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RECORD OF DECISION

This Record of Decision (ROD) documents the Federal Highway Administration (FHWA) decision regarding the Bay Crossing Study (BCS): Tier 1 National Environmental Policy Act (NEPA). In making its decision, FHWA considered the information and analysis included in the Tier 1 Draft Environmental Impact Statement (DEIS), all supporting technical reports and public and agency comments and the supplemental information and analysis provided in the Final Environmental Impact Statement (FEIS).

Corridor 7 was identified as the Maryland Transportation Authority-Recommended Preferred Corridor Alternative (MDTA-RPCA) in the DEIS that was made available for public review and comment through the project website (www.baycrossingstudy.com). The public was able to view and comment on the DEIS for a period of 84 days, from February 23 through May 17, 2021. The DEIS Notice of Availability was published in the Federal Register on March 5, 2021. MDTA began the DEIS Public Hearing Virtual Information Room on February 23, 2021 and held live testimony sessions beginning on April 14, 2021. In-person testimony sessions were held on April 21 and 22, 2021.

The Tier 1 NEPA Study represents the MDTA's first step in a two-tiered NEPA approach and includes a high-level review of cost, engineering, and environmental data. The DEIS and FEIS have defined existing and future transportation conditions and needs at the William Preston Lane, Jr. Memorial (Bay) Bridge, identified broad corridor alternatives (including a "No-Build" alternative), documented the corridor alternative screening process, identified the most reasonable Corridor Alternatives Retained for Analysis (CARA), evaluated potential environmental impacts of the CARA, and identified a Preferred Corridor Alternative (PCA). This ROD concludes the Tier 1 NEPA process by formally selecting Corridor 7 as the Selected Corridor Alternative (SCA) that would advance into a potential future Tier 2 NEPA study.

MDTA requested cooperating agency concurrence and participating agency comments on Corridor 7 as the PCA in accordance with the BCS Coordination Plan. Concurrence or no objection from all BCS cooperating agencies was received as of October 2021. **Appendix D** includes all agency correspondence since the release of the DEIS.

A combined FEIS and ROD document (per 23 USC §139(n), 23 CFR 771.124) does not have a comment period or a 30-day waiting period because these documents are published as a single document. The US Environmental Protection Agency (USEPA) publishes a Notice of Availability (NOA) in the Federal Register for combined FEIS/ROD documents.

7.1 ALTERNATIVES CONSIDERED

This section provides a brief overview of the alternatives considered for the Bay Crossing Study EIS that led to the selection of Corridor 7.

Three categories of alternatives were evaluated for the Bay Crossing Study: the No-Build Alternative, Modal and Operational Alternatives (MOAs), and Corridor Alternatives.

The No-Build Alternative included existing infrastructure, planned future improvements, and regular maintenance of the Bay Bridge.

The MOA evaluated include:

- **Transportation Systems Management / Travel Demand Management (TSM/TDM)** – infrastructure and operational changes to improve the function of the existing roadway network without adding major new capacity. Improvements evaluated included AET or variable tolling. AET at the Bay Bridge has since been implemented as of Spring 2020.
- **Ferry Service** – one or more sets of ferry terminals to connect the Eastern Shore and the Western Shore. May include roadway improvements to connect terminals to existing roadways.
- **Bus Rapid Transit (BRT)** – a high-quality, bus-based transit system that would use the existing Bay Bridge or a new crossing.
- **Rail Transit** – rail service providing passenger service that would use a new Bay crossing.

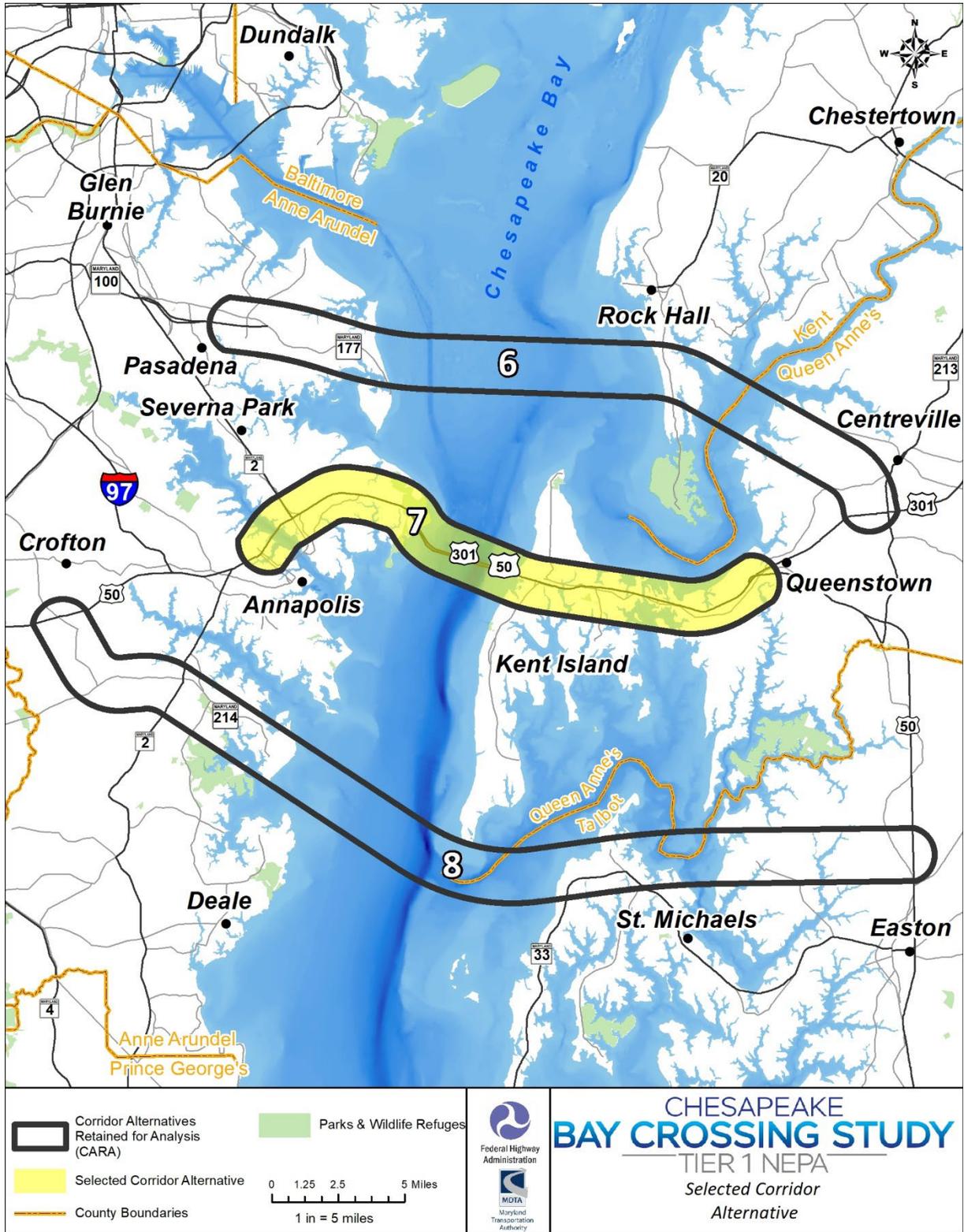
An examination of these MOAs determined that they would not meet the Purpose and Need as stand-alone alternatives because they would not: provide adequate capacity to relieve congestion at the existing Bay Bridge, provide dependable and reliable travel times, or provide flexibility to support maintenance and incident management at the existing bridge. Therefore, all MOAs were eliminated from further consideration as stand-alone alternatives. However, three of the MOAs (TSM/TDM, BRT, and Ferry Service) would be evaluated further in combination with other alternatives within the Tier 1 SCA (Corridor 7) in a potential future Tier 2 study.

Fourteen Corridor Alternatives were developed to include potential Chesapeake Bay crossing locations and the approach roadways that would tie into the existing roadway network.

A screening process was used to compare the 14 Corridor Alternatives based on the ability to meet the Purpose and Need, along with environmental considerations, and cost and financial considerations, as detailed in **DEIS Section 3.2**. The screening resulted in the identification of three CARA. The screening results showed that Corridors 6, 7, and 8 have a greater ability to meet the project Purpose and Need than all the other Corridor Alternatives. The No-Build Alternative was retained throughout the Tier 1 NEPA process.

The CARA were then further analyzed and evaluated to identify a single MDTA-RPCA in the DEIS (Corridor 7) (see **Figure 7-1**). The DEIS included a high-level analysis of environmental impacts, traffic metrics, and consideration of public and agency input.

Figure 7-1: Selected Corridor Alternative



7.2 SELECTED CORRIDOR ALTERNATIVE

Corridor 7 consists of a two-mile wide corridor that follows the existing Bay Bridge road network along US 50/301 from west of the Severn River on the Western Shore to the US 50/301 split on the Eastern Shore. Corridor 7 includes the location of the existing Bay Bridge. The location of the SCA (Corridor 7) is shown in **Figure 7-1**.

7.2.1 Basis of Decision

In consideration of the analysis presented in the DEIS, FEIS and substantive agency and public comments, FHWA selects Corridor 7, the previously identified PCA. This section discusses the basis for this decision.

Analysis of traffic, engineering, cost, and environmental considerations indicate that the Selected Corridor Alternative, Corridor 7, would have substantial advantages over the other CARA, Corridors 6 and 8. Major conclusions of this analysis include:

- Additional transportation capacity in the SCA would provide the greatest traffic relief at the Bay Bridge and thus have a greater ability to meet the Tier 1 DEIS Purpose and Need.
- Additional capacity in the SCA would divert substantially more traffic away from the Bay Bridge lanes in terms of total vehicles per day (vpd) on both summer weekends and non-summer weekdays.
- Additional transportation capacity in the SCA would result in greater peak-hour congestion relief on the Bay Bridge lanes compared to an equivalent number of lanes in Corridors 6 or 8.
- The SCA would likely be the least costly of the three CARA because of the ability to utilize existing roadway infrastructure on US 50/301 and the shorter length of crossing over the Chesapeake Bay.
- The SCA would potentially have lower overall environmental impacts due to the shorter Chesapeake Bay crossing length and ability to utilize existing on-land roadway infrastructure along US 50/301. Corridors 6 and 8 would require longer crossings and more roadway infrastructure along a new alignment, likely resulting in greater impacts to sensitive environmental resources in and around the Chesapeake Bay.
- Corridors 6 and 8 would likely cause substantially more indirect effects from new connectivity between rural lands on the Eastern Shore and employment centers such as Baltimore and Washington, DC. Corridors 6 and 8 could lead to substantial pressure for new residential development, especially on the Eastern Shore, with corresponding impacts to farmland and natural resources. The SCA would have some indirect effects, but they would be more consistent with existing land use patterns and plans.

MDTA received 861 public comments during the DEIS comment period, including public testimony, written comments, and electronic submissions. Federal, state, and local agencies also provided comments on the DEIS. Public comments emphasized themes such as the need for traffic congestion relief, especially during peak summer travel times. Other commenters raised concerns over the potential for additional capacity to impact local roadways in the vicinity of the Bay Bridge, and concerns for land use change and environmental impacts.

Most agencies did not object to identifying Corridor 7 as the MDTA-RPCA. One local government participating agency, Anne Arundel County, provided comments stating their opinion that the Study is flawed. Other agency comments were generally in agreement with the findings of the DEIS and identification of the MDTA-RPCA. Agencies expressed a desire to continue to participate in a potential future Tier 2 study and provided input and recommendations for Tier 2 concerns, such as detailed impact analysis, mitigation, and other future study considerations. All cooperating agencies provided concurrence or no objection on the PCA as of October 2021.

Comments received throughout this Tier 1 Study, including during the DEIS comment period, have not brought to light new substantive information or major concerns that would affect the validity of the DEIS findings or the decision to select Corridor 7. **FEIS Chapters 4** and **Chapter 5** include more detailed summaries of public and agency comments. The full list of comments and responses is included in **Appendix A** (public comments) and **Appendix B** (agency comments).

7.2.2 Environmentally Preferable Alternative

Council on Environmental Quality (CEQ) regulations at 40 CFR 1505.2 (a)(2) require that in a ROD, FHWA shall *“Identify alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives considered environmentally preferable. An agency may discuss preferences among alternatives based on relevant factors including economic and technical considerations and agency statutory missions. An agency shall identify and discuss all such factors, including any essential considerations of national policy, that the agency balanced in making its decision and state how those considerations entered into its decision.”*

MDTA has evaluated a range of alternatives in the Bay Crossing Study as outlined in **Section 7.1**. FHWA has determined that the SCA is the environmentally preferable alternative based on the information included in the DEIS and FEIS and summarized in the bullets below.

- The existing US 50/301 infrastructure within Corridor 7 could potentially facilitate a future Tier 2 alternative with lower overall community impacts relative to the other CARA. While Corridor 7 has a greater presence of businesses and community facilities, a future Tier 2 alternative that expands capacity along existing roadways in Corridor 7 could minimize impacts to community cohesion and local mobility, and reduce the potential disruption caused from bisecting residential neighborhoods relative to Corridors 6 or 8. Much of the land adjacent to the existing US 50/301 roadway is developed, so utilizing this infrastructure potentially minimizes overall impacts to on-land natural resources.
- Corridor 7 would require a much shorter crossing of the Chesapeake Bay compared to Corridors 6 and 8, which could result in lower potential impacts to open water of the Bay and other major waterways. Aquatic resources associated with open water such as essential fish habitat (EFH), tidal wetlands, and oyster resources are more prevalent in Corridors 6 and 8 compared to Corridor 7.

- Corridor 7 would likely result in additional new capacity to the existing transportation network in relative proximity to the Bay Bridge, which would be more compatible with existing land use patterns and plans compared to Corridor 6 or Corridor 8. This would likely result in lower indirect effects from land use development.

7.2.3 All Practicable Means to Avoid or Minimize Environmental Harm

CEQ regulations at 40 CFR 1505.2 (a)(3) require that in the ROD, FHWA shall “*State whether the agency has adopted all practicable means to avoid or minimize environmental harm from the alternative selected, and if not, why the agency did not. The agency shall adopt and summarize, where applicable, a monitoring and enforcement program for any enforceable mitigation requirements or commitments.*”

In selecting Corridor 7, FHWA has considered the broad-scale potential for environmental impacts from a new crossing in each of the Corridor Alternatives. The DEIS provides discussion of the presence and distribution of environmental resources within the corridors and, where possible, discussions of the potential for avoidance of those resources. Resources which have no potential for avoidance, such as those that cross the full width of a corridor, were given particular attention and considered throughout the alternatives evaluation.

Because of the broad scale nature of the Tier 1 evaluation and corridors evaluated in this Tier 1 Study, specific avoidance, minimization and mitigation measures relating to individual resources are not applicable. A potential future Tier 2 NEPA study would consider alternatives within the Tier 1 Selected Corridor at a level of detail that would allow for consideration of all practicable means to avoid or minimize environmental harm from Tier 2 alternatives. MDTA and FHWA would continue to coordinate with the public and agencies to ensure all practicable means to avoid or minimize environmental harm are considered in a future Tier 2 NEPA study and during a future permitting phase. It is anticipated that MDTA would be the responsible party for monitoring and ensuring the implementation of all permitting requirements and associated mitigation to be determined during the potential future Tier 2 study.

7.3 PUBLIC AND AGENCY OUTREACH

MDTA has conducted an extensive public outreach campaign throughout the Tier 1 NEPA study to ensure public and agency input has been considered throughout the process. MDTA has posted updates, documentation, and public comments received to the BCS website throughout the Study (www.baycrossingstudy.com). Public comment opportunities have included:

- **November 2017** – An online Scoping Meeting was held to seek input on the project scope and Purpose and Need.
- **Spring 2018** – Open House meetings were held at six locations to present and solicit comments on the Purpose and Need, the environmental review process, corridor development, and screening process.
- **Fall 2019** – Open house meetings were held at seven locations to present the range of alternatives considered, the screening analysis and results, and the preliminary CARA.

- **Winter/Spring 2021** – The DEIS was made available to view and comment on the document for a period of 84 days, from February 23 through May 17, 2021. A virtual information room and six public testimony sessions (including virtual and in-person) were held.

A comprehensive agency coordination program was implemented throughout the Bay Crossing Study from project initiation through the Tier 1 DEIS and FEIS development. As summarized in the DEIS, interaction with the agencies was guided by an Agency Coordination Plan, which was made available on the BCS website. The plan included a general study and coordination schedule and identified Cooperating, Participating, and Notified agencies/stakeholders. Interagency Coordination Meetings (ICMs) were held by MDTA to present and discuss information, and to seek feedback on the Study process, methodologies, and results of major findings at Study milestones with Cooperating and Participating Agencies. In addition, the BCS team asked Cooperating and Participating Agencies with specific expertise or regulatory authority to review and provide comments on Technical Reports used to inform the DEIS. Cooperating Agencies were requested to provide concurrence at key project milestones throughout the Study. As outlined in the coordination plan, concurrence was received on the Study schedule and guiding principles for the agency coordination process in February 2018. In July 2018, the Cooperating Agencies concurred on the Purpose and Need statement. In February 2020, the Cooperating Agencies concurred on the identification of the CARA. Concurrence or no objection from all BCS cooperating agencies was received as of October 2021 on Corridor 7 as the PCA.

7.4 COMMITMENTS AND NEXT STEPS

This ROD concludes the Tier 1 Phase of this Study. The intent of the Tier 1 Phase has been to identify a potential corridor location for a future crossing of the Bay. The specific alignment of a potential new crossing has not been defined in Tier 1. Additionally, the type of crossing, such as a bridge or bridge-tunnel, has not been evaluated or identified in Tier 1. A Tier 2 study would evaluate options such as a bridge, a bridge-tunnel, or replacement of the existing Bay Bridge. Following issuance of this ROD, the MDTA may advance a Tier 2, project-level NEPA study. In comparison to the more general Tier 1 analyses, a potential future Tier 2 NEPA study would result in decisions made on a project-level (site-specific) analysis, through evaluation of specific alignments within the Tier 1 SCA. The potential future Tier 2 analysis would include detailed engineering design of alternative alignments and the assessment of potential environmental impacts associated with those alignments. Consistent with NEPA's requirements, agency and public involvement would be an essential part of the Tier 2 NEPA study. Analysis and data used to compare alternatives and determine impacts would be updated for a Tier 2 study, such as traffic data and existing environmental conditions, to reflect the most recent available information at the time of the study.

Specific activities for a potential future Tier 2 study would include the elements listed below. This list is not exhaustive but presents a selection of some main components of a potential future Tier 2 study.

- Refinement of Purpose and Need to reflect project-level issues;
- Updated traffic analysis to reflect current conditions at the time of a Tier 2 study;
- Identification of alignments within the Tier 1 SCA;
- More detailed engineering of alternatives, evaluation of crossing types, and specific assessment of potential environmental impacts;

- Consideration of MOA in combination with a new crossing and/or other MOA within the SCA;
- Public and cooperating agency involvement and response to Tier 2 DEIS comments;
- Continued consideration of the No-Build Alternative;
- Selection of a Preferred Alignment within the Preferred Corridor;
- Identification of appropriate mitigation measures;
- Evaluation and coordination of permitting requirements for natural resources compliance including Section 404 of the CWA, floodplains, ESA Section 7, forest, Coastal Zone Management Act, Chesapeake Bay Critical Areas, and others;
- Preparation of a Tier 2 EIS, and;
- Completion of a Tier 2 ROD.

In a potential future Tier 2 NEPA study, avoidance and minimization measures would be considered and recommended; the potential for unavoidable adverse direct, indirect and cumulative impacts would be documented; and appropriate permitting and mitigation measures for any unavoidable impacts identified. Results of the analyses conducted during Tier 2 would inform decisions regarding engineering for a specific crossing and supporting transportation network, cost considerations, and mitigation. Final project design and construction would follow final agency decisions based on completion of Tier 2 NEPA Study documents. Examples of regulatory activities resulting from the Tier 2 NEPA study may include Section 4(f) resource avoidance (to the extent such resources are involved); continued Section 106 consultation and execution of a Memorandum of Agreement or Programmatic Agreement to address adverse effects to historic properties, if necessary; and other specific permitting decisions for applicable water, threatened and endangered species, and other natural resources matters.

A future Tier 2 NEPA study would include an evaluation, as appropriate, of the use of properties subject to protection by Section 4(f). If a Tier 2 alternative would require the use of Section 4(f) property, the Tier 2 study would include evaluation of feasible and prudent avoidance alternatives and incorporate all possible planning to minimize harm to Section 4(f) properties.

Identification of historic properties and Section 106 consultation would resume during the potential future Tier 2 study. Section 106 consultation would continue with refining the Tier 2 Area of Potential Effects (APEs) based on the Tier 1 SCA, Corridor 7, in consultation with MD SHPO and the other consulting parties. For more detailed information about the recommendations for continuation of the Section 106 process in Tier 2, refer to **Chapter 8.3** of the *Cultural Resources Technical Report*.

Impacts to jurisdictional waters of the US (WOTUS) would require coordination with the US Army Corps of Engineers (USACE) and the Maryland Department of the Environment (MDE) and are authorized under the Joint Permit Application (JPA) or Individual Permit process, depending on the level of jurisdictional impact. Impacts to the jurisdictional, non-tidal 100-year Federal Emergency Management Agency (FEMA) floodplain are authorized by the Maryland Department of the Environment (MDE) via the JPA process.

Impacts to lands within 1,000 feet of the mean high water line of tidal waters of the Chesapeake Bay and its tributaries require authorization from the Critical Area Commission.

Coordination with the Maryland Department of Natural Resources (MDNR) and county planning agencies would be required during a Tier 2 NEPA study to evaluate potential impacts to forested areas and forest interior dwelling species (FIDS) habitat. Submerged aquatic vegetation (SAV) and oyster resources and

regulated by MDNR but are also classified as Special Aquatic Sites and regulated by MDE and USACE under Section 404 of the Clean Water Act (CWA).

Coordination with the US Fish and Wildlife Service (USFWS) would be required for any potential effects on listed endangered or threatened species in accordance with Section 7 of the Endangered Species Act (ESA). Coordination with the Chesapeake Bay Oyster Alliance, MDNR, the Virginia Marine Resources Commission, USACE, USFWS, and the National Oceanic and Atmospheric Administration, among others, may be required during a Tier 2 NEPA study to evaluate potential aquatic resource impacts.