



PATUXENT RIVER COMMISSION

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Councilman Michael Leszcz, Chairman

Christopher Perry, Vice Chairman

We, the Patuxent River Commission, envision a Patuxent River ecosystem as vital and productive in 2050 as it was in the 1950s. We therefore commit to be stewards and advocates for the Patuxent River and to lead and inspire actions to protect, enhance, and restore living resources and the natural, cultural, economic, and recreational values of the Patuxent River and its watershed.

May 19, 2021

SCMAGLEV Project c/o Lauren Molesworth
Maryland Transit Administration
6 Saint Paul St
Baltimore, MD 21202

RE: Comments on the SCMAGLEV DEIS; Request for FRA to Choose the "No Build" Alternative for SCMAGLEV Project

Dear SCMAGLEV Project c/o Lauren Molesworth:

In 2001, the Maryland legislature, seven counties and the City of Laurel adopted the Patuxent River Policy Plan, which includes goals to restore the water quality and living resources of Maryland's largest and longest river. In 2014, the seven counties and the City of Laurel recommitted to restoring the river by adopting the 2015 update to the Patuxent River Policy Plan. Subsequently, in 2016, the Maryland General Assembly passed Joint Resolution 1 to approve the 2015 Patuxent River Policy Plan update as an amendment to the Patuxent River Policy Plan.

The Maryland legislature established the Patuxent River Commission to "review and comment on plans and reports related to the Patuxent River and its watershed." **After completing a detailed review and evaluation of the Draft Environmental Impact Statement (DEIS) for the SCMAGLEV project, the Commission recommends the NO BUILD ALTERNATIVE.** The federal and state agency representatives, representatives of Anne Arundel County and Prince George's County, one of the Commission's soil conservation district representatives, and the Commission's business, development, extension and watermen representatives, abstained from voting on this issue. **Attached are the Commission's comments in support of the Commission's recommendation for the NO BUILD ALTERNATIVE.**

Sincerely,

Michael R. Leszcz, Councilman
City of Laurel
Chair, Patuxent River Commission

Christopher Perry, Operating Manager
Bourn Environmental
Vice-Chair, Patuxent River Commission

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cc: William C. Baker, Chesapeake Bay Foundation

Brian Coyle and Michael McLaughlin, Officers, Laurel For Patuxent

Scott A. Hancock, Executive Director, Maryland Municipal League

Emmett V. Jordan, Mayor Pro Tem, City of Greenbelt

Craig A Moe, Mayor, City of Laurel

Prince George's County Council members

Directors of County Environmental Departments

Ben Grumbles, Secretary, Maryland Department of the Environment

Maryland State Senators C. Bernard Fowler, Michael Jackson, Douglas Peters, Paul Pinsky and Jim Rosapepe

Maryland State Delegates Benjamin Barnes, Anne Healey, Marvin Holmes Jr., Julian Ivey, Mary Lehman, Joseline

Peña-Melnyk, Geradline Valentino-Smith, Alonzo Washington, Ronald Watson and Nicole Williams

U.S. Representatives Anthony Brown and Steny Hoyer

U.S. Senators Ben Cardin and Chris Van Hollen

Summary of Areas of Greatest Concern and Key Points of Opposition of the Patuxent River Commission to the Proposed Baltimore Washington Super Conducting (SC) Maglev Project

After substantial and detailed review of the Draft Environmental Impact Statement (DEIS) for the Baltimore Washington SC Maglev project (SC Maglev), the Patuxent River Commission (Commission) concludes that all proposed build alignments of the SC Maglev are unacceptable (as defined in the following paragraphs), and the environmentally responsible alternative is to choose the No Build option.

The Commission identified the areas of greatest concern and the most important reasons why the No Build option is the correct choice for the SC Maglev.

Briefly, the areas of greatest concern by the Patuxent River Commission are:

- A. The temporary and permanent environmental impacts to water resources, including Tier II waters that are afforded greater protection from degradation under the law, freshwater wetlands, groundwater, streams, floodplain integrity, and hydrology of the Patuxent River and its watersheds including the net increases in impervious surfaces. [Tier II, high quality, waters, as defined by the Clean Water Act, are those that have an existing water quality that is significantly better than the minimum requirements, as specified in water quality standards].
- B. The transfer of conservation lands and green open space¹ that have been protected with the highest levels of protection our nation can designate to a private-for-profit company for non-conservation use. In addition to being an improper use of lands and resources protected under Section 4(f) of the Department of Transportation Act, it sets a very bad precedent for the potential demand and taking of other protected lands and resources.
- C. The loss of green space, the impacts on habitats and flora and fauna of unique and rare natural resources, and more specifically, the loss of biodiversity and the net loss of ecosystem services resulting from removal of vegetation, creation of impervious surfaces, facility construction, and other disturbances will magnify negative impacts of the project such as creating new corridors of forest fragmentation or new paths for invasive species that will seriously damage the balance of sensitive environments.
- D. Increased chemical pollution of land, water, and air creating temporary, long-term, and permanent impacts to local environments will cause lasting and possibly irrevocable damage to natural resources and especially to Section 4(f) protected resources.

Reasons why the Patuxent River Commission identified the four areas of concern above:

- This project is highly incompatible with the legal protections for Patuxent Research Refuge, for the Patuxent River as a state-designated scenic river, for Tier II waterbodies, for Section 4(f) protected resources of parks, refuges, and recreation areas, and for state protected resources

¹ Baltimore-Washington Parkway, Patuxent Research Refuge, Greenbelt City, Beltsville Agricultural Center, Goddard Spaceflight Center, and other federal protected lands.

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such as wetlands and Wetlands of Special State Concern. The “Permanent watershed impacts range from approximately 900 acres to 1,100 acres of overall watershed disturbance” (page 4.10-13). The impacts to the Little Patuxent River watershed in particular could be highly significant including the filling of wetlands, and re-routing of the river channel and floodplain. Depending on the build alternatives, there would be up to 712 to 826 acres of new impervious surface created.

- The construction of SC Maglev would threaten state, national, and global protections for Rare, Threatened, and Endangered Species, including bird species under the Migratory Bird Treaty Act and a variety of species covered by the Endangered Species Act. Many of the affected ecosystems and species are especially rare in the Baltimore-Washington region and represent many of the last examples of their kind in the area. In addition, for example, isolated and rare ecosystems or biological communities such as the pine barrens community associated with the Patuxent Research Refuge caused by naturally occurring acidic waters and soils are extremely fragile and would be disrupted or destroyed by construction intrusions. They could not be replicated by mitigation.
- This proposal does not comment on the Bay Total Maximum Daily Load (TMDL) and local TMDL, but the Commission questions whether this project will undermine the achievement of Bay and local TMDLs and Chesapeake Bay Watershed Agreement goals, which among other goals, endorses EPA’s targets for TMDLs and for creating and restoring Bay wetlands by 2025. The impact of sedimentation, wastewater discharges from extensive use of cleaning products for trains, disposal of spoils, dewatering, and the significant amount of earth movement, all needs to be quantified and then assessed for its impact on TMDL and Bay Agreement implementation. If additional environmentally protective measures can feasibly prevent these impacts, the proposal must explain what they are.
- The section of the Summary (page 25) on Table 4.10-1 is deficient in that it does not highlight which of the eight sub-watersheds listed will be adversely impacted by the viaduct. Simply illustrating floodplains, wetlands and mentioning water quality degradation (page 28 Figure) is no substitute for a detailed examination of potential adverse impacts to water resources in the river system, including sedimentation, nutrients, and pollutants from construction, as well as future operation of the SC Maglev.
- There is no reference to existing local TMDLs, a striking omission given their importance in the Patuxent River watershed. There is a brief narrative on the “Effect on Water Quality” on page 30, but the impacts are generic and only mention likelihood of “increased runoff.” There needs to be a quantitative assessment made for how much additional runoff and how much greater the pollutant loads would be.
- The DEIS is vague, lacking in detail, and unacceptably generic for the level of impacts to water resources it states would occur if the project were to be built such as where the Patuxent River and other streams and rivers would be crossed by a viaduct or tunnel, or where a stream or a river would be re-aligned, a wetland filled, or other temporary or permanent impacts such as the de-watering, staging or movement of spoil material from construction or tunneling. This is

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also true with regard to wetland and forest delineations and mitigation specifics. Several examples include:

- In Chapter 4.11.3 the DEIS documents that despite the location of new wetlands and apparent significant proposed changes to wetland extent at the Konterra site they did not do a field review at this site, while other sites in the project area were field delineated, resulting in the wetlands being “excluded from the quantitative impact analysis”. Additionally, within chapter 4.11, Nontidal Wetlands of Special State Concern are highlighted but while the DEIS delineates wetlands as a cross-check to the state’s figures it does not investigate if some of these unstudied areas do or do not meet the Nontidal Wetlands of Special State Concern criteria. Statements are made but not investigated or detailed that: “Permanent structures and construction activities outside of wetlands but within wetland buffers can also indirectly affect wetlands. Wetland buffers are critical to the function of wetland systems. Changes to upstream hydrology from new impervious surface can indirectly affect wetland hydrology for downstream receiving wetlands.” These impacts need to be documented and included as impacts, not just described generally.
- Similarly, no effort is made to address the impacts that temporary roads and staging areas will cause, despite this quote from appendix D: “Additional, construction-related impacts to natural resources related to staging and work areas used temporarily by construction crews could be irretrievable. Construction work areas at waterway crossings and ancillary facilities would be larger in size than the footprint of the permanent structures. The Project Sponsor would restore temporarily disturbed areas to the original state, to the extent feasible to minimize the irretrievable commitment of resources related to temporary construction impacts.”
- The viaducts will traverse next to the BW Parkway and ancillary lines from there to the Train Maintenance Facilities (TMFs), however, the BW Parkway is not designed nor do they permit heavy truck traffic, consequently, building access must come from USFWS, NPS, City, State, NSA, and NASA lands. No existing roads exist in those areas that could carry the construction equipment and therefore would have to be built to withstand that traffic during construction and following so that there would be permanent access to the viaduct in case of accident or for maintenance. These access roads do not construe temporary roads, but permanent ones and will cross wetlands, bring invasive species, fragment forests, and disrupt hydrology as much or more as the viaduct itself. These need to be addressed.
- Chapter 4.11 is meant to document mitigation strategies, but no actual mitigation strategy is described and there is no acknowledgment that these special wetlands could not actually be re-created elsewhere. These are globally rare ecosystems that if destroyed would require more than payment to a mitigation bank, or the digging of ponds and vernal pools in places where they do not naturally occur. Mitigation issues are serious reparation for damage to globally rare systems and a serious investigation and plan needs to be in place before anything close to confidence in the process can be restored.

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A serious deficiency of the Draft EIS is that potential and actual environmental impacts, both short and long-term, have been poorly quantified. This makes it very difficult to properly assess and evaluate the environmental impacts of the project, and in turn, the compliance of the project with NEPA. For example, the quantification of impacts to Tier II waters has not been completed. Assimilative capacity is the ability for pollutants to be absorbed by a waterbody without detrimental effects to the waterbody or those who use it. Maryland Department of the Environment (MDE) regulations require a socioeconomic justification if assimilative capacity is compromised: COMAR 26.08.02.04-1. 04-1 Antidegradation Policy Implementation Procedures. (b) If an impact cannot be avoided, or no assimilative capacity remains as described in §G(3)(a) of this regulation, provide the Department with a social and economic justification for permitting limited degradation of the water quality.²

² Here are the regulations that apply to assimilative capacity:

G. Tier II Antidegradation Review.

(1) If a Tier II antidegradation review is required, the applicant shall provide an analysis of reasonable alternatives that do not require direct discharge to a Tier II water body (no-discharge alternative). The analysis shall include cost data and estimates to determine the cost effectiveness of the alternatives.

(2) If a cost effective alternative to direct discharge is reasonable, the alternative is required as a condition of the discharge permit or amendment to the county plan.

(3) If the Department determines that the alternatives that do not require direct discharge to a Tier II water body are not cost effective, the applicant shall:

(a) Provide the Department with plans to configure or structure the discharge to minimize the use of the assimilative capacity of the water body, which is the difference between the water quality at the time the water body was designated as Tier II (baseline) and the water quality criterion; and

(b) If an impact cannot be avoided, or no assimilative capacity remains as described in §G(3)(a) of this regulation, provide the Department with a social and economic justification for permitting limited degradation of the water quality.

(4) An applicant shall update an antidegradation review when applying for a new permit or major modification to an existing permit.

H. Potential Determinations Resulting from Antidegradation Reviews.

(1) If there is a cost-effective alternative to direct discharge, the applicant shall implement the no discharge alternative and it shall be a condition of the discharge permit.

(2) If there is no cost-effective alternative to direct discharge, but there is potential for further minimization of the use of assimilative capacity, the applicant shall revise the initial application to further minimize the use of assimilative capacity.

(3) If there is no cost-effective, no-discharge alternative, and minimization of the use of assimilative capacity is adequate, but the social and economic justification (SEJ) is not adequately performed, the applicant shall revise the SEJ.

(4) If there is no cost-effective alternative to direct discharge, minimization of the use of assimilative capacity is adequate, the SEJ is adequately performed but does not justify the water quality impact, the proposed amendment to the county plan or discharge permit application shall be denied.

(5) If there is no cost-effective alternative to direct discharge, all reasonable efforts have been made to minimize the use of assimilative capacity, and the SEJ is adequate and justifies the discharge, the proposed amendment to the county plan or discharge permit shall be granted subject to other applicable requirements.

I. Wetlands Permits and Water Quality Certifications. Maryland's wetlands and waterways regulatory process, governed by the Tidal Wetlands (COMAR 26.24.01—26.24.05), Nontidal Wetlands (COMAR 26.23.01—26.23.06), and Waterway Construction (COMAR 26.17.04) regulations, satisfies the requirements of this regulation.

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- One of the most egregious examples of inadequate information and consideration is the proposed rerouting of the Little Patuxent River due to the MD 198 TMF, which would affect approximately 200 acres. Other proposed sitings of the TMF would have similar impacts. The Draft EIS mentions the following: “Due to the significant new impervious surface and the significant amount of fill required to the landscape, it is possible that the boundary defining the drainage area of the Little Patuxent River Watershed could be altered. As described in Chapter 3, the TMF site slopes downward toward the Little Patuxent River to the north and east. Current design indicates the need to provide up to 154 feet of fill to raise the site to a level grade. The fill would be supported by perimeter retaining walls. This results in a significant change to the landscape and to the drainage pattern of the adjacent Little Patuxent River and its upstream and downstream tributaries. This facility is located less than one-half mile upstream from the PRR, and with the added impervious surface, fill within the floodplain and wetlands, and loss for forest canopy, it is expected to indirectly affect resources located within PRR” (page 4.10-15). We believe there is insufficient evidence to support the statement that the “Loss of watershed functions to the Patuxent River Upper Watershed are not expected”. Additional impacts to the Little Patuxent River are listed in the footnote.³

J. Social and Economic Justification (SEJ).

(1) An SEJ shall be submitted if:

- (a) No cost effective alternative to the discharge is available; or
- (b) The cumulative degradation resulting from nonpoint source pollution and any other permitted

discharges would diminish water quality.

(2) To allow for natural variability, water quality shall be considered diminished only if the assimilative capacity as defined in §G(3)(a) of this regulation is cumulatively reduced by more than 25 percent from the baseline water quality determined when the water body was listed as Tier II.

3 “Build Alternatives J-01 and J-04 would have a water resources impact to the Little Patuxent River Watershed, river, and its surrounding natural habitat within the watershed. Due to proposed viaduct piers, SCMAGLEV systems, and TMF located within two locations of this resource, these Build Alternatives would directly affect floodplain functions, riparian habitat, NTWSSC [Nontidal Wetlands of Special State Concern], water quality, surface hydrology, and wildlife and aquatic species (including rare, threatened or endangered species or species of concern)” (pages 4.10-12 and 4.10-13).

Effect on Watersheds: “Permanent watershed impacts range from approximately 900 acres to 1,100 acres of overall watershed disturbance” (page 4.10-13).

Alignment: Permanent impacts “would be more evident in the Little Patuxent River Watershed, Anacostia River Watershed, and the Patuxent River Watershed. Permanent impacts would be greater for alignments associated with J-01 through J-06 due to the greater proposed above ground features. This difference between Build Alternatives is most significantly found within the Little Patuxent River watershed, where the Build Alternatives J alignments are proposed largely above ground and Build Alternatives J1 alignments are in deep tunnel....Direct and indirect impacts...include removal of vegetation within wetlands and riparian forest, construction within the floodplain, and potential affect to water quality.... Due to these proposed impacts to water resources and the indirect effects to the surrounding natural environment...Build Alternatives J alignments may have an adverse effect to the Little Patuxent River Watershed.... FRA has proposed design techniques called ‘straddle bents’ to aid in spanning large sinuous river systems, such as the Little Patuxent River, with the goal to avoid instream pier construction...” (page 4.10-14).

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- The DEIS, while submitted for federal agency review and approval cannot be taken out of the context of Maryland's conservation and green infrastructure objectives. Concern for Wetlands of Special State Concern, both within the project boundaries and outside of it persists because of the connection of such wetlands to watersheds and sub-watersheds.

Other Areas of Concern

The evaluation of the SC Maglev project's purported need and economic benefits do not justify the environmental impacts created. There was no economic comparison to other regional transit improvements or upgrades. Section 1502.16 of the NEPA regulations require this type of comparison⁴.

Assumptions were based on pre-COVID-19 social, economic, and transportation conditions. But as the world adapts it is not clear what the future may hold with respect to a potential long-term increase in teleworking and other social and economic changes and the impact they may have on the need for a SC Maglev system, particularly between Washington and Baltimore. The future may see less commuting or business travel.

Other statewide conservation objectives are also important but have not been given adequate treatment in the DEIS. For example, the State Wildlife Action Plan titled Maryland's Wildlife Diversity Conservation Plan, first written in 2005 and updated in a ten-year review in 2015, identifies Species in Need of Greatest Conservation (SGCN). As with TMDL's and other objective standards by which cumulative impact to Maryland's natural resources can be measured, there are little or no specifics on how Maryland's imperiled wildlife resources will be impacted by this project and what specific actions would be taken to ameliorate impacts and protect wildlife Species in Need of Greatest Conservation. Again, the DEIS is seriously deficient in the presentation of such considerations.

Finally, the Commission notes that the greatest impacts of SC Maglev construction, regardless of alignments chosen, would fall upon low income and Environmental Justice (EJ) communities as determined by the DEIS. The Environmental Justice dimensions of impacts to the following resources in the DEIS occur in the following categories: Transportation, Community Facilities, Parkland, Economic,

TMF: "The MD 198 TMF would permanently impact over 2,300 linear feet of waterways for Build Alternatives J-01 and J-04 and over 4,700 linear feet of waterways for Build Alternatives J1-01 and J1-04." The difference is due to a long portal from the MD 198 Alternative under the J1 alignments, "which would traverse the Little Patuxent River and its tributaries" (page 4.11-16).

4 The federal [regulations for environmental impact statements](#) indicate the following about discussing financial benefits/impacts:

§1502.16 Environmental consequences.

(a) (10) Where applicable, economic and technical considerations, including the economic benefits of the proposed action.

(b) Economic or social effects by themselves do not require preparation of an environmental impact statement. However, when the agency determines that economic or social and natural or physical environmental effects are interrelated, the environmental impact statement shall discuss and give appropriate consideration to these effects on the human environment.

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Aesthetics, Visual Quality, Hazardous Materials, Noise, Vibration, and Land Use. For example, the impacts to 12 of 14 parks will occur in EJ communities; 80% of land parcels affected would be in EJ communities; and 99% to 100% of severe vibration and noise impacts would occur in EJ communities (see pages 4.5-11, 4.5-15 and 4.5-16 of the DEIS).

The DEIS is not required to make a comparison between the SC Maglev project and existing rail service. However, the Commission notes that the recently released DC-MD-VA regional transportation plan makes no reference to SC Maglev as part of the solution to the region's rail issues. Options for upgrading existing rail services would provide better transit for the public, but also would create more sustainable job creation and economic development potential. The Commission questions the supplemental information provided by the project sponsor in April 2021 as insufficient to justify the economic benefits claim.

After completing a detailed review and evaluation of the DEIS, the Patuxent River Commission recommends the NO BUILD ALTERNATIVE.

The federal and state agency representatives, representatives of Anne Arundel County and Prince George's County, one of the Commission's soil conservation district representatives, and the Commission's business, development, extension and watermen representatives, abstained from voting on this issue.