

ATLANTA REGIONAL MANAGED LANE SYSTEM PLAN

IMPLEMENTATION STRATEGY

PREPARED FOR

Georgia Department of Transportation
Office of Planning
600 West Peachtree Street NW
Atlanta, GA 30308
Phone: (404) 631-1796
Fax: (404) 631-1804
Contact: Michelle Caldwell

PREPARED BY

HNTB Corporation
3715 Northside Parkway
400 Northcreek, Suite 600
Atlanta, GA 30327
Phone: (404) 946-5708
Fax: (404) 841-2820
Contact: Andrew C. Smith, AICP

Atlanta Regional Managed Lane System Plan

Technical Memorandum 11: Implementation Strategy

Prepared for:

Georgia Department of Transportation

One Georgia Center, Suite 2700

600 West Peachtree Street NW

Atlanta, Georgia 30308

Prepared by:

HNTB Corporation



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IMPLEMENTATION STRATEGY

A. Introduction

The Managed Lane System Plan (MLSP) provides the Atlanta metropolitan region with a means to analyze corridor and regional impact related to adding managed lanes on its interstate system. Using the High Occupancy Vehicle (HOV) System Plan footprint, including the Truck Only Lane(s) system as part of the analysis, and examining HOV Conversions to High Occupancy Toll (HOT) or Electronic Toll Lanes (ETL), the MLSP recognizes and addresses the need for flexible infrastructure that provides mobility and value to Georgia in the long-term.

The MLSP establishes goals for managed lanes investment at the corridor and system level, discusses critical policy elements, determines appropriate lane management strategies, establishes performance measures, evaluates at a concept level traffic and revenue potential, develops preliminary concepts, and strategized an implementation plan. The goals and objectives of the MLSP are to protect mobility and maximize person and vehicle throughput. The MLSP protects mobility by developing a system that will increase average travel speeds, decrease delay, increase access to major activity centers, and increase system efficiency. The MLSP maximizes person and vehicle throughput by increasing throughput, decreasing travel time variations, and improving transit on-time performance.

B. Purpose

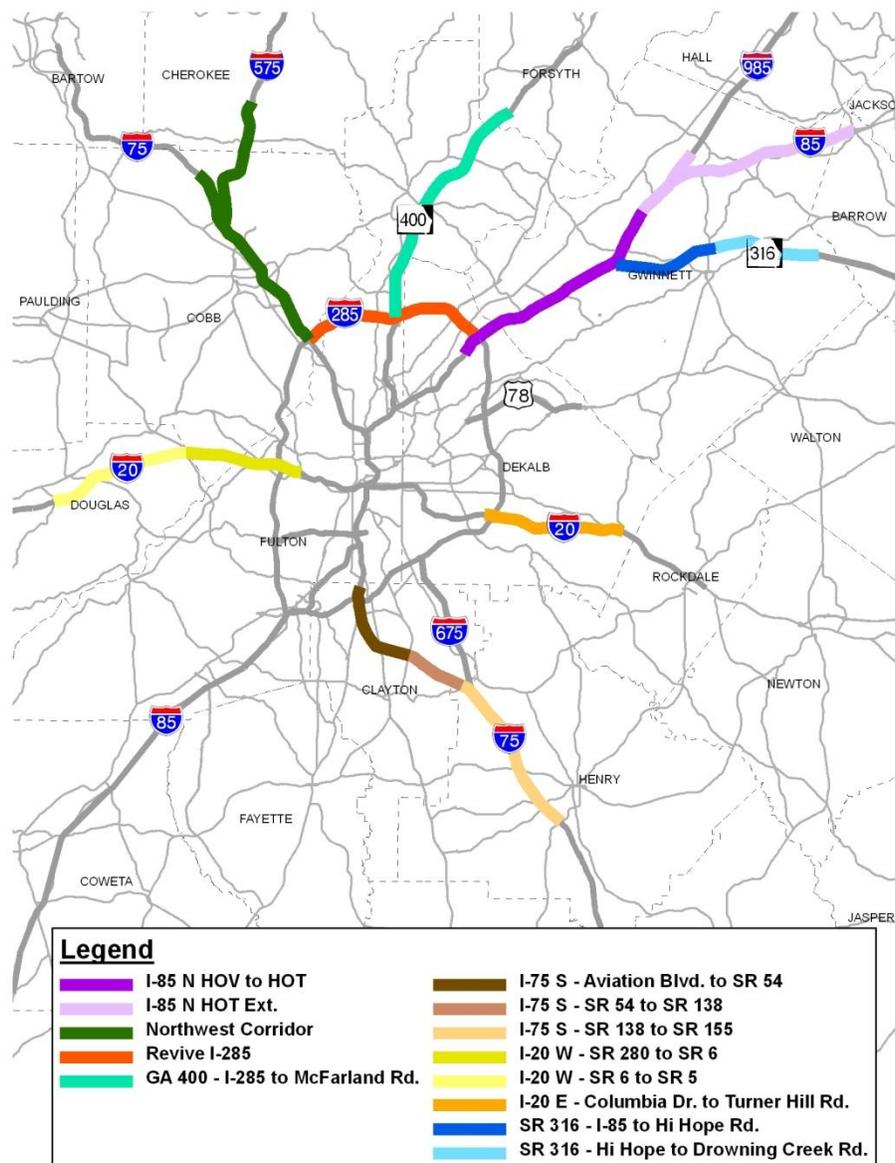
The purpose of this document is to provide strategies to progress the Managed Lanes System Plan (MLSP) towards implementation. A linkage between transportation planning and the National Environmental Policy Act of 1969 (NEPA process) will be explored and steps to take coming out of the transportation planning process will be outlined to provide a smooth transition into the NEPA process.

This document will expound on the benefits of integrating the transportation and environmental processes, compare a strategy of using a tiering approach versus a traditional corridor-by-corridor approach to link the transportation planning and NEPA process, and suggest the next steps towards implementing the MLSP.

C. Catalog of Studies on MLSP Corridor

Several studies have taken place on MLSP corridors (see Figure 1). The study areas were limited to addressing the transportation deficiencies in that particular corridor, which follows a traditional approach. The MLSP takes a regional approach that analyzes the appropriate level of transportation investment at the corridor and regional level to help protect mobility, manage congestion, and increase the efficiency of the transportation system. The map below shows the corridors that have undergone or are in the process of an on-going study.

Figure 1: Study Area



D. Planning and Environmental Linkages

Federal Highway Administration (FHWA) policy emphasizes “to the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation” (23 CFR 771.105). Transportation planning and environmental planning should be a coordinated effort with choices made in the transportation planning phase helping to form the need and purpose statement for a NEPA document. The planning products emerging from this collaborative process should be given “great weight” by the FHWA as well as the Federal Transit Administration (FTA), which is consistent with Congressional and Court direction(1). The Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) provides the foundation for

linking transportation planning and environmental planning to “make the environmental review process more efficient and timely, and to protect environmental and community resources” in an effort to implement critical projects(2).

The MLSP responds to the need to formulate a transportation vision for the Atlanta region. The transportation planning phase of the MLSP employs a transportation system-level analysis. This regional perspective allows for an assessment of the cumulative impact of the MLSP and presents an opportunity for a systematic approach for implementation. The MLSP’s strategic vision enables a systematic linkage between transportation system analysis and environmental planning.

Federal Requirements

In transportation planning, the development of transportation plans and programs is guided by seven planning factors (23 U.S.C. 134(f)(1) and 23 U.S.C. 135(c)(1)), one of which is to “protect and enhance the environment, promote energy conservation, and improve the quality of life.” As such, there generally is a broad consideration of the environmental effects of transportation decisions for a region. To the extent relevant, this analysis can be incorporated into the environmental consequences section of an Environmental Assessment (EA) or Environmental Impact Statement (EIS) prepared under NEPA. However, in most cases the assessment of environmental consequences conducted during the transportation planning process will not be detailed enough to meet NEPA standards and thus will need to be supplemented(1).

Nonetheless, the planning process can often be a source of information for the evaluation of cumulative and indirect impacts required under NEPA (40 C.F.R. 1502.16, 1508.7 and 1508.8). The nature of the planning process is to look broadly at future land use, development, demographic changes, and other growth factors. This analysis could provide the basis for the assessment of cumulative and indirect impacts required under NEPA. Investigating these impacts at the planning level can also provide insight into landscape, watershed or regional mitigation opportunities that will provide mitigation for multiple projects(1).

An EIS may incorporate information regarding future land use, development, demographic changes, etc. from the transportation planning process to form a common basis for comparing the direct, indirect and cumulative impacts of all alternatives. When an analysis of the environmental consequences from the transportation planning process is incorporated into an EIS it:

- Should be presented in a way that differentiates among the consequences of the proposed action and other reasonable alternatives;
- Should be in sufficient detail to allow the decision-maker and the public to ascertain the comparative merits and demerits of the alternatives; and
- Must be supplemented to the extent it does not adequately address all of the elements required by the Council on Environmental Quality and FHWA/FTA NEPA regulations.

Other important environmental requirements to consider that are included in SAFETEA-LU regulations are:

Section 1904: Stewardship and Oversight Program

For major projects, a project management plan and a project financing plan are required, per SAFETEA-LU regulations.

Section 6001: Statewide Transportation Planning; Metropolitan Transportation Planning

Section 6001 includes requirements for environmental consideration during the transportation planning process that emphasize greater public involvement and outreach, greater coordination with regional and statewide planning processes, and extensive coordination with other planning organizations.

Section 6002: Efficient Environmental Reviews for Project Decision Making

Section 6002 requires extensive coordination, using a formal coordination plan, with all interested parties, encourages resource agencies to get more involved earlier in the decision-making process, and puts at risk decisions made outside the formal NEPA process.

Planning Partners**The Public**

SAFETEA-LU specifies that the lead agencies must give the public the opportunity to comment on the planned project. To date, public involvement has been conducted on a corridor-by-corridor level as different types of managed lanes are implemented throughout the region. For instance, public involvement efforts were undertaken for the HOV to HOT conversion along I-85. However, emphasis on how each managed lanes corridor fits into an overall system and connects with the others on a regional level in the long-term may not have been a focus topic. A public involvement campaign conducted at a system-wide level to gain regional support may reduce the risk that the preferred alternative on a particular corridor eliminates the managed lane tolling option. The elimination of the tolling component on a particular corridor may disrupt the continuity of the managed lanes system and reduce the overall benefit afforded by a coordinated system across multiple corridors.

Atlanta Regional Commission - Plan 2040

An extensive public involvement campaign will help to educate the public on the benefits of managed lanes. Managed lanes will need to be adopted into the Atlanta Regional Commission's (ARC), Regional Transportation Plan (RTP) and Transportation Implementation Plan (TIP) in order to progress into the next project development phase. The ARC is currently updating its RTP, which is called "Plan 2040." If the ARC's financial plan for its long range transportation plan indicates the need for special funding sources (e.g. tolls or public-private financing) to implement its identified projects, then this information should be included in the need and purpose statement(s) in the managed lanes NEPA document(s), per SAFETEA-LU requirements.

If the MLSP projects are adopted into the RTP, then the NEPA document needs to detail the impacts of the MLSP-selected project in the EIS, using the project as the preferred alternative and comparing it to a No-build as a baseline and other alternatives developed during the scoping process, as appropriate. The acceptance of the MLSP projects into the RTP validates the transportation planning process and NEPA defers to that MPO process. Documentation of the decision points is critical so that in the NEPA process the rejection of alternatives can be referenced and not have to be analyzed in the same detail as the preferred alternative. Any alternative that moves into NEPA has to be given the same level of analysis. An alternative that does not include tolling may serve as an alternative in the NEPA process and provide further validation of the benefits of tolling to meet the need and purpose of managing congestion.

PPP Legislation

TIP Adoption is fiscally constrained and traditionally has been based on full public expenditure. With the introduction of private investment, which is anticipated to supplement the public investment as managed lanes are implemented, there is a need to calculate the potential private investment required on the MLSP corridors. The MLSP has developed traffic and revenue assumptions over a multitude of scenarios that were used to generate the recommended configuration of managed lanes in each corridor and as a regional system. The cost of the managed lanes and the anticipated private funding required should be incorporated into the need and purpose of the NEPA document. The costs of the MLSP as part of a fiscally constrained TIP should demonstrate the amount of investment of public and private funds and help to build public understanding and trust.

Transportation vision “buy-in” may reduce risk for private equity and increase opportunities for expedited project review and approval to build projects in a shorter amount of time with less public money than traditional pay-as-you-go methods. Early coordination with decision-making agencies may help to accelerate review and project delivery schedules.

The MLSP would apply market-based mechanisms to collect revenue and balance demand as it meets its goal of congestion management. The tolls generate revenue, which help to pay for the system, but also compel drivers to determine the value they place on reaching their destination in a guaranteed time. The travel time savings is a component of the MLSP that is presumed to tap into an unmet demand. The benefits of delay reduction include the abatement of negative externalities associated with congestion such as reduced air quality and stifled economic activity. Private equity takes a calculated risk by financially supporting the MLSP in order to secure a return on investment for supplying funds earlier to the MLSP projects. The private equity will be used to supplement the public funds being dedicated to the project in order to deliver the project earlier than if the GDOT waited to have the funds in hand. Clearing the concept at an earlier stage provides increased assurance that the project is warranted and publicly accepted, which may influence the private equity decision-makers to place a lower risk on the potential for public controversy and increase their participation and investment in the concept.

The responsibility for NEPA compliance rests on federal agencies. For highway projects that require federal approval, the lead federal agency typically is FHWA, which carries out its NEPA responsibilities in partnership with the State DOT. These NEPA responsibilities cannot be privatized; they cannot be “handed off” to a private developer. Therefore, even if a state seeks to shift many responsibilities for project development to a private developer, the state and FHWA must retain ownership of the NEPA process. Specific guidelines regarding the extent of a private developer’s involvement were provided by FHWA to Virginia DOT in a memorandum dated May 6, 2003 and serve as an example for GDOT’s relationship to private companies(2).

Agency Coordination

SAEFTEA-LU encourages early participation from cooperating agencies and consulting parties in order to identify environmental issues early on and to expedite review later in the environmental process. Environmental streamlining may be facilitated by early agency coordination on the MLSP and its regional scope. The lead agencies will be the FHWA and the GDOT and may include the cooperation of FTA, State Road and Tollway Authority (SRTA) and the Georgia Regional Transportation Authority (GRTA). Agencies included to participate in the interagency meetings may include, but are not limited to, all County and City governments

affected in the corridor, planning commissions, transit providers, fire and emergency service providers, the Clean Air Campaign, the Federal Emergency Management Administration (FEMA), Georgia Department of Agriculture, Georgia Department of Community Affairs, Georgia Department of Natural Resources, Georgia Environmental Protection Agency, Georgia Forestry Commission, Georgia Natural Heritage Program, Georgia State Transportation Board, the Governor's Office, National Center for Environmental Health, US Army Corps of Engineers, Savannah District of the Corps of Engineers, US Congress and US Senate members representing the Atlanta metropolitan area, US Housing and Urban Development, US Department of Interior, US Environmental Protection Agency – Region IV, US Fish and Wildlife Service, and the US Natural Resources Conservation Service.

E. NEPA Planning Framework

While transportation planning is not subject to the level of detail required in the NEPA process, the NEPA process may be initiated in conjunction with transportation planning studies. The following matrix summarizes a series of five approaches that can coordinate and integrate Corridor Planning and NEPA to various degrees(3). Each approach summarizes the relative advantages, disadvantages, and conditions under which approach is most applicable. The lower the approach number, the higher the level of integration between corridor planning and NEPA. For example, Approach No. 1 is a fully integrated corridor plan, where NEPA is an essential part of the work effort. At the other end of the range, Approach No. 5 is a pre-corridor planning/NEPA approach for projects that have not been designated as part of a corridor plan.

Table 1: Summary of Choices for Integrating the NEPA Process with Corridor Planning

No.	Approach	Advantages	Disadvantages	Most Appropriate
1.	Make corridor improvement decisions only within the formal NEPA process	<ul style="list-style-type: none"> • Decisions are made under the NEPA umbrella • Likely to generate resource agency attention • Well understood process; less chance of confusion 	<ul style="list-style-type: none"> • Requires federal signatures; less local autonomy than if done outside of NEPA 	<ul style="list-style-type: none"> • When agencies expect projects will keep moving through project development and construction
2.	Conduct a Tiered EIS (Tier 1 for design and scope decisions; Tier 2 for project development decisions)	<ul style="list-style-type: none"> • Decisions are made under the NEPA umbrella • Likely to generate resource agency attention • Federal signature on Tier 1 reinforces decisions made on design concept and scope • Amount of information in each tier can be tailored to needs 	<ul style="list-style-type: none"> • Requires education of resource agencies and public regarding the study objectives • Could confuse public if not properly explained • Requires two draft and final EISs 	<ul style="list-style-type: none"> • Where Federal buyoff on design concept and scope helps cement decision • When significant time lag is expected between planning decision and project development • When corridor protection is an issue
3.	Prepare less detailed Draft EIS for design concept and scope decision, with expectation of a Supplemental Draft EIS or new Draft EIS for project development decisions	<ul style="list-style-type: none"> • Likely to generate resource agency attention • Provides flexibility for level of detail in DEIS • Provides flexibility in whether to move ahead immediately into project development or wait 	<ul style="list-style-type: none"> • Resource agencies may expect more detail than DEIS is intended to provide; some education (and consensus) needed 	<ul style="list-style-type: none"> • When agencies are not sure whether there will be a time lag between planning decision and project development • When Federal involvement in draft is viewed to be a plus
4.	Initiate NEPA scoping process to begin the corridor study, but do not prepare draft and final NEPA documents until project development begins	<ul style="list-style-type: none"> • Allows corridor study to take place under the NEPA umbrella • Does not require Federal signatures until project development; Planning decisions made locally 	<ul style="list-style-type: none"> • Resource agencies may be unclear about their roles and obligations in this approach • Responsibilities and expectations of all parties would need to be clearly understood and explained 	<ul style="list-style-type: none"> • When there is a concern about making decisions outside the NEPA umbrella, but it is viewed as premature to initiate NEPA documentation
5.	Conduct corridor study outside NEPA process; Follow with NEPA documentation at appropriate time	<ul style="list-style-type: none"> • Provides greatest local flexibility • If study is conducted well, information can be integrated into NEPA record • Have the option to initiate EIS/EA when appropriate or “spin off” projects to EIS/EA in middle of study 	<ul style="list-style-type: none"> • Resource agencies may take study less seriously • Heightens possibility of revisiting decisions if study eliminates certain alternatives outside NEPA umbrella 	<ul style="list-style-type: none"> • When a multi-corridor study is appropriate, with expectation of multiple recommended projects • When significant time lag is expected between planning decision and project development

Source: *Idaho Corridor Planning and National Environmental Policy Act Integration Guide*

Tiering Process Benefits (Approach #2)

The regional approach of the MLSP may be applied towards NEPA planning. Using a tiering approach, high-level environmental impacts may be determined that provide a feedback loop for the transportation planning, so that these planning processes inform each other and provide a foundation for decisions (8). The goal of using a tiered approach is to provide a link between transportation planning and NEPA planning and analyze potential impacts at a broad level to avoid unnecessary detailed study of alternatives that could have been eliminated early on based on environmental fatal flaws. Additionally, this approach helps to solidify the goals and need and purpose of the projects to achieve agency acceptance and environmental streamlining later in the process (8).

A Tier 1 Environmental Impact Statement (EIS) may be prepared to determine decisions such as mode and general location (4). The goals developed in the transportation planning process may be linked to the formal need and purpose statement developed in the NEPA process. Tier 1 analysis may utilize geographic information system (GIS) analysis to conduct an inventory of resources in the vicinity of the proposed project's study corridor. The range of alternatives and limits of study will require agency consultation to determine the appropriate level of detail needed in order to make informed decisions. An estimation of potential impact provides an understanding of the environmental impacts at a regional and corridor level. Gathering this information at an early project stage enables decision makers to make informed choices and creates opportunities for mitigation strategies. The Tier 1 EIS approach eliminates the duplication of effort on NEPA components that are assessed on a regional level(7). Broad level analysis conducted in the Tier 1 EIS, may be referenced in the Tier 2 EIS to allow the subsequent Tier 2 analysis to focus on detailed impacts(7).

The level of decisions and timing of decisions of Tier 1 EIS should be documented in detail. A Tier 1 EIS that seeks a Record of Decision (ROD) allows right-of-way to be purchased, which affords agencies the opportunity for right-of-way corridor protection. The outcomes of the Tier 1 EIS do not preclude the need to conduct a Tier 2 EIS nor do they dictate the level of documentation. The Tier 1 may establish a general location and mode of the project in order to eliminate the need to conduct detailed study on alternatives that did not meet the need and purpose of the project. The rationale for the rejection of project alternatives should be developed in detail. The number and type of alternatives that meet the overall need and purpose, the no-build or "no action" alternative as a baseline and the rejection of specific alternatives should be developed with input and concurrence from cooperating regulatory and resource agencies in order to streamline review of the NEPA document and expedite permitting requirements in later phases, as appropriate(5). The NEPA process requires that alternatives be given the same level of analysis(7). The Tier 1 provides a foundation for the need and purpose statement included in the NEPA process. Extensive public involvement and agency coordination early on should help eliminate conflict on decisions made later in the process. Studies that are part of the NEPA process which are appropriate for a Tier 1 EIS include:

- Indirect and cumulative effects
- Regional air quality impact assessment
- Land use impacts

- Public involvement
- Environmental Justice
- Natural systems impacts produced at the watershed-level
- Phased Section 106 and Section 4(f) studies

A system-wide Tier 1 EIS approach eliminates the redundancy of indirect and cumulative impacts analysis, air quality assessment, land use impacts, and public involvement conducted at an individual corridor level. Additionally, this approach provides the public and agency decision-makers a greater understanding of the total transportation system impact. The Tier 1 may provide the umbrella for the development of a focused transportation vision for the Atlanta region.

The MLSP brings in a relatively new concept to the region. While the toll booths on SR 400 have existed since the early 1990s, the nexus between the tolling need and the project were clear: the tolls helped pay off the debt used for its construction between I-285 and I-85. The concept of using tolling as a congestion management tool is new to the region. A public education campaign should be conducted to help the public understand the reasoning behind tolling, to explain where the tolling revenue will go, and to educate the public on the way the system will function. Environmental justice community identification and outreach may be conducted at a regional level and potential impacts of the system may be identified early to start a conversation for potential mitigation solutions. Identifying potential impacts early provides opportunities for avoidance, minimization, and mitigation strategies to be identified before detailed engineering and preliminary design have taken place, which reduces study costs and provides time savings. A graphic that shows current and proposed projects and how they interact helps determine cumulative impact, enables more effective planning and design of projects, and assists in identifying potential mitigation early on (4).

Early identification of potential issues offers opportunity for creative solutions. For example, identifying the potential impacts for the entire managed lanes system may help to develop mitigation strategies for natural resources impacts. Traditionally, compensatory mitigation has been carried out on a project-by-project basis; specific measures are implemented to mitigate a project's impacts at a site that is usually on or adjacent to the impact site. Project-specific mitigation is usually selected based on the impact-site location, usually does not address landscape or watershed perspectives, and is generally small in scale. During the environmental review and permitting phase of project development, regulatory agencies will assess the expected impacts of the project and set a proposed threshold for mitigation. The applicant or project sponsor is then responsible for developing the mitigation proposal that is presented to the agencies to confirm how project impacts can be mitigated. The mitigation can be on-site or off-site and in-kind (of similar resource or ecological function as the impact) or out-of-kind; however, there has traditionally been a flexible preference for on-site and in-kind compensation.

In some cases, on-site, in-kind mitigation may not yield the greatest benefit to an ecosystem. In 2001, the National Academy of Sciences National Research Council (NAS/NRC) recognized this shortcoming of traditional approaches to mitigation in their report titled *Compensating for Wetland Losses Under the Clean Water Act* (6). This report states "The [NAS/NRC] committee endorses the watershed approach and finds the automatic preference for in-kind and on-site compensatory mitigation ... to be inconsistent with that approach." The NAS/NRC report noted that often there are circumstances in which on-site or in-kind mitigation is not practicable nor is it

environmentally preferable under a watershed approach (6). Mitigation strategies may be maximized by providing mitigation on the watershed level which may provide an overall enhanced benefit to the environment. Determining the general managed lanes “footprint” and assessing the potential impact early provides increased opportunities for maximizing mitigation.

The following applies to a tiered EIS with regard to Section 4(f): When the first-tier, broad-scale EIS is prepared, the detailed information necessary to complete the Section 4(f) evaluation may not be available at that stage in the development of the action. In such cases, an evaluation should be made on the potential impacts that a proposed action will have on Section 4(f) land and whether those impacts could have a bearing on the decision to be made. A preliminary determination may be made at this time as to whether there are feasible and prudent locations or alternatives for the action to avoid the use of Section 4(f) land. This preliminary determination shall consider all possible planning to minimize harm to the extent that the level of detail available at the first-tier EIS stage allows. It is recognized that such planning at this stage will normally be limited to ensuring that opportunities to minimize harm at subsequent stages in the development process have not been precluded by decisions made at the first-tier stage. This preliminary determination is then incorporated into the first-tier EIS.

Whereas the Tier 1 EIS provides general location and mode of a project to gain agency support of the transportation concept, the Tier 2 EIS analyzes specific impacts based on design alignments and may be conducted closer to construction. Approval of Tiered EIS establishes a unified approach that validates individual project’s contribution to a system-wide vision. For example, if ultimately the Atlanta area will have managed lanes on its highway system, it does not preclude the construction of HOV lanes as an interim project. The key is that the system-wide impacts will have been estimated as a whole in the TIER 1 EIS and therefore, there will be an expectation of the impacts of a project-level corridor study for introducing new HOV lanes. While a Tier 1 EIS would be completed for the entire system, that does not mean that EISs will have to be completed for each corridor. An environmental evaluation of resources in the corridor may provide evidence that there are not significant impacts and the project could be constructed under an Environmental Assessment (EA) with a Finding of No Significant Impacts (FONSI). The coordination afforded in the Tier 1 will provide agencies and stakeholders an understanding of the total system impact and a foundation for decisions made on the required level of documentation as each corridor moves into NEPA as it nears the construction phase.

Potential benefits of Tiered EIS approach include:

1. Tiering provides the flexibility to achieve two goals that are often in conflict – widening the range of alternatives, while at the same time increasing the level of detail in the analysis of alternatives(4).
2. Tiering expedites the resolution of big-picture issues, such as general location and mode choice, so that subsequent studies can focus solely on project-specific impacts and issues (4).
3. Tiering permits early right-of-way acquisition and corridor preservation in areas of existing and anticipated rapid growth and development(4).
4. Tiering expands the opportunities for public and agency input by breaking the environmental analysis into two levels. Individuals with a strong interest in the overarching questions of route location and mode choice can participate extensively at Tier 1; those who are more interested in

localized impact and mitigation issues can focus their efforts on the specific Tier 2 project or projects that involve those issues(4).

5. Tiering allows environmental analyses for each Tier 2 project to be conducted closer in time to the actual construction phase, as funds become available for construction, thereby improving the usefulness of the studies and reducing the chance that supplementation will be necessary(4).

6. Tiering offers an appropriate mechanism for linking broader scale planning and project level decision-making(4).

7. Tiering may actually save time and/or money, by ensuring that environmental issues are addressed at an appropriate level of detail at each stage of the process, and thus avoiding excessive documentation of detailed issues too early in the process(4).

Potential drawbacks with the Tiered EIS approach include:

1. Regulatory requirements under other laws (Section 106, laws pertaining to protection of wetlands, etc.) do not specifically provide for tiering and therefore must be adapted. With regard to how the Section 106 process is carried out in Georgia, the tiered process might conflict with GDOT's informal "5 year rule" which acknowledges that all field surveys/reports related to the identification and evaluation of historic resources are no longer valid if a certain percentage of the project's right-of-way has not been authorized within 5 years of the initial surveys/reports. Section 106 allows for a "phased" approach to the identification of resources in the tiering process. For example, the current approach to Section 106 documentation involves a two step process. The first step is a records check and "windshield" survey and the second step is establishing National Register eligibility and boundaries. If a tiered approach is to apply the "5 year rule" must be modified.

This issue of a document's "shelf life" is noteworthy in the NEPA process and should be acknowledged in any efforts to more thoroughly integrate the planning process with NEPA. It should be noted that unlike certain documents relative to the Section 106 process, the "shelf life" of a NEPA document (including a tiered EIS) is not determined by its age, but by circumstances—i.e., whether or not there are substantial changes in the proposed action that are relevant to environmental concerns. In other words, the "good standing" of a NEPA document is directly tied to the need to supplement it.

2. Lack of experience with tiering process may make decisions made by FHWA/GDOT more vulnerable to a lawsuit (4). This lack of experience may also lead to issues of trustworthiness and credibility in the eyes of the public, who might, at some point in the constant back-and-forth coordination that must take place in the tiering process, begin to believe that agencies are changing their stories and objectives, among other possible changes. These issues with information management may further expose vulnerability to litigation.

3. With regard to the environmental process, FHWA/GDOT are sued on how they follow, or do not follow certain aspects of the process rather than on the decisions and conclusions that are ultimately made. Therefore, lack of experience with tiering makes it difficult to predict with confidence how courts might evaluate the adequacy of a tiered NEPA process or any other type of environmental process that deviates from the norm.

SAFETEA-LU's Flexible Solutions

SAFETEA-LU offers the opportunity for flexible solutions under NEPA. Therefore, it is important to understand the differences between adopting a tiering approach for the entire MLSP system plan versus a corridor by corridor approach. Both may be appropriate approaches, the question is which provides the most effective and efficient means towards MLSP implementation. Considerations of applicable SAFETEA-LU guidance include:

- Extensive public outreach will provide the public with understanding of the congestion management technique that tolling provides and instill public trust to reduce the chance public controversy over the tolling component of managed lanes.
- Opening NEPA in a Tier 1 EIS allows for agency decision on the need and purpose and range of alternatives to be explored with agencies providing concurrence on decisions.
- The guidance from SAFETEA-LU allows for the use of environmental documentation on a corridor by corridor level, provided there are logical termini established and the managed lanes project meets the need and purpose.
- If the managed lanes that are a product of the MLSP are included in ARC's RTP, then the NEPA document can focus on the impacts of managed lanes and does not have to evaluate different mode types or analyze alternative locations. In order to do this, the ARC needs to show it vetted the options, modeled the results to alternatives (including transit), and had a strong public involvement component to give an opportunity for the public to comment. SAFETEA-LU allows GDOT to use what was done in planning to move into NEPA. Therefore under this approach, tiering does not provide a benefit; the traditional EIS or EA approach would apply as each corridor moves closer to construction.

Ultimately, the lead agencies, GDOT and FHWA, determine the need and purpose and range of alternatives. The broad level need and purpose of the MLSP is to manage congestion. The following table represents a comparison on how best to structure the activities to inform the lead agencies and the public on the transportation needs of the regional, the range of reasonable alternatives, the cumulative impacts, and the development of a mitigation plan.

Table 2: Comparison between Tiering and Traditional Approach to Project Implementation

Issue	Tier 1 and Tier 2 EIS Approach	Corridor by Corridor EIS and RTP Adoption using SAFETEA-LU
System-wide Level Analysis	General location and mode agreed upon in Tier 1. Tier 2 analysis includes specific impact using design alignments to alternatives that advance out of Tier 1 as reasonable and feasible alternatives that meet the need and purpose.	Potential for more alternatives, different modes, alternative locations within wider corridor that meet the need and purpose. Alternatives analysis may include more modes and locations that those coming out of a Tier 1 ROD.
Agency Support	<ul style="list-style-type: none"> • Concept acceptance of general mode and location that meets need and purpose in Tier 1 analysis. Potential to focus efforts on fewer alternatives in Tier 2. Tier 2 details impacts. • Supports investigation into the type of work, termini, length, and general location of the proposed project and any other Federal approvals (e.g. Section 404 permits). 	Projects that come out of a MPO project are considered valid. SAFETEA-LU directs FHWA not to go back to previous decision points.
Right-of Way Purchasing	A Tier 1 ROD allows right-of-way to be purchased. Right-of-way can be strategically secured or purchased in advance of construction allowing for potential cost savings assuming land cost will rise in the future.	Right-of-way occurs after each EIS is approved. Cost of right-of-way is determined at time of construction.
Data Collection and GIS Repository	Data collection in Tier 1 allows for the development of a regional repository of GIS information and understanding of potential impacts and subsequent permits needed.	Corridor-by-corridor data collection. Some redundancy included in NEPA documentation.
Indirect and Cumulative Impact (ICI) Evaluation	Regional analysis eliminates redundancy compared to corridor-by-corridor level of analysis.	Information collected as each corridor is initiated in the NEPA process.
Land use Impacts	Regional assessment and opportunity to prevent development encroachment onto future right-of-way. Coordinated land use approach to support transportation system and potential future transit operations.	Impacts are calculated on a project by project basis.
Natural Resource Impact Planning	Early identification of total impact of the MLSP projects to natural resources with the potential to identify a mitigation strategy. Instead of traditional on-site 1 for 1 mitigation that may not produce effective results, a larger area may be secured for mitigation at the watershed level.	Studies are conducted as each corridor moves into environmental studies for NEPA. Traditional on-site 1 for 1 mitigation.
Section 106 and Section 4(f)	Process modification needed to conform to tiering approach.	Traditional process of survey, determination, and SHPO concurrence.
Air quality	Regional assessment of air quality.	Corridor air quality assessment.

Issue	Tier 1 and Tier 2 EIS Approach	Corridor by Corridor EIS and RTP Adoption using SAFETEA-LU
Public controversy potential	Tiering may reduce risk if public education campaign garners support for tolling.	If the public rejects tolling concept, then there is risk of failure for other corridors.

F. Legal Guidance

Based upon a local legal case, *North Buckhead Civic Association v. Skinner*, 903 F. 2d 1533 (11th Cir. 1990), the results of the transportation planning process are considered valid. The law is clear that deference is made to the transportation planning process and subsequent phases do not have to revert to previous decision points. However, the court decision emphasizes that the need and purpose of a project should not be written so narrowly that “reasonable alternatives” are ruled out of consideration or eliminated completely. In the *North Buckhead* case, the purpose and need was derived from a series of planning studies conducted by the Atlanta Regional Commission. Applying this logic to the MLSP efforts, the managed lanes projects should be considered valid; however, the MLSP projects are not necessarily the only alternative solutions to the needs of the Atlanta regional transportation system. A strong, clearly defined need and purpose needs to emerge from the transportation planning process that can be integrated into the NEPA planning phase. Additionally, FHWA guidance specifically calls out system-level analysis, which has relevance to the MLSP:

“To the extent regional or systems-level analyses and choices in the transportation planning process help to form the need and purpose statement for a NEPA document, such planning products should be given great weight by FHWA and FTA, consistent with Congressional and Court direction to respect local sovereignty in planning. This approach is also consistent with a letter to Secretary Mineta dated May 12, 2003, from James Connaughton, Chairman of CEQ, on need and purpose statements in NEPA documents:

‘Federal courts generally have been deferential in their review of a lead agency’s “purpose and need” statements, absent a finding that an agency acted in an arbitrary or capricious manner. They have recognized that federal agencies should respect the role of local and state authorities in the transportation planning process and appropriately reflect the results of that process in the federal agency’s NEPA analysis of purpose and need [citing to *North Buckhead*].’”

NEPA and the government-wide regulations that carry out NEPA (40 C.F.R. Parts 1500 *et seq.*) clearly contemplate the integration of the NEPA process with planning processes. Specifically, Section 102(2)(A) of NEPA direct all Federal agencies to “utilize a systemic, interdisciplinary approach which will insure the integrated use of natural and social sciences and the environmental design arts in *planning* and decision-making. [Emphasis added] The regulations issued by the President’s Council on Environmental Quality (CEQ) amplify the statutory directive:

- 40 C.F.R. 1501.1(a) requires decision-makers to “integrate[e] the NEPA process *into early planning* to ensure appropriate consideration of NEPA’s policies and to eliminate delay;

- 40 C.F.R. 1501.1(b) emphasizes the need for "cooperative consultation among agencies *before the environmental impact statement is prepared*, rather than "submission of adversary comments on a completed document;
- 40 C.F.R. 1501.1(d) emphasizes the importance of "[I]dentifying at an early stage the significant environmental issues deserving of study, by deemphasizing "insignificant issues and "narrowing the scope of the environmental impact statement accordingly;
- 40 C.F.R. 1501.2 requires that Federal agencies "integrate the NEPA process with *other planning at the earliest possible time* to ensure that planning and [agency] decisions reflect environmental values. . .
- Likewise, the NEPA regulations adopted by the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA) emphasize the tie between NEPA and transportation planning:
 - 23 C.F.R. 771.105(a) provides that "To the fullest extent possible, all environmental investigations, reviews and consultations be coordinated as a single process. . . and
 - 23 C.F.R. 771.105(b) directs that "Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic and environmental impacts of the proposed transportation improvement; and of national, State and local environmental protection goals.

Thus, the organic statute, the government-wide NEPA regulations, and the specific FHWA and FTA regulations all strongly support the integration of the NEPA process with the transportation planning process.

This respect for local sovereignty in making planning decisions has been reinforced more recently in the context of transportation planning. In *North Buckhead Civic Association v. Skinner* (discussed previously in Section III of this Memorandum), the 11th Circuit emphasized that "NEPA does not confer the power or responsibility for long range local planning on Federal or state agencies. 903 F. 3d at 1541-42. See also *Sierra Club v. U.S. Department of Transportation*, 350 F.Supp.2d 1168, 1193 (D. Nevada 2004), where the Court said: "[A] federal agency does not violate NEPA by relying on prior studies and analyses performed by local and state agencies. This approach is also consistent with the statutory provision describing the Federal-State relationship for the Federal-aid highway program: "The authorization of the appropriation of Federal funds or their availability for expenditure under this chapter shall in no way infringe on the sovereign rights of the States to determine which projects shall be federally financed. 23 U.S.C.

G. Case Studies

Certain states that have undertaken the tiered EIS approach have approached it somewhat differently. Five case studies are provided to show approaches taken in Missouri, Oregon, Florida, North Carolina, and California.

1. Missouri Department of Transportation

MDOT conducted a Tier 1 EIS that explored various design alternatives for improvements to I-70 between Kansas City and St. Louis (roughly 199 mile long by 10 mile wide corridor). This approach considered a variety of improvement alternatives such as widening the existing

facility, building a parallel facility, transportation and design management programs (ITS), building a parallel toll facility, constructing HOV lanes, and developing a passenger rail system.

2. Oregon Department of Transportation (ODOT)

ODOT conducted a Tier 1 EIS that explored various alternatives for a proposed bypass along Oregon 99W around the towns of Newburg and Dundee. Unlike the tiered EIS prepared by MDOT, the document prepared by ODOT explored design alternatives solely within a single realm of improvement (bypass). Thus, the main purpose of ODOT's study was to support a "location" decision as opposed to a "design" decision that would clear the way for right-of-way acquisition within the selected bypass corridor. In effect, it allowed for the completion of a NEPA study and the acquisition of right-of-way after the planning phase and prior to the project development process (this may be useful in Georgia for resolving issues between right-of-way acquisition and the "5 year rule" pertaining to historic resources under Section 106).

Beginning around 1989, the majority of tiered EISs were used for protecting right-of-way or preserving corridors for highways, particularly in areas of rapid development (like the Oregon example above). FHWA issued Notices of Intent to prepare Tier 1 EISs to define and preserve corridors in Washington County, Oregon and Contra Costa County, California in 1989; in Los Angeles County, California and Livingston, Michigan in 1991; and in Kern County, California in 1994.

3. Florida Department of Transportation (FDOT)

The Florida Department of Transportation (FDOT) has developed one, integrated, Efficient Transportation Decision-making (ETDM) Process for its planning, development, and permitting processes for transportation projects. The ETDM Process aims to identify critical environmental and cultural issues early, to involve resource agencies and the public in the transportation planning process, to supply the necessary data for informed decision-making, and to decrease the time and cost associated with project development and permitting.

Under the ETDM Process, dialogue among resource agencies, MPOs, FDOT, and the public begins as soon as transportation needs are articulated. The Environmental Screening Tool (EST), an internet-accessible interactive database and GIS mapping application, makes this involvement possible. After FDOT uploads new project information onto the ETDM website, the EST performs automated crosschecks among proposed transportation project sites, natural resource information, and community characteristics. Once these crosschecks are processed, the Environmental Technical Advisory Team (ETAT), made of resource and transportation representatives from the ETDM member agencies, reviews the outputs and provides feedback on potential environmental impacts, possible mitigation and avoidance strategies, and the scope of needed environmental study. Summaries of the ETAT's comments, along with the GIS outputs, are made available to the public via the web. ETDM coordinators then make sure that FDOT and MPOs receive the team's recommendations and suggested degree of effect with comments so that issues might be resolved before the project development stage. Resource agencies engage in early NEPA reviews, issuing final NEPA decisions and permits concurrently.

4. North Carolina state agencies, including DOT

The Ecosystem Enhancement Program (EEP), a compensatory mitigation system, was established in 2003 by the North Carolina Department of Environment and Natural Resources (NCDENR), in partnership with the North Carolina DOT (NCDOT) and the United States Army

Corps of Engineers, to speed project development and delivery while protecting the environment. Rather than focusing on individual highway project impacts, the EEP concept operates programmatically, using watershed plans and considering cumulative impacts associated with a given watershed. The program funds highway project mitigation activities, such as stream and wetlands protection and restoration, at other locations within the same watershed and in advance of the actual project work. Funding is provided from Federal and state transportation sources through the statewide transportation improvement program (STIP). As of late 2005, EEP is on schedule to meet NCDOT's mitigation needs in all watersheds.

5. San Diego Regional Planning Agency, San Diego, CA

San Diego has an Environmental Mitigation Program (EMP) which includes a funding allocation category for the costs to mitigate habitat impacts for regional transportation projects. The EMP is unique in that it goes beyond traditional mitigation for transportation projects by including a funding allocation for habitat acquisition, management, and monitoring activities as needed to help implement the Multiple Species Conservation Program and the Multiple Habitat Conservation Program. The EMP has \$850 million to spend on mitigation from a regional sales tax. This funding is tied to mitigation requirements and the environmental clearance approval process for projects outlined in the Regional Transportation Plan. The Environmental Mitigation Program Working Group advises the Regional Planning Committee on issues related to the implementation of the EMP. Members of the working group include representatives from the City of San Diego, County of San Diego, the four San Diego Regional Planning Agency (SANDAG) sub-regions, state and federal wildlife agencies, and several organizations representing disciplines and interests involved in the implementation of the EMP. SANDAG is preparing a master agreement to establish the roles and responsibilities of the participating agencies and to formalize the implementation of the EMP. SANDAG encourages discussions on mitigation issues and transportation projects with affected agencies early in the planning process.

H. FHWA Special Experimental Project

The FHWA Special Experimental Project (SEP) 15 program may also be a viable strategy for implementation of the MLSP. SEP-15 is an experimental program for FHWA to identify new public-private partnership approaches to project delivery. It is anticipated that these new approaches will allow the efficient delivery of transportation projects without impairing FHWA's ability to carry out its stewardship responsibilities to protect both the environment and American taxpayers. SEP-15 addresses, but is not limited to, four major components of project delivery: contracting, compliance with environmental requirements, right-of-way acquisition, and project finance. Elements of the transportation planning process may be involved as well. The program seeks innovative techniques and/or areas of experimentation that are different from FHWA's traditional project approval procedures. SEP-15 can be used for a single corridor or a program composed of multiple projects. In many cases, subsequent projects can be added to a previously approved SEP-15 application.

SEP-15 cannot be used to modify environmental and other requirements external to Title 23 of the U.S. Code. Projects approved under the SEP-15 program must follow the same environmental requirements (i.e., NEPA) of a "regular" federally-funded project, but allows the project sponsor to experiment with the procedures used to fulfill the environmental requirements. This experimentation/innovation typically involves allowing project sponsors to

provide NTP with limited non-construction (P.E.) activities prior to Tier 1 NEPA approval of a project corridor.

I. Next Steps

Define the Need and Purpose of Projects

The transportation planning process for the MLSP vetted several alternatives. The evaluation of alternatives during the planning process may eliminate some of the alternatives from detailed study in the NEPA process prior to the start of the project-level NEPA process. The transportation planning process should shape the need and purpose of the project and thereby, the range of reasonable alternatives.

Consistent with NEPA, the need and purpose statement should be a statement of a transportation problem, not a specific solution. Alternatives passed over during the transportation planning process because they are infeasible or do not meet the NEPA “need and purpose” can be omitted from the detailed analysis of alternatives in the NEPA document, as long as the rationale for elimination is explained in the NEPA document. Alternatives that remain “reasonable” after the planning-level analysis must be addressed in the EIS, even when they clearly are not the preferred alternative (2).

Establish a funding need for the projects

A funding shortfall necessitates that a selected project type and mode has a revenue collection system. Emerging from the transportation planning process, the need for alternative financing should be identified, which relates back to the need and purpose.

The timing of projects and the cost in today’s dollars adds validity to the transportation planning process and supports the public’s understanding of the investment.

Establish a Public Involvement Plan

The reaction and input from public involvement may help to shape the scope and influence the need and purpose of the managed lanes projects. Community vision and goals should be established. Economic development agendas may be crystallized during the public involvement and agency coordination phase.

Develop a strategy based on the approach taken to implement the MLSP projects.

If GDOT and FHWA agree the best way to implement managed lanes is to take a tiered EIS approach, then the following step would be appropriate:

Develop institutional memorandums of understanding (MOU) to create a partnership agreement to share GIS data and actively involve agency leadership to get “buy-in” on regional transportation vision and potential impacts to environmental resources. Outline expectations and timing of decisions (i.e. What decisions will be made in the Tier 1 process? (mode and general location, etc.)). Meet early with agency decision-makers in the project concept development phase and on a regularly scheduled basis to maintain momentum on project decisions.

Develop a Memorandum of Understanding to determine the relationship of each corridor under study and how previous documentation can be used or combined across multiple corridors based on the selected Managed Lanes projects and their logical termini. Developing a coordination plan to transfer data from one study and phase to the next or integrating previous studies into a Tier 1 EIS on multiple corridors will utilize existing or planning studies underway and previously conducted field work on the managed lanes system plan corridors.

Section 1502.25 of the regulations requires that draft EISs be prepared concurrently and integrated with environmental analyses and related surveys and studies required by other federal statutes. In addition, Section 1506.4 allows any environmental document prepared in compliance with NEPA to be combined with any other agency document to reduce duplication and paperwork. However, these provisions were not intended to authorize the preparation of a short summary or outline EIS, attached to a detailed project report or land use plan containing the required environmental impact data. In such circumstances, the reader would have to refer constantly to the detailed report to understand the environmental impacts and alternatives which should have been found in the EIS itself. The EIS must stand on its own as an analytical document which fully informs decision-makers and the public of the environmental effects of the proposal and those of the reasonable alternatives (Section 1502.1). But, as long as the EIS is clearly identified and is self-supporting, it can be physically included in or attached to the project report or land use plan, and may use attached report material as technical backup (7).

Determine the general “footprint” of MLSP plan

Following the concept used by FDOT, the managed lanes project implementation schedule may benefit from the creation of a GIS database to document all resources impacts, which may be used to compare alternative alignment impacts during the NEPA process. This approach may also assist in the development of a mitigation strategy for impacts.

Start Compiling Existing Studies and/or Begin New Studies

Regardless of how the NEPA and planning processes are integrated for the MLSP, the environmental considerations to be analyzed are generally the same. They include:

Social/Economic Environment

1. Existing Land Use
2. Demographic/Social Characteristics
 - population, employment, income, minority representation, environmental justice

Natural Environment

1. Air Quality
2. Noise
3. Parkland/Recreational Areas
4. Prime Farmland

5. Water Quality
6. Physiography / Topography
7. Terrestrial / Aquatic Communities
8. Cultural Resources (history, archaeology)
9. USTs/Hazardous Waste Sites
10. Visual Quality
11. Indirect and Cumulative Impacts
12. Energy
13. Permit Applicability

For many of these considerations, a “phased” approach may be implemented based on the type of study undertaken (see previous mention of “phasing” with regard to Section 106 as an example). Any studies undertaken within the NEPA framework still must comply with applicable federal environmental laws and regulations. These include, but are not limited to, Section 4(f) of the US DOT Act, Section 7 of the Endangered Species Act (also provides for a “phased” approach), and Section 404 of the Clean Water Act. Coordination with the appropriate regulatory agencies on a case-by-case basis is necessary to determine how the requirements of these and other laws can be satisfied in the context of a tiered NEPA process.

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