

## SCMagLev – Environmental Justice Communities - Addendum

By: Susan McCutchen and Patricia Jackman  
Edited by: Lawrence Liebesman and Dan Woomer

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The Baltimore-Washington Rapid Rail (BWRR) (the project developer) and the Northeast MagLev (TNEM) (the promotional entity) have the short-term goal of obtaining Federal Railroad Administration (FRA) approval to build a magnetic levitation (maglev) train between Baltimore and Washington, DC, with the long-term goal of extending the train operation to New York City by way of Philadelphia. Japan's Superconducting Magnetic Levitation (SCMagLev) train is the high-speed, ground-based transportation system TNEM is promoting to build in the northeast corridor of the United States.

Information about the SCMagLev and BWRR's plans to build and operate the system have raised many questions and concerns. This is one of a series of articles that identifies and discusses some of the many questions and concerns citizens and communities have identified with moving forward in building and operating the SCMagLev.

### Background and Summary

The Biden Administration's "Justice40" Initiative was highlighted in the July 2021 Maryland Coalition for Responsible Transit (MCRT)– Citizens Against the SCMagLev (CATS) environmental justice (EJ) position paper. This description is found in the next section, included as a reference for the reader.<sup>1</sup> The current position paper is an addendum that addresses the subsequent White House memorandum providing interim implementation guidance:<sup>2</sup>

In Executive Order 14008,<sup>3</sup> the President directed the Director of the Office of Management and Budget (OMB), the Chair of the Council on Environmental Quality (CEQ), and the National Climate Advisor, in consultation with the White House Environmental Justice Advisory Council (WHEJAC), to jointly publish guidance on how certain Federal investments might be made toward a goal that 40 percent of the overall benefits of such investments flow to disadvantaged communities – the Justice40 Initiative. The Justice40 Initiative is a critical part of the Administration's whole-of-government approach to advancing environmental justice.

<sup>1</sup> Maryland Coalition for Responsible Transit (MCRT) - Citizens Against the SCMagLev (CATS). SCMagLev – Environmental Justice Communities. [aa247ef8-bd4a-4dd2-890c-8b5ebdf396e2.filesusr.com/ugd/6d0640\\_8266ed7e1efd441682d1c470faad5131.pdf](https://aa247ef8-bd4a-4dd2-890c-8b5ebdf396e2.filesusr.com/ugd/6d0640_8266ed7e1efd441682d1c470faad5131.pdf). p. 13.

<sup>2</sup> Executive Office of the President. *Interim Implementation Guidance for the Justice40 Initiative*. Memorandum for the Heads of Departments and Agencies. Office of Management and Budget. July 20, 2021. [www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf). p. 1.

<sup>3</sup> The White House. *Executive Order on Tackling the Climate Crisis at Home and Abroad*. January 27, 2021. [www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/). [See also 86 *Fed. Reg.*, 7619 (February 1, 2021)].

The following Interim Implementation Guidance for the Justice40 Initiative (“guidance” or “interim guidance”) provides the initial recommendations pursuant to section 223 of Executive Order 14008,<sup>4</sup> and supports the Administration’s comprehensive approach to advancing equity for all in line with Executive Order 13958.<sup>5</sup> The Executive branch should implement this guidance in accordance with existing authorities in order [to] achieve the 40-percent goal.

This interim guidance includes a set of actions required of agencies that manage covered Justice40 programs. These actions include identifying the benefits of covered programs, determining how covered programs distribute benefits, and calculating and reporting on reaching the 40-percent goal of the Justice40 Initiative. This interim guidance provides implementation direction to an initial set of covered programs under the Justice40 Initiative. Additional guidance is forthcoming. The interim guidance applies to all entities with covered programs, including those agencies with potential covered programs listed in Appendix B.

This addendum discusses key issues addressed in the interim guidance that outline concerns potentially applicable to the anticipated destructive effects on EJ communities of the proposed SCMagLev Project. While the SCMagLev developer indicates that positive changes will accrue from their transportation system, it is far from clear that their construction and operation will be beneficial for EJ communities.

In our June 2021 position paper, we addressed the SCMagLev Draft Environmental Impact Statement and highlighted the demonstrable lack of measurable concern on the part of the project sponsors about and in-depth research into how it will affect the quality of life of viable and thriving multiracial, multicultural, and lower-income EJ communities along the Northeast Corridor. We were prompted to ask several pertinent overarching questions:<sup>6</sup>

- Is it appropriate to place more potential pollutants and a large footprint where minority, lower-income residents live?
- Will EJ communities enjoy any of the claimed SCMagLev benefits, such as temporary or permanent jobs, community investment, or improved accessibility?
- Is the quality of life of the residents in EJ communities considered less important than those in more upscale communities?
  - Would these more affluent residents and their communities be considered more deserving of careful consideration and appropriate environmental protection?
  - Would major, invasive transportation projects such as the SCMagLev realistically not be built in these more prosperous and potentially more influential areas because of the anticipated hue and outcry?

In light of these concerns, we question whether the SCMagLev investment will “flow” to our EJ communities. We foresee we will not receive “40 percent of the overall benefits,” as described in the

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<sup>4</sup> *Supra* note 1, at 7632.

<sup>5</sup> *Advancing Racial Equity and Support for Underserved Communities Through the Federal Government*. 86 *Fed. Reg.*, 7009. January 25, 2021.

<sup>6</sup> *Ibid.* p. 2.

interim guidance, unless the SCMagLev project comes under direct agency purview and is required to be held to the stated interim guidance standards.

### **Redux: The Biden Administration and EJ Communities<sup>7</sup>**

Recently, the Biden Administration has directed its attention to EJ community concerns. According to President Biden's Climate Executive Order 14008:<sup>8</sup>

Agencies shall make achieving environmental justice part of their missions by developing programs, policies, and activities to address the disproportionately high and adverse human health, environmental, climate-related and other cumulative impacts on disadvantaged communities, as well as the accompanying economic challenges of such impacts. It is therefore the policy of my Administration to secure environmental justice and spur economic opportunity for disadvantaged communities that have been historically marginalized and overburdened by pollution and underinvestment in housing, transportation, water and wastewater infrastructure, and health care.

In response to this executive order, the Administration created the "Justice40 Initiative" that underscores its attention to revitalizing and providing resources to EJ communities. The following orders were made to "secure environmental justice and spur economic opportunity":<sup>9</sup>

- The order formalizes President Biden's commitment to make environmental justice a part of the mission of every agency by directing federal agencies to develop programs, policies, and activities to address the disproportionate health, environmental, economic, and climate impacts on disadvantaged communities.
- The order establishes a White House Environmental Justice Interagency Council and a White House Environmental Justice Advisory Council to prioritize environmental justice and ensure a whole-of-government approach to addressing current and historical environmental injustices, including strengthening environmental justice monitoring and enforcement through new or strengthened offices at the Environmental Protection Agency, Department of Justice, and Department of Health and Human Services. The new bodies are also tasked with advising on ways to update Executive Order 12898 of February 11, 1994.
- The order creates a government-wide "Justice40 Initiative" with the goal of delivering 40 percent of the overall benefits of relevant federal investments to disadvantaged communities and tracks performance toward that goal through the establishment of an Environmental Justice Scorecard.

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<sup>7</sup> This section is copied in its entirety from: Maryland Coalition for Responsible Transit -Citizens Against the SCMagLev. SCMagLev – Environmental Justice Communities. [aa247ef8-bd4a-4dd2-890c-8b5ebdf396e2.filesusr.com/ugd/6d0640\\_8266ed7e1efd441682d1c470faad5131.pdf](https://aa247ef8-bd4a-4dd2-890c-8b5ebdf396e2.filesusr.com/ugd/6d0640_8266ed7e1efd441682d1c470faad5131.pdf). p. 13.

<sup>8</sup> The White House. Executive Order on Tackling the Climate Crisis at Home and Abroad. January 27, 2021. [www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/](https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/executive-order-on-tackling-the-climate-crisis-at-home-and-abroad/).

<sup>9</sup> The White House. Fact Sheet: President Biden Takes Executive Actions to Tackle the Climate Crisis at Home and Abroad, Create Jobs, and Restore Scientific Integrity Across Federal Government. January 27, 2021. [www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/](https://www.whitehouse.gov/briefing-room/statements-releases/2021/01/27/fact-sheet-president-biden-takes-executive-actions-to-tackle-the-climate-crisis-at-home-and-abroad-create-jobs-and-restore-scientific-integrity-across-federal-government/).

- The order initiates the development of a Climate and Environmental Justice Screening Tool, building off EPA’s EJSCREEN, to identify disadvantaged communities, support the Justice40 Initiative, and inform equitable decision making across the federal government. [Note: The tool would be created by the Council on Environmental Quality.]

These actions acknowledge and underscore concerns expressed by EJ residents as proposed transportation projects compete to establish themselves along the densely populated Northeast Corridor, undoubtedly affecting EJ communities that are its mainstay.

## **Interim Guidance: July 20, 2021**

### Interim Definition of Disadvantaged Communities

The interim guidance definitions describe to differing degrees the environmental justice (EJ) communities along the proposed SCMagLev routes.<sup>10</sup>

Community – Agencies should define community as “either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.”<sup>11</sup>

Disadvantaged – Agencies should consider appropriate data, indices, and screening tools to determine whether a specific community is disadvantaged based on a combination of variables that may include, but are not limited to, the following:

- Low income, high and/or persistent poverty
- High unemployment and underemployment
- Racial and ethnic residential segregation, particularly where the segregation stems from discrimination by government entities
- Linguistic isolation
- High housing cost burden and substandard housing
- Distressed neighborhoods
- High transportation cost burden and/or low transportation access
- Disproportionate environmental stressor burden and high cumulative impacts
- Access to healthcare

### Covered Programs

The interim guidance instructs agencies to work with the Office of Management and Budget (OMB) to determine applicability of the Justice40 Initiative. The EJ communities along the proposed SCMagLev

<sup>10</sup> Executive Office of the President. *Interim Implementation Guidance for the Justice40 Initiative*. Memorandum for the Heads of Departments and Agencies. Office of Management and Budget. July 20, 2021. [www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf). pp. 2-3.

<sup>11</sup> Council on Environmental Quality, *Environmental Justice: Guidance under the National Environmental Policy Act* (Dec. 10, 1997), available at [ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf](https://ceq.doe.gov/docs/ceq-regulations-and-guidance/regs/ej/justice.pdf).

routes show the need for investment benefits, according to the guidance definition: “a Federal Government program that makes covered investment benefits in one or more” of these areas: <sup>12</sup>

#### Climate change

- i. Clean energy and energy efficiency
- ii. Clean transportation
- iii. Affordable and sustainable housing
- iv. Training and workforce development (related to climate, natural disasters, environment, clean energy, clean transportation, housing, water and wastewater infrastructure, and legacy pollution reduction, including in energy communities<sup>13</sup>)
- v. Remediation and reduction of legacy pollution
- vi. Critical clean water and waste infrastructure

#### Examples of Benefits of Covered Programs

The interim guidance indicates: “Benefits include direct and indirect investments (and program outcomes) that positively impact disadvantaged communities.”<sup>14</sup> Benefits applicable to disadvantaged communities include targeted actions that address climate change, clean energy and energy efficiency, clean transportation, affordable and sustainable housing, training and workforce development, remediation and reduction of legacy pollution, and development of critical clean water infrastructure.<sup>15</sup> The document states that the OMB “will . . . develop and publish a common set of metrics to measure select benefits across agencies, e.g., improvements in air quality.”<sup>16</sup>

#### Calculating Benefits

The interim guidance indicates: “Executive Order 14008 states that ‘40 percent of the overall benefits’ of federal investments from covered programs should flow to disadvantaged communities. To respond to that directive, each agency should establish a methodology for calculating the benefits that a) flow from each applicable covered program and b) accrue in disadvantaged communities from each covered program.”<sup>17</sup>

This includes benefits methodology: “Within 150 days of the issuance of this guidance deliver to OMB a methodology for calculating the covered program benefits accruing to disadvantaged communities. This methodology should also include a description of the metrics . . . ”<sup>18</sup>

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<sup>12</sup> Executive Office of the President. *Interim Implementation Guidance for the Justice40 Initiative*. Memorandum for the Heads of Departments and Agencies. Office of Management and Budget. July 20, 2021. [www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf). p. 3.

<sup>13</sup> Energy communities, as discussed in Executive Order 14008, include coal, oil, and gas and power plant communities.

<sup>14</sup> Executive Office of the President. *Interim Implementation Guidance for the Justice40 Initiative*. Memorandum for the Heads of Departments and Agencies. Office of Management and Budget. July 20, 2021. [www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf](https://www.whitehouse.gov/wp-content/uploads/2021/07/M-21-28.pdf). p. 4.

<sup>15</sup> Ibid. pp. 4-6.

<sup>16</sup> Ibid. p. 7.

<sup>17</sup> Ibid. p. 7.

<sup>18</sup> Ibid. p. 7.

It also includes stakeholder consultation:<sup>19</sup>

When determining the benefits of a covered program, as specified in section IV(A), agencies should consult with stakeholders, including state, local, and Tribal governments, as well as Native communities, to ensure public participation and that community stakeholders are meaningfully involved in what constitutes the “benefits” of a program. In addition, if the calculation of a benefit to a disadvantaged community includes investments outside of that community, the disadvantaged community should be consulted. In engaging with stakeholders, agencies should consider their obligation under Title VI of the Civil Rights Act of 1964 to ensure meaningful access for individuals with limited English proficiency (LEP), as well as their obligation pursuant to Section 504 of the Rehabilitation Act to take appropriate steps to ensure effective communication for individuals with disabilities.

The SCMagLev project to date falls short in all these areas.

### Reporting

The interim guidance states: “Agency heads are responsible for calculating the accrual of covered program benefits to disadvantaged communities. Agencies should consult with OMB when determining whether their program is a covered program. Consistent with section IV, agencies shall report . . . to OMB for each covered program within 60 days and 150 days of the issuance of this guidance, as specified, and annually thereafter.”<sup>20</sup>

Further: “The Administration’s overall progress towards the Justice40 Initiative’s goal will be tracked by the categories of covered project.”<sup>21</sup>

### Pilot to Maximize Benefits to Disadvantaged Communities

The pilot programs listed in Appendix A are requested to “undertake an initial implementation of the Justice40 Interim Implementation.”<sup>22</sup> They are “directed to” develop a stakeholder engagement plan; a Justice40 implementation plan to maximize benefits; consider program modifications to maximize benefits; calculate benefits and reporting; and reporting as previously described.<sup>23</sup>

The Department of Transportation and the Environmental Protection Agency (EPA) are on this list.<sup>24</sup>

Appendix B provides internal guidance for potential covered programs:<sup>25</sup>

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<sup>19</sup> Ibid. pp. 7-8.

<sup>20</sup> Ibid. p. 8.

<sup>21</sup> Ibid. p. 9.

<sup>22</sup> Ibid. p. 9.

<sup>23</sup> Ibid. pp. 9-11.

<sup>24</sup> Ibid. p. 12.

<sup>25</sup> Ibid. p. 13.

OMB has begun compiling a list of potential “covered programs” at <https://go.max.gov/justice40> . The programs listed have potential existing authorities that could be used to benefit disadvantaged communities. Agencies with covered programs are directed to begin examining (and consider modifications to) policies, practices, and procedures to implement the Administration’s Justice40 goals.

The Department of Transportation and the EPA are found on this list of agencies.

## Findings/Conclusions

The July 2021 MCRT-CATS EJ position paper outlined specific disproportionate impacts to EJ communities along the SCMagLev route, as follows.<sup>26</sup>

- Eighty (80) percent of the parcels that would be impacted by land use conversion, rezoning, and property acquisitions are in EJ communities.
- Nearly all the project ancillary facilities (those located above ground) are located within the EJ population areas (e.g., stations, viaducts, tunnel portals).
- Increase in runoff, stormwater, and flooding issues will disproportionately affect the EJ communities.
- Most cultural resources (historic and archaeological resources) impacts occur within EJ groups.
- Construction impacts would occur at varying locations and for varying durations during the construction period, 24 hours a day, seven days a week, for one to seven years.
- A decreased level of service in residential areas and changes to local access or mobility can be anticipated.
- The chance of high-speed collisions and other operational accidents is elevated in EJ communities because of the disproportionate construction impacts.
- Potential spills of hazardous materials are more likely to occur in EJ communities.
- Most of the frequent and severe noise and vibration impacts will occur in EJ communities.
- Air pollution will worsen around stations due to increased traffic and potentially harmful emissions from ventilation facilities.
- Visual changes in neighborhoods and the elimination of greenspace will occur.
- Negative impacts to neighborhood cohesiveness will be sustained.
- Negative impacts to recreational facilities and parklands will occur.

This addendum to that position paper discusses key issues addressed in the interim guidance as applicable to federal agencies. We feel they are apropos of our concerns about the proposed SCMagLev project the MCRT has outlined associated with EJ communities.

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<sup>26</sup> Maryland Coalition for Responsible Transit (MCRT) - Citizens Against the SCMagLev (CATS). SCMagLev – Environmental Justice Communities. [aa247ef8-bd4a-4dd2-890c-8b5ebdf396e2.filesusr.com/ugd/6d0640\\_8266ed7e1efd441682d1c470faad5131.pdf](https://a247ef8-bd4a-4dd2-890c-8b5ebdf396e2.filesusr.com/ugd/6d0640_8266ed7e1efd441682d1c470faad5131.pdf). p. 1-2.



Despite it being described as a private endeavor requiring no taxpayer funds, to the contrary, government funding has been provided to support the development of the Maglev Deployment Program.

In 2016, the Federal Railroad Administration awarded \$27.8 million in SCMagLev funds to the Maryland Department of Transportation “to prepare preliminary engineering and a NEPA<sup>27</sup> analysis for the Proposed Action.”<sup>28</sup>

Wayne Rogers, Chairman and CEO of The Northeast Maglev (TNEM), stated in May 2021 testimony to the U.S. House Committee on Transportation and Infrastructure:<sup>29</sup>

Maturity of the technology was a clear desire of Congress for the Maglev Deployment Program. It was funded by Congress who provided \$60 million in contract authority and authorized \$950 million as part of TEA-21 in 1998. SAFETEA-LU provided an additional \$90 million in contract authority. \$10 million was provided in FY19 appropriations and \$2 million in each of FY20 and FY21.

Baltimore-Washington Rapid Rail (BWRR) and TNEM are actively seeking anticipated federal funding through the Biden Administration’s Infrastructure Plan. Wayne Rogers also stated in his recent testimony:<sup>30</sup>

We are requesting \$300 million in contract authority for the MDP which would be provided to the State of Maryland to complete activities precedent to finalizing construction. At this time, we estimate the civil capital costs to be around \$9 billion.

The very basic unavailability of the train’s commuter station access or affordable tickets are representative of the lack of benefits that could conceivably be calculated to comply with this executive order. Therefore, based on our detailed analysis, we believe that any SCMagLev investment will not “flow” to our EJ communities and that those communities will not receive “40 percent of the overall benefits,” as required under the Biden Administration policy. The project will be a long-term or permanent disruption and burden for our disadvantaged residents and EJ communities. Any benefits will accrue to BWRR and TNEM and their investors and not to EJ communities.

### **Need More Information? Want to Help?**

- (1) Learn more about the concerns and impacts the SCMagLev will have on our communities at [www.stophisthtrain.org/](http://www.stophisthtrain.org/) and [mcrt-action.org](http://mcrt-action.org).
- (2) Contact your elected officials to express your opposition to building the SCMagLev, go to: [myreps.datamade.us](http://myreps.datamade.us).

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<sup>27</sup> NEPA = National Environmental Policy Act.

<sup>28</sup> U.S. Department of Transportation – Federal Railroad Administration – Maryland Department of Transportation. *Baltimore-Washington Superconducting Maglev Project Final Scoping Report*. May 2017. [www.bwmaglev.info/images/document\\_library/reports/Maglev\\_Scoping-Report\\_051717RE.pdf](http://www.bwmaglev.info/images/document_library/reports/Maglev_Scoping-Report_051717RE.pdf). p. 3.

<sup>29</sup> Testimony of Wayne L. Rogers, Chairman & CEO, The Northeast Maglev, LLC before the US House Committee on Transportation and Infrastructure Subcommittee on Railroads and Pipelines and Hazardous Materials. May 6, 2021. [transportation.house.gov/imo/media/doc/Rogers%20Testimony.pdf](https://transportation.house.gov/imo/media/doc/Rogers%20Testimony.pdf). p. 3.

<sup>30</sup> Ibid. p. 5.



- (3) Share this information with your family, friends, neighbors, and your community.
- (4) Sign our petition and share on social media: [tinyurl.com/4rks5rk7](https://www.facebook.com/groups/CitizensAgainstSCMaglev).
- (5) Facebook pages: [www.facebook.com/groups/CitizensAgainstSCMaglev](https://www.facebook.com/groups/CitizensAgainstSCMaglev) and <https://www.facebook.com/MCRTaction>.
- (6) Contact the Maryland Coalition for Responsible Transit (MCRT) at [mcrtaction@gmail.com](mailto:mcrtaction@gmail.com) with questions.
- (7) Make a contribution to support the MCRT and CATS at [mcrt-action.org](https://www.mcrt-action.org). Thanks for your support!

### About the Authors

**Patricia Jackman** served as the National Equal Opportunity Program Manager and held various civil rights positions for the U.S. Forest Service before retiring. An environmentalist and community activist, she is a co-founder and is currently treasurer of the Maryland Coalition for Responsible Transit. Pat is a resident of New Carrollton in Prince George's County.

**Susan McCutchen** retired as a senior research associate from the National Academies of Sciences, Engineering, and Medicine. She assisted in the production of more than 50 publications on policy issues, including science and technology for international development, technology transfer, aeronautics and the U.S. space program, natural disaster mitigation, U.S. education policy and science curricula, needle exchange, the scientific merit of the polygraph, human factors/engineering, research ethics, disability compensation programs, health hazard evaluation, and medical and public health preparedness for catastrophic events, including nuclear detonations. Ms. McCutchen is a community activist on many issues, including the SCMagLev.

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Citizens Against the SCMagLev (CATS) is a confederation of scientists, engineers, experts, community organizations and citizens in support of transportation infrastructure improvements that benefit our communities, state, and nation. CATS opposes the construction of an expensive transportation system serving a small minority of the wealthy at the cost of taxpayer funds far better used to maintain and improve the transportation infrastructure needed and used daily by all citizens, businesses, and commerce. For up-to-date information on the SCMagLev opposition, see our Facebook page at: [www.facebook.com/groups/CitizensAgainstSCMaglev](https://www.facebook.com/groups/CitizensAgainstSCMaglev).

The Maryland Coalition for Responsible Transit (MCRT) is a nonprofit organization formed in 2020. MCRT's mission is to evaluate transit projects for social equity, environmental justice, environmental preservation, economic viability, and community accessibility. See MCRT's Facebook page [www.facebook.com/MCRTaction](https://www.facebook.com/MCRTaction) and our website at [www.mcrt-action.org](https://www.mcrt-action.org). Contact the MCRT at [mcrtaction@gmail.com](mailto:mcrtaction@gmail.com).