

October 23, 2009

Beverley K. Swaim-Staley
Secretary
Maryland Department of Transportation

Chair
Maryland Transportation Authority

Item: Maryland Public Information Act-Federal Freedom of Information Act Request
Regarding Proposed Toll Rates for the Intercounty Connector and the Potential Impacts
of Those Toll Rates.

Request that the Maryland Transportation Authority Postpone Scheduled Hearings,
Extend the Public Comment Period, and Postpone Its Decision on ICC Toll Rates

Dear Secretary Swaim-Staley:

We submit this request under the Maryland Public Information Act (PIA), State
Government Article § 10-611 to § 10-628, and under the United States Freedom of Information
Act (FOIA).

The federal statute applies, we believe, because we are asking the Maryland Department
of Transportation (MDOT) to provide copies of information that it has generated, gathered,
analyzed or shared with respect to the Intercounty Connector (ICC). As you know, the ICC is a
federal-aid highway project, for which the federal government is providing roughly \$1 billion in
funding, and for which federal approvals and permits were sought and granted. In addition,
MDOT sought and was granted the federally delegated authority to act as the Federal Highway
Administration's co-lead agency in developing the federally mandated environmental impact
statement required under the National Environmental Policy Act.

On September 23, 2009, the Maryland Transportation Authority (MdTA) announced
proposed toll rates for the ICC, scheduled hearings on those proposed rates for October 28 and
29, and set a comment deadline of November 23.

The information we seek is necessary to help the public understand the impacts of the
proposed toll rates and the decision-making process through which MDOT and the MdTA have
arrived at the proposed toll rates. The agencies would enhance the potential for informed public
comment on the proposed toll rates and their impacts if they were to share this information in a
timely way and useful formats, and allow the public adequate time to review it.

We are concerned that the schedule set by MDOT and the MdTA creates the appearance
that the agencies are conducting this process merely as a *pro forma* exercise to justify a decision

that they already have made, rather than seeking and duly considering informed public comment on an action that may have profound impacts on the public.

We ask MDOT and the MdTA, therefore, to postpone the scheduled hearings or to schedule additional hearings, so that the public may have adequate time to review the information that the agencies provide in response to this request. We ask also that MDOT and the MdTA extend the comment period by at least 90 days to allow the public to review whatever information MDOT and the MdTA provide in response to this request.

This request for a 90-day extension assumes that MDOT and the MdTA will provide the requested information in a timely way – *ie.* the 30 days allowed under Maryland law – and in formats that facilitate analysis and public comment. This time frame should allow the public 60 days to review the information once MDOT and the MdTA provide it.

We ask also that the MdTA postpone its scheduled December 17 decision on the tolls by at least 60 days beyond the close of the extended comment period. This would allow the O'Malley administration and members of the General Assembly a reasonable amount of time to review and discuss public comment on the proposed toll rates and their potential impacts.

We are compelled to submit this request for several reasons.

1. The ICC toll rates currently proposed by the MdTA are significantly higher than the rates modeled as the baseline in the November 2004 Draft Environmental Impact Statement and the January 2006 Final Environmental Impact Statement published by the MDOT, the MdTA, and the U.S. Department of Transportation.

The proposed 2010 peak-hour toll rates are 25 to 75 percent higher than the 2010 baseline peak-hour toll rates that MDOT and the MdTA presented to the public and used to determine transportation and environmental impacts in the 2004 and 2006 environmental impact statements.

The proposed 2010 non-peak-hour toll rates are 33 to 100 percent higher than the 2010 baseline non-peak-hour toll rates that MDOT and the MdTA presented to the public and used to determine transportation and environmental impacts in the environmental impact statements.

The higher toll rates may have significant impacts on the various transportation benefits that MDOT and the MdTA have alleged that the ICC would provide. They may also affect a wide range of inter-related impacts including: traffic volumes and congestion levels on other roads; commuting times and other trip times; the mix of vehicles traveling the ICC and other roads; air pollutant emissions and disease effects; energy consumption and greenhouse gas emissions; accidents on other highways and local roads in the area; the cost of travel to area commuters and their families; and costs or benefits to local economies.

Yet to our knowledge, neither MDOT nor the MdTA has published any assessment of the potential fiscal, economic, transportation, environmental impacts, public health or public

safety impacts of charging these significantly higher rates in 2010 then increasing them over time.

2. The proposed ICC toll rates also appear to be significantly higher than the baseline rates that MdTA consultants used to generate toll revenue forecasts in 2006, 2007 and late 2008.

Based on those toll revenue forecasts, it appears that the MdTA did not plan to charge the high rates that it now proposes for 2010 until 2030. In other words, the MdTA appears to have accelerated its toll rate increases by two decades.

3. The proposed toll rates also appear to be significantly higher than the rates assumed in a ICC toll revenue forecast that the Maryland Department of Legislative Services (DLS) relied upon in fiscal analyses of the ICC late in December 2008 and early in 2009.

In keeping with Governor O'Malley's declared intent to make the state government more accountable and transparent, we ask MDOT to provide copies of the following public records at the earliest possible date:

Analyses of Potential Revenues and Expenditures

1. All analyses or forecasts of potential revenues that MDOT hopes or expects to generate through tolls on the ICC. This request applies to all analyses or forecasts that MDOT has generated itself, requested, contracted for, relied upon, or submitted to the U.S. Department of Transportation, the Maryland Department of Legislative Services, the Maryland General Assembly or any of its members, any other government agency or official, or any private entity.

Private entities include but are not limited to: parties considering purchasing ICC-related bonds or debt, firms evaluating or brokering debt issuances for the ICC; firms evaluating the State's debt rating, MDOT's debt rating or the MdTA's debt rating; and firms or individuals auditing the Maryland Transportation Authority's finances.

2. All analyses or forecasts of potential revenues that MDOT or the MdTA hope or expect to generate through tolls on all toll facilities in the Maryland Transportation Authority's network. This request applies to all analyses or forecasts that MDOT or the MdTA has generated, requested, contracted for, relied upon, or submitted to the U.S. Department of Transportation, the Maryland Department of Legislative Services, the Maryland General Assembly or any of its members, any other government agency or official, or any private entity, as defined above.
3. All toll revenue analyses or forecasts that MDOT and the MdTA relied upon to generate the revenue estimates that it published in the 2004 Draft Environmental Impact Statement and the 2006 Final Environmental Impact Statement.
4. All projected expenditures to operate, maintain, rehabilitate, improve or replace the ICC and all bridges and tunnels owned or operated by the MdTA.

5. All forecasts that MDOT or the MdTA has provided to the DLS, especially the forecasts on which the DLS relied in its late 2008 and early 2009 analyses of the potential fiscal impacts of canceling the ICC.
6. All correspondence, minutes, analyses or other documents produced, received, sent, relied upon or reviewed by you, your staff or MDOT or MdTA consultants in developing the proposed toll rates and the rationale that supposedly justifies them.
7. All correspondence, analyses or other documents shared by you, your staff or MDOT consultants with any private entities engaged in:
 - a. evaluating the ICC financial plan and updates submitted to the Federal Highway Administration;
 - b. evaluating the financial or legal soundness of debt issuances for the ICC; or
 - c. brokering or purchasing bonds issued for the purpose of financing the construction of the ICC.

Analyses of Potential Transportation Impacts

8. All analyses generated or reviewed by MDOT or the MdTA of the potential impacts of the currently proposed toll rates on the following transportation impacts:
 - a. Total Vehicle Miles Traveled in the ICC Study Area and in the Secondary and Cumulative Effects Area (SCEA) defined by MDOT and the MdTA in the 2004 Draft EIS and the 2006 Final EIS.
 - b. Vehicle Miles Traveled on the ICC, by vehicle class, in 2010, 2012, 2020 and 2030.
 - c. Vehicle Miles Traveled on other roads and highways, by vehicle class, in the ICC Study Area and in the SCEA, in 2010, 2012, 2020 and 2030. Where possible, please provide link-specific projections and classify roads by type.
 - d. Average Daily Weekday Traffic volumes and hourly traffic volumes on the ICC and other roads in the ICC Study Area and in the SCEA, by vehicle class, in 2010, 2012, 2020 and 2030. Where possible, please provide link-specific projections and classify roads by type.
 - e. Levels of Service on the ICC and other roads in the ICC Study Area and in the SCEA, in 2010, 2012, 2020 and 2030.
 - f. Critical Lane Volumes at all intersections modeled in the 2006 Final Environmental Impact Statement, as well as any others modeled by MDOT or the MdTA as part of any assessment of the ICC's impacts, in 2010, 2012, 2020 and 2030.

- g. Vehicle Hours of Delay on the ICC and other roads the ICC Study Area and in the SCEA, in 2010, 2012, 2020 and 2030.
- h. Trip times for all origin and destination pairs modeled as part of the 2006 Final Environmental Impact Statement or for any ICC toll revenue forecast conducted by or for MDOT or the MdTA, in 2010, 2012, 2020 and 2030.
- i. The number of weekday trips to and from Thurgood Marshall International Airport (BWI) from sites in the ICC Study Area, the SCEA and elsewhere, in 2010, 2012, 2020 and 2030.

Impacts of the Proposed Toll Rates on Area Commuters and the Local Economy

- 9. All analyses generated or reviewed by MDOT of the potential impacts of the currently proposed toll rates and of the tolls modeled in the 2006 Final Environmental Impact Statement on the following socioeconomic impacts:
 - a. The distribution, by income and place of residence, of people expected to travel any part of the ICC, in 2010, 2012, 2020 and 2030, with the currently proposed tolls and with the tolls modeled in the 2006 Final Environmental Impact Statement;
 - b. The financial impact on commuters and their families, and on their ability to invest in housing, food, health, education, and other needs; and
 - c. The local and regional economic impacts of residents paying tolls on the ICC rather than saving that money or investing it in the local economy.

For the purposes of this request, the term "public records" shall be construed as broadly as possible under § 10-611 and all applicable rules and regulations, and shall include, without limitation: documents, information, memoranda, correspondence, studies, reports, drafts, communications, records of communications, telephone message records, facsimile transmissions, data, analyses of data, computer records, electronic data or information compilations, electronic mail, recordings, tapes, maps, photographs and all other types of records that are in the custody, possession, or control of any office of MDOT or the MdTA, any related department or agency and any contractor working for MDOT or the MdTA.

In all possible cases, please provide these records in electronic formats that facilitate analysis, *eg.* in Excel or similar formats for quantitative data, rather than in PDF. While we know from past experience that MDOT and the MdTA generally prefer to provide electronic copy solely in PDF, we believe that the public interest would be better served if your agencies were to view the public as a full partner in the public decision-making process with the full right of access to public information developed or maintained using public resources.

For all records responsive to this request within the possession, custody or control of MDOT that the State chooses not to produce based on an exemption from disclosure, please prepare a privilege and/or exemption log describing, at a minimum: (i) the type of record withheld, (ii) the date(s) of creation of the record; (iii) the subject of the record; (iv) the identity of the author and all recipients of the record; (v) the names of all people, entities, and locations referenced in the record, and (vi) a detailed, written description of the basis upon which MDOT is withholding the record (e.g., claim of privilege or PIA required denial, etc.). Further, please produce redacted copies of all non-privileged or non-exempt factual material contained within such documents. If all or any part of this request is denied, we request that the State provide us with a written statement of the grounds for the denial.

We respectfully request that MDOT and the MdTA waive all fees in connection with this request pursuant to State Government Article § 10-621(e). The records requested will contribute significantly to public understanding of the proposed Intercounty Connector project and the governmental decision-making process.

If complying with some parts of this request will take longer than complying with other parts, please have your staff provide whatever information it can as soon as it can, and please have them explain to us as soon as possible when they plan to deliver the information we are requesting.

To save MDOT and the MdTA time, effort and money, we are listing in the attached Appendix, the relevant documents that we currently have on hand. The lack of clear, relevant information in these documents is in large part what compels us to submit this information request.

We look forward to receiving the requested public records promptly, or a decision about all of the requested records, within 30 days. Please direct any inquiries, notices or determination to us at:

Email: communityresearch@igc.org

Address: Community Research
9230 Saint Andrews Place
College Park, MD 20740.

Sincerely,

Greg Smith
Director
Community Research

Suchitra Balachandran
Director
Community Research

Stewart Schwartz
Executive Director
Coalition for Smarter Growth

Dolores Milmoie
Maryland Conservation Advocate
Audubon Naturalist Society

Appendix

ICC Traffic and Toll Forecasts and Environmental Impact Statements

“Ball Park” Revenue Estimates, Wilbur Smith Associates, July 15, 2003

Preliminary Traffic and Revenue Study – Inter-County Connector, Wilbur Smith Associates, September 2004

ICC Draft Environmental Impact Statement, Maryland Department of Transportation and U.S. Department of Transportation, November 2004

ICC Final Environmental Impact Statement, Maryland Department of Transportation and U.S. Department of Transportation, January 2006

Comprehensive Traffic and Revenue Study – Proposed Intercounty Connector, Wilbur Smith Associates, June 2006

ICC Revised Transaction and Revenue Estimates, Wilbur Smith Associates, August 3, 2007

Impacts of Updated Socioeconomic Forecasts on ICC Transactions and Revenue, Wilbur Smith Associates, February 1, 2008

System-Wide Traffic and Toll Revenue Forecasts

Traffic and Revenue Projections for the Maryland Transportation Authority, Vollmer Associates, June 3, 2004

Draft 2006 Traffic and Revenue Projection for the Maryland Transportation Authority, Vollmer Associates, September 13, 2005

FY 2006 Traffic and Revenue Projection for the Maryland Transportation Authority, Vollmer Associates, January 9, 2006

Preliminary Traffic and Revenue – I-95 Express Toll Lanes – Northern Terminus Study, Wilbur Smith Associates, August 2007

DRAFT - FY 2007 Traffic and Revenue Projection for the Maryland Transportation Authority, Vollmer Associates, January 9, 2007

Updated FY 2008 Traffic and Revenue Projection for the Maryland Transportation Authority, Stantec, August 1, 2007

MdTA Existing System Traffic and Revenue Forecast, Wilbur Smith Associates, August 29, 2008

FY 2009-2018 Traffic and Revenue Projections – Maryland Transportation Authority, Stantec, September 30, 2008