id.*

assessment, (3) detailed mitigation measures, and (4) a response to the community's FOIA and MPIA requests. We further request that these steps are taken in a truly collaborative manner that offers transparency and establishes mitigation measures which ultimately prevent the Program from negatively impacting West Baltimore communities, particularly given the long, significant history of environmental injustice that these communities have already faced and which this Program threatens to prolong.

SIGNED :

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MD Gubernatorial Candidate Wes Moore

MD Gubernatorial Candidate Dan Cox

State Senator Antonio Hayes, District 40

Delegate Marlon Amprey, District 40

Delegate Frank Conaway, Jr., District 40

Delegate Melissa Wells, District 40

Mayor Brandon Scott

City Council President Nick Mosby

Councilman James Torrence, District 7

Councilman John Bullock, District 9

Councilman Eric Costello, District 11

Dr. Nicole Labruto, Johns Hopkins University

APPENDICES (pending)

[Appendix A – Audio recordings or transcripts from interviews. Note date and location of interviews.]

[Appendix B – FOIA and MPIO requests, submitted by RATT May 2020.]