

**MIDTOWN AND THE CLEVELAND CLINIC'S  
PUBLIC COMMENT IN OPPOSITION TO DEIS AND THE  
REMOVAL OF INNERBELT INTERCHANGES AT  
CARNEGIE AND PROSPECT AVENUES**

**I. Introduction**

This public comment is being filed on behalf of MidTown Cleveland, Inc. and the Cleveland Clinic in opposition to the removal of the Innerbelt Trench interchanges at Carnegie and Prospect Avenues as suggested in the Draft Environmental Impact Statement (hereinafter "DEIS"). MidTown Cleveland, Inc. (hereinafter "MidTown") is a community development corporation representing over 650 businesses with over 18,000 total employees that rely on direct interstate access from Carnegie and Prospect for their livelihood. The Cleveland Clinic is the largest employer in northeastern Ohio with over 39,000 employees, whose viability is dependant upon millions of patients and those employees being able to easily access the hospital campus from the Innerbelt via Carnegie and Prospect.<sup>1</sup>

Discussions regarding the Innerbelt Project between ODOT and both the public and private sector can be characterized by one consistent theme: an impasse between (a) ODOT's predetermined decision, based on a one-track concern for formulaic highway standards, to remove a total of four highway access points from a two-mile stretch of the Innerbelt Trench and (b) the efforts of MidTown, the Cleveland Clinic, and dozens of other MidTown businesses who have testified on the record to prevent the destruction of their

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<sup>1</sup> Indeed, with the completion of the Euclid Corridor Project, Euclid has become only a one-lane street each way for access to the Cleveland Clinic's northern entrances. Carnegie is the only four-lane street which intersects its large and growing hospital campus. This document and the attached appendices are being provided for the public record in opposition to the DEIS, and its preferred alternative in the Trench area, which recommends the removal of the Carnegie and Prospect interchanges.

businesses and the loss of jobs that would follow, as well as the degradation to the social and economic vitality of Cleveland's urban core. Instead of engaging the public in an honest and objective search of the most beneficial alternative, ODOT has advanced its own predetermined agenda, which is based solely on freeway operational success, without regard to the business and local community the Innerbelt serves. As a result, ODOT's approach to the Innerbelt Trench section revisits social policies reminiscent of Urban Renewal discarded as destructive so long ago and violates a maxim posited by a Federal District Court:

“A transportation system, in other words, should be planned to serve the goals of the community; the goals of the community should not be restructured to serve a transportation system.”  
*Movement Against Destruction v. Volpe*, 361 F.Supp. 1360 (D. Md. 1973).

As a result of ODOT's planning and study goal, in direct violation of binding federal case law, the public process and involvement phase of the Innerbelt Project planning has been devoid of objective assessment of alternatives and in violation of the National Environmental Policy Act (hereinafter “NEPA”). See *Burkholder v. Wykle*, 268 F.Supp.2d 835 (N.D. Ohio 2002) (comprehensive “hard look” assessment “mandated by Congress and required by the statute must be timely, and it must be taken objectively and in good faith, not as an exercise in form over substance, and not as a subterfuge designed to rationalize a decision already made”). In fact, ODOT's failure to consider factors other than operational highway standards has caused it to bypass assessment measures required by its own Project Development Process and required under NEPA. As a result of ODOT's procedural failures, ODOT's decisions reflected in the DEIS lack input from an ODOT-

informed and properly engaged public, lack objective assessment of alternatives, and have resulted in flawed decision making.

Given this, the DEIS, unless rejected or modified as suggested herein, will not withstand judicial scrutiny. See *O'Reilly v. U.S. Army Corps. Eng.*, 477 F.3d 225 (5th Cir. 2007). MidTown and the Cleveland Clinic therefore request that the DEIS be disapproved or segmented so as to reconcile ODOT's decisions with the overwhelming objection, voiced through MidTown, the Cleveland Clinic, and hundreds of other businesses and non-profit entities, to the removal of freeway access at Prospect and Carnegie Avenues.

## II. **Background**

MidTown, the Cleveland Clinic, and other stakeholders have opposed the removal of the Carnegie Avenue and Prospect Avenue Innerbelt interchanges throughout the Planning Phase of the Innerbelt Project. Despite substantial public opposition, ODOT filed the DEIS in August of 2007 and selected Preferred Alternative A, a plan that involves the removal of a total of four highway interchanges in a two-mile span of the Innerbelt Trench. Removal of these access points, particularly at Carnegie and Prospect, stands to significantly reduce business vitality and land value of firms in Cleveland's urban core serviced by in the Innerbelt Trench.

The value of highway interchanges and direct highway accessibility is well-known and documented. Results of corporate executive surveys reviewed in *Area Development* demonstrate that highway accessibility "undeniably forms the essential nexus between workers, suppliers, producers, distributors, and markets." Brandon, D.V. Highway Accessibility Underpins Location Decisions. *Area Development*, Aug./Sept. 2008 (online

edition available at <http://www.areadevelopment.com/corpSurveyResults/aug08/highway-accessibility-location-decision.shtml?Page=1> (accessed May 17, 2009)). In fact, “[a]t the site level, redundant ingress/egress points” are important “not only to minimize potential barriers to access, but also to ensure access for fire-fighting, emergency medical, police, and other essential services” needed by businesses and also to facilitate commercial traffic. *Id.* As a result, Brandon writes that highway accessibility consistently ranks among the top five in priorities among all site-related factors considered by businesses when choosing a site location. Brandon concludes that “one fact is inescapable: highway accessibility exerts a preponderant influence on the distribution of economic activity throughout the United States.” *Id.*

Because highway access is a priority among locational factors, real property near highway interchanges is in high demand, is very valuable, and commands rent premiums. Bollinger, C., Ihlanfeldt, K., Bowes, D. Spatial Variation in Office Rents Within the Atlanta Region. *Urban Studies*, Vol. 35, No. 7, 1097-1118, at 1112 (1998). Indeed highway accessibility was one of the primary reasons Applied Industrial Technologies decided to locate its headquarters in Cleveland near the Innerbelt Trench as opposed to the suburbs. See testimony of Michael Coticchia, Chief Administrative Officer and Vice President of Government Business of Applied Industrial Technologies, at the public hearing on November 17, 2005.

ODOT itself acknowledges in the DEIS that economic development concerns are created and left unresolved by its Preferred Alternative A. In fact, ODOT stated that “key issues” of concern regarding the removal of the Carnegie exit ramp alone included:

“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 at 5.10.

In accordance with these site selection and land valuation realities, hundreds of MidTown businesses and the Cleveland Clinic rely on direct access to the Innerbelt at Carnegie and Prospect Avenues. Furthermore, the success of Cleveland’s urban core at the MidTown District, as well as the Cleveland Clinic-University Circle area, relies on the Carnegie and Prospect interchanges. Conceding both of these points, the record states

“[t]he University Circle area, second only to the [Central Business District] of Cleveland as a regional employment center with over [40,000] jobs, is located 4 miles east of the central business district.... Access between the Innerbelt freeway and the University Circle area is provided at I-90 and Carnegie Avenue/Prospect Avenue interchanges and at I-90 and Chester Avenue interchange on the south end of the Innerbelt Trench.”

Conceptual Alternatives Study (the “CAS”) at 2.1.4.

Despite Cleveland’s otherwise general economic malaise, MidTown, the Cleveland Clinic, and University Circle continue to commit assets to the City and represent unique and significant growth areas that provide jobs, opportunity, and economic benefit to the County and City in taxes and other revenues.

Despite the adverse economic and social consequences that will be thrust upon these areas and institutions by ODOT’s pending decision, ODOT has failed to deliver economic impact studies promised to stakeholders or adequately assess the economic impact of the removal of the Carnegie and Prospect Avenue interchanges. ODOT

promised stakeholders that an economic impact study would be performed for the MidTown corridor before preferred alternatives were selected in the planning process. Craig Hebebrand also promised stakeholders at the public hearing held on November 17, 2005, that ODOT would revisit and modify alternatives if the economic impact study demonstrated that further study of the MidTown corridor was warranted because of likely adverse economic impacts in the Trench. Transcript of Public Hearing on November 17, 2005, pages 115-121; see also Letter from Stephen O'Bryan to Craig Hebebrand dated February 15, 2006, attached as Exhibit A.

On behalf of ODOT, Economic Development Research Group ("EDR") and URS released a "draft" economic impact study entitled Economic Effects of the Cleveland Innerbelt Plan Access Changes (see ODOT summary at Exhibit B, hereinafter "Draft Economic Effects Study"). However, an economic impact study performed by MidTown's own expert, George Vredevelde, Ph.D., University of Cincinnati, challenged the methodology and many of the findings of the Draft Economic Effects Study. See Vredevelde Study attached as Exhibit C.

At the public hearing held on February 21, 2006, Gordon Proctor, the then Director of ODOT, admitted that (a) ODOT has 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. ODOT never produced the promised final economic impact study. As a result, the public had no opportunity to comment on findings of an ODOT-approved economic impact study prior to the selection of Preferred Alternative A. The DEIS states at 4-38 that instead of carrying out its promise, ODOT and FHWA

“decided to use a different approach to resolve the issues.” The approach became a nontransparent “negotiation” over traffic models with an undefined “community”. DEIS 4-38.

Even if ODOT considered the Draft Economic Effects Study, the study clearly states that, within the area relevant to the Trench, at least two thirds of the projected job losses will be concentrated on Carnegie, Prospect, Superior, and Lakeside Avenues. Draft Economic Effects Study.

In addition, job losses on these same four avenues will be accompanied by a loss of between \$5.0 and \$5.8 Million in sales by MidTown firms. Draft Economic Effects Study. Thus, even ODOT’s consultant agrees that the businesses represented by MidTown and the Cleveland Clinic will experience a loss of jobs and a significant loss in sales. In sum, the Draft Economic Effects Study is wholly inadequate even according to ODOT. By failing to procure an accepted and finalized economic impact study, ODOT failed to adequately assess the economic effect of the Innerbelt Project in the Trench, failed to provide such assessment to the public to allow for feedback, and failed to fulfill its promise to the Cleveland business community generally and MidTown specifically.

ODOT’s recognition of the value of highway accessibility to MidTown, the Cleveland Clinic, University Hospitals, and other similarly situated firms is implicit in the DEIS. In the Purpose and Needs statement in the DEIS, ODOT cites that “there is a need to maintain and improve access to and from the University Circle area to address current and future access demand.” DEIS 2.1.4. In addition, the Purpose and Needs section cited the need for discussion of issues related to access because of “the critical role of the freeway-to-

local street connections.” DEIS ES-2. Moreover, the DEIS admits that because 85% of the traffic on the 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.” DEIS ES-2. Ultimately, the DEIS designates as a Project Need “preserv[ing] of the local roadway connectivity function of the Innerbelt Freeway and provid[ing] continued access and mobility to the CBD, adjacent neighborhoods, and commercial/industrial areas....” DEIS ES-2.

Despite ODOT’s acknowledgment that such issues must be addressed by the Innerbelt Project and recognition of the need to maintain access to MidTown, the Cleveland Clinic, and University Circle, ODOT selected Preferred Alternative A, which removes the access points at both Carnegie and Prospect Avenues that the DEIS cites as crucial to business growth. ODOT’s selection of Preferred Alternative A is thus wholly inconsistent with the stated Project Need to “maintain and improve access to and from University Circle” and to “preserve the local roadway connectivity function of the Innerbelt....” The suggested removal of Carnegie and Prospect interchanges certainly does not meet this “Need.” CAS 2.4.1.

Furthermore, and again despite ODOT’s recognition of the importance of access to MidTown, the Cleveland Clinic, and University Circle, ODOT’s traffic studies failed to account for roughly 4 million cars per year representing traffic of certain business patrons and patients visiting the Cleveland Clinic and University Hospitals. Exhibit D. A study performed by Dr. Mark Rosentraub, Ph.D., Levin College of Urban Affairs, Cleveland State University, on behalf of MidTown and other stakeholders (hereinafter “Rosentraub Study”) demonstrated that ODOT’s traffic models included only traffic due to inpatient visits and not

also outpatient visits or visits by families of patients. As a result, ODOT failed to consider enormous numbers of vehicles when it represented that all of the traffic currently flowing through exits at Carnegie, Prospect, and Chester Avenues into MidTown could be adequately serviced by a single highway interchange at Chester Avenue.

In addition, ODOT's models were created before significant growth in the operations of the Cleveland Clinic, University Hospitals, and the Stokes VA Hospital were known. Since ODOT performed its traffic studies, the Cleveland Clinic constructed over 3.3 million square feet of new space, including the Miller Pavilion, an enormous complex that required the largest building permit ever issued by the City of Cleveland. University Hospitals also constructed a new cancer center and emergency center. The Cleveland Clinic will also shortly construct a new reference lab that will employ 3,500 new staff. Finally, the Stokes VA Hospital at University Circle will, due to the consolidation of other area VA hospitals, grow to become the fifth largest VA hospital in the nation. The magnitude of this new growth renders ODOT's traffic models and any study based thereupon inapplicable to presently known and demonstrated facts and, again, demonstrates that a single interchange at Chester Avenue will not adequately service the traffic needs of MidTown, the Cleveland Clinic, and University Circle.

While the above failures deprived both the public and decision makers of information needed to (1) satisfy due process and (2) support rational decisions regarding alternatives, ODOT similarly failed to produce and discuss numerous other documents and ignored published processes geared toward informing the public. In a letter to stakeholders dated November 17, 2005 (hereinafter "Hebebrand Letter" (Exhibit E)), Craig Hebebrand, ODOT Project Manager, stated that

“[a]s we move through the complicated process of reconstructing the Innerbelt, we felt it important to make sure our immediate stakeholders and the general public clearly understand the federal process that remains before us. And, specifically when and how public input correlates with the overall process.”

The Hebebrand Letter then lists numerous studies or processes to be performed as part of the public feedback loop required under the federally mandated NEPA process. A comparison of the Hebebrand Letter with a string of two subsequent emails, dated August 30, 2007, and September 4, 2007 (Exhibit F), in which Mr. Hebebrand attempts to explain the non-performance of certain studies and processes shows that seven of the studies or processes outlined in the Hebebrand Letter have not been performed:

1. Final Economic Impact Analysis
2. Meeting with Stakeholders explaining results of Economic Impact Analysis
3. Alternatives Report for the Cleveland Innerbelt
4. Public comment period on the ODOT Recommended Alternative
5. ODOT Response to comments on ODOT Recommended Alternative
6. Circulation of preliminary environmental impact findings to public agencies
7. Public comment period on ODOT Preferred Alternative Impacts

In addition to failing to carry out published and mandated procedures, ODOT did not carry out bona fide negotiations with the community. In fact, when it became known that ODOT planned to remove interchanges at Carnegie and Prospect Avenues, every major constituency in the community came together to voice a unified concern regarding ODOT's plan. Frank Jackson, Mayor of Cleveland, and fourteen other signatories sent J. Richard Capka, Administrator of the Federal Highway Administration, and James G. Beasley,

Director of ODOT, a letter dated November 7, 2007, stating 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. Exhibit G. Together, the institutions requesting that a Carnegie exit ramp remain open represent every major business and elected official in the study area. Just a few notable signatories, in addition to the Mayor, expressing the need to maintain the Carnegie Avenue exit include the following:

Timothy Hagan, President, Cuyahoga County Board of Commissioners  
Delos Cosgrove, M.D., President, The Cleveland Clinic  
Thomas F. Zenty, III, President, University Hospitals  
Barbara Snyder, President, Case Western Reserve University  
Christopher Ronayne, President, University Circle, Inc.  
Michael Schwartz, President, Cleveland State University  
James Haviland, Executive Director, MidTown Development Corporation

The Mayor’s letter states that the signatories “believe that the omission of [a Carnegie] exit ramp will have significant economic and social impacts on our community.” The letter also states that “Carnegie Avenue is a major connector” to the Central Business District, Midtown Corridor, and University Circle and that “it is imperative that direct access be part of the Innerbelt plan.” Exhibit G. Neither this letter nor a documented response by the FHWA or ODOT appears in the DEIS or anywhere in the public record as of this date. We trust that now, however, the Mayor’s letter will be duly noted.

### III. NEPA Requirements and Procedural Review of Environmental Impact Statements.

NEPA requires the filing of an Environmental Impact Statement (hereinafter “EIS”) where a major federal action “significantly affects the quality of the human environment.” *O’Reilly v. U.S. Army Corps. Eng.*, 477 F.3d 225, 229 (5th Cir. 2007), citing 42 U.S.C. § 4332(2)(C). Federal Regulations require that EISs provide “full and fair disclosure of significant environmental impacts” and “inform decision-makers and the public of reasonable alternatives which would avoid or minimize adverse impacts or enhance the quality of the human environment.” 40 C.F.R. §1502.1.

Federal Regulations require that EISs do more than merely justify decisions already made. 40 C.F.R. 1502.2(g). EISs must facilitate an *actual* assessment of the proposed action. *Burkholder v. Wykle*, 268 F.Supp.2d 835 (N.D. Ohio 2002) (comprehensive “hard look” assessment must be more than a mere subterfuge designed to rationalize a decision already made). Indeed, the portion of the EIS analyzing alternatives constitutes “the heart of the environmental impact statement.” 40 C.F.R. § 1502.14. Accordingly, an agency is obligated to analyze all available evidence and then articulate a “rational connection between that evidence and its exercise of discretion.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856 (1983).

Courts will set aside agency decisions under NEPA where the record demonstrates that the agency failed to take took a “hard look” at effects on the human environment. *Kleppe v. Sierra Club*, 427 U.S. 390, 410, 96 S.Ct. 2718 (1976). Agency review of alternatives and adverse impacts, however, must also be grounded in “good

faith objectivity.” *Piedmont Hts. Civic Club v. Moreland*, 637 F.2d 430, 436 (5th Cir. 1981). More generally, courts overturn agency decisions shown to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402 (1971). Agency decisions are deemed “arbitrary and capricious” where the agency relied upon “factors that Congress has not intended it to consider, entirely failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to difference in view or the product of agency expertise.” *Audobon Naturalist Soc.*, 524 F.Supp.2d at 660.

In application, courts have held that an agency acts arbitrarily where the agency’s administrative record does not contain data to support its conclusions. See *O’Reilly v. U.S. Army Corps. Eng.*, 477 F.3d 225, 231 (5th Cir. 2007). In *O’Reilly*, the court set aside an agency’s action where the agency’s Environmental Assessment (“EA”) cited potentially significant adverse traffic impacts but discussed in only conclusory terms the manner in which mitigation techniques would alleviate the potential problem. *O’Reilly* at 233-34. Notably, the court recognized the fact that, while the EA mentioned that a traffic study would be performed, no such study was performed. *Id.* In short, where there was no data that rationally linked the anticipated adverse impacts with the purported alleviation through mitigation techniques, the agency’s decision fell short of the “hard look” requirement and was thus arbitrary and capricious.

An EIS meets these procedural requirements only where “the treatment of alternatives, when judged against a rule of reason, is sufficient to permit a reasoned

choice among the various options.” *Florida Keys Citizens Coalition v. U.S. Army Corps. Eng.*, 374 F.Supp.2d 1116, 1151 (N.D. Fla. 2005). Moreover, presentation of alternatives must “*rigorously explore and objectively evaluate* all reasonable alternatives....” 40 C.F.R. §1502.13. However, courts have held that alternatives “that are not significantly distinguishable” or “which have substantially similar consequences” do not constitute alternatives requiring separate analysis under NEPA. *Westlands Water Dist. v. U.S. Dep’t Interior*, 376 F.3d 853, 868 (9th Cir. 2004).

#### **IV. ODOT Violated its Published Project Development Process by Failing to Create Promised Reports Necessary for Reasoned Public Input and Federally Required Rational Decision-Making.**

Given the failures outlined above, it is evident that ODOT failed to follow its own Project Development Process (hereinafter “PDP”). The PDP prescribes multi-step processes that ensure that information is gathered, presented to the public to allow for public input, and considered objectively in the selection of the best option available. Because ODOT failed to produce numerous informational tools integral to the decision-making process, ODOT has deprived the decision-making process of a rational, documented, and transparent basis upon which decisions could be made regarding the Innerbelt Trench. In view of federal case law regarding NEPA requirements and fundamental due process requirements, ODOT’s flawed decisions provide MidTown and the Cleveland Clinic with ample grounds to insist that the DEIS be rejected as to its treatment of the Trench.

- A. ODOT's decision not to create an Assessment of Feasible Alternatives document and bypass Step 6 and Concurrence Point 3 of the PDP (i) deprived stakeholders of means to assess and comment upon Preferred Alternative A before its selection and (ii) rendered the record insufficient to inform decision makers.**

The Conceptual Alternatives Study ("CAS") states that the CAS "outlines the development, analysis, and decisions of the process to identify a broad range of Conceptual Alternatives" to ultimately yield a list of Feasible Alternatives. CAS 1-1. In addition, the CAS asserts that "[t]he use of this process is directed by the Ohio Department of Transportation (ODOT) and is documented in its Project Development Process (PDP)...." CAS 1-1.

ODOT's PDP, repeated verbatim in the DEIS, clearly emphasizes that the prescribed process will contain "Concurrence Points," each of which represents a "major decision point where input is sought." CAS 1-1; DEIS 1-4. The CAS provides that while the steps are "not perfectly sequential," the "key is that public input is obtained and considered prior to making the decision required at each Concurrence Point." CAS 1-1; DEIS 1-4. Figure 1-1 of the CAS presents the flow chart showing five (5) Concurrence Points for the Innerbelt Project. See also DEIS Figure 1-4. The graphic clearly shows that Concurrence Point 3, Subtitled "Assessment of Feasible Alternatives," coincides with Step 6. CAS 1-2; DEIS 1-4.

Furthermore, Figure 1-1 also clearly shows that Step 6, geared toward the stated goal of "Develop[ing] Feasible Alternatives," requires the production of an Assessment of Feasible Alternatives ("AFA") document. Notably, the AFA is the only document listed for Step 6 or Concurrence Point 3 likely to pertain to the assessment of alternatives and provide a means to inform the public of such an assessment. CAS 1-2; DEIS 1-6.

In addition, the CAS states that the East 22<sup>nd</sup> St. exit is being suggested as a replacement for the loss of the Carnegie and Prospect Avenue ramps. The CAS also acknowledges that public concerns remain regarding the loss of the Carnegie and Prospect Avenue interchanges and the proposed shift of access to the E. 22<sup>nd</sup> exit. The report states that the “evaluation of potential impacts associated with the change in access will be further explored during step 6.” (CAS 5-13).

However, ODOT decided not to create an AFA document. Certainly, the AFA, if it would have been performed and published, would have produced information relevant to the evaluation of the reliance on the East 22<sup>nd</sup> ramp. Instead, ODOT opted to skip the preparation of the AFA, and directly prepare a Draft Environmental Impact Statement. CAS 1-4. Notably, the DEIS contains ODOT’s selection of a Preferred Alternative, Preferred Alternative A, a selection that was supposed to take place at Step 7 and Concurrence Point 4 after completion of Step 6 and Concurrence Point 3. CAS 1-4.

This failure presents a clear violation of ODOT’s own procedure. Even if PDP Steps “are not perfectly sequential” as the PDP states, nothing in ODOT’s PDP enables ODOT to wholly eliminate procedural requirements and promised substantive review of critical impacts. More importantly ODOT skipped Concurrence Point 3 and Step 6 and advanced to Concurrence Point 4 and Step 7 without initiating or obtaining the public feedback that is required by the federally regulated planning phase. By doing so, the critical concern regarding the loss of Carnegie and Prospect and the alleged mitigation thereof at East 22<sup>nd</sup> Street was never publicly documented or vetted before this Preferred Alternative A was chosen.

The failure to provide the public with an AFA has a two-fold effect. First, skipping Step 6 and moving through Concurrence Point 3 deprived stakeholders and the public of crucial information that would allow them to assess the alternatives presented by ODOT. Second, without such critical information, stakeholders or the public had no opportunity to provide ODOT with informed feedback regarding their concerns regarding feasible alternatives, as required by law. In short, the DEIS provides no adequate substitute for the AFA. The DEIS contains a decision at Concurrence Point 4 that, under ODOT's own process, could not be made without input from the public regarding the AFA at Concurrence Point 3.

It is also noteworthy that the assessment of feasible alternatives, logically documented in an AFA process, was necessary for the completion of numerous other ODOT-required processes. As discussed earlier, ODOT promised in Step 6 a final economic impact study as a predicate to or as part of the AFA process. However, no such study was ever completed or published for comment even though the devastating economic impact from the loss of interchange access was and remains today the overriding and unresolved issue in the entire Innerbelt planning process and in the pending DEIS.

Not only did ODOT fail to publish a finalized analysis, but ODOT decided to invoke non-objective means of resolving the concerns regarding the economic impact study. To that end, the DEIS at page 4-38 provides that:

“ODOT determined that it would be prudent to use a different approach to resolve the issue rather than debating methodologies for the analysis. ODOT concluded that further efforts would be best spent in negotiations with the community regarding their concerns.”

Thus, rather than rely on valid, objective methods to (1) rectify the problems with the economic impact study and (2) use information derived from a valid study to transparently assess the best available alternative, ODOT adopted unspecified “negotiation” methods. While certain members of the community may have been involved, the private negotiations are not of record, not transparent, and are unrelated to an objective assessment of the economic impacts certain to result from the loss of access at Carnegie and Prospect Avenues.

When it became clear that ODOT was not going to complete the promised economic impact study, significant members of the Ohio House of Representatives, on April 17, 2007, requested that ODOT complete the same. Exhibit H. Notably, this letter from the Ohio State Representatives does not appear in the public record. ODOT failed to respond to this request by elected leaders as well.

**B. ODOT’s approval of Preferred Alternative A constitutes an abuse of discretion because the DEIS makes numerous assertions that cannot possibly be substantiated by ODOT’s deficient documentation and process.**

As one of the clearest examples of ODOT’s completely unsupported conclusions, Table 4-39 at page ES-8 in the DEIS makes representations regarding assessment outcomes that ODOT has not substantiated. As discussed above, ODOT Director Gordon Proctor admitted that the economic impact study performed by EDR and URS was not acceptable and that ODOT would procure a finalized study. However, none was ever performed, much less published for comment.

ODOT's own consultant provided ODOT with "lessons" from case studies of the effects of removing direct highway access from urban centers. Exhibit B. One of the case studies provided that replacement of direct highway access with mere local streets led to economic decline in San Francisco's economically vulnerable Chinatown. Another case study of Milwaukee, WI, states that, even where an economically sound area remained economically viable after loss of interchanges, the affected area "has struggled with increases in traffic as through traffic trying to access the freeway is mixing with the local traffic associated with customers and employees trying to reach destinations in the neighborhood." Indeed, the first "lesson" cited by ODOT's consultant advises the following:

"Evaluate the economic condition of the affected neighborhood. Recognize that ramp mitigation measures cannot eliminate negative impacts associated with already existing economic uncertainty."

Exhibit B.

Despite (a) the lack of an accepted economic impact study and (b) the advice of case studies provided by ODOT's consultants, ODOT nonetheless cited the following as projected characteristics for Preferred Alternative A with regard to assessment of "Economics":

- "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."

Table 4-39 (Comparison of Feasible Alternatives), DEIS ES-8.

These representations are unwarranted and unsubstantiated because ODOT did not complete the economic impact study it would need to support statements such as those in Table 4-39. Moreover, contrary to representations in Table 4-39, the Draft Economic Effects Study also projected losses in localized areas, which certainly must be “sensitive areas.”

However, these “sensitive areas” in which the Draft Economic Effects Study projects losses in jobs and loss in firm sales are occupied by some of the most significant economic engines within the City of Cleveland. MidTown is supported by and thus represents 650 businesses and stakeholders. The businesses and stakeholders supporting MidTown supply the MidTown District in Cleveland’s urban core with roughly 18,000 jobs. In addition, the Cleveland Clinic is the largest employer in Northeast Ohio and the second largest employer in the State of Ohio, providing 39,250 high-quality jobs to health care professionals and other staff that pay, on average, \$50,000 per employee. The Cleveland Clinic posted 6% growth in 2008, opened 3.3 million new square feet of space in 2009, and remains on schedule to build a national reference lab that will soon employ an additional 3,500 new staff. U.S. News & World Report has consistently ranked the Cleveland Clinic as the No. 1 heart center in the nation and as one of the top hospitals in the nation.

ODOT’s preferred alternative for the Trench, with its closure of Prospect and Carnegie interchanges, will choke off and isolate these employers and hundreds of other major employers from convenient ingress and egress to the interstate freeway, including their employees, customers, and suppliers. The result, as ODOT has

repeatedly been told by significant employers at the few public hearings it has held on this project, is the loss of significant businesses and their related jobs in the City's prime growth areas of MidTown, The Cleveland Clinic and University Circle areas, and downtown generally.

The DEIS asserts at page 4-36 that one of the economic benefits from the project is that “[i]n the year 2035, Cuyahoga County is expected to have an additional 175 jobs due to the Cleveland Innerbelt improvements compared to what would have happened without the improvements.” This alleged benefit pales in comparison, however, to the number of jobs that will be lost if ODOT's preferred alternative is approved for the Trench. Many employers such as Applied Industrial Technologies, Dodd Camera, Central Cadillac, and scores of others have already testified for the record that they will either be forced to close, move out of Cleveland, or cut back. Conservatively, this total loss of jobs could exceed 1,000. This does not even take into consideration the negative economic effect on the Cleveland Clinic and the university and cultural community to the east that will result if Carnegie and Prospect interchanges are closed.

ODOT clearly failed to procure crucial informational tools that could support meaningful decisions regarding the Innerbelt Project, especially relating to the economic impact of its decisions for the Trench. ODOT's actions during the Innerbelt Planning Phase thus bear striking resemblance to the impermissible agency actions in *O'Reilly*. Since ODOT failed to obtain an accepted economic impact study to resolve economic impacts cited in the DEIS and nonetheless asserted in the DEIS that both (a) that there are “[n]o substantial negative impacts anticipated in sensitive local areas” under Preferred Alternative A and (b) negative impacts to access will be mitigated, the DEIS

remains unsubstantiated by data and even contrary to supporting documents in ODOT's possession and therefore cannot be approved as a matter of law.

**C. The addition of “indirect” access to Midtown through enhancement of “connector” streets is a mitigation technique, not an alternative to loss of direct access to the Innerbelt.**

Review of the DEIS quickly reveals that, in clear contravention of Federal Regulations discussed above, ODOT failed to present and consider actual alternatives to the predetermined decision to remove access points at Carnegie and Prospect Avenues. ODOT's characterization of options that all include the loss of interchanges at Carnegie and Prospect Avenues as true alternatives under NEPA is contrary to law. Courts have held that alternatives “that are not significantly distinguishable” or “which have substantially similar consequences” do not constitute alternatives requiring separate analysis under NEPA. *Westlands Water Dist. v. U.S. Dep't Interior*, 376 F.3d 853, 868 (9th Cir. 2004). Thus, the DEIS fails to actually present alternatives that are “significantly distinguishable” where the options all imposed the same hotly contested result: the loss of direct access at Carnegie and Prospect in the Trench segment of the Innerbelt Project.

The fact that ODOT added downstream mitigation techniques like indirect access to Carnegie from East 22<sup>nd</sup> Street does not make this option an alternative to loss of direct freeway access at Carnegie.<sup>2</sup> The additions of the local connector side streets are also merely mitigation measures, not alternatives, and were implemented to

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<sup>2</sup> Let it also be remembered that, as discussed in the section above, “lessons” from case studies presented to ODOT assert that mitigation techniques do not alleviate the loss of direct highway access in areas that are economically vulnerable to begin with.

promote acceptance of the plan predetermined by ODOT long ago. They remain the same with regard to the issue at hand: the loss of direct access from the Innerbelt. Where the fundamental requirement under NEPA is that an agency present and assess alternatives in an EIS, ODOT's insistence on the removal of critical interchanges contravenes the essence of NEPA.

**V. ODOT's Section 4(f) justification for opposing or ignoring the consensus community compromise of retaining the Carnegie Avenue exit is contrary to law.**

As discussed above, and as expressly stated in Mayor Frank Jackson's letter dated November 7, 2007, every major constituency in Cleveland agreed upon a single compromise solution to preserving the economic and accessibility interests of the community: the retention of an exit ramp at Carnegie Avenue. ODOT justified its rejection to this compromise in the DEIS by asserting that the Juvenile Justice Center stands in the path of such an exit ramp, the Juvenile Justice Center is a property eligible for the National Register of Historic Places, and Section 4(f) prohibits the "use" of such structures. DEIS at 4-49. However, in reality there is no such "prohibition" as Section 4(f) allows such buildings to be "used" for a variety of reasons, including when all other alternatives would cause significant negative social impacts. ODOT's alleged justification under Section 4(f) is thus contrary to law.

**A. "Complete avoidance" of Section 4(f) property is not required where alternatives to complete avoidance are "imprudent."**

Section 4(f) of the Department of Transportation Act, 49 U.S.C. § 303, prohibits the Secretary of Transportation from approving a highway project that requires the use of a

public park, recreation area, wildlife and waterfowl refuge, or land of an historic site of national, state, or local significance unless

- (1) “there is no prudent and feasible alternative to using the land; and
- (2) the program or project includes all possible planning to minimize harm [to the historic site] resulting from the use.”

49 U.S.C. § 303.

Courts recognize that “complete avoidance is not always possible or prudent.” *Audobon Naturalist Soc.* at 675-76 (upholding Secretary’s decision that complete avoidance of Section 4(f) lands was not prudent). An alternative that will avoid the use of a protected site is imprudent if “there arises ‘unusual factors’ or ‘cost or community disruption’ as a result of ‘extraordinary magnitudes’ which counsel against building a highway along such a route.” *Audobon Naturalist Soc.* at 676, citing *Citizens to Preserve Overton Park v. Volpe*, 401 U.S. 402, 411, 91 S.Ct. 814 (1971). 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.” *Audobon Naturalist Soc.* at 677, citing *Hickory Neighborhood Defense League v. Skinner (Hickory II)*, 910 F.2d 159, 164 (4th Cir. 1990) (in approving highway project, Secretary may reject as imprudent alternatives that will not solve or reduce existing traffic problems). Thus, as shown in both *Audobon* and *Hickory*, an alternative that allows “complete avoidance” of a protected site is actually imprudent where such an alternative causes the Project to fail to meet the stated purpose and need.

Also, as stated in a letter dated March 26, 2007, from FHWA Administrator J. Richard Capka to U.S. Senator George V. Voinovich (Exhibit I), the FHWA has also set forth seven general reasons why an alternative may be rejected as not prudent. These

reasons include the following:

- “1. It does not meet the project purpose and need,
2. It involves extraordinary operational or safety problems,
3. There are unique problems or truly unusual factors present with it,
4. It results in unacceptable and severe adverse social, economic or other environmental impacts,
5. It would cause extraordinary community disruption,
6. It has additional construction costs of an extraordinary magnitude, or
7. There is an accumulation of factors that collectively, rather than individually, have adverse impacts that present unique problems or reach extraordinary magnitudes.”

Mr. Capka’s letter also states that “[i]f sufficient analysis demonstrates that no alternative to the taking of a Section 4(f) resource is feasible and prudent... [t]he FHWA may then approve the taking of the resource.” Exhibit I. Mr. Capka’s letter then concludes that, because ODOT studies to date do not show nor have the local officials provided quantifiable information that identify economic impacts to the neighborhood that rise to the extreme levels envisioned by the ‘feasible and prudent’ standard of Section 4(f),” ODOT’s alternative that relies on local roads to mitigate loss of the Carnegie exit is “prudent in that it does not result in any of the seven reasons for rejection.” Exhibit I.

In effect, Mr. Capka’s opinion is that because ODOT failed to complete the promised economic impact study, this provides ODOT a self-created reason to cite the Juvenile Justice Center as a constraint. It is unclear whether Mr. Capka was aware of ODOT’s failure when responding to the Senator’s questions, but certainly now ODOT cannot stand behind its self-created failure to provide an economic impact report as justification for

rejecting the Carnegie exit alternative as it does at page 3-15 of the DEIS.

In any case, it would appear to anyone or to any agency – except one with a predetermined bias – that Mayor Jackson’s community letter of November 7, 2007, would provide the “quantifiable” input from local officials of the type that rises to the “extreme levels envisioned by Section 4(f)” so as to allow the Carnegie exit alternative.

**B. In light of the significant social harm that will arise from removing the Carnegie Avenue exit and ODOT’s failure to satisfy ODOT’s stated Purpose and Needs, ODOT’s avoidance of the Juvenile Justice Center is imprudent.**

As discussed at length above, rejecting the Carnegie Avenue exit compromise will destroy the economic vitality of Cleveland’s urban core. Alternatives that do not include an exit at Carnegie will choke off traffic necessary to sustain crucial economic engines such as MidTown, the Cleveland Clinic, and the University Circle area. Also, alternatives that do not include a Carnegie Avenue exit will cause the Innerbelt Project to fail to achieve its Purpose and Needs statement, which expressly designated the maintenance and improvement of Innerbelt access and connectivity to local streets as a Project Need.<sup>3</sup> DEIS ES-2.

Because significant negative social and economic effects will result from rejecting the Carnegie Avenue exit compromise, but ODOT nonetheless proceeds in favor of

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<sup>3</sup> In addition, the community has plans to build a new Juvenile Justice Center and holds the existing structure in no particular regard that would warrant avoiding more beneficial options. As a Cleveland Plain Dealer editorial stated “[a]lthough some would protest the building’s demolition, the diverse group supporting the compromise [including a Carnegie exit] - which includes Mayor Frank Jackson - sees that plan as the best option. Frankly, the juvenile court building is a dump. No reasonable person would object to its disappearance.” Exhibit J.

completely avoiding the Juvenile Justice Center, ODOT's position is that Section 4(f) *requires* the complete avoidance of the Juvenile Justice Center. In contrast, as seen in *Audobon* and *Hickory*, the Transportation Secretary should recognize that complete avoidance of the Juvenile Justice Center may not be possible. In fact, *Audobon* and *Hickory* actually suggest that ODOT's rejection of the Carnegie Avenue exit is imprudent.

In addition, the FHWA's own criteria suggest that any alternative that lacks a Carnegie exit and relies instead on local connector streets is imprudent. Indeed, such alternatives violate Criterion 1 by failing to meet the project purpose and need, violate Criterion 4 by promoting unacceptable and severe adverse social and economic impacts, violate Criterion 5 by causing extraordinary disruption to Cleveland's urban core, and violate Criterion 7 by causing traffic congestion on local streets and economic failure of local firms that, collectively, will destroy the social and economic fabric of Cleveland. In sum, alternatives that fail to include an exit ramp at Carnegie Avenue cannot be considered prudent under the full scope of Section 4(f) or the FHWA's own criteria. Where no prudent alternative to the inclusion of a Carnegie Avenue exit exists, the taking of the Juvenile Justice Center to provide for a Carnegie exit is not contrary to the law.

**VI. ODOT's Preferred Alternative A fails to achieve ODOT's stated Purpose and Need.**

The DEIS states that 85% of the traffic using the Innerbelt Freeway has a destination within the study area during the AM peak period or an origin within the study area during the PM peak period." DEIS ES-2. As a result of this unique travel pattern, the Purpose

and Need section of the DEIS designates one of the Project Needs as being “to preserve the local roadway connectivity function of the Innerbelt Freeway and provide continued access and mobility to the CBD, adjacent neighborhoods, and commercial/industrial areas....” DEIS ES-2.

The DEIS identifies, however, in its Summary of Key Issues related to “Carnegie Access,” a litany of concerns including: “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 at 5.10. Despite ODOT’s acknowledgment of this long list of problems related specifically to the loss of access at Carnegie, ODOT nevertheless recommends the removal of the Carnegie Avenue ramp.

Thus, when the DEIS is read in conjunction with the CAS, it is clear that Preferred Alternative A does not meet the Purpose and Need of providing critical local access and connectivity between the Innerbelt Trench and the CBD to the east, and MidTown, Cleveland Clinic and University Circle. In fact, a close examination of the traffic data provided in ODOT’s documents shows that there will be near traffic gridlock imposed upon the local street system at the AM and PM peaks if Preferred Alternative A is built as proposed. First of all, the Interchange Justification Study shows in the “build” situation the following:

1. The intersection at Chester Avenue and East 30<sup>th</sup> Street fails the LOS standard D as well as the operational standard of a volume to capacity ratio greater than 1.0.

2. The critical intersection of Carnegie Avenue and East 9<sup>th</sup> Street fails the required volume to capacity ratio.
3. A total of 12 local street intersections, including 4 on Carnegie Avenue, 4 on Chester Avenue, 3 on Superior Avenue, and 1 on Orange do not meet the mandated storage length requirements for proper operation, but supposedly have “additional storage provided upstream.”
4. A total of 6 interchanges, including those at Carnegie at Ontario; Carnegie at East 9<sup>th</sup> Street; Chester at WB I-90/SB MidTown connector; Superior at EB I-90; Woodland at East 30<sup>th</sup> Street; Broadway at East 9<sup>th</sup> Street; and Orange Ontario at East 9<sup>th</sup> Street/Broadway, do not have sufficient storage lengths and none is available upstream.

See Interchange Justification Study at pages 52-58 attached as Exhibit K.

In short, this indicates, and as MidTown’s expert engineer, Michael Schweikert, indicated in a report of record (see Exhibit L), that if Preferred Alternative A is built, it will result in the local street system becoming gridlocked at certain times and will create safety hazards by impeding emergency vehicle travel or local Cleveland streets as well and economic devastation throughout Cleveland’s urban core.

In addition, it is now clear that ODOT’s models did not take into consideration the many projects listed herein that are now being built or are on the drawing boards of the City’s great health care institutions such as those at the Cleveland Clinic, University Hospitals and the VA Hospital. In sum, these improvements will account for over 4,000,000 patient trips a year that have not been considered by ODOT’s modeling. All of these vehicles will need to utilize all of the above-mentioned local intersections for patients to reach these critical business and health care-related destinations. Moreover, when it is considered that the Euclid Corridor Project, which in effect makes Euclid Avenue a one-lane street each way, was not considered in the model, this future gridlock becomes even more apparent.

Indeed, the Rosentraub Study highlights the degree to which ODOT's study was short-sighted in its approach. Dr. Rosentraub found that, even with Innerbelt access points at both Carnegie and Chester Avenues, the connection between the Innerbelt and University Circle, the Cleveland Clinic, University Hospitals, and the VA Hospital will result in a "transportation bottleneck." Rosentraub Study at ii. This bottleneck will cause long delays in travel and stifle the economic growth of the medical institutions that drive much of Cleveland's economy. *Id.* As a result, Rosentraub asserts that an entirely different "reliever" highway, namely, an extension of Interstate 490 located to the south of the existing Interstate 90 (otherwise known as "Opportunity Corridor"), will be required. *Id.* As the Rosentraub Study states, the inclusion of a reliever highway such as a completed Interstate 490 would remove roughly 3,500 cars per day from the Innerbelt and place them along the I-490 alternative. *Id.*

Thus, ODOT's proposed reduction in interchanges within the Trench and its Preferred Alternative A will not come close to alleviating traffic concerns and will impose wide-scale operational failure on the Innerbelt Trench and Cleveland's local streets. Thus, the Rosentraub Study indicates that it is critical to maintain all Trench interchanges including exit ramps at *both* Carnegie and Chester as well as to construct Opportunity Corridor. ODOT's proposal to relieve congestion in the Trench through removal of yet more interchanges (at Carnegie) and its complete reliance on the Chester Avenue exit is faulty and contrary to the Purpose and Needs of the Innerbelt Project even on an operational level.

## VII. Conclusion

- A. In light of the significant negative social impacts that attend the loss of Innerbelt access points at Prospect Avenue and Carnegie Avenue, MidTown and the Cleveland Clinic request that ODOT pursue the Minimum Build alternative plus a Carnegie Avenue exit ramp, after all future projects and improvements are constructed.**

The “Minimum Build” alternative plus an exit ramp at Carnegie Avenue presents a proper balance between operational standards and social utility. First, as one would expect, and as shown in the DEIS, the preservation of the Innerbelt access points that accompanies the Minimum Build alternative causes no impact to the human environment. DEIS, ES-4 through ES-11. Second, the Minimum Build alternative plus an exit ramp at Carnegie Avenue would allow the Trench to be properly aligned with the much needed reconstruction of the Central Viaduct and Innerbelt Curve segments. Third, the exit at Carnegie Avenue would provide the Innerbelt access so vital to businesses in Cleveland’s urban core. Finally, as the DEIS states, election of the Minimum Build would save \$50 Million in taxpayer dollars. In short, the balance between operational standards and high social utility and fiscal responsibility that would be struck by selecting the Minimum Build alternative plus an exit ramp at Carnegie Avenue warrants selection of such an alternative over the socially, economically, and financially unacceptable Preferred Alternative A.

- B. In the event that the Minimum Build alternative plus a Carnegie exit is not selected, ODOT must segment the Innerbelt Project, proceed with approval of the Central Viaduct and Innerbelt Curve sections, and reassess the removal of access points at Carnegie Avenue and Prospect Avenue.**

**1. Federal Law clearly permits segmentation of highway construction projects.**

Case law presents countless examples in which transportation departments attempt to segment a roadway project into small units in order to avoid the requirement of having to perform an entire EIS. Generally, where NEPA requires EISs for only major federal actions, transportation departments have attempted to avoid the EIS requirements by segmenting roadway projects into units that fall below the “major federal action” threshold. See *Swain v. Brinegar*, 542 F.2d 364 (7th Cir. 1976) (enjoining highway project where Department failed to file EIS for 2 of 3 project segments); *San Antonio Conservation Soc. V. Texas Hwy. Dep’t*, 446 F.2d 1013 (5th Cir. 1971) (enjoining project where Department improperly segmented project to avoid Section 4(f) determinations); but see *Save Barton Creek Assoc. v. Fed. Hwy. Admin.*, 950 F.2d 1129 (5th Cir. 1992) (segmentation proper where segments had independent utility).

In such cases, the public commonly allege that the segmentation was improper. Regardless of the exact facts in such actions, however, actions seeking to prevent segmentation all effectively seek to prevent transportation departments from carrying out projects without first assessing the likely impacts. While ODOT’s decision places MidTown and the Cleveland Clinic in the unique legal position of seeking segmentation rather than opposing it, MidTown and the Cleveland Clinic share the same goal with all parties seeking modification of ODOT plans: a process that most enables them, through information gathering and objective assessment, to protect their community from ill-conceived changes at the hands of a transportation department.

## **2. Courts analyze the propriety of segmentation under a four-factor test.**

Not only can highway projects be segmented, but the courts set forth a four-factor test to allow objective, consistent determination of whether segmentation of a roadway project is permissible. The test requires that the proposed segment (1) have logical termini, (2) have substantial independent utility, (3) not foreclose the opportunity to consider alternatives, and (4) not irretrievably commit federal funds for closely related projects. *O'Reilly v. U.S. Army Corps Eng.*, 477 F.3d 225, 237 (5th Cir. 2007).

## **3. Under this test, segmentation of the Trench from the Central Viaduct and the Innerbelt Curve is permissible.**

The CAS states that the “Innerbelt Trench conceptual alternatives can connect to any of the Innerbelt Curve and Central Interchange conceptual alternatives.” (CAS 5.10). ODOT’s assertion demonstrates that the project meets the four-factor test set forth in *O'Reilly*. More specifically, the Trench can be segmented from the Central Viaduct and Innerbelt Curve because (1) the Trench segment has logical termini, allowing for modification without disruption of the surrounding segments; (2) the Trench has its own utility independent of the Central Viaduct and Innerbelt Curve that also allows for separate and later review of the Trench without disruption to the surrounding segments; (3) segmentation of the Trench still allows the opportunity to consider alternatives; and (4) segmentation of the Trench will not irretrievably commit federal funds for surrounding segments.

Given all of the above, and since the newly instituted Opportunity Corridor Project is proposed to be built by 2017, whereas expenditures in the Trench are not scheduled until

2019, there is practical reason for segmenting out and considering later any proposed improvements in the Trench. First of all, the Opportunity Corridor will take approximately 40% of the vehicles off of the Innerbelt, if and when it is approved and built, and thus whether improvements in the Trench may be necessary after its construction is “up in the air” at this time. Thus, for this and for all of the other reasons set forth herein, there is good reason to segment the Trench and not approve it now, and to review and study it after the Central Viaduct, Innerbelt Curve, and Opportunity Corridor are constructed and after all of the improvements and all of the economic development projects by the hospitals as set forth herein are constructed. To approve it now based on this record would be inappropriate, arbitrary, and disastrous to the businesses and institutions submitting this report and to the City of Cleveland.

**MidTown Cleveland, Inc.**

By: \_\_\_\_\_

Title: Executive Director

Date: \_\_\_\_\_

**The Cleveland Clinic**

By: \_\_\_\_\_

Title: Chief Government Relations Officer

Date: \_\_\_\_\_

**Taft Stettinius & Hollister LLP**

By: \_\_\_\_\_

Stephen M. O’Bryan  
M. Casey Swemba  
Attorneys for MidTown Cleveland, Inc.

Date: \_\_\_\_\_

## Appendix

1. Exhibit A: Letter from Stephen O'Bryan to Craig Hebebrand dated February 15, 2006.
2. Exhibit B: ODOT summary of draft economic impact study entitled Economic Effects of the Cleveland Innerbelt Plan Access Changes ("Draft Economic Effects Study").
3. Exhibit C: Vredeveld Study.
4. Exhibit D: Rosentraub Study.
5. Exhibit E: Hebebrand Letter.
6. Exhibit F: Hebebrand emails dated August 30, 2007, and September 4, 2007.
7. Exhibit G: Letter from Mayor Frank Jackson and other signatories to J. Richard Capka, Administrator of the FHWA, and James G. Beasley, Director of ODOT, dated November 7, 2007.
8. Exhibit H: Letter from members of The Ohio House of Representatives, dated April 17, 2007, requesting that ODOT complete an economic impact study.
9. Exhibit I: Letter from FHWA Administrator J. Richard Capka to U.S. Senator George V. Voinovich dated March 26, 2007.
10. Exhibit J: Plain Dealer Editorial entitled "Fix Cleveland's Inner Belt, but keep the Carnegie Ramps."
11. Exhibit K: Interchange Justification Study (pages 52-58).
12. Exhibit L: Traffic engineering report by Michael Schweikert.