Submit the Following Comments

by email to: FEIS@purplelinemdÆcom

and via the US Postal Service to:

FEIS Comment
Maryland Transit Administration
Transit Development Delivery
100 S.E. Charles Street, Tower Two, Suite 700
Baltimore, MD 21201

Comments on the Environmental Impact Statement
For the Purple Line
Proposed by the Maryland Department of Transportation

Introduction

John M. Fitzgerald, Christine Real de Azua, Dedun Ingram and Center for Sustainable Economy (CSE) hereby offer the following comments on the Final Environmental Impact Statement (FEIS) for the proposed Purple Line Project. John M. Fitzgerald, Christine Real de Azua and Dedun Ingram are individuals residing in the area affected by the Purple Line Project whose interests will be harmed by the project in a number of ways: the project will diminish the quality and the extent of their use and enjoyment of their homes on Elm Street, the street paralleling that portion the proposed Purple Line Capital Crescent Trail, the trail which they use often for recreation and fitness, Elm Street, Leland Center and Rock Creek Parks and the species, services and features thereof. Fitzgerald and Real de Azua are also active members of Center for Sustainable Economy.
Center for Sustainable Economy is a non-profit advocate for the transition to an economy based on principles of social, environmental, and economic sustainability. CSE has active members who reside in and around the project area who will be harmed by the loss of aesthetic, historic, ecological, and economic resources of urban forests, streams, and open spaces. CSE also has an interest in protecting these green infrastructure elements for their benefits in reducing water quality management costs downstream and generating a host of ecosystem services of great benefit to surrounding communities.

The Maryland State Department of Transportation is planning to seek Federal and private funding to build and operate a light railroad across Montgomery and Prince Georges Counties just north of the District of Columbia. It would cross Rock Creek Park and negatively and permanently affect Rock Creek Park, several other parks, forests, migratory birds, and the Rock Creek watershed that contains a highly endangered species, the Hay's Spring amphipod. This small crustacean is a key part of the ground water and creek ecosystems, turning leaves into nutrients for other species. It is highly sensitive to water pollution of the sort expected to be generated by the construction and operation of the Purple Line.

The primary publicly stated purpose for building the Purple Line, and for routing over the path of a former railroad and a hiking and biking trail is to alleviate east-west traffic congestion and strengthen east-west transit between College Park and Bethesda. However, the unstated, underlying driving force for the proposal is to enable large-scale residential and commercial development at Connecticut Avenue and along the Capitol Crescent Trail mainly to Silver Spring and to provide those new residents with access to Bethesda that is easier than taking a walk, a bike, a bus, a pedal cab or motor cab or a new dedicated bus line. Any of these could cost much less and lead to less net pollution and risk to the communities affected.

The direct cost to taxpayers of the construction can be measured in millions of dollars and five years of interruptions. The indirect, unavoidable costs of construction and operation include the lost opportunities to pay within existing tax rates for projects that are already built, and for several already planned as well as the potential losses inherent in an undrafted contract with private partners.

Maryland has committed similar errors in recent years primarily driven by one major private developer and for which citizens are still paying in the form of higher taxes, lost opportunities and lost ecosystems. A prime example is the InterCountyConnector, as set out in Bethesda Magazine in September 2013, for which traffic and revenue have turned out to be far lower than projected, and for
which costs escalated from the initial estimate of $1 billion to as much as $4 billion including interest payments\(^1\)--payments which are still today draining the State’s Transportation Trust Fund.

In these comments we outline several fatal flaws in the Environmental Impact Statement for the Purple Line. The project proponent and the State may believe that the EIS standards need not be met due to an attempted waiver for similar projects in the 2012 Highway Act that has not yet been tested in court as applied to this project in particular. That waiver, however, does not waive the Federal and state requirements that such proponents comply with other laws and state fully, and without misleading or withholding, in any EIS or other such statements, all information relevant to government permits or funding. This EIS fails to meet that standard and places all agencies relying on it at risk.

Therefore, should the objections raised in these comments not be satisfactorily addressed in the near future, we will have to consider further action, beginning with a sixty days’ notice of the intent of coauthors to sue to uphold the laws affected and prevent harm to the resources, wildlife, and people that the Purple Line project puts at risk.

Main Points

1) There are serious flaws in the EIS, including the failure to disclose the presence of a highly endangered species, the Hay’s Spring amphipod, *Stygobromus hayi*, downstream in Rock Creek Park, which, through required interagency consultation by the Federal funding agency, and possible litigation by concerned citizens, including the coauthors of these comments, is likely to alter and/or delay and increase the cost of the project;

2) The EIS understates the extent and cost of the loss of tree canopy and natural green space and of its stormwater runoff and air and water pollution reduction, shade-providing, noise and wind buffering, and other environmental services.

3) The above-ground option for the Purple Line would result in the degradation of Parks, in violations of Section 4(f) Park Protections in the Transportation Act— that are beyond the legal limit of *De Minimis*; and in hazards to school children -- from Nursery through High School -- that are beyond cavalier.


\(^2\) Sources cited by the FWS article include:
4) Migratory Bird Treaty Act – Some potential impacts and potentially illegal bird kills are ignored.

5) The Environmental Compliance Plan is not included as it is not yet developed – Proposed zoning changes and ensuing development associated with the Line are also not covered. Therefore the impact of the actions cannot be assessed based on this EIS and the EIS is inadequate as an legal assessment or as a basis for prior informed consent or decision-making per se.

In addition:

6) Key elements of any binding contract between public and private partners for the construction and operation of the Line are obviously not yet available nor ready for inclusion in the "request for qualifications" that will be sent out and lead to a joint application for that Federal funding;

7) Many other elements of the environmental and economic performance that will be required by State and Federal law in order to obtain Federal and state funding, including the Compliance Plan, are mere guesses at this stage, while the numbers have been arrayed so as to cast the project in the best light, which barely made it over the Federal standard for such matches at an earlier stage; and

8) Many better alternatives for inner east-west flow improvements are available (yet not assessed fully) and the costs of pursuing this one opportunity would preclude all of those and many other worthy transportation projects meeting additional and more pressing needs at lower risk and lower cost.

Discussion of Main Points

1) The EIS admits an impact on wetlands but ignores key wetlands and a highly endangered wetlands-dependent species.

The EIS admits that a Section 404 Clean Water Act permit will be required due to the apparent impact on wetlands but appears to ignore the impacts on some wetlands such as Coquelin Run in Chevy Chase and completely omits the threat to a highly endangered species downstream.

The EIS does not disclose that a wetlands-dependent endangered species, the Hay’s Spring amphipod, has its only known population in and near Rock Creek. Rock Creek and its many tributaries to it, will have their sediment loads and pollutant loads increased for five years in all likelihood due to construction of the Purple Line. It is probable that Rock Creek’s sediment and
pollution loads will be increased to some extent for a considerably longer period.

Sediment and pollution were cited as primary threats to the endangered Hay’s Spring amphipod and a potentially more rare relative, Kenk’s amphipod, in the official Endangered Species Bulletin of the US Fish and Wildlife Service (which summarized scholarly articles and recent grants to the Maryland Department of Natural Resources for status surveys). See http://www.fws.gov/ENDANGERED/bulletin/2002/01-02/08-09.pdf; The report stated:

Obvious vulnerability comes from the narrow distribution in the specialized subterranean habitat, and threats come from potential groundwater pollution. The urban area surrounding the park poses potential risks due to toxic spills (such as oil and gas), nonpoint source inputs (such as fertilizers and pesticides), land disturbances, sewer leaks, and excessive stormwater flows that might adversely affect groundwater. Except for parklands, additional potential habitat where Hay’s Spring amphipod populations may have occurred in the District has largely been lost to development.

Another vulnerable species, Kenk’s amphipod (Stygobromus kenki), occurs in Rock Creek Park in two other springs and may be more rare than the Hay’s Spring amphipod.²

² Sources cited by the FWS article include:


Hubricht, L. and J. G. Mackin. 1940. Description of nine new species of fresh-water crustaceans with notes and new localities for other species.

Construction may cause rock fractures – allowing increased pollution of ground water downstream affecting the amphipod and possible leaks into the stations on the Metro Red Line

The 2009 letter in the appendices of the EIS, received from David Hayes of the DOI -- (the Regional Transportation Liaison, rather than the Deputy Secretary of the same name) notes that rock fractures from construction of the purple line could make leaks of water already occurring into the Red Line of the Metro system worse, leading to more shut downs in service or greater expenses for additional pumps, etc.

The potential problems brought on by increasing fractures in underground rock layers seemed not to be addressed in the Final EIS and it presents a serious risk not only on the Metro Stations the Purple Line is intended to serve but also to the Hay’s Spring amphipod which depends on clean ground water as a major part of its habitat. New fractures in rock formations along the train tracks would likely lead to the leaching of hazardous wastes near ground level at various sites along the right of way, as marked in the maps of the EIS, that may have to date been contained by uncompromised or un-cracked layers of rock. That may result in the pollution of bodies of water near the waste sites, such as the pond and stream on the Chevy Chase Country Club adjacent to the hazardous waste site at the dry cleaners at the junction of the trail and Connecticut Avenue. Ironically, that is the lot that is at the center of the complex of buildings that is driving the proposal to route the Purple Line through the Capitol Crescent Trail. Therefore, the residents of the site may share with the birds, fish, snails and amphipods that depend on this water the increased levels of hazardous air and water pollution stirred up by the construction of the Purple Line.

The law cannot permit an agency action to jeopardize any listed species. There is hardly a better definition of jeopardy to a listed species within the realm of likely impacts in or near the District than the impact on wetlands and water set out, however incompletely, in the EIS. This potential negative affect upon a listed species, and in this case, rising to the point of jeopardizing the continued existence of a listed species due to the impact on the only known population on earth, calls for a biological assessment by the action agency and a formal biological opinion in return from the FWS before any Federal funds can be expended or irretrievably committed, and similarly requires a formal incidental taking statement or permit before any non-federal action affecting the species may legally take place.

State listed species of concern such as the Appalachian Spring snail (category S2) may also be present in the affected area. There is also the possibility that other Federally – listed species may be present in the areas
affected, including downstream of the Purple Line route. All of these should be
determined not to be affected before the project proceeds without formal permits
addressing such species.

The EIS ignores the affirmative duty of the Federal agencies to enhance
the recovery prospects of the Hay’s Spring Amphipod if the project affects
the species.

Furthermore, we note that to the extent that the Purple Line builders and
operators rely upon Federal agency permits, actions or subsidies the standard of
care is not just to avoid jeopardizing the likelihood of recovery but that there is
also an affirmative duty to undertake actions that will be likely to lead to the
recovery of the species, including protecting areas where the species may be re-
introduced or may yet be found to have migrated in later status surveys. This
duty is not just for wide-ranging species such as wolves or anadromous fish, but
also for any listed species and has been found to exist and to protect listed
amphipods in the path of Federally-subsidized private actions. (See, Sierra Club
v. Glickman, 5th Circuit, as discussed in by E Kristen in 27 Ecology LQ 699,
2000).

This means that the potential effects of the Purple Line’s construction and
operation on the potentially useable amphipod habitat, including groundwater,
springs and cave-like structures throughout the Rock Creek watershed should be
considered and not allowed to negatively affect such areas.

Federal project partners must consult with the USFWS on the effects of the
Purple Line on Hay’s Spring amphipod

Because the Purple Line is likely to adversely affect Hay’s Spring
amphipod *(Stygobromus hayi)* and its habitat, the Federal Transit Administration,
National Park Service, and the National Capital Planning Commission have a
duty to consult with the U.S. Fish and Wildlife Service over these impacts and
develop measures to avoid or mitigate harm. 16 U.S.C. § 1536(a)(2); 50 C.F.R. §
402.14(a). Section 7 consultation is required for “any action [that] may affect
listed species or critical habitat.” 50 C.F.R. § 402.14. Formal consultation with the
U.S Fish and Wildlife Service (USFWS) must be initiated “at the earliest possible
time” so as to avoid irreversible commitments of resources and to eliminate the
possibility of the Purple Line causing an incidental take of this important indicator
species for the health of the Rock Creek ecosystem.

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3 HeinonLine suggests that we “See Hay, supra note 57, at 1462 n.29 (citation
omitted ... species on the endangered or threatened list include the
Comal Springs dryopid beetle *(Stugopamus comalensis)*, Comal Springs riffle beetle
*(Heterelmis comalensis)* and Peck’s cave amphipod *(Stygobromus pecki)*..."
Federal agencies have thus far erred in determining that there are no endangered species affected by the Purple Line Project. According to the FEIS, “[i]n the October 27, 2011 letter from USFWS, the USFWS stated that there are no federally proposed or listed endangered or threatened species known to exist within the project area; therefore, no Biological Assessment or further Section 7 Consultation with the USFWS is required” (FEIS at 4-117). But this determination was based on an incomplete project record provided by FTA. The information and studies cited herein, provide a more accurate assessment, and we trust that the federal agencies involved will now act expeditiously to initiate formal consultation in accordance with the procedures outlined in 50 C.F.R. § 402.14, work with USFWS to prepare a biological opinion, and develop measures to avoid incidental take.

Expeditious consultation will obviate the need for CSE and its members to take further legal action over this critical issue, including filing of a sixty-day notice of intent to sue under the ESA and subsequent litigation to enforce ESA’s consultation and incidental take provisions.

2) The EIS understates the extent and cost of the loss of tree canopy and natural green space and of the environmental services they provide, including stormwater runoff, air and water pollution reduction, shade, and the buffering of noise and wind.

The EIS understates the loss of forest cover by covering the issue primarily in the cumulative effects section of the EIS. This appears to limit the analysis of forest cover loss to the arbitrarily drawn circles around the stations and leave most of the Trail and its environs between station circles uncounted. The EIS also appear to exclude the losses in Rock Creek Park by stating that the figures for the park were unavailable (see Table 7.7) (That the Park does not know its own forest is rather hard to believe -- see the letter from the Park Service in the appendices and another from the National Capitol Planning Commission dated 4/29 and 1/16/09 respectively. The two letters list many faults in the Draft EIS that do not appear to be corrected or addressed in the final including insufficient information to allow the agencies to assess the many effects, beyond loss of trees, of the Purple Line on the Park. We address one of the issues they raise below on the threats posed by the construction process fracturing underground rock and leading to leakage and leaching.4)

The Final EIS appears to admit to the cutting of 47.6 acres of forest, primarily along what is now the Capital Crescent Trail, which the EIS refers to as

4 One DOI letter of 2009 noted that rock fractures from construction of the purple line could make leaks of water already occurring into the Red Line of the Metro system worse, leading to more shut downs in service or greater expenses for additional pumps, etc.
the Georgetown Branch Right of Way. The EIS also admits that this is on top of a 3% loss in the area from 2002-2010. The EIS fails to calculate the value of the services provided by these trees, and to report that loss as a cost to society in its section on “Benefits and Effects”. For such a calculation the EIS could use the “itree” 5 program available from USDA to calculate the value of the ecosystem services that different tree types and ages provide. For example, the itree program presents and can calculate the storm water management, air and water purification and carbon capture services as high economic values provided by trees and entire urban forests, which will be lost to the Purple Line.

For users of the popular Capital Crescent trail, and residents of The Town of Chevy Chase, among others, the attractiveness of the neighborhoods will be dramatically reduced by the Purple Line and in particular by the loss of these trees and the linear park that they form, their shade, their contributions to air quality, water retention and purification, and other enhancements. Loss of the entire tree canopy in the corridor between Bethesda and Silver Spring will make any hiker-biker trail constructed along the rails unprotected from summer heat and force the thousands of people who use the trail each weekend to be exposed to more cancer causing UV rays and a higher potential for heat stroke. There will also be indirect losses in health as many people will cease to use the more constricted, noisy, and less pleasant trail.

Indeed, the section on Benefits and Effects, while noting job creation benefits of an above-ground Purple Line, fails to tally the job creation benefits and other genuine economic benefits of alternatives, including an underground Purple Line, and of completing the Capital Crescent Trail solely as a dedicated hiker-biker trail.

3) The above-ground option for the Purple Line would result in the degradation of Parks, in violations of Section 4(f) Park Protections in the Transportation Act – that are beyond the legal limit of De Minimus; and in hazards to school children -- from Nursery through High School -- that are beyond cavalier.

The EIS attempts to avoid the application of Section 4(f) requirements of the Transportation Act of 1966 by omitting, minimizing or mischaracterizing description of the harms caused to Elm Street, the park at the Leland Center, called Leland Park it seems in the EIS, and Rock Creek Parks, among others. Section 4(f) prohibits any detrimental use of parks or historic properties by Federally supported transportation projects which can only be permitted if they are de minimus uses (49 USC 303, 23 CFR Part 774). The EIS representation of impacts on parks is not only inaccurate and thus not in compliance with NEPA,

5 http://www.itreetools.org/index.php
the Transportation Act and other planning laws, but also runs the risk of violating additional prohibitions against the withholding of or misrepresenting material facts in Federal proceedings or permitting procedures (e.g., 18 USC 1001 and 1505). Instead of alleviating the bursting demand for hiker-biker commuting and recreation trails in the area, above-ground construction of the Purple Line will discourage Capital Crescent Trail (CCTrail) use and make it hazardous. While it could be argued that the (CCTrail) is exempt from 4(f) (by virtue of the 1995 Montgomery County Resolution that declared its reservation as part of the park system to be temporary, which is debatable, particularly as to other jurisdictions affected), the affects on other parks are not exempted. For example, to assert that the sound and presence of pile drivers, earth moving machines and then 70 trips a day of trains with warning bells or horns sounding as they move through Chevy Chase and the other neighborhoods, in addition to the sounds and dangers of the trains themselves, is “de minimus”, stretches the definition of the term “de minimus” which means of such small amount as not to be recognizable or noticeable in the law. It is wrong to apply it in this context in particular, for parks are specifically intended to provide quiet settings in which people can enjoy the benefits of a natural environment and the purpose of 4(f) is to protect that quiet enjoyment. The decibel levels and duration of the sounds themselves were not evident in my review and the cumulative noise levels were not provided in the EIS despite the duty to report on cumulative and associated impacts. (Expected noise levels of 70dB and above were reported to the Town of Chevy Chase.) Yet the EIS asserts that the "Bethesda Station would have no cumulative effects on resources of interest." (p. 7-11). Elm Street Park and Leland Park are per se, legal, or de jure, resources of interest, and the forest cover and water flows and noise levels in the area are certainly de facto resources of interest to all residents, caregivers, teachers and workers here.

Construction of the Purple Line will result in degradation of Elm Street Park because, among other things, a wide pathway will probably have to be built through it so that bikers and hikers displaced from the Capital Crescent Trail can reach Willow Lane, and because a portion of the park will be used during construction of the Purple Line. The EIS asserts that damage to the Park will not amount to adverse impacts to Elm Street Park in light of a presumed or planned total reconstruction of “the entire Park within the next few years as a requirement of nearby development”. This is circular logic and also fails to recognize that the Park was created to protect the Town of Chevy Chase from such development and to mitigate and offset commercial development. The Park should be expanded rather then reduced in response to nearby development. (p. 6-27). On p. 6-28 the EIS misleadingly asserts there will be no noise vibration or visual effects and no “constructive use” (an indirect use of parks forbidden by Section 4(f) of the Transportation Act of 1966) of Elm Street Park while building ramps and overpasses near the Park) as follows:

The Preferred Alternative would not permanently
use any part of Elm Street Urban Park. *The FEIS Chapter 4.0 assessment of effects indicates that the Preferred Alternative would not cause noise, vibration, or visual effects on Elm Street Urban Park that would constitute a constructive use; no substantial impairment of the activities, features or attributes—playgrounds, gazebo, picnic tables, benches, trails and public art—that qualify the park for protection under Section 4(f) would occur.**

* Note that the Purple Line plan was modified after release of the EIS: a “minor” zoning change was requested after the EIS release to allow the bike trail to run through and thus “use” Elm Street Park or on the road next to it, thus affecting Elm Street Park and using it permanently. In addition, in the zoning change request, the entire Elm Street Park is included as part of the Bethesda Purple Line Train Station and encircled in yellow as such. These are not minor changes legally as properly understood for the serious and permanent changes that they are, they are probably forbidden by Section 4(f) of the Transportation Act.

** Note however, that horns or bells of 70 approaching trains each day would be sounded as each approaches the Wisconsin Avenue underpass which is just a few feet away from the park. This is also a permanent degradation of the Park and thus probably in violation of Section 4(f).

Additionally, children playing in the park would be separated from serious injury by only a four-foot wall. That small barrier, combined with the attractive nuisance that the trains would represent to children are yet another serious risk in fact to the community and probably a violation per se of Section 4(f).

When the EIS admits to a greater level of impact or use of a Park, it seeks a temporary exclusion from the 4(f) requirements by asserting the impact will be temporary. This assertion is not correct; significant impacts will continue for the life of the Purple Line and they are not de minimus.

The EIS shows power stations, including one across from the Town Hall of the Town of Chevy Chase and its Leland Street Park. The EIS indicates that noise and vibration monitors will be located south of the power station, on the property of a town resident. The presence of such monitors seems to anticipate that noise and vibration may be problematic, but we could not find any discussion of levels in the EIS summary sections (although they might be in the technical reports). However, at this point there appears to be no meaningful limitation on noise or vibration levels in the EIS as the Compliance Plan is to be developed later (See below).
Threats to schoolchildren and other pedestrians are understated

Beyond the noise levels are the threats to immediate safety of children of all ages who use and cross these parks and the trail. There are day care centers on and near the trail and children who cross the trail to get to school at numerous points. No discussion of covering the tracks with a light roof with walls that would prevent people from climbing over the tracks for the portion from Connecticut to Wisconsin was included. That would have reduced the threats.

With regard to safety issues beyond Elm Street Park many children and adults currently walk or otherwise cross the trail at Lynn Drive. The state promised that this crossing would remain but have reneged on this. They have not offered a viable solution and admit now that they can’t let people cross the tracks here because it would be too dangerous. There is a curve in the path so the sight lines are poor and trains will be moving at 45 miles per hour here and they refuse to reduce the speeds. Children will have to walk along East West highway on a narrow sidewalk to get to school or they’ll try to get over fences to get to school on time putting themselves in great danger.

4) Migratory Bird Treaty Act – Some potential impacts and potentially illegal bird kills are ignored.

The 47 acres or more of mostly mature canopy and natural green space that will be lost – an area almost twice the size of Dumbarton Oaks Park in Washington DC, provide shelter, habitat, food sources and other life support functions for many wildlife, some common and others less so, including birds that are listed and protected under the Migratory Bird Treaty Act.6

The following are examples of birds protected under the MBTA that use or live in the affected area and that the coauthors of these comments regularly see (or, in the case of the screech owl, hear) in that canopy and green space on the trail or in properties along the trail and forming part of its network:

Archilochus colubris, Ruby-throated Hummingbird,

Zenaida macroura, Mourning Dove

In addition to affecting and removing habitat, shelter, and food, the Purple Line would pose a potential danger: The issue of high power lines over the tracks, including what would appear to be un-insulated live wires to supply the trains passing underneath, presents the likelihood of migratory and other protected birds being electrocuted after alighting on the live, un-insulated wires if they make contact with other parts of the structure that create a circuit and thus electrocute them.

The FWS letter to the consultant in appendix G provides a link to guidelines for compliance with the MBTA but that appears to be in response to the felling of the many nesting trees and not in response to the permanent presence of high-power lines that are not insulted. Even insulated transmission and distribution wires are leading causes of death as birds still touch un-insulated portions where the wires join the poles. Even passing birds such as Bald Eagles may alight on the wires, especially over streams and creeks. They must be protected or the operators will potentially be in violation of the law.

There is also the question of bright lights during and after construction of the Purple Line at its service facilities and elsewhere.

As the FWS MBTA office has noted—

Migratory birds are a "trust resource" with 1,007 species protected
by the Migratory Bird Treaty Act (MBTA). Bright lights have been extensively documented to attract and kill migratory birds, especially at night. Migratory birds are protected by the MBTA, which is a strict liability criminal statute. Each time a protected migratory bird is documented injured or killed at a lit structure such as this one -- most mortality occurring at night during migration, and an existing "conservation measure" is readily available to address it (i.e., turn the light off), then each incident represents a "take" that could have criminal consequences.  

No discussion of covering the tracks with a roof for any portions, such as the one from Connecticut to Wisconsin Avenues was included, for example. That would have reduced the threats to children and birds and reduced the "need" to cut trees away at an angle as some have heard, to avoid wet leaves falling on and accumulating on the live electric rail.

5) The Environmental Compliance Plan is not included as it is not yet developed. Proposed zoning changes and ensuing development associated with the Line are also not covered. Therefore the impact of the actions cannot be assessed based on this EIS and the EIS is inadequate as a legal assessment or as a basis for prior informed consent or decision-making per se.

Section 5.4 of the EIS states that the MTA will develop an Environmental Compliance Plan after the Record of Decision is issued. That would seem to miss the point of an EIS of informing decision makers of the likely impact of their decisions as to the preferred and alternative courses of action. Also absent from this Final EIS are the changes that would follow proposed alterations in zoning announced after the EIS was published. Those changes would encourage the permanent conversion and reduction of part of Elm Street Park as noted above, and increasingly dense development, near the Purple Line and its stations. This is a classic example of segmented, piecemeal revelations and sleight of hand intended to by-pass the requirements of planning law and to fly under the radar of busy elected officials and citizens. Therefore, before funds are dedicated to the Purple Line, the preferred alternative and several reasonable alternatives should be reassessed and a supplemental EIS completed for them along with a complete description of all compliance steps required. It is necessary to do this, despite the 2012 streamlining of the Transportation Act requirements because other laws apply that have not changed or been preempted. These include the Endangered Species Act, the Migratory Bird Treaty Act (active nesting trees, etc.)

7 Email from Dr. Albert Manville of the USFWS, October 18, 2013, concerning a construction site light in the vicinity of Chevy Chase, MD.
the Clean Water and Historic Preservation Acts, and similar Maryland and potentially District of Columbia (e.g. water pollution and wildlife) laws.

Finally, any decision based on the EIS’s limited and understated analysis and its lack of a compliance plan would seem to be arbitrary and capricious for purposes of federal or state administrative law alone given the serious financial, health and safety risks that are evident.

Sincerely,

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