

PETITION TO THE NEW JERSEY TURNPIKE AUTHORITY TO PROMULGATE RULES IMPLEMENTING EO 274, EO 23, EO 172 AND FOR OTHER RELIEF

Petitioners EmpowerNJ, BlueWaveNJ, Clean Water Action NJ, Delaware Riverkeeper Network, Don't Gas the Meadowlands Coalition, Environment New Jersey, Food & Water Watch, and the New Jersey Sierra Club hereby submit the following rule-making petition to the New Jersey Turnpike Authority ("NJTA"), pursuant to N.J.S.A. 52:14B-4(f) and N.J.A.C. 19:9-6.2. This petition is also supported by the organizations listed in Appendix A.

I. PETITION SUMMARY

NJTA is not in compliance with Executive Order 274 ("EO 274"),¹ which directs all State agencies to develop strategies to accomplish New Jersey's policy of reducing greenhouse gas emissions ("GHGs") by 50% below 2006 levels by 2030, the 50 x 30 Goal. Reducing GHGs in the transportation sector is crucial to accomplishing the 50 x 30 Goal. Vehicles account for 40.6% of the State's net GHG emissions, making it the highest GHG source in the State.²

Instead of complying with EO 274, NJTA is either ignoring it or undermining it. There is not a word about climate change in NJTA's 2020-2029 strategic plan³, ten-year capital plan⁴, rules⁵ or on its website.⁶ Even worse, under its capital plan, NJTA is planning to spend more than \$16 billion on new highway expansion projects on the Garden State Parkway and New Jersey Turnpike ("Highway Expansions" or "Projects")⁷ with little or no analysis of whether they would increase GHGs, conflict with this State's climate goals; be cost effective; improve traffic congestion; or whether the money could be better spent on other transportation projects that would generate more jobs and economic growth without adding toxic pollutants to our already bad air. The failure to adopt a climate reduction strategy conflict with federal policy and makes New Jersey ineligible to obtain any grants available under the Bipartisan Infrastructure Law.⁸

NJTA is also not complying with Executive Order 23⁹, which requires all state agencies to consider environmental justice in all its decision making. We know of no action NJTA is taking or considering addressing environmental justice. When asked at the May 2, 2022 Assembly Budget Committee hearing what NJDOT was

doing to comply with EO 23, Commissioner Gutierrez-Scaccetti was stumped; she could not cite a single example. Like climate change, environmental justice is not even mentioned in NJTA's 2020-2029 strategic plan, capital plan, regulations, or website despite the harm that Highway Expansions have and will disproportionately harm already overburdened communities.

This Petition demands that NJTA adopt rules: (1) implementing EO 274 by establishing a carbon reduction strategy to meet the 50 x 30 Goal; (2) requiring any Highway Expansion Project pass a climate impact test showing that the Project does not conflict with the 50 x 30 Goal and the goal of reducing GHGs by 80% by 2050 as required by the Global Warming Response Act; (3) requiring a cost-benefit analysis for any Highway Expansion Project, which considers whether the Project would increase or decrease traffic and vehicle miles traveled ("VMT"), potential increases in budgeted construction costs, the social and health costs of carbon and other pollution and alternatives to the Highway Expansion such as public transportation, repair projects, safe street projects, bikeways and walkways; (4) requiring environmental justice to be considered in all of its decision making as required by Executive Order 23 and rejecting any projects that disproportionately harms already Overburdened Communities, as defined in N.J.S.A. 13:1D-157 to -161; and (5) providing for a robust public participation process that meets the letter and spirit of Executive Order 172¹⁰, including providing early public input at the inception of a Project. A companion petition is being submitted to the New Jersey Department of Transportation ("NJDOT") demanding that NJDOT also adopt rules that comply with EO 274 and EO 23.

EO 274 states that, "it is vital that ... we take decisive action in the immediate term ... to meet our longer-term emissions reduction goals and protect our people, economy, and environment from the worsening impacts of climate change"; and "effective action to achieve the necessary emissions reductions requires a coordinated whole-state approach that addresses all sectors of the economy, including transportation..." (emphasis added). In the transportation sector, this means reducing VMT by stopping further Highway Expansions. Funding highway expansions relative to other strategies is "the main driver of emissions outcomes."¹¹ Highway Expansions produce more traffic, VMT, and carbon and co-pollutant emissions, because of induced demand, whereby expanded highways fill to capacity. Induced demand is the fundamental law of road congestion.¹²

But it is not just climate considerations that are behind the proposed rules; it is health, economics, and common sense. NJTA should not be spending tens of billions of dollars on Highway Expansions without a rigorous analysis of whether they are worth the cost. The budgeted \$16 billion cost to widen the New Jersey Turnpike and Garden State Parkway will almost certainly increase by billions of dollars because of cost overruns and delays. When the Turnpike expansion from Exits 14 to 14C was first proposed in 2020, the budget was \$4.3 billion. It is now \$4.7 billion and preliminary design work has only started.¹³

In addition to billions of dollars in construction costs, there are environmental, quality of life, opportunity, and health costs incurred in expanding highways. Vehicles generate toxic pollutants, -- particulate matter, known as PM 2.5, and ground level ozone – that are particularly harmful to our most vulnerable citizens including the elderly, children and asthma sufferers. Expanded highways mean more vehicles and more of these pollutants. New Jersey has one of the highest premature mortality rates in the nation caused by PM 2.5, with more than an estimated 17,000 lives lost per year because of the impacts of air pollution.¹⁴

While the benefits from Highway Expansions must be extraordinary to justify their extraordinary cost, NJTA has not shown how its Projects would improve traffic congestion. Traffic studies and experience, described more fully below, universally show that highway widenings, particularly in urban areas, will only provide temporary, if any, reduction in traffic congestion because of induced demand. Long term, expanded highways will be as congested as they were before.¹⁵ Before NJTA expands highways, it should publicly explain why its Highway Expansions would somehow be different.

The placement and expansion of urban highways have disproportionately harmed not only the health, but the economies of minority and low-income communities, who have suffered the most with the least benefit from highway projects. African-American neighborhoods, such as ones in Orange, East Orange and Newark, have been ripped apart to build highways connecting white suburbs with urban centers. Businesses were uprooted or destroyed, residents displaced, and thriving communities devastated with the remaining residents suffering the health effects from living and working near highways.

NJTA must consider whether there are better alternatives to Highway Expansions. NJTA's plan to spend the bulk of its capital funds on Highway Expansions flies in the face of the directive from the United States Department of Transportation that transportation funding should prioritize fix-it-first projects over road expansions.¹⁶ Further, studies and experience show that using transportation dollars on improving public transportation promotes far more economic growth than highway expansions.¹⁷

Numerous states -- such as California, Oregon, Colorado, Washington, and Virginia, among many others -- are aligning transportation planning with climate goals. So is the federal government. Instead of being a leader, New Jersey is a laggard in reducing GHGs in the transportation sector.

II. PETITIONERS' INTEREST IN THE PETITION

Petitioner EmpowerNJ is a coalition of 135 environment, community, religious and grassroots groups located in New Jersey. EmpowerNJ's mission, endorsed by its coalition partners, seeks to reduce GHG emissions and other pollutants as the climate science demands.

Each of the Petitioners actively seeks to reduce GHGs and other pollutants and recognizes that climate change constitutes an existential threat to New Jersey, the country and the world. Indeed, every New Jersey citizen has an interest in the rules Petitioners are seeking.

III. NJTA'S AUTHORITY TO TAKE THE REQUESTED ACTION

Executive Order 274 establishes the 50 x 30 Goal as State policy and requires all state agencies to develop and implement objectives and strategies to accomplish that policy, the policies detailed in the 2020 Energy Master Plan and the 80 x 50 Report issued by the New Jersey Department of Environmental Protection.

Executive Order No. 23 directs all Executive Branch departments and agencies to consider environmental justice in implementing their responsibilities.

The Global Warming Response Act, N.J.S.A. 26:2C-40, mandates GHG reductions of 80% below 2006 levels by 2050. The GWRA permits any State department or agency to limit or regulate GHGs pursuant to law. N.J.S.A. 26:2C-42(e).

Executive Order 172, issued on May 20, 1987, requires NJTA to (1) provide adequate public notice of proposed Projects; (2) present its plans in a public forum which allows those affected to adequately voice their opinions, recommendations, and suggestions in a timely manner; and (3) evaluate and respond to all public comments as an integral part of the Project development process.

IV. THE SUBSTANCE OF THE PROPOSED REQUEST

This Petition demands that NJTA adopt rules (1) implementing EO 274 by establishing a carbon reduction strategy to meet the 50 x 30 Goal; (2) requiring any Highway Expansion Project pass a climate impact test showing that the Project does not conflict with the 50 x 30 Goal and the goal of reducing GHGs by 80% by 2050 as required by the GWRA ; (3) requiring a cost-benefit analysis for any Highway Expansion, which considers whether the Project would increase or decrease traffic and VMT, potential increases in budgeted construction costs, the social and health costs of carbon and other pollution and alternatives to the Highway Expansion such as public transportation, repair projects, safe street projects, bikeways and walkways; (4) requiring environmental justice to be considered in all of its decision making as required by Executive Order 23 and rejecting any Project that disproportionately harms already Overburdened Communities; and (5) providing for a robust public participation process that meets the letter and spirit of Executive Order 172, including providing early input at the inception of a Project.

V. THE REASONS FOR THE PROPOSED RULES

A. The 50 x 30 Goal is State Policy

EO 274 recognizes that “global atmospheric warming, caused largely by the burning of fossil fuels, constitutes one of the greatest long-term threats currently facing humanity and is leading to significant changes in climate patterns here in New Jersey, across the United States, and around the world, resulting in rising sea levels, increased flooding, more frequent and severe extreme weather events, and numerous other adverse

environmental impacts and that “reducing the severity of adverse climate change impacts requires steep and immediate reductions in greenhouse gas emissions on an economy-wide basis.”

EO 274 further recognized New Jersey’s communities and economy are uniquely vulnerable to the devastating impacts of climate change, with potentially disastrous consequences for public health and safety, as well as for the social and economic vitality of the State.

EO 274 establishes the 50 x 30 Goal as State policy and requires all state agencies to implement the objectives of EO 274 and develop strategies detailed in the EMP and 80x50 Report.

The EMP states that “[t]here is near unanimous scientific consensus that the global threat of climate change is grave and that it demands swift local action and focused state leadership.”¹⁸

B. The Accelerating Climate Change Crisis

Since the issuance of EO 274 in mid-November 2021, there is even yet more evidence that climate change is accelerating far faster than anyone had previously predicted. A February 2022 report by the Intergovernmental Panel on Climate Change (“IPCC”) details the ongoing, catastrophic impacts of global warming including floods, deadly heat waves and droughts.¹⁹

When the GWRA was enacted in 2007, the belief was that we had until 2050 to address GHGs. For climate science, that was eons ago. The incontrovertible scientific consensus is that we must dramatically reduce GHGs by 2030 to avoid climate catastrophe. 2030 is the new 2050.

C. Vehicles are the largest source of GHGs in New Jersey

The 50 x 30 Goal cannot be achieved without a plan and rules that provide for a sharp reduction in VMT and GHGs from vehicular travel.

As noted above, vehicles account for 40.6% of the State’s net GHGs making it the highest GHG source in the State. This does not even consider GHGs created through the extraction, refining and distribution of fossil fuels used to run those vehicles. Funding highway expansion relative to other strategies is the main driver of

emissions outcomes and reducing the growth in vehicle miles traveled is critical to reducing GHGs in the transportation sector.²⁰

VMT have been steadily increasing in New Jersey. In 1989, the earliest year in which there is data, annual VMT was roughly 52.2 billion. “As of 2017, New Jersey drivers traveled a record 77.5 billion vehicle miles.

At the same time, miles of roads increased from 33,879 miles in 1984 to 38,896 miles in 2017.”²¹ Only 12% of the State’s commuters use mass transit.²²

Electric vehicles (EVs) will eventually reduce vehicular GHGs but will not do so by the amount needed by 2030. Less than 1% of the 250 million cars, SUVs, and light-duty trucks on the road in the United States are EVs. If 50% of new passenger cars and light trucks sales are EVs by 2030, an ambitious goal that will be hard to meet, fossil fuel powered vehicles would still make up the vast majority of the vehicles in use in 2030 and between 30% to 40% of cars in 2050.²³

The electrification of medium- and heavy-duty vehicles is moving even slower. Those vehicles account for less than 5% of the vehicles on the road but produce 25.9% of the emissions from the transportation sector.²⁴ Battery electric trucks are not expected to become cost-competitive for smaller trucks until 2030 while heavy trucks with less than 500-miles of range are not projected to be cost-competitive until 2035.²⁵

D. Pollution from Vehicle Use

In addition to GHGs, vehicles create particulate matter pollution and ground level ozone that severely impact the health of New Jersey residents. The greater the VMT, the greater those health costs.

Particulate matter, known as PM 2.5, is a great risk to human health and one of the most dangerous environmental pollutants.²⁶ It is associated with premature deaths, heart and lung disease, asthma, and respiratory issues, such as irritation of the airways, coughing or difficulty breathing. COVID-19 mortality rates are higher in areas with more particulate pollution than in areas with even slightly less.²⁷

Particulates from vehicle use also react with sunlight to create ground-level ozone, informally known as smog. Vehicles are the largest contributors to ground level ozone and are responsible for “71% of the State’s nitrous oxide emissions.”²⁸ Ground level ozone causes respiratory diseases and premature death. Smog

can irritate the eyes and throat and damage the lungs, especially those of children, senior citizens, and people who work or exercise outdoors. It is even worse for people who have asthma or allergies; these extra pollutants can intensify their symptoms and trigger asthma attacks.²⁹

In New Jersey, more than 600,000 adults and 167,000 children suffer from asthma, and thus are particularly vulnerable to ozone pollution.³⁰ There were also 385,665 cases of COPD, all of which were caused or exacerbated by vehicle pollution.³¹

In the United States, 350,000 premature deaths are attributed to fossil fuel pollution with New Jersey being among the states with the highest number of deaths per capita.³² Fossil fuel pollution kills more people each year than HIV, tuberculosis, and malaria combined with the U.S. having the highest estimated rate of deaths among children under the age of five from lower respiratory infections.³³

People who live, work, or attend school near major roads have an increased incidence and severity of health problems associated with air pollution. Children, older adults, people with preexisting cardiopulmonary disease, and people of low socioeconomic status are among those at higher risk for health impacts from air pollution near roadways. These risks include higher rates of asthma onset and aggravation; cardiovascular disease; impaired lung development in children; pre-term and low-birthweight infants; childhood leukemia; and premature death.³⁴

The number of people living “next to a busy road” may include 30 to 45 percent of the urban population in North America,³⁵ a percentage that is undoubtedly higher in New Jersey given how densely populated the State is. Vehicle pollution will directly affect people who are within 0.2 to 0.3 miles of a highway.³⁶

New Jersey already has some of the worst air in the country. All of New Jersey has been designated as nonattainment for federal ozone national ambient air quality standards, meaning that the *entire state* suffers from unhealthy air due to excess levels of ground-level ozone.³⁷ The American Lung Association gives Hudson County, the site of NJTA’s \$4.7 billion Turnpike expansion, an F grade with respect to high ozone days.³⁸

The Highway Expansions will make all these problems worse.

E. Environmental Justice Must Be Prioritized

Carbon and air pollution disproportionately harm people of color and low-income communities. Poor air quality is one reason that people of color die disproportionately from COVID-19.³⁹ African Americans are three times more likely to die from asthma.⁴⁰ Climate change and car pollution increase the risk that pregnant women have premature, underweight, or stillborn babies with African American mothers affected the most.⁴¹ Black and Hispanic populations bear a “pollution burden” by being exposed to 56% to 63% more PM 2.5 pollution than non-Hispanic whites.⁴²

The placement and expansions of urban highways have also caused African American and other low income, minority communities disproportionate economic harm. Businesses were uprooted, residents displaced, and thriving communities destroyed to connect white suburbs to urban centers. This occurred, for example, in sections of Orange, East Orange and Newark, for the construction of the Parkway and I-280.

There is a nation-wide movement to reverse this trend, including tearing down highways and mitigating their impact.⁴³ An initiative in the 2021 federal Bipartisan Infrastructure Law (BIL), referred to as the Reconnecting Communities Pilot Program, provides \$1 billion in grants to remove or refigure urban highways that have divided and depressed economic development in minority communities and the Biden Administration and cities around the country are attempting to increase this amount many times over.⁴⁴ The Biden Administration stopped a \$7 billion highway expansion that would have been built in largely minority neighborhoods in Houston.⁴⁵ There is no such effort being made in New Jersey.

Both the Governor and Legislature have recognized that New Jersey must reverse the policies that have caused Overburdened Communities to bear the disproportionate costs of climate change and pollution. EO 274 states that “minority and low-income communities are disproportionately affected by climate change, including by the health effects of higher temperatures and increased air pollution...” The Overburdened Communities Act, N.J.S.A. 13:1D-157 to -161, recognizes that minority and low-income communities are disproportionately affected by climate change and pollution and limits the future placement and expansion of certain polluting facilities in overburdened communities. The preamble to the Overburdened Communities Act, C.13:1D-157, states:

The Legislature further finds and declares that no community should bear a disproportionate share of the adverse environmental and public health consequences that accompany the State's economic growth; that the State's overburdened communities must have a meaningful opportunity to participate in any decision to allow in such communities certain types of facilities which, by the nature of their activity, have the potential to increase environmental and public health stressors; and that it is in the public interest for the State, where appropriate, to limit the future placement and expansion of such facilities in overburdened communities.

While the Overburdened Communities Act does not apply to highway projects, even though those projects can be equally or more harmful than the facilities the law covers, EO 23 directs all Executive Branch departments and agencies to consider environmental justice in implementing their responsibilities.⁴⁶

NJTA has ignored EO 23 and environmental justice in its plans and decision-making. It has not issued any rules or regulations, or taken any action we are aware of, to comply with EO 23. Instead, it is doubling down on the failed policies of the past by expanding highways in urban areas all over the State.

F. Highway Widenings Do Not Reduce Traffic Congestion

Traffic studies and experience universally show that highway widenings, particularly in urban areas, will only provide temporary, if any, reduction in traffic congestion. Ultimately lane widening results in more driving and even greater long-term congestion, a phenomenon known as induced demand. Each mile of new highway lane increases capacity up to 2,850 vehicles/hour.⁴⁷

Induced demand was recognized as early as 1930 but became better known and accepted with the publication of *The Power Broker*, the legendary biography of Robert Moses, New York's "master builder." Robert Caro wrote:

During the last two or three years before [the entrance of the United States into World War II], a few planners had...begun to understand that, without a balanced system [of transportation], roads would not only not alleviate transportation congestion but would aggravate it. Watching Moses open the [Triborough Bridge](#) to ease congestion on the [Queensborough Bridge](#), open the [Bronx-Whitestone Bridge](#) to ease congestion on the Triborough Bridge and then watching traffic counts on all three bridges mount until all three were as congested as one had been before, planners could hardly avoid the conclusion that "traffic generation" was no longer a theory but a proven fact: the more highways were built to alleviate congestion, the more automobiles would pour into them and congest them and thus force the building of more highways – which would generate more traffic and become congested in their turn in an ever-widening spiral that contained the most awesome implications for the future of New York and of all urban areas.

After the publication of the *Power Broker* in 1974, Caro's thesis has been verified many times over. Study after study, in country after country, has shown that adding new road capacity does not improve traffic congestion.⁴⁸ There are also countless real-world examples of this. Los Angeles' I-405 freeway was completed in 2014 after five years of construction and a cost of more than \$1 billion. The data shows that traffic is moving slower now on 405 than before the widening.⁴⁹ When Texas widened the Katy Freeway in Houston to more than 20 lanes in 2011, the widest in the world, at a cost of \$2.8 billion, congestion returned to previous levels within a few years, and it is now worse.⁵⁰

The EPA's Guidebook on Induced Travel concluded studies showing that a 10% increase in highway capacity caused an immediate 3% to 5% increase in VMT in 1 to 2 years and a 5% to 9% increase in VMT over 10 to 20 years.⁵¹ Another report found that between 1993 and 2017, 30,511 new freeway lane-miles of road were built in the largest 100 urbanized areas in the country, an increase in capacity that far outstripped the population growth in those regions over the same time period. Yet traffic delays in those urbanized areas increased by a staggering 144 percent.⁵² Trying to cure traffic congestion by adding more capacity is like trying to cure obesity by loosening your belt.

Rocky Mountain Institute ("RMI") is a highly regarded firm dedicated to researching climate change and sustainability issues. NJBPU has hired and relied upon RMI in preparing the 2020 State Energy Master Plan. RMI recently summarized the failed policies of highway expansions:

[R]oad expansion projects move us in the wrong direction, generating more traffic that increases climate pollution, worsens local air quality, and leads to more road crashes. Vulnerable and frontline communities bear a disproportionate burden from these impacts, including health effects from hazardous air pollutants.⁵³

NJTA has not provided any evidence, or given any reason, why its Highway Expansions will produce different results.

G. The NJTA's Highway Expansion Plans

NJTA's 2020 \$24 billion capital improvement plan calls for spending more than \$16 billion over ten years to widen the New Jersey Turnpike and Garden State Parkway overwhelmingly in the most urbanized northeastern corner of the state.⁵⁴ None of the projects allow for or incorporate a mass transit component.

The costs of highway construction projects, particularly in urban areas, are often understated to hide their true costs. For example, the Big Dig in Boston was originally scheduled to cost \$2.8 billion.⁵⁵ The final cost of the project was \$24.3 billion.⁵⁶ When the Turnpike expansion from Exits 14 to 14C was first proposed in 2020, the budget was \$4.3 billion. It is now \$4.7 billion and only preliminary design work has started.⁵⁷

There are also health, social, economic, quality-of-life, and opportunity costs imposed by highway widenings. Federal agencies have incorporated the social cost of GHGs in benefit-cost analysis since 2008. On his first day in office, President Biden issued E.O. 13990, directing those costs be updated to reflect the best available science and consider climate risk, environmental justice, and intergenerational equity.⁵⁸ That report is expected shortly. NJTA should be using the federal government's calculation of the social costs of carbon in its cost-benefit analyses.

NJTA's capital plan and ten-year strategic plan do not mention GHGs, climate change or social costs of carbon and we are unaware of those matters being addressed anywhere else.⁵⁹ Tellingly, there is no one on NJTA's Board or senior staff who has expertise or a background in climate or environmental justice issues, is from an overburdened community or is African American.⁶⁰

H. The Jersey City Highway Expansion

NJTA is currently proceeding with its plan to expand the Turnpike from Exit 14 through Exit 14C, most of which runs through Jersey City.⁶¹

In a January 7, 2022 letter to the NJTA, Jersey City stated its opposition to the project because i) it will produce additional traffic on city streets as there will not be any capacity change at the Holland Tunnel or its approaches; ii) it will increase pollution and noise; iii) it will not reduce traffic congestion over the long-term due to induced demand; iv) road widening projects are not a sustainable, long-term solution to meet regional travel

needs; and v) it will run counter to state, regional, and local climate goals. Jersey City asked NJTA to consider an alternative that modernizes the Turnpike without expanding it. To the best of our knowledge, NJTA has never addressed these concerns or the concerns of the many citizens who have expressed their opposition to the Project during public hearings.

Meanwhile, as with other expansion projects, NJTA has only provided a cursory explanation for why its Highway Expansion Projects are being proposed and built. For example, the entire description of the \$4.7 billion Jersey City is set forth in two pages of big print with photographs taking up almost half the pages. The entirety of the explanation for spending \$4.7 billion on the Project consists of three words: Safety and Customer Satisfaction.⁶²

I. Federal Policy and Funding

NJDOT's failure to adopt a carbon reduction strategy conflict with federal policy and will make New Jersey ineligible for grants available under the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law.⁶³

On April 21, 2022, USDOT/FHA issued eligibility requirements to participate in a \$6 billion grant program to fund state carbon reduction strategies.⁶⁴ By November 15, 2023, states are required to develop a carbon reduction strategy to reduce transportation emissions and identify projects and strategies to reduce these emissions. Each carbon reduction strategy is required to facilitate the use of alternatives to single occupant vehicle trips, including public transportation, bikeways, and walkways.

A wide variety of carbon reduction strategies are eligible for funding, including "certain types of projects to include traffic flow" with one notable exception – they cannot "involve construction of new capacity." Projects to add general-purpose lane capacity for single occupant vehicle use will not be eligible absent analyses demonstrating emissions reductions over the project's lifecycle, the joint USDOT/FHA document notes.

By dedicating the bulk of NJTA's capital funds on highway expansions rather than fix-it-first projects, NJDOT and NJTA are also in direct conflict with federal policy. In December 2021, the Federal Highway Administration issued a memo regarding projects to be funded under the Bipartisan Infrastructure Law, which

prioritized repairing and maintaining “existing transportation infrastructure before making new investments in highway expansions.”⁶⁵ Anyone riding New Jersey roads and highways knows that they are in obvious need of repair.

Investments are needed in road safety to address the skyrocketing number of vehicular fatalities since the pandemic. From 2020 to 2021, New Jersey vehicular fatalities increased by 19.9%, from 587 to 701. Year to date as of March 24, 2022, fatalities have increased another 9.9%.⁶⁶

J. There are Better Alternatives to Highway Expansions

There is no shortage of better ways to improve transportation in New Jersey than Highway Expansions, starting with adequately funding improving public transportation. The New Jersey Energy Master Plan (EMP) calls for, among other things, a concerted effort to expand public transportation options and reduce VMT which “will also yield many economy-wide financial and health benefits.”⁶⁷

Many crucial projects in New Jersey Transit’s five-year and ten-year capital plan are unfunded.⁶⁸ Since 1990, more than \$10 billion has been diverted from NJT’s Capital Budget to cover NJT operating expenses with \$1.7 billion having been diverted in the last four years.⁶⁹ The proposed FY 2023 budget calls for \$362 million to be diverted from NJT’s capital account to pay for operating expenses.

NJTA’s contributions to NJT have recently increased but have been erratic. It was \$154M in FY 2019 and \$129M in FY 2020 and 2021 as compared to an average of \$295 million in fiscal years 2013-2016. The April 20, 2021 MOU between Treasury and NJTA provides for payments of \$350M in FY 2022; \$746M in FY 2023; \$465M in FY 2024; \$480M in FY 2025; \$495M in FY 2026; \$510M in FY 2027 and \$525M in FY 2028.⁷⁰

Crucial NJT projects are not being funded or are moving at a snail’s pace. Electric buses are a prototypical example. NJT did not approve its first order of electric buses until October 2021⁷¹ and is finally planning on putting those eight electric buses into service this year.⁷² This is years after other public transit systems have done so. For example, Los Angeles ordered 155 electric buses in 2020 as part of its plan to fully electrify its fleet by 2028.⁷³ In 2021, Los Angeles phased out all of its fossil-fuel run buses on its popular G Line and replaced them with 40 zero-emissions electric buses.⁷⁴ California has in total 1,400 electric buses in use or on order.⁷⁵

Transit systems with fewer riders than NJT are using and purchasing far more electric buses than NJT. King County Metro (Seattle) first started using and testing electric buses in 2016; it leased ten more electric buses in 2018-19 and ordered 40 more electric buses in 2021.⁷⁶ Austin, Texas ordered 197 electric buses in 2021.⁷⁷ Denver has 36 electric buses in use.⁷⁸ ((At the May 2022 Senate and Assembly Budget Committees on the FY23 budget, NJT CEO Kevin Corbett attempted to justify the slow pace of NJT's electric bus roll out by citing three instances of cities running into hiccups with electric buses – Albuquerque, Minneapolis and Philadelphia – without noting that all these cities are moving ahead with electric bus rollouts and all the successful introductions of electric buses. The slow pace of NJT's bus electrification program will almost certainly put it in violation of the omnibus EV bill (S2252/A4819), which mandates that NJT electrify 10% of its bus fleet purchases by December 2024.

A recent Star-Ledger editorial correctly summarizes the situation this way:

Once again, Murphy is stitching together a \$2.75 billion budget that includes another massive raid of the capital budget, which compromises crucial infrastructure projects. This abysmal habit of shifting seed money into operations has cost the agency about \$10 billion in potential investments over the last few decades, which is a good reason why NJ Transit still has no electric buses, why its light rail projects have stalled, and why its rail passengers still bounce inside those creaky, 40-year-old Arrows.⁷⁹

Besides for reducing GHGs, VMT and traffic congestion, funding public transportation projects creates more jobs and economic growth than highway expansions.

A Rutgers report submitted with NJT's capital plans details how, if fully funded, the 5-year plan "would generate significant direct and spillover impacts within the New Jersey economy creating jobs and economic activity throughout the state." Project spending in the first five years would generate an estimated \$13.3 billion in economic output in the state, supporting 60,000 direct, indirect, and induced jobs and providing \$3.7 billion in employee compensation. The 10-year capital plan would generate \$54.9 billion in economic output in New Jersey, 245,000 jobs and \$15 billion in employee compensation.⁸⁰

In contrast to the Rutgers NJT study, NJTA has not provided any analysis showing that the highway expansions would produce economic growth other than in one-time construction jobs.

Other research shows that public transportation projects produce even more jobs and economic growth. One study found that each \$1 billion invested in public transportation produces \$5 billion in GDP growth and 49,000 jobs.⁸¹ Public transportation projects generally generate 31% more jobs/dollar spent than expanding highways.⁸² Those jobs would particularly benefit low-income families and essential workers, providing them with increased access to jobs and allowing them to spend less on housing and transportation as a percentage of their income.⁸³

The population of Hudson County grew 14.3% between 2010 and 2020, making it the fastest growing county in New Jersey.⁸⁴ That growth was fueled by public transportation, not highways. Harrison's population has grown 99% from 2010 to 2022⁸⁵, a direct result of the PATH station located there.⁸⁶ Bayonne was one of the fastest growing municipalities in New Jersey between 2010 and 2020 as a direct result of the Hudson-Bergen Light Rail line.⁸⁷ Hoboken's explosive growth is due in substantial part to its "easy access to public transportation."⁸⁸

Road repair, which must be prioritized over highway expansion, is also being underfunded. 36% of the state's highways are deficient (rough and/or distressed), 529 bridges are structurally deficient and 2,367 need repairs. The price tag for unfunded fix-it-first projects is more than \$10 billion -- at least \$8.6 billion for bridges and \$679 million for just the top 500 state road projects over the next few years, which doesn't even include needed repairs to the far larger network of local and county roads.⁸⁹

K. Actions By Other States

Numerous other States are taking actions consistent with the rules proposed here. In December 2021, Colorado's DOT adopted climate change regulations that are aimed to redirect funding away from highway expansions and toward projects that cut vehicle pollution, such as buses and bike lanes. Under the new rules, local governments must estimate GHGs expected from future road projects, factoring in induced traffic with a long and short term VMT analysis. Those plans will have to adhere to an overall emissions budget. If localities want to expand highways, they need to offset the extra emissions with cleaner projects, such as public transit, bicycle trails, electric-vehicle chargers, car-pooling or land-use changes that help limit suburban sprawl.⁹⁰

Colorado's DOT rules should be a model for NJTA to build on.

In March 2020, Oregon's Governor issued Executive Order 20-04, which, similar to EO 274, calls for Oregon to reduce GHG emissions to at least 45 percent below 1990 emissions levels by 2035 and directed state agencies to take action to meet this goal.⁹¹ Oregon's DOT then adopted a five-year Climate Action Plan to address the impacts of climate change and extreme weather on the transportation system in Oregon, which includes actions to reduce GHGs from transportation, improve climate justice and make the transportation system more resilient to extreme weather events.⁹² Oregon considers GHGs when deciding what projects to fund at each stage of the development of a project.⁹³

California prioritizes emissions reductions as part of the state's transportation plan.⁹⁴ The state will now measure induced traffic during environmental reviews of new highways and plans to prioritize funding toward fixing existing roads rather than building new ones. Last year, officials halted a plan to widen the 710 freeway, which carries truck traffic from the port of Long Beach, over concerns that it would displace residents in low-income neighborhoods and worsen air pollution.⁹⁵

Washington's DOT regulations require an EIS to be completed prior to the approval of the location or design of a project.⁹⁶ Those regulations also require all environmental, social and economic effects be considered in all its actions.⁹⁷

In Virginia, transportation planners were considering whether to alleviate traffic jams on I-95 between Fredericksburg and Washington by adding two extra lanes at a cost of \$12.5 billion. Ultimately, understanding the first law of traffic congestion, that adding lane capacity results in induced demand and does little if anything to solve congestion, Virginia decided to instead spend \$3.7 billion to expand commuter rail service.⁹⁸

Oregon, Massachusetts and Washington all have policies to create walkable, bikeable neighborhoods, well connected by affordable, frequent transit.⁹⁹

L. The Need and Requirement for Meaningful Public Input

Executive Order 172 requires NJTA: (1) to provide adequate public notice of proposed Projects; (2) to present its plans in a public forum which allows those affected to adequately voice their opinions,

recommendations, and suggestions in a timely manner; and (3) to evaluate and respond to all public comments as an integral part of the project development process.¹⁰⁰

NJTA has not lived up to the letter or spirit of EO 172 or adopted any rules to implement them. Instead, NJTA has bulldozed its highway expansion plans without any meaningful public input. It adopted its 2020 capital plan in March 2020 at the outset of the pandemic and without the opportunity for any meaningful public input..

M. The Demanded Actions

Addressing climate change should be a critical, if not determinative, factor in all transportation policy and planning. NJTA must begin implementing EO 274, EO 23 and EO172 by adopting the following rules.

NJDOT must implement a state-wide carbon reduction plan and rule to implement EO 274, reduce GHGs in the State's transportation sector, and to enable the State to achieve its 50 x 30 Goal. That plan should include, at a minimum, requiring any Highway Expansions to pass a climate impact test showing that the Project does not conflict with the 50 x 30 Goal. Before commencing any Highway Expansion Project, NJTA should also require a cost-benefit analysis. With respect to benefits, the analysis must include a traffic study, which considers whether the Project would increase or decrease traffic congestion and VMT, both long-term and short-term, and the economic benefits of the project. With respect to costs, the analysis must: (1) make realistic projections of increased construction costs over the life of the project; (2) calculate the social, environmental, economic and health costs of carbon and other pollution; and (3) calculate the lost opportunity costs of not using the funds for alternatives to road expansions such as public transportation, repair projects, bikeways and walkways. NJTA should be using the federal government's calculation of the social costs of carbon in its cost-benefit analysis.

NJTA must implement EO 23 by adopting rules that prioritize environmental justice in all its plans decision-making. It should reject any projects that disproportionately harm Overburdened Communities. NJTA's rules should be consistent with the national movement to remove, not expand, urban highways that have devastated minority communities.

Finally, NJTA should adopt rules that implement EO 172 by providing public input at all stages of the project, but particularly the beginning. Prior to spending time and money on preliminary designs and

environmental review, at a cost of hundreds of millions of dollars, NJTA should first provide for public review, comment and input, its cost-benefit analysis showing that a Project even makes conceptual sense.

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