

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

HARRIS COUNTY, TEXAS

*Plaintiff*

vs.

TEXAS DEPARTMENT OF  
TRANSPORTATION; AND JAMES M.  
BASS, IN HIS OFFICIAL CAPACITY  
AS EXECUTIVE DIRECTOR OF THE  
TEXAS DEPARTMENT OF  
TRANSPORTATION

*Defendants*

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CIVIL ACTION NO. 4:21-cv-00805

ORIGINAL COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Harris County, Texas (“Harris County” or “the County”) brings this civil action against the Texas Department of Transportation (“TxDOT”), and James M. Bass, in his official capacity as its Executive Director, for declaratory and injunctive relief pursuant to the provisions of the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706, and the National Environmental Policy Act (“NEPA”), 42 U.S.C. § 4321 *et. seq.* and its implementing regulations, and Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303 (“§ 4(f)”).

2. This litigation arises from the Defendants’ decisions to expand and widen Interstate Highway 45 (“I-45”), from south of downtown Houston north to Beltway 8, to remove the Pierce Elevated section of I-45, and to re-route I-45 to the east and north of downtown, together named the North Houston Highway Improvement Project (“NHHIP” or “the Project”).

3. Harris County files this lawsuit to challenge the actions of TxDOT—a state agency—and its officials in adopting a design and plan that ignored serious harms, disregarded the concerns of the communities impacted by the Project, and brushed off the numerous comments they received as part of their flawed EIS process. The Defendants had already made their mind

about what they were going to do and then simply did it, running roughshod over the procedural requirements of NEPA, the substantive law of Section 4(f) and the APA's constraint on arbitrary and capricious decision-making.

4. Harris County files this lawsuit because the NHHIP must be more carefully considered and designed to meet the diverse needs of the region's future, reflect the changing circumstances of altered work patterns and new transit initiatives, learn from the regions' past experience that wider freeways cause more traffic, not less, and without unnecessarily displacing hundreds of families and businesses.

5. Harris County recognizes that transportation projects are essential to the region, but also maintains that it is time to re-imagine the traditional highway expansion projects in a way that will benefit everyone by allowing improved mobility for all modes of transportation—including cars, trucks, transit, bicycles, and pedestrians—addressing current safety concerns such as narrow shoulders and short merge lanes, while minimizing the right-of-way taken from people to do so.

6. The NHHIP is a once-in-a-generation opportunity to improve our region's mobility, enhance our region's image, and advance economic opportunity, while enriching our quality of life and mitigating the worst impacts on low-income and minority neighborhoods from highway construction.

7. By filing this lawsuit, Harris County does not seek to cancel or unduly delay the NHHIP because the County readily recognizes that the existing I-45 desperately needs improving. But the NHHIP must be undertaken in accordance with applicable law, including NEPA, § 4(f) and the APA.

## I. JURISDICTION

8. This action arises under NEPA, 42 U.S.C. § 4321 *et. seq.*, and its implementing regulations, particularly those of the Council on Environmental Quality (“CEQ”) found at 40 C.F.R. § 1500 *et seq.* as well as those of the Federal Highway Administration (“FHWA”), 23 C.F.R. § 770 *et. seq.*, and under § 4(f) of the Department of Transportation Act, 49 U.S.C. § 303. Judicial review is sought pursuant to the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701–706. This Court has jurisdiction over the case pursuant to 28 U.S.C. § 1331 (Federal Question Jurisdiction). This Court can grant declaratory and injunctive relief under 28 U.S.C. § 2201 (declaratory judgment), 28 U.S.C. § 2202 (injunctive relief), and 5 U.S.C. §§ 552, 701–706, for violations of, *inter alia*, the APA, NEPA, and § 4(f).

## II. VENUE

9. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b), (c)(2) and (e) because the location of the property where the proposed expansion of I-45 is to take place is located within this district, Defendants reside in the district maintaining offices at 7600 Washington Ave, Houston, TX 77007, and Harris County is a governmental entity in this district.

## III. PARTIES

10. Harris County, Texas is a body corporate and politic under the laws of the State of Texas.

11. The Texas Department of Transportation is a government agency of the State of Texas and may be served at 125 East 11th Street, Austin, Texas 78701–2483.

12. James M. Bass is sued in his official capacity as Executive Director of the Texas Department of Transportation and may be served at 125 East 11th Street, Austin, Texas 78701–2483.

#### IV. STANDING

13. Harris County has significant interests at stake in this litigation, and as detailed below, the County has standing to seek redress of the specific concrete injuries it will suffer. The footprint of the NHHIP is entirely within Harris County. The Project will impact Harris County residents, businesses, neighborhoods, property owners, and commuters for generations to come.

14. The County Commissioners (members of the County's five-person legislative body), County staff, and retained consultants devoted countless hours and resources to reviewing the Draft Environmental Impact Statement ("DEIS") and the Final Environmental Impact Statement ("FEIS"), both of which are documents prepared and issued by TxDOT (required by law) to describe the effects for the NHHIP on the environment. The County submitted comments on the DEIS and the FEIS. The Record of Decision ("ROD") issued by TxDOT does not adequately address the County's comments.

15. After TxDOT's release of the DEIS, Harris County and the City of Houston conducted a months-long community and stakeholder engagement to seek the public's input and ideas for changes to TxDOT's proposals in the DEIS. This public input resulted in a new vision—which the County and the City submitted to TxDOT—that proposes an alternative way for TxDOT to accomplish many of the safety, flood mitigation, and other benefits of the NHHIP while retaining the freeway's current footprint as much as possible in Segments 1 and 2 to minimize its impact on existing homes, businesses, and communities. The new vision also provides for improved local connectivity and transit access, including implementing a voter-approved and funded plan for easing traffic congestion, the METRONext Moving Forward Plan.

16. The alternative selected in the FEIS/ROD issued by TxDOT will have several adverse impacts on the residents and property of Harris County. For example:

- It would displace 1,079 residential housing units and 344 businesses, resulting in the loss of significant tax base and revenues to the County.
- It will impede public access to the downtown Harris County Court complex.
- Real property owned by Harris County will be taken for additional right-of-way for the Project including, for example, the Harris County employee parking lot on Nance Street.

17. Harris County has specific government interests at stake in this litigation including its responsibilities over air quality, water quality, flood control, roadways, and emergency management, among others. For instance, stormwater runoff from the expanded I-45 will increase flows in the bayous and drainage ditches of Harris County, and will carry increased loads of pollutants, both during construction, and after the Project is complete. The Project construction period will likely result in disruption of traffic flows, longer travel times, an increase on local street traffic, and increased air pollution levels along all segments of the expansion and re-routing.

18. Harris County Pollution Control Services Department operates to protect the health and welfare of County residents through programs such as those that monitor and protect air quality. Harris County is a designated serious nonattainment area for the Environmental Protection Agency's ("EPA") 8-hour ozone 2008 standard, and marginal nonattainment area for the EPA's 8-hour ozone 2015 standard. This means that the EPA has found that areas in the County do not meet the national primary or secondary ambient air quality standards. Ozone forms at ground level when nitrogen oxides ("NOx") and volatile organic compounds ("VOC") combine in the presence of sunlight. NOx is found in car exhaust and VOC enters the atmosphere from evaporated gasoline from vehicles.

19. Through the adoption of a resolution on August 11, 2020, Harris County launched its Vision Zero Initiative to reach zero traffic deaths or severe injuries by the year 2030, to be

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