

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

MIDTOWN CLEVELAND, INC., 3634 Euclid Avenue, Suite 215, Cleveland, OH 44115,)	CASE NO.
)	
SAVE OUR ACCESS, 3821 Prospect Avenue, Cleveland, OH 44115, and)	
)	
ACME EXPRESS, INC., 3821 Prospect Avenue, Cleveland, OH 44115,)	JUDGE
)	
Plaintiffs,)	
)	
v.)	
)	
UNITED STATES DEPARTMENT OF TRANSPORTATION, 1200 New Jersey Avenue, SE, Washington, DC 20590,)	
)	
RAY LAHOOD, in his official capacity as Secretary, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, Washington, DC 20590,)	
)	
FEDERAL HIGHWAY ADMINISTRATION, 1200 New Jersey Avenue, SE, Washington, DC 20590,)	
)	
VICTOR M. MENDEZ, in his official capacity as Administrator, Federal Highway Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590,)	
)	
LAURIE LEFFLER, in her official capacity as Division Administrator, Ohio Division, Federal Highway Administration, 200 North High Street, Room 328, Columbus, OH 43215,)	
)	
OHIO DEPARTMENT OF TRANSPORTATION, 1980 West Broad Street, Columbus, OH 43223, and)	
)	
JOLENE MOLITORIS, in her official capacity as Director, Ohio Department of Transportation, 1980 West Broad Street, Columbus, OH 43223,)	
)	
Defendants.)	

**COMPLAINT FOR DECLARATORY AND PRELIMINARY AND
PERMANENT INJUNCTIVE RELIEF**

INTRODUCTION

1. This action challenges violations of the National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.; “NEPA”), the Federal Aid Highway Act (23 U.S.C. §§ 101 et seq.; “Federal Aid Highway Act”), Section 4(f) of the Department of Transportation Act (23 U.S.C. § 138 and 49 U.S.C. § 303; “Section 4(f)”), and the Administrative Procedure Act (5 U.S.C. §§ 701 et seq.; “APA”) carried out by the defendants during the planning of the Cleveland Innerbelt Project (the “Innerbelt Project”). The Innerbelt Project seeks to modify or replace various sections of interstate routes I-71, I-77, and I-90 that run through Downtown Cleveland. The Innerbelt Trench (“Innerbelt Trench”), so called because it travels through Cleveland’s MidTown District (“MidTown District”) and Cleveland’s Central Business District (“CBD”) in a depressed corridor surrounded by sloped walls, provides access from the Greater Cleveland Metropolitan Area to Cleveland’s MidTown District, the CBD, The Cleveland Clinic Main Campus, and the University Circle area (“University Circle”) through I-90 interchanges at Carnegie Avenue, Prospect Avenue, Chester Avenue, East 22nd Street, and Superior Avenue.

2. The plan ultimately selected by the defendants for the Innerbelt Trench, namely, Alternative A, proposes to remove the interchanges at Carnegie Avenue and Prospect Avenue, thereby destroying direct freeway access that is absolutely vital to plaintiffs and the businesses and non-profit hospitals and other institutions located in and around the MidTown District, the CBD, The Cleveland Clinic Main Campus, and the University Circle area.

3. Throughout the planning process that led to the selection of Alternative A, defendants have advanced their own predetermined agenda, which is based primarily on

updating the Innerbelt Trench to meet formulaic operational guidelines regarding minimum required distances between interchanges for interstate highway systems imposed irrespective of the highway's location, without regard for predictable and significant adverse socioeconomic effects on the MidTown District, the CBD, The Cleveland Clinic Main Campus, and the University Circle area, without appropriate regard or consideration for the input of the local government, non-profits, and the business community presently served by the Innerbelt Trench, and without a rational, objective assessment of meaningful alternatives.

4. A transportation system should be planned to serve the goals of the community; the goals of the community should not be restructured to serve a transportation system, as was the process here. *Movement Against Destruction v. Volpe*, 361 F.Supp. 1360, 1395 (D. Md. 1973).

5. Defendants' assessment of alternatives for the Innerbelt Trench was fraught with violations of NEPA requirements and, despite the creation of an Environmental Impact Statement for the Innerbelt Project ("EIS"), resulted in an arbitrary and capricious decision to remove numerous interchanges from the Innerbelt Trench as described above.

6. The United States Department of Transportation, the Federal Highway Administration, and the Ohio Department of Transportation participated in the deficient planning process, failed to comply or require compliance with NEPA, approved the Draft Environmental Impact Statement ("DEIS") and Final Environmental Impact Statement ("FEIS"), and/or ratified the deficient planning process and related planning documents for the Innerbelt Project by issuing a Record of Decision ("ROD") that approved the selection of Alternative A in the FEIS.

7. More specifically, defendants (a) failed to study, assess, or consider the social and economic effects of the proposed action and made unsubstantiated representations in the EIS; (b) failed to follow their own prescribed and publicly announced decision-making procedure, aimed at ensuring NEPA compliance, and instead deleted steps and failed to provide promised reports, which resulted in unsubstantiated decisions; (c) rejected prudent and feasible alternatives under arbitrarily decided Section 4(f) justifications; (d) failed to achieve the stated Purpose and Need of the Innerbelt Project of maintaining roadway connectivity; (e) failed to inform the public on the critical issue of adverse social and economic effects to arise from Alternative A or to appropriately consider input from local officials and the business and non-profit community; and (f) abused its discretion in refusing to either segment the Innerbelt Trench in order to allow an objective assessment of alternatives at an appropriate later time when realistic impacts will be better known or create a Supplemental Economic Impact Statement (“Supplemental EIS”) for the Innerbelt Trench that includes, at a minimum, a bona fide economic impact study assessing relevant data on the effects of removing vital interchanges within the Innerbelt Trench.

8. As a result of defendants’ failures to follow NEPA, plaintiffs and/or their members, customers, and visitors will be deprived of multiple interchanges and direct freeway access. With the removal of interchanges at Carnegie and Prospect Avenues, traffic bottlenecks will result on local streets as large volumes of traffic are forced to use a reduced number of freeway interchanges, further choking off access to plaintiffs’ businesses, The Cleveland Clinic’s Main Campus, and other properties. These impediments will deprive plaintiffs of customers, cause a loss of sales and revenue, endanger plaintiffs’ ability to compete in the market place, devalue plaintiffs’ property, cause deterioration of the urban environment as firms select locations elsewhere that possess direct freeway access, and harm plaintiffs’ use and enjoyment of

the MidTown District, the CBD, The Cleveland Clinic's Main Campus, and the University Circle area.

9. In light of these acts and/or failures to act, plaintiffs ask this Court to (1) declare that defendants' planning process violated NEPA requirements, especially as to the Innerbelt Trench segment of the Innerbelt Project, and (2) enjoin the release of federal funds for and the implementation of the Innerbelt Trench segment unless and until such time as defendants assess the social and economic effects of removing interchanges in the Innerbelt Trench by performing an appropriate and future economic impact study and selecting alternatives on the basis of that up-to-date study.

JURISDICTION AND VENUE

10. This action arises under the National Environmental Policy Act (42 U.S.C. §§ 4321 et seq.; "NEPA"), the Federal Aid Highway Act (23 U.S.C. §§ 101 et seq.; "Federal Aid Highway Act"), and Section 4(f) of the Department of Transportation Act (23 U.S.C. § 138 and 49 U.S.C. § 303; "Section 4(f)"). Plaintiffs seek judicial review of defendants' acts and failures to act pursuant to the Administrative Procedure Act (5 U.S.C. §§ 701 et seq.; "APA"). This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1346 and 28 U.S.C. § 1331 and may issue declaratory and other relief pursuant to 28 U.S.C. §§ 2201 et seq. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e).

PARTIES

11. MidTown Cleveland, Inc. ("MidTown") is a 501(c)(3) economic and community development corporation. Since 1983, MidTown has coordinated private sector efforts to combat crime, joblessness, challenges to commerce, and economic and aesthetic deterioration in the MidTown District, which includes a two-square-mile area in the immediate vicinity of the

Innerbelt Trench. MidTown has in place a Master Plan and Zoning Guidelines. The Brookings Institute has recognized MidTown as a model for urban redevelopment. MidTown's primary purpose is substantially related to protecting and promoting the interests that stand to be injured by defendants' violations and conduct asserted herein.

12. Plaintiff MidTown represents its official members and more generally represents the roughly 650 businesses, 18,000 employed citizens, and 2,000 residents that live in, transact business in, or enjoy the use of the MidTown District, the CBD, The Cleveland Clinic Main Campus, and University Circle and the vicinity directly served by the Innerbelt Trench.

13. Plaintiff Save Our Access ("Save Our Access") is an incorporated nonprofit association of businesses and citizens that oppose and stand to be adversely impacted by the loss of interchanges at Carnegie and Prospect Avenues in the Innerbelt Trench under Alternative A. Save Our Access has operated its campaign to oppose the loss of direct freeway access through its website at www.saveouraccess.org, where over 1,000 comments have been posted from concerned citizens. The purpose of Save Our Access is substantially related to protecting and promoting the interests that stand to be injured by defendants' violations and conduct asserted herein.

14. Plaintiff Acme Express, Inc. ("Acme Express") is an entrepreneurial company typical of the hundreds of small businesses that have located in the Midtown District because of its superior freeway access.

15. Plaintiffs and/or each of their members live in, work in, transact business in, own property in, and/or use and enjoy the urban environment that stands to be directly and adversely

affected by the defendants' failure to follow NEPA and the resultant proposed course of action for the Innerbelt Trench.

16. Plaintiffs participated in each step of the administrative proceedings related to the planning of the Innerbelt Project and, in particular, the Innerbelt Trench.

17. Defendant United States Department of Transportation ("U.S. DOT") is responsible for overseeing the administration of federal transportation policy and regulation, including oversight of the Federal Highway Administration.

18. Defendant Ray LaHood ("LaHood") is the Secretary of the U.S. DOT and is sued in his official capacity as such. LaHood or his predecessor(s) was responsible for the activities of the U.S. DOT and its agency the FHWA, including the participation in, approval of, and ratification of the planning process for the Innerbelt Project.

19. Defendant Federal Highway Administration ("FHWA") is a federal agency within the United States Department of Transportation and acted as a joint lead agency on the Innerbelt Project. The Federal Aid Highway Act mandates that FHWA secure compliance with NEPA before approving the use of federal funds for a highway project.

20. Defendant Victor M. Mendez ("Mendez") is the Administrator of the FHWA and is sued in his official capacity as such. Mendez or his predecessor(s) was responsible for the activities of the FHWA, including the participation in, approval of, and ratification of the planning process for the Innerbelt Project.

21. Defendant Laurie Leffler ("Leffler") is the Division Administrator of the Ohio Division of the FHWA and is sued in her official capacity as such. Leffler or her predecessor(s) was responsible for the activities of the Ohio Division, FHWA, including the participation in,

approval of, and ratification of the planning process for the Innerbelt Project. The Innerbelt Project falls within the jurisdiction of the Ohio Division of the FHWA.

22. Defendant Ohio Department of Transportation (“ODOT”) is an agency of the State of Ohio, was designated pursuant to 40 C.F.R. § 1501.5 as a joint lead agency for purposes of the Innerbelt Project with FHWA, was partially responsible for and partially prepared the EIS and preceding versions thereof, and partially carried out the planning process giving rise thereto.

23. Defendant Jolene Molitoris (“Molitoris”) is the Director of ODOT and is sued in her official capacity as such. Molitoris or her predecessor(s) was responsible for the activities of ODOT, including the planning and preparation of the EIS and related documents.

BACKGROUND

24. Defendants launched the Cleveland Innerbelt Study in roughly 2000 to assess the modification of various segments of interstate routes I-71, I-77, and I-90 that run through Downtown Cleveland (the “Cleveland Innerbelt”). (DEIS, 1-1).

25. Over the course of the next several years, defendants engaged in a planning process that did not adhere to publicly announced procedure. At each step of this process, defendants promoted their own predetermined objective of reducing interchanges within the Innerbelt Trench to satisfy operational guidelines and failed to objectively assess the social and economic effects of doing so. Plaintiffs and governmental officials informed defendants that such removal of interchanges would cause severe and adverse social and economic effects within the MidTown District, the CBD, The Cleveland Clinic Main Campus, and the University Circle area due to a lack of access, but plaintiffs’ concerns were never remedied or given adequate consideration.

26. On March 3, 2009, defendants approved the DEIS. The DEIS proposed Alternative A as the selected course of action for the Innerbelt Trench (“Alternative A”). (DEIS, ES-10). Alternative A calls for the removal of several critical, long-established highway interchanges within a short span of the Innerbelt Trench, including the interchanges at Carnegie Avenue and Prospect Avenue. (DEIS, Exhibit A, Maps C-D). On or before May 21, 2009, plaintiffs filed a public comment challenging the DEIS (“DEIS Comment”).

27. On July 22, 2009, defendants approved the selection of Alternative A and issued the FEIS. Defendants’ efforts and process for producing the FEIS failed to cure or adequately address defendants’ violations of NEPA, ratified and approved the arbitrary and capricious selection of alternatives in the DEIS, and contained its own arbitrary and capricious conclusions. On or before August 31, 2009, plaintiffs filed a public comment challenging the FEIS (“FEIS Comment”).

28. On September 18, 2009, FHWA consented to and approved the FEIS by issuance of the ROD. By statements published in the Federal Register on October 16, 2009, defendants provided notice that the ROD constituted a final agency action under 23 U.S.C. § 139(l)(1) and that claims seeking judicial review of the Innerbelt Project shall be barred unless filed on or before April 14, 2010.

FACTS

A. Defendants’ Failure to Assess Social and Economic Effects.

29. NEPA requires that an EIS provide full and fair discussion of significant environmental impacts, inform decision makers and the public of the reasonable alternatives, and

be supported by evidence that the agency has made the necessary environmental analyses. (40 C.F.R. § 1502.1).

30. NEPA also requires consideration of “indirect effects” of the action assessed in an EIS. (40 C.F.R. § 1508.8). Indirect effects include growth reduction and other effects related to induced changes in the pattern of land use, population density or growth rate and contemplate economic, social, aesthetic, and/or cultural changes. (40 C.F.R. § 1508.8).

31. Defendants acknowledged in the DEIS that economic development and other social and environmental concerns of the plaintiffs are created and left unresolved by the removal of interchanges under Alternative A, citing key issues as “loss of companies in the MidTown corridor area; a negative impact on the economic development efforts of the neighborhoods; reduced access to The Cleveland Clinic and University Circle; shifting traffic to Chester Avenue from Carnegie Avenue; the negative impact of a traffic incident at the Chester Avenue interchange; and increased congestion on local streets.” (DEIS, 5-10).

32. In light of the above-referenced significant economic and environmental issues, which plaintiffs had consistently presented, defendants retained Economic Development Research Group and URS to create and release a “draft” economic impact study dated March of 2006 and entitled Economic Effects of the Cleveland Innerbelt Plan Access Changes (hereinafter “Draft Economic Effects Study”). This document preliminarily attempted to assess the economic effects to arise in and around the MidTown District and the CBD and nearby areas upon loss of interchanges under Alternative A.

33. In Section 1.7 of the Draft Economic Effects Study, defendants’ own consultants, based on case studies in other cities, advised them that they must “[e]valuate the economic

condition of the affected neighborhood” and “[r]ecognize that ramp mitigation measures cannot eliminate negative impacts associated with already existing economic uncertainty.”

34. The Draft Economic Effects Study clearly states that, within the area relevant to the Innerbelt Trench, at least two thirds of the projected job losses will be concentrated on Carnegie, Prospect, Superior, and Lakeside Avenues. The Draft Economic Effects Study states further at Section 1.7 that job losses on these same four avenues will be accompanied by a loss of between \$5.0 Million and \$5.8 Million in sales by MidTown District firms.

35. Plaintiffs challenged both the methodology and some of the conclusions in the Draft Economic Effects Study by submitting to defendants an economic impact study performed by expert George Vredeveld, Ph.D., University of Cincinnati, that contradicted certain findings of the Draft Economic Effects Study. In response to criticism of the Draft Economic Effects Study, at the public hearing held on February 21, 2006, defendants by and through Gordon Proctor, the then Director of ODOT, admitted that (a) defendants have been historically unsuccessful with economic analyses, (b) the methodology of the Draft Economic Effects Study needed to be revisited, (c) a finalized economic impact study would be performed, and (d) the public would have an opportunity to give input thereafter.

36. Instead of carrying out its promise to perform a valid economic impact study, defendants admit in the DEIS that they “decided to use a different approach to resolve the issues.” Defendants admit in the DEIS that the “different approach” consisted of “negotiations” over traffic models with an undefined “community”. Said negotiations were not transparent and did not properly allow for input by the public at large. (DEIS, 4-38).

37. Defendants never produced the promised final economic impact study. Said failure also demonstrates that defendants failed carry out the advice of their own consultants, namely, to further evaluate and consider the economic condition of the MidTown District, the CBD, and nearby areas and to recognize that mitigation measures on side streets will not eliminate negative impacts of removing interchanges in communities with existing economic uncertainty and distress, as is affecting Cleveland.

38. Despite the evidence to the contrary stated in its own Draft Economic Effects Study, defendants nonetheless cited the following expected results with regard to Alternative A: “Positive regional economic benefits expected due to improved facility, reduced congestion, efficient access; positive economic benefits during construction period; minimal impacts on tax base due to property acquisitions, as many may relocate within the area; *no substantial negative impacts anticipated in sensitive local areas. Access changes are mitigated.*” (DEIS, ES-8).

39. In the FEIS, defendants admitted that the Draft Economic Effects Study was never completed. (FEIS, 24). The FEIS nonetheless reiterated the unsubstantiated assertions in the DEIS that no substantial negative economic effects will result from the loss of direct highway access within the Innerbelt Trench. (FEIS, 37 (Table 8)).

40. Defendants asserted in the FEIS that the “alternative methodology” they employed to resolve the aforementioned dispute over the socioeconomic effects associated with Alternative A focused instead “on the fundamental elements that were the basis for the economic concerns cited by the public.” (FEIS, 24). Notably, defendants’ explanation of the “alternative methodology” in the FEIS differed from the explanation given in the DEIS, which as outlined above stated that the different approach consisted of non-public negotiations.

41. These “fundamental elements” consisted of further assessment of traffic data. (FEIS, 24). The FEIS concluded that “these [traffic-related] issues, neither individually nor cumulatively, are anticipated to result in substantial impacts within the Trench area” and that, therefore, “the fundamental issues leading to the concern regarding economic impacts have been determined to be insubstantial.” (FEIS, 24).

42. Through such statements, defendants admitted to making conclusions regarding social and economic impacts on the basis of traffic data alone and not on the basis of studies or data regarding social and economic impacts from the Innerbelt Project, and defendants’ conclusions were therefore not based on relevant data. There is no relevant basis in the record for the conclusion set forth on page 24 of the FEIS that “it has been determined that there will be no substantial economic affects within the Trench area.” The ultimate decision to select Alternative A considered only projected and unsubstantiated traffic impacts and failed entirely to consider the socioeconomic impacts on plaintiffs, the local street system, or the areas serviced by the Innerbelt Trench. These projected traffic impacts were not materially different from defendants’ traffic projections in 2006, in response to which defendants nevertheless promised to perform an economic impacts study. As a result of these deficiencies in process, and by defendants’ own admissions, the representations in the FEIS regarding local economic impacts remain unsubstantiated and have no rational basis or foundation in the record.

43. Defendants approved the above conclusions and made new and further unsubstantiated conclusions in the ROD. The ROD states at page 20 that “it is the FHWA’s view that no substantial economic effects are anticipated to be realized with the implementation of the Project.” Defendants reasoned that the travel route modification that will be experienced with the implementation of the Project “is not significant” and that “the travel needs of

businesses and employers into, out of, and within the area will be preserved as well without the realization of any substantial adverse impacts, other than the impact that will be born by individual properties identified for acquisition/relocation as part of the Project.” (ROD, 20).

44. The above conclusions of the ROD that only the individual properties subject to acquisition or relocation will suffer substantial adverse impacts have no basis in relevant data and in fact contradict evidence on the record at the time of the ROD issuance. Companies within the CBD and the MidTown District, rely upon direct access to the Innerbelt and will be harmed significantly by the proposed removal of interchanges. For example, Applied Industrial Technologies relocated its Corporate Headquarters, and its 300 employees, to Prospect Avenue in the MidTown District in great measure due to the direct freeway access provided to the location by the Innerbelt Trench interchanges that are now subject to removal under Alternative A. Applied Industrial Technologies has publicly stated on the record that it will be forced to seriously consider leaving its current location upon removal of the Carnegie and Prospect Avenue interchanges due to the loss of direct freeway access. In addition, Central Cadillac, which employs 60 people at its location near the Carnegie Avenue ramp, has also stated on the record that it will be forced to seek a new suburban location after the implementation of the Innerbelt Project if its direct highway access is removed. Other specific companies that stand to be affected by the loss of direct freeway access have provided similar testimony on the record.

45. Public involvement is critical to informed decision-making and mandated in the NEPA planning process. Defendants’ bait-and-switch tactic of promising the public that economic impacts would be fully studied, but then later drawing conclusions regarding economic impact purely on the basis of traffic data, deprived the agencies involved and the public of an opportunity to review and comment on a bona fide economic impact study prior to the selection

of Alternative A. By failing to carry out a bona fide economic impact study, defendants failed to inform the public and elected officials of matters critical to the Innerbelt Project and thereby inhibited the public feedback loop, a fundamental principle under NEPA. Defendants' conclusions are therefore uninformed to the full extent required under NEPA, and defendants' conduct and failure to act violated NEPA.

46. Throughout the planning process, plaintiffs also have notified defendants of the adverse effects to arise from closing interchanges within the Innerbelt Trench and demanded that defendants produce data through an economic impact study to substantiate the conclusions in the EIS that minimal socioeconomic impacts will result under Alternative A.

47. Also, by letter dated April 17, 2007, when it became clear that defendants were not going to complete the promised economic impact study, significant members of the Ohio House of Representatives requested that defendants complete the study (the "Ohio State Representatives' Letter"). Neither the Ohio State Representatives' Letter nor a documented response by the defendants appeared in the DEIS or anywhere in the public record prior to May 21, 2009 when plaintiffs submitted the Ohio State Representatives' Letter into the record as an exhibit to the DEIS Comment.

48. By letter dated November 7, 2007, Frank Jackson, Mayor of Cleveland, and fourteen other signatories, representing every major constituency in the Cleveland community, came together to voice unified opposition to the removal of the interchange at Carnegie Avenue under defendants' proposal ("Mayor's Opposition Letter"). The Mayor's Opposition Letter stated that the "Cleveland community, including government, business, community groups, and major institutions have reached complete consensus in support of [maintaining] a Carnegie Avenue exit ramp" as part of the Innerbelt; that the signatories "believe that the omission of [a

Carnegie] exit ramp *will have significant economic and social impacts on our community*” (emphasis added); that “Carnegie Avenue is a major connector” to the Central Business District, Midtown District, The Cleveland Clinic Main Campus, and the University Circle area; and that “it is imperative that direct access be part of the Innerbelt plan.” Neither the Mayor’s Opposition Letter nor a documented response by the defendants appeared in the DEIS or anywhere in the public record prior to May 21, 2009 when plaintiffs submitted the Mayor’s Opposition Letter into the record as an exhibit to the DEIS Comment

49. Defendants failed throughout the planning process for the Innerbelt Project to consider the concerns stated in the Ohio State Representatives’ Letter or the Mayor’s Opposition Letter and the concerns stated by plaintiffs regarding the need for a bona fide economic impact study and thereby violated NEPA.

50. In basing their conclusions regarding economic impacts on traffic data rather than economic data, defendants failed entirely to consider relevant data regarding an important part of the Innerbelt Project. Defendants’ conclusions regarding economic impacts were also contrary to even the limited evidence before it. As a result, the selection of Alternative A was arbitrary and capricious and in violation of NEPA and the APA standard for administrative decisions. (5 U.S.C. § 706(2)). In addition, defendants’ failure to assess social and economic impacts through actual, relevant, and agreed upon, needed, and promised data demonstrates that defendants failed to take a “hard look” at the issue of socioeconomic impacts associated with the Innerbelt Project as it pertains to the Innerbelt Trench and therefore violated NEPA and related regulations. (40 C.F.R. § 1502.1). In related fashion, defendants also failed to appropriately advise or inform the public with relevant studies and data as required by NEPA, much less allow for feedback thereon. (40 C.F.R. § 1502.1).

B. Failure to Follow Prescribed Procedure and Resulting Unsubstantiated Decisions.

51. NEPA requires that an EIS provide full and fair discussion of significant environmental impacts, inform decision makers and the public of the reasonable alternatives, take a “hard look” at the issue of socioeconomic impacts associated with a project, and be supported by evidence that the agency has made the necessary environmental analyses. (40 C.F.R. § 1502.1).

52. Defendants adopted and published a Project Development Process for the Innerbelt Project (“PDP”), a decision-making process that correlates with and mirrors NEPA’s fact-gathering and rational-assessment requirements by (a) setting forth a series of decision-making events and (b) requiring that each such event be *preceded* by the gathering of data and public input thereon. Defendants represented that the planning process for the Innerbelt Project would adhere to the PDP as published. (DEIS, 1-4).

53. The published PDP emphasizes that the prescribed process should contain “Concurrence Points,” each of which represents a “major decision point where input is sought.” (DEIS, 1-4). According to the flow chart set forth in Figure 1-4 of the DEIS, the PDP for the Innerbelt Project contained only five (5) such Concurrence Points.

54. Concurrence Point 3, Subtitled “Assessment of Feasible Alternatives,” coincides with Step 6. (DEIS, Figure 1-4). Step 6, geared toward the stated goal of “Develop[ing] Feasible Alternatives,” requires the production of an Assessment of Feasible Alternatives (“AFA”) document. (DEIS, Figure 1-4). In addition, the Conceptual Alternatives Study (“CAS”), released to the public in August of 2006, states further that the “evaluation of potential impacts associated with the change in access will be further explored during step 6.” (CAS, 5-13).

55. Defendants, however, skipped both Concurrence Point 3 and Step 6 described at CAS 1-4 and failed to perform the publicly promised information-gathering functions associated therewith, including evaluation of potential impacts associated with the change in access and the completion of an economic impact study that, as alleged above, then Director Gordon Proctor promised would be completed and available before the selection of a preferred alternative. Defendants skipped directly to Concurrence Point 4 and Step 7 without obtaining facts or public feedback as directed by the PDP and required by NEPA. (CAS, 1-4).

56. Defendants also never created the AFA document associated with Step 6 and, thereby, avoided the production and public dissemination of information relevant to the evaluation of potential impacts associated with loss of access within the Innerbelt Trench.

57. The selection of a preferred alternative for presentation in the DEIS was supposed to take place at Step 7 and Concurrence Point 4, *after* completion of Step 6 and Concurrence Point 3. (DEIS, Figure 1-4). Despite the fact that an assessment of feasible alternatives was never carried out or documented, defendants proceeded to make a selection of an alternative, selecting Alternative A in the DEIS. (DEIS, ES-10).

58. Defendants' failures deprived plaintiffs and the public at large of crucial information that would allow them to assess the alternatives presented by defendants, deprived stakeholders and the public of the opportunity to provide defendants with informed feedback regarding their concerns regarding feasible alternatives, as required by NEPA, and rendered the administrative record insufficient to inform decision makers reviewing the EIS.

59. In addition, defendants' failure demonstrates that plaintiffs' critical concern regarding the loss of interchanges at Carnegie and Prospect Avenues in the Innerbelt Trench was

never assessed in an objective and rational manner, publicly documented, or vetted *before* Alternative A was chosen. As a result, defendants' divergence from the PDP demonstrates a violation of fundamental NEPA requirements of fact-gathering, public involvement, and objective assessment.

60. Because NEPA prohibits mere after-the-fact justification of previous unsubstantiated decisions, the above-described manner in which Alternative A was selected constituted a terminal violation of NEPA and which defendants did not and could not cure through alleged justification or attempted rationalization in the FEIS or ROD.

C. Arbitrary Rejection of Alternatives Based on Section 4(f) of the Department of Transportation Act.

61. Plaintiffs asserted throughout the NEPA planning process that maintaining the interchange at Carnegie Avenue would serve to prevent at least some of the adverse socioeconomic effects to result from the implementation of Alternative A. (DEIS Comment, 26).

62. Defendants have consistently stated that, while proposals to maintain the existing interchange at Carnegie Avenue "would function operationally," the interchange cannot be incorporated into Alternative A without impacting the Juvenile Justice Center (the "Center"). (FEIS, 24). The Center is a structure that is eligible for listing on the National Register of Historic Places, but not so listed.

63. Defendants state in the EIS that because the Center is eligible for the National Register of Historic Places, Section 4(f) prohibits impacts on the Center unless alternatives are not feasible and prudent. (FEIS, 21).

64. A new juvenile justice center will open at a different location in 2010 or early 2011. Cuyahoga County, which owns and operates the Center, has stated in published media that

it has no plans for the Center, has no intention of listing it on the National Register, and has indicated that the Center will be sold or demolished when the replacement juvenile justice center opens.

65. In light of said facts, which were available to defendants during the NEPA planning process, no benefit will result from avoiding impacts to the Center and rejecting plaintiffs' proposed alternative of maintaining a freeway interchange at Carnegie Avenue.

66. In contrast, studies presented to defendants in the DEIS Comment and FEIS Comment, as well as defendants' own Draft Economic Effects Study, indicate that removing the Carnegie Avenue interchange to avoid impacting the Center will cause negative job loss, loss of businesses, and other adverse socioeconomic impacts within the MidTown District, the CBD, The Cleveland Clinic Main Campus, and the University Circle area.

67. In addition, through the Mayor's Opposition Letter referenced above, the Mayor of Cleveland and fourteen other signatories expressed complete consensus in support of maintaining direct access to the Innerbelt through a Carnegie Avenue interchange and that the removal of said interchange will have significant economic and social impacts on the community.

68. Notably, Tim Hagan, President of the Cuyahoga County Board of Commissioners, which owns the Center, signed the Mayor's Opposition Letter and advocated in favor of maintaining an interchange at Carnegie Avenue and impacting the historic site which his governmental entity owned.

69. An alternative that will avoid the use of a protected site is imprudent if there arise unusual factors or cost or community disruption that rise to extraordinary magnitudes which

counsel against building a highway along such a route. At the same time, alternatives that avoid the use of a protected site but that do not solve or meet transportation needs of a project can be rejected as not prudent.

70. As demonstrated by the Mayor's Opposition Letter, the harm to be dealt to Cleveland's fragile urban core rises to an extraordinary magnitude that outweighs the importance of protecting the Center and renders defendants' decision to avoid the Center imprudent. The magnitude of the harm to the community is magnified further by (a) the cumulative adverse socioeconomic effects on the established community to result from removal of interchanges at both Carnegie and Prospect Avenues and (b) the facts that the Center may be only one to two years away from being torn down by Cuyahoga County and that no benefit will be derived from protecting it. These considerations demonstrate that the avoidance of the Center will cause severe social or economic impacts and/or severe disruption to established communities, and the avoidance can therefore be defined as imprudent under 23 C.F.R. § 774.17.

71. Defendants' suggestion in the ROD that a phone call in September of 2009 to an administrator of Cuyahoga County trumps a Commissioners' written position, or is otherwise probative on the issue of the elected County Commissioners' intent regarding the future of the Center is unwarranted and misplaced. It certainly does not justify defendants' continued position that the Center is an absolute constraint. Defendants' alleged phone call also does not address or relieve the extraordinary harm and disruption to the established urban community that will result from removing the Carnegie Avenue interchange.

72. Section 4(f) therefore allows the interchange at Carnegie Avenue to be implemented in spite of the Center because an objective assessment and rational balancing of the facts suggests that avoiding the Center is imprudent. Defendants' summary rejection of

plaintiffs' proposed alternative and refusal to engage in any analysis or balancing of the harms upon removal of the Carnegie Avenue interchange, in either the DEIS, FEIS, or ROD, is an abuse of discretion and an arbitrary and capricious application of Section 4(f). Defendants' failure to assess plaintiffs' alternative that maintains the Carnegie Avenue interchange or any other alternatives that impact the Center violated NEPA.

D. Failure to Achieve the Innerbelt Project's Purpose and Need.

73. NEPA required defendants to identify and pursue a statement of Purpose and Need in the EIS. (40 C.F.R. § 1502.13). The Purpose and Need discussion in the DEIS stated that "there is a need to maintain and improve access to and from the University Circle area to address current and future access demand" and that there is need for discussion of issues related to access because of "the critical role of the freeway-to-local street connections." (DEIS, 2-1). The DEIS admits further that because 85% of the traffic on the Cleveland Innerbelt has a destination or origin in the studied area during peak hours, the "interrelationship and connection between the city street grid and the Innerbelt Freeway becomes even more crucial."

74. One of the Purposes and Needs identified for the Innerbelt Project is to "preserve the local roadway connectivity function of the Cleveland Freeway and provide continued access and mobility to the CBD, adjacent neighborhoods, and commercial/industrial areas." (DEIS, 2-1).

75. Defendants' selection of Alternative A, which removes freeway access and reduces connectivity between the Innerbelt and local roadways, constitutes a per se contradiction of the Purpose and Need statement. (DEIS, Exhibit A, Maps C-D).

76. In the DEIS Comment and FEIS Comment, plaintiffs presented to defendants a report dated June of 2008 by expert Dr. Mark Rosentraub demonstrating that defendants failed to account for an increase of roughly 4,000,000 outpatient and visitor trips expected due to significant additions planned or underway at The Cleveland Clinic, University Hospitals, and the Louis Stokes Cleveland VA Medical Center. Plaintiffs also informed defendants prior to finalization of the EIS that, since defendants performed the initial traffic studies, (a) the Cleveland Clinic constructed over 3.3 million square feet of new space, including an enormous complex that required the largest building permit ever issued by the City of Cleveland, (b) University Hospitals constructed a new cancer center and emergency center, and (c) the Louis Stokes Cleveland VA Medical Center will, due to the consolidation of other area VA hospitals, grow to become the fifth largest VA hospital in the nation. In addition, The Cleveland Clinic will also soon begin construction of a new reference lab that will employ 3,500 new staff. In short, defendants' consideration of traffic in areas served by the Innerbelt Trench was carried out just prior to a period of massive, rapid growth at numerous medical centers near the Innerbelt Trench.

77. Plaintiffs also demonstrated to defendants through the expert report of engineer Michael Schweikert that Alternative A will cause the local street system to become gridlocked and therefore create safety hazards by impeding emergency vehicle travel and cause economic downturn throughout the MidTown District, the CBD, The Cleveland Clinic Main Campus, and the University Circle area.

78. The Rosentraub and Schweikert reports demonstrate that the closure of numerous interchanges within the Innerbelt Trench, in combination with the expected increases in traffic to and from The Cleveland Clinic, University Hospitals, and the Louis Stokes Cleveland VA

Medical Center, will force great volumes of traffic to travel through substantially fewer interchanges with local streets, causing unacceptable bottlenecks and choking off access to the MidTown District, the CBD, The Cleveland Clinic Main Campus, and the University Circle area. The report by Dr. Rosentraub also clearly establishes that Alternative A, especially in light of the increased traffic to due to the immense expansion at The Cleveland Clinic, University Hospitals, and the Louis Stokes Cleveland VA Medical Center, will in fact greatly reduce connectivity between the Innerbelt and local streets.

79. In an attempt to respond to the DEIS Comment, defendants provided at Appendix F of the FEIS a document dated March of 2009 and entitled Fact Sheet (the “Fact Sheet”) obtained from the Northeast Ohio Areawide Coordinating Agency (“NOACA”). The Fact Sheet is a half-page in length, contains no analysis of data to inform the public of how it was produced or its methodology or much less allow for public input thereon, and does not constitute or indicate an objective, fact-based assessment by defendants.

80. The Fact Sheet admits that the traffic model it utilized was created in 1990 and does not comment on the relative accuracy of the model’s projections, despite the fact that the model was used to project traffic data 45 years into the future for the year 2035.

81. The Fact Sheet nevertheless “opines” further that the design of the Innerbelt highway system will not be overburdened by the expected increases in traffic but makes no comment on whether the closure of numerous interchanges as proposed will result in traffic bottlenecks or other adverse impacts on the local streets as asserted by Dr. Mark Rosentraub and the DEIS Comment and FEIS Comment. Thus, the Fact Sheet did not rebut the new information presented in the Rosentraub Study as the FEIS and ROD suggest.

82. Defendants failed to address or cure the failure of the DEIS, FEIS, and ROD to address the lack of local street connectivity associated with Alternative A. Such failure to preserve connectivity between the Innerbelt and local streets constitutes a failure to achieve the Purpose and Need of the Innerbelt Project. Defendants' failure to meet the Innerbelt Project's Purpose and Need violated NEPA requirements.

E. Refusal to Segment the Innerbelt Trench to Allow Further Future Consideration and/or Commit to a Supplemental EIS.

83. NEPA allows projects to be segmented for planning purposes so long as the segmentation is not done to evade environmental review and the fundamental NEPA principles of fact-gathering and public disclosure are respected. In fact, defendants' study of the Innerbelt Corridor has been divided into sections or segments since its inception to facilitate the development and evaluation of alternatives. (DEIS, 1-2)

84. The Innerbelt Trench can legally be segmented from the other segments of the Innerbelt Project, including the Central Viaduct and Innerbelt Curve, under the test established in 23 C.F.R. § 771(f) and *Burkholder v. Wykle*, 268 F.Supp. 2d 835, 846 (N.D. Ohio 2001). First, the Innerbelt Trench segment has logical termini, allowing for modification of the Innerbelt Trench without disruption of the surrounding segments. Second, the Innerbelt Trench has its own utility independent of the surrounding segments of the Innerbelt Project, and separate and later review of the Innerbelt Trench could be carried out without disruption to the surrounding segments. Third, segmentation of the Innerbelt Trench would not prevent the consideration of any other alternative for the Innerbelt Project. Finally, segmentation of the Innerbelt Trench would not affect the commitment of federal funds to the other segments of the Innerbelt Project.

85. Also, agencies must prepare supplements to either draft or final environmental impact statements if there are significant new circumstances or information relevant to environmental concerns and may do so when the agency determines that the purposes of the Act will be furthered by doing so. (40 C.F.R. § 1502.9; 23 C.F.R. § 771.130).

86. In the DEIS Comment and FEIS Comment, plaintiffs demonstrated significant new circumstances that, individually and cumulatively, will have environmental and socioeconomic impacts on the Innerbelt Trench. Plaintiffs submitted the aforementioned Rosentraub Study, which describes significant changes in traffic demand and bottlenecks on local streets, which have not been adequately addressed by defendants. Defendants never rebutted the findings of the Rosentraub study that removal of the interchanges within the Innerbelt Trench, combined with increased local traffic volume due to significant growth in local hospitals, will cause operational failure on local streets near the Innerbelt Trench. Furthermore, plaintiffs also submitted to defendants that the Opportunity Corridor, a highway project that proposes to extend Interstate 490 to the southeast of the Innerbelt Trench, decrease traffic through the Innerbelt by roughly 40%, and decrease the cause for defendants' safety concerns in the Innerbelt and render moot the need to remove interchanges within the Innerbelt Trench. Plaintiffs also submitted facts indicating that the Center would be abandoned and/or torn down by roughly 2011, thus warranting reconsideration of defendants' Section 4(f) findings. In addition, plaintiffs submitted to defendants that, because construction in the Innerbelt Trench will not begin until approximately the year 2020, reason warrants additional study in the future after the foreseeable changes regarding the Center, the Opportunity Corridor, and other significant projects are fully known. In light of such changes, plaintiffs suggested that defendants segment the Innerbelt Trench from the Innerbelt Project to allow for additional future

consideration while allowing construction to proceed on adjacent segments such as the Central Viaduct Bridge.

87. In response, defendants stated in the FEIS that “[e]ven if the agency could at this point segment out just Trench elements, it is unnecessary to do so in order to address concerns raised in comments because FHWA regulations provide for either a re-evaluation or supplementation process in certain circumstances to determine whether the previous NEPA analysis and final decision remain appropriate.” (FEIS, 25). Notably, defendants’ response did not actually assess the foreseeable changes in circumstances submitted by plaintiffs or commit to assess them in the future.

88. In the ROD, defendants stated that “no new substantive information, relevant circumstances, or environmental concerns have been brought forth or been identified that have not already been appropriately addressed and considered in compliance with the NEPA decision making process,” that there are “no substantive reasons for FHWA and the ODOT to reconsider or reassess the Cleveland Innerbelt Project,” and that there is no demonstrated need to delay the further advancement of the Project.” (ROD, 36-37).

89. Since roughly the time the ROD was issued, however, significant changes in land use have occurred in areas serviced by the Innerbelt. With the acceptance of federal stimulus funds, ODOT has accelerated the rate at which the Opportunity Corridor will be implemented, and current reports suggest that the Opportunity Corridor will be completed by 2019, before the construction of the Innerbelt Trench even begins. Also since roughly the time the ROD was issued, Cleveland was granted a right to build a casino in the Downtown area and has selected a site for a massive new Medical Mart convention center located Downtown, which will be separated by the Innerbelt Trench from The Cleveland Clinic, University Hospitals, and the

Louis Stokes Cleveland VA Medical Center. Finally, the State of Ohio is preparing to construct a new state behavioral health hospital on Euclid Avenue in the MidTown District.

90. Rather than segment out the Innerbelt Trench and adequately assess alternatives as to the Innerbelt Trench in the future based on these changed circumstances, defendants approved the FEIS, the arbitrary selection of Alternative A, and the arbitrary rejection of plaintiffs' proposed alternatives. Defendants' refusal in the ROD to segment out and reassess the Innerbelt Trench from the Innerbelt Project constitutes an abuse of discretion and a violation of NEPA requirements.

91. Alternatively, and in light of the significant changes in circumstances described above, defendants' failure to commit to or create a Supplemental EIS as to the Innerbelt Trench in the ROD constitutes a violation of NEPA and applicable regulations at 40 C.F.R. § 1502.9 and an abuse of discretion in violation of the APA. Given the magnitude of the changes from the above-described projects, all of which will affect traffic and the socioeconomics of the area serviced by the Innerbelt Trench, and the time available for further study, the creation of a Supplemental EIS as to the Innerbelt Trench, consisting of at least the creation of an up-to-date and relevant economic impact study assessing the effects of removing two highway interchanges in the Innerbelt Trench, is now required.

COUNT I

Violation of NEPA

92. Plaintiffs re-allege and incorporate herein the statements in Paragraphs 1-91.

93. Defendants violated NEPA and the APA through the conduct and omissions alleged above, including (a) failing to study, assess, or consider the individual and cumulative

social and economic effects of Alternative A on the Innerbelt Trench and making unsubstantiated representations in the EIS and ROD regarding the socioeconomic effects of Alternative A; (b) failing to follow their own prescribed and publicly announced decision-making procedure aimed at ensuring NEPA compliance and failing to provide promised reports as announced in the procedure, which inhibited public input and rendered defendants' decisions uninformed and unsubstantiated to the extent required under NEPA; (c) rejecting prudent and feasible alternatives under arbitrarily decided Section 4(f) justifications; (d) failing to achieve the stated Purpose and Need of the Innerbelt Project of maintaining roadway connectivity; (e) failing to inform the public on the critical issue of adverse social and economic effects to arise from Alternative A or to appropriately consider input from local officials and the business and non-profit community on social and economic effects on the community; and (f) abused its discretion in refusing to either segment the Innerbelt Trench in order to allow an objective assessment of alternatives at an appropriate later time when realistic individual and cumulative impacts can be assessed via a bona fide economic impact study and otherwise or create a Supplemental Environmental Impact Statement for the Innerbelt Trench that includes, at a minimum, a bona fide economic impact study assessing relevant and timely data on the effects of removing vital interchanges within the Innerbelt Trench.

94. The requirements set forth in NEPA serve to protect and preserve the interests of plaintiffs and/or their members in the use and enjoyment of areas that stand to be directly impacted by the Innerbelt Project as alleged, including but not limited to the beneficial use and enjoyment of said areas for employment, the health and welfare of citizens, business transactions, and economic and social well-being and advancement of the community.

95. As a direct and proximate result of defendants' acts or failure to act in accordance with NEPA during the planning of the Innerbelt Project and in the creation and approval of the EIS, plaintiffs and/or their members have been harmed and will be further and irreparably harmed due to a deprivation of direct freeway access and resultant adverse effects, both individual and cumulative, described herein and below. Traffic bottlenecks will result on local streets as large volumes of traffic are forced to use a reduced number of freeway interchanges, further choking off access to plaintiffs' businesses or properties. These impediments will deprive plaintiffs of employees, customers, and visitors, cause a loss of sales and revenue, endanger plaintiffs' ability to compete in the market place, devalue plaintiffs' property, cause deterioration of the urban environment as firms select locations elsewhere that possess direct freeway access, and harm plaintiffs' use and enjoyment of the MidTown District, the CBD, The Cleveland Clinic Main Campus, and the University Circle area.

COUNT II

Violation of the Federal Aid Highway Act

96. Plaintiffs re-allege and incorporate herein the statements in Paragraphs 1-95.

97. The Federal Aid Highway Act (23 U.S.C. §§ 101 et seq.) and related regulations required that defendants create and approve an environmental impact statement pursuant to NEPA before any federal funds could be released for use on the Innerbelt Project.

98. Defendants failed to adhere to NEPA and produced an EIS that is deficient as described above and that fails to appropriately consider criteria set forth in the Federal Aid Highway Act, including disruption of the community and its man-made resources, the availability of public facilities and services, adverse employment effects, tax and property value losses, injurious displacement of businesses, and disruption of desirable community growth.

Defendants also failed to appropriately consider the economic and social effects of Alternative A in light of the Innerbelt Trench's urban location and failed to demonstrate consistency of the Alternative A with the goals and objectives expressed by the affected community.

99. Defendants have applied for or will imminently apply for federal monies to fund the Innerbelt Trench segment of the Innerbelt Project.

100. Plaintiffs will be harmed as described above by the release and use of federal funding to implement an Innerbelt Project that includes the removal of interchanges at Carnegie Avenue and Prospect Avenue.

COUNT III

Violation of Section 4(f) of the Department of Transportation Act

101. Plaintiffs re-allege and incorporate herein the statements in Paragraphs 1-100.

102. Defendants have an affirmative duty under Section 4(f) to consider all feasible and prudent alternatives to a proposed course of action that would have adverse impacts upon protected lands.

103. Defendants failed to carry out their duty under Section 4(f) by failing to consider or appropriately assess the facts that (a) the Juvenile Justice Center has little or no significance according to the community and local officials, (b) the Juvenile Justice Center may be removed from the landscape by Cuyahoga County prior to construction of the Innerbelt Trench, (c) removal of the Carnegie Avenue interchange to avoid impacts to the Juvenile Justice Center will cause disruption to the local community of an extraordinary magnitude that substantially outweighs the importance of protecting the Juvenile Justice Center, and (d) the removal of interchanges at both Carnegie and Prospect Avenues will have a cumulative adverse effect that

magnifies the harm and disruption to the community to result from protecting the Juvenile Justice Center.

104. Plaintiffs have been harmed by such conduct and failure to act and will be harmed further as described above where defendants' arbitrary application of Section 4(f) led to the selection of Alternative A that proposes to remove the interchange at Carnegie Avenue.

WHEREFORE, plaintiffs hereby request that this Court grant the following relief:

(a) a judgment declaring that the process under which the defendants prepared and approved the EIS for the Innerbelt Project violated NEPA, the Federal Aid Highway Act, Section 4(f) of the Department of Transportation Act, and the APA as set forth herein;

(b) a judgment declaring that the Innerbelt Trench portion of the Innerbelt Project may legally be segmented from the Innerbelt Project and must be so segmented to allow for further consideration of alternatives without further delaying any other part of the Innerbelt Project;

(c) a judgment declaring that, in light of the recent changes in circumstances outlined herein, defendants' failure to commit to or perform a Supplemental EIS as to the Innerbelt Trench, including at least an economic impact analysis regarding the effects of removing interchanges within the Innerbelt Trench, constitutes an unlawful abuse of discretion;

(d) a preliminary and permanent injunction prohibiting defendant Leffler or her agents or FHWA from authorizing the release of any funds to the State of Ohio in connection with the Innerbelt Trench segment of the Innerbelt Project until such time as defendants actually assess the social and economic effects of removing interchanges in the Innerbelt Trench by

performing an appropriate and updated economic impact study and selecting alternatives on the basis of that updated study;

(e) a preliminary and permanent injunction prohibiting defendant Molitoris or her agents or ODOT from proceeding with or implementing the Innerbelt Trench segment of the Innerbelt Project until such time as defendants actually assess the social and economic effects of removing interchanges in the Innerbelt Trench by performing appropriate and updated economic impact study and selecting alternatives on the basis of that updated study;

(f) a judgment awarding plaintiffs the costs of this action, including but not limited to reasonable attorneys' fees; and

(g) any other relief the Court deems appropriate.

Dated: April 14, 2010

Respectfully submitted,

/s/ Stephen M. O'Bryan

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Save Our Access; and Acme Express, Inc.*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

MidTown Cleveland, Inc.; Save Our Access; Acme Express, Inc.

(b) County of Residence of First Listed Plaintiff Cuyahoga (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

See attachment

DEFENDANTS

U.S. Department of Transportation; Ray LaHood, Secretary; Federal Highway Administration; Victor M. Mendez,

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Eric H. Holder, Jr.; Steven M. Dettelbach; Richard Cordray

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State
Citizen of Another State
Citizen or Subject of a Foreign Country
PTF DEF
1 1
2 2
3 3
4 4
5 5
6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FEDERAL TAX SUITS, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, OTHER STATUTES. Includes various legal categories like Personal Injury, Real Property, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from another district (specify)
6 Multidistrict Litigation
7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing. (Do not cite jurisdictional statutes unless diversity): 42 U.S.C. 4321, 23 U.S.C. 109, 23 U.S.C. 128, 23 U.S.C. 138, 49 U.S.C. 303, 5 U.S.C. 701-706

Brief description of cause: Violation of the National Environmental Policy Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 04/14/2010 SIGNATURE OF ATTORNEY OF RECORD

M. Casey Swemba

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO**

I. Civil Categories: (Please check one category only).

- 1. General Civil
- 2. Administrative Review/Social Security
- 3. Habeas Corpus Death Penalty

*If under Title 28, §2255, name the SENTENCING JUDGE: _____

CASE NUMBER: _____

II. **RELATED OR REFILED CASES.** See LR 3.1 which provides in pertinent part: "If an action is filed or removed to this Court and assigned to a District Judge after which it is discontinued, dismissed or remanded to a State court, and subsequently refiled, it shall be assigned to the same Judge who received the initial case assignment without regard for the place of holding court in which the case was refiled. Counsel or a party without counsel shall be responsible for bringing such cases to the attention of the Court by responding to the questions included on the Civil Cover Sheet."

This action is RELATED to another PENDING civil case. This action is REFILED pursuant to LR 3.1.

If applicable, please indicate on page 1 in section VIII, the name of the Judge and case number.

III. In accordance with Local Civil Rule 3.8, actions involving counties in the Eastern Division shall be filed at any of the divisional offices therein. Actions involving counties in the Western Division shall be filed at the Toledo office. For the purpose of determining the proper division, and for statistical reasons, the following information is requested.

ANSWER ONE PARAGRAPH ONLY. ANSWER PARAGRAPHS 1 THRU 3 IN ORDER. UPON FINDING WHICH PARAGRAPH APPLIES TO YOUR CASE, ANSWER IT AND STOP.

(1) **Resident defendant.** If the defendant resides in a county within this district, please set forth the name of such county

COUNTY:

Corporation For the purpose of answering the above, a corporation is deemed to be a resident of that county in which it has its principal place of business in that district.

(2) **Non-Resident defendant.** If no defendant is a resident of a county in this district, please set forth the county wherein the cause of action arose or the event complained of occurred.

COUNTY: Cuyahoga

(3) **Other Cases.** If no defendant is a resident of this district, or if the defendant is a corporation not having a principle place of business within the district, and the cause of action arose or the event complained of occurred outside this district, please set forth the county of the plaintiff's residence.

COUNTY:

IV. The Counties in the Northern District of Ohio are divided into divisions as shown below. After the county is determined in Section III, please check the appropriate division.

EASTERN DIVISION

- AKRON (Counties: Carroll, Holmes, Portage, Stark, Summit, Tuscarawas and Wayne)
- CLEVELAND (Counties: Ashland, Ashtabula, Crawford, Cuyahoga, Geauga, Lake, Lorain, Medina and Richland)
- YOUNGSTOWN (Counties: Columbiana, Mahoning and Trumbull)

WESTERN DIVISION

- TOLEDO (Counties: Allen, Auglaize, Defiance, Erie, Fulton, Hancock, Hardin, Henry, Huron, Lucas, Marion, Mercer, Ottawa, Paulding, Putnam, Sandusky, Seneca VanWert, Williams, Wood and Wyandot)

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