SCHOOL OF LAW

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December 1, 2011

Texas Department of Transportation
Corpus Christi District
Attn: Victor Vourcos
1701 S. Padre Island Drive
Corpus Christi, TX 78416
Victor.Vourcos@txdot.gov

Re: Corpus Christi Harbor Bridge Project

Dear Mr. Vourcos :

Citizens for Environmental Justice (CFEJ) appreciates the opportunity to submit these comments on the U.S. 181 Harbor Bridge Project, Draft Coordination Plan, and scoping presentation. We look forward to continued involvement in the Harbor Bridge project. Our comments focus on three issues: (1) the need to prioritize environmental justice and community considerations, (2) the resulting need to establish a more robust and transparent public participation process, and (3) the need to provide additional public outreach and obtain further public input before finalizing the project goals, measures of effectiveness, alternatives, and mitigation measures.

Addressing Environmental Justice and Community Issues Should be a Priority for this Project.

As the Texas Department of Transportation (TxDOT) and Federal Highway Administration (FHWA) are no doubt aware, this project will directly affect historic, minority and low-income communities. According to the 2000 Census, nearly 83% of Hillcrest and Dona Park area residents are Hispanic/Latino or Black, and roughly 71% of residents have a household income of less than $35,000 a year. In the TC Ayers Park area, nearly 84% of residents are Hispanic/Latino or Black and some 80% of residents have a household income of less than $35,000. The average median income in these neighborhoods was around $19,000 and $13,400 respectively.

The Corpus Christi ship channel communities are already clearly overburdened environmental justice ("EJ") communities. For example:

- The area was on TCEQ's Air Pollutant Watch List for over 10 years due to excessive ambient levels of benzene. While average benzene levels have come down in recent years, there are still events at the facilities that cause elevated benzene levels of concern.

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- Particle emissions, including coke dust, from area facilities regularly blow onto neighbors properties.
- Several of the facilities directly adjacent to the Ship Channel communities use and store highly toxic hydrogen fluoride, and the area has the highest national rate of hydrogen fluoride use. A release of hydrogen fluoride into adjacent neighborhoods would likely cause numerous fatalities. At least one facility along the Corpus Christi Ship Channel has an accident related to hydrogen fluoride in 2009.
- The Ship Channel communities experience elevated noise levels, lights, and vibrations from the industrial and port facilities and from IH37.
- There is a large, shallow benzene groundwater plume that extends under the industrial facilities to the West of the Hillcrest neighborhood and into the first couple of blocks of the neighborhood.
- The Dona Park neighborhood has been contaminated with heavy metals. ASARCO, Encycle, and the Texas Commission on Environmental Quality have investigated and remediated yards in the neighborhood at least four times over the past seventeen years.
- There are additional known sites of soil and groundwater contamination in these communities.

As mentioned in *FHWA Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, the FHWA should take into account the cumulative adverse impact to human health and the environment, and interrelated social and economic effects, resulting from: air, noise, and water pollution, soil contamination, destruction or disruption of man-made resources, destruction or diminution of aesthetic values, vibration, and increased traffic congestion, in addition to any other negative effects. *Id.* at p. 2-3.

The proposed project will impact all of the neighborhoods along the Corpus Christi Ship Channel, including Hillcrest, TC Ayers Park, Dona Park, and Academy Heights. One of the stated purposes of the project is to promote expansion of the Port and to spur economic development in the area. Specifically, the Coordination Plan notes that raising the Harbor Bridge will allow unobstructed access to the Ship Channel for larger vessels, "in particular crude oil tankers." Coordination Plan, p. 8. These larger vessels will increase air pollution along the ship channel, and will likely increase actual emissions from the refineries to which the crude oil is shipped. In addition, expansion of the Port itself is likely to lead to increased air emissions.

The actions that TxDOT and FHWA take in locating and designing the Harbor Bridge project will, therefore, directly affect the Ship Channel neighborhoods. The Red, Orange and West options, however, are currently the only ones that have EJ as a design constraint. The Green, Blue and Tunnel options are listed as not having any EJ issues as design constraints. EJ issues should be considered for all of these alternatives. As noted above, one of the stated goals of the project is to promote Port expansion and spur economic development. Meeting these goals will have environmental and community impacts for all of the neighborhoods along the Ship Channel. The environmental and community impacts, full range of potential alternatives, and extensive mitigation measures need to be

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considered for this project in light of the environmental justice impacts on all of the Ship Channel communities.

TxDOT and FHWA should establish a Robust, Open, and Transparent Public Participation Process Incorporating Context Sensitive Solutions.

There does not appear to be broad understanding in the ship channel neighborhoods that the Harbor Bridge project and decisions regarding alternatives are moving forward. Due to the history of the project and prior delays, it seems that many in the community are unaware that decisions about the project and how it will affect their community are currently being made. Further, many in the community are frustrated because of past interactions with government agencies and are skeptical that their input matters.

While we understand that TxDOT is attempting to hold meetings in the community to discuss the project, we are concerned that those efforts may not be reaching many in the community. TxDOT and FHWA should use ideas from FHWA's Context Sensitive Solutions (CSS) and Community Impact Assessment programs, and bring together stakeholders surrounding the Harbor Bridge project to envision alternatives and analyze effects, including impacts to the Ship Channel communities. Such outreach could include:

- Conducting community surveys using surveyors trusted by the community;
- Completing a community impact assessment profile (see, FHWA's website for details, www.ciatrans.net/);
- Using mobile kiosks placed in the community to explain the process, the alternatives and goals already identified and to allow submission of ideas for additional goals, alternatives or other considerations;
- Visual imaging and computer simulations to demonstrate the impacts of various project alternatives; and
- Integrating land use and community development concerns as central to the project.

In addition, TxDOT and FHWA should make sure that the Harbor Bridge process is coordinated with current City, EPA, and community efforts resulting from EPA's environmental summit to address environmental justice concerns in the project area.

The Statement of Need and Alternatives and Mitigation Options Should be Expanded and Should Not be Finalized Until After Further Public Process.

FHWA's website notes that the agency is committed to advancement of Context Sensitive Solutions (CSS) nationwide. www.fhwa.dot.gov/context/index.cfm. As stated in the description of the CSS process, the "statement of purpose and need under the CSS process is reflective of not only a transportation needs assessment, but also of a statement of environmental values, and community values." The current statement of need includes promoting the expansion of the Port and spurring economic opportunity. The statement of need should be expanded to also include addressing the environmental justice and community development concerns of the ship channel neighborhoods,

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including Hillcrest, TC Ayers Park, Dona Park and Academy Heights. These concerns should be fully explored through the public participation process before they are finalized.

In addition, the proposed alternatives should include additional options to the extent these options better address environmental and community concerns. CEQ regulations require the agencies to "rigorously explore and objectively evaluate all reasonable alternatives." 40 CFR §1502.14. This is particularly true when, as here, some of the alternatives would impact section 106 or 4(f) properties. 16 U.S.C. §470f; 49 U.S.C. §303. It appears, however, that some alternatives that might address some community concerns have not been considered, such as possible routes between the West and Red alternatives. The final list of alternatives should not be selected until there is a more robust process to engage with residents of the ship channel communities, to consider additional alternatives, and to understand the effects of the various alternatives on the future development and environmental health of the neighborhoods.

As FHWA's EJ Best Practices guidebooks states:

> Ensuring the participation of traditionally underrepresented communities in the transportation planning process allows communities to identify the benefits and burdens associated with the proposed activity, and suggest alternatives to mitigate impacts based on their concerns. This input helps transportation agencies comply with another core EJ principle – avoid, minimize, or mitigate disproportionately high and adverse impacts. As demonstrated though context-sensitive approaches, the most effective community engagement processes incorporate a broad range of community input long before planning and project-level decisions are made.
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> www.fhwa.dot.gov/environment/environmental_justice/resources/guidebook. Chap. 2, p.1.

The full scope of environmental justice and community considerations cannot be known until there is a more robust process for gathering input from the affected neighborhoods. The analysis should include consideration of: (1) air quality and health impacts of the highway itself and of the increased industrial activity that raising the bridge is designed to promote, (2) the viability of any pockets of neighborhood that would be left after construction, (3) safety issues such as truck routes through the neighborhood and evacuation routes in case of industrial emergency, and (4) the likelihood that residents of communities along industry fence lines will experience greater noise and air pollution, a diminution on aesthetic values, and more traffic in the neighborhood.

Likewise, the agencies should broadly consider creative mitigation options. These options should be developed in consultation with the affected communities and could include using the highway placement to create a green buffer between ship channel industry and impacted communities and considering recent dispersion modeling studies related to the geographic range of motor vehicle highway emissions to create a green buffer along the highway itself.

Conclusion

The Harbor Bridge project presents a unique opportunity for TxDOT and FHWA to work with other state, federal, and local agencies, as well as the affected communities to develop a project that not only

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serves the areas transportation needs, but also addresses environmental injustice and responds to community needs.

We, therefore, ask TxDOT and FHWA to:

1. Conduct public outreach and then schedule a meeting with the U.S. Environmental Protection Agency (EPA) for the agencies to explore with the affected communities how the project will affect: (1) community and Environmental Justice issues, (2) EPA's workplan for Corpus Christi, and (3) air quality;

2. Use the planned Environmental Justice Interagency Working Group meeting in Corpus Christi this Spring to explore the Harbor Bridge project and creative ways federal, state and local governments and agencies can interact and use the Harbor Bridge project to mitigate the excessive environmental burdens on Corpus Christi Ship Channel communities;

3. Use ideas from the FHWA CSS process and other creative outreach methods to truly engage the impacted communities in exploring options, impacts and mitigation;

4. Leave open the decisions as to the project goals, alternatives, and impacts until a more robust public process can be completed; and

5. Consider unique and creative mitigation options to address the specific environmental justice and community development concerns related to this project.

Thank you for your consideration of these comments and we look forward to continuing to work with you. Should you have any questions regarding these comments, please contact Kelly Haragan at (512) 232-2654.

Sincerely,

Rodrigo Cantu
Student Attorney

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