CONSTRUCTION PARTNERS INC.
A LEADING INFRASTRUCTURE COMPANY

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June 16, 2022

VIA EMAIL: rule-comments@sec.gov

U.S. Securities and Exchange Commission
Attention: Vanessa A. Countryman, Secretary
100 F Street NE
Washington, DC 20549-1090

Re: **Comments on Proposed Rule for the Enhancement and Standardization of Climate-Related Disclosures for Investors**

File Number S7-10-22

Dear Ms. Countryman:

Construction Partners, Inc., a Delaware corporation ("we," "us" or the "Company"), appreciates the opportunity to comment on the proposed rule of the United States Securities and Exchange Commission ("you" or the "Commission") entitled "The Enhancement and Standardization of Climate-Related Disclosures for Investors" (File Number S7-10-22) (the "Proposed Rule"). In this letter, following a brief description of our Company, we have included both a general discussion of our position on the scope and substance of the Proposed Rule and specific responses to the Commission's requests for comment.

About Construction Partners, Inc.

We are a vertically integrated civil infrastructure company operating across five southeastern states, with 57 hot-mix asphalt plants, 14 aggregate facilities and one liquid asphalt terminal. Publicly funded projects make up the majority of our business and include local and state roadways, interstate highways, airport runways and bridges. The majority of our public projects are maintenance-related. Private sector projects include paving and sitework for office and industrial parks, shopping centers, local businesses and residential developments. We completed our initial public offering approximately four years ago, and our Class A common stock is publicly traded on the Nasdaq Global Select Market under the ticker symbol "ROAD."

The Proposed Rule – In General

Construction Partners, Inc. is committed to promoting a culture of socially and environmentally conscious behavior and integrating these business practices at all levels of our organization. As a public company, we recognize the need to communicate transparently with our investors and other stakeholders about our environmental practices as a matter of sound governance and in furtherance of our efforts to create sustainable economic value for our stakeholders. To date, our engagement with investors and other stakeholders on environmental matters has been fruitful and has facilitated our efforts to be good corporate citizens in the communities in which we live and work. We have addressed questions about our environmental performance as we received them and have used the feedback from third parties to evaluate and improve our own environmental initiatives. Anecdotal evidence indicates that many of our public company peers have had a similar experience. Without question, issues of sustainability and environmental performance have ascended to unprecedented prominence in the collective corporate consciousness, leading to transformative developments across all industries and disciplines. Importantly, this has been the result of grassroots efforts and free market economics, with investors deploying capital to firms and industries most closely aligned with their own environmental objectives.

Against this backdrop, we were disappointed in the approach that the Commission indicated it intends to take in the Proposed Rule, which would impair the momentum of environmental innovation fueled by grassroots efforts by imposing a single approach to environmental disclosure that falls short of the Commission's stated goal to "provide consistent, comparable, and reliable—*and therefore decision-useful*—information to investors" for reasons described herein. We believe that the Proposed Rule in its current form is unnecessarily broad in scope and would impose significant disclosure and compliance burdens on many companies while providing investors with information that is, at most, minimally material due to its inability to facilitate accurate comparisons across industries or firms. Under the Commission's longstanding principles-based disclosure framework, public companies are already required to disclose material risks and opportunities posed by climate change and its related effects. In contrast, the Proposed Rule takes the opposite approach, requiring each public company, regardless of size or industry, to presume materiality for metrics that may have little or no impact on that company's operations but will undoubtedly require significant management attention and corporate resources to document and report. Moreover, unlike traditional financial metrics for which definitions and calculations have been refined over the course of many years and that are directly comparable across companies and industries, a prescribed disclosure format for emissions data under the Proposed Rule, which inevitably requires companies to rely heavily on assumptions, estimates and averages, only serves to confuse the recipient about the application of such measures to the subject company and thereby limit such information's usefulness.

We also believe that the liability framework for disclosures under the Proposed Rule is unnecessarily heavy-handed and will actually serve to disincentivize goal-setting, planning and publicly announcing commitments and emissions targets by public companies due to the additional reporting and other obligations contemplated by the Proposed Rule for companies that elect to pursue such initiatives. Currently, the disclosure mandated by the Proposed Rule would be deemed filed, rather than furnished, and subject to officer certifications regarding disclosure and internal controls, which, in each case, increases the liability exposure for companies. As a result, many companies will likely be forced to expend significant resources either to increase their internal staffing or to outsource their data collection and reporting rather than investing in newer, lower-emission equipment and processes. In addition, under the Proposed Rule, a company considering whether to voluntarily disclose emission reduction targets will now be faced with the same level of liability for a misstatement or internal control failure as a company that misstates its earnings. Undoubtedly, this will have a chilling effect on the disclosure of performance targets, and investors will lose the benefit of the enhanced emissions performance and public accountability that would result from such disclosure.

The Commission noted in the Proposed Rule that one of the purposes of standardized emissions disclosure is to mitigate instances of "greenwashing," or conveying information that is either misleading or creates a false impression about the environmental impacts of a company's products or services. In this regard, we note that this concern is quite similar to the concern about non-GAAP financial measures addressed by the Commission in 2002 in Regulation G. There, the Commission did not adopt non-GAAP financial measures that all companies would be required to use, but instead adopted an "if, then" framework – *if* a company desires to disclose one or more non-GAAP financial measures, *then* there are specific requirements for such disclosure. We believe that a similar approach would be more appropriate for emissions-related disclosures and would address the concern about companies selectively disclosing quantitative information in a manner that creates a misleading impression about their financial performance.

Today, interested investors have access to unprecedented levels of information about corporate environmental performance and, as a result, are playing a pivotal role in advancing important conversations about the role of public companies with regard to sustainability and environmental stewardship. Companies are also already disclosing material climate-based risks and opportunities under the Commission's current principles-based materiality framework. The result has been a transformational shift in thinking and a vibrant discussion between investors and corporate boards of directors and management teams that allows capital to be deployed to companies who are transparent in their disclosure and aspirational in their environmental practices. While a uniform approach to emissions disclosure may appear on the surface to address concerns about comparability across companies, we believe that the unintended and more significant consequence will be a "race to the bottom," with companies being forced to focus on mitigating their disclosure risk in a new and rapidly developing area, rather than seeking ways to be better stewards of the environment.

In short, while we appreciate the Commission's efforts to address the topic of climate-based disclosures through the Proposed Rule, we strongly urge the Commission to reconsider its current proposed approach, which, as further discussed herein, would provide information of limited usefulness to investors due to a lack of comparability across companies and industries. We believe that the Proposed Rule would be significantly more effective if, rather than mandating emissions by all public companies in a uniform format, it limited the application of the Proposed Rule and its reporting framework to companies that elect to disclose emissions data in materials filed with or furnished to the Commission. Like non-GAAP financial metrics, emissions data and similar environmental disclosures may be useful to some investors but should not be mandated by all registrants.

Responses to Requests for Comment

For the reasons stated above, we reiterate our request that the Commission redirect the Proposed Rule in a direction that creates consistency among those companies that choose to disclose emissions data, rather than imposing a new and cumbersome burden on all companies. Nevertheless, we also believe it is important to provide the Commission with specific, targeted feedback in response to the requests for comment set forth in the Proposed Rule. The following represents our responses to certain questions included within the Proposed Rule. These responses are numbered to correspond to the numbered questions in the Proposed Rule, and, for your convenience, we have reproduced the text of each question in bold text followed by our response. To the extent that we have commented only on specific questions included within a numbered request for comment, we have reproduced only the text of those questions. In appropriate cases, we have aggregated multiple requests for comment and provided a single response by the Company when such response is responsive to multiple requests. For organizational purposes, we have also included section headers when there are multiple responses on a single broader topic.

<u>Proposed Rule – General</u>

1. Should we add a new subpart to Regulation S-K and a new article to Regulation S-X that would require a registrant to disclose certain climate-related information, as proposed? Would including the climate-related disclosure in Regulation S-K and Regulation S-X facilitate the presentation of climate information as part of a registrant's regular business reporting? Should we instead place the climate-related disclosure requirements in a new regulation or report?

<u>The Company's Response</u>: We believe that the new climate-related information contemplated by the Proposed Rule would not be material or relevant for most investors and, to the extent that it is material, registrants should already disclose such information. As provided by Rule 12b-2 under the Exchange Act and consistent with Supreme Court precedent, a matter is considered "material" if there is a substantial likelihood that a reasonable investor would consider it important when determining whether to buy or sell securities or how to vote. The materiality determination is largely fact specific and requires both quantitative and qualitative considerations. Moreover, the materiality determination with regard to potential future events requires an assessment of both the probability of the event occurring and its potential magnitude, or significance to the

registrant. In the Proposed Rule, the Commission presupposes the materiality of its proposed required disclosures, stating in the first paragraph of the adopting release that "[t]he disclosure of this information would provide consistent, comparable, and reliable—*and therefore decision-useful*—information to investors to enable them to make informed judgments about the impact of climate-related risks on current and potential investments." To be sure, information about direct and indirect GHG emissions could be of interest to some investors. However, registrants are already required to disclose information about material risks and business trends to the extent relevant to their individual businesses, and it is unclear how the sweeping scope of the Proposed Rule would improve upon the current reporting regime. It simply is not the case that more information equates to better information.

2. If adopted, how will investors utilize the disclosures contemplated in this release to assess climate-related risks? How will investors use the information to assess the physical effects and related financial impacts from climate-related events? How will investors use the information to assess risks associated with a transition to a lower carbon economy?

<u>The Company's Response</u>: The new quantitative disclosures about GHG emissions contemplated by the Proposed Rule will do little to assist investors with their assessment of climate-related risks associated with a transition to a lower carbon economy of individual registrants, because, put simply, these disclosures bear minimal to no correlation to a registrant's exposure to climate-based risks. A registrant's Scope 1 or Scope 2 emissions and any resulting contribution to climate change provide little information about the physical effects and related financial impacts of climate-related events on that registrant's business or operations. For example, under the regime contemplated by the Proposed Rule, an industrial registrant that operates an emissions-intensive business in an inland geographic area would disclose significant Scope 1 and 2 emissions but may be much less susceptible to climate-based risks than a small financial services firm located in a coastal area. Moreover, the proposed presentation of this information would do little to facilitate comparisons across firms, particularly for registrants in more diversified industries. Given the unique nature of each registrant's business model and scope, even registrants engaged in analogous or related industries will be difficult to compare. For an example from our industry, the manufacture of asphalt has a more intensive GHG profile than aggregates production based on the processes required to manufacture asphalt. Under the Proposed Rule, an efficient and climate-conscious asphalt manufacturer would still be shown to emit significantly more GHGs than an aggregates producer merely as a result of the business in which it is engaged. When coupled with the fact that many firms like us are engaged in a number of activities across the value chain with disparate GHG emission implications, the comparability of one firm to another becomes practically impossible. Finally, as noted in the response to Question 1 above, companies are already required to disclose material risks to their business, including climate-based risks, so the incremental benefit to be derived from the disclosures required by the Proposed Rule pales in comparison to the expenditure of time and effort and distraction of management's attention required to track and disclose responsive information.

5. Should we require a registrant to present the climate-related disclosure in an appropriately captioned, separate part of the registration statement or annual report, as proposed? Should this disclosure instead be presented as part of the registrant's MD&A?

<u>The Company's Response</u>: As provided by Item 303(a) of Regulation S-K, "[t]he objective of the discussion and analysis is to provide *material* information relevant to an assessment of the financial condition and results of operations of the registrant" (emphasis added). This Item continues by specifying that the MD&A "must focus specifically on *material* events and uncertainties known to management," "descriptions and amounts of matters that have had a *material* impact on reported operations," and "matters that are reasonably likely based on management's assessment to have a *material* impact on future operations" (emphasis added). Because the disclosures contemplated by the Proposed Rule are required without regard to their materiality to the registrant, we believe that requiring these disclosures within the MD&A could have the effect of confusing investors and would be inconsistent with the stated objectives of the MD&A section to "better allow investors to view the registrant from management's perspective." If such information or trends have been determined by a registrant's management to be material, they will already be included in the MD&A. Accordingly, if these disclosures are to be required at all, it would be more appropriate to include them in an appropriately captioned, separate part of the registration statement or annual report.

7. Should we permit a registrant to provide certain of the proposed climate-related disclosures in Commission filings other than the annual report or registration statement? For example, should we permit a registrant to provide information about board and management oversight of climate-related risks in its proxy statement?

<u>The Company's Response</u>: To the extent that information required by the Proposed Rule is merely an extrapolation or example of information that registrants are already required to disclose (e.g., information about board and management oversight of climate-related risks), there is no reason to treat climate-related information different from other analogous information that registrants are required to disclose. As a recent point of comparison, we note that the Commission's proposed rule "Cybersecurity Risk Management, Strategy, Governance, and Incident Disclosure" (File Number S7-09-22) would allow the contemplated disclosures related to cybersecurity risk management, strategy, and governance to follow the traditional framework under which governance and risk management disclosures related to the substantive area at issue may be included in the registrant's proxy statement. We see no reason to treat climate-based disclosures differently from other disclosure requirements for specific substantive issues that the Commission has deemed to be material.

<u>**Geographic Disclosures**</u>

12. For the location of its business operations, properties or processes subject to an identified material physical risk, should we require a registrant to

provide the ZIP code of the location or, if located in a jurisdiction that does not use ZIP codes, a similar subnational postal zone or geographic location, as proposed? Is there another location identifier that we should use for all registrants, such as the county, province, municipality or other subnational jurisdiction? Are there exceptions or exemptions to a granular location disclosure requirement that we should consider?

The Company's Response: For several reasons, disclosing ZIP codes for business operations, properties or processes that are subject to an identified material physical risk would be neither material nor useful to most investors. First, most investors would not be able identify a geographic area from a ZIP code. Next, ZIP codes vary widely in size, from thousands of square miles (*e.g.*, 89049) to a few city blocks (*e.g.*, 11109). This information represents simply another data point for registrants to track with minimal marginal value to most investors. Finally, many business operations processes could span multiple ZIP codes (e.g., transportation of materials) or be impacted by the same physical risks, and it is unclear whether the Proposed Rule would require registrants to disclose every ZIP code involved in implicated operations and processes. For example, each of our facilities is located in the southeastern United States and could be damaged or otherwise impacted by hurricanes, which are common in our area of the country. We believe an investor would derive significantly greater benefit from a qualitative statement in line with the foregoing statement than from a list of more than sixty ZIP codes in which our operations are conducted. For more particularized risks, such as a risk of flooding based on sea level rise, we believe that a more generalized narrative description (e.g., that a registrant has a key facility located adjacent to the Gulf of Mexico) would provide investors with more relevant information about the registrant's climate-based risk exposure than disclosing the ZIP code of the same facility.

13. If a registrant determines that the flooding of its buildings, plants, or properties is a material risk, should we require it to disclose the percentage of those assets that are in flood hazard areas in addition to their location, as proposed? Would such disclosure help investors evaluate the registrant's exposure to physical risks related to floods? Should we require this disclosure from all registrants, including those that do not currently consider exposure to flooding to be a material physical risk? Should we require this disclosure from all registrants operating in certain industrial sectors and, if so, which sectors? Should we define "flood hazard area" or provide examples of such areas? If we should define the term, should we define it similar to a related definition by the Federal Emergency Management Agency ("FEMA") as an area having flood, mudflow or flood-related erosion hazards, as depicted on a flood hazard boundary map or a flood insurance rate map? Should we require a registrant to disclose how it has defined "flood hazard area" or whether it has used particular maps or software tools when determining whether its buildings, plants, or properties are located in flood hazard areas? Should we recommend that certain maps be used to promote comparability? Should we require disclosure of whether a registrant's assets are located in zones that are subject to other physical risks, such as in locations subject to wildfire risk?

The Company's Response: We believe that the level of detail regarding flood risk contemplated by the foregoing request for comment would simply be immaterial to most investors. Under the current principles-based risk assessment framework, a registrant that determines that the flooding of its buildings, plants, or properties is a material risk to its business or operations is required to disclose and explain the nature of that risk in sufficient detail to facilitate an investment decision by a reasonable investor. If appropriate, this would include more granular and quantitative disclosures of the type described above. An investor interested in the physical locations of a registrant's properties typically can access this information through information in the public domain, such as the online Geographic Information System mapping applications maintained by most county governments, many of which include flood map overlays. In the alternative, even if the Commission elects to require registrants that are subject to material flooding risks to provide additional information about such risks, it should not extend this requirement to all companies. It is unclear how investors would benefit from the time and resources required of management to analyze flooding risk on a property-by-property basis if the overall risk of flooding for that particular registrant is not material.

Financial Disclosures

25. Should we require a registrant to provide a narrative discussion of whether and how any of its identified climate-related risks have affected or are reasonably likely to affect its consolidated financial statements, as proposed? Should the discussion include any of the financial statement metrics in proposed 17 CFR 210.14-02 (14-02 of Regulation S-X) that demonstrate that the identified climate-related risks have had a material impact on reported operations, as proposed? Should the discussion include a tabular representation of such metrics?

The Company's Response: Pursuant to Item 303(a) of Regulation S-K, the Management's Discussion and Analysis of Financial Condition and Results of Operations of a registrant's periodic reports containing consolidated financial statements "must focus specifically on material events and uncertainties known to management that are reasonably likely to cause reported financial information not to be necessarily indicative of future operating results or of future financial condition. This includes descriptions and amounts of matters that have had a material impact on reported operations, as well as matters that are reasonably likely based on management's assessment to have a material impact on future operations." We interpret this provision to require registrants to provide a narrative discussion of whether and how any of its identified climate-related risks have affected or are reasonably likely to affect its consolidated financial statements if such risk is material, and there appears to be no specific purpose served by duplicating this requirement specifically for climate-related risks. In any event, the nature of the disclosure contemplated by the foregoing request for comment is by its nature more appropriate for narrative disclosure, rather than tabular disclosure.

<u>Internal Carbon Pricing</u>

29. Should we require all registrants to disclose an internal carbon price and prescribe a methodology for determining that price? If so, what corresponding disclosure requirements should we include in connection with such mandated carbon price? What methodology, if any, should we prescribe for calculating a mandatory internal or shadow carbon price? Would a different metric better elicit disclosure that would monetize emissions?

<u>The Company's Response</u>: An imposition by the Commission of a requirement for all registrants to develop and disclose an internal carbon price would represent an unprecedented intrusion by the Commission into the management decisions of public companies at a level that both the U.S. Congress and the Commission have avoided in recent analogous scenarios. One example relates to recent actions taken in respect of executive compensation. The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, although implementing several new compensation-related procedural and disclosure requirements as a matter of federal law (e.g., "say on pay," "say on frequency," and CEO pay ratio), preserved intact the standard of the so-called business judgment rule under established corporate jurisprudence with respect to the underlying substantive decisions concerning executive compensation. An analogous situation exists here. The Proposed Rule contains numerous procedural and disclosure requirements concerning climate-based risks but should stop short of prescribing the development and disclosure of an internal carbon price by all registrants, including those who do not use internal carbon prices in connection with decisional processes. By its very nature, an internal carbon price is developed by an organization under its own circumstances to cause carbon-related considerations to become more central to its business operations. The determination of whether to establish – and how to use – an internal carbon price should remain within the purview and discretion of management under the business judgment rule.

<u>Board and Governance Disclosures</u>

34. Should we require a registrant to describe, as applicable, the board's oversight of climate-related risks, as proposed? Should the required disclosure include whether any board member has expertise in climate-related risks and, if so, a description of the nature of the expertise, as proposed? Should we also require a registrant to identify the board members or board committee responsible for the oversight of climate-related risks, as proposed? Do our current rules, which require a registrant to provide the business experience of its board members, elicit adequate disclosure about a board member's or executive officer's expertise relevant to the oversight of climate-related risks?

35. Should we require a registrant to disclose the processes and frequency by which the board or board committee discusses climate-related risks, as proposed?

36. Should we require a registrant to disclose whether and how the board or board committee considers climate-related risks as part of its business strategy, risk management, and financial oversight, as proposed? Would the proposed disclosure raise competitive harm concerns? If so, how could we address those concerns while requiring additional information for investors about how a registrant's board oversees climate-related risks?

37. Should we require a registrant to disclose whether and how the board sets climate-related targets or goals, as proposed? Should the required disclosure include how the board oversees progress against those targets or goals, including whether it establishes any interim targets or goals, as proposed? Would the proposed disclosure raise competitive harm concerns? If so, how could we address those concerns while requiring additional information for investors about how a registrant's board oversees the setting of any climate-related targets or goals?

The Company's Response: The proposed disclosure requirements regarding board oversight of climate-related risks and related topics are duplicative of existing requirements and singles out climate-related risks for an elevated disclosure status without regard to materiality to the registrant. Under the Commission's existing rules, a registrant must provide information about the business experience of its board members and their qualifications for serving on the board. Registrants also must disclose information about the board's role in risk oversight. To the extent that climate-related risks are material to a particular registrant, the registrant would, under existing rules, necessarily disclose the applicable experience or other qualifications of its board members and the processes and procedures followed by its board of directors with respect to such risks. For registrants for whom climate-based risks are not material, it is unclear what purpose would be served by requiring such disclosure. In short, the Proposed Rule presupposes materiality of climate-based risks for all registrants (and, correspondingly, the need for the board to address such risks) in a manner that the Commission has not historically done for other areas of business-related risks.

Management Disclosures

38. Should we require a registrant to describe, as applicable, management's role in assessing and managing climate-related risks, as proposed? Should the required disclosure include whether certain management positions or committees are responsible for assessing and managing climate-related risks and, if so, the identity of such positions or committees, and the relevant expertise of the position holders or members in such detail as necessary to fully describe the nature of the expertise, as proposed? Should we require a registrant to identify the executive officer(s) occupying such position(s)? Or do our current rules, which require a registrant to provide the business experience of its executive officers, elicit adequate disclosure about management's expertise relevant to the oversight of climate-related risks?

39. Should we require a registrant to describe the processes by which the management positions or committees responsible for climate-related risks are informed about and monitor climate-related risks, as proposed? Should we also require a registrant to disclose whether and how frequently such positions or committees report to the board or a committee of the board on climate-related risks, as proposed?

40. Should we specifically require a registrant to disclose any connection between executive remuneration and the achievement of climate-related targets and goals? Is there a need for such a requirement in addition to the executive compensation disclosure required by 17 CFR 229.402(b)?

<u>The Company's Response</u>: In connection with executive compensation disclosures, Item 402(b) of Regulation S-K already requires, among other things, that a registrant "explain all material elements of the registrant's compensation of the named executive officers," including, without limitation, the objectives of the registrant's compensation programs, what the compensation program is designed to reward, and each element of compensation. As examples of the required disclosure, Item 402(b)(2) suggests that a registrant could (if applicable) be required to disclose what specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions and how specific forms of compensation are structured and implemented to reflect these items of the registrant's performance. Accordingly, if there is a connection between a registrant's executive compensation program and the achievement of climate-related targets and goals, such connection should be disclosed on the basis of requirements already set forth in Item 402(b) of Regulation S-K, and any additional requirements would be merely duplicative and add little value to the Commission's existing disclosure regime.

41. As proposed, a registrant may disclose the board's oversight of, and management's role in assessing and managing, climate-related opportunities. Should we require a registrant to disclose these items?

<u>The Company's Response</u>: As noted in the "Introduction" section of the Proposed Rule, the purpose of the Proposed Rule is to allow investors to "to make informed judgments about the impact of climate-related *risks* on current and potential investments" (emphasis added). A focus on disclosure of risks, rather than opportunities, is consistent with Commission precedent on mandatory disclosures, which weigh in favor of fulsome discussion of risk factors and are the longstanding principle of conservatism under generally accepted accounting principles. In other contexts, registrants are permitted, but not required, to discuss opportunities relevant to their business or operations and the assessment, management and oversight thereof to the extent that such disclosures are responsive to specific items within Regulation S-K or S-X. The same is currently true of climate-related opportunities, as there is no legal impediment to registrants disclosing information about climate-related opportunities in their annual reports or other communications to stockholders. It is unclear what improvement to existing law would result from the Commission requiring registrants to disclose climate-related opportunities. Accordingly, we encourage the Commission not to impose such a requirement.

42. Should we require a registrant to describe its processes for identifying, assessing, and managing climate-related risks, as proposed?

43. When describing the processes for identifying and assessing climate-related risks, should we require a registrant to disclose, as applicable, as proposed:

- **How the registrant determines the relative significance of climate-related risks compared to other risks?**
- **How it considers existing or likely regulatory requirements or policies, such as emissions limits, when identifying climate-related risks?**
- **How it considers shifts in customer or counterparty preferences, technological changes, or changes in market prices in assessing potential transition risks?**
- **How the registrant determines the materiality of climate-related risks, including how it assesses the potential size and scope of an identified climate-related risk?**

Are there other items relevant to a registrant's identification and assessment of climate-related risks that we should require it to disclose instead of or in addition to the proposed disclosure items?

<u>The Company's Response</u>: We believe that the appropriate scope of disclosure for climate-related risks may be determined by reference to Item 105 of Regulation S-K, which, when applicable, broadly requires a registrant to "[c]oncisely explain how each risk affects the registrant or the securities being offered." The level of detail contemplated by the Proposed Rule for climate-related risks is significantly greater than that required for any other risk affecting the registrant, without regard to the materiality of climate-related risks to the registrant's business or securities. It is unclear what purpose, if any, would be served by requiring enhanced disclosure for one specific type of risk that may or may not be material or relevant to a particular registrant. Accordingly, we urge the Commission to adopt the general reporting standard for risk factors set forth under Item 105 of Regulation S-K for any disclosure required for climate-related risks.

<u>Transition Plans</u>

46. If a registrant has adopted a transition plan, should we require the registrant to describe the plan, including the relevant metrics and targets used to identify and manage physical and transition risks, as proposed? Would this proposed disclosure requirement raise any competitive harm concerns and, if so, how can we mitigate such concerns? Would any of the proposed disclosure requirements for a registrant's transition plan act as a disincentive to the adoption of such a plan by the registrant?

47. If a registrant has adopted a transition plan, should we require it, when describing the plan, to disclose, as applicable, how the registrant plans to mitigate or adapt to any identified physical risks, including but not limited to those concerning energy, land, or water use and management, as proposed? Are there any other aspects or considerations related to the mitigation or adaption to physical risks that we should specifically require to be disclosed in the description of a registrant's transition plan?

The Company's Response: For several reasons, we believe that the mandatory disclosures contemplated by the Proposed Rule will disincentivize registrants from adopting transition plans. First, as discussed elsewhere in this letter, registrants will incur significant time and expense to comply with other non-voluntary requirements of the Proposed Rule and would necessarily weigh the perceived benefit of adopting a transition plan against the additional time and expense that would result from the mandatory disclosure of various elements of such plan. It is reasonable to assume that at least some, if not most, registrants would conclude that the disclosure-related costs of adopting transition plans would outweigh the benefit of adoption. Second, transition plans are likely to vary greatly by industry and involve highly technical and other industry-specific information that likely would be of little use or relevance to most investors who may lack the experience or training necessary to fully comprehend the scope or anticipated impacts of the components of the plan. Third, a comprehensive transition plan would likely involve capital expenditures, geographic transitions, strategic acquisitions and divestitures and similar competitively sensitive information, which registrants reasonably could be expected to avoid disclosing if given the option to do so. Finally, some registrants may elect to participate in industry pilot programs, research and development activities or other targeted activities as part of their transition plans about which such registrants could be restricted from disclosing responsive information by law, contract or otherwise. In light of the foregoing, we encourage the Commission not to stymie the progress that registrants are currently making in the area of transition planning by imposing unnecessary disclosure requirements on those registrants who choose to engage in such activities.

Periods Presented

55. The proposed rules would require disclosure for the registrant's most recently completed fiscal year and for the corresponding historical fiscal years included in the registrant's consolidated financial statements in the filing. Should disclosure of the climate-related financial statement metrics be required for the fiscal years presented in the registrant's financial statements, as proposed? Instead, should we require the financial statement metrics to be calculated only for the most recently completed fiscal year presented in the relevant filing? Would requiring historical disclosure provide important or material information to investors, such as information allowing them to analyze trends? Are there other approaches we should consider?

114. Should we require GHG emissions disclosure for the registrant's most recently completed fiscal year and for the appropriate, corresponding historical fiscal years included in the registrant's consolidated financial statements in the filing, to the extent such historical GHG emissions data is reasonably available, as proposed? Should we instead only require GHG emissions metrics for the most recently completed fiscal year presented in the relevant filing? Would requiring historical GHG emissions metrics provide important or material information to investors, such as information allowing them to analyze trends?

The Company's Response: We encourage the Commission to make at least two revisions to the Proposed Rule with regard to the periods for which climate-related financial statement metrics and GHG emissions disclosures must be provided. First, we respectfully request the Commission to explicitly state that climate-related financial statement metrics and GHG emissions data need not be presented for any fiscal year commencing prior to the effective date of the Proposed Rule. Many registrants currently are not collecting climate-related financial statement metrics and GHG emissions information, and to begin to do so will require significant investments of time and resources. Any data presented for periods prior to the implementation of controls and procedures designed to capture such data would be subject to significant estimates and assumptions that would devalue the comparability of any such data with data collected in more recent years. Second, we encourage the Commission to require the presentation of climate-related financial statement metrics and GHG emissions data only for the most recent fiscal year presented, and not all fiscal years presented. In comparable contexts, the Commission has eliminated duplicative disclosures and modernized and enhanced MD&A disclosures for the benefit of investors, while simplifying compliance efforts for registrants (*see, e.g.*, Instruction 1 to Item 303(b) of Regulation S-K, permitting registrants to omit MD&A about the earliest of three years presented in a filing if the information is included in a registrant's prior filings on EDGAR), and there does not appear to be any reason to treat climate-related financial statement metrics and GHG emissions disclosures differently than other aspects of MD&A that address similar themes with respect to registrants' businesses.

Financial Impact Metrics

59. Should we require registrants to disclose the financial impact metrics, as proposed? Would presenting climate-specific financial information on a separate basis based on climate-related events (severe weather events and other natural conditions and identified physical risks) and transition activities (including identified transition risks) elicit decision-useful or material information for investors?

60. Would the impact from climate-related events and transition activities yield decision-useful information for investors? Would a registrant be able to quantify and provide the proposed disclosure when the impact may be the result of a mixture of factors (e.g., a factory shutdown due to an employee strike that occurs simultaneously with a severe weather event)?

61. Alternatively, should we not require disclosure of the impacts of identified climate-related risks and only require disclosure of impacts from severe weather events and other natural conditions? Should we require a registrant to disclose the impact on its consolidated financial statements of only certain examples of severe weather events and other natural conditions? If so, should we specify which severe weather events and other natural conditions the registrant must include? Would requiring disclosure of the impact of a smaller subset of climate-related risks be easier for a registrant to quantify without sacrificing information that would be material to investors?

The Company's Response: We believe that the required disclosure of financial impact metrics as contemplated by the Proposed Rule would result in neither decision-useful nor material information for investors, primarily due to the inherent difficulty in isolating and quantifying the impact of climate-related risks on individual financial statement line items. Simply put, the spectrum of climate-related risks affecting all registrants is broad, and the specific impact of various risks often do not correlate to individual financial statement line items with any level of certainty. For example, as a construction company, our operations are conducted outdoors, and we may be unable to perform revenue-generating activities during events of rain, snow or other forms of precipitation. These are inherent risks to an outdoor business that may be intensified as a result of climate change or related risks, but any attempt to quantify the extent to which revenue, net income or other measures are impacted by climate-related risks would be mere conjecture at best. In connection with reporting results for period of excessive rainfall, existing disclosure standards would already require us to discuss the impact of such rainfall on our results of operations in general terms among other contributing factors, providing investors with relevant and useful information for assessing our results for such period. However, it would be impossible to measure the exact relative contribution of excessive rainfall or other climate-based risks to the impact on operational results as compared to other risks affecting our business, such as supply chain constraints or labor shortages.

We also believe that the comparison of the disaggregation contemplated by the Proposed Rule to the disaggregation of financial statement line items under FASB ASC Topic 606 and Article 5 of Regulation S-X is not a fair one. Those provisions address core financial reporting metrics applicable to most – if not all – registrants to at least some extent, in which the respective registrant management teams would necessarily have experience and expertise in evaluating the impacted metrics. In contrast, we expect that most registrants are simply neither qualified nor equipped to delineate the extent to which excessive rainfall in a particular period is a result of climate change or other climate-based risks as opposed to normal fluctuations in weather patterns.

GHG Emissions

96. Should we require a registrant to express its emissions data in CO2e, as proposed? If not, is there another common unit of measurement that we should use? Is it important to designate a common unit of measurement for GHG emissions

data, as proposed, or should we permit registrants to select and disclose their own unit of measurement?

The Company's Response: If disclosure of emissions data will be required, it would be essential to designate a common unit of measurement, along with specifying the methods, models, and data that must be used to calculate the proposed metrics for clarity, meaningfulness, comparability and credibility. Without these components standardized, the results are not comparable and meaningful, and credibility could be jeopardized. As a result, if GHG emission disclosures are required, we strongly encourage the Commission to designate the common unit of measurement and the methods, models, and data required to calculate such metric. Specifically, we encourage the Commission to require the GHG emissions to be expressed in terms of the global warming potential measured in CO_2e for both the 20-year and 100-year time horizons. The requirement for two different time horizons would ensure that both the short-term and long-term potentials of GHG emissions are captured. To that end, we recommend that the Commission require the use of the standardized characterization factors specified by EPA through its TRACI methodology to calculate these values.

98. Should we require a registrant to disclose its Scope 3 emissions for the fiscal year if material, as proposed? Should we instead require the disclosure of Scope 3 emissions for all registrants, regardless of materiality? Should we use a quantitative threshold, such as a percentage of total GHG emissions (*e.g.*, 25%, 40%, 50%) to require the disclosure of Scope 3 emissions? If so, is there any data supporting the use of a particular percentage threshold? Should we require registrants in particular industries, for which Scope 3 emissions are a high percentage of total GHG emissions, to disclose Scope 3 emissions?

115. Should we require a registrant to disclose the methodology, significant inputs, and significant assumptions used to calculate its GHG emissions metrics, as proposed? Should we require a registrant to use a particular methodology for determining its GHG emission metrics?

The Company's Response: Mandatory Scope 3 emissions disclosures for companies of any size or at any materiality level are unlikely to yield any accurate or useful information for investors. In addition, making registrants responsible for recordkeeping and disclosures by third parties would impose an unnecessary and untenable burden on all of the affected business, including the registrants themselves.

When evaluating GHG emissions, the models and methods used to calculate the Scope 1, Scope 2, and Scope 3 GHG emissions should be consistent and follow consensus protocols to ensure fairness and transparency of results. Therefore, we recommend that the Commission prescribe these. In addition, inventory data used to estimate Scope 3 emissions when primary data is not available should be publicly available and prescribed.

This helps not only to keep costs low (from the perspective of assessments, auditing, and interpretation) but also aids credibility.[1] [2]

Prescribing methodologies and data for Scope 1 and Scope 2 emissions is achievable by requiring EPA's Scope 1 and Scope 2 Inventory Guidance, which provides methods to calculate direct emissions associated with fuel combustion in boilers, furnaces, and vehicles, as well as indirect emissions associated with the purchase of electricity, steam, heat or cooling. In contrast, estimating Scope 3 GHG emissions is extremely challenging, and currently there is no consistent methodology to calculate and allocate these emissions at the granular level required to account for technological advancements while maintaining consistency and comparability. Moreover, very few private companies in the supply chain are currently keeping records on their own activities and emissions to the extent necessary to complete an accurate calculation of these emissions, nor are they equipped to do so. Obtaining reliable data from suppliers, customers and others would be not only exceedingly challenging, but also unlikely to yield accurate or useful data. As a result, prescribing methodologies and data to estimate Scope 3 emissions is a significant barrier to Scope 3 GHG emission disclosures. This challenge has been recognized by the World Business Council for Sustainable Development (New Carbon Transparency Partnership provides forum for stakeholders to address lack of Scope 3 emissions transparency - World Business Council for Sustainable Development (WBCSD)).

As a result, we encourage the Commission to not require Scope 3 GHG emissions until consistent methodologies and data are available.

Thank you again for the opportunity to comment on the Proposed Rule. We would be happy to answer questions or discuss any of our feedback further.

Respectfully submitted,

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[1] Bhat, C. M. (2020). Mapping of unit product system/processes for pavement life-cycle assessment. *Pavement, Roadway, and Bridge Life cycle Assessment 2020 - Harvey et al (eds)*, 1-11.

[2] Rangelov M., D. H. (2021). Use of environmental product declarations (EPDs) of pavement materials in the United States of America (U.S.A.) to ensure environmental impact reductions (124619). *Journal of Cleaner Production*, 283.