

Ian Fisher

From: Mohammed, Faris (FRA) <faris.mohammed@dot.gov>
Sent: Friday, April 23, 2021 4:19 PM
To: Ian Fisher
Cc: Jill Grant; Mary Clemmensen; Bratcher, Brandon (FRA); jthorne@mdot.maryland.gov; info@BWMaglev.info
Subject: RE: Access to SCMaglev DEIS Referenced Reports

Good afternoon Mr. Fisher:

The ridership studies requested are now available on the Project Website. It may take a few minutes for the reports to go live, so if you have problems accessing the reports, please check back. If you are still unable to access the reports, let me know.

-Faris

From: Mohammed, Faris (FRA)
Sent: Friday, April 16, 2021 11:48 AM
To: Ian Fisher <ifisher@jillgrantlaw.com>
Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mclemmensen@jillgrantlaw.com>; Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>; jthorne@mdot.maryland.gov; info@BWMaglev.info
Subject: RE: Access to SCMaglev DEIS Referenced Reports

Good morning Mr. Fisher:

We are currently preparing a response to your request, which should be available next week. I will notify you with any updates.

-Faris

From: Ian Fisher [<mailto:ifisher@jillgrantlaw.com>]
Sent: Monday, April 12, 2021 10:49 AM
To: Mohammed, Faris (FRA) <faris.mohammed@dot.gov>
Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mclemmensen@jillgrantlaw.com>; Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>; jthorne@mdot.maryland.gov; info@BWMaglev.info
Subject: RE: Access to SCMaglev DEIS Referenced Reports

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good morning Mr. Mohammed,
Thank you for providing two of the requested documents with redactions. We disagree that FRA did not rely on the following document in preparing the DEIS: Louis Berger. 2018: Baltimore-Washington SCMAGLEV Project Draft Ridership Report, June 29, 2018.

Please clarify the following outstanding issues:

1. We reiterate our request for a comment period extension so the public can meaningfully review and comment on the DEIS's Transportation, Economic Resources, and Air Quality sections with the same information FRA utilized to reach its conclusions. As these redacted reports were not provided until 84 days after the DEIS was made publicly available, we request a comment period extension of at least 84 days.
2. We request that FRA provide the following cited documents that were not included with the redacted ridership reports:
 - a. SCMAGLEV Ridership Report Revenue and Operations Estimates Addendum, October 27, 2018 referenced in DEIS Appendix D.4, p. D-43.
 - b. SCMAGLEV Project Ridership Data Request, May 6, 2020 referenced in DEIS 4.6-13, 4.16-10, Appendix D.4, p. D-81.
 - c. SCMAGLEV Project Ridership Data Request, July 27, 2020 referenced in DEIS 4.6-2, Appendix D.4, p. D-35, D-40, D-42, D-44, and D-45.

Thank you,
Ian

From: Mohammed, Faris (FRA) <faris.mohammed@dot.gov>
Sent: Friday, April 9, 2021 3:07 PM
To: Ian Fisher <ifisher@jillgrantlaw.com>
Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mcl Emmensen@jillgrantlaw.com>
Subject: RE: Access to SCMaglev DEIS Referenced Reports

Good afternoon Mr. Fisher:

To follow up on your request, please find the requested records attached to this email. You requested "Louis Berger. 2018: Baltimore-Washington SCMAGLEV Project Draft Ridership Report, June 29, 2018"; however, this record was not relied on for the Draft Environmental Impact Statement (DEIS) and was erroneously included in the list of references. It is not included in the response to your request.

We appreciate your interest in the SCMAGLEV Project and look forward to receiving your comments on the DEIS. Please reach out if you have any technical issues accessing the attached documents.

-Faris

From: Mohammed, Faris (FRA)
Sent: Friday, March 26, 2021 8:53 AM
To: Ian Fisher <ifisher@jillgrantlaw.com>
Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mcl Emmensen@jillgrantlaw.com>; Osterhues, Marlys (FRA) <Marlys.Osterhues@dot.gov>; Valenstein, David (FRA) <david.valenstein@dot.gov>; Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>; jthorne@mdot.maryland.gov; info@BWMaglev.info
Subject: RE: Access to SCMaglev DEIS Referenced Reports

Good morning Mr. Fisher:

We are finalizing the response to your request, and anticipate that the requested records will be available to you no later than April 9. As I previously mentioned, the requested reports contain confidential business information that was not relied on to prepare the Draft Environmental Impact Statement (DEIS). The agency has an obligation to protect sensitive business information from disclosure. See 5 U.S.C. 552(b)(4). FRA is consulting with the Project Sponsor to ensure its CBI is properly protected. If the reports are available prior to April 9, I will notify you.

-Faris

From: Ian Fisher [<mailto:ifisher@jillgrantlaw.com>]
Sent: Monday, March 22, 2021 10:23 AM
To: Mohammed, Faris (FRA) <faris.mohammed@dot.gov>
Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mcl Emmensen@jillgrantlaw.com>; Osterhues, Marlys (FRA) <Marlys.Osterhues@dot.gov>; Valenstein, David (FRA) <david.valenstein@dot.gov>; Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>; jthorne@mdot.maryland.gov; info@BWMaglev.info
Subject: RE: Access to SCMaglev DEIS Referenced Reports

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Good morning,

I am following up for the sixth time on this request made over a month ago, on February 17. I appreciate that FRA has extended the public comment period by 30 days. But FRA continuing to withhold this information will prevent the public from being able to utilize the public comment period to meaningfully review and comment on this critical aspect of the DEIS.

Please provide the ridership reports and data by Friday, March 26. I also reiterate my request that FRA extend the comment period by at least the amount of time that will have elapsed since the comment period opened until the material is released. Thank you,
Ian

From: Mohammed, Faris (FRA) <faris.mohammed@dot.gov>
Sent: Thursday, March 11, 2021 10:01 AM
To: Ian Fisher <ifisher@jillgrantlaw.com>
Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mcl Emmensen@jillgrantlaw.com>; Osterhues, Marlys (FRA) <Marlys.Osterhues@dot.gov>; Valenstein, David (FRA) <david.valenstein@dot.gov>; Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>; jthorne@mdot.maryland.gov; info@BWMaglev.info
Subject: RE: Access to SCMaglev DEIS Referenced Reports

Good morning Mr. Fisher:

We are in the process of preparing a response to your initial request. I will update you as soon as possible.

Faris

From: Ian Fisher [<mailto:ifisher@jillgrantlaw.com>]
Sent: Thursday, March 11, 2021 9:58 AM
To: Mohammed, Faris (FRA) <faris.mohammed@dot.gov>
Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mcl Emmensen@jillgrantlaw.com>; Osterhues, Marlys (FRA) <Marlys.Osterhues@dot.gov>; Valenstein, David (FRA) <david.valenstein@dot.gov>; Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>; jthorne@mdot.maryland.gov; info@BWMaglev.info
Subject: RE: Access to SCMaglev DEIS Referenced Reports

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Faris,

I am again following up on the below request, made initially on February 17, for ridership reports that were referenced in the SCMaglev DEIS and that should have been made publicly available when the DEIS was released. Please let me know when FRA will be releasing these reports. Also, I reiterate my request that FRA extend the comment period in order to provide the public the opportunity to meaningfully review and comment on this aspect of the DEIS. Thank you,
Ian

From: Ian Fisher

Sent: Friday, March 5, 2021 1:08 PM

To: 'Mohammed, Faris (FRA)' <faris.mohammed@dot.gov>

Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mcl Emmensen@jillgrantlaw.com>; 'Osterhues, Marlys (FRA)' <Marlys.Osterhues@dot.gov>; 'Valenstein, David (FRA)' <david.valenstein@dot.gov>; 'Bratcher, Brandon (FRA)' <brandon.bratcher@dot.gov>; 'jthorne@mdot.maryland.gov' <jthorne@mdot.maryland.gov>; 'info@BWMaglev.info' <info@BWMaglev.info>

Subject: RE: Access to SCMaglev DEIS Referenced Reports

Dear Mr. Faris,

I'm writing to follow up on the below request. Thank you,
Ian

From: Ian Fisher

Sent: Monday, March 1, 2021 12:37 PM

To: 'Mohammed, Faris (FRA)' <faris.mohammed@dot.gov>

Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mcl Emmensen@jillgrantlaw.com>; Osterhues, Marlys (FRA) <Marlys.Osterhues@dot.gov>; Valenstein, David (FRA) <david.valenstein@dot.gov>; Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>; jthorne@mdot.maryland.gov; info@BWMaglev.info

Subject: RE: Access to SCMaglev DEIS Referenced Reports

Good morning,

Thank you for your response. As you're likely aware, the comment period provided for this DEIS currently closes on April 22. We expect that the withheld ridership reports that were referenced and considered in the DEIS will be long and technical, and require substantial time to meaningfully review. We request that these reports, and any other withheld ridership reports, data, or models referenced or considered in the DEIS, be publicly released as soon as possible. We also request that the FRA extend the public comment period by at least the amount of time that will have elapsed since the comment period opened until the material is released. Otherwise, the public will be deprived of its opportunity to meaningfully review and comment on this important aspect of the DEIS. *See N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, 677 F.3d 596, 604-05 (4th Cir. 2012). Thank you,

Ian

From: Mohammed, Faris (FRA) <faris.mohammed@dot.gov>

Sent: Monday, March 1, 2021 8:27 AM

To: Ian Fisher <ifisher@jillgrantlaw.com>

Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mcl Emmensen@jillgrantlaw.com>; Osterhues, Marlys (FRA) <Marlys.Osterhues@dot.gov>; Valenstein, David (FRA) <david.valenstein@dot.gov>; Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>; jthorne@mdot.maryland.gov; info@BWMaglev.info

Subject: RE: Access to SCMaglev DEIS Referenced Reports

Good morning Mr. Fisher:

Thank you for bringing this to our attention, we are working on a response to your request. The reports listed below contain confidential information that was not included in the DEIS, which will need to be redacted prior to releasing the reports. We will have a response back to you within a reasonable time. If you have any additional questions please feel free to reach out.

-Faris

Faris Mohammed

Attorney Advisor
Federal Railroad Administration
General Law Division
U.S. Department of Transportation
W33-409
O: (202) 493-7064
C: (202) 763-3230

From: Ian Fisher [<mailto:ifisher@jillgrantlaw.com>]

Sent: Wednesday, February 24, 2021 3:14 PM

To: Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>; jthorne@mdot.maryland.gov; info@BWMaglev.info

Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mclemmensen@jillgrantlaw.com>; Mohammed, Faris (FRA) <faris.mohammed@dot.gov>; Osterhues, Marlys (FRA) <Marlys.Osterhues@dot.gov>; Valenstein, David (FRA) <david.valenstein@dot.gov>

Subject: RE: Access to SCMaglev DEIS Referenced Reports

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Bratcher,

The requested reports are incorporated in the DEIS by reference and relied upon by the DEIS. *See, e.g.*, DEIS at 4.6-3 (“The ridership report assumes that about 70.0 percent of business travelers in the defined catchment area and 67.0 percent of non-business travelers, which includes those making personal trips as well as commuters, between Baltimore and Washington, D.C. would choose the SCMAGLEV service if it were available.”); *id.* nn.7, 9; App. A at A.3-6; App. D.4 at C-6 n.4, D-35 n.41-42, D-36, D-40 n.51, D-43, D-53 to 54, & D-56.

Accordingly, under NEPA, these reports should have been included in an appendix, but at the very least they must be made available to the public for review and comment. *See* 40 C.F.R. §§ 1501.12, 1502.19. “Agencies shall not incorporate by reference material based on proprietary data that is not available for review and comment.” *Id.* § 1501.12. “When relevant information ‘is not available during the [impact statement] process and is not available to the public for comment[,] ... the [impact statement] process cannot serve its larger informational role, and the public is deprived of [its] opportunity to play a role in the decision-making process.’” *N.C. Wildlife Fed'n v. N.C. Dep't of Transp.*, 677 F.3d 596, 604-05 (4th Cir. 2012) (quoting *N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1085 (9th Cir. 2011)); *see League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, No. 3:12-CV-02271-HZ, 2014 WL 6977611, at *15-17 (D. Or. Dec. 9, 2014) (agency is plainly prohibited “from relying on information in the preparation of an EIS while refusing to make that information available to the public” and there is no privilege exception to the required disclosure). Failure to provide the requested reports would, moreover, be a basis for challenging the adequacy of the EIS in court.

Therefore, I reiterate my request for these reports as soon as possible, to comply with NEPA and allow meaningful public comment. If FRA asserts that it did not consider or rely on these reports, can you please explain and provide the source of the ridership estimates used in the DEIS?

Thank you,
Ian

From: Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>
Sent: Wednesday, February 24, 2021 12:11 PM
To: Ian Fisher <ifisher@jillgrantlaw.com>; jthorne@mdot.maryland.gov; info@BWMaglev.info
Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mclemmensen@jillgrantlaw.com>; Mohammed, Faris (FRA) <faris.mohammed@dot.gov>; Osterhues, Marlys (FRA) <Marlys.Osterhues@dot.gov>; Valenstein, David (FRA) <david.valenstein@dot.gov>
Subject: RE: Access to SCMaglev DEIS Referenced Reports

Good Afternoon, Mr. Fisher.

The ridership reports referenced below contain information marked as propriety and confidential by Baltimore Washington Rapid Rail (BWRR), the Project Sponsor, and are not included in the Draft Environmental Impact Statement (DEIS).

The Project Sponsor may be able to provide additional details regarding these specific reports.

Appreciate your interest in the project!

Brandon L. Bratcher

Environmental Protection Specialist
(202) 493-0844
(202) 868-2626

From: Ian Fisher [<mailto:ifisher@jillgrantlaw.com>]
Sent: Tuesday, February 23, 2021 3:03 PM
To: Bratcher, Brandon (FRA) <brandon.bratcher@dot.gov>; jthorne@mdot.maryland.gov; info@BWMaglev.info
Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mclemmensen@jillgrantlaw.com>
Subject: RE: Access to SCMaglev DEIS Referenced Reports

CAUTION: This email originated from outside of the Department of Transportation (DOT). Do not click on links or open attachments unless you recognize the sender and know the content is safe.

Dear Mr. Bratcher and Ms. Thorne,
I'm writing to follow up on the request for the below referenced reports. Thank you,
Ian

From: Ian Fisher
Sent: Wednesday, February 17, 2021 4:30 PM
To: 'brandon.bratcher@dot.gov' <brandon.bratcher@dot.gov>; 'jthorne@mdot.maryland.gov' <jthorne@mdot.maryland.gov>; 'info@BWMaglev.info' <info@BWMaglev.info>
Cc: Jill Grant <jgrant@jillgrantlaw.com>; Mary Clemmensen <mclemmensen@jillgrantlaw.com>
Subject: Access to SCMaglev DEIS Referenced Reports

Dear Mr. Bratcher and Ms. Thorne,

In reviewing the Baltimore-Washington Superconducting Maglev Project Draft Environmental Impact Statement, we have been unable to locate the following documents that the DEIS incorporates by reference:

1. Louis Berger. 2018: Baltimore-Washington SCMAGLEV Project Final Ridership Report, November 8, 2018
2. Louis Berger. 2018: Baltimore-Washington SCMAGLEV Ridership Supplement, December 10, 2018
3. Louis Berger. 2018: Baltimore-Washington SCMAGLEV Project Draft Ridership Report, June 29, 2018

Can you please provide those documents or direct me to where they can be reasonably inspected? Thank you,

Ian Fisher

Ian Fisher
Associate Attorney
Jill Grant & Associates, LLC
1319 F Street NW, Suite 300
Washington, DC 20004
Tel: 202-821-1948
Fax: 202-459-9558
ifisher@jillgrantlaw.com
www.jillgrantlaw.com



If this email concerns legal matters, this communication and any attachments are attorney-client privileged and confidential and intended for use only by the individual or entity named above as the intended recipient. If you are not the intended recipient, reading, distributing, or copying this communication is strictly prohibited. If you have received this communication in error, please immediately notify the sender at ifisher@jillgrantlaw.com and delete this email and any attachments. Thank you.