



March 22, 2018

Secretary Matthew A. Beaton, EOEEA
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Re: EEA No. 14346 Draft Supplemental Environmental Impact Report, South Coast Rail Project
Phase 1 – sent by email

Dear Secretary Beaton and Ms. Fox,

Thank you for the opportunity to comment on the Draft Supplemental Environmental Impact Report (DSEIR) for Phase 1 of the South Coast Rail (SCR) project. Public Employees for Environmental Responsibility (PEER) is a Washington D.C.-based non-profit, non-partisan public interest organization concerned with honest and open government. Specifically, PEER serves and protects public employees working on environmental issues. PEER represents thousands of local, state and federal government employees nationwide; our New England chapter is located outside of Boston, Massachusetts. PEER has been involved in reviewing the SCR project since 2002.

Description of proposed project. The DSEIR is proposing to adopt a so-called “phased approach” to provide commuter rail service to the South Coast region: Phase 1, the Middleborough Secondary Alternative, and Phase 2, the Full Build scenario, which would be the Stoughton Alternative through the Hockomock Swamp. According to the Massachusetts

Department of Transportation (MassDOT), this new phased approach will: 1) cost the same amount as the Stoughton Alternative alone; 2) bring service eight years earlier than the Stoughton Alternative (by the year 2022, instead of 2030); 3) provide a one-seat ride from Fall River and New Bedford to Boston; 4) provide over 40% of the ridership benefits of the Full Build; and 5) have far fewer environmental impacts and permitting challenges than the Full Build. Phase 1 would extend service through the existing Middleborough/Lakeville line using diesel-powered trains to New Bedford and Fall River. Specifically, it would reconstruct 17.3 miles of New Bedford Main Line and 11.7 miles of Fall River Secondary, upgrade 7.1 miles of existing Middleborough track, construct two new layover facilities, and construct six new stations.

MEPA versus NEPA. MassDOT views Phase 1 service as an “interim service” until the Full Build service along the Stoughton route can be provided, claiming that Phase 1 contributes to many of the Project goals.¹ However, it appears that MassDOT is only examining the impacts associated with Phase 1 of the Project under the Massachusetts Environmental Policy Act (MEPA). With regards to the National Environmental Policy Act (NEPA), MassDOT states:

For the Project to proceed to construction it will be necessary for MassDOT to obtain a permit from the U.S. Army Corps of Engineers (USACE) for the discharge of dredged or fill material in waters of the United States under Section 404 of the Clean Water Act. This required the USACE to conduct a federal environmental review in accordance with NEPA. The USACE and MEPA agreed to coordinate the environmental review for the Project. As the lead federal agency for the environmental review pursuant to NEPA, the USACE prepared a federal Environmental Impact Statement (EIS), which MassDOT reviewed and adopted as its state-required Environmental Impact Report (EIR).... To date, the USACE has not issued the Record of Decision that will complete the NEPA process.²

MassDOT is silent on the USACE’s plans to prepare a Draft Supplemental Environmental Impact Statement (DSEIS) under NEPA for this new phased approach. In fact, MassDOT states, “The document also provides an update on the total impacts of Phase 1, and the cumulative impacts of Phase 1 and the SGR projects. This DSEIR does not re-analyze those elements of the Project included in the FEIS/FEIR analysis that remain unchanged.”³ This project cannot proceed without this federal environmental analysis, and PEER respectfully requests that MassDOT explain when the DSEIS will be released.

Independent utility. MassDOT claims that Phase 1 has independent utility from the Full Build project.⁴ PEER assumes that MassDOT stresses this point in an effort avoid examining the impacts from both Phase 1 of the proposed project, and the Full Build. A project has independent utility if it is a stand-alone project, and serves a distinct purpose or function. Under NEPA, the term “unconnected single actions” describes projects that have independent utility. Specifically, 40 CFR § 1508.25(a)(1) requires that the scope of an EIS include the impacts from all connected actions. Actions are connected if they:

¹ DSEIR, p. 2-2

² DSEIR, p. 1-5 through 1-6

³ DSEIR, p. 1-3

⁴ DSEIR, p. 8-6

- (i) Automatically trigger other actions which may require environmental impact statements.
- (ii) Cannot or will not proceed unless other actions are taken previously or simultaneously.
- (iii) Are interdependent parts of a larger action and depend on the larger action for their justification.

The ACOE considers a project to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

In this case, MassDOT argues that Phase 1 has independent utility, and PEER agrees. As we stated in our comments on the Notice of Project Change (NPC), the Middleborough Alternative stands on its own as a viable project. In this case, the Middleborough Alternative would satisfy the Corps' basic project purpose of "more fully meet[ing] the existing and future demand for public transportation between Fall River/New Bedford and Boston, Massachusetts," and therefore is a viable project in and of itself. The two phases are not interdependent, and Phase 1 does not depend on the Full Build (or vice versa).

However, the fact that Phase 1 has independent utility does not relieve MassDOT from examining the impacts from Phase 1 *and* the Full Build. Under NEPA, an EIS must include all cumulative impacts of other proposed actions which have common timing or geography. As stated above, 40 C.F.R. § 1508.25(a)(1) states that an EIS must consider actions which: 1) are connected; 2) automatically trigger other actions which may require an EIS; and 3) are interdependent parts of a larger action and "depend on the larger action for their justification." Under MEPA regulations, the proponent of a project must:

consider the entirety of the Project, including any likely future Expansion, and not separate phases or segments thereof. The Proponent may not phase or segment a Project to evade, defer or curtail MEPA review. The Proponent, any Participating Agency, and the Secretary shall consider all circumstances as to whether various work or activities constitute one Project, including but not limited to: whether the work or activities, taken together, comprise a common plan or independent undertakings, regardless of whether there is more than one Proponent; any time interval between the work or activities; and whether the environmental impacts caused by the work or activities are separable or cumulative.⁵

Therefore, despite the fact that Phase 1 has independent utility, MassDOT must examine the impacts from both the Phase 1 and the Full Build scenarios if it persists in claiming that the Full Build will ultimately be built.

Coupling the two projects would result in an unpermittable project: The extraordinary costs and environmental impacts associated with the Stoughton Alternative/Full Build of the proposed project *alone* are unpermittable. Under NEPA, an EIS must include all cumulative impacts of other proposed actions which have common timing or geography. PEER has outlined the significant impacts resulting from bisecting the Hockomock Swamp Area of Critical Environmental Concern (ACEC) (the proposed Stoughton Alternative) in many of our previous comment letters, and it is unnecessary to repeat those facts here. Suffice it to say that wetland

⁵ 301 CMR 11.01(2)(c)

impacts associated with the Stoughton Alternative would have cause or contribute to significant degradation of waters of the United States, and as such would be unable to legally obtain a Section 404 of the Clean Water Act permit. If MassDOT continues to intertwine these two phases, neither would be permissible. In other words, by coupling the two phases, MassDOT would be rendering the permissible Phase 1 unpermissible due to the cumulative impacts with the Full Build.

MassDOT's rationale for doing both projects is flawed. MassDOT proposes this two-phase process because it has suddenly determined that “the timeline for implementing service was significantly longer than originally anticipated,”⁶ and that this delay will cause the cost of the Project to continue to increase with inflation.⁷ MassDOT also states that the overall purpose of the Project remains unchanged, and that Phase 1 will “avoid and minimize wetlands impacts, and ... reduce overall project costs by starting construction sooner.”⁸ Most importantly, however, MassDOT states, “[t]he Phase 1 Project will still help address transportation deficiencies in the South Coast Region of Massachusetts, and help to more fully meet the existing and future demand for public transportation between Fall River and New Bedford, and enhance regional mobility.”⁹ In fact, MassDOT touts the “redundancy and resiliency” of having two lines rather than one:

The likelihood of barriers to service in the Full Build is even greater since the Stoughton Line joins the Northeast Corridor (NEC), a high frequency line with various complicated service conditions. By providing a permanent alternative to bypass these potential service obstacles from stations in the Southern Triangle, the MBTA service from New Bedford and Fall River could recover from a service interruption far more quickly than it could without the improvements associated with the phased service. In addition, because the Phase 1 route passes through fewer flood-prone areas than the Full Build route, it will provide resiliency in the event of extreme weather events.¹⁰ By having a permanent alternative route to use in those situations, MassDOT increases the level of resiliency in the corridor to a level that is warranted and appropriate.¹¹

Basically, MassDOT is arguing that Phase 1 of the Project: 1) has independent utility; 2) can be built more cheaply and quickly than the Stoughton Alternative; 3) has far fewer environmental impacts; 4) meets the stated project purpose; and that 5) Phase 2, the Full Build, provides “redundancy.” MassDOT states:

The Phase 1 service will be practicable based on the Section 404 Permit definition: “capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purpose.” Similarly, it will meet the overall Project purpose “to more fully meet the existing and future demand for public transportation between Fall River/New Bedford and Boston, Massachusetts, to enhance regional mobility.”¹²

⁶ DSEIR, p. 1-2

⁷ Id.

⁸ Id.

⁹ DSEIR, p. 1-5

¹⁰ PEER would be remiss if it did not point out that building in “flood-prone” areas like the Hockomock Swamp given the accelerated extreme weather events caused by climate change is both short-sighted and ill-advised.

¹¹ DSEIR, p. 2-2

¹² DSEIR, p. 2-2

MassDOT also states:

The Massachusetts Department of Transportation's (MassDOT) stated purpose of the implementation of South Coast Rail (SCR) Phase 1 (the Project) is consistent with the Full South Coast Rail Project, as documented in the Final Environmental Impact Statement (FEIS)/ Final Environmental Impact Report (FEIR) released in September 2013 ... This purpose is to meet the existing and future demand for public transportation between Fall River/New Bedford and Boston, Massachusetts, to enhance regional mobility while supporting smart-growth planning and development strategies in affected communities. Phase 1 allows MassDOT to serve these objectives in a timelier manner than would be possible if service was delayed until the completion of the Full SCR Project.¹³

And the ridership is also suddenly palatable:

Even with limited service and fewer stations than provided in the Full Build, Phase 1 is expected to capture a substantial portion of the projected ridership for SCR in the South Coast region.¹⁴

PEER believes that Phase 1 sounds suspiciously like the least environmentally damaging practicable alternative (LEDPA).¹⁵ As such, there is no need to build the second phase of this project, the Stoughton Alternative.

The history of the project. The SCR Project has been studied for more than 25 years. In the DSEIR, MassDOT provides an extremely truncated history of this project. MassDOT states that in 2002, an FEIS/FEIR prepared by the MBTA concluded that the Stoughton Alternative was the preferred route. Planning was delayed until 2007, and MassDOT began public review of the project under MEPA, concurrent with the USACE's public scoping process under NEPA, in 2008. The Final EIS/R (FEIS/FEIR) was issued in September 2013. MassDOT filed a Notice of Project Change (NPC) on March 22, 2017, describing the phased approach to Project implementation.

What MassDOT neglected to explain was the sordid history of this project prior to 2002. When MBTA first proposed the Stoughton alternative in a 1990 feasibility study, the concept was quickly swatted down by a state planning body. The Joint Transportation Planning Group of the Southeastern Municipal Planning Organization (JTPG) bluntly criticized MBTA for not exploring options outside the Hockomock. JTPG commented that the project seemed to be driven by representatives from Fall River hoping to attract tourists from Boston, and noted that MBTA officials could find "no reliable evidence for economic effects other than the effects on the housing market." The planning body concluded that the benefits of such a commuter rail were "insignificant." MBTA was sent back to the drawing board to create a more thorough analysis. Five years later, the MBTA submitted an Environmental Notification Form (ENF) on the project. The ENF identified four possible alignments for the new rail: the Attleboro Alternative, the Stoughton Alternative, the Middleborough Alternative, and enhanced bus. In this document, the preferred route for the commuter line was known as the Attleboro Alternative. The Attleboro

¹³ DSEIR, p. 13-1

¹⁴ DSEIR, p. 2-67

¹⁵ Remember, there is no requirement that the LEDPA be the applicant's favorite alternative. So long as it is the least environmentally damaging practicable alternative, it is the only one that can be permitted.

Alternative avoided the Hockomock, and MBTA sang the praises of its high ridership, reasonable costs, competitive travel times, and, significantly, lower environmental impacts than the Stoughton Alternative. Not only did the MBTA's ENF recommend pursuing the Attleboro Alternative, but it repeatedly pointed out the difficulties and severe environmental impacts associated with the Stoughton Alternative. Due in large part to these overwhelming environmental concerns, the MBTA settled on the Attleboro Alternative as its first choice.

The Attleboro choice raised the ire of citizens in the affected communities of Attleboro, Norton, and Taunton, who feared that a train line would interfere with local traffic and decrease property values of houses along the line. Soon the region's influential congressmen were weighing in on the issue. In August of 1996, the Legislature essentially overruled MBTA's ENF by ordering the MBTA to "rethink" their study and review other alternatives for rail construction. Later, in a discussion of the history of the proposed New Bedford/Fall River rail line, MBTA admitted that these communities raised "a number of local concerns" and that "these concerns were also expressed by state legislators ... in response, the MBTA stopped work on the project in January of 1996." The legislature had spoken, and MBTA received the message loud and clear: the Attleboro Alternative, while less environmentally damaging, would be less of a political headache.

In 1997, MBTA and its consultant, VHB (the very same consultant who prepared the DSEIR) reported that the Attleboro alternative would "result in the highest impacts to environmental resources," thus giving them an excuse to eliminate the Attleboro alternative from consideration. But apparently some state representatives were not going to take any chances. In October of 1997, 16 legislators wrote to then-Governor Paul Cellucci, expressing their interest in the project. Their letter went on to say:

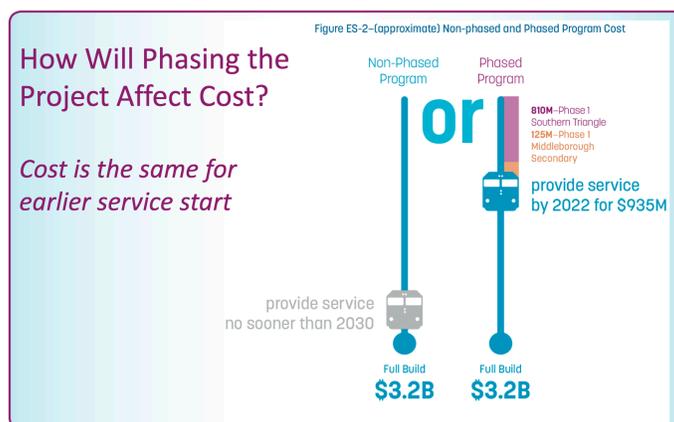
...we are happy to inform you of an agreement reached by the undersigned legislators on a choice for the rail route to Taunton, Fall River and New Bedford. As you can see from the enclosed legislative language, for which we shall seek enactment, the so-called "Attleboro Route" is specifically excluded once and for all. The final path which we are supporting is the so-called 'Stoughton Route.' ... the MBTA is directed to cease all attempts to provide this service by way of the "Attleboro Route, so called." Section 2J: 6005-1962 is hereby amended as follows: For the extension of the commuter rail service to New Bedford and Fall River...the funds provided by this section shall be used for engineering and environmental studies and for permitting and constructing the Stoughton Extension through the municipalities of Stoughton, Easton, Raynham, and Taunton.

On November 15, 1999, Secretary Durand said both the Attleboro and Stoughton alternatives were feasible and that the "environmental impacts of the Stoughton Alternative are, on balance, greater than those of the other alternatives, including Attleboro." The Middleborough Alternative, the one that is before us today, was not pursued because it did not meet the ridership criteria. Then the Massachusetts Legislature stepped in again: they approved the transportation bond on June 30th, 2000, containing the following language: "The Massachusetts Bay Transportation Authority shall use an extension of the Stoughton commuter rail route through the municipalities of Stoughton, Easton, Raynham and Taunton in order to provide commuter rail service to New Bedford and Fall River."

PEER's point is this: For 25 years, the Commonwealth has been spending hundreds of millions of dollars on this project. The original route – determined through an unbiased process - was through Attleboro. But politics reared its ugly head, and Stoughton became the most politically

palatable – albeit most environmentally damaging and costliest - alternative. For more than 15 years, the U.S Environmental Protection Agency (EPA), environmental groups, citizens, and PEER have been telling MassDOT that the Stoughton Alternative was too expensive and too environmentally damaging, and that alternatives such as Middleborough and the rapid bus should be examined. Middleborough, which was always the cheapest and least environmentally damaging of the routes, was dismissed early on. And here we are, in 2018, and suddenly the Middleborough Alternative is practicable. It is difficult to have confidence in MassDOT and its consultants, as it appears that politics have been driving this train all along. MassDOT and VHB have made this environmental review process a sham. While PEER is pleased that the Middleborough Alternative is viable once again, we are frustrated at the length of time it took to get here, and the money wasted.

The cost of the project. PEER is baffled as to how Phase 1 of the Project will not add to the overall cost of the Full Build. A graphic, provided in MassDOT’s community outreach presentation, shows that the Project will cost \$3.2 billion, with or without the construction of Phase 1. Phase 1 reconstructs 29 miles of track, upgrades 7.1 miles of existing track, constructs two new layover facilities, and constructs six new stations. While many of these track improvements can be used in the Full Build, some of the costs (such as those associated with the new Pilgrim Junction station and the relocated East Taunton station) cannot. The estimated cost for the Pilgrim Junction station alone is between \$17.4 and \$24.9 million.¹⁶



MassDOT contends that the savings comes from building eight years earlier; however, it is inconceivable that costs will not continue to rise, and if the Full Build is ultimately pursued, that it will not be more expensive to have both routes constructed and in operation.

Environmental concerns. PEER has several environmental concerns regarding Phase 1: specifically, the failure to consider induced traffic in the air pollution/greenhouse gas analysis, and protection of vernal pools. First, the DSEIR – once again – does not take into account induced traffic. Specifically, if cars are taken off the road and traffic congestion eases, more cars start using the roads. This is a known effect, and many peer-reviewed articles discuss this phenomenon. MassDOT must take induced traffic into consideration when analyzing VMT and air pollution.

¹⁶ DSEIR, p. 2-38

Second, improvements to the Middleborough track requires construction within 100 feet of nine vernal pools. MassDOT states:

This work is not anticipated to substantially change habitat quality (microclimate) as clearing will be limited to small areas in the upland and will preserve vegetation between the work area and the limit of the vernal pool. The construction will not affect the ability of amphibians to move between vernal pools, as it will not change the existing ballast and track or add new barriers to movement.¹⁷

As we have told you before, in April 2002, PEER conducted a water quality analysis that MBTA neglected to perform, comparing vernal pools in the Hockomock to similar pools near existing rail lines. PEER examined water quality in six vernal pools: three adjacent to the active MBTA Attleboro rail line in Sharon, Massachusetts, and three adjacent to the abandoned MBTA right-of-way in the Hockomock Swamp in Easton, Massachusetts. The analysis tested the MBTA's hypotheses that there are no adverse impacts associated with an active diesel rail line. The results show that the dissolved oxygen in the vernal pools adjacent to the active rail line was significantly lower than similar pools in the Hockomock. Dissolved oxygen is necessary to support aquatic life; therefore, low dissolved oxygen is extremely detrimental to animals found in vernal pools. The statistical analysis also showed that the difference in dissolved oxygen between the two sites is not due to any other factors examined (i.e., water temperature, distance to rail bed, depth of the vernal pool, or pH). The presence of the rail line itself is the most likely culprit. MassDOT and its consultants should ensure that these nine vernal pools are not adversely impacted from hydrocarbons and other pollutants from the diesel trains.

In addition, MassDOT fails to consider protecting these vernal pools from herbicide spraying. MassDOT states that in order to protect water quality and state-listed species, it will:

designate the portion of the corridor adjacent to Thatcher's Pond in Taunton as a No-Application [of herbicides] sensitive area. In addition, in accordance with the DFA requirements, the following will be designated as No-Application zones: Areas within 10 feet of a surface water or wetland; Areas within 50 feet of a private drinking water supply; Areas within 100 feet of a surface water public water supply; and Areas within 400 feet of a public water supply well (Zone 1).¹⁸

PEER requests that this No-Application zone also be afforded to the vernal pools.

What MassDOT used to say about the Middleborough Alternative. It is baffling how MassDOT suddenly considers the Middleborough Alternative practicable. PEER agrees that Middleborough is indeed practicable, and in fact the LEDPA. We had urged MassDOT to consider Middleborough for years. However, we respectfully request an explanation as to how this happened – perhaps if we can understand why MassDOT changed its mind so drastically, we can prevent future delays and expenditures on other projects.

In 2009, MassDOT stated that the Middleborough Alternatives (2, 2A and 2B) “had consistently less favorable results because they had inferior run times and lack ... Orange Line connectivity. Alternative 2, Option 2B, also has inferior headways to any of the other alternatives causing it to

¹⁷ DSEIR, p. 9-28

¹⁸ DSEIR, p. 9-48

have less demand than Alternative 2, Option 2A... Alternative 2B consistently produced the least favorable travel demand results of all of the options.”¹⁹

In 2011, MassDOT said that several Middleborough Alternatives were:

not considered practicable due to ... low projected ridership numbers, high cost and significant construction-related disruption to the existing public transit system and to the City of Quincy. The Middleborough Full Alternative would also add multiple trains in the morning and evening peaks to South Station operations, resulting in operational impacts at South Station ... resulting in extensive delays to the operation of the alternative and system-wide impacts to the rail network. The operational impacts would render the Middleborough Full Alternative not practicable for this reason as well.²⁰

The so-called Middleborough Simple Alternative was said to “not meet the minimum capacity requirements of MBTA for quality of service and the ridership would result in substantially lower projections than that of other alternatives. Because of its low projected ridership this alternative was not considered practicable.”²¹

In 2013, MassDOT claimed that Middleborough was currently unable to handle any more growth due to full parking lots, and that communities were “reluctant to increase parking lot capacity.”²² Table 3.2-1 provided in the FEIR showed that Middleborough was already over capacity (see Table, below).

Table 3.2-1 Ridership on Providence, Stoughton and Middleborough Rail Lines

Line	AM Peak Passengers	AM Peak Seating Capacity	AM Peak Utilization*
Providence	11,017	8,532	129%
Stoughton	2,771	3,558	78%
Middleborough	3,743	3,696	101%

Source MBCR Ride Check December 2006, MBTA South Side Equipment Schedule
 * Assumes all passengers continue to South Station, Stoughton, Providence/Stoughton and Middleborough/Lakeville Lines.

When commenters suggested building another station, MassDOT refused to consider it. Now, MassDOT proposes to build the new Pilgrim Junction parking lot, slightly north of the existing Middleborough lot, to accommodate the revamped line and additional cars.

PEER is not suggesting that Middleborough is impracticable; rather, we are curious as to the sudden desirability of the Middleborough Alternative.

Conclusion. PEER agrees that the Middleborough Alternative is practicable, and indeed, is the LEDPA of all the train alternatives. We also agree that the Middleborough Alternative has

¹⁹ Appendix 3.1-C CTPS South Coast Rail Travel Demand Analysis Results Memo, p. 8 (February 2009)

²⁰ p. 3-25, USACOE DEIR/DEIS, February 2011

²¹ Id

²² p. 3-29 of FEIR (August 2013)

independent utility. However, by linking the Full Build/Stoughton Alternative to the Middleborough Alternative, MassDOT is rendering an otherwise permissible project unpermissible. We therefore urge MassDOT to drop the Stoughton Alternative once and for all.

Thank you for the opportunity to comment.

Sincerely,

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