CUY-90-14.90

PID 77332/85531

APPENDIX EC-01

ACOE Preconstruction Notification
(Contract Document)

State of Ohio
Department of Transportation
Jolene M. Molitoris, Director

Innerbelt Bridge
Construction Contract Group 1 (CCG1)

Revision Date: December 10, 2009

Section 404 Application for Department of Army Permit

CUY-90-14.52
PID No. 77332/85531
Innerbelt Bridge Construction

Prepared for:
Ohio Department of Transportation
1930 West Broad Street
Columbus, Ohio 43223
OES Contact: Mr. William R. Cody
Phone: 614-466-5198

By: Michael Baker Jr., Inc.
The Halle Building
1228 Euclid Avenue, Suite 1050
Cleveland, Ohio 44115
Phone: 216-664-6493
Fax: 216-664-6532

December 10, 2009

TABLE OF CONTENTS

APPENDICES

APPLICATION FOR DEPARTMENT OF THE ARMY PERMIT

(33 CFR 325)

OMB APPROVAL NO. 0710-0003
Expires December 31, 2006

PRIVACY ACT STATEMENT

Authorities: Rivers and Harbors Act, Section 10, 33 USC 403;Clean Water Act, Section 404, 33 USC 1344; Marine Protection, Research and Sanctuaries Act, 33 USC 1413. Principal Purpose: Information provided on this form will be used in evaluating the application for a permit. Routine Uses: This information may be shared with the Department of Justice and other federal, state, and local government agencies. Submission of requested information is voluntary, however, if information is not provided the permit application cannot be processed nor can a permit be issued.

One set of original drawings or good reproducible copies which show the location and character of the proposed activity must be attached to this application (see sample drawings and instructions) and be submitted to the District Engineer having jurisdiction over the location of the proposed activity. An application that is not completed in full will be returned.

(ITEMS 1 THRU 4 TO BE FILLED BY THE CORPS)

1. APPLICATION NO.	2. FIELD OFFICE CODE	3. DATE RECEIVED	4. DATE APPLICATION COMPLETED

(ITEMS BELOW TO BE FILLED BY APPLICANT)

5. APPLICANT"S NAME	8. AUTHORIZED AGENT'S NAME AND TITLE (an agent isn't required)
Jolene M. Molitoris, Director	Michael A. Pettegrew, OES Waterway Permits Supervisor
6. APPLICANT'S ADDRESS Ohio Department of Transportation Office of Environmental Services, Third Floor 1980 West Broad Street Columbus, Ohio 43223	**9. AGENT'S ADDRESS** Ohio Department of Transportation Office of Environmental Services, Third Floor 1980 West Broad Street Columbus, Ohio 43223
7. APPLICANT'S PHONE NUMBERS WITH AREA CODE a. Residence b. Business : William R. Cody (614) 466-5198	**10. AGENT'S PHONE NUMBERS WITH AREA CODE** a. Residence b. Business : Michael A. Pettegrew (614) 466-7102

11. STATEMENT OF AUTHORIZATION

I hereby authorize, Michael A. Pettegrew to act in my behalf as my agent in the processing of this application and to furnish, upon request, supplemental information in support of this permit application.

APPLICANTS'S SIGNATURE	DATE:

NAME, LOCATION AND DESCRIPTION OF PROJECT OR ACTIVITY

12. PROJECT NAME OR TITLE (see instructions)
CUY-90-14.52 Innerbelt Bridge Construction , PID 77332/85531

13. NAME OF WATERBODY, IF KNOWN (see instructions)
Cuyahoga River (HUC 04110002) – Ship Channel
Limited Resource Water (June through January) (OEPA)
Fish Passage (February through May) (OEPA)

14. PROJECT STREET ADDRESS (if applicable)

15. LOCATION OF PROJECT

Cuyahoga	Ohio
COUNTY	STATE

16. OTHER LOCATION DESCRIPTIONS, IF KNOWN (see instructions)
Located in the City of Cleveland, Ohio.
Latitude: N41° 29' 12" Longitude: W81° 41'28"

17. DIRECTIONS TO THE SITE
From Columbus: Take I-70 E to I-71 N. I-71 N becomes I-90E. New bridge to be located north of the existing I-90 bridge.

ENG FORM 4345 EDITION OF SEP 94 IS OBSOLETE (Proponent: CECW-OR)

18. NATURE OF ACTIVITY (DESCRIPTION OF PROJECT, INCLUDE ALL FEATURES)

The project proposes to construct a new bridge over the Cuyahoga River Valley on I-90 that will accommodate six lanes of traffic. See attached Block 18 detailing additional information regarding the description of the project.

19. PROJECT PURPOSE (DESCRIBE THE REASON OR PURPOSE OF THE PROJECT, SEE INSTRUCTIONS)

The purpose of the proposed project is to replace a structurally deficient bridge in order to maintain a safe route of travel. See attached Block 19 detailing additional information regarding the project purpose.

USE BLOCKS 20-22 IF DREDGED AND/OR FILL MATERIAL IS TO BE DISCHARGED

20. REASON(S) FOR DISCHARGE

The project is a design-build project, therefore at this time, the construction plans are not final. However, for purposes of this PCN, the worst case (impact) scenario will be submitted for approval. Discharges associated with the project will be addressed as both temporary and permanent. The only work below the OHWM associated with this bridge replacement project is the replacement of sections of the existing bulkheads and the installation of outfall structures resulting in temporary and permanent impacts. See attached Block 20 detailing additional information regarding the reasons for discharge.

21. TYPE(S) OF MATERIAL BEING DISCHARGED AND THE AMOUNT OF EACH TYPE IN CUBIC YARDS

At this time ODOT does not know exactly what construction method(s) the contractor will use to reconstruct the existing bulkheads. Therefore, worst case impacts have been estimated for the fills below ordinary high water (OHW) based on the experience of the District's Construction Engineer and the following figures have been developed:

Temporary fill, composed of clean non-erodible material, will impact the east bank of the Cuyahoga River for 824 CY (0.12 acres, 260 LF), and temporary impact to the west bank Cuyahoga River for 542 CY (0.13 acres, 208 LF). No permanent impact to the east bank Cuyahoga River is anticipated. Permanent impact to the west bank Cuyahoga River = 1,420 CY (0.05 acres, 167 LF). Permanent fill will be composed of granular material, shale, rock, and/or other clean non erodible fill material. See attached block 21 for summary table of proposed impacts.

22. SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS FILLED (SEE INSTRUCTIONS)

A total of 0.05 acre (167 LF) of the Cuyahoga River will be permanently impacted by the proposed project. A total of 0.25 acre (468 LF) of the Cuyahoga River will be temporarily impacted to provide construction access. No wetlands will be impacted by the proposed project. Please note that there is no overlap between temporary and permanent impacts. See attached Block 22 detailing proposed temporary and permanent impacts.

23. IS ANY PORTION OF THE WORK ALREADY COMPLETE? Yes _____ No _____X_____ IF YES, DESCRIBE THE COMPLETED WORK

24. ADDRESSES OF ADJOINING PROPERTY OWNERS, LESSEES, ETC., WHO'S PROPERTY ADJOINS THE WATERBODY (IF MORE THAN CAN BE ENTERED HERE PLEASE ATTACH SUPPLEMENTAL LIST).

See attached Block 24 for adjoining property owners.

25. LIST OF OTHER CERTIFICATIONS OR APPROVALS/DENIALS RECEIVED FROM OTHER FEDERAL, STATE, OR LOCAL AGENCIES FOR WORK DESCRIBED IN THIS APPLICATION

AGENCY	TYPE OF APPROVAL*	IDENTIFICATION NUMBER	DATE APPLIED	DATE APPROVED	DATE DENIED
FHWA	ROD			9/18/09	

Multiple agency coordination was conducted during the completion of the EIS document. A copy of the ROD and agency coordination is attached.

26. Application is hereby made for a permit or permits to authorize the work described in this application. I certify that the information in this application is complete and accurate. I further certify that I possess the authority to undertake the work described herein or am acting as the duly authorized agent of this applicant.

SIGNATURE OF APPLICANT	DATE	SIGNATURE OF AGENT	DATE

The application must be signed by the person who desires to undertake the proposed activity (applicant) or it may be signed by a dully authorized agent if the statement in block 11 has been filled out and signed.

18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up any trick, scheme, or disguises a material fact or makes any false, fictitious or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious or fraudulent statements or entry, shall be fined not more than $10,000 or imprisoned not more than five years or both.

BLOCK 18 – NATURE OF ACTIVITY (CONTINUED)

In general, the Design Build Team (DBT) will design and construct a new bridge over the Cuyahoga River Valley on I-90 that will accommodate six (6) lanes of bi-directional traffic on opening day and 5 (five) lanes of traffic westbound through traffic at some point in the future (after opening day). This will include temporary and permanent approach pavement and structures from I-90 WB at Kenilworth Avenue to I-90 WB at East 14th Street.

The overall project also includes:

1. Bridge deck replacement and bridge rehabilitations for I-90 EB and WB Mainline and Ramp bridges over East 14th Street and I-90 EB and WB Mainline over I-77 ramps to/from I-90 (E-8 and E-10);
2. Reconstruction of West Bound I-90 entrance ramps and associated structures from East 14th Street, East Ninth Street and Ontario Avenue in the Central Business District;
3. Reconstruction of Ontario Avenue, Carnegie Avenue and Ramp Intersection and associated structures;
4. Construction of new sections of East Ninth Street, Broadway Avenue and East 14th Street and associated structures;
5. Replacing deck of existing I-71 SB bridge over Starkweather Avenue;
6. Replacing deck of existing I-90 WB bridge over Starkweather Avenue;
7. Modifying and replacing deck of existing I-90 WB bridge over Kenilworth Avenue;
8. Reconstruction of Commercial Road and Central Viaduct Street and Fire Station and Museum Area;
9. Construction of new Commercial Road alignment to new East Ninth Street Alignment;
10. Major earthwork grading of the West Slope region between Abbey Avenue and Cuyahoga River;
11. Reconstruction of I-90 Exit to Abbey and Fairfield including construction of West 14th Street Extension;
12. Reconstruction of bulkheads along Cuyahoga River;
13. Removal of sections of University Avenue;
14. Closure and removal of I-77 NB to I-90 WB Ramp and I-90 EB to I-77 SB Ramp; and,
15. All associated items including but not limited to earthwork, pavements, landscaping, sidewalks, drainage facilities, utilities, walls, traffic control, and aesthetic or other enhancements for the completion of a facility that can be opened to traffic.

Activities with potential impacts to the Cuyahoga River addressed in this permit application include:

1. Reconstruction of approximately 260 linear feet of bulkhead located on the east bank of the Cuyahoga River.
2. Reconstruction of approximately 375 linear feet of bulkhead located on the west bank of the Cuyahoga River.
3. Construction of approximately three storm outfalls on the east bank of the Cuyahoga River and two storm outfalls on the west bank of the Cuyahoga River. Exact locations for the outfalls will be determined during the design phase.

Although construction of the Central Viaduct Bridge will be subject to Contractor means and methods, the proposed construction will be in accordance with ODOT's Location & Design, Volume 2 Manual. Bridge foundations will not be permitted within the limits of the Cuyahoga River. Construction activities will likely consist of standard construction, such as the use of cofferdams, may be placed around the existing

bulkhead locations to divert the channel flow away from construction. The existing bulkheads will be removed and new bulkheads constructed, which would temporarily impact the Cuyahoga River.

Demolition debris shall not be permitted to enter the Cuyahoga River. Please refer to the project plan set for preliminary project details. The Regional and Special Limitations and Conditions applicable to this project as identified in the Nationwide 3 for maintenance (i.e., bridge replacement) and Nationwide 7 for the outfall structures will be included with the plans implemented by the contractor(s). To further avoid and minimize impacts to the river from the stormwater outfalls an Ohio EPA issued General National Pollution Discharge Elimination System (NPDES) permit utilizing post construction storm water best management practices (BMPs) shall be prepared for the project (see Appendix C - Supplemental Specification 832-Temporary Sediment and Erosion Control) and executed by the contractor.

The project will comply with the Ohio Department of Natural Resources Coastal Zone Management Act's federal consistency determination general condition, as well as compliance with applicable FEMA approved state or local floodplain management requirements. The corresponding FEMA map is included in Appendix A.

No compensatory mitigation is being proposed due to the minimal effects anticipated from the project on the Cuyahoga River, as well as employing to the fullest extent possible construction related BMP's. Replacement of the vertical bulkheads will incorporate recessed areas for increased aquatic habitat, to the extent practical.

No impacts to any species listed or proposed as threatened or endangered or designated critical habitat will be affected by the project. The project does impact cultural resources in association with Section 106 of the National Historic Preservation Act. However, the project will be implemented in compliance with the *"Programmatic Agreement Among the Federal Highway Administration, the Ohio State Historic Preservation Office, and the Ohio Department of Transportation Regarding the Federal-Aid Highway Improvement of Interstate Routes 71, 77, and 90 in the City of Cleveland, Cuyahoga County, Ohio CUY-90 Innerbelt; PID 77510 Agreement Number 15498"* as signed by the FHWA, ODOT, and SHPO. The attached NEPA documentation satisfying Section 7 of the Endangered Species Act (33 CFR 330.4(f)) and Section 106 of the National Historic Preservation (33 CFR 330.4(g)) is located in Appendix D.

BLOCK 19 – PURPOSE (CONTINUED)

The Central Viaduct Bridge is identified as CUY-90-1524 and carries I-90 over the Cuyahoga River Valley from Fairfield Avenue on the west to Broadway Avenue on the east. The Central Viaduct Bridge was put into service in 1959 and has been continuously used throughout its 47-year history. The Central Viaduct Bridge is comprised of three structures:

1. The 1,226-foot rear or west approach structure spans over Fairfield Avenue, Abbey Avenue, and University Road;
2. The 2,277-foot main truss (consisting of a total of nine spans) passes over the Cuyahoga River, the industrial Valley, the Norfolk-Southern trestle, Harrison Street, West 4th Street, West 3rd Street, the CSX system tracks, and Canal Road;
3. The 1,131-foot forward or east approach structure spans over Commercial Road, Greater Cleveland Regional Transit Authority railroad tracks and Broadway Avenue.

A 1997 ODOT inspection found major deficiencies in the bridge deck and stringers, with replacement of these structural elements recommended by 2008. Because of extensive cracking and spalling discovered in that inspection, ODOT authorized application of a high-molecular weight sealant, which was completed in 1999.

In the fall of 2007, it was determined that the existing Cleveland Innerbelt Central Viaduct Bridge was in substantially worse condition than previously understood. On September 30, 2008, the ODOT closed the outside lanes on the bridge and the Ontario Street on ramp to traffic.

Due to the deteriorated conditions of the existing Central Viaduct Bridge, as well as its important connection over the Cuyahoga River Valley, construction of a new Innerbelt bridge is necessary in order to maintain a safe route of travel.

The new bridge is programmed and scheduled for construction beginning in November 2010 and tentative completion in June 2014.

BLOCK 20 – REASON(S) FOR DISCHARGE (CONTINUED)

Permanent impacts will occur from the replacement of the metal sheetpiling associated with the reconstruction of the failed bulkheads. Approximately 260 linear feet of bulkheads on the east bank of the river and approximately 375 linear feet of bulkheads on the west bank of the river will be replaced. Temporary impacts will occur during construction activities. Fill material may be used to create a temporary work area for the contractor to work while reconstructing the bulkheads. All temporary fill material will be removed upon completion of the project and the area will be restored to its original condition. A note will be added to the DBT plans to ensure that all temporary fill material is removed and the area restored.

BLOCK 21 – TYPE(S) OF MATERIAL BEING DISCHARGED AND THE AMOUNT OF EACH TYPE IN CUBIC YARDS (CONTINUED)

SUMMARY OF VOLUME OF FILL

Permanent Impacts		
Left (west) Bank (CY)	Right (east) Bank (CY)	Project Total (CY)
1,420	0	1,420
Temporary Impacts		
Left (west) Bank (CY)	Right (east) Bank (CY)	Project Total (CY)
542	824	1,366

BLOCK 22 – SURFACE AREA IN ACRES OF WETLANDS OR OTHER WATERS (CONTINUED)

Approximately 824 cubic yards of granular material, shale, rock, and/or other clean non erodible material may temporarily be discharged below the ordinary high water elevation of the Cuyahoga River to reconstruct approximately 260 linear feet (0.12 acre) of bulkheads located on the east bank of the river.

Approximately 542 cubic yards of granular material, shale, rock, and/or other clean non erodible material may temporarily be discharged below the ordinary high water elevation of the Cuyahoga River to reconstruct approximately 208 linear feet of bulkheads located on the west bank of the river.

Approximately 1,420 cubic yards of granular material, shale, rock, and/or other clean non erodible fill will be placed below the ordinary high water elevation along the west bank of the Cuyahoga River to repair the failed portion of the existing bulkhead.

SUMMARY OF SURFACE AREA AND LENGTH OF IMPACTS*

Permanent Impacts		
Left (west) Bank	Right (east) Bank	Project Total
0.05 acre	0 acre	0.05 acre
167 LF	0 LF	167 LF
Temporary Impacts		
Left (west) Bank	Right (east) Bank	Project Total
0.13 acre	0.12 acre	0.25 acre
208 LF	260 LF	468 LF

*NOTE: Temporary and permanent impact totals are cumulative and no overlap occurs.

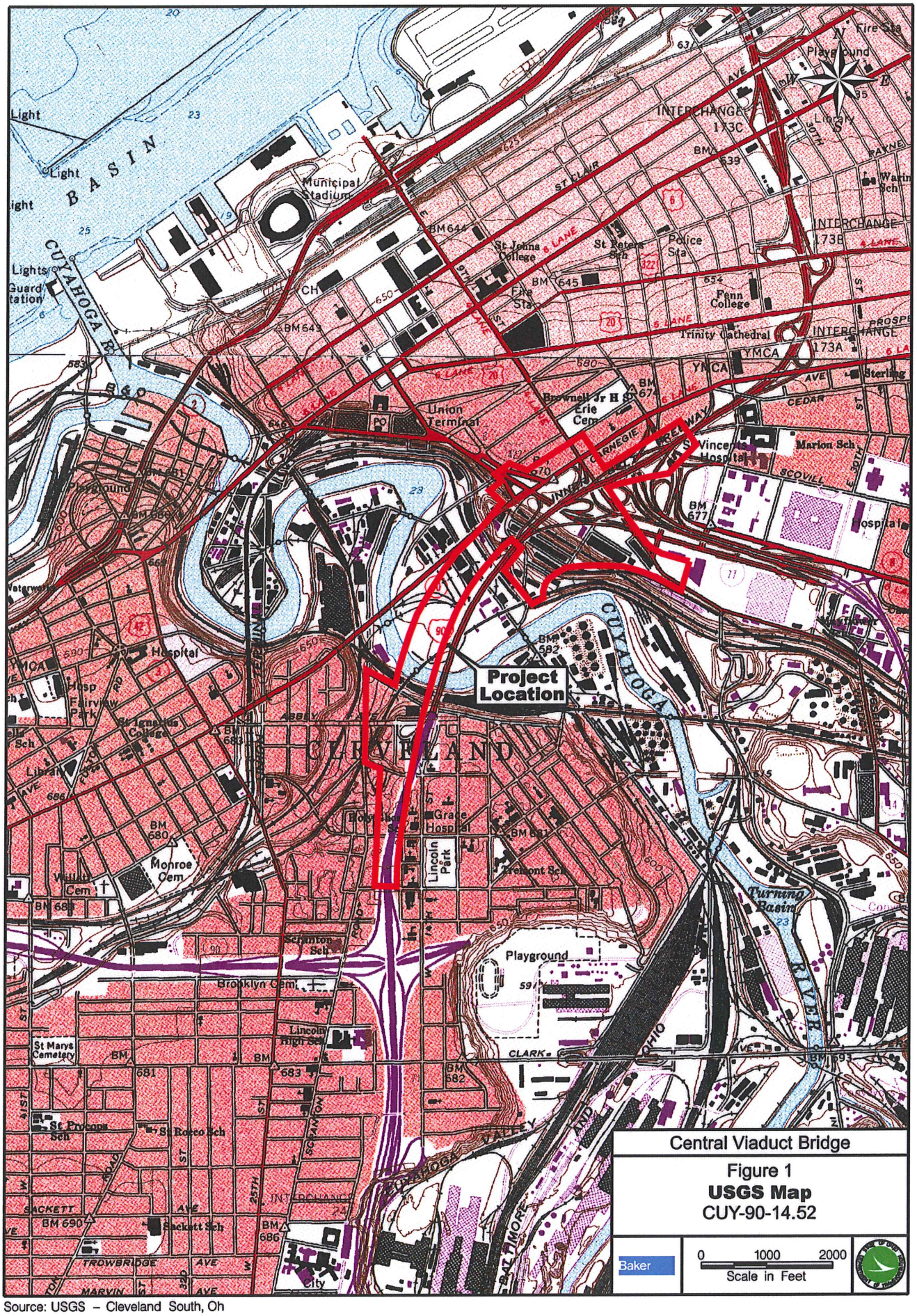
BLOCK 24 – ADDRESSES OF ADJOINING PROPERTY OWNERS, LESSEES, ETC.

1. CSub Corporation
   LaFarge, North America
   12735 Morris Road, Suite 300
   Alpharetta, GA 30004

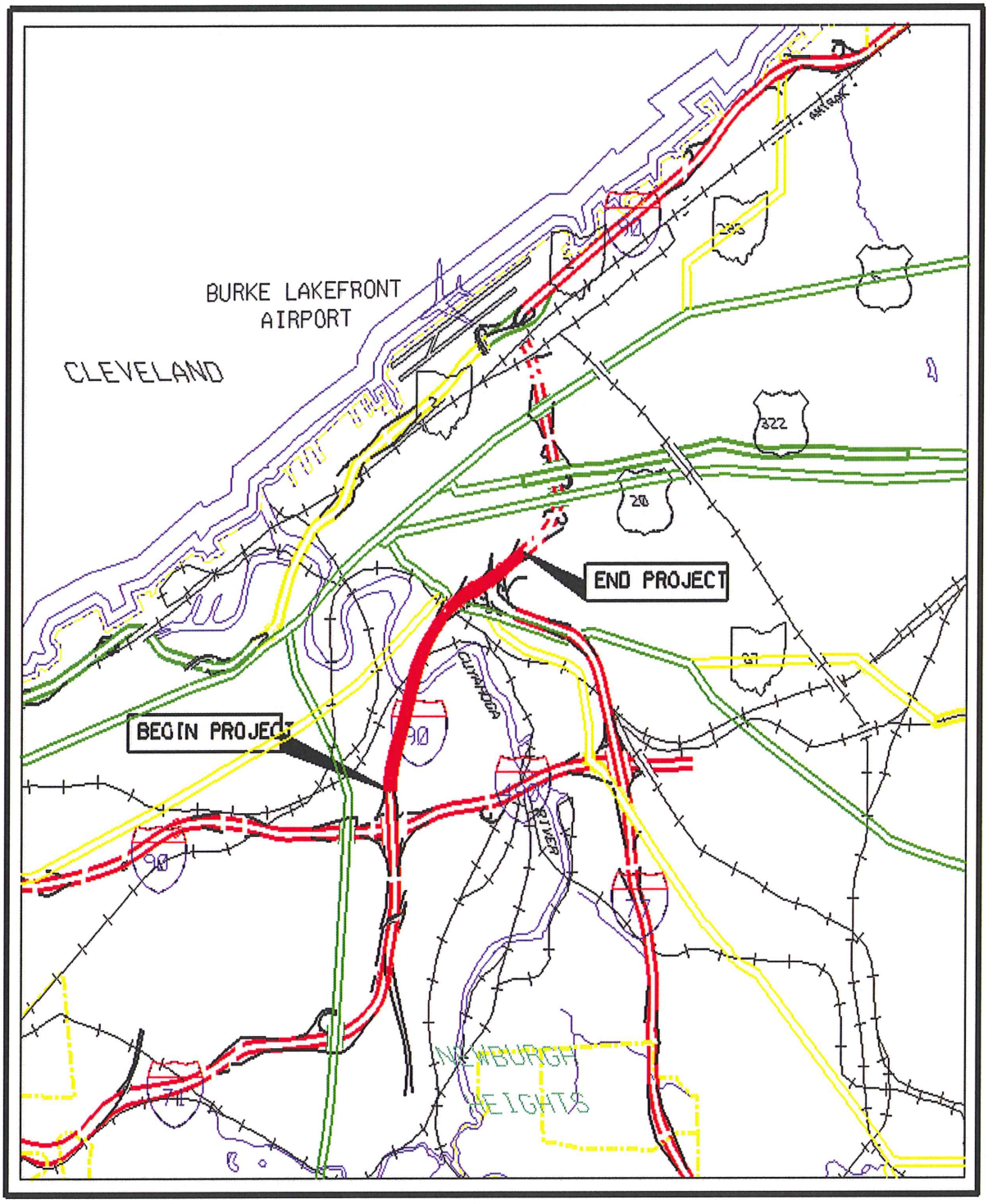
2. University Cuyahoga Inc.
   PO Box 40482
   Bay Village, OH 44140

APPENDIX A

FIGURES



Source: USGS – Cleveland South, Oh



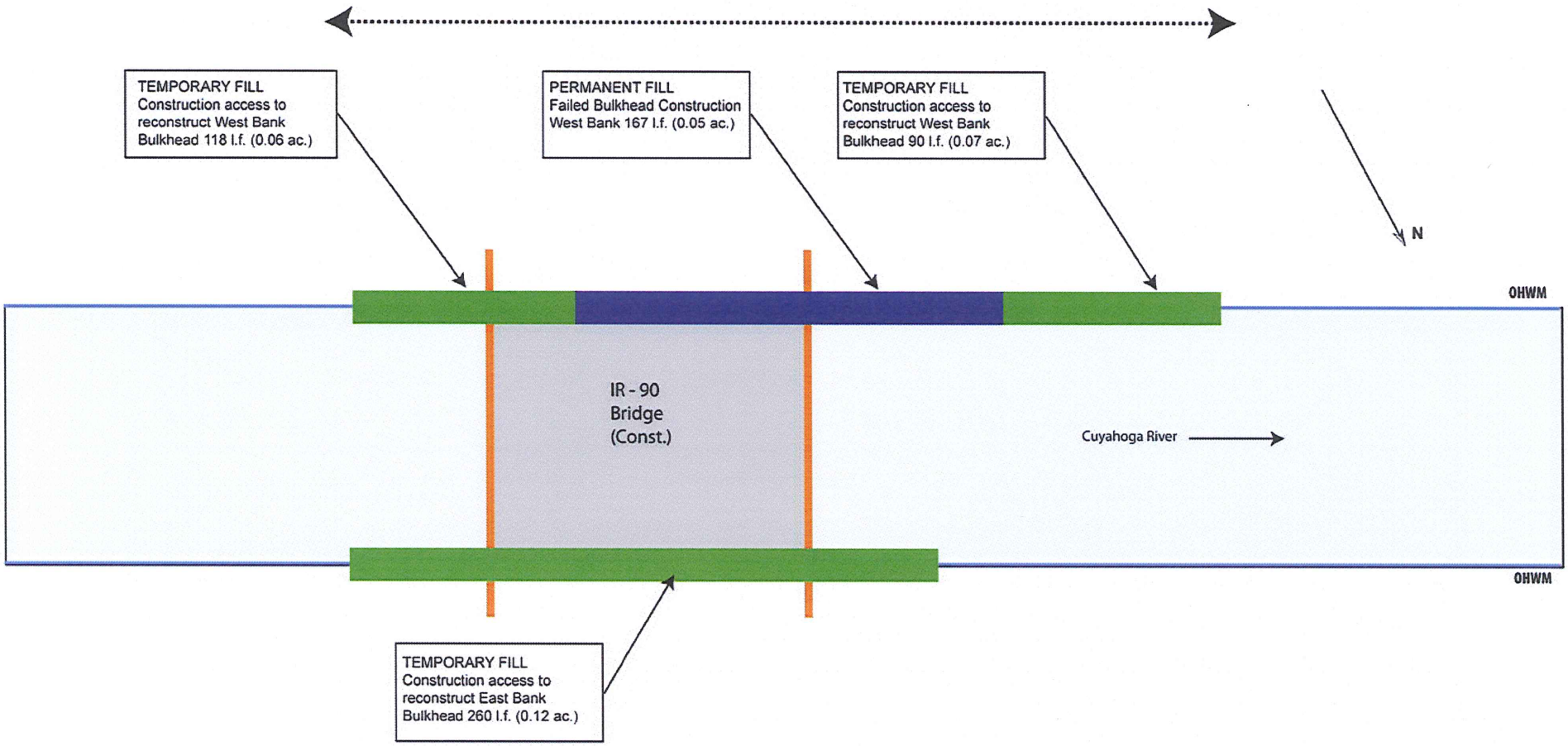
Baker

Michael Baker Jr., Inc.

Figure 2
Project Location Map
CUY-90-14.52
Innerbelt Bridge Construction
Cleveland, Cuyahoga County, Ohio

N

TOTAL LINEAR FEET OF IMPACT TO THE WEST BANK CUYAHOGA RIVER = 118 l.f. + 167 l.f. + 90 l.f. = 375 l.f.



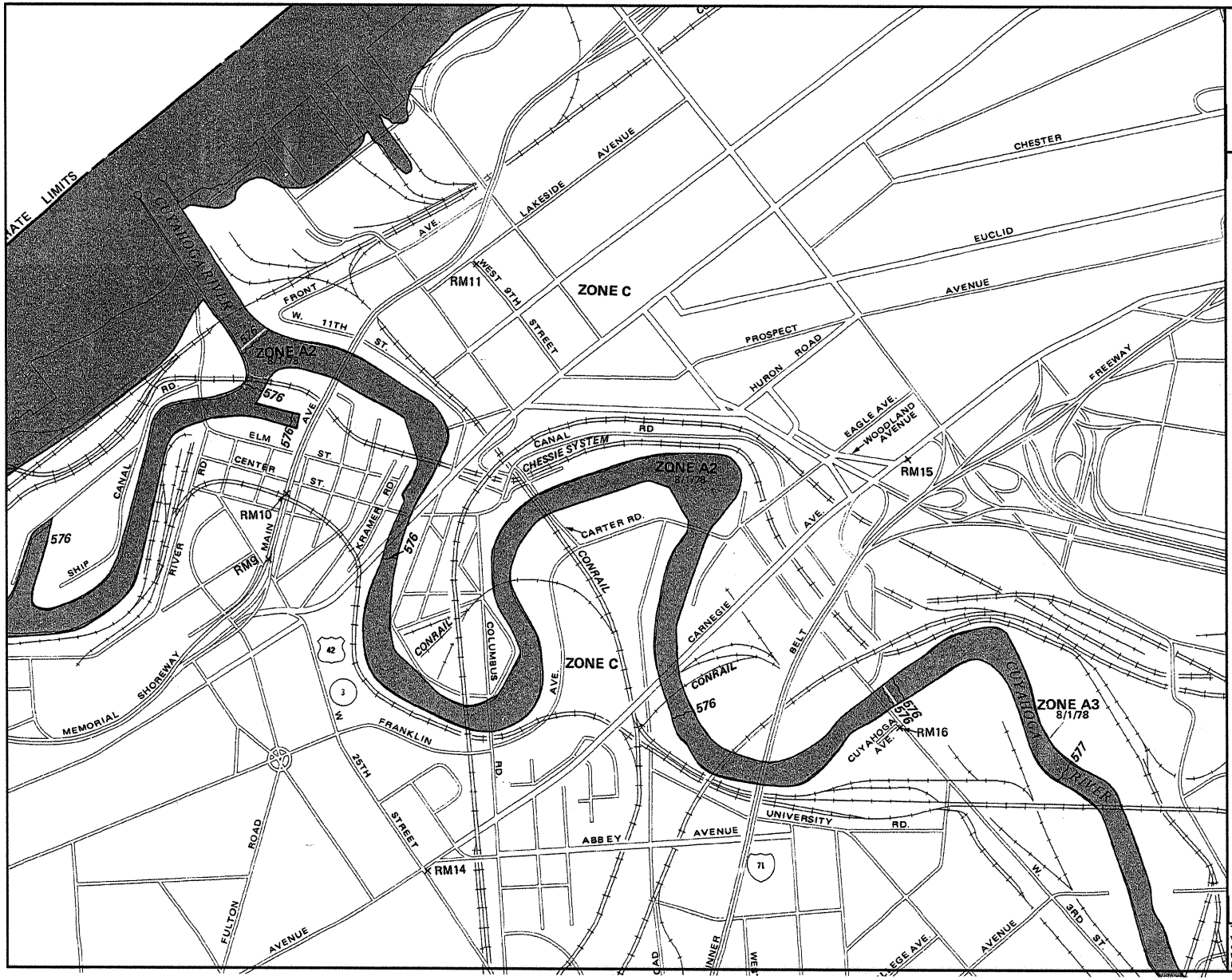
TOTAL LINEAR FEET OF IMPACT TO THE EAST BANK CUYAHOGA RIVER = 260 l.f

SUMMARY OF SURFACE WATER IMPACTS

Activity	Duration	Length of Channel Impacted (linear feet)	Area Impacted (acre)	Fill Below OHWMM (cubic yards)
Bulkhead Construction (West Bank)	permanent	167	0.05	1,420
Reconstruction of Bulkhead (West Bank)	temporary	118	0.06	340
Reconstruction of Bulkhead (West Bank)	temporary	90	0.07	202
Reconstruction of Bulkhead (East Bank)	temporary	260	0.12	824

Note: The presented impacts are "maximum extent" or "worse case" estimates that will not be exceeded. The final outfall locations are to be determined however they will be located within the extent of the temporary fill shown and the permanent fill from the outfalls will not exceed the volume, area and LF provided.

Generic plan-view schematic showing type of proposed impacts below the OHWM of the Cuyahoga River. (figure not to scale)



APPROXIMATE SCALE
1000 0 1000 FEE

NATIONAL FLOOD INSURANCE PROGRAM

FLOOD INSURANCE RATE MAP

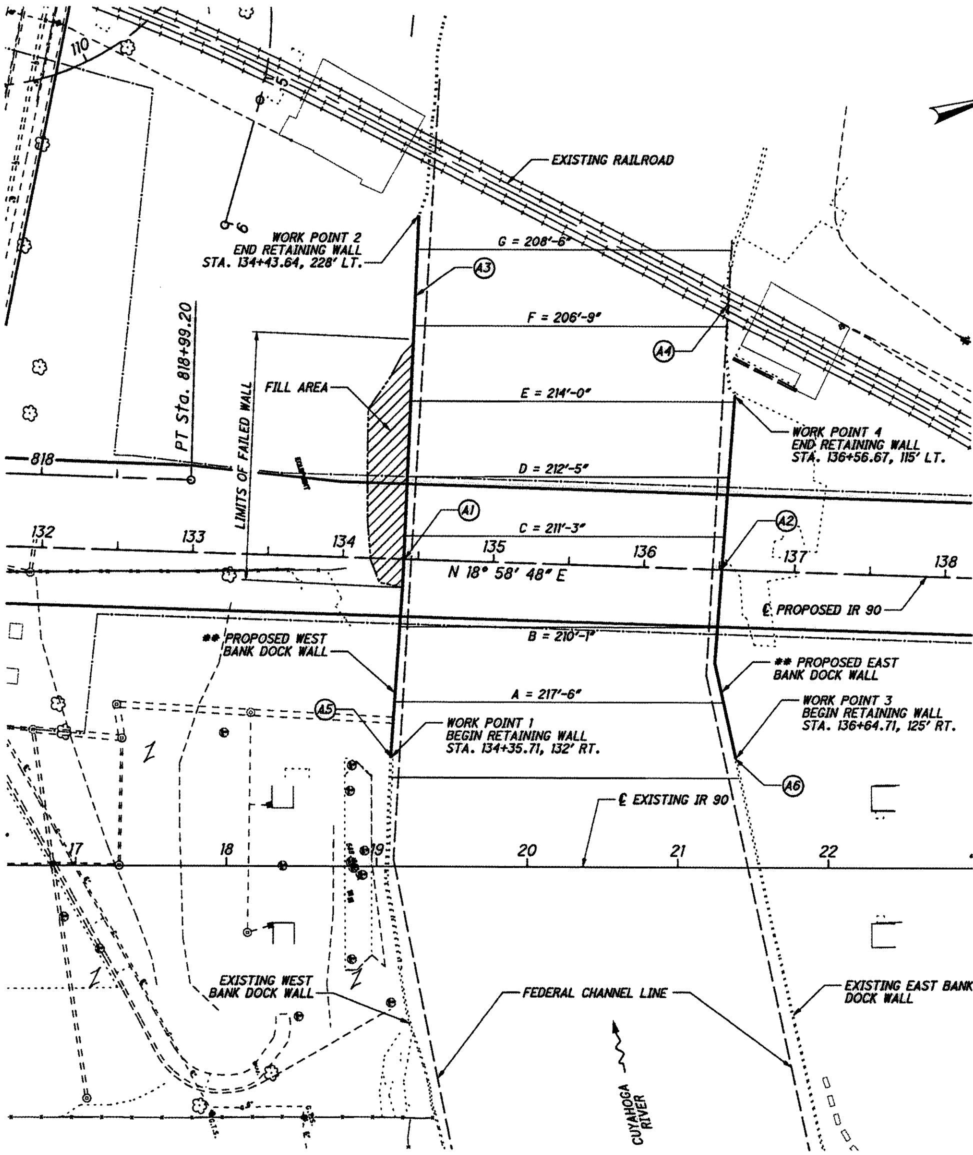
CITY OF
CLEVELAND, OHIO
CUYAHOGA COUNTY

COMMUNITY-PANEL NUMBER
390104 0010 B

PAGE 10 OF 30
(SEE MAP INDEX FOR PAGES NOT PRINTED)

EFFECTIVE
AUGUST 1, 1978

U.S. DEPARTMENT OF HOUSING
AND URBAN DEVELOPMENT
FEDERAL INSURANCE ADMINISTRATION



BENCHMARK DATA
BM XXXX STA. XXX=XX.XX, ELEV. XXX.XX, OFFSET XX.XX' XX., XXXXXXX
BM XXXX STA. XXX=XX.XX, ELEV. XXX.XX, OFFSET XX.XX' XX., XXXXXXX

FOR ADDITIONAL BENCHMARK INFORMATION SEE ROADWAY PLANS.

WATERWAY OPENING

DIM	EXISTING*	PROPOSED**
A	220'-0"	217'-8"
B	213'-11"	210'-1
C	209'-7"	211'-3"
D	209'-9"	212'-5"
E	214'-4"	214'-0"
F	212'-2"	206'-9"
G	213'-11"	208'-6"

* - LOCATION OF EXISTING DOCK WALL AS SURVEYED ON MAY 27, 2009

** - THE LOCATION OF DOCK WALL IF PLACED APPROXIMATELY ON THE WALLS ORIGINAL PROPOSED ALIGNMENT

[hatched] - TOTAL FILL AREA = 1420± CUBIC YARDS

NOTE:

1. FOR TIMBER FENDER DETAILS, SEE ATTACHED SHEET.

E.L.ROBINSON
The Challenge, the Choice
1801 Watermark Drive, Suite 310 - Columbus, Ohio 43215

DESIGNED	DRAWN	REVIEWED	DATE
JN	FIB		
CHECKED	REVISED	STRUCTURE FILE NUMBER	
RLE			

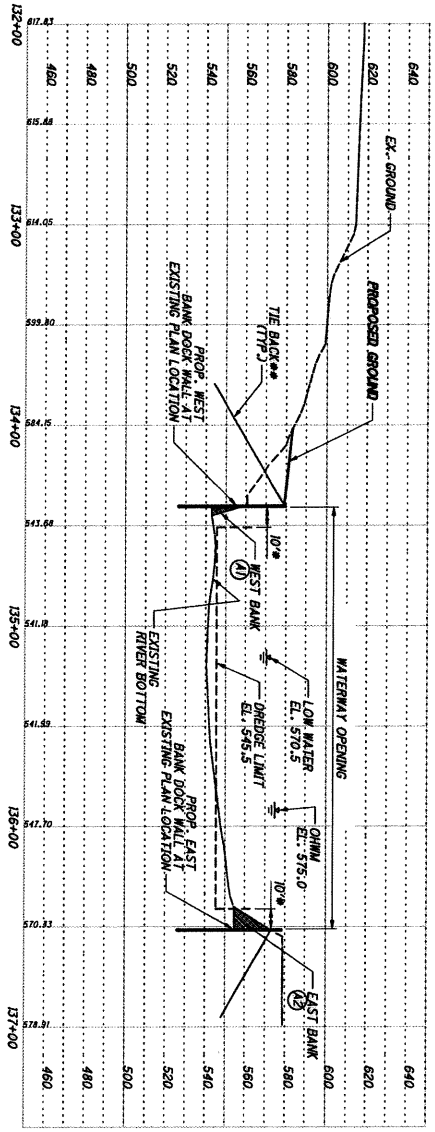
APPROXIMATE LOCATION OF ORIGINAL DOCK WALL
BRIDGE NO. CUY-90-1452
OVER CUYAHOGA RIVER

CUY-90-14.92
PID No. 77332

2/6

$TIME$
$DATE$
$FILE$

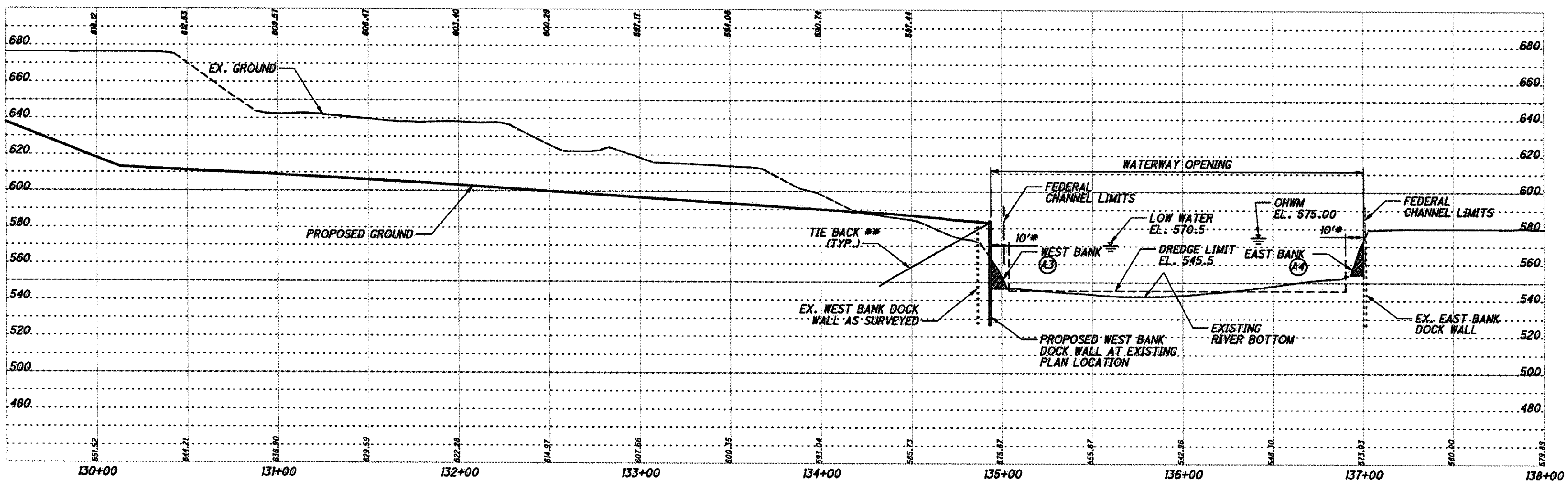
$TIME$
$DATE$
$FILE$



SECTION ALONG PROPOSED JR-90

* = DREDGE LIMITS
** = CONTRACTOR MAY ELECT TO USE HORIZONTAL TIEBACK WITH DEADMAN ANCHOR OR PILE ANCHOR.

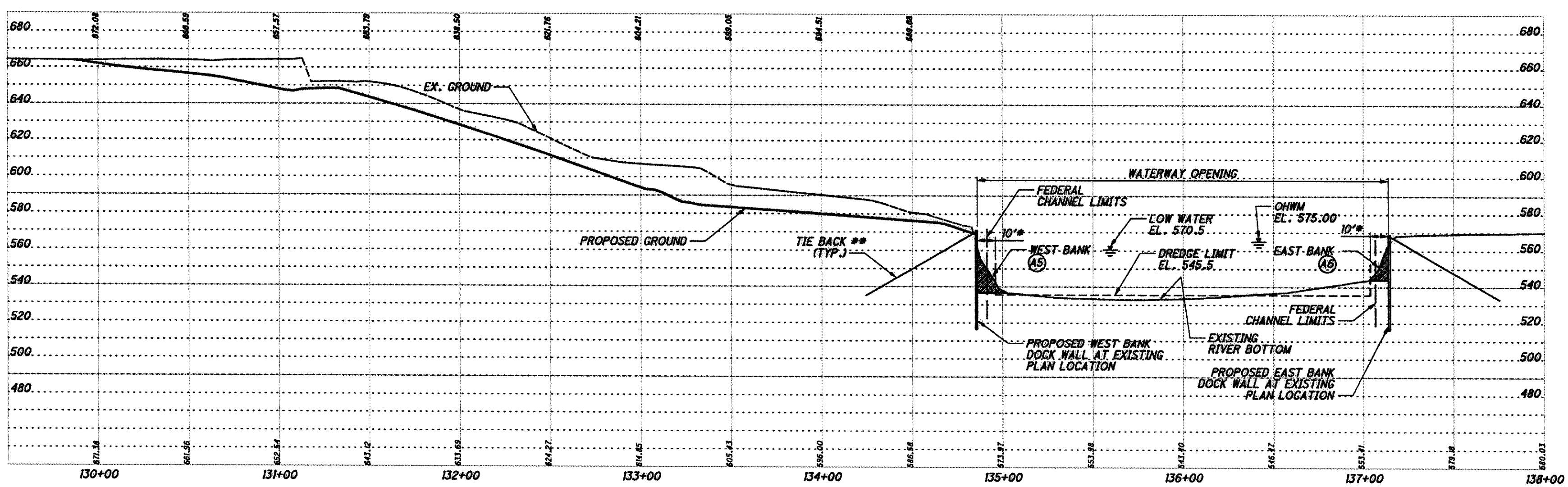
4/6	CUY-90-14.92 PID No. 77332	PRELIMINARY DOCK WALL DETAILS BRIDGE NO. CUY-90-1452 OVER CUYAHOGA RIVER	DESIGNED JN	DRAWN FIB	REVIEWED	DATE	E.L.ROBINSON The Challenge. The Choice 11661 Watermark Drive, Suite 210 - Columbus, Ohio 43215
			CHECKED RLE	REVISED	STRUCTURE FILE NUMBER		



SECTION 175' LEFT OF PROPOSED IR-90

* = DREDGE LIMITS

** = CONTRACTOR MAY ELECT TO USE HORIZONTAL TIEBACK WITH DEADMAN ANCHOR OR PILE ANCHOR.



SECTION 125' RIGHT OF PROPOSED IR-90

E.L. ROBINSON

PRELIMINARY DOCK WALL DETAILS

BRIDGE NO. CUY-90-1452

OVER CUYAHOGA RIVER

DESIGNED JN | DRAWN FIB | REVIEWED | DATE

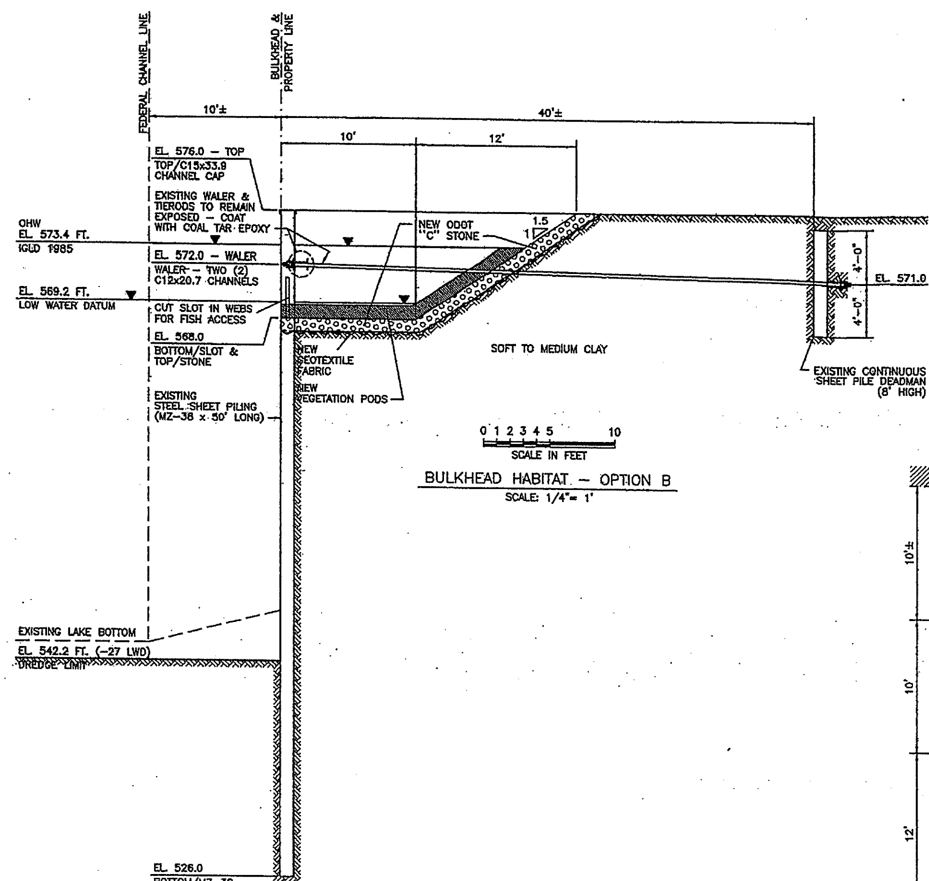
CHECKED RLE | REVISED | STRUCTURE FILE NUMBER

CUY-90-14.92

PID No. 77332

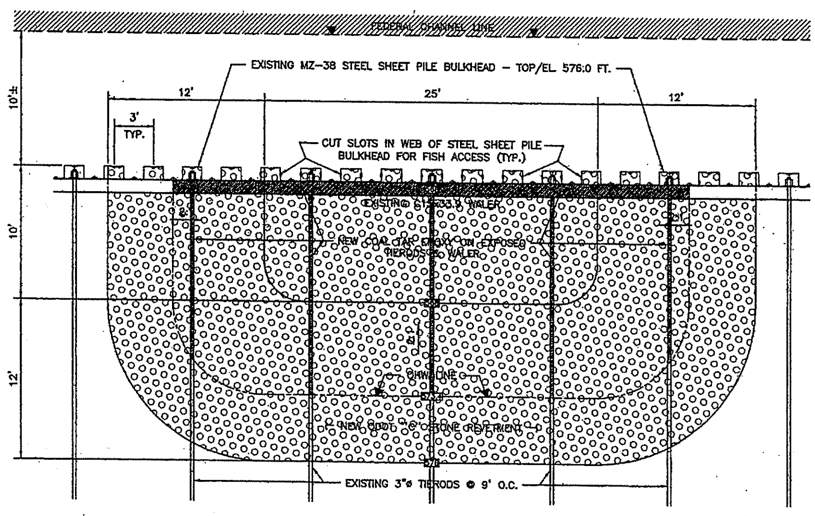
5/6

$TIME$ $DATE$ $FILE$



BULKHEAD HABITAT – OPTION B

SCALE: 1/4"= 1'



0 1 2 3 4 5 10

SCALE IN FEET

SITE PLAN – BULKHEAD HABITAT – OPTION B

SCALE: 1/4"= 1'

PRELIMINARY

NOTES:

1.) ALL ELEVATIONS ARE RELATIVE TO IGLD 1985. 0.0 LWD = 569.20 FT. IGLD 1985.

JOHN S. MATRICARDI, MATRIX ENGINEERING INC 10-09-07 9:46 AM 1615-2.dwg

REV. No.	REVISION:

NOTES:

STATE OF OHIO
JOHN S. MATRICARDI
E-044003
REGISTERED
PROFESSIONAL ENGINEER

SITE PLAN & SECTION – OPTION B

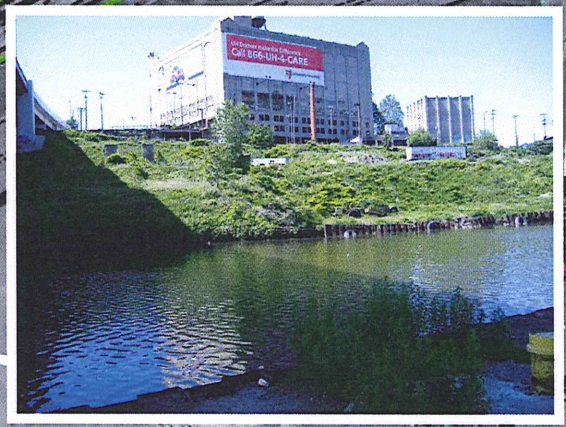
PROPOSED BULKHEAD HABITATS
ON THE CUYAHOGA RIVER
CLEVELAND, OHIO

MATRIX ENGINEERING INC.
12515 DETROIT AVENUE, LAKEWOOD, OHIO 44107
PHONE No.: (216) 226-8520
E-MAIL: MATRIXLAKE@AOL.COM

1/4"= 1'	10-09-07
O.C.J.	
J.S.M.	1615-2

CONCEPTUAL STORMWATER OUTFALL LAYOUT

CUY-90-14.92
CENTRAL VIADUCT
DESIGN-BUILD
JUNE 11, 2009



APPX. 350'

APPX. 250'

Potential East Bank Storm Outfall

Bulkhead Reconstruction Along Entire Proposed ODOT Right of Way on East and West Bank

Potential East Bank Storm Outfall

Potential East Bank Storm Outfall

Potential West Bank Storm Outfalls

Note: All proposed outfall locations are conceptual. Final locations to be determined.

APPENDIX B

PHOTOGRAPHS OF PROJECT AREA

Photo 1: South facing view from the west bank of the Cuyahoga River.

Photo 2: West facing view of west bank of Cuyahoga River bulkhead to be replaced.

Photo 3: East facing view of east bank of Cuyahoga River bulkhead to be replaced.

Photo 4: East bank bulkhead to be replaced.

Photo 5: Failed West bank bulkhead to be replaced.

Photo 6: South facing view of east bank of the Cuyahoga River bulkhead to be replaced.

Photo 7: South facing view of east bank of Cuyahoga River bulkhead to be replaced.

APPENDIX C

SUPPLEMENTAL SPECIFICATION – TEMPORARY SEDIMENT AND EROSION CONTROL

MODIFIED SS832

STATE OF OHIO
DEPARTMENT OF TRANSPORTATION

SUPPLEMENTAL SPECIFICATION 832
TEMPORARY SEDIMENT AND EROSION CONTROL

October 30, 2009

832.01 Description. This work consists of locating, furnishing, installing, and maintaining temporary sediment and erosion control best management practices for earth disturbing activity areas, developing a Storm Water Pollution Prevention Plan, and filing a Co-Permittee form as required. Furnish a Storm Water Pollution Prevention Plan if required prior to any earth disturbing activity. Furnish and install temporary sediment and erosion control best management practices prior to any earth disturbing activity. Amend the Storm Water Pollution Prevention Plan in accordance with the OEPA NPDES Permit. In the event of conflict between these requirements and pollution control laws, rules, or regulations of other Federal, State, or local agencies, adhere to the more restrictive laws, rules, or regulations. This supplemental specification replaces C&MS 207.

832.02 Definitions

BMP. Temporary sediment and erosion control best management practices.

C&MS. Construction and Material Specifications of the Ohio Department of Transportation dated as shown on the plans.

CECI. Contractor's Erosion Control Inspector.

CESSWI. Certified Erosion, Sediment, and Storm Water Inspector sponsored by the Soil and Water Conservation Society and International Erosion Control Association. Information on certified individuals is available at *www.cesswi.org*.

CESSWI Trained. An individual that has attended and completed CESSWI training and is recognized as completing the course by the approved CESSWI Instructor. The "CESSWI Trained" requirement applies to all project work taking place after April 1, 2008. Effective July 1, 2009 all "CESSWI Trained" references contained in this specification will require full CESSWI Certification status.

CPESC. Certified Professional in Erosion and Sediment Control as sponsored by the Soil and Water Conservation Society and International Erosion Control Association. Information on certified individuals is available at *www.cpesc.net*.

CPESC Trained. An individual that has attended and completed The Certified Professional in Erosion and Sediment Control Exam Review Course and is recognized as completing the course by the CPESC Instructor. The "CPESC Trained" requirement applies to all project work taking place after July 1, 2006. Effective July 1, 2009 all "CPESC Trained" references contained in this specification will require full CPESC Certification status.

Co-Permittee. A requirement of OEPA NPDES Permit (Appendix E of this specification, Part VII. Definitions O).

EDA. Earth Disturbing Activity is any activity that exposes bare ground or an erodible material to storm water, including any "Disturbance" as defined in OEPA NPDES Permit, Part VII, Definition G.

Contractor EDA. Any EDA that is NOT shown on the plans as part of the project. EDA not shown on the plans and occurring within the project limits is also Contractor EDA.

Project EDA. Any EDA that is shown on the plans as part of the project.

Total EDA. Combined Project EDA and Contractor EDA.

EPA. Environmental Protection Agency.

Isolated Wetland Permit. Ohio EPA permit allowing the discharge of fill material into an isolated wetland.

NOI. Notice of Intent.

NOT. Notice of Termination.

NPDES. National Pollutant Discharge Elimination System.

OEPA. Ohio Environmental Protection Agency.

OEPA NPDES Permit. Ohio EPA Storm Water Construction General Permit (OHC 000003) Appendix E of this specification.

OES. Office of Environmental Services-ODOT.

OHWM. The line on the shore established by the fluctuations of water and indicated by physical characteristics such as clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas or defined in accordance with the most current version of 33 CFR 328.

OWPCA. Ohio Water Pollution Control Act (Ohio Revised Code 6111.01 et seq.).

PCN. Pre-Construction Notification for 404 permit.

SCD. Standard Construction Drawing.

SWPPP. Storm Water Pollution Prevention Plan.

USACE. United States Army Corps of Engineers.

404 Permit. USACE permit authorizing discharge of fill material into Waters of the US, per Section 404 of the Clean Water Act.

401 Water Quality Certification (401 WQC). Ohio EPA permit authorizing discharge of fill material, per Section 401 of the Clean Water Act.

Waters of the United States. Defined in Code of Federal Regulations, 33 CFR Part 328.

832.03 SCD References. Construct the following features according to the following SCDs.

Construction Fence DM-4.3
Dikes DM-4.3
Filter Fabric Ditch Check DM-4.4
Inlet Protection DM-4.4
Perimeter Filter Fabric Fence DM-4.4
Rock Channel Protection Type C or D with/without Filter
..... DM-4.3/4.4
Sediment Basins and Dams DM-4.3
Slope Drains DM-4.3
Construction Entrance (Type 1 Driveway) ..... BP 4.1

832.04 Requirements and Provisions. Furnish a SWPPP to represent compliance with OEPA NPDES Permit (See Appendix E), related rules, specifications, SCD, and permits. The Department will furnish the Design-Build Team (DBT) a copy of the NOI and the OEPA approval letter at award of the Design-Build contract.

Locate, furnish, install, and maintain temporary sediment and erosion control Best Management Practices (BMP) to represent compliance with the Clean Water Act (33 USC Section 1251 et seq.), the OWPCA, the 404 permit, the 401 WQC, the Isolated Wetland Permit, local government agency requirements, specifications, SCD, and other related rules and permits.

File a Co-Permittee form for the DBT and the Independent Quality Firm (IQF). Information about the Co-Permittee form can be found at *www.epa.state.oh.us/dsw/storm/stormform.html*. For a copy of the Co-Permittee form see Appendix D. Furnish the Department with an executed copy of the form submitted to OEPA at or before the Pre-Construction meeting.

Post Construction controls described in Appendix E (section III.G.2.e) are not temporary erosion control features. Detail construction requirements and compensation for post construction controls in the project plans according to the Design-Build scope. Any illicit or illegal discharge of construction related materials, wastes, pollutants or debris is prohibited.

The following provisions survive the completion and/or termination of the contract.

Provision 1. If a governmental agency or a local governmental authority finds a violation of the above noted requirements, or that the BMP are incomplete, or that the SWPPP is incomplete or that the implementation of the SWPPP is not being performed correctly or completely, full responsibility is borne by the DBT to make all corrections.

Provision 2. If a governmental agency or a local governmental authority furnishes an assessment, damage judgment or finding, fine, penalty, or expense for a violation of the above noted requirements, or that the BMP are incomplete, or that the SWPPP is incomplete or that the implementation of the SWPPP is not being performed correctly or completely, the DBT will reimburse the Department within 10 Calendar Days of the amount for any of the above. The Department may withhold the amount of money requested for the above from the DBT's next pay estimate and deliver that sum to the governmental agency or local governmental authority issuing the assessment, damage judgment or finding, fine, penalty or expense.

Provision 3. The DBT agrees to indemnify and hold harmless the Department, and will reimburse the Department for any assessments, damage judgment or finding, fine, penalty, or expense as a result of the failure of performing this portion of the Contract. The Department may withhold the amount of any assessments, damage judgment or finding, fine, penalty or expense from the DBT's next pay estimate.

Provision 4. If a governmental agency or a local governmental authority furnishes a stop work order for any of the following: a violation of the above noted requirements; BMP are incomplete; SWPPP is incomplete; implementation of the SWPPP is not being performed correctly or completely, the Department will find the DBT in default.

Provision 5. If the Department or any government regulatory agency finds a violation of the above noted requirements, or that the BMP are incomplete, or that the SWPPP is incomplete or that the implementation of the SWPPP is not being performed correctly or completely, the DBT shall correct and mitigate the conditions within 48 hours of notification by the Department or regulatory agency. Failure to correct non-compliant site conditions may result in the Department suspending work for the entire project until the corrections are performed. Repeated non-compliance with the SWPPP or failure to regularly update the SWPPP as needed to match the site conditions may result in removal of the DBT's Superintendent in accordance with C&MS 108.05.

EDA Requirements. Furnish appropriate BMP for all EDA.

Furnish a SWPPP with BMP for all EDA areas and file a Co-Permittee form. The SWPPP and these BMP will be compensated. The Department will furnish a NOI and NOT.

832.05 Locate and Furnish BMP. Locate and furnish the BMP in accordance with the OEPA NPDES Permit and the SWPPP.

Construct the following items A, B, F, G, H, and I according to the SCD.

A. Perimeter Controls. Furnish filter fabric ditch checks, rock checks, inlet protection, perimeter filter fabric fence, sediment basins and dams, dikes, slope drains, construction entrances and rock channel protection materials as specified on the SCD. Furnish construction ditch and slope protection conforming to the requirements of C&MS Item 670. The seeding and mulching of the mats are not required. The Department may accept other materials as BMP provided the DBT submits a written proposal for the alternatives to the Engineer.

Use perimeter filter fabric fence to capture construction related sediment carried in sheet flow runoff. Restrict the use of perimeter filter fabric fence to the extent allowed in the OEPA NPDES Permit.

Use dikes to divert and control surface water and sediment flow to prevent discharge of construction related sediment from the project.

Install perimeter filter fabric fence and dikes before any clearing and grubbing operations.

Ensure that the ponding of water behind the perimeter filter fabric fence or dike will not damage property or threaten human health and safety.

B. Inlet Protection. Construct the inlet protection for existing inlets at the beginning of construction and for new inlets immediately after completing the sump. Ensure that the

ponding of water behind the inlet will not damage property or threaten human health and safety.

The DBT may use modified Inlet Protection controls for Catch Basins and Inlets with approval of the Engineer.

C. Construction Seeding and Mulching. Furnish commercial fertilizer, seed, and mulch materials conforming to C&MS Item 659. Apply seed and straw mulch materials according to C&MS Item 659 as modified below.

Apply straw mulch at a rate of 3 tons per acre (0.7 metric ton/1000 m2). Seed and mulch during construction. This BMP may only be installed after March 15 and before October 15. Use wood fiber or compost mulch only with concurrence of the Department. Fertilize construction seeding areas at one-half the application rate specified in C&MS Item 659. If project conditions prevent fertilizing the soil and preparing the seed bed, then the fertilizing and preparation requirements of C&MS Item 659 may be waived. Do not place construction seed on frozen ground. Apply seed for this BMP at the rates shown below:

Seed Mixture	Number of Bales
Fawn Tall Fescue 3.0 lb/1000 ft^2 (15 kg/1000 m^2) and Annual Ryegrass 2 lb/1000 ft^2 (10 kg/1000 m^2)	2 / 1000 ft^2 (0.01 ha)

D. Construction Mulch. Construction Mulch is the application of straw mulch directly on to the disturbed soil surface. Use straw according to C&MS Item 659. C&MS 659 wood fiber or compost mulch may only be used with concurrence of the Department. Apply Construction Mulch only to disturbed areas which will remain idle for 21 days or less or areas of exposed subgrade that require temporary stabilization. Use a mechanical crimping implement or other suitable implement approved by the Engineer when installing Construction Mulch on exposed subgrade. Apply Construction Mulch at a rate of 3 tons per acre (0.7 metric ton/1000 m2).

E. Winter Seeding and Mulching. Apply seed and straw mulch materials according to C&MS Item 659 as modified above. Apply straw mulch at a rate of 3 tons per acre (0.7 metric ton/1000 m2). Winter Seed and Mulch is required for EDA operations occurring between October 15 and March 15 and can only be installed during that time. All straw mulch included in this work must be either crimped in place or installed with a biodegradable Bonded Fiber Matrix. Crimped mulch is required to be anchored into the soil surface with a mechanical crimping implement or other suitable implement approved by the Engineer. The mulch included in this work must be capable of providing sufficient durable protective cover that provides OEPA NPDES Permit compliant erosion control for a minimum of 6 months. The use of other seed and/or mulch materials in this time period requires specific Department approval. The use of winter seeding and mulching is not an acceptable practice for protecting the subgrade surface.

F. Slope Protection. Place dikes, install slope drains, and construct ditches to divert water from bare non-vegetated areas and to protect cut and fill slopes. Protect the side slopes from erosion by placing dikes at the top of fill slopes prior to construction of the slope. Construct

ditches and dikes prior to construction of cut slopes to divert runoff away from the slope. Ensure that all sediment-laden discharges from slope protection are directed into an appropriate sediment control BMP.

Furnish Construction Slope Protection at the required locations as the slopes are constructed. Furnish all permanent slope protection as shown in the construction plans when final grade is complete.

G. Ditch Checks and Ditch Protection. Place filter fabric ditch checks or rock checks across a ditch and perpendicular to the flow. Use rock checks to protect the ditch from erosion. Use filter fabric ditch checks to filter sediment from the flowing water.

Place ditch checks as soon as the ditch is cut. If working on a ditch, replace the ditch checks by the end of the workday.

Install filter fabric ditch checks for drainage areas less than or equal to 2 acres (0.8 ha) as shown in the SCD. Install rock checks for drainage areas between 2 to 5 acres (0.8 to 2.0 ha) as shown in the SCD.

Install ditch checks in conjunction with Sediment Basins and Dams.

Furnish Construction Ditch Protection at the required locations as the ditches are cut. Furnish all permanent ditch protection as shown in the construction plans when final grade is complete.

H. Sediment Basins and Dams. Design and construct Sediment Basins and Dams in accordance with and as described in the OEPA NPDES Permit for “sediment settling ponds”. Design and construct Sediment Basins and Dams at concentrated and critical flow locations to settle out sediment before the water leaves the EDA area. When the limits of construction do not allow construction of large Sediment Basins and Dams, substitute a series of smaller basins and dams. Do not construct Sediment Basins and Dams in streams or waterways that carry Waters of the United States.

Complete the construction of the Sediment Basins and Dams before starting EDA operations.

When needed or when directed by the Engineer, construct construction fence around the Sediment Basins and Dams.

I. River, Stream, and Water Body Protection. Protect all streams or water bodies passing through or on the project using the appropriate BMP. River, Stream, and Water Body Protection may include diverting project water flow using dikes and slope protection. The DBT may use a combination of BMP.

J. Stream Relocation, Temporary Channels and Ditches that carry Waters of the United States. Perform this work in compliance with the OEPA NPDES Permit and any other applicable permits (i.e. 404/401 Permits). Stabilize Stream Relocation, Temporary Channels and Ditches

with Construction Slope Protection or 70 percent grass growth before diverting flow into the new channel.

K. Concrete washout areas BMP. Compensation for this BMP is incidental to the concrete work.

L. Construction Entrances. Furnish Construction Entrance materials conforming to C&MS 712.09 Type B Filter Blankets for Rock Channel Protection and C&MS 703.01, Size Number 1 and 2, CCS aggregate. Furnish Construction Entrance protection at the locations shown on the SWPPP and as required below:

1. At locations where construction vehicles enter or leave EDA areas.
2. At all points of egress to public roads.
3. At all access locations where runoff from the construction access road is not checked by sediment controls.

Include the appropriate size culvert as needed to prevent water from flowing onto paved surfaces and from overtopping the entrance road surface.

Install a maximum of three Construction Entrances per mile along the length of the project. The length of the project is the plan length along the project's longest axis. Department approval is required for additional construction entrances in excess of the maximum.

Locate and identify all Construction Entrances on the SWPPP.

Provide a configuration consisting of 6 inches of aggregate over geotextile fabric. Provide geometry according to a Type 1 Driveway as shown in the SCD. Provide a minimum 10 foot width and length measuring a minimum of 150 feet and not exceeding 200 feet from edge of pavement.

Construction Entrance removal includes the appropriate disposal of geotextile fabric and pipe. Aggregate may be incorporated into embankment work when approved by the Department.

M. Project fueling and refueling BMP locations. Compensation for this BMP is incidental to the project.

N. All other BMP that are required and not specifically referenced in Appendix F will not be paid as a separate item, but will be included by the DBT as part of the total project cost.

832.06 Causeways and Access Fills (Stream and River Crossings and Fills). Fording of streams and rivers is not allowed. Evaluate the 404/401 permits to determine whether or not causeway and access fills have been permitted by the USACE or OEPA. If a causeway and access fills have been permitted, construct fill(s) per the 404/401 permits, and the application submitted for those permits. Only the surface area (acreage) of temporary fill, and volume of temporary fill as permitted and contained in the permit application will be allowed. The surface area (acreage) of temporary fill, and volume of temporary fill may be furnished in the

construction plans. The construction plans may furnish additional information or restrictions for causeways or access fills. The project engineer will consult with the Office of Environmental Services (OES) for any technical questions regarding 404/401 permits.

If the Contractor DBT proposes a causeway and access fill(s) which has not been permitted through the 404/401 permit process, the DBT is required to coordinate the request for the causeway and access fill(s) with the project engineer and OES. The Department makes no guarantee to granting the request. The causeway and access fills request will be coordinated by OES with the USACE and OEPA where applicable.

Supply the project engineer/OES with the following information:

A. A plan and profile drawing showing the causeway and access fills with OHWM elevation (Refer to Section 13 of the Project Scope for information concerning OHWM).
B. Volume of temporary fill below the OHWM.
C. The surface area of temporary fill below the OHWM.
D. A restoration plan for the area affected by the causeway and access fills.
E. Time frames for placement and removal of the causeway and access fills.

The time frame allowed for the coordination of the causeway and access fill(s) will be 60 days, at a minimum, and the causeway and access fill(s) will not occur prior to the 404 Permit being authorized by the USACE. All coordination with the USACE and/or OEPA will be performed through OES.

832.07 Causeway and Access Fills Construction and Payment. Begin planning and installing causeways and access fills as early in construction as possible to avoid conflicts with 404/401 permits or other environmental commitments that have been included in the construction plans.

Access fills in streams or rivers may include, but are not limited to, cofferdams, access pads, temporary bridges, etc.

Make every attempt to minimize disturbance to water bodies during construction, maintenance and removal of the causeway and access fills. Construct the causeway and access fills as narrow as practical and perpendicular to the stream banks. Make the causeway and access fills in shallow areas rather than deep pools where possible. Minimize clearing, grubbing, and excavation of stream banks, bed, and approach sections. Construct the causeway and access fills as to not erode stream banks or allow sediment deposits in the channel.

Prior to the initiation of any in-stream work, establish a monument upstream of proposed temporary crossing or temporary construction access fill to visually monitor the water elevation in the waterway where the fill is permitted. Maintain the monument throughout the project. Provide a visual mark on the monument that identifies the elevation 1 foot above the Ordinary High Water Mark (OHWM).

Ensure that the monument can be read from the bank of the waterway. Have this elevation set and certified by an Ohio Registered Surveyor.

Temporary causeway and access fill placed by the contractor above the OHWM are not subject to the 404/401 permit constraints.

Should the water elevation of the waterway, exceed the elevation 1 foot above OHWM, the Department will compensate the DBT for repair of any resulting damage to the permitted temporary access fill up to the elevation of 1 foot above the OHWM. The Department will not pay for repair and maintenance of temporary access structures that are related to the construction access fill.

Should the water elevation of the waterway exceed the elevation shown on the monument, the Department will recognize this event as an excusable, non-compensable delay in accordance with Section 108.06 of the Construction & Materials Specifications.

All costs associated with furnishing and maintaining the above referenced monument is incidental to the work.

Construct the causeway and access fills to a water elevation at least 1 foot (0.3 m) above the OHWM. If the causeway fills more than one-third the width of the stream, then use culvert pipes to allow the movement of aquatic life. Maintain normal downstream flows. Ensure that any ponding of water behind the causeway and access fills will not damage property or threaten human health and safety.

The following minimum requirements apply to causeways where culverts are used.

A. Furnish culverts on the existing stream bottom.
B. Avoid a drop in water elevation at the downstream end of the culvert.
C. Furnish culverts with a diameter at least two times the depth of normal stream flow measured at the causeway centerline or with a minimum diameter of 18 inches (0.5 m) whichever is greater.
D. Furnish a sufficient number of culverts normal to the flow to completely cross the channel from stream bank to stream bank with no more than 10 feet (3 m) between each culvert.

For all fill and surface material placed in the channel, around the culverts, or on the surface of the causeway and access fills furnish clean, non-erodible, nontoxic dumped rock fill, Type B, C, or D, as specified in C&MS 703.19.B. Extend rock fill up the slope from original stream bank for 50 feet (10 m) to catch and remove erodible material from equipment.

When the work requiring the causeway and access fills all portions of the causeway (including all rock and culverts) and access fills will be removed in its entirety. The material will not be disposed in other waters of the US or isolated wetland. The stream bottom affected by the causeway and access fills will be restored to its pre-construction elevations. The causeway and

access fills will not be paid as a separate item but will be included by the Contractor as part of the total project cost.

All environmental protection and control associated with the 404/401 permit activities are incidental to the work within the boundaries of the 404/401 permit or as otherwise identified in the 404/401 permit application.

832.08 Maintenance. Properly maintain all BMP. Dispose of silt removed from BMP according to C&MS 105.16.

For all Perimeter Filter Fabric Fence, Filter Fabric Ditch Checks, Rock Checks, and Inlet Protection, Dikes, remove trapped sediment and any other debris which has accumulated when sediment reaches a height of one-half the BMP.

When the sediment fills the sediment storage zone (as described in the OEPA NPDES Permit) of a Sediment Basin or Dam, remove deposited sediment. Remove Sediment Basins and Dams after the contributing drainage area has been stabilized.

When erodible materials accumulate at the surface of the construction entrance, furnish additional stone as needed to prevent tracking. If tracking occurs, restore and clean the affected roadway surface at no additional cost to the Department.

Remove all BMP before the project is accepted. Dispose of the removed materials including sediment according to C&MS 105.16 and C&MS 105.17. Maintain the BMP until the up-slope permanent grass coverage is 70 percent or better and the site is permanently stabilized in accordance with the OEPA NPDES Permit (See Appendix E, Part VII, Q). At this stage, remove the BMP.

832.09 Storm Water Pollution Prevention Plan. Prepare the SWPPP as outlined in this specification. All activity identified by the SWPPP that is not specifically identified as a pay item elsewhere shall be included in the Lump Sum price bid for Erosion Control. At a minimum, the design and information requirements that must be included in the SWPPP are as follows:

A. Provide a site specific SWPPP designed and sealed by a Professional Engineer who is CPESC Trained.

B. Location of the required BMP for both on and off project EDA areas.

C. Furnish quantity totals for all BMP required for the execution of the proposed plan.

D. Location of a minimum of 100 feet (30 m) from the water's edge of any stream, ephemeral stream, wetland, or body of water:
    1. Concrete or asphalt plant areas
    2. Material and equipment staging or storage areas
    3. Dewatering Areas

4. Concrete truck wash out BMP areas
5. Construction access BMP locations
6. Vehicle fueling and refueling locations

E. Furnish an implementation schedule which describes the sequence of major construction operations (i.e., grubbing, excavating, grading, utilities and infrastructure installation) and the implementation of erosion, sediment and storm water management practices or facilities to be employed during each operation of the sequence.

G. Furnish the total EDA areas in acres and identify each drainage area (watershed) impacted by the proposed construction.

H. Locate all slopes that will be inactive for 21 calendar days or longer.

I. Furnish the names of the individuals on site who will serve as the CPESC Trained SWPPP designer and CECI.

J. Describe the type of construction activities that will be taking place.

K. Furnish signatures of all contractors and subcontractors involved in BMP practices (see Appendix B).

If there are plan sheets which meet any of the requirements in Appendix E, use that information. Design files may be furnished to the awarded DBT in electronic form upon request.

832.10 SWPPP Acceptance. Furnish the initial SWPPP to the Department for acceptance. The Department will allow work to begin upon receiving an acceptable SWPPP. See Appendix C for a sample acceptance form. The Department may assess critically the following:

A. The type and location of BMP with totals.

B. The SWPPP is for this project.

C. There is no language in the SWPPP about any BMP being directed for use by the Engineer.

E. The SWPPP accounts for the various phases of construction and the associated degree of earthwork disturbance over the life of the project.

F. The SWPPP delineates and identifies the individual watersheds contained within the plan. If topographic mapping contained in the plans is not sufficient to identify and delineate the watersheds associated with the work, provide the

appropriate mapping. The appropriate BMP are correctly sized and located in the SWPPP.

G. All perimeter filter fabric fence is identified in the SWPPP and supporting runoff calculations are attached.

H. The SWPPP identifies the locations and specific geometry of the required Sediment Basins and Dams and related control structures. Provide the following information for each Sediment Basin and Sediment Dam:
   1. Calculations demonstrating compliance with the 48 hour draw down time (if required by the OEPA NPDES Permit),
   2. Size of the contributing drainage area,
   3. Volume of the Sediment Storage Zone
   4. Volume of the Dewatering Zone (if required by the OEPA NPDES Permit),
   5. Basin excavation quantity or dam embankment quantity
   6. Quantity of rock channel protection
   7. Riser Pipe and outlet structure details (if required by the OEPA NPDES Permit).

Revise the accepted SWPPP as needed to maintain compliance with OEPA NPDES Permit. Revisions and amendments (See Appendix E, Part III, D) to the accepted SWPPP will be at no additional cost to the Department.

832.11 Inspections and SWPPP Updates. Perform the required OEPA NPDES Permit inspections and prepare inspection reports (see Appendix E).

The inspections must be performed by one of the following parties:

A. The CPESC Trained Engineer who signed and sealed the SWPPP.
B. The CPESC Trained inspector who is under the supervision of the Engineer who signed and sealed the SWPPP.
C. The CESSWI Trained inspector who is under the supervision of the Engineer who signed and sealed the SWPPP.

The individual performing the OEPA NPDES Permit inspections is called the Contractor's Erosion Control Inspector (CECI). Prepare the inspection reports for projects that have a SWPPP. Submit inspection reports to the Engineer every 7 days and within 24 hours of a 0.5 inch (13 mm) or greater rainfall event throughout the life of the contract.

Due to the dynamic nature of the construction activities, the reporting CECI will update, amend and revise the SWPPP as the contractor's operations and site conditions warrant. Identify all revisions and updates to the SWPPP and indicate what measures will be taken to maintain OEPA NPDES Permit compliance in the report. Include the following in the inspection report; the OEPA NPDES Permit inspection checklist (see appendix E, Part III.G.2.i), a map identifying all BMP needed, installed, maintained or removed since the last inspection report,

certification that all construction activities are compliant with the SWPPP and the signature of the CECI responsible for the inspection. The signature of the Professional Engineer who sealed the SWPPP is required as part of the inspection report, on a monthly basis or when modifications to the SWPPP design are made. Professional Engineer who sealed the SWPPP is required to address all comments and concerns raised by the department as part of the monthly inspection report. Include the certification requirements according to OEPA NPDES Permit Part V.H with all reporting sign offs.

A BMP Inventory form is furnished in Appendix A to assist in documenting and recording the BMP quantities for payment. The BMP inventory form in Appendix A is not a substitute for the inspection report described above.

The CECI is required to notify the Department within 24 hours of any compliance deficiencies or verified complaints related to the SWPPP or OEPA NPDES Permit. Within 48 hours of the Department's or CECI's notice of deficiency, the contractor is required to construct, install, repair or correct the BMP measures needed to resume OEPA NPDES Permit compliance.

832.12 Compensation. Temporary Sediment and Erosion Control includes all BMP work associated with furnishing, installing, replacing and maintaining BMP for the entire duration of the project regardless of the number of phases. Temporary Sediment and Erosion Control also includes all work associated with development, design, NPDES required inspection, modification, revision, updates, amendments and reporting related to the SWPPP. Changes made to the SWPPP, but not caused by the Department, are the financial responsibility of the Contractor. All costs associated with providing and maintaining the required CPESC and CESSWI Trained personnel, conducting the NPDES required inspections, and support engineering services are also included in Temporary Sediment and Erosion Control.

832.13 Basis of Payment

The Department will pay for any and all costs associated to meet the requirements of this specification under the appropriate work activities, as detailed in the Cost Loaded CPM Schedule.

Appendix A

Weekly and Rain Event Erosion Control
BMP Inventory

Contractor _____

Project No. _____ Co-Rt-Sec _____ Date _____

R=Replacement W=Working M=Maintenance I=Install D=Delete Rain Amt

Station to Station	Side	Offset	Balloon Ref.	Perimeter Control	Inlet Protection	Constr. Speed	Dikes Fill Slopes	Dikes Cut Slopes	Slope Drains	FF Ditch Checks	Rock Ditch Checks	Sediment Basins	Stream Relocate	Stream Crossing	Date work was Complete

Notes:

This form is furnished to assist in documenting and recording the BMP quantities for payment. This form is not a substitute for the inspection report described in 832.11.

Appendix B

SIGNATURE LIST

NPDES and Surface Water Pollution Prevention Plan

Contractors and Sub-contactors responsible for any Earth Disturbing Activity

Duty to inform contractors and subcontractors

(Ohio EPA Permit No.:OHC000003 Part III. E)

Signature	Printed Name	Title	Company	Date

Appendix C

Sample SWPPP Acceptance Form

The Department has received the SWPPP for Project: _____

Co-Rt-Sec: _____

The submittal is dated: _____

The Department Accepts the Submittal.

_____ _____

Project Engineer, Project Supervisor Date

Co-Permittee Notice of Intent for Coverage Under Ohio EPA Storm Water Construction General Permit

Submission of this NOI constitutes notice that the party identified in Section I of this form intends to be authorized by Ohio's NPDES general permit for storm water associated with construction activity. Becoming a permittee obligates a discharger to comply with the terms and conditions of the permit. NOTE: All necessary information must be provided on this form. Read the accompanying instructions *carefully* before completing the form. Do not use correction fluid on this form. Forms transmitted by fax will not accepted. There is no fee associated with submitting this form.

I. Applicant Information/Mailing Address

Company (Applicant) Name: _____

Mailing (Applicant) Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person: _____ Phone: _____ Fax: _____

Contact E-Mail Address: _____

II. Facility/Site Location Information

Existing Ohio EPA Facility Permit Number: __ GC __ __ __ __ __*__ G OR OHR1 __ __ __ __ __

Initial Permittee Name: _____ Phone: _____

Facility/Site Name: _____

City: _____ Township(s): _____

County(ies): _____ State: Ohio Zip Code: _____

Facility Contact Person: _____ Phone: _____ Fax: _____

Facility Contact E-Mail Address: _____

III. Certification

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

Applicant Name: _____ Title: _____

Applicant Signature: _____ Date: _____

EPA 4496 (Rev. 4/03) Click to clear all entered information CLEAR

Application form available at *http://www.epa.state.oh.us/dsw/storm/stormform.html*

Ohio EPA Permit No.: OHC000003

Effective Date: April 21, 2008
Expiration Date: April 20, 2013

OHIO ENVIRONMENTAL PROTECTION AGENCY

AUTHORIZATION FOR STORM WATER DISCHARGES ASSOCIATED WITH CONSTRUCTION ACTIVITY UNDER THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

In compliance with the provisions of the federal Water Pollution Control Act, as amended (33 U.S.C. Section 1251 et. seq. hereafter referred to as "the Act") and the Ohio Water Pollution Control Act [Ohio Revised Code ("ORC") Chapter 6111], dischargers of storm water from sites where construction activity is being conducted, as defined in Part I.B of this permit, are authorized by the Ohio Environmental Protection Agency, hereafter referred to as "Ohio EPA," to discharge from the outfalls at the sites and to the receiving surface waters of the State identified in their Notice of Intent ("NOI") application form on file with Ohio EPA in accordance with the conditions specified in Parts I through VII of this permit.

It has been determined that a lowering of water quality of various waters of the State associated with granting coverage under this permit is necessary to accommodate important social and economic development in the state of Ohio. In accordance with OAC 3745-1-05, this decision was reached only after examining a series of technical alternatives, reviewing social and economic issues related to the degradation, and considering all public and intergovernmental comments received concerning the proposal.

This permit is conditioned upon payment of applicable fees, submittal of a complete NOI application form and written approval of coverage from the director of Ohio EPA in accordance with Ohio Administrative Code ("OAC") Rule 3745-38-06.

Laura H. Powell

Laura H. Powell
Assistant Director

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: _____ Date: 4-21-08

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PART I. COVERAGE UNDER THIS PERMIT

A. Permit Area.

This permit covers the entire State of Ohio.

B. Eligibility.

1. Construction activities covered. Except for storm water discharges identified under Part I.B.2, this permit may cover all new and existing discharges composed entirely of storm water discharges associated with construction activity that enter surface waters of the State or a storm drain leading to surface waters of the State.

   For the purposes of this permit, construction activities include any clearing, grading, excavating, grubbing and/or filling activities that disturb one or more acres of land. Discharges from trench dewatering are also covered by this permit as long as the dewatering activity is carried out in accordance with the practices outlined in Part III.G.2.g.iv of this permit. The threshold acreage includes the entire area disturbed in the larger common plan of development or sale.

   This permit also authorizes storm water discharges from support activities (e.g., concrete or asphalt batch plants, equipment staging yards, material storage areas, excavated material disposal areas, borrow areas) provided:

   a. The support activity is directly related to a construction site that is required to have NPDES permit coverage for discharges of storm water associated with construction activity;

   b. The support activity is not a commercial operation serving multiple unrelated construction projects and does not operate beyond the completion of the construction activity at the site it supports;

   c. Appropriate controls and measures are identified in a storm water pollution prevention plan (SWP3) covering the discharges from the support activity; and

   d. The support activity is on or contiguous with the property defined in the NOI (off-site borrow pits and soil disposal areas, which serve only one project, do not have to be contiguous with the construction site);

Part I.B

2. Limitations on coverage. The following storm water discharges associated with construction activity are not covered by this permit:

   a. Storm water discharges that originate from the site after construction activities have been completed, including any temporary support activity, and the site has achieved final stabilization. Industrial post-construction storm water discharges may need to be covered by an NPDES permit;

   b. Storm water discharges associated with construction activity that the director has shown to be or may reasonably expect to be contributing to a violation of a water quality standard; and

   c. Storm water discharges authorized by an individual NPDES permit or an alternative NPDES general permit;

3. Waivers. After March 10, 2003, sites whose larger common plan of development or sale have at least one, but less than five acres of land disturbance, which would otherwise require permit coverage for storm water discharges associated with construction activities, may request that the director waive their permit requirement. Entities wishing to request such a waiver must certify in writing that the construction activity meets one of the two waiver conditions:

   a. **Rainfall erosivity waiver.** For a construction site to qualify for the rainfall erosivity waiver, the cumulative rainfall erosivity over the project duration must be five or less and the site must be stabilized with at least a 70 percent vegetative cover or other permanent, non-erosive cover. The rainfall erosivity must be calculated according to the method in U.S. EPA Fact Sheet 3.1 Construction Rainfall Erosivity Waiver dated January 2001. If it is determined that a construction activity will take place during a time period where the rainfall erosivity factor is less than five, a written waiver certification must be submitted to Ohio EPA at least 21 days before construction activity is scheduled to begin. If the construction activity will extend beyond the dates specified in the waiver certification, the operator must either: (a) recalculate the waiver using the original start date with the new ending date (if the R factor is still less than five, a new waiver certification must be submitted) or (b) submit an NOI application form and fee for coverage under this general permit at least seven days prior to the end of the waiver period (see Attachment A); or

Part I.B.3

b. **TMDL (Total Maximum Daily Load) waiver.** Storm water controls are not needed based on a TMDL approved or established by U.S. EPA that addresses the pollutant(s) of concern or, for non-impaired waters that do not require TMDLs, an equivalent analysis that determines allocations for small construction sites for the pollutant(s) of concern or that determines that such allocations are not needed to protect water quality based on consideration of existing in-stream concentrations, expected growth in pollutant contributions from all sources, and a margin of safety. The pollutant(s) of concern include sediment or a parameter that addresses sediment (such as total suspended solids, turbidity or siltation) and any other pollutant that has been identified as a cause of impairment of any water body that will receive a discharge from the construction activity. The operator must certify to the director of Ohio EPA that the construction activity will take place, and storm water discharges will occur, within the drainage area addressed by the TMDL or equivalent analysis. A written waiver certification must be submitted to Ohio EPA at least 21 days before the construction activity is scheduled to begin.

4. Prohibition on non-storm water discharges. All discharges covered by this permit must be composed entirely of storm water with the exception of the following: discharges from fire fighting activities; fire hydrant flushings; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown which does not use detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water from trench or well point dewatering and foundation or footing drains where flows are not contaminated with process materials such as solvents. Dewatering activities must be done in compliance with Part III.G.2.g.iv of this permit. Discharges of material other than storm water or the authorized non-storm water discharges listed above must comply with an individual NPDES permit or an alternative NPDES general permit issued for the discharge.

   Except for flows from fire fighting activities, sources of non-storm water listed above that are combined with storm water discharges associated with construction activity must be identified in the SWP3. The SWP3 must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Part I.B

5. Spills and unintended releases (Releases in excess of Reportable Quantities). This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302. In the event of a spill or other unintended release, the discharge of hazardous substances in the storm water discharge(s) from a construction site must be minimized in accordance with the applicable storm water pollution prevention plan for the construction activity and in no case, during any 24-hour period, may the discharge(s) contain a hazardous substance equal to or in excess of reportable quantities.

   40 CFR Part 117 sets forth a determination of the reportable quantity for each substance designated as hazardous in 40 CFR Part 116. The regulation applies to quantities of designated substances equal to or greater than the reportable quantities, when discharged to surface waters of the State. 40 CFR Part 302 designates under section 102(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, those substances in the statutes referred to in section 101(14), identifies reportable quantities for these substances and sets forth the notification requirements for releases of these substances. This regulation also sets forth reportable quantities for hazardous substances designated under section 311(b)(2)(A) of the Clean Water Act (CWA).

C. Requiring an individual NPDES permit or an alternative NPDES general permit.

1. The director may require an alternative permit. The director may require any operator eligible for this permit to apply for and obtain either an individual NPDES permit or coverage under an alternative NPDES general permit in accordance with OAC Rule 3745-38-04. Any interested person may petition the director to take action under this paragraph.

   The director will send written notification that an alternative NPDES permit is required. This notice shall include a brief statement of the reasons for this decision, an application form and a statement setting a deadline for the operator to file the application. If an operator fails to submit an application in a timely manner as required by the director under this paragraph, then coverage, if in effect, under this permit is automatically terminated at the end of the day specified for application submittal.

Part I.C

2. Operators may request an individual NPDES permit. Any owner or operator eligible for this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application with reasons supporting the request to the director in accordance with the requirements of 40 CFR 122.26. If the reasons adequately support the request, the director shall grant it by issuing an individual NPDES permit.

3. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit or the owner or operator is approved for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of approval for coverage under the alternative general permit, whichever the case may be.

D. Permit requirements when portions of a site are sold

If an operator obtains a permit for a development, and then the operator (permittee) sells off lots or parcels within that development, permit coverage must be continued on those lots until a Notice of Termination (NOT) in accordance with Part IV.B is submitted. For developments which require the use of centralized sediment and erosion controls (i.e., controls that address storm water runoff from one or more lots) for which the conveyance of permit coverage for a portion of the development will either prevent or impair the implementation of the controls and therefore jeopardize compliance with the terms and conditions of this permit, the permittee will be required to maintain responsibility for the implementation of those controls. For developments where this is not the case, it is the permittee's responsibility to temporarily stabilize all lots sold to individual lot owners unless an exception is approved in accordance with Part III.G.4. In cases where permit coverage for individual lot(s) will be conveyed, the permittee shall inform, in writing, the individual lot owner of the obligations under this permit and ensure that the Individual Lot NOI application is submitted to Ohio EPA.

E. Authorization

1. Obtaining authorization to discharge. Operators that discharge storm water associated with construction activity must submit an NOI application form in accordance with the requirements of Part II of this permit to obtain authorization to discharge under this general permit. As required under OAC Rule 3745-38-06(E), the director, in response to the NOI submission, shall notify the applicant in writing that he/she has been granted general permit coverage to discharge storm water associated with construction activity under the terms and conditions of this permit or that the applicant must apply for an individual NPDES permit or coverage under an alternate general NPDES permit as described in Part I.C.1.

Part I.E

2. No release from other requirements. No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations. Other permit requirements commonly associated with construction activities include, but are not limited to, section 401 water quality certifications, isolated wetland permits, permits to install sanitary sewers or other devices that discharge or convey polluted water, permits to install drinking water lines, single lot sanitary system permits and disturbance of land which was used to operate a solid or hazardous waste facility (i.e., coverage under this NPDES general permit does not satisfy the requirements of OAC Rule 3745-27-13 or ORC Section 3734.02(H)). This permit does not relieve the permittee of other responsibilities associated with construction activities such as contacting the Ohio Department of Natural Resources, Division of Water, to ensure proper well installation and abandonment of wells.

Part II. NOTICE OF INTENT REQUIREMENTS

A. Deadlines for notification.

Initial coverage: Operators who intend to obtain initial coverage for a storm water discharge associated with construction activity under this general permit must submit a complete and accurate NOI application form and appropriate fee at least 21 days prior to the commencement of construction activity. If more than one operator, as defined in Part VII of this general permit, will be engaged at a site, each operator shall seek coverage under this general permit. Where one operator has already submitted an NOI prior to other operator(s) being identified, the additional operator shall request modification of coverage to become a co-permittee. In such instances, the co-permittees shall be covered under the same facility permit number. No additional permit fee is required.

Individual lot transfer of coverage: Operators must each submit an individual lot notice of intent (Individual Lot NOI) application form (no fee required) to Ohio EPA at least seven days prior to the date that they intend to accept responsibility for permit requirements for their portion of the original permitted development from the previous permittee. The original permittee may submit an Individual Lot NOT at the time the Individual Lot NOI is submitted. Transfer of permit coverage is not granted until an approval letter from the director of Ohio EPA is received by the applicant.

B. Failure to notify.

Operators who fail to notify the director of their intent to be covered and who discharge pollutants to surface waters of the State without an NPDES permit are in violation of ORC Chapter 6111. In such instances, Ohio EPA may bring an enforcement action for any discharges of storm water associated with construction activity.

Part II

C. Where to submit an NOI.

Operators seeking coverage under this permit must submit a signed NOI form, provided by Ohio EPA, to the address found in the associated instructions.

D. Additional notification.

The permittee shall make NOIs and SWP3s available upon request of the director of Ohio EPA, local agencies approving sediment and erosion control plans, grading plans or storm water management plans, local governmental officials, or operators of municipal separate storm sewer systems (MS4s) receiving drainage from the permitted site. Each operator that discharges to an NPDES permitted MS4 shall provide a copy of its Ohio EPA NOI submission to the MS4 in accordance with the MS4's requirements, if applicable.

E. Renotification.

Upon renewal of this general permit, the permittee is required to notify the director of his intent to be covered by the general permit renewal. Permittees covered under the previous NPDES general permits for storm water discharges associated with construction activity (NPDES permit numbers OHR100000 and OHC000002) shall have continuing coverage under this permit. The permittees covered under OHR100000 or OHC000002 shall submit a letter within 90 days of receipt of written notification by Ohio EPA expressing their intent that coverage be continued. There is no fee associated with these letters of intent for continued coverage. Permit coverage will be terminated after the 90-day period if the letter is not received by Ohio EPA. Ohio EPA will provide instructions on the contents of the letter and where it is to be sent within the notification letter.

PART III. STORM WATER POLLUTION PREVENTION PLAN (SWP3)

A. Storm Water Pollution Prevention Plans.

A SWP3 shall be developed for each site covered by this permit. For a multi-phase construction project, a separate NOI shall be submitted when a separate SWP3 will be prepared for subsequent phases. SWP3s shall be prepared in accordance with sound engineering and/or conservation practices by a professional experienced in the design and implementation of standard erosion and sediment controls and storm water management practices addressing all phases of construction. The SWP3 shall identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges associated with construction activities. The SWP3 shall be a comprehensive, stand-alone document, which is not complete unless it contains the information required by Part III.G of this permit. In addition, the SWP3 shall describe and ensure the implementation of best management practices (BMPs) that reduce the pollutants in storm water discharges during construction and pollutants associated with post-construction activities to ensure compliance with ORC Section 6111.04, OAC Chapter 3745-1 and the terms and conditions of this permit.

B. Timing

A SWP3 shall be completed prior to the timely submittal of an NOI and updated in accordance with Part III.D. Upon request and good cause shown, the director may waive the requirement to have a SWP3 completed at the time of NOI submission. If a waiver has been granted, the SWP3 must be completed prior to the initiation of construction activities. The SWP3 must be implemented upon initiation of construction activities.

Permittees continuing coverage from the previous generations of this permit (OHR100000 and OHC000002) that have initiated construction activity prior to the receipt of the first written notification from Ohio EPA to submit a letter of intent to continue coverage, as required in Part II.E, are not required to update their SWP3 as a result of this renewal (OHC000003). Permittees continuing coverage from the previous generations of this permit (OHR100000 and OHC000002) that have not initiated construction activity prior to the receipt of the first written notification from Ohio EPA to submit a letter of intent to continue coverage, as required in Part II.E, are required to update their SWP3 as a result of this renewal (OHC000003).

C. SWP3 Signature and Review.

1. Plan Signature and Retention On Site. The SWP3 shall include the certification in Part V.H., be signed in accordance with Part V.G., and be retained on site during working hours.

Part III.C

2. Plan Availability

   a. On-site: The plan shall be made available immediately upon request of the director or his authorized representative during working hours. A copy of the NOI and letter granting permit coverage under this general permit also shall be made available at the site.

   b. By written request: The permittee must provide a copy of the SWP3 within 10 days upon written request by any of the following:

      i. The director or the director's authorized representative;

      ii. A local agency approving sediment and erosion plans, grading plans or storm water management plans; or

      iii. In the case of a storm water discharge associated with construction activity which discharges through a municipal separate storm sewer system with an NPDES permit, to the operator of the system.

   c. To the public: All NOIs, general permit approval for coverage letters, and SWP3s are considered reports that shall be available to the public in accordance with the Ohio Public Records law. The permittee shall make documents available to the public upon request or provide a copy at public expense, at cost, in a timely manner. However, the permittee may claim to Ohio EPA any portion of an SWP3 as confidential in accordance with Ohio law.

3. Plan Revision. The director or authorized representative, may notify the permittee at any time that the SWP3 does not meet one or more of the minimum requirements of this part. Within 10 days after such notification from the director (or as otherwise provided in the notification) or authorized representative, the permittee shall make the required changes to the SWP3 and, if requested, shall submit to Ohio EPA the revised SWP3 or a written certification that the requested changes have been made.

D. Amendments

The permittee shall amend the SWP3 whenever there is a change in design, construction, operation or maintenance, which has a significant effect on the potential for the discharge of pollutants to surface waters of the State or if the SWP3 proves to be ineffective in achieving the general objectives of controlling pollutants in storm water discharges associated with construction activity. Amendments to the SWP3 may be reviewed by Ohio EPA in the same manner as Part III.C.

Part III

E. Duty to inform contractors and subcontractors

The permittee shall inform all contractors and subcontractors not otherwise defined as "operators" in Part VII of this general permit, who will be involved in the implementation of the SWP3, of the terms and conditions of this general permit. The permittee shall maintain a written document containing the signatures of all contractors and subcontractors involved in the implementation of the SWP3 as proof acknowledging that they reviewed and understand the conditions and responsibilities of the SWP3. The written document shall be created and signatures of each individual contractor shall be obtained prior to their commencement of work on the construction site.

F. Total Maximum Daily Load (TMDL) allocations

If a TMDL is approved for any waterbody into which the permittee's site discharges and requires specific BMPs for construction sites, the director may require the permittee to revise his/her SWP3.

G. SWP3 Requirements

Operations that discharge storm water from construction activities are subject to the following requirements and the SWP3 shall include the following items:

1. Site description. Each SWP3 shall provide:

    a. A description of the nature and type of the construction activity (e.g., low density residential, shopping mall, highway, etc.);

    b. Total area of the site and the area of the site that is expected to be disturbed (i.e., grubbing, clearing, excavation, filling or grading, including off-site borrow areas);

    c. An estimate of the impervious area and percent imperviousness created by the construction activity;

    d. A calculation of the runoff coefficients for both the pre-construction and post construction site conditions;

    e. Existing data describing the soil and, if available, the quality of any discharge from the site;

    f. A description of prior land uses at the site;

Part III.G.1

g. An implementation schedule which describes the sequence of major construction operations (i.e., grubbing, excavating, grading, utilities and infrastructure installation) and the implementation of erosion, sediment and storm water management practices or facilities to be employed during each operation of the sequence;

h. The name and/or location of the immediate receiving stream or surface water(s) and the first subsequent named receiving water(s) and the areal extent and description of wetlands or other special aquatic sites at or near the site which will be disturbed or which will receive discharges from disturbed areas of the project. For discharges to an MS4, the point of discharge to the MS4 and the location where the MS4 ultimately discharges to a stream or surface water of the State must be indicated;

i. For subdivided developments where the SWP3 does not call for a centralized sediment control capable of controlling multiple individual lots, a detail drawing of a typical individual lot showing standard individual lot erosion and sediment control practices.

   This does not remove the responsibility to designate specific erosion and sediment control practices in the SWP3 for critical areas such as steep slopes, stream banks, drainage ways and riparian zones.

j. Location and description of any storm water discharges associated with dedicated asphalt and dedicated concrete plants covered by this permit and the best management practices to address pollutants in these storm water discharges;

k. A copy of the permit requirements (attaching a copy of this permit is acceptable);

l. A cover page or title identifying the name and location of the site, the name and contact information of all construction site operators, the name and contact information for the person responsible for authorizing and amending the SWP3, preparation date, and the estimated dates that construction will start and be complete;

m. A log documenting grading and stabilization activities as well as amendments to the SWP3, which occur after construction activities commence; and

n. Site map showing:

Part III.G.1.n

i. Limits of earth-disturbing activity of the site including associated off-site borrow or spoil areas that are not addressed by a separate NOI and associated SWP3;

ii. Soils types should be depicted for all areas of the site, including locations of unstable or highly erodible soils;

iii. Existing and proposed contours. A delineation of drainage watersheds expected during and after major grading activities as well as the size of each drainage watershed, in acres;

iv. Surface water locations including springs, wetlands, streams, lakes, water wells, etc., on or within 200 feet of the site, including the boundaries of wetlands or stream channels and first subsequent named receiving water(s) the permittee intends to fill or relocate for which the permittee is seeking approval from the Army Corps of Engineers and/or Ohio EPA;

v. Existing and planned locations of buildings, roads, parking facilities and utilities;

vi. The location of all erosion and sediment control practices, including the location of areas likely to require temporary stabilization during the course of site development;

vii. Sediment and storm water management basins noting their sediment settling volume and contributing drainage area;

viii. Permanent storm water management practices to be used to control pollutants in storm water after construction operations have been completed.

ix. Areas designated for the storage or disposal of solid, sanitary and toxic wastes, including dumpster areas, areas designated for cement truck washout, and vehicle fueling;

x. The location of designated construction entrances where the vehicles will access the construction site;

xi. The location of any in-stream activities including stream crossings;

Part III.G

2. Controls. The SWP3 must contain a description of the controls appropriate for each construction operation covered by this permit and the operator(s) must implement such controls. The SWP3 must clearly describe for each major construction activity identified in Part III.G.1.g: (a) appropriate control measures and the general timing (or sequence) during the construction process that the measures will be implemented; and (b) which contractor is responsible for implementation (e.g., contractor A will clear land and install perimeter controls and contractor B will maintain perimeter controls until final stabilization). The SWP3 shall identify the subcontactors engaged in activities that could impact storm water runoff. The SWP3 shall contain signatures from all of the identified subcontractors indicating that they have been informed and understand their roles and responsibilities in complying with the SWP3. Ohio EPA recommends that the primary site operator review the SWP3 with the primary contractor prior to commencement of construction activities and keep a SWP3 training log to demonstrate that this review has occurred.

   Ohio EPA recommends that the erosion, sediment, and storm water management practices used to satisfy the conditions of this permit should meet the standards and specifications in the current edition of Ohio's Rainwater and Land Development (see definitions) manual or other standards acceptable to Ohio EPA. The controls shall include the following minimum components:

   a. **Non-Structural Preservation Methods.** The SWP3 must make use of practices which preserve the existing natural condition as much as feasible. Such practices may include: preserving riparian areas adjacent to surface waters of the State, preserving existing vegetation and vegetative buffer strips, phasing of construction operations in order to minimize the amount of disturbed land at any one time and designation of tree preservation areas or other protective clearing or grubbing practices. The recommended buffer that operators should leave undisturbed along a surface water of the State is 25 feet as measured from the ordinary high water mark of the surface water.

   b. **Erosion Control Practices.** The SWP3 must make use of erosion controls that are capable of providing cover over disturbed soils unless an exception is approved in accordance with Part III.G.4. A description of control practices designed to restabilize disturbed areas after grading or construction shall be included in the SWP3. The SWP3 must provide specifications for stabilization of all disturbed areas of the site and provide guidance as to which method of stabilization will be employed for any time of the year. Such practices may include: temporary seeding, permanent seeding, mulching, matting, sod stabilization, vegetative buffer strips, phasing of construction operations, use of construction entrances and the use of alternative ground cover.

Part III.G.2.b

i. **Stabilization.** Disturbed areas must be stabilized as specified in the following tables below. Permanent and temporary stabilization are defined in Part VII.

Table 1: Permanent Stabilization

Area requiring permanent stabilization	Time frame to apply erosion controls
Any areas that will lie dormant for one year or more	Within seven days of the most recent disturbance
Any areas within 50 feet of a surface water of the State and at final grade	Within two days of reaching final grade
Any other areas at final grade	Within seven days of reaching final grade within that area

Table 2: Temporary Stabilization

Area requiring temporary stabilization	Time frame to apply erosion controls
Any disturbed areas within 50 feet of a surface water of the State and not at final grade	Within two days of the most recent disturbance if the area will remain idle for more than 21 days
For all construction activities, any disturbed areas that will be dormant for more than 21 days but less than one year, and not within 50 feet of a surface water of the State	Within seven days of the most recent disturbance within the area For residential subdivisions, disturbed areas must be stabilized at least seven days prior to transfer of permit coverage for the individual lot(s).
Disturbed areas that will be idle over winter	Prior to the onset of winter weather

Where vegetative stabilization techniques may cause structural instability or are otherwise unobtainable, alternative stabilization techniques must be employed.

ii. **Permanent stabilization of conveyance channels**. Operators shall undertake special measures to stabilize channels and outfalls and prevent erosive flows. Measures may include seeding, dormant seeding (as defined in the current edition of the Rainwater and Land Development manual), mulching, erosion control matting, sodding, riprap, natural channel design with bioengineering techniques or rock check dams.

Part III.G.2

c. **Runoff Control Practices.** The SWP3 shall incorporate measures which control the flow of runoff from disturbed areas so as to prevent erosion from occurring. Such practices may include rock check dams, pipe slope drains, diversions to direct flow away from exposed soils and protective grading practices. These practices shall divert runoff away from disturbed areas and steep slopes where practicable. Velocity dissipation devices shall be placed at discharge locations and along the length of any outfall channel to provide non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected.

d. **Sediment Control Practices.** The plan shall include a description of structural practices that shall store runoff allowing sediments to settle and/or divert flows away from exposed soils or otherwise limit runoff from exposed areas. Structural practices shall be used to control erosion and trap sediment from a site remaining disturbed for more than 14 days. Such practices may include, among others: sediment settling ponds, silt fences, earth diversion dikes or channels which direct runoff to a sediment settling pond and storm drain inlet protection. All sediment control practices must be capable of ponding runoff in order to be considered functional. Earth diversion dikes or channels alone are not considered a sediment control practice unless those are used in conjunction with a sediment settling pond.

The SWP3 must contain detail drawings for all structural practices.

i. Timing. Sediment control structures shall be functional throughout the course of earth disturbing activity. Sediment basins and perimeter sediment barriers shall be implemented prior to grading and within seven days from the start of grubbing. They shall continue to function until the up slope development area is restabilized. As construction progresses and the topography is altered, appropriate controls must be constructed or existing controls altered to address the changing drainage patterns.

ii. Sediment settling ponds. A sediment settling pond is required for any one of the following conditions:
- concentrated storm water runoff (e.g., storm sewer or ditch);
- runoff from drainage areas, which exceed the design capacity of silt fence or other sediment barriers;
- runoff from drainage areas that exceed the design capacity of inlet protection; or
- runoff from common drainage locations with 10 or more acres of disturbed land.

Part III.G.2.d.ii

The permittee may request approval from Ohio EPA to use alternative controls if the permittee can demonstrate the alternative controls are equivalent in effectiveness to a sediment settling pond.

The sediment settling pond volume consists of both a dewatering zone and a sediment storage zone. The volume of the dewatering zone shall be a minimum of 1800 cubic feet (ft^3) per acre of drainage (67 yd^3/acre) with a minimum 48-hour drain time for sediment basins serving a drainage area over 5 acres. The volume of the sediment storage zone shall be calculated by one of the following methods: Method 1: The volume of the sediment storage zone shall be 1000 ft^3 per disturbed acre within the watershed of the basin. OR Method 2: The volume of the sediment storage zone shall be the volume necessary to store the sediment as calculated with RUSLE or a similar generally accepted erosion prediction model. The accumulated sediment shall be removed from the sediment storage zone once it's full. When determining the total contributing drainage area, off-site areas and areas which remain undisturbed by construction activity must be included unless runoff from these areas is diverted away from the sediment settling pond and is not co-mingled with sediment-laden runoff. The depth of the dewatering zone must be less than or equal to five feet. The configuration between inlets and the outlet of the basin must provide at least two units of length for each one unit of width (> 2:1 length:width ratio), however, a length to width ratio of 4:1 is recommended. When designing sediment settling ponds, the permittee must consider public safety, especially as it relates to children, as a design factor for the sediment basin and alternative sediment controls must be used where site limitations would preclude a safe design. The use of a combination of sediment and erosion control measures in order to achieve maximum pollutant removal is encouraged.

iii. Silt Fence and Diversions. Sheet flow runoff from denuded areas shall be intercepted by silt fence or diversions to protect adjacent properties and water resources from sediment transported via sheet flow. Where intended to provide sediment control, silt fence shall be placed on a level contour downslope of the disturbed area. This permit does not preclude the use of other sediment barriers designed to control sheet flow runoff. The relationship between the maximum drainage area to silt fence for a particular slope range is shown in the table below.

Part III.G.2.d.iii

Maximum drainage area (in acres) to 100 linear feet of silt fence	Range of slope for a particular drainage area (in percent)
0.5	< 2%
0.25	≥ 2% but < 20%
0.125	≥ 20% but < 50%

Placing silt fence in a parallel series does not extend the size of the drainage area. Storm water diversion practices shall be used to keep runoff away from disturbed areas and steep slopes where practicable. Such devices, which include swales, dikes or berms, may receive storm water runoff from areas up to 10 acres.

iv. Inlet Protection. Other erosion and sediment control practices shall minimize sediment laden water entering active storm drain systems, unless the storm drain system drains to a sediment settling pond. All inlets receiving runoff from drainage areas of one or more acres will require a sediment settling pond.

v. Surface Waters of the State Protection. If construction activities disturb areas adjacent to surface waters of the State, structural practices shall be designed and implemented on site to protect all adjacent surface waters of the State from the impacts of sediment runoff. No structural sediment controls (e.g., the installation of silt fence or a sediment settling pond) shall be used in a surface water of the State. For all construction activities immediately adjacent to surface waters of the State, it is recommended that a setback of at least 25-feet, as measured from the ordinary high water mark of the surface water, be maintained in its natural state as a permanent buffer. Where impacts within this setback area are unavoidable due to the nature of the construction activity (e.g., stream crossings for roads or utilities), the project shall be designed such that the number of stream crossings and the width of the disturbance within the setback area are minimized.

vi. Modifying Controls. If periodic inspections or other information indicates a control has been used inappropriately or incorrectly, the permittee must replace or modify the control for site conditions.

Part III.G.2

e. **Post-Construction Storm Water Management Requirements.** So that the receiving stream's physical, chemical, and biological characteristics are protected and stream functions are maintained, post-construction storm water practices shall provide perpetual management of runoff quality and quantity. To meet the post-construction requirements of this permit, the SWP3 must contain a description of the post-construction BMPs that will be installed during construction for the site and the rationale for their selection. The rationale must address the anticipated impacts on the channel and floodplain morphology, hydrology, and water quality. Post-construction BMPs cannot be installed within a surface water of the State (e.g., wetland or stream) unless it's authorized by a CWA 401 water quality certification, CWA 404 permit, or Ohio EPA non-jurisdictional wetland/stream program approval. Note: localities may have more stringent post-construction requirements.

Detail drawings and maintenance plans must be provided for all post-construction BMPs. Maintenance plans shall be provided by the permittee to the post-construction operator of the site (including homeowner associations) upon completion of construction activities (prior to termination of permit coverage). For sites located within a community with a regulated municipal separate storm sewer system (MS4), the permittee, land owner, or other entity with legal control of the property may be required to develop and implement a maintenance plan to comply with the requirements of the MS4. Maintenance plans must ensure that pollutants collected within structural post-construction practices, be disposed of in accordance with local, state, and federal regulations. To ensure that storm water management systems function as they were designed and constructed, the post construction operation and maintenance plan must be a stand-alone document, which contains: (1) a designated entity for storm water inspection and maintenance responsibilities; (2) the routine and non-routine maintenance tasks to be undertaken; (3) a schedule for inspection and maintenance; (4) any necessary legally binding maintenance easements and agreements; and (5) a map showing all access and maintenance easements. Permittees are not responsible under this permit for operation and maintenance of post-construction practices once coverage under this permit is terminated.

Post-construction storm water BMPs that discharge pollutants from point sources once construction is completed, may in themselves, need authorization under a separate NPDES permit (one example is storm water discharges from regulated industrial sites).

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Construction activities that do not include the installation of any impervious surface (e.g., soccer fields), abandoned mine land reclamation activities regulated by the Ohio Department of Natural Resources, stream and wetland restoration activities, and wetland mitigation activities are not required to comply with the conditions of Part III.G.2.e of this permit. Linear construction projects, (e.g., pipeline or utility line installation), which do not result in the installation of additional impervious surface, are not required to comply with the conditions of Part III.G.2.e of this permit. However, linear construction projects must be designed to minimize the number of stream crossings and the width of disturbance and achieve final stabilization of the disturbed area as defined in Part VII.H.1.

Large Construction Activities. For all large construction activities (involving the disturbance of five or more acres of land or will disturb less than five acres, but is a part of a larger common plan of development or sale which will disturb five or more acres of land), the post construction BMP(s) chosen must be able to detain storm water runoff for protection of the stream channels, stream erosion control, and improved water quality. The BMP(s) chosen must be compatible with site and soil conditions. Structural (designed) post-construction storm water treatment practices shall be incorporated into the permanent drainage system for the site. The BMP(s) chosen must be sized to treat the water quality volume (WQv) and ensure compliance with Ohio's Water Quality Standards in OAC Chapter 3745-1. The WQv shall be equivalent to the volume of runoff from a 0.75-inch rainfall and shall be determined according to the following equation:

$WQv = C * P * A / 12$
where:
WQv = water quality volume in acre-feet
C = runoff coefficient appropriate for storms less than 1 inch
(Either use the following formula: $C = 0.858i^3 - 0.78i^2 + 0.774i + 0.04$, where i = fraction of post-construction impervious surface or use Table 1)
P = 0.75 inch precipitation depth
A = area draining into the BMP in acres

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Table 1
Runoff Coefficients Based on the Type of Land Use

Land Use	Runoff Coefficient
Industrial & Commercial	0.8
High Density Residential (>8 dwellings/acre)	0.5
Medium Density Residential (4 to 8 dwellings/acre)	0.4
Low Density Residential (<4 dwellings/acre)	0.3
Open Space and Recreational Areas	0.2

Where the land use will be mixed, the runoff coefficient should be calculated using a weighted average. For example, if 60% of the contributing drainage area to the storm water treatment structure is Low Density Residential, 30% is High Density Residential, and 10% is Open Space, the runoff coefficient is calculated as follows (0.6)(0.3) + (0.3)(0.5) + (0.1)(0.2) = 0.35.

An additional volume equal to 20 percent of the WQv shall be incorporated into the BMP for sediment storage. Ohio EPA recommends that BMPs be designed according to the methodology included in the Rainwater and Land Development manual or in another design manual acceptable for use by Ohio EPA.

The BMPs listed in Table 2 below shall be considered standard BMPs approved for general use. However communities with a regulated MS4 may limit the use of some of these BMPs. BMPs shall be designed such that the drain time is long enough to provide treatment, but short enough to provide storage for successive rainfall events and avoid the creation of nuisance conditions. The outlet structure for the post-construction BMP must not discharge more than the first half of the WQv or extended detention volume (EDv) in less than one-third of the drain time. The EDv is the volume of storm water runoff that must be detained by a structural post-construction BMP. The EDv is equal to 75 percent of the WQv for wet extended detention basins, but is equal to the WQv for all other BMPs listed in Table 2.

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Table 2
Structural Post-Construction BMPs & Associated Drain (Drawdown) Times

Best Management Practice	Drain Time of WQv
Infiltration Basin^	24 - 48 hours
Enhanced Water Quality Swale	24 hours
Dry Extended Detention Basin*	48 hours
Wet Extended Detention Basin**	24 hours
Constructed Wetland (above permanent pool)+	24 hours
Sand & Other Media Filtration	40 hours
Bioretention Cell^	40 hours
Pocket Wetland#	24 hours
Vegetated Filter Strip	24 hours

* Dry basins must include forebay and micropool each sized at 10% of the WQv
** Provide both a permanent pool and an EDv above the permanent pool, each sized at 0.75 * WQv
+ Extended detention shall be provided for the full WQv above the permanent water pool.
^ The WQv shall completely infiltrate within 48 hours so there is no standing or residual water in the BMP.
# Pocket wetlands must have a wet pool equal to the WQv, with 25% of the WQv in a pool and 75% in marshes. The EDv above the permanent pool must be equal to the WQv.

The permittee may request approval from Ohio EPA to use alternative post-construction BMPs if the permittee can demonstrate that the alternative BMPs are equivalent in effectiveness to those listed in Table 2 above. Construction activities shall be exempt from this condition if it can be demonstrated that the WQv is provided within an existing structural post-construction BMP that is part of a larger common plan of development or if structural post-construction BMPs are addressed in a regional or local storm water management plan. A municipally operated regional storm water BMP can be used as a post-construction BMP provided that the BMP can detain the WQv from its entire drainage area and release it over a 24 hour period.

Transportation Projects The construction of new roads and roadway improvement projects by public entities (i.e., the state, counties, townships, cities, or villages) may implement post-construction BMPs in compliance with the current version (as of the effective date of this permit) of the Ohio Department of Transportation's "Location and Design Manual, Volume Two Drainage Design" that has been accepted by Ohio EPA as an alternative to the conditions of this permit.

Part III.G.2.e

Offsite Mitigation of Post-Construction Ohio EPA may authorize the offsite mitigation of the post-construction requirements of Part III.G.2.e of this permit on a case by case basis provided the permittee clearly demonstrates the BMPs listed in Table 2 are not feasible and the following criteria is met: (1) a maintenance agreement or policy is established to ensure operations and treatment in perpetuity; (2) the offsite location discharges to the same HUC-14 watershed unit; and (3) the mitigation ratio of the WQv is 1.5 to 1 or the WQv at the point of retrofit, whichever is greater. Requests for offsite mitigation must be received prior to receipt of the NOI applications.

Redevelopment Projects Sites that have been previously developed where no post-construction BMPs were installed shall either ensure a 20 percent net reduction of the site impervious area, provide for treatment of at least 20 percent of the WQ_v, or a combination of the two. A one-for-one credit towards the 20 percent net reduction of impervious area can be obtained through the use of pervious pavement and/or green roofs. Where projects are a combination of new development and redevelopment, the total WQv that must be treated shall be calculated by a weighted average based on acreage, with the new development at 100 percent WQv and redevelopment at 20 percent WQv.

Non-Structural Post-Construction BMPs The size of the structural post-construction can be reduced by incorporating non-structural post-construction BMPs into the design. Practices such as preserving open space will reduce the runoff coefficient and, thus, the WQv. Ohio EPA encourages the implementation of riparian and wetland setbacks. Practices which reduce storm water runoff include permeable pavements, green roofs, rain barrels, conservation development, smart growth, low-impact development, and other site design techniques contained in the Ohio Lake Commission's Balanced Growth Program (see http://www.epa.state.oh.us/oleo/bg1/index.html). In order to promote the implementation of such practices, the Director may consider the use of non-structural practices to demonstrate compliance with Part III.G.2.e of this permit for areas of the site not draining into a common drainage system of the site, i.e., sheet flow from perimeter areas such as the rear yards of residential lots, for low density development scenarios, or where the permittee can demonstrate that the intent of pollutant removal and stream protection, as required in Part III.G.2.e of this permit is being addressed through non-structural post-construction BMPs based upon review and approval by Ohio EPA.

Part III.G.2.e

Use of Alternative Post-Construction BMPs This permit does not preclude the use of innovative or experimental post-construction storm water management technologies. However, the Director may require these practices to be tested using the protocol outlined in the Technology Acceptance Reciprocity Partnership's (TARP) Protocol for Stormwater Best Management Practice Demonstrations (see http://www.dep.state.pa.us/dep/deputate/pollprev/techservices/tarp).

The Director may require discharges from such structures to be monitored to ensure compliance with Part III.G.2.e of this permit. Permittees must request approval from Ohio EPA to use alternative post-construction BMPs if the permittee can demonstrate that the alternative BMPs are equivalent in effectiveness to those listed in Table 2 above. To demonstrate this equivalency, the permittee must show that the alternative BMP has a minimum total suspended solids (TSS) removal efficiency of 80 percent. Also, the WQv discharge rate from the practice must be reduced to prevent stream bed erosion and protect the physical and biological stream integrity unless there will be negligible hydrological impact to the receiving surface water of the State. The discharges will have a negligible impact if the permittee can demonstrate that one of the following four conditions exist:

i. The entire WQv is recharged to groundwater;

ii. The larger common plan of development or sale will create less than one acre of impervious surface;

iii. The project is a redevelopment project within an ultra-urban setting (i.e., a downtown area or on a site where 100 percent of the project area is already impervious surface and the storm water discharge is directed into an existing storm sewer system); or

iv. The storm water drainage system of the development discharges directly into a large river (fourth order or greater) or to a lake and where the development area is less than 5 percent of the watershed area upstream of the development site, unless a TMDL identified water quality problems in the receiving surface waters of the State.

Part III.G.2.e

The Director shall only consider the use of alternative BMPs on projects where the permittee can demonstrate that the implementation of the BMPs listed in Table 2 is infeasible due to physical site constraints that prevent the ability to provide functional BMP design. Alternative practices may include, but are not limited to, underground detention structures, vegetated swales and vegetated filter strips designed using water quality flow, natural depressions, rain barrels, permeable pavements green roofs, rain gardens, catch basin inserts, and hydrodynamics separators. The Director may also consider non-structural post-construction approaches where no local requirement for such practices exist.

Small Construction Activities. For all small land disturbance activities (which disturb one or more, but less than five acres of land and is not a part of a larger common plan of development or sale which will disturb five or more acres of land), a description of measures that will be installed during the construction process to control pollutants in storm water discharges that will occur after construction operations have been completed must be included in the SWP3. Structural measures should be placed on upland soils to the degree attainable. Such practices may include, but are not limited to: storm water detention structures (including wet basins); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). The SWP3 shall include an explanation of the technical basis used to select the practices to control pollution where flows exceed pre-development levels.

f. **Surface Water Protection.** If the project site contains any streams, rivers, lakes, wetlands or other surface waters, certain construction activities at the site may be regulated under the CWA and/or state non-jurisdictional stream and wetland requirements. Sections 404 and 401 of the Act regulate the discharge of dredged or fill material into surface waters and the impacts of such activities on water quality, respectively. Construction activities in surface waters which may be subject to CWA regulation and/or state requirements include, but are not limited to: sewer line crossings, grading, backfilling or culverting streams, filling wetlands, road and utility line construction, bridge installation and installation of flow control structures. If the project contains streams, rivers, lakes or wetlands or possible wetlands, the permittee must contact the appropriate U.S. Army Corps of Engineers District Office. (CAUTION: Any area of seasonally wet hydric soil is a potential wetland - please consult the Soil Survey and list of hydric soils for your County, available at your county's Soil and Water Conservation District. If you have any questions about Section 401 water quality certification, please contact the Ohio Environmental Protection Agency, Section 401 Coordinator.)

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U.S. Army Corps of Engineers (Section 404 regulation):
Huntington, WV District (304) 399-5210 (Muskingum River, Hocking River, Scioto River, Little Miami River, and Great Miami River Basins)
Buffalo, NY District (716) 879-4191 (Lake Erie Basin)
Pittsburgh, PA District (412) 395-7154 (Mahoning River Basin)
Louisville, KY District (502) 315-6733 (Ohio River)

Ohio EPA 401/404 and non-jurisdictional stream/wetland coordinator can be contacted at (614) 644-2001 (all of Ohio)

Concentrated storm water runoff from BMPs to natural wetlands shall be converted to diffuse flow before the runoff enters the wetlands. The flow should be released such that no erosion occurs downslope. Level spreaders may need to be placed in series, particularly on steep sloped sites, to ensure non-erosive velocities. Other structural BMPs may be used between storm water features and natural wetlands, in order to protect the natural hydrology, hydroperiod, and wetland flora. If the applicant proposes to discharge to natural wetlands, a hydrologic analysis shall be performed. The applicant shall attempt to match the pre-development hydroperiods and hydrodynamics that support the wetland. The applicant shall assess whether their construction activity will adversely impact the hydrologic flora and fauna of the wetland. Practices such as vegetative buffers, infiltration basins, conservation of forest cover, and the preservation of intermittent streams, depressions, and drainage corridors may be used to maintain wetland hydrology.

g. **Other controls.** The SWP3 must also provide BMPs for pollutant sources other than sediment. Non-sediment pollutant sources, which may be present on a construction site, include paving operations, concrete washout, structure painting, structure cleaning, demolition debris disposal, drilling and blasting operations, material storage, slag, solid waste, hazardous waste, contaminated soils, sanitary and septic wastes, vehicle fueling and maintenance activities, and landscaping operations.

   i. **Non-Sediment Pollutant Controls.** No solid or liquid waste, including building materials, shall be discharged in storm water runoff. The permittee must implement all necessary BMPs to prevent the discharge of non-sediment pollutants to the drainage system of the site or surface waters of the State. Under no circumstance shall concrete trucks wash out directly into a drainage channel, storm sewer or surface waters of the State. No exposure of storm water to waste materials is recommended.

   ii. **Off-site traffic.** Off-site vehicle tracking of sediments and dust generation shall be minimized.

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iii. **Compliance with other requirements.** The SWP3 shall be consistent with applicable State and/or local waste disposal, sanitary sewer or septic system regulations, including provisions prohibiting waste disposal by open burning and shall provide for the proper disposal of contaminated soils to the extent these are located within the permitted area.

iv. **Trench and ground water control**. There shall be no turbid discharges to surface waters of the State resulting from dewatering activities. If trench or ground water contains sediment, it must pass through a sediment settling pond or other equally effective sediment control device, prior to being discharged from the construction site. Alternatively, sediment may be removed by settling in place or by dewatering into a sump pit, filter bag or comparable practice. Ground water dewatering which does not contain sediment or other pollutants is not required to be treated prior to discharge. However, care must be taken when discharging ground water to ensure that it does not become pollutant-laden by traversing over disturbed soils or other pollutant sources.

v. **Contaminated Sediment.** Where construction activities are to occur on sites with contamination from previous activities, operators must be aware that concentrations of materials that meet other criteria (is not considered a Hazardous Waste, meeting VAP standards, etc.) may still result in storm water discharges in excess of Ohio Water Quality Standards. Such discharges are not authorized by this permit. Appropriate BMPs include, but are not limited to:
   - The use of berms, trenches, and pits to collect contaminated runoff and prevent discharges;
   - Pumping runoff into a sanitary sewer (with prior approval of the sanitary sewer operator) or into a container for transport to an appropriate treatment/disposal facility; and
   - Covering areas of contamination with tarps or other methods that prevent storm water from coming into contact with the material.

   Operators should consult with Ohio EPA Division of Surface Water prior to seeking permit coverage.

h. **Maintenance.** All temporary and permanent control practices shall be maintained and repaired as needed to ensure continued performance of their intended function. All sediment control practices must be maintained in a functional condition until all up slope areas they control are permanently stabilized. The SWP3 shall be designed to minimize maintenance requirements. The applicant shall provide a description of maintenance procedures needed to ensure the continued performance of control practices.

Part III.G.2

i. **Inspections.** At a minimum, procedures in an SWP3 shall provide that all controls on the site are inspected at least once every seven calendar days and within 24 hours after any storm event greater than one-half inch of rain per 24 hour period. The inspection frequency may be reduced to at least once every month if the entire site is temporarily stabilized or runoff is unlikely due to weather conditions (e.g., site is covered with snow, ice, or the ground is frozen). A waiver of inspection requirements is available until one month before thawing conditions are expected to result in a discharge if all of the following conditions are met: the project is located in an area where frozen conditions are anticipated to continue for extended periods of time (i.e., more than one month); land disturbance activities have been suspended; and the beginning and ending dates of the waiver period are documented in the SWP3. Once a definable area has been finally stabilized, you may mark this on your SWP3 and no further inspection requirements apply to that portion of the site. The permittee shall assign "qualified inspection personnel" to conduct these inspections to ensure that the control practices are functional and to evaluate whether the SWP3 is adequate and properly implemented in accordance with the schedule proposed in Part III.G.1.g of this permit or whether additional control measures are required.

Following each inspection, a checklist must be completed and signed by the qualified inspection personnel representative. At a minimum, the inspection report must include:

i. the inspection date;
ii. names, titles, and qualifications of personnel making the inspection;
iii. weather information for the period since the last inspection (or since commencement of construction activity if the first inspection) including a best estimate of the beginning of each storm event, duration of each storm event, approximate amount of rainfall for each storm event (in inches), and whether any discharges occurred;
iv. weather information and a description of any discharges occurring at the time of the inspection;
v. location(s) of discharges of sediment or other pollutants from the site;
vi. location(s) of BMPs that need to be maintained;
vii. location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location;
viii. location(s) where additional BMPs are needed that did not exist at the time of inspection; and
ix. corrective action required including any changes to the SWP3 necessary and implementation dates.

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Disturbed areas and areas used for storage of materials that are exposed to precipitation shall be inspected for evidence of or the potential for pollutants entering the drainage system. Erosion and sediment control measures identified in the SWP3 shall be observed to ensure that those are operating correctly. Discharge locations shall be inspected to ascertain whether erosion and sediment control measures are effective in preventing significant impacts to the receiving waters. Locations where vehicles enter or exit the site shall be inspected for evidence of off-site vehicle tracking.

The permittee shall maintain for three years following the submittal of a notice of termination form, a record summarizing the results of the inspection, names(s) and qualifications of personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the SWP3 and a certification as to whether the facility is in compliance with the SWP3 and the permit and identify any incidents of non-compliance. The record and certification shall be signed in accordance with Part V.G. of this permit.

i. **When practices require repair or maintenance.** If the inspection reveals that a control practice is in need of repair or maintenance, with the exception of a sediment settling pond, it must be repaired or maintained within three days of the inspection. Sediment settling ponds must be repaired or maintained within 10 days of the inspection.

ii. **When practices fail to provide their intended function.** If the inspection reveals that a control practice fails to perform its intended function and that another, more appropriate control practice is required, the SWP3 must be amended and the new control practice must be installed within 10 days of the inspection.

iii. **When practices depicted on the SWP3 are not installed.** If the inspection reveals that a control practice has not been implemented in accordance with the schedule contained in Part III.G.1.g of this permit, the control practice must be implemented within 10 days from the date of the inspection. If the inspection reveals that the planned control practice is not needed, the record must contain a statement of explanation as to why the control practice is not needed.

Part III.G

3. **Approved State or local plans.** All dischargers regulated under this general permit must comply, except those exempted under state law, with the lawful requirements of municipalities, counties and other local agencies regarding discharges of storm water from construction activities. All erosion and sediment control plans and storm water management plans approved by local officials shall be retained with the SWP3 prepared in accordance with this permit. Applicable requirements for erosion and sediment control and storm water management approved by local officials are, upon submittal of a NOI form, incorporated by reference and enforceable under this permit even if they are not specifically included in an SWP3 required under this permit. When the project is located within the jurisdiction of a regulated municipal separate storm sewer system (MS4), the permittee must certify that the SWP3 complies with the requirements of the storm water management program of the MS4 operator.

4. **Exceptions.** If specific site conditions prohibit the implementation of any of the erosion and sediment control practices contained in this permit or site specific conditions are such that implementation of any erosion and sediment control practices contained in this permit will result in no environmental benefit, then the permittee shall provide justification for rejecting each practice based on site conditions. Exceptions from implementing the erosion and sediment control standards contained in this permit will be approved or denied on a case-by-case basis.

   The permittee may request approval from Ohio EPA to use alternative methods to satisfy conditions in this permit if the permittee can demonstrate that the alternative methods are sufficient to protect the overall integrity of receiving streams and the watershed. Alternative methods will be approved or denied on a case-by-case basis.

PART IV. NOTICE OF TERMINATION REQUIREMENTS

A. Failure to notify.

The terms and conditions of this permit shall remain in effect until a signed Notice of Termination (NOT) form is submitted. Failure to submit an NOT constitutes a violation of this permit and may affect the ability of the permittee to obtain general permit coverage in the future.

B. When to submit an NOT

1. Permittees wishing to terminate coverage under this permit must submit an NOT form in accordance with Part V.G. of this permit. Compliance with this permit is required until an NOT form is submitted. The permittee's authorization to discharge under this permit terminates at midnight of the day the NOT form is

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submitted. Prior to submitting the NOT form, the permittee shall conduct a site inspection in accordance with Part III.G.2.i of this permit and have a maintenance agreement is in place to ensure all post-construction BMPs will be maintained in perpetuity.

2. All permittees must submit an NOT form within 45 days of completing all permitted land disturbance activities. Enforcement actions may be taken if a permittee submits an NOT form without meeting one or more of the following conditions:

   a. Final stabilization (see definition in Part VII) has been achieved on all portions of the site for which the permittee is responsible (including, if applicable, returning agricultural land to its pre-construction agricultural use);

   b. Another operator(s) has assumed control over all areas of the site that have not been finally stabilized;

   c. For residential construction only, temporary stabilization has been completed and the lot, which includes a home, has been transferred to the homeowner. (Note: individual lots without housing which are sold by the developer must undergo final stabilization prior to termination of permit coverage.); or

   d. An exception has been granted under Part III.G.4.

C. How to submit an NOT

Permittees must use Ohio EPA's approved NOT form. The form must be completed and mailed according to the instructions and signed in accordance with Part V.G of this permit.

PART V. STANDARD PERMIT CONDITIONS.

A. Duty to comply.

1. The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of ORC Chapter 6111. and is grounds for enforcement action.

2. Ohio law imposes penalties and fines for persons who knowingly make false statements or knowingly swear or affirm the truth of a false statement previously made.

B. Continuation of an expired general permit.

An expired general permit continues in force and effect until a new general permit is issued.

Part V

C. Need to halt or reduce activity not a defense.

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to mitigate.

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to provide information.

The permittee shall furnish to the director, within 10 days of written request, any information which the director may request to determine compliance with this permit. The permittee shall also furnish to the director upon request copies of records required to be kept by this permit.

F. Other information.

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI, SWP3, NOT or in any other report to the director, he or she shall promptly submit such facts or information.

G. Signatory requirements.

All NOIs, NOTs, SWP3s, reports, certifications or information either submitted to the director or that this permit requires to be maintained by the permittee, shall be signed.

1. These items shall be signed as follows:

    a. For a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means:

        i. A president, secretary, treasurer or vice-president of the corporation in charge of a principal business function or any other person who performs similar policy or decision-making functions for the corporation; or

Part V.G.1.a

ii. The manager of one or more manufacturing, production or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations and initiating and directing other comprehensive measures to assure long-term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

c. For a municipality, State, Federal or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of U.S. EPA).

2. All reports required by the permits and other information requested by the director shall be signed by a person described in Part V.G.1 of this permit or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described in Part V.G.1 of this permit and submitted to the director;

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator of a well or well field, superintendent, position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

c. The written authorization is submitted to the director.

Part V.G

3. Changes to authorization. If an authorization under Part V.G.2 of this permit is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of Part V.G.2 of this permit must be submitted to the director prior to or together with any reports, information or applications to be signed by an authorized representative.

H. Certification.

Any person signing documents under this section shall make the following certification:

> *"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."*

I. Oil and hazardous substance liability.

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities or penalties to which the permittee is or may be subject under section 311 of the CWA or 40 CFR Part 112. 40 CFR Part 112 establishes procedures, methods and equipment and other requirements for equipment to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable surface waters of the State or adjoining shorelines.

J. Property rights.

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

K. Severability.

The provisions of this permit are severable and if any provision of this permit or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances and the remainder of this permit shall not be affected thereby.

Part V

L. Transfers.

Ohio NPDES general permit coverage is transferable. Ohio EPA must be notified in writing sixty days prior to any proposed transfer of coverage under an Ohio NPDES general permit. The transferee must inform Ohio EPA it will assume the responsibilities of the original permittee transferor.

M. Environmental laws.

No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

N. Proper operation and maintenance.

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of SWP3s. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

O. Inspection and entry.

The permittee shall allow the director or an authorized representative of Ohio EPA, upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;
2. Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and
3. Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

PART VI. REOPENER CLAUSE

A. If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with construction activity covered by this permit, the permittee of such discharge may be required to obtain coverage under an individual permit or an alternative general permit in accordance with Part I.C of this permit or the permit may be modified to include different limitations and/or requirements.

B. Permit modification or revocation will be conducted according to ORC Chapter 6111.

PART VII. DEFINITIONS

A. "Act" means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972) Pub. L. 92-500, as amended Pub. L. 95-217, Pub. L. 95-576, Pub. L. 96-483, Pub. L. 97-117 and Pub. L. 100-4, 33 U.S.C. 1251 et. seq.

B. "Best management practices (BMPs)" means schedules of activities, prohibitions of practices, maintenance procedures and other management practices (both structural and non-structural) to prevent or reduce the pollution of surface waters of the State. BMP's also include treatment requirements, operating procedures and practices to control plant and/or construction site runoff, spillage or leaks, sludge or waste disposal or drainage from raw material storage.

C. "Commencement of construction" means the initial disturbance of soils associated with clearing, grubbing, grading, placement of fill or excavating activities or other construction activities.

D. "Concentrated storm water runoff" means any storm water runoff which flows through a drainage pipe, ditch, diversion or other discrete conveyance channel.

E. "Director" means the director of the Ohio Environmental Protection Agency.

F. "Discharge" means the addition of any pollutant to the surface waters of the State from a point source.

G. "Disturbance" means any clearing, grading, excavating, filling, or other alteration of land surface where natural or man-made cover is destroyed in a manner that exposes the underlying soils.

H. "Final stabilization" means that either:

1. All soil disturbing activities at the site are complete and a uniform perennial vegetative cover (e.g., evenly distributed, without large bare areas) with a density of at least 70 percent cover for the area has been established on all unpaved areas and areas not covered by permanent structures or equivalent stabilization measures (such as the use of landscape mulches, rip-rap, gabions or geotextiles) have been employed. In addition, all temporary erosion and sediment control practices are removed and disposed of and all trapped sediment is permanently stabilized to prevent further erosion; or

2. For individual lots in residential construction by either:

    a. The homebuilder completing final stabilization as specified above or

Part VII.H.2

b. The homebuilder establishing temporary stabilization including perimeter controls for an individual lot prior to occupation of the home by the homeowner and informing the homeowner of the need for and benefits of, final stabilization. (Homeowners typically have an incentive to put in the landscaping functionally equivalent to final stabilization as quick as possible to keep mud out of their homes and off sidewalks and driveways.); or

3. For construction projects on land used for agricultural purposes (e.g., pipelines across crop or range land), final stabilization may be accomplished by returning the disturbed land to its pre-construction agricultural use. Areas disturbed that were previously used for agricultural activities, such as buffer strips immediately adjacent to surface waters of the State and which are not being returned to their pre-construction agricultural use, must meet the final stabilization criteria in (1) or (2) above.

I. "Individual Lot NOI" means a Notice of Intent for an individual lot to be covered by this permit (see parts I and II of this permit).

J. "Larger common plan of development or sale"- means a contiguous area where multiple separate and distinct construction activities may be taking place at different times on different schedules under one plan.

K. "MS4" means municipal separate storm sewer system which means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains) that are:

1. Owned or operated by the federal government, state, municipality, township, county, district(s) or other public body (created by or pursuant to state or federal law) including special district under state law such as a sewer district, flood control district or drainage districts or similar entity or a designated and approved management agency under section 208 of the act that discharges into surface waters of the State; and

2. Designed or used for collecting or conveying solely storm water,

3. Which is not a combined sewer and

4. Which is not a part of a publicly owned treatment works.

L. "National Pollutant Discharge Elimination System (NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits and enforcing pretreatment requirements, under sections 307, 402, 318 and 405 of the CWA. The term includes an "approved program."

Part VII

M. "NOI" means notice of intent to be covered by this permit.

N. "NOT" means notice of termination.

O. "Operator" means any party associated with a construction project that meets either of the following two criteria:

1. The party has operational control over construction plans and specifications, including the ability to make modifications to those plans and specifications; or

2. The party has day-to-day operational control of those activities at a project which are necessary to ensure compliance with an SWP3 for the site or other permit conditions (e.g., they are authorized to direct workers at a site to carry out activities required by the SWP3 or comply with other permit conditions).

As set forth in Part II.A, there can be more than one operator at a site and under these circumstances, the operators shall be co-permittees.

P. "Owner or operator" means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

Q. "Permanent stabilization" means the establishment of permanent vegetation, decorative landscape mulching, matting, sod, rip rap and landscaping techniques to provide permanent erosion control on areas where construction operations are complete or where no further disturbance is expected for at least one year.

R. "Percent imperviousness" means the impervious area created divided by the total area of the project site.

S. "Point source" means any discernible, confined and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or the floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

T. "Qualified inspection personnel" means a person knowledgeable in the principles and practice of erosion and sediment controls, who possesses the skills to assess all conditions at the construction site that could impact storm water quality and to assess the effectiveness of any sediment and erosion control measures selected to control the quality of storm water discharges from the construction activity.

Part VII

U. "Rainwater and Land Development" is a manual describing construction and post-construction best management practices and associated specifications. A copy of the manual may be obtained by contacting the Ohio Department of Natural Resources, Division of Soil & Water Conservation.

V. "Riparian area" means the transition area between flowing water and terrestrial (land) ecosystems composed of trees, shrubs and surrounding vegetation which serve to stabilize erodible soil, improve both surface and ground water quality, increase stream shading and enhance wildlife habitat.

W. "Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

X. "Sediment settling pond" means a sediment trap, sediment basin or permanent basin that has been temporarily modified for sediment control, as described in the latest edition of the Rainwater and Land Development manual.

Y. "State isolated wetland permit requirements" means the requirements set forth in Sections 6111.02 through 6111.029 of the ORC.

Z. "Storm water" means storm water runoff, snow melt and surface runoff and drainage.

AA. "Surface waters of the State" or "water bodies" means all streams, lakes, reservoirs, ponds, marshes, wetlands or other waterways which are situated wholly or partially within the boundaries of the state, except those private waters which do not combine or effect a junction with natural surface or underground waters. Waters defined as sewerage systems, treatment works or disposal systems in Section 6111.01 of the ORC are not included.

BB. "SWP3" means storm water pollution prevention plan.

CC. "Temporary stabilization" means the establishment of temporary vegetation, mulching, geotextiles, sod, preservation of existing vegetation and other techniques capable of quickly establishing cover over disturbed areas to provide erosion control between construction operations.

DD. "Water Quality Volume (WQ_v)" means the volume of storm water runoff which must be captured and treated prior to discharge from the developed site after construction is complete. WQ_v is based on the expected runoff generated by the mean storm precipitation volume from post-construction site conditions at which rapidly diminishing returns in the number of runoff events captured begins to occur.

APPENDIX D

AGENCY COORDINATION

U.S. Department
of Transportation
Federal Highway Administration

Ohio Division

200 North High Street
Room 328
Columbus, Ohio 43215
614-280-6896
614-280-6876 Fax
Ohio.FHWA@fhwa.dot.gov

September 18, 2009

In Reply Refer To:
HEO-OH

Director Jolene M. Molitoris
Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223

Subject: Record of Decision
Cleveland Innerbelt Project
CUY – 71/90 – 16.79/14.90, PID 77510

Dear Director Molitoris:

Enclosed per your request of September 11, 2009 is the Record of Decision dated September 18, 2009 for the Cleveland Innerbelt Project, CUY – 71/90 – 16.79/14.90, PID 77510. Alternative A (Northern Alignment Alternative), as identified within the FEIS/Section 4(f) Evaluation and the incorporated supporting documents/documentation, is approved for further development and implementation in compliance with the FHWA September 18, 2009 Record of Decision.

Please be aware that within the Record of Decision, the Federal Highway Administration (FHWA) has provided the *Project's* Section 4(f) approval, and the final acceptance/approval of the *Project's* March 2009 *Interchange Justification Study.*

Should the Ohio Department of Transportation have any questions or comments in regards to the FHWA decisions and approvals as documented in the Record of Decision please do not hesitate to contact me or my staff. Mr. Herman Rodrigo and Mr. Michael B. Armstrong will remain as the primary FHWA contacts for the Project. They may be contacted by calling (614) 280-6896 or by e-mail at the following address: ohio.fhwa@dot.gov

Sincerely,

For: Patrick A. Bauer
Acting Division Administrator

Enclosure (1)

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Ken Harvey (FHWA)

Reading

Letter File Name:
2009 09 18 FHWA Cleveland Innerbelt Project ROD Trans Ltr.doc

ROD File Name: 2009 09 18 FHWA Cleveland Innerbelt Project ROD (final).doc
CUY – 71/90 – 16.79/14.90, PID 77510

E-File Name:
2009 09 18 FHWA Cleveland Innerbelt ROD.pdf

United States Department of Transportation
Federal Highway Administration
Ohio Division

Record of Decision,
Section 4(f) Approval, and
Interchange Justification Study Approval

For the

Cleveland Innerbelt Project, CUY – IR 71/IR90 -16.79/14.90, PID: 77510, City of Cleveland, Cuyahoga County, Ohio

Issued Pursuant to 42 U.S.C. 4332(2)(c), 23 U.S.C. 138, 49 U.S.C. 303 and 23 U.S.C. 128(a)

(This action complies with the National Historic Preservation Act)

Introduction:

The Record of Decision (ROD) complies with NEPA, regulations implementing NEPA (40 CFR 1505.2), and FHWA requirements (23 CFR 771). It is a statement of the decisions made as a result of environmental, social, economic, and engineering analyses, and consideration of input from the public and other agencies. The Final Environmental Impact Statement (FEIS) (FHWA-OH-EIS-09-01-F) released for public comment in July 2009 summarizes the analyses and input.

The Federal Highway Administration (FHWA) and the Ohio Department of Transportation (ODOT) as joint lead agencies are proposing the major rehabilitation and reconstruction of the Cleveland Innerbelt Freeway system infrastructure to address operational, design, safety, and access shortcomings that severely impact the Freeway's ability to function in an acceptable manner. The Cleveland Innerbelt Project is approximately 3.24 miles long. Its termini are located near the merge/diverge point of State Route 176, (the Jennings Freeway) and Interstate 71 southwest of downtown, south of the existing Interstate 90/Interstate 77 Central Interchange on Interstate 77 south to the Pershing Avenue local partial interchange south of downtown, and east of the Interstate 90/State Route 2 system interchange east of downtown along the shore of Lake Erie and adjacent to the Burke Lakefront Airport. Within the project limits Interstate 90 crosses the expansive Cuyahoga River Valley. The Central Viaduct major deck truss bridge, as constructed in 1959, facilitates the Interstate 90 crossing of the Valley with connections to Interstate 71 and Interstate 90 within the historic Tremont area on the west side, and with connections to the Interstate 90/Interstate 77 Central Interchange adjacent to the Cleveland Indians' Major League Baseball sporting facility to the east.

The Selected Alternative for the project is Alternative A, which includes the Northern Alignment Alternative in the Central Viaduct/Central Interchange area. The basis for the selection of the alternative is discussed in "Comparison of Feasible Alternatives" below.

Purpose and Need:

The purpose of the Innerbelt Freeway system is to collect and distribute traffic between the radial freeway system (I-71, I-90, I-77, SR 2, I-490, and SR 176) and the local street system, and to move traffic between each of the radial freeways, within the Cleveland CBD area. The purpose of the Cleveland Innerbelt action is to rehabilitate and reconstruct the Innerbelt Freeway system, and to address operational, design, safety, and access shortcomings that severely impact the ability of the Innerbelt Freeway system to function acceptably. Several circumstances prevent the Innerbelt Freeway from

performing these functions at an acceptable level. These include deteriorating physical conditions of bridges and pavements, poor operational performance (congestion), design features that do not meet current standards, and accident rates exceeding the statewide average for similar facilities. Because the fundamental function described above includes the critical role of the freeway-to-local street connections, the Purpose and Need also includes a discussion of the issues related to local access.

Downtown Cleveland depends on the Innerbelt Freeway's ability to collect and distribute traffic between the radial freeway and interstate system and the local street system. During the morning peak period, the Innerbelt Freeway functions to collect traffic from the system of radial freeways and distribute that traffic to the local street system. During the evening peak period, the Innerbelt Freeway functions to collect traffic from the local street system and distribute that traffic to the system of radial freeways and interstates. Approximately 85 percent 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. Because of this unique travel pattern, the interrelationship and connection between the city street grid and the Innerbelt Freeway becomes even more crucial. The Innerbelt Freeway also moves traffic between each of the radial freeways, thus allowing through traffic to bypass the local street system.

The Cleveland Innerbelt Project initially resulted from the need to address deteriorating bridges and pavements on the Innerbelt Freeway. The bridges and roadway pavements of the Innerbelt Freeway are approaching the end of their useful lives. Therefore, there is a need to replace or rehabilitate the bridges and roadway pavements.

- *Innerbelt Freeway Infrastructure Bridge Decks* – All the Innerbelt Freeway bridge decks are of similar age, construction and condition, and are in need of replacement prior to the project's design year 2035. Of particular concern is that 24 of the Innerbelt Freeway's 25 bridges are concentrated within the three-mile section of freeway that extends from the I-71 interchange with SR 176 to the I-90 interchange with I-77 (Central Interchange).
- *Innerbelt Freeway Infrastructure Roadway Pavements* – All the Innerbelt Freeway roadway pavements are of similar age, construction and condition, and need rehabilitation prior to the project's design year 2035.

As part of the comprehensive planning study conducted to address the physical conditions of the Innerbelt Freeway, ODOT also identified other transportation needs within the corridor that impacted the ability of the Innerbelt Freeway to function acceptably. These other transportation needs include:

- *Innerbelt Freeway Operational Performance* – During the AM and PM peak periods, the travel demand exceeds the capacity on multiple portions of the Innerbelt Freeway. This results in a reduction in running speed, the queuing of traffic on the mainline and the diversion of traffic from the freeway to the local street system.
- *Innerbelt Freeway Design Deficiencies* – The existing Innerbelt Freeway predates the development of modern standards for the design of freeways. In particular, four types of design deficiencies have the most direct and adverse impacts on the operational performance and safety of the Innerbelt Freeway: (1) improper reduction in the basic number of lanes, (2) inadequate ramp configuration and spacing, (3) inadequate curve radii, and (4) inadequate shoulder width.
- *Innerbelt Freeway Safety* – ODOT analysis and ODPS crash data document that the Innerbelt Freeway is a congested freeway with a history of high crash frequency. Twenty-one of 30 half-mile sections that comprise the Innerbelt Freeway have crash rates above the statewide average. Furthermore, six locations have been, or currently are, ranked in the top 250 high crash locations in the State of Ohio. One portion of I-90 from the east end of the Central Viaduct Bridge to the Innerbelt Curve has been ranked #1 Safety Hot Spot for the past two years (2004/2005).
- *Innerbelt Freeway Access* – There is a need 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. Expressed another way, there is a need to preserve the local and interstate traffic functions throughout the Innerbelt Freeway to improve safety and operations on each element of the roadway system.

Additional details regarding the Purpose and Need are provided in DEIS Chapter 2, which is included within Appendix G of the FEIS/Section 4(f) Evaluation.

Alternatives Considered:

Under ODOT's Project Development Process (see Section 1.2 of the DEIS), the alternatives for the Cleveland Innerbelt Project were developed through a series of steps. When limited design and environmental information was available early in the process, broad conceptual solutions were evaluated in the *Strategic Plan*, completed in 2004. Through each step, as more technical information was collected and public involvement was considered, the range of alternatives was narrowed until a small number of Feasible Alternatives were identified in the *Conceptual Alternatives Study*, published in August 2006.

The *Conceptual Alternatives Study* (CAS) concluded by identifying Feasible Alternatives, by section of the Innerbelt project, for further development. For all but two of the sections of the Innerbelt, a single Feasible Alternative was identified. The two sections with more than one alternative were the Innerbelt Trench and the Central Interchange/Central Viaduct Bridge sections. Further refinements following the CAS yielded a compromise alternative for the Innerbelt Trench (discussed in detail in DEIS Section 3.4.2.2.) Therefore, the only area with more than one remaining alternative is the Central Interchange/Central Viaduct Bridge section. The alternatives for each section were combined to yield two Feasible Alternatives, Alternative A and Alternative B for the entire length of the project.

Alternative A spans the entire project length using the Northern Alignment Alternative within the Central Viaduct/Central Interchange area. Alternative A is shown on DEIS Exhibit A overview maps A-G, and in detail on DEIS Exhibits A-1 through A-44.

Alternative A includes full depth pavement replacement/reconstruction, widening where necessary to address capacity or lane continuity, 35 new mainline, ramp, and overhead bridges, and 16 mainline and ramp deck replacements. It will provide 3 through lanes in each direction in the Trench and I-77 sections (same as existing) and 5 lanes in each direction (one more than existing) across the Central Viaduct Bridge.

It includes construction of a new bridge north of the existing Central Viaduct to carry westbound traffic and replacement of the existing Viaduct on essentially existing alignment to carry eastbound traffic. The new westbound bridge over the Cuyahoga Valley would have a main span of 800 feet, with 1,028 feet of structure on the west approach and 3,371 feet on the east approach. The eastbound bridge will have a main span of 800 feet, with 1,226 feet of structure on the west approach and 3,053 feet on the east approach.

Alternative B spans the entire project length using the Southern Alignment Alternative within the Central Viaduct/Central Interchange area. Where Alternative B differs from Alternative A, it is shown on DEIS Exhibit B overview maps B-C, and in detail on DEIS Exhibits B-9 through B-22. Outside of the limits of these figures, Alternative B is identical to Alternative A.

Alternative B is generally identical to Alternative A, except it includes construction of a new bridge south of the existing Central Viaduct to carry eastbound traffic and replacement of the existing Viaduct on essentially existing alignment to carry westbound traffic. The new eastbound bridge over the Cuyahoga Valley would have a main span of 900 feet, with 1,043 feet of structure on the west approach and 3,061 feet on the east approach. The westbound bridge would have a main span of 800 feet, with 1,226 feet of structure on the west approach and 3,053 feet on the east approach.

Access changes as a result of each alternative are listed in FEIS Table 7.

Sidewalk widths for affected city streets have been determined in coordination with the City of Cleveland. Sidewalks will meet ADA standards and will generally match existing. A new sidewalk will be provided adjacent to the new Midtown Connector between Chester Avenue and Euclid Avenue, where a six-foot sidewalk is proposed per City guidelines.

Construction limits shown on the exhibits are preliminary. Where the project involves a local intersection, the work may also encompass necessary intersection work (re-striping, signal improvements, etc.) that is within the existing right-of-way.

Alternative A and Alternative B reduce the number of design deficiencies from 131 in the No Build condition to just 6 in the build condition. Deviations from design standards typically require a Design Exception approval from the Federal Highway Administration (FHWA). No formal submission or approval has yet occurred. Formal review and approval of design exceptions will occur during detailed design.

The March 2009 *Interchange Justification Study* for the *Cleveland Innerbelt Project*, CUY – 71/90 – 16.79/14.90, PID 77510, identifies the above noted geometric design deviations. In addition, and more importantly, the Study has been found by the FHWA to have been developed in compliance with FHWA's February 11, 1998 Interstate Access Policy: *Additional Interchanges to the Interstate System.* FHWA has also determined that the proposed access modifications to be implemented with the *Cleveland Innerbelt Project* Alternative A, the preferred alternative, are acceptable from a geometric and operational standpoint. The *Study* analysis validate that Alternative A will provide for the effective collection and distribution of traffic between the radial freeway system (I-71, I-90, I-77, SR 2, I-490, and SR 176) and the local street system, and that Alternative A will effectively facilitate the movement of traffic between each of the radial freeways. The design and operational deficiencies that are retained within Alternative A, on the Interstate and on the local street system, are minor, localized in nature, and in all cases provide for a build condition that is substantially better than that of the existing/no build condition.

The March 2009 *Interchange Justification Study* for the *Cleveland Innerbelt Project*, CUY – 71/90 – 16.79/14.90, PID 77510, has been incorporated in full into the FEIS/Section 4(f) Evaluation document, Appendix G. The *Study* and the FEIS/Section 4(f) Evaluation documents for the Project are directly linked with each other purposefully. Any changes to the geometric design and layout of Alternative A during detailed design and during overall Project implementation will require such changes to be operationally reassessed in sufficient manner so as to determine the acceptability of the change in compliance with FHWA's Interstate Policy and in order to determine the continued acceptability/validity of the *Study.* The enumerated geometric criteria, Interstate system mainline and ramp layouts, local street system layouts and intersection layouts, lane and turn lane dimensions and assessed operational characteristics as documented within the Study and the FEIS/Section 4(f) evaluation are considered those determined to be minimally acceptable by the FHWA for project implementation. Through detailed design the FHWA expects operational performance and geometric design aspects to be optimized resulting in further project improvements.

Provided below is an outline of the *Interchange Justification Study* and linked to DEIS documentation used by FHWA to determine the geometric and operational acceptability of the Alternative A. The *Study* document itself, contains the highway operational analysis and the DIES document itself contains the purpose and need for action and the balanced analysis of alternatives. Both the Study and DEIS are incorporated into the FEIS/Section 4(f) Evaluation in Appendix G. They together along with the additional traffic operational analysis within FEIS/Section 4(f) Evaluation Section 2.5.2 provide for the FHWA's comprehensive quantified engineering assessment of the Project and its acceptability in meeting or exceeding documented and quantified purposes and needs for action.

Comparison of Feasible Alternatives:

Impacts of the Feasible Alternatives are summarized in FEIS Table 7. Noteworthy differences between the two alternatives are highlighted in the table and discussed below. Several issues results in impact differences in more than one category. They are grouped by issue below.

Historic Properties Alternative A impacts three stand-alone historic buildings that were recently determined to be eligible for the National Register: Broadway Mills, Marathon Gas, and the Distribution Terminal Warehouse. These buildings will be removed with the alternative. The Distribution Terminal Warehouse has been vacant for more than five years, it has been in foreclosure, and the owners have petitioned ODOT to request that it be purchased from them. (See DEIS Section 4.2.5 Property Impacts and Relocations.)

In comparison, Alternative B would also require the removal of the Broadway Mills building and Marathon Gas building. But in exchange for avoiding the Distribution Terminal Warehouse, this alternative has an adverse effect on the Tremont National Register Historic District, resulting in removal of two residences

that are contributing elements and one non-contributing building, plus adverse access and proximity impacts to the Annunciation Greek Orthodox Church. (See DEIS Section 4.2.11 Cultural Resources and FEIS Chapter 5 Final Section 4(f) Evaluation.)

Religious Facilities. Alternative A is projected to have no impacts on religious facilities. Alternative B would have impacts on the Annunciation Greek Orthodox Church that also fall under the Visual, Access, and Historic Properties categories. Alternative B would introduce proximity impacts to the church, affect its access, block views to and from, and impact the attributes that make it a contributing element to the Tremont National Register Historic District. (See DEIS Section 4.2.1 Visual Resources, DEIS Section 4.2.3 Neighborhood and Community Access, DEIS Section 4.2.11 Cultural Resources, and FEIS Chapter 5 Final Section 4(f) Evaluation.)

Maintenance of Traffic. Alternative A and Alternative B have one important difference with regard to maintenance of traffic. The Northern Alignment (Alternative A) for the Central Viaduct/Central Interchange, which runs continuously north of the existing alignment until its tie-in point, can be constructed almost entirety off-line, permitting traffic to use the existing alignment while the Northern Alignment is constructed. During a Maintenance of Traffic Alternatives Analysis (MOTAA), only one conflict area was found just north of East 22nd Street.

The Southern Alignment (Alternative B) also contains this conflict point at East 22nd Street. In addition, it crosses the existing alignment near 9th Street, which restricts traffic from being maintained on the existing alignment at this point and continuing to the north. Maintaining traffic while the Southern Alignment is being constructed will require a crossover to be constructed to the north and west of existing I-90 to permit the contractor to work while traffic is being maintained. The only way to avoid the need for the cross-over would be to shift the Southern Alignment into the Cuyahoga County Juvenile Justice Center, a property eligible for the National Register of Historic Places.

The Southern Alignment (Alternative B) would also require the concurrent construction of the westbound alignment to 22nd Street to maintain traffic in both the eastbound and westbound directions. The Northern alignment allows the westbound lanes to be constructed under a separate contract, which provides for better cash flow management for implementing the project. In addition, substantial additional costs would be required, not only to construct wider structures associated with the crossover, but for the additional fills, structures, and pavement. The specific cost cannot be estimated without detailed cross sections, but is expected to be in the millions of dollars based upon ODOT's experience with similar projects.

Relocations. Alternatives A and B would impact businesses and residences. Alternative A would have fewer impacts, with 25 commercial buildings (57 businesses) and 10 residential buildings (19 households) compared to 27 buildings (57 businesses) and 12 residential buildings (22 households) on Alternative B. (See Property Impacts and Relocations, DEIS Section 4.2.5.)

Access and Neighborhood Street Impacts. Alternative B requires the elimination of 14th Street between Fairfield Avenue and Abbey Avenue, requiring vehicles to go around the block to gain access. Alternative A retains 14th Street in its current location. In addition, Alternative A would provide for a relocated access from I-90 eastbound to Broadway Avenue southbound, while Alternative B would not provide this access. The Broadway ramp provides access to the main post office. Without this connection, vehicles would be routed via East 22nd Street, past St. Vincent Hospital, and through Cuyahoga Community College. (See Neighborhood and Community Access, DEIS Section 4.2.3.)

Based upon information presented in the Draft and Final Environmental Impact Statements and summarized in FEIS Table 7, Alternative A satisfies the project's purpose and need and best minimizes impacts to the natural and human environment. Based upon the comparison of Feasible Alternatives above, Alternative A is the environmentally preferred alternative and is the Selected Alternative for the following reasons:

- Fewer Adverse Effects under Section 106 and least net harm under Section 4(f),
- Ability to incorporate off-ramp to Broadway Avenue to maintain direct access to Quadrangle area, including main post office
- Ability to maintain 14th Street between Fairfield and Abbey Avenues to avoid impacting access the Annunciation Greek Orthodox Church

- Fewer relocations of residences and businesses
- More straightforward maintenance of traffic, which permits smaller construction segments and improves cash flow

In addition FHWA and ODOT have determined that the No Build alternative would not fully address the project's needs and does not enable the Innerbelt Freeway system to function acceptably. Compared to the No Build and other alternatives considered, Alternative A best provides for the balanced consideration of the purpose and need for the action and justifies the impacts and costs. For future actions, the project's analyses provide reasonable assurance that all other requirements can be met.

Section 4(f):

The analysis presented in the Final Section 4(f) Evaluation (FEIS Chapter 5) documents that there is no feasible and prudent alternative that entirely avoids impacts to Section 4(f) properties. (See FEIS Table 10.) The No Build alternative would not satisfy the project's needs and would not allow the Innerbelt Freeway system to function acceptably. Therefore, the Feasible Alternatives were compared to determine which causes the least overall harm to Section 4(f) properties in accordance with 23 CFR 774.3. The individual Section 4(f) impacts of the Feasible Alternatives are summarized in FEIS Table 9 and described below. As discussed above, Alternative A and Alternative B are the same and have the same impacts, except for the Central Viaduct/Central Interchange section of the project. This section has two alignments, the Northern Alignment (Alternative A) and the Southern Alignment (Alternative B).

The Northern Alignment (Alternative A) would require the removal of three stand-alone historic buildings that were recently determined to be eligible for the National Register: Broadway Mills, Marathon Gas, and the Distribution Terminal Warehouse. The Distribution Terminal Warehouse has been vacant for more than five years, it has been in foreclosure, and the owners have petitioned ODOT to request that it be purchased from them.

In comparison, the Southern Alignment (Alternative B) would also require the removal of the Broadway Mills building and access impacts to the Marathon Gas building, but in exchange for avoiding the Distribution Terminal Warehouse, this alternative has an adverse effect on the Tremont National Register Historic District, resulting in removal of two residences that are contributing elements and one non-contributing building, plus adverse access and proximity impacts to the Annunciation Greek Orthodox Church.

FEIS Table 9: Impacts to Section 4(f) Properties in Central Interchange/Central Viaduct

Property	Impacts of Alternatives	
	Northern Alignment	Southern Alignment
Broadway Mills	Building removal (adverse)	Building removal (adverse)
Marathon Gas Station	Building removal (adverse)	Access impact (adverse)
Distribution Terminal Warehouse	Building removal (adverse)	Minor property (no adverse)
Tremont National Register Historic District	Minor Right-of-Way Impacts (no adverse)	Property impacts, Access changes (adverse)
Byzantine Greek Orthodox Church of the Annunciation	None	Right-of-way impact, Access impact (adverse)
Residential House at 1103 University Road (contributing to Tremont Historic District)	None	Building removal (adverse)
Residential House at 1107 University Road (contributing to Tremont Historic District)	None	Building removal (adverse)

Considering the relative severity of the impacts and significance of the impacted properties, Alternative A (Northern Alignment) has the least overall harm to resources protected under Section 4(f).

In addition, a comparison of the Alternative A (Northern Alignment) and Alternative B (Southern Alignment) on the basis of all impacts, not just Section 4(f), reveals that Alternative A (Northern Alignment) is preferable. (See FEIS Chapter 4 and FEIS Table 8 for full comparison of the Feasible Alternatives.)

In its review of the Draft Section 4(f) Evaluation, the U.S. Department of Interior, National Park Service (NPS) concurred that there are no feasible or (sic and) prudent alternatives to the proposed alternatives resulting in impacts to Section 4(f) properties (letter dated May 18, 2009, FEIS Appendix C). Because the measures to mitigate for adverse effects to the impacted historic properties needed to be negotiated with the Ohio Historic Preservation Office (OHPO) (resulting in a programmatic agreement (PA) to address the adverse effect determinations), NPS did not concur that all measures to minimize harm have been employed at the time of review of the DEIS. NPS advised that it would provide its final determination based upon the finalized PA. The FHWA provided the PA in its submission of the FEIS/Section 4(f) Evaluation document to the NPS and the Department of the Interior (DOI) on July 27, 2009. Per the executed Programmatic Agreement among FHWA, ODOT, and OHPO the project includes all reasonable measures to minimize harm to the impacted historic properties. On September 14, 2009 the FHWA consulted by telephone as documented herein with Nick Chevance of the NPS and E. Smith of the DOI to determine if the NPS or DOI had any further comment on the Project and its FEIS/Section 4(f) Evaluation with specific inquiry regarding the acceptability of the documented measures to minimize harm. The NPS and DOI advised that they had no further comment to offer on the project and specifically that the measures to minimize harm were acceptable and that they would follow-up with correspondence for the record indicating no additional comment.

Based on the above information and as discussed in the Final Section 4(f) Evaluation (FEIS Chapter 5 and FEIS Table 10), there are no feasible and prudent avoidance alternatives to the use of the following three properties: Broadway Mills, Marathon Gas Station, and Distribution Terminal Warehouse. The Final Section 4(f) Evaluation demonstrates that there are unique problems or unusual factors involved in the use of alternatives that avoid these properties or that the cost, social, economic, and environmental impacts, or community disruption resulting from such alternatives reach extraordinary magnitudes in accordance with 23 CFR 774.3.

In addition, Alternative A, the Selected Alternative, causes the least overall harm, based upon a balancing of the following factors:

- The ability to mitigate adverse impacts to each Section 4(f) property;
- The relative severity of the remaining harm, after mitigation, to the protected activities, attributes, or features that qualify each Section 4(f) property for protection;
- The relative significance of each Section 4(f) property;
- The views of the officials with jurisdiction over each Section 4(f) property;
- The degree to which each alternative meets the purpose and need for the project;
- After reasonable mitigation, the magnitude of any adverse impacts to resources not protected by Section 4(f); and
- Substantial differences in costs among the alternatives.

Alternative A includes all measures to minimize harm, as documented in a Programmatic Agreement under 36 CFR Part 800. The Project shall be implemented in compliance with the "*Programmatic Agreement Among the Federal Highway Administration, the Ohio State Historic Preservation Office, and the Ohio Department of Transportation Regarding the Federal-Aid Highway Improvement of Interstate Routes 71, 77, and 90 in the City of Cleveland, Cuyahoga County, Ohio CUY-90 Innerbelt; PID 77510 Agreement Number 15498*" as signed by the FHWA, ODOT, and SHPO.

In summary, it is the FHWA determination that based upon the above considerations, there is no feasible and prudent alternative to the use of land from the identified Section 4(f) properties and the proposed action includes all possible planning to minimize harm to the Section 4(f) properties resulting from such use.

In addition, in accordance with 23 CFR 774.3, FHWA is making the following determinations regarding the Selected Alternative A:

The use of property from the Infield of the Loop Ramp on Chester Avenue, a recreation area, will have a *de minimis* impact as defined in 23 CFR 774.17, in that it will not adversely affect the features, attributes, or activities qualifying the property for protection under Section 4(f). Coordination has been conducted with Cleveland State University regarding the *de minimis* finding.

The use of property from the following historic properties will have a *de minimis* impact. Coordination has been conducted with the Ohio Historic Preservation Office and Consulting Parties. Concurrence has been received from the OHPO that the project will have "no adverse effect" in accordance with 36 CFR Part 800.

- Loft Building
- Samuel Mather Mansion*
- Ohio Boxboard Company
- Cuyahoga County Juvenile Justice Center
- Tactical Rescue Station
- Tremont National Register Historic District

In its review of the Draft Section 4(f) Evaluation, the U.S. Department of Interior, National Park Service (NPS) reviewed the temporary and de minimis use descriptions in the evaluation and concurred with those determinations.

[* NOTE: On 8/26/09, SHPO and ODOT staff, (while conducting a field review for another local yet separate and independent project) observed construction activities that modified the Mather Mansion property. The project file contains photo- documentation that clearly shows construction activities and equipment situated on the grounds of the Mather Mansion in the area of the de minimis impact. ODOT and the SHPO will continue to monitor and if necessary determined whether the property has been so altered to seek that the property boundary been redefined. If so, the Section 4(f) impacts would likely be reduced or completely eliminated.]

Measures to Minimize Harm:

Following is a summary of the environmental commitments for the project.

Geology: Soil and Bedrock
The ODOT will ensure that Contractors are required to follow best management practices for temporary sediment and erosion control during construction in accordance with 2005 ODOT Construction and Material Specifications (CMS) Section 107.19 and Supplemental Specification (SS) 832. Plan notes and estimated quantities in accordance with Supplemental Note 832 will be included in the plans to handle erosion control. In addition to the current CMS, SS, plan notes, and Stormwater Pollution Prevention Plan (SWPPP) stipulations, all the regulations and conditions associated with the required National Pollution Discharge Elimination System (NPDES) permit will require the Contractor's full compliance.

Aquatic Resources
A US Coast Guard Section 9 permit and an Ohio Department of Natural Resources (ODNR) Coastal Consistency Determination will be required for the project. If during the waterway permit application process it is determined that a Section 404 permit and/or a Section 401 Water Quality Certification is required, stream mitigation will be provided in accordance with the US Army Corps of Engineers (USACE) and Ohio Environmental Protection Agency (OEPA) applicable stream mitigation rules and guidelines. If in-stream work is required, time of year restrictions will be adhered to in accordance with permit conditions to reduce impacts to aquatic species and their habitat.

Storm Water
This project will require an OEPA NPDES Phase 2 General Construction Permit. Plan notes, along with a Storm Water Pollution Prevention Plan (SWPPP), will be needed to address project soil erosion control measures. It is anticipated that the project will install appropriate best management practices.

ODOT will continue to comply with current and future OEPA NPDES regulations. ODOT has documented policies and procedures to address both sediment and erosion control and long term storm water quality on construction projects. ODOT will continue to update its policies and procedures as needed to stay in compliance with current and future NPDES regulations. This project will utilize the most current ODOT policies and procedures at time of final design.

ODOT will continue its coordination with Northeast Ohio Regional Sewer District (NEORSD) and Cleveland Water Pollution Control (WPC) during detail design of each project section. Particular attention will be given to areas of the project that will remain connected to the combined sewer system. Additionally, if NEORSD creates a regional storm water management program, ODOT will coordinate, as necessary, with this newly formed regional entity. ODOT will continue to coordinate with Northeast Ohio Area Coordinating Agency (NOACA) Transportation/Water Quality Advisory Council (TRANSWAC), as appropriate, during detail design of each project section.

ODOT will consider, during the detail design of each project section, installing water quality Best Management Practices (BMPs) that exceed the required treatment area percentage of the NPDES permit. (Currently redevelopment projects only require treating 20% of the existing pavement area.)

Threatened and Endangered Species
The ODOT will conduct additional coordination with ODNR regarding the Peregrine Falcon prior to demolition activities for the existing Central Viaduct Bridge. ODNR has obtained a permit from the US Fish and Wildlife Service to relocate the falcon to safe habitat in advance of construction.

Floodplain Impacts
Coordination will be conducted with the local community floodplain administrator during design of Alternative A. A description and mapping of the alternative, including available details on any fill material to be placed in the floodplain, will be provided to the local community Floodplain Administrator for review and comment. This coordination will determine if a Flood Hazard Development Permit will be required prior to construction activities.

Parks and Other Green Spaces
Impacts to the infield of the loop ramp on Chester Avenue will continue to be coordinated with Cleveland State University. The walking trail will be restored and the area will be revegetated to retain the current recreational use of the right-of-way. In addition, the path adjacent to the North Marginal Road will be realigned along with the roadway to provide continuity of the path.

Hazardous Waste
Phase II Environmental Site Assessments will be conducted for recommended properties. For any property determined to be contaminated with regulated substances, environmental plan notes will be developed and incorporated into the construction contracts to ensure that regulated substances are properly managed and disposed during construction.

Air Quality
Given that air pollutants are not predicted to exceed the National Ambient Air Quality Standards (NAAQS) in the future as a result of implementing the Build Alternative, mitigation measures for air quality are not necessary for the project. Standard emission minimization measures for construction activities will be incorporated into the project plans.

Noise Analysis
Three noise barrier locations are recommended. These locations are within the Central Viaduct and I-77 Access locations. A public meeting will be held in these areas during the design phase to determine if the residents wish to have a noise wall. Although not a noise abatement measure, vegetative screening will be offered to residences along the east side of I-90 between Superior Avenue and St. Clair Avenue, if feasible to install, in accordance with ODOT noise policy.

Barrier optimization will be performed during the detailed design phase of the project after final profiles are established. A final check of elevation consistency between those used in barrier design model and those in the stage three roadway plans will be completed. A table will be provided showing barrier segments, distance from centerline or baseline, barrier height, and top elevation for the project design consultant as stated in the ODOT-OES IOC dated February 2, 2007 found in Appendix D of the DEIS.

Vibration Analysis
No long-term vibration impacts have been identified for the Cleveland Innerbelt project and therefore no mitigation measures are required with regard to ground-borne traffic vibration. During the construction period, however, there is the potential for short-term vibration impact from impact pile driving and the use of vibratory rollers adjacent to the Annunciation Greek Orthodox Church and the Samuel Mather Mansion. In addition to minimizing the use of such equipment near the vibration-sensitive buildings, potential mitigation measures include use of alternative construction methods, such as the use of drilled piles or pressed piles in place of impact piling. The feasibility of such measures will be investigated during project design to avoid vibration impact during construction.

Historic Architecture Sites/ Section 4(f)/Section 106 Consultation
Based upon coordination with the Ohio Historic Preservation Office, the following commitments are known for properties where there is "no adverse effect":

- Cuyahoga County Juvenile Justice Center – Relocate approximately 200' of sidewalk and stone wall; maintain vehicular access to courtyard; construct adjacent retaining wall in manner that will not impact the historic resource
- Samuel Mather Mansion – Alternative construction methods will be evaluated during design to minimize vibration during construction.

In accordance with the Programmatic Agreement, FHWA and ODOT will use the following treatment plans to resolve the adverse effect on the three impacted historic properties:

- Broadway Mills - Level II documentation as specified by the Historic American Building Survey (HABS) will be prepared. A commemorative display will be located at or near the existing mill site.
- Marathon Gas Station – Level II documentation as specified by the Historic American Building Survey (HABS)
- Distribution Terminal Warehouse – A historic context will be prepared documenting the significance of the resource in relation to the City of Cleveland's food distribution industrial history.

Details for implementing these proposals are specified in the June 5, 2009 letter from ODOT to OHPO, as accepted by OHPO on July 7, 2009. Additional mitigative measures will be identified and considered through the consultation process to further mitigate for adverse effects, as specified in the Programmatic Agreement.

Traffic Maintenance
As part of the detailed design, a maintenance of traffic plan will be prepared in accordance with the then most current ODOT standard specifications and policies. Public involvement will be conducted during the construction phase according to ODOT District 12's communication plan for major projects.

Public Notifications
To ensure that the public is notified of construction activities, lane closures, and/or road closures, the following plan note will be added to the project plans: The Contractor will advise the Project Engineer a minimum of fourteen (14) days prior to the following: the start of construction activities, lane closures, and road closures. As appropriate, the PIO will, in turn, notify the public, the local emergency services, affected schools and businesses, and/or any other impacted local public agency of any of the above mentioned items via media sources.

Residential/Business Relocations and Property Impacts
The acquisition and relocation for all residences displaced for right-of-way will be conducted in accordance with all applicable state and federal laws.

Utility Relocations
All utility relocations will be coordinated between the Contractor and the utility owners in such a way as to avoid and/or minimize any inconvenience to potentially affected customers. All utility relocations not included in the construction contract will be performed by the affected utility owner or its contractor and will be compliant with ODOT roadway design standards. Utility work will be ongoing throughout

construction of the project. Upon the contract award, the coordination of all necessary relocations with the utilities becomes the responsibility of the Contractor. A list of all utility owners located within the project work limits will be included in the General Notes section of the project plans.

Remaining Design Commitments from Public Involvement

- Directional signing will be considered for indicating local street destinations at redesigned and redirected ramp locations.
- Input from the Innerbelt Bridge and Urban Design Aesthetics Sub-committees will be considered prior to the selection of aesthetic treatments and urban design details, including way finding, gateway, overpass and underpass treatments.
- Designing the retaining walls between E 22nd St and Carnegie Ave to support a freeway cap or deck will be considered during detail design. This commitment does not include the funding for the design and construction of the freeway cap or deck.
- ODOT will coordinate with the Cuyahoga County Engineer and the City of Cleveland to accommodate the proposed Cleveland Towpath Trail multi-purpose trail as it crosses beneath I-90.
- Upper Commercial Road will be reconfigured to accommodate fire trucks and buses serving Cleveland Fire Department Station No. 28 and the Western Reserve Fire Museum.
- Ontario entrance ramp structure will be designed to provide the vertical clearance necessary to accommodate fire trucks serving Cleveland Fire Department Station No. 28.
- Adjusting the alignment of the East 30th Street extension slightly toward the west will be considered during detail design in an effort to further minimize impacts.
- The City of Cleveland Office of Harbormaster reviews proposed dock wall construction in the river. ODOT will coordinate with the Harbormaster at the time of permit application to the U.S. Army Corps of Engineers.

State/Regional Transportation Planning:

On July 21, 2009 FHWA agreed with ODOT that the Project cost/schedule information contained within the FEIS/Section 4(f) Evaluation, Table 7, Page 31, met the criteria for administrative modifications and a request was made to have the MPO, the Northeast Ohio Area Coordinating Agency (NOACA), amend their TIP and to update their Long Range Plan.

NOACA's Regional Transportation Investment Policy (RTIP) defines a technical Transportation Improvement Program (TIP) amendment as follows: "the TIP may be amended at any time without Board approval for clerical errors, bookkeeping, line-item project descriptions and other non-policy reasons that do not impact policy implementation or funding balances. The board will be informed of any clerical TIP amendments." Technical TIP amendments are submitted, as needed, to the ODOT's Office of System Planning and Program Management to be incorporated into the Statewide Transportation Improvement Program (STIP) where appropriate.

NOACA informed ODOT of its August 13, 2009 technical amendment to the SFY 2008 – 2011 Transportation Improvement Program (TIP), dated May 11, 2007, on August 13, 2009. The technical amendment included several projects for detail design, Right of Way (R/W) acquisition and construction of the Innerbelt project. NOACA also provided ODOT the technical amendment sheets portraying the projects in their respective years and requested that ODOT incorporate the technical amendment into the next STIP amendment as well as Ellis (ODOT's project management database) as appropriate to enable the access funding information as needed.

On September 9, 2009 the ODOT advised FHWA that it had processed the NOACA technical amendments and advised that most of the NOACA listed projects are funded outside of the time frame of the current STIP FY 2008-2011. NOACA's formal Technical Amendment lists most of the projects in its

Transportation Plan approved May 2009, which means they are committed but outside of the current TIP. However, two of the projects were included in the STIP by modification, as follows:

1) CCG1 Design (PID 77332) was included in the original STIP as approved 6/30/07 for Design and R/W. The increase in R/W costs are covered by the STIP Administrative Modification dated 9/9/09 under Mod#8.

2) CUY-IR90 15.24L New Bridge (PID 85531) was incorporated into the STIP under Mod#6. This Administrative Modification combined PIDs 82375, 82376, 82378 from the originally approved STIP into PID 85531.

Approval, Distribution, Publication, and Availability of FEIS/Section 4(f) Evaluation:

The Final Environmental Impact Statement/Section 4(f) Evaluation, for the Cleveland Innerbelt Project, CUY – 71/90 – 16.79/14.90, PID 77510 was signed by the ODOT Director on July 10, 2009 and approved by FHWA on July 22, 2009. On behalf of the FHWA, and in accordance with 23 CFR 771.125(g), the ODOT transmitted a copy of the FEIS/Section 4(f) Evaluation to persons, organizations, and agencies who were identified as making substantive comments on the March 3, 2009 Draft EIS/Section 4(f) Evaluation and to State, Federal and local agencies with jurisdiction or interest.

In addition, ODOT submitted the FEIS/Section 4(f) Evaluation to the US Environmental Protection Agency for filling on July 22, 2009. The Notice of Availability of the FEIS was published in Federal Register Volume 74, Number 146, on Friday, July 31, 2009.

The ODOT also published a notice of availability of the FEIS/Section 4(f) Evaluation in a local newspaper (The Plain Dealer) and on-line at www.innerbelt.org, in compliance with 23 CFR 771.125(g). Additionally, ODOT made the FEIS/Section 4(f) Evaluation document available for review at twelve locations (local government offices, libraries and institutions) throughout the project area. In addition, the ODOT made the FEIS available for public review on-line at the following address:

http://www.dot.state.oh.us/projects/ClevelandUrbanCoreProjects/Innerbelt/Pages/FinalEnvironmentalImpactStatement.aspx

Summary of Comments Submitted on the FEIS/Section 4(f) Evaluation and FHWA Response:

Agency Comments:

1. The Environmental Protection Agency provided the following comments by letter Dated August 18, 2009:

   a. We commend Ohio Department of Transportation (ODOT) for specifying ODOT will follow its best management practices (BMP) in creating "green pretreatment" trenches, swales and detention sites for all segments of the project. Treated runoff from these constructs will be directed to the Cuyahoga River or Lake Erie or to local combined sewer systems.

      Response: Noted

   b. EPA encourages ODOT to continue negotiations with local agencies responsible for stormwater management (NEORSD and TRANSWAC) and determine the best direction to channel effluent from the pretreatment constructs to reduce combined sewer overflows.

      Response: During the implementation of the Cleveland Innerbelt Project the FHWA will assure that the mitigative measures for Storm Water discussed in the Measures to Minimize Harm

section above are complied with in the management of Project stormwater as "encouraged" by the EPA.

c. We recommend the Record of Decision (ROD) commit to pretreating all project stormwater runoff plus maintain and monitor this system to sustain its ecological standard of function.

Response: During the implementation of the Cleveland Innerbelt project FHWA and ODOT will work with local stakeholders to determine feasible project locations to separate project generated storm waters from the local combined sewer system in order to improve water quality in the region by reducing the volume of waters that may contribute to Combined Storm sewer Overflows (CSO). In the areas where separation is feasible (based on design, right of way and construction costs) project waters will be treated via BMPs before being discharged into the Cuyahoga River or Lake Erie. The BMPs will satisfy current regulatory requirements and thus will include an acceptable level to maintain the ecological standard of function or the agency will not permit the action. For project locations where separating the storm water runoff from the combined sewer is not feasible, no pretreatment is expected to occur. This is in compliance with the current applicable regulations of the OEPA and NEORSD.

d. The FEIS discusses some concepts of climate change and the related impacts of greenhouse gases. EPA recommends consideration be given in the ROD for how the project will accommodate climate change, including the impacts of higher temperatures on bridge and road surface structural integrity. We also recommend discussion be included regarding planning adaptations for handling the impacts of increased rain and snowfall intensity to runoff design and sewer system capacities.

Response: The NEPA process is meant to concentrate on the analyses of issues that can be truly meaningful to the consideration of project alternatives, rather than simply "amassing" data. In the absence of a regional or national framework for considering the implications of a project-level GHG analysis, we feel that such an analysis would not inform project decision-making, while adding administrative burden.

Regarding the effects of global climate change on the project, it should be noted that no comprehensive inventory exists of U.S. transportation infrastructure vulnerable to climate change impacts, the potential extent of that exposure, or the potential damage costs. However, FHWA can surmise that there will be some impacts from climate change on transportation infrastructure within Ohio. The potential impacts of global climate change to Ohio's entire existing and planned surface transportation infrastructure are not unique to the Cleveland Innerbelt Project, nor are the potential global climate change impacts unique to certain alternatives of this Project. Thus while the EPA recommends further discussion of the global climatic issues, it is the FHWA position that such additional discussion is not appropriate at the project level and that the amassing of more information and data would not meaningfully change and or impact the project NEPA decision.

e. Specific Transportation System Management techniques (TSM) are listed in the FEIS for both construction and operation phases. We commend these steps and encourage the ROD to commit to adding other methods as technologies and funds become available.

Response: Noted. The Ohio Department of Transportation (ODOT) has developed the Cleveland Freeway Management System Project for a regional freeway management system in the Cleveland metropolitan area. The system will perform the following functions:

- Remotely monitor freeway traffic flow;
- Receive notification of freeway crashes from 911 calls;
- Distribute information in real-time to multiple, local, public safety agencies;
- Manage traffic, via the operation of permanent highway dynamic message signs and highway advisory radio;

- Provide web-based traveler information services.

ODOT's approach to transportation system management is to provide traffic surveillance and monitoring on limited access roadways (Interstates and freeways) in major metropolitan areas in Ohio. Over half of all congestion on these roadways is caused by incidents (typically vehicle crashes). Rapid notification and identification of these incidents can help save lives through quick deployment of emergency response personnel. We also provide real-time information to motorists to inform them about an incident so they can potentially avoid the roadway with the crash scene. This accomplishes two things – first, it helps minimize additional delays to the travelling public, and second, by minimizing the queuing or stopped traffic at the scene, secondary crashes can be avoided. In some instances the secondary crash can be more severe than the original incident.

With other major construction projects in Ohio's major urban areas, the freeway management systems are also used to manage regional traffic for major roadway construction. In the Cleveland area the Innerbelt/Viaduct bridge construction will have a significant impact to traffic movement and circulation. The Cleveland FMS project includes an early operations phase to coincide with the beginning of the Viaduct project. Specific FMS devices will be in place and operational within one year of the start of the FMS project to provide work zone traffic control.

2. The Environmental Protection Agency also provided the following comment within Federal Register Volume 74, Number 171, on Friday, September 4, 2009:

Summary: EPA continues to have environmental concerns about stormwater impacts and requested the pretreatment of all stormwater.

Response: See above reply to USEPA comments dated August 18, 2009.

3. The Ohio Environmental Protection Agency provided the following comments by letter Dated September 10, 2009:

a. Comment: Based on an analysis of the proposed project alternatives, we understand Alternative A (Northern Alignment Alternative) has been selected as the Preferred Alternative. We do not have any major issues with Alternative A and its selection as the Preferred Alternative. As a matter of fact, in our April 22, 2009 comments we recommended that ODOT use Alternative A based on its lower reported impacts than Alternative B (Southern Alignment Alternative). We understand Alternative B is essentially the same as Alternative A with exception that it includes the construction of a new bridge to the south of the existing Central Viaduct and will carry traffic eastbound and replace the existing Viaduct on essentially the same Ohio Department of Transportation Cleveland Innerbelt (Viaduct) alignment to direct traffic westbound. The "No-Build" Alternative was eliminated during the review process because ODOT stated it did not satisfy the "Purpose and Need" criterion.

Response: Noted

b. Comment: In our July 30, 2009 meeting, we discussed several issues regarding the Cleveland Innerbelt (Viaduct) Project. This included whether the project was eligible for authorization by one or more nationwide permits (NWPs). Before we make a decision on this issue we need to know how the project will be authorized by the Army Corps of Engineers (ACOE) and the U.S. Coast Guard, relative to Section 9 permit requirements. These issues are currently being discussed with the respective agencies. ODOT will inform us of the ACOE's decision.

Response: During implementation of the Project coordination with all appropriate resource and permitting agencies will continue. The project will be advanced in compliance with all applicable requirements.

c. Comment: Stormwater -- We understand a separate stormwater plan has been proposed by ODOT including the use of detention basins, constructed wetlands, and the installation of up to five outfall structures on the Cuyahoga River, two of which would be on the east bank and one on the west bank near the proposed bridge.

Response: Noted. See project measures to minimize harm/environmental commitments.

d. Comment: Bulkheads -- Existing defective bulkheads will be replaced or rehabilitated on the east and west banks of the Cuyahoga River. "Green" bulkhead structures or aquatic habitat conducive to the establishment of vegetation and fish communities will be installed on the east bulkheads. We encourage the use of measures to improve water quality and habitat improvements in the Cuyahoga River.

Response: Noted. See project measures to minimize harm/environmental commitments.

e. Comment: Geotechnical Issues -- In regards to the geotechnical issues and associated erosion on the west bank of the Cuyahoga River, we would like to be periodically informed of the status of the problem and final plans to restore the site.

Response: Noted. Coordination of Project implementing detailed contract plans with the resource agencies will be ongoing and continuous and compliant with all regulatory and permitting requirements.

4. The Ohio Department of Natural Resources advised on August 28, 2009 that they had no additional comments on the Project based upon their review of the FEIS/Section 4(f) Evaluation.

Response: Noted.

5. The Federal Aviation Administration advised on August 10, 2009 that they have no comments to offer as a result of their review of the FEIS/Section 4(f) Evaluation.

Response: Noted.

6. On September 14, 2009 the FHWA consulted by telephone as documented herein with Nick Chevance of the NPS and E. Smith of the DOI to determine if the NPS or DOI had any further comment on the Project and its FEIS/Section 4(f) Evaluation with specific inquiry regarding the acceptability of the documented measures to minimize harm. The NPS and DOI advised that they had no further comment to offer on the project and specifically that the measures to minimize harm were acceptable and that they would follow-up with correspondence for the record indicating no additional comment.

Public Comments:

1. Commensurate with the development, approval, distribution, publication, and availability of the FEIS/Section 4(f) Evaluation a community group "Save Our Access" initiated a grassroots effort in opposition to proposed modifications to the Cleveland Innerbelt Freeway system in association with the *Cleveland Innerbelt Project*. Comments were provided regarding the Project alternative concepts considered within the Trench section of the overall Project. In particular, the community group has indicated their strong desire for the maintenance of the Carnegie and Prospect Avenue access points to and from the Interstate 90 to remain in the exact same locations as they exist today. Moreover the community group has voiced concerns regarding how the proposed modifications in access will impact them and the surrounding community. The community group established a internet site www.saveouraccess.com for the public to review the group's position on the Project and afford the public with the opportunity to electronically submit their comments and views associated with the

Project's alternatives and impacts to: Senator Sherrod Brown, Representative Dennis Kucinich, Representative Marcia Fudge, Representative Steven LaTourette, U.S. DOT Secretary Ray LaHood, FHWA Ohio Division Staff, Governor Ted Strickland, Lt. Governor Lee Fisher, Secretary of State Jennifer Brunner, Senator Shirley Smith, and ODOT Central Office and District 12 Staff.

Response: The ODOT and FHWA considered comments submitted by the "Save Our Access" community group prior to approving the FEIS/Section 4(f) Evaluation. Comments from "Save Our Access" were identified and accounted for in "Table 1c: Summary of Public Comments – Received After Comment Period" (of the DEIS), on page 13 of the FEIS/Section 4(f) Evaluation document. The ODOT and FHWA considered the "Save Our Access" comments and addressed them within the discussion of access in the Trench, see FEIS Section 2.5.2.

In addition, prior to the approval of the FEIS and its public availability ODOT notified local public officials and organizations on July 8, 2009 of the "Save Our Access" group's efforts, thanked the group for its support of replacing the I-90 Innerbelt Bridge and flattening the Innerbelt Curve, however, the new bridge and flattened curve would not entirely address safety and congestion concerns along the interstates in Downtown Cleveland. ODOT provided the following information regarding proposed changes in the Trench section of the project and referred the recipients to ODOT's web site on the Innerbelt for additional information:

As ODOT's many years of study and community outreach have detailed, however, the new bridge and flattened curve do not entirely address safety and congestion concerns along the interstates in Downtown Cleveland. Below is an update on ODOT's Innerbelt Modernization Plan:

The Innerbelt Modernization Plan: What Is It?
ODOT's Innerbelt Modernization Plan is focused on improving safety, reducing congestion and traffic delays, and modernizing interstate travel along I-71, I-77 and I-90 through Downtown Cleveland. This investment by the State of Ohio will rehabilitate and reconstruct the Innerbelt Freeway system and address operational, design, safety and access shortcomings that severely impact the ability of the Innerbelt Freeway system to meet the 21st Century transportation needs of Northeast Ohio.

Addressing Safety Concerns
Safety is, and will always remain, the number one priority of the Ohio Department of Transportation. In fact, 21 of the 30 sections that comprise the Innerbelt Freeway have crash rates above the statewide average. The area between the Innerbelt Bridge and Curve has been ranked as the #1 Safety Hot Spot since 2004/05, and the number of rear-end crashes are nearly one-and-a-half to three times higher than the statewide average. Addressing these safety concerns as well as modernizing the roadway to meet modern design standards will certainly have a positive impact on Cleveland.

Addressing Cleveland's Congestion
Nationwide, congestion has continued to grow over the past 15 years. According to a national mobility study release this month, the average traffic delay for a motorist in Cleveland is 12 hours per year, double the six hour delay experienced in 1992. This time stuck in traffic equates to lost money. Nationally, congestion costs the average metropolitan driver $757 each year. In Cleveland, it's estimated that the cost of congestion to the region's motorists totals $203 million in wasted fuel and time.

"Save Our Access" Takes Aim at the Prospect & Carnegie Avenue Ramps
Under ODOT's Innerbelt Modernization Plan, Prospect Avenue traffic would be redirected via neighboring ramps including Chester Avenue - a short drive on Cleveland's city streets. ODOT's plan to consolidate traffic from Carnegie Avenue and E. 22nd Street into a single access point at E. 22nd Street and Central Avenue would add only 465 feet to the already existing route – or the distance of a Victor Martinez homerun to the back of the Tribe's bullpen at Progressive Field.

Possible Solutions?
In its campaign material, the supporters of "Save Our Access" suggest that Opportunity Corridor - the proposed link between I-490 and University Circle - is a "possible solution...which would remove an estimated 40 percent of the vehicles now using the Innerbelt Carnegie and Prospect ramps." In combination with the safety upgrades of the Innerbelt Modernization Plan, the Opportunity Corridor would provide additional congestion relief - as well as promote major economic development in the area. In support of this effort, ODOT has committed up to $20 million in new funding to advance the planning of the Opportunity Corridor.

Similarly, FHWA received several hundred e-mails from the "Save Our Access" group noting the same concerns as described above. On August 4, 5 and 9, 2009 FHWA responded to each of the e-mails received reiterating the extensive public involvement process that was used to develop the Alternatives, the comprehensive consideration given to safety, congestion and access needs and concerns during the development of the Alternatives, the various options that were considered to ensure an acceptable level of access to and from the Interstate systems and the local arterials and streets, and the balancing of impacts and cost as various options were considered and modified.

In summary, the FHWA and the Ohio Department of Transportation (ODOT) have developed the Cleveland Innerbelt Project in compliance with the National Environmental Policy Act (NEPA). A range of alternatives were considered during the development of the Project to address the purpose and need for action that took into consideration the extensive input provided by the public over a number of years. Alternative concepts considered within the Trench section, of the overall Project, have been extensively commented upon by the public. However, during the development of Project alternatives and alternative concepts within the Trench Section, FHWA and ODOT were unable to develop a feasible and prudent alternative that would preserve the Carnegie and Prospect Avenue access, as desired by the public, without resultant substantial adverse environmental effects and impacts that are not anticipated with Project Alternatives A or B. With Project Alternatives A and B the functional access within the Trench Section was redesigned and redirected and the functions of the Innerbelt Freeway System within the area were preserved. FHWA and the ODOT have identified Cleveland Innerbelt Project FEIS Alternative A for further advancement because it: satisfies the project's purpose and need; causes the least impact to the natural and human environment in comparison to the alternatives considered; and includes all possible planning to avoid, minimize, or mitigate resultant impacts, effects, and the use of Section 4(f) property.

Despite receipt of continued public comment from the "Save Our Access" community no new substantive information, relevant circumstances, or environmental concerns have been brought forth or been identified as a result of FHWA's review of the submitted comments, that have not already been appropriately considered and addressed, in compliance with the NEPA decision making process. It is FHWA's position that there is no substantive reason for the FHWA and the ODOT to reconsider the access provided in the Trench section of the Cleveland Innerbelt and there is no justifiable reason to delay the further advancement of the Project.

2. MidTown Cleveland, Inc., the Cleveland Clinic, and Taft Stettinius & Hollister LLP, Attorneys for Midtown Cleveland, Inc. provided the following comments by letter Dated August 31, 2009:

   a. MidTown Cleveland, Inc. ("MidTown") and the Cleveland Clinic oppose the removal of highway interchanges from the Innerbelt Trench as proposed in the Final Environmental Impact Statement (the "FEIS").

      Response: Opposition is noted. The primary purpose of the Cleveland Innerbelt Project is to rehabilitate and reconstruct the Innerbelt Freeway system and to address operational, design, safety, and access deficiencies that severely impact the Freeway's ability to function acceptably. The Innerbelt Freeway System provides for the collection and distribution of traffic between the radial freeway system (I-71, I-90, I-77, SR 2, I-490, and SR 176) and the local street system, and

it also moves traffic between each of the radial freeways, within the City of Cleveland Central Business District (CBD) area.

Within the Trench section of the Project the existing Innerbelt Freeway System provides the following traffic functions: through traffic, local-street to interstate, interstate to local-street, and local-to-local movements (where traffic uses the interstate to go a distance of only one interchange). Safety and operation in the Trench section is affected by the numerous, closely spaced interchanges and the large number of weaving maneuvers within this section. The FEIS establishes that the redesign of the ramps in the Trench will address safety, design deficiencies, and performance issues that currently exist in that area. Furthermore, the documentation establishes that each of the functions in the Trench is addressed. Through traffic will experience improved travel times and safety due to reduced congestion and fewer conflicts. Traffic accessing local streets from the freeway, and vice versa, will experience the same improvements as the through traffic and will use ramps that meet current design standards, which have a safer merging distance. In addition, local-to-local movements, which are presently using the freeway to go from one interchange to the next, will be able to use the new Midtown connector to access several east-west corridors in the Trench area. Furthermore, the Midtown connector will serve to distribute traffic from the Innerbelt Freeway system to the local street system. In the build condition, the local street system in the Trench area will function as good or better than existing conditions in all but one location.

Public comment has been considered and addressed throughout the development of project and its alternatives including those of MidTown Cleveland, Inc., the Cleveland Clinic, and their Attorneys. However, within the Trench Section, an alternative that would preserve the Carnegie and Prospect Avenue access points to and from the Interstate could not be achieved in the exact same locations as they exist today. Instead, the functional access was redesigned and redirected and the functions of the Innerbelt Freeway System within the Trench Section were preserved. With the selected alternative, Alternative A, traffic to and from the Prospect and Carnegie Avenue ramps will be redirected to ramps at Chester Avenue and East 22nd Street, utilizing city streets and the new Midtown Connector. In most cases, the additional travel distance is two to three city blocks on new or improved roadways that incorporate new or improved traffic intersection layouts/designs/signals that optimize traffic operations resulting in minimum travel delay. Directional signing will be used to provide motorists with information on which city streets are best accessed from which ramps.

b. MidTown Cleveland, Inc. ("MidTown") and the Cleveland Clinic oppose the issuance of a Record of Decision approving the FEIS.

Response: Opposition is noted. The FHWA and the Ohio Department of Transportation (ODOT) have developed the Cleveland Innerbelt Project in compliance with the National Environmental Policy Act (NEPA). A range of alternatives were considered during the development of the Project to address the purpose and need for action which took into consideration the extensive input provided by the public, including comment by MidTown Cleveland, Inc., the Cleveland Clinic, and their Attorneys. The FEIS/Section 4(f) Evaluation document including all of the incorporated support documents, document's the extensive public involvement efforts and project analysis that were carried out during the development of the Project. It is FHWA's position that all relevant and substantive social, economic, and environmental effects, impacts, and consequences of the Project and it's alternatives' have been assessed in sufficient detail to enable the quantified disclosure of said effects, impacts, and consequences including the context and intensity of their relative magnitude. While FHWA and the ODOT remain in receipt of continued public comment, no new substantive information, relevant circumstances, or environmental concerns have been identified or been brought forth that would have a bearing on the Project or the magnitude of its impacts, that have not already been appropriately addressed in compliance with the NEPA decision making process. It is FHWA's position that there is no substantive reason for the FHWA and the ODOT to reconsider the access provided in the Trench

section of the Cleveland Innerbelt and there is no justifiable reason to delay the further advancement of the Project.

c. MidTown is a community development corporation that represents over 650 businesses that employ roughly 18,000 citizens of Northeast Ohio, and the Cleveland Clinic is the largest employer in Northeast Ohio, with over 39,000 employees. Both of these entities and a significant number of citizens they employ and/or represent rely on direct access from the Carnegie and Prospect Avenue interchanges of the Innerbelt for their success and livelihood.

Response: Informational statement of business and employment estimations is noted. The FHWA does not agree with the comment regarding reliance of MidTown and the Cleveland Clinic on direct access from the Carnegie and Prospect Avenue interchanges as the access exist today. FHWA's reply to comment 2(a) above establishes that the traffic functions within the Trench section are preserved. Furthermore, the FEIS documents that the redirected access will have minimal impact on traffic, and traffic operations within the Trench area. Local streets proximate to the freeway and redirected access points are expected to have individual volume changes; however, the overall traffic volumes within the Trench area will remain essentially the same. In addition, the overall origin and destinations of trips into and out of the area will remain essentially the same, with small changes in travel patterns based upon the proposed access changes. The travel on local streets will increase by two to three blocks, a distance of about 400-500 feet, which is not substantial for most trips. For example, the Trench/Midtown stakeholders generally occupy the area between Central Avenue and St. Clair Avenue and between East 22nd Street to East 55th Street and beyond. Thus, a trip from the I-90 to a point within the Trench/Midtown area could include as many as 33 blocks of travel on the local street system. A trip from I-90 to the University Circle area could include as many as 3 miles of travel on the local street system. Comparatively the trip travel pattern change of 2 to 3 blocks, necessitated by the redesigned and redirected access of the project, is not substantial in comparison to the potential of travel on the local street system of 33 blocks and 3 miles, which is in addition to the overall travel tip on the Innerbelt Freeway System and from points beyond. Furthermore, the potential minor increase in local street travel time will be more than offset by the overall travel timesaving's on the Innerbelt Freeway System through reduction of congestion, geometric and operational improvements.

The FEIS analysis demonstrate that the local street system within the Trench section will operate as good as or better than existing conditions with only a single exception. The Chester Avenue and East 30th Street intersection is the one exception within the Trench area, and only during the PM peak travel period. To meet the operational capacity need a southbound right turn lane from Chester Avenue to eastbound East 30th Street is needed. However, such improvement would require demolishing two buildings located in the northwest quadrant of the intersection. The minor southbound operational capacity problem at this intersection during the PM peak period, will not adversely affect the remaining traffic movements managed by the intersection or the adjacent I-90 interchange. ODOT and FHWA have determined that it would be better to accept this minor future capacity deficiency than to remove the two buildings. Considered in context, this minor operational capacity issue does not represent any substantial degradation of local street system conditions compared to the No Build.

Potential economic effects associated with the Cleveland Innerbelt Project particularly localized economic effects within the Trench Section/Midtown stakeholder area have also been analyzed and documented within the FEIS. The local economic effects of the Project were assessed by focusing on analyzing the fundamental elements that were the basis for the local economic concerns cited by the public: congestion on local streets, changes in traffic volumes, loss of direct access, and lack of need for the project. The identified elements sufficiently support the NEPA decision-making process and they cover the range of issues determined to be the basis for the expressed public concern regarding the potential local economic effects of the project. In summary, the FEIS documents and the following regarding each of the fundamental elements:

- Congestion will be improved in the build condition. The Access Modification Study (AMS) as incorporated in full into the FEIS demonstrates that the local street system will operate as good as or better than existing conditions. Within the Trench area, there is only one exception located at the intersection of East 30th Street and Chester Avenue, which has been determined to be minor and does not represent a substantial degradation of local street conditions.
- Redirected access will have minimal impact on the overall traffic volumes in the Trench area. The comparison of build and no build traffic volumes illustrate that traffic volumes will go up on Chester Avenue and down on Prospect and Carnegie Avenues in close proximity to I-90. However, the overall traffic within the Trench will not change appreciably.
- The loss of direct access results in additional travel distances of two to three blocks on city streets, approximately 400-500 feet, which is minor compared to the overall size of the Trench area. The additional travel time on local streets will be more than offset by the overall travel timesaving's on the freeway through reduction of congestion, geometric and operational improvements.
- There is a demonstrated purpose and need for the project as a whole, and within the Trench area. The project will meet the needs for freeway through traffic, freeway-to-local, local-to-freeway, and local-to-local movements through improved mainline capacity, ramps that meet current standards, and local connectivity provided by city streets and the Midtown connector.

In considering the above elements individually and cumulatively, the FEIS documents that with the implementation of the Project no substantial economic effects are anticipated to be realized.

In summary, it is FHWA's assessment that the local streets proximate to the freeway and redirected access points are expected to have individual volume changes; however, the overall traffic volumes within the Trench area will remain essentially the same. In addition, it is FHWA's assessment that the overall origin and destinations of trips into and out of the area will remain essentially the same, with small changes in travel patterns based upon the proposed access changes. It is FHWA's assessment that the trip travel pattern change of 2 to 3 blocks, necessitated by the redesigned and redirected access of the project, is not substantial in comparison to the potential of travel on the local street system of 33 blocks and 3 miles, which is in addition to the overall travel tip on the Innerbelt Freeway System and from points beyond. Furthermore, it is FHWA's assessment that the potential minor increase in local street travel time will be more than offset by the overall travel timesaving's on the Innerbelt Freeway System through reduction of congestion, geometric and operational improvements. The FEIS analyses demonstrate in a quantifiable manner that the local street system within the Trench section will operate as good as or better than existing conditions with only a single exception. Considered in context, the minor operational capacity issue at the intersection of Chester Avenue and E 30th Street does not represent any substantial degradation of local street system conditions compared to the No Build. Finally, it is FHWA's view that no substantial economic effects are anticipated to be realized with the implementation of the Project. It is thus FHWA's position that the Project's transportation improvement will provide for all of the functional transportation and defined Project needs within the Trench Section, that the 2 to 3 block travel route modification, that will be experienced with implementation of the Project, is not significant, and that the redesigned and redirected access will preserve the relationship between the traveling /commuting public and their travel needs to and from businesses and employment destinations within the Trench/Midtown areas and beyond, 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 impacts that will be born by individual properties identified for acquisition/relocation as part of the Project.

d. MidTown and the Cleveland Clinic oppose the FEIS because it fails to adequately address the issues raised in the comment on the Draft Environmental Impact Statement ("DEIS") submitted by MidTown and the Cleveland Clinic on May 21, 2009 (the "Comment").

1. First, no comprehensive or completed economic impact study has been provided as promised, and yet the FEIS reiterates the unsubstantiated assertions that no substantial negative economic effects will result from the loss of direct highway access within the Trench. However, there is nothing in the record that justifies making economic impact conclusions based solely on traffic mitigation models.

Response: It is acknowledged that the draft study, *Economic Effects of the Cleveland Innerbelt Plan Access Changes (Draft - March 2006)*, was not finalized. While initially conceived and coordinated with the public as a means to facilitate the assessment of local economic effects of the project within the Trench area, it was met with strong opposition by the public while in draft form. As discussed below, ODOT and FHWA determined that bringing the study to final form would be difficult given the challenges to methodology. Therefore, ODOT and FHWA pursued an alternative methodology to assess the economic effects of the proposed transportation improvements by focusing on the fundamental elements that were the basis for the economic concerns cited by the public. Based upon the use of an alternative methodology as described below, finalizing the draft local economic study is not necessary to support the NEPA decision-making process. The scope of the methodology employed within the FEIS covers the range of issues determined as the basis for economic concerns through extensive public involvement documented in Tables 5a and 5b of the FEIS. Continuing comments regarding this issue have not presented any additional substantive factors relevant to the analysis.

The FHWA disagrees with the comment that no substantiated economic analysis was completed to support FHWA's assessment of the economic effects of the Project. Provided below are experts from the FEIS that disclose the quantified analysis of the Project's potential economic effects which the FHWA used to reach its conclusion.

Based upon the fundamental elements that were the basis for the economic concerns cited by Midtown representatives and in public comments throughout project development:

- congestion on local streets,
- changes in traffic volumes,
- loss of direct access, and
- lack of need for the project.

And based upon the conclusions reached for each fundamental economic element/issue they "neither individually nor cumulatively" are anticipated to result in substantial impacts within the Trench area. As the FEIS and incorporated DEIS regional economic analysis indicates that the project is likely to result in an overall economic benefit to the area, it has been determined that there will be no substantial economic effects within the Trench area.

Economic Impacts

A study of the statewide and regional economic effects of the project, *Regional Economic Impacts of Cleveland Innerbelt Reconstruction (July 15, 2004)*, discussed in DEIS Section 4.2.7, indicated overall benefits in employment and income as result of the project, both for Ohio as a whole and for the greater Cleveland area. While not disputing these findings, representatives of Midtown contend that the access changes in the Trench area will have negative localized economic effects on Midtown.

As a result of these comments, a localized study was conducted and discussed in the report entitled *Economic Effects of the Cleveland Innerbelt Plan Access Changes (Draft - March 2006)*. The study area boundaries coincide, for the most part, with the three local community development corporations (CDCs): Midtown Cleveland, St. Clair-Superior Development Corporation (excluding the area east of East 55th Street), and the Quadrangle. The scope of the study was proposed by the economic subconsultant and reviewed by ODOT and representatives of Midtown. The study was designed to include an analysis of likely impacts on employment and sales at firms in the MidTown area and an estimation of changes in transportation costs for firms and workers in the area.

The results of the draft study did show small increases and decreases in employment and income for particular streets, generally based upon changes in pass-by traffic. However, the draft study indicated that any negatives would be offset by positive gains elsewhere within the Trench area and there would be no substantial negative economic impacts on the MidTown area as a result of the project. MidTown stakeholders did not accept this conclusion and provided public comments on the issue (see DEIS Chapter 5), including comments on the methodology.

Economic analyses, and a specific methodology to conduct them, are not specified in any FHWA or ODOT guidance. As a result, disputes concerning the most effective or "best" methodology to assess economic impacts do not necessarily call into question the results and would be difficult to resolve through public involvement. There are a high number of variables related to potential job creation in a downtown business district. Similarly, the valuation of travel cost savings is inherently subjective and subject to numerous interpretations. With this in mind, ODOT and FHWA decided not to finalize the disputed study. ODOT and FHWA pursued an alternative methodology to assess the economic effects of the proposed transportation improvements by focusing on the fundamental elements that were the basis for the economic concerns cited by Midtown representatives and in public comments throughout project development:

- congestion on local streets,
- changes in traffic volumes,
- loss of direct access, and
- lack of need for the project.

These factors were determined from public involvement throughout numerous meetings, as listed in Tables 5a and 5b of the FEIS. The following quantified discussions were provided for within the FEIS for each of the fundamental elements that were identified as the basis for economic concern within the Midtown and surrounding areas:

Access in the Trench Section

A third of the 89 written comments received on the DEIS, as well as half the 19 verbal comments at the public hearing, expressed concerns with the potential impacts resulting from Project changes to freeway access. Cited concerns include the following, which are also discussed in more detail below:

- Failure to meet Purpose and Need regarding local access
- No consideration of alternatives
- Validity of traffic models
- Congestion on local roadways
- Economic impacts on businesses from loss of direct access or changes in travel patterns
- Desire to delay NEPA decision concerning project elements in the Trench, by segmenting that portion of the road from the remainder of project

Purpose and Need

Certain comments suggested that proposed project elements in the Trench portion of the study area would not meet the stated Purpose and Need. These comments improperly segregate individual project elements and ignore the overall balancing of operational performance, safety, design improvement and freeway access that must be conducted to evaluate the project as a whole and key to the function of the Innerbelt freeway system.

The purpose of the Innerbelt Freeway system is to collect and distribute traffic between the radial freeway system (I-71, I-90, I-77, SR 2, I-490, and SR 176) and the local street system, and to move traffic between each of the radial freeways, within the Cleveland CBD area. Within the Trench section, the existing Innerbelt Freeway System provides the following traffic functions: through traffic, local street to interstate, interstate to local street, and local-to-local movements (where traffic uses the interstate to go a distance of only one interchange). Safety and operation in the Trench section is affected by the numerous, closely spaced interchanges and the large number of weaving maneuvers within this section.

With respect to the Trench area, evidence in the DEIS demonstrates that redesign of the ramps in the Trench will in fact address safety, design deficiencies and performance issues that currently exist in that area. (See Purpose and Need element summarized in FEIS Table 8 for proposed conditions compared to No Build.) Each of the functions in the Trench is addressed. Through traffic will experience improved travel times and safety due to reduced congestion and fewer conflicts. Traffic accessing local streets from the freeway, and vice versa, will experience the same improvements on the freeway as through traffic and will use ramps that meet current design standards, which have a safer merging distance.

Local-to-local movements, which are presently using the freeway to go from one interchange to the next, will be able to use the new Midtown connector to access several east-west corridors in the Trench area. In addition, the Midtown connector will serve to distribute traffic from the Innerbelt Freeway system to the local street system. In the build condition, the local streets in the vicinity of the project will function as good as or better than existing conditions. Therefore, the project meets the access need from the Purpose and Need.

Figure 1-1: Innerbelt Study Area Points of Interest

Consideration of Alternatives

As discussed above, the alternatives developed for the Trench section focused on maintaining all of the Innerbelt Freeway system functions while addressing the safety and operational shortcomings that cause the system not to function acceptably. The alternatives within the Trench area focused on consolidating some of the interchanges within this section, reconfiguring the remaining interchanges such that access to the CBD and Midtown were equally accessible, and minimizing the number of weaving locations through use of a frontage road system, braided ramps, improving weaving distances or a combination of these approaches. Ten different conceptual alternatives (Trench 1 through Trench 10) were developed to address freeway through traffic and freeway-to-local movements. At the conclusion of the conceptual alternatives phase, two feasible alternatives remained for the Trench: one option which provided for an interchange at Chester Avenue and a second option that provided for a split interchange at Chester and Payne Avenues. The primary difference between these alternatives is how access is provided to the Payne Avenue corridor. As such, these alternatives were referred to as the "With Payne" and "No Payne" alternatives. (See CAS Chapter 5).

The "With Payne" alternative provided direct freeway access to Payne Avenue via a modified split diamond interchange with Payne Avenue and Chester Avenue. Operational analyses showed that this alternative improved operation for Chester Avenue. However, there was strong public opposition to the provision of direct freeway access to Payne Avenue. Key stakeholders, including the City of Cleveland, were concerned that this change in access would change the character of this arterial. The "No Payne" Alternative removes freeway access from Payne Avenue and consolidates access at the Chester Avenue interchange, a modified diamond interchange. While this design better addressed access concerns raised by stakeholders, it raised other concerns regarding the operation of the Chester Avenue arterial corridor in the interchange area and access patterns to Payne Avenue. After working extensively with stakeholders in this area, the "No Payne" alternative was modified in the DEIS to include refined versions of the existing cut-off ramps that provide indirect access to Payne Avenue. Therefore, an alternative was considered that would have provided for more of the direct access desired by the public at an additional location in the Trench, but this option was eliminated from further consideration as a result of public comment which strongly expressed the desire to not change the character of the Payne Avenue corridor.

Eighteen conceptual alternatives (Midtown 1 through Midtown 18) were developed to address local-to-local movements in the CAS. At the conclusion of the CAS, the Midtown Connector remained the feasible solution; however, the exact configuration of the connector was left open for additional consideration.

The *Conceptual Alternatives Study* (located in Appendix C of the DEIS, included as Appendix G of this FEIS) details the development of the Innerbelt Trench conceptual alternatives through the identification of Feasible Alternatives. Figures 3-3a, 3-3b, 3-3c, 5-3a, and 5-3b of the CAS illustrate the progression of these alternatives in relation to the numerous meetings held with area stakeholders, including Midtown Cleveland, in order to identify Feasible Alternatives for the Trench. Extensive coordination, including approximately two dozen meetings (as documented in Table 5a), occurred during development of conceptual alternatives for the Trench area.

During development of the DEIS, Coordination with the City of Cleveland and area stakeholders resulted in a modification to the Midtown connector to create one-way pairs on either side of I-90 and to extend the connector to Cedar Avenue. Coordination during development of the DEIS is listed in Table 5b. Various concerns of stakeholders were considered and addressed through the development of alternatives, leaving one remaining concern: the strong local desire to provide direct access at Carnegie and Prospect Avenues could not be achieved.

Table 5a: Coordination with Local Stakeholders Regarding Trench Access during Development of CAS

January 20, 2004	Meeting with MidTown Cleveland
March 15, 2004	Meeting with University Circle, Inc.
May 11, 2004	Meeting with MidTown Cleveland
June 4, 2004	Meeting with MidTown Cleveland
November 3, 2004	Meeting with MidTown Cleveland
January 11, 2005	Meeting with MidTown Cleveland, Quadrangle, St. Clair/Superior, Tremont and City of Cleveland
February 24, 2005	Public Involvement Meeting
May 12, 2005	Meeting with MidTown, St. Clair/Superior, City of Cleveland
June 14, 2005	Public Involvement Meeting
July 21, 2005	Meeting with MidTown, St. Clair/Superior
October 13, 2005	Meeting with Congresswoman Tubbs-Jones, MidTown, Cuyahoga County Planning Commission
October 18, 2005	Meeting with MidTown
October 19, 2005	Meeting with MidTown
October 27, 2005	Meeting with MidTown
November 2, 2005	Meeting with MidTown, St. Clair/Superior
November 15, 2005	Asian Community Meeting at Asia Plaza
November 17, 2005	Public Involvement Meeting
November 18, 2005	Meeting with MidTown, Greek Orthodox Church, Cuyahoga County Planning Commission, Tremont West, Quadrangle, Cleveland State University, St. Clair/Superior
January 23, 2006	Meeting with Mayor Jackson, Congressional Representatives Tubbs-Jones and Kucinich, Senator Voinovich, Councilman Cimperman
January 25, 2006	Meeting with Midtown

February 21, 2006	Midtown public meeting (locally sponsored)
February 24, 2006	Meeting with Midtown, Quadrangle, St. Clair/Superior, Tremont, City of Cleveland
March 14, 2006	Meeting with Midtown, Quadrangle, St. Clair/Superior, City of Cleveland, Congressional Representatives
April 13, 2006	Meeting with Midtown, Quadrangle, St. Clair/Superior, Tremont, City of Cleveland
April 21, 2006	City of Cleveland Press Release indicating "no safe way to reestablish ramps at Carnegie Avenue and Prospect Avenue." Committing to work closely with ODOT during design.

Table 5b: Coordination with Local Stakeholders during Preparation of DEIS

August 13, 2007	GCP e-mail indicating "lack of consensus" regarding Carnegie ramp among stakeholders
August 31, 2007	Meeting with Liet. Governor Fisher, Mayor Jackson, GCP, Quadrangle, Midtown, and City of Cleveland
October 17, 2007	GCP Meeting, Draft Letter to ODOT/FHWA
November 6, 2007	Meeting with GCP, CSU, and NOACA. GCP indicated desire to revisit travel demands based upon growth in University Circle. NOACA presented travel demand model. ODOT discussed certified traffic process. GCP/CSU discussed data collection. GCP to provide updated data to modeling advisory committee (MAC).
November 7, 2007	GCP letter to FHWA and ODOT, with signatures of additional stakeholders, indicating desire to include direct ramp to Carnegie Avenue
January 8, 2008	Meeting with GCP and CSU. GCP secured support of local stakeholders, Lt. Governor Fisher and Senator Voinovich for GCP/CSU to study access issues, impacts, and alternatives. ODOT provided information on travel demand model and on Section 4(f) procedures.
August 14, 2008	Meeting with GCP, CSU, City of Cleveland, and NOACA regarding GCP/CSU's presentation of revised employment projections for MidTown and University Circle
August 20, 2008	ODOT e-mail to GCP transmitting summary from 8/14/08 meeting, along with population and employment projections from the NOACA travel demand model
December 5, 2008	ODOT e-mail to GCP and CSU regarding certified traffic and travel demand modeling
February 4, 2009	GCP e-mail to ODOT transmitting outpatient information
March 3, 2009	Publication of DEIS
March 12, 2009	NOACA response to GCP regarding travel demand modeling
March 13, 2009	Meeting with GCP, City of Cleveland, NOACA, Cleveland Clinic, and CSU

The Feasible Alternatives within the Innerbelt Trench require traffic to and from the existing ramps at Carnegie and Prospect Avenues to be redirected, as shown in DEIS Tables 4-11 and 4-12. Alternatives to these changes were considered early in the conceptual design phase, but no options could be found that could maintain these ramps and meet operational needs without substantial impacts. Design concepts for the Trench area face several constraints. On the north side of the trench is the Walker Weeks Building. On the south side is the Cuyahoga County Juvenile Justice Center. Both are historic properties subject to protection under Section 4(f). The space between these buildings is limited. Based upon I-90 traffic volumes, ten travel lanes are needed to serve the traffic. With ten travel lanes and shoulders, there is no room to develop a ramp in this area even with the use of retaining walls.

As part of project development, and as a result of stakeholder concerns, two options were developed to examine preserving the existing direct freeway access to Carnegie Avenue. Exhibits of these options are included in DEIS Appendix G. While these options would function operationally, neither is constructible without impacts to the Juvenile Justice Center building.

The options developed in response to comments put the agency in the unusual position of further evaluating an alternative that would clearly use an historic or cultural resource eligible for listing on the National Register of Historic Place, as opposed to considering options that would avoid such a use under Section 4(f) of the Transportation Act. Under the accepted standard for Section 4(f), the agency would have to find that alternatives without the ramp were not "feasible and prudent avoidance alternatives," as that phrase is defined at 23 C.F.R. 774.17.

First, it is the agency's recommendation that the avoidance alternatives included as part of the proposed Preferred Alternative are clearly feasible from an engineering standpoint. Comments received to date do not appear to question that recommendation. The alternatives discussed in the DEIS can be built as a matter of sound engineering judgment and would require an additional travel distance of two to three blocks.

Second, and most pertinent to the comments raised proposing use of the Juvenile Justice Center building, the agency recommends that the proposed options in the Preferred Alternative are, in fact, prudent. Under current

FHWA regulations, a feasible and prudent alternative "does not cause other severe problems of a magnitude that substantially outweighs the importance of protecting the Section 4(f) property." In addition, the regulations set out several factors that could contribute to a finding that an alternative is not prudent. The agency could find that one of those factors exist in such a magnitude as to warrant a finding of no prudence, or the option could involve multiple factors "that while individually minor, cumulatively cause unique problems or impacts of extraordinary magnitude."

Among these factors, comments suggested that the proposed Preferred Alternative would result in "severe economic impacts" and "disruption to established communities." However, analyses n the DEIS contradicts such a finding. (See Regional Economic Analysis in DEIS Section 4.2.7 and Neighborhood and Community Access DEIS Section 4.2.3). As presented in the supplemental discussion of local economics below, none of the impacts identified are so severe or of such an extraordinary magnitude that would render the proposed Preferred Alternative imprudent. Therefore, under Section 4(f), the alternative that impacts the Juvenile Justice Center cannot be selected since another feasible and prudent alternative exists (the Preferred Alternative) that avoids the building.

Comments recommending demolition of all or some of the Juvenile Justice Center further indicate the nature of the analysis of the "relative value of the resource to the preservation purpose" of Section 4(f). Yet, none of the comments question the fact that the Center is eligible for listing on the National Register. Under accepted criteria created to evaluate the significance of historic or cultural resources, the Center has been identified as deserving projection. Section 4(f) mandates protection in circumstances when a prudent and feasible alternative exists. Those circumstances are present here.

As shown in Tables 4-11 and 4-12 from the DEIS (repeated below), traffic to and from the Prospect and Carnegie Avenue ramps will be redirected to ramps at Chester Avenue and East 22nd Street, utilizing city streets and the new Midtown Connector. In most cases, the additional travel distance is two to three city blocks. Directional signing will be used to provide motorists with information on which city streets are best accessed from which ramps. The Midtown connector will serve as a frontage road to provide connectivity between the east-west roadways, to allow the Chester Avenue Interchange to provide access to multiple cross-streets.

DEIS Table 4-11: Disposition of I-90 Westbound Local Access Points

Type	Street	Secondary	Proposed	Comments
Exit to	SR 2		Redesigned	
Entrance from	SR 2		Redesigned	
Entrance from	E 26th St	Lakeside	Redirected	Via E 26th St to Superior Ave Entrance Ramp
Exit to	Superior	E 26th St	Redesigned	
Entrance from	Superior		Redesigned	
Exit to	Chester	E 24th St	Redesigned	
Entrance from	Chester		Redesigned	
Exit to	Prospect		Redirected	Via new frontage road from Chester Exit Ramp
Entrance from	Prospect		Redirected	Via Carnegie Ave to E 14th St Entrance Ramp
Entrance from	E 14th St		Redesigned	
Entrance from	E 9th St		Redesigned	
Entrance from	Ontario		Redesigned	

DEIS Table 4-12: Disposition of I-90 Eastbound Local Access Points

Type	Street	Secondary	Proposed	Comments
Exit to	Broadway		Relocated or Eliminated	Relocated to new E 9th St southbound exit ramp for Northern Alignment Alternative. Not provided on Southern Alignment Alternative.
Exit to	Ontario		Redesigned	
Exit to	E 9th St		Redesigned	
Exit to	E 22nd St		Redesigned	
Exit to	Carnegie		Redirected	Via E 22nd St Exit Ramp
Entrance from	Prospect		Redirected	Via new frontage road to Chester Entrance Ramp
Exit to	Chester		Redesigned	
Entrance from	Chester		Redesigned	
Exit to	Superior	E 30th St	Redesigned	
Entrance from	Superior		Redesigned	

Exit to	E 33rd St	Lakeside	Redirected	Via E 26th or E 30th extension from Superior Exit Ramp

Travel Demand Modeling

Traffic volumes used to analyze the operation of the Innerbelt freeway, ramps, and local street systems were developed according to ODOT's prescribed practice used for projects throughout the state. The process to develop traffic, which is then "certified" by ODOT's Office of Technical Services for use in project design, consists of two main inputs: traffic counts and the Northeast Ohio Areawide Coordination Agency (NOACA) travel demand model. The model is used to grow the traffic volumes for a design year, in this case 2035.

NOACA develops its model by, in part, including conservative land use assumptions. In their process, neighborhood planning subcommittees provide input on the growth numbers being used. ODOT and the project team apply the NOACA model to create traffic impacts analysis. Reasonable projected growth in University Circle based on consultation with neighborhood planning subcommittees is reflected in the NOACA model.

The project team developed the traffic volumes following the prescribed process. ODOT's Technical Services independently reviewed the results and certified that the required procedure had been followed. The NOACA model was used and the same process was followed as is required for all projects. The resulting traffic volumes are included as an appendix to the Access Modification Study (AMS), which may be found on DVD in Appendix G of this FEIS. These certified traffic volumes are required for project analyses.

Public comments expressed concerns about the ability of the proposed Innerbelt design to handle increasing traffic volumes due to growth in University Circle. In response to similar questions, NOACA provided a "Fact Sheet" to the Greater Cleveland Partnership (GCP) on March 12, 2009, responding to concerns about traffic modeling. This Fact Sheet has been included in Appendix F. NOACA indicates that the proposed Innerbelt design can accommodate anticipated trips from expansion of hospital facilities, stating: *"A review of available travel demand model (TDM) data for the corridor suggests that expected outpatient growth will not overburden the Innerbelt design proposed by ODOT. The Innerbelt was designed using the highest possible number of work trips (the 1990 compact model)."*

Table 6a presents a comparison of the build and no build peak hour traffic volumes on east-west corridors in the Trench. This summary illustrates that overall traffic volumes accessing the area on the main east-west routes are projected to remain essentially the same. As would be expected based upon the access patterns as shown in Tables 4-11 and 4-12, traffic volumes are projected to decrease on Prospect and Carnegie Avenues, increase on Chester Avenue, and remain nearly the same on Superior, Payne and Euclid Avenues. The overall east-west traffic volumes show a difference of only -1% to +2% for build compared to no build. The function of the Innerbelt Freeway is to collect and distribute traffic from the local street system to the radial freeways and vice versa. These projected volumes illustrate that the project will achieve this function.

Table 6a: Comparison of Build and No Build Peak Hour Traffic Volumes in the Trench	**East-West Routes**					
	AM No Build	**AM Build**	**Increase (Decrease)**	**PM No Build**	**PM Build**	**Increase (Decrease)**
Superior						
West of East 30th	1780	1600	(180)	1920	1890	(30)
East of East 30th	1470	1540	70	1540	1550	10
Payne						
West of East 30th	780	790	10	1000	1070	70
East of East 30th	830	820	(10)	980	1080	100
Chester						
West of East 30th	3380	4070	690	3190	4100	910
East of East 30th	3200	3780	580	3100	3910	810
Euclid						
West of East 30th	860	970	110	700	890	190
East of East 30th	900	1030	130	660	750	90
Prospect						
West of East 30th	1000	620	(380)	1600	1010	(590)
East of East 30th	920	670	(250)	1350	900	(450)

Carnegie								
West of East 30th	2770	2410	(360)		2430	1850	(580)	
East of East 30th	2660	2360	(300)		2360	1900	(460)	
Total for East-West Routes								
West of East 30th	10570	10460	(110)	-1%	10840	10810	(30)	0%
East of East 30th	9980	10200	220	2%	9990	10090	100	1%

Table 6b presents a comparison of the build and no build peak hour traffic volumes on north-south routes adjacent to the Trench. North-south routes, East 22nd and East 30th Streets, are projected to show a decrease between Euclid and Carnegie Avenues, as the new Midtown Connector will provide an additional option for motorists. The Midtown Connector also provides for local trips that use the Innerbelt Freeway under existing conditions, so the overall volume is higher than just the redirected volumes from existing north-south streets. It should be noted that the volume changes on local streets are proximate to the freeway and access points, but are similar to existing conditions a short distance away. For example, volumes on East 30th Street are shown to remaining essentially the same between Superior and Chester Avenues.

Table 6b: Comparison of Build and No Build Peak Hour Traffic Volumes in the Trench	North-South Routes							
	AM No Build	AM Build	Increase (Decrease)		PM No Build	PM Build	Increase (Decrease)	
East 22nd								
Euclid to Prospect	680	650	(30)		570	530	(40)	
Prospect to Carnegie	1400	1350	(50)		930	760	(170)	
East 30th								
Superior to Payne	920	990	70		1010	970	(40)	
Payne to Chester	890	960	70		1090	1120	30	
Chester to Euclid	980	900	(80)		870	820	(50)	
Euclid to Prospect	880	740	(140)		870	720	(150)	
Prospect to Carnegie	1070	860	(210)		1010	970	(40)	
Midtown Connector								
Euclid to Chester	n/a	2250	2250		n/a	1270	1270	
Prospect to Euclid	n/a	820	820		n/a	870	870	
Carnegie to Prospect	n/a	860	860		n/a	990	990	
Total for North-South Routes (excluding Midtown Connector)								
Euclid to Prospect	1560	1390	(170)	-11%	1440	1250	(190)	-13%
Prospect to Carnegie	2470	2210	(260)	-11%	1940	1730	(210)	-11%

The above data in Tables 6a and 6b validates the model results. The origin and destinations remain the same, with small changes in travel patterns based upon access changes. In the overall picture, trips to the majority of destinations in the Trench area will not change appreciably. In the build condition, the travel on local streets will increase by two to three blocks, a distance of about 400-500 feet. The additional travel time on local streets will be more than offset by the overall travel time savings on the Innerbelt Freeway system through reduction of congestion, geometric and operational improvements.

The Midtown stakeholders occupy the area between Central Avenue and St. Clair Avenue, from I-90 at approximately East 22nd Street to East 55th Street and beyond, a distance of about 33 blocks or more. (Figure 3-2 of the CAS shows specific boundaries of the Community Development Corporations.) Within this area, 2-3 blocks added to a trip is not substantial for most trips. For example, for longer trips along city streets, such as those to the University Circle area (often cited in public comments), the addition of 400-500 feet of travel on city streets is even less noticeable, as these trips currently travel about 3 miles from I-90 on city streets in addition to the length of their trip on the Innerbelt Freeway system and beyond.

Operation of Local Roads
Local roads that are affected by the project have been evaluated based upon the projected 2035 traffic volumes, as discussed above. Improvements to local streets required to achieve acceptable intersection operations are included as project elements, such as the proposed Midtown connector and improvements to the intersections of freeway ramps with local streets. A summary of intersection operations is included on Page 3-13 of the DEIS. (Details regarding the operational analyses are included in the Access Modification Study, included in Appendix G on DVD.) From this table, it is clear that the proposed design will operate as good as or better than existing conditions at local street intersections.

The Chester Avenue and East 30th Street intersection is the one exception within the Trench area. This intersection operates at LOS E during the PM peak. The high volumes on southbound East 30th Street coupled with the lane use of a pocket left and shared thru/right, overload this approach. To improve operation at this intersection, a southbound right turn lane would need to be added to East 30th Street. Adding this lane would require demolishing two buildings located in the northwest quadrant of the intersection that are currently occupied and designated for warehouse/light industrial uses. The minor problems at this intersection, occurring primarily on one approach and only during the PM peak period, will not impact the operation of the freeway or interchange. ODOT and FHWA have determined that it would be better to accept this minor capacity problem than to impact two buildings. Considered in context, this minor issue does not represent any substantial degradation of local street conditions compared to the No Build.

Thus again, it is FHWA's assessment based upon the above analysis of the Project's potential economic effects as founded in the identified fundamental elements that:

- Congestion will be improved in the build condition. The AMS (included on DVD in Appendix G) demonstrates that the local street system will operate as good as or better than existing conditions. Within the Trench area, there is only one exception located at the intersection of East 30th Street and Chester Avenue, which has been determined to be minor and does not represent a substantial degradation of local street conditions.
- Redirected access will have minimal impact on the overall traffic volumes in the Trench area. The build and no build traffic volumes, summarized in Table 6a and 6b above, illustrate that traffic volumes will go up on Chester Avenue and down on Prospect and Carnegie Avenues in close proximity to I-90. However, the overall traffic within the Trench will not change appreciably.
- The loss of direct access results in additional travel distances of two to three blocks on city streets, approximately 400-500 feet, which is minor compared to the overall size of the Trench area. The additional travel time on local streets will be more than offset by the overall travel time savings on the freeway through reduction of congestion, geometric and operational improvements.
- There is a demonstrated purpose and need for the project as a whole, and within the Trench area. The project will meet the needs for freeway through traffic, freeway-to-local, local-to-freeway, and local-to-local movements through improved mainline capacity, ramps that meet current standards, and local connectivity provided by city streets and the Midtown connector.

These issues, upon which economic concerns are fundamentally based, neither individually nor cumulatively, are anticipated to result in substantial impacts within the Trench area. Therefore, the fundamental issues leading to the concern regarding economic impacts have been determined to be insubstantial. As the FEIS and incorporated DEIS regional economic analysis indicates an overall economic benefit to the area, it has been determined that there will be no substantial economic effects within the Trench area. Continuing comments regarding this issue have not presented any new information to contradict these findings including continued comment from Midtown Cleveland, In. and the Cleveland Clinic as disclosed herein.

2. Second, the FEIS rejects the alternative proposed in the Comment by arguing that under Section 4(f) regulations, the project cannot maintain the existing highway access point at Carnegie Avenue because avoidance of the Juvenile Justice Center (the "Center") remains feasible and prudent. In fact, in view of Cuyahoga County's position that the Center will soon be empty and may be torn down, removing highway access to save the Center is imprudent.

Response: In the development of Federal Aid Highway project's the FHWA is required to comply with Section 106 of the National Historic Preservation Act of 1966 (NHPA) and Section 4(f) of The Department of Transportation Act (DOT Act) of 1966.

Section 106 of the National Historic Preservation Act of 1966 (NHPA) requires FHWA to take into account the effects of its undertakings, (The Cleveland Innerbelt Project) on historic properties, and afford the Advisory Council on Historic Preservation a reasonable opportunity to comment. The historic preservation review process mandated by Section 106 is outlined in regulations issued by ACHP, "Protection of Historic Properties" (36 CFR Part 800).

Section 4(f) of The Department of Transportation Act (DOT Act) of 1966 stipulates that the FHWA and other DOT agencies cannot approve the use of land from publicly owned parks, recreational areas, wildlife and waterfowl refuges, or public and private historical sites unless the following conditions apply:

- There is no feasible and prudent alternative to the use of land.
- The action includes all possible planning to minimize harm to the property resulting from use.

The FHWA implements the Section 4(f) requirements in accordance with regulations issued by FHWA, "Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites (Section 4(f))" (23 CFR 774). During the development of the Cleveland Innerbelt Project, properties that were to be potentially impacted by the Project and its alternatives were assessed in accordance with FHWA's Section 106 and Section 4(f) obligations. The assessment of the Cuyahoga County Juvenile Justice Center, 2163 E. 22nd Street revealed that it is a large complex that is composed of several wings surrounding a courtyard. The original portions of the building have a series of gabled roofs, limestone trim, and brick walls. The exterior of the building has not had any major additions other than the completion of a new rear addition in 1965–1966. This addition was used for offices in 1969. The addition is attached to the original building by only a small connector, and it is situated at the back of the building; it therefore does not significantly diminish the integrity of the original structure. The original portion of the building did undergo some alterations. A 1976 photograph of the property indicates that by that date, the original multi-pane windows had been replaced by inappropriate single-pane tinted aluminum-frame windows. In addition, the south and north wings of the building, which were once residential in nature, were converted to office use; the original finishes were demolished and replaced by offices with gypsum board walls, metal doors, and drop acoustical ceilings.

After study by the Cleveland Foundation, a decision was made in 1929 by the City of Cleveland to separate the juvenile court from the main adult court system. A bond issue was passed in 1929 to fund the construction of a new juvenile court facility. Construction began in 1931, and the building was dedicated in 1932. The architect was Frank W. Bail. The building served as a national and international model for court facilities for juveniles, and it continues to be used as a juvenile court facility.

In accordance with Section 106 process, the Cuyahoga County Juvenile Justice Center at 2163 E. 22nd Street was found to be eligible for inclusion in the National Register by consensus determination of eligibility by the Ohio Department of Transportation, on behalf of the FHWA, with concurrence by the Ohio Historic Preservation Office on November 8, 2005. The building was found to be eligible under Criterion A (social history) for its role as a significant social institution at the national, state, and local levels, and under Criterion C (architecture) as a prototype for the juvenile center property type. The eligible boundary for the property was determined to be the low stone retaining wall running along the property edge on the west, north, and south sides of the building. The east boundary is the western edge of an alley at the rear of the building. The parking lot at the rear of the building is

considered a non-contributing element. The entire Juvenile Justice Center property is also listed as a local landmark by the Cleveland Landmarks Commission.

With the finding of eligibility for the National Register, the FHWA was obligated to develop the Cleveland Innerbelt Project in accordance with the Section 106 and Section 4(f) provisions which required the FHWA to strive for the identification and development of project alternatives that would result in no Section 106 effects and no Section 4(f) property uses. The FHWA was unable to meet the no effect and no use objectives of Section 106 and Section 4(f) in the development of the Project alternatives and their attributes proximate to the Cuyahoga County Juvenile Justice Center. However, FHWA was able to develop feasible and prudent alternatives that would result in no more than a Section 4(f) de minimis impact and use of the property based upon their Section 106 assessment of effect determination of "no adverse effect".

The Juvenile Justice Center "building" will not be impacted by Project Alternatives. However, the Feasible Project Alternatives, Alternatives A and B (as discussed in the FEIS/Section 4(f) Evaluation), require that a strip take of property be acquired from the Juvenile Justice Center property that is within the defined National Register eligible property boundary. The take which results in a defined Section 4 (f) use is located along the northern side of the property and is required order to widen I-90 in the Carnegie Curve area to address the purpose and needs of the overall Project and to reestablish the existing retaining wall and sidewalk proximate the Juvenile Justice Center property. This impact is necessary in order to avoid acquisition of the NRHP-listed Walker Weeks Building on the opposite side of the freeway which would result in a Section 106 adverse effect determination. Approximately 200 feet of the low stone wall and sidewalk on the northern side of the property will be impacted. These features will be reestablished by the Project, utilizing as much of the existing stone wall material as practical. Any new stone required for the reestablishment of the properties encircling low stone wall be matched as closely as possible to the existing material.

Construction of the retaining wall between I-90 and the northern boundary of the Juvenile Justice Center property will require the use of tie-backs in order to perform its intended purpose and to be structurally sound. The tie-backs are expected to extend underneath the existing foundation of the Juvenile Justice Center "building" and they will be designed and constructed in a manner that will not impact the foundation and the structural integrity of the "building". Furthermore vehicular access will be maintained to the property's courtyard entrance off of Cedar Avenue and in addition no substantial noise, vibration, or visual impacts are anticipated. Coordination was conducted with consulting parties and the OHPO and it has been determined that the Project's Alternative effect on the Juvenile Justice Center property would result in "No Adverse Effect" Therefore, the FHWA was able to determine, in consultation with OHPO, that the Section 4(f) use of Juvenile Justice Center property was *de minimis* as defined within 23 CFR 774.

In addition to FHWA's development of the Cleveland Innerbelt Project in compliance with Section 4(f) and Section 106 and in order to address comments regarding the future status of the Juvenile Justice Center property, the FHWA consulted, by telephone as documented herein, with the Cuyahoga County Department of Central Services Director Jay Ross on September 10, 2009. The Department of Central Services provides and maintains all county facilities and life safety functions to support all county agencies, employees, and the general public resulting in consistent, quality, timely service and a desirable workplace through the design, planning, and efficient management of manpower and technology. Director Ross reported that a new Courthouse and Detention Center was under construction at East 93rd Street and Quincy Avenues and that the juvenile courtroom, detention center, offices and etc. where expected to relocate from the Cuyahoga County Juvenile Justice Center at 2163 E. 22nd Street to the new facilities in early 2011. Director Ross also reported that the County had not taken any action, nor did the County have any plans as of this time regarding the future use of the County owned Juvenile Justice Center property. Director Ross

acknowledged that he was aware of the historic significance of the property and indicated that any future use of the property would require coordination to fulfill applicable public and governmental interest in the property.

The Feasible Alternatives within the Innerbelt Trench require traffic to and from the existing ramps at Carnegie and Prospect Avenues to be redirected. Alternatives to these changes were considered early in the conceptual design phase, but no options could be found that could maintain these ramps and meet operational needs without substantial impacts to either the Walker Weeks Building or the Cuyahoga County Juvenile Justice Center. As part of project development, and as a result of stakeholder concerns, two options were developed to examine preserving the existing direct freeway access to Carnegie Avenue. Exhibits of these options are included in DEIS Appendix G. While these options could potentially function operationally, neither is constructible without substantial adverse impact to the Juvenile Justice Center building or the Walker Weeks Building.

The options developed in response to comments put FHWA in the unusual position of further evaluating alternatives that would clearly use an historic resource on or eligible for listing on the National Register of Historic Place, as opposed to considering options that would avoid such a use under Section 4(f) of the DOT Act. Under the accepted standard for Section 4(f), the FHWA would have to find that alternatives without the Carnegie Avenue direct exit ramp as not "feasible and prudent avoidance alternatives," as that phrase is defined within 23 CFR 774.17.

It is FHWA's position that the Project alternatives as described in the FEIS/Section 4(f) Evaluation are clearly feasible and prudent, that the Cuyahoga County Juvenile Justice Center Complex is historically significant, and that the Project Selected Alternative A "use" of Juvenile Justice Center property is *de minimis*. Comments received to date do not appear to question these points. Comments instead speculate upon the future use of the Juvenile Justice Center property and the relative value of the resource. Yet, none of the comments question the fact that the Center is eligible for listing on the National Register. Furthermore, comment regarding public perception of relative diminished value of the Juvenile Justice Center based upon speculated future use is unsubstantiated. FHWA has confirmed that the County had not taken any action, nor does the County have any plans as of this time regarding the future use of the County owned Juvenile Justice Center property. Comments also argue the prudency of the Project alternatives in light of expressed views regarding the magnitude of resultant environmental impacts that might be realized with the implementation of the FEIS/Section 4(f) Evaluation Project alternatives.

In summary it is the FHWA's position that there are no impacts of such severity or of such extraordinary magnitude that would render the Project Alternatives not "feasible and prudent". Therefore, under Section 4(f), Project alternative concepts desired by the public, that would adversely impact either the Juvenile Justice Center property or the Walker Weeks Building cannot be selected since feasible and prudent alternatives exists (Project Alternatives A and B) that avoid the use of historic property and do not result in adverse effects to the property. Furthermore FHWA has confirmed that the County had not taken any action, nor does the County have any plans as of this time regarding the future use of the County owned Juvenile Justice Center property. Thus the relative value of the Juvenile Justice Center property remains in tact as documented within the project record and the property remains deserving of protection in accordance with FHWA Section 4(f) obligations.

3. Third, the assertions in the Fact Sheet submitted by the Northeast Ohio Areawide Coordinating Agency ("NOACA") do not adequately address ODOT's failure to achieve the Purpose and Need of the Innerbelt Project with regard to traffic congestion that will, as demonstrated in an expert report submitted by MidTown and the Cleveland Clinic, result from the removal of numerous highway interchanges within the Trench. This document was never

provided for the public record previously and it contains no concrete data related to the connectivity/congestion issue raised in the Comment.

Response: The FHWA has comprehensively evaluated the traffic operations of the Project and documented and disclosed its findings within the FEIS/Section 4(f) Evaluation, Appendix G, Access Modification Study (DVD). The March 2009 *Interchange Justification Study* for the *Cleveland Innerbelt Project*, CUY – 71/90 – 16.79/14.90, PID 77510, was developed in accordance with and is compliant with FHWA's February 11, 1998 Interstate Access Policy: *Additional Interchanges to the Interstate System.* Based on the *Study*, the FHWA has determined the proposed access modifications to be implemented with the *Cleveland Innerbelt Project* Alternative A, the preferred alternative, to be acceptable from a geometric and operational standpoint. The *Study* in conjunction with the analysis contained within the FEIS/Section 4(F) Evaluation document validate that Alternative A will provide for the effective collection and distribution of traffic between the radial freeway system (I-71, I-90, I-77, SR 2, I-490, and SR 176) and the local street system, and that Alternative A will effectively facilitate the movement of traffic between each of the radial freeways. The design and operational deficiencies that are retained within Alternative A, on the Interstate and on the local street system, are minor, localized in nature, and in all cases provide for a build condition that is substantially better than that of the existing/no build condition.

It is FHWA's position that the operational analysis conducted for the Project more than adequately, in a quantitative manner, document that the Project will achieve the quantified purposes and needs of the project. The NOACA "Fact Sheet: Trips in the Midtown Corridor," March 12, 2009 was disclosed to the public within the FEIS/Section 4(F) Evaluation document, Appendix F. The NOACA prepared Fact Sheet speaks to the planning model traffic projections used in support of the Certified traffic estimates that were used by the FHWA to assess the operational performance of the Innerbelt Freeway System within the March 2009 *Interchange Justification Study* for the *Cleveland Innerbelt Project*, CUY – 71/90 – 16.79/14.90, PID 77510. The NOACA Fact Sheet clearly indicates that the Project "was designed using the highest possible number of work trips (the 1990 compact model)." Finally the report referenced in the above comment was disclosed to the public within the FEIS/Section 4(F) Evaluation document, Appendix B, Pages 175 to 232, Exhibit D. The FHWA is not obligated to review, assess, determine validity of, and accept for, decision making purposes, independent reports as scoped and independently prepared by the public. Again the FHWA has assessed the operational performance of the Innerbelt Freeway System within the March 2009 *Interchange Justification Study* for the *Cleveland Innerbelt Project*, CUY – 71/90 – 16.79/14.90, PID 77510 and within the FEIS/Section 4(f) Evaluation document. The issues of public comment raised within the report sanctioned by the public have been considered and analyzed by the FHWA in accordance with agency policies and procedures. The disclosed Project record as embodied within the FEIS/Section 4(f) Evaluation document clearly establishes that FHWA has quantitatively assessed the "connectivity/Congestion issue raised in the Comment". Finally the FHWA specifically notes that public comment has specifically avoided the debating of the disclosed quantified facts, figures, analysis, methodologies, assessments, and etc.. contained within agency decision making documentation and instead simply states contrary conclusions based upon broad overarching un-quantified generalizations and points of view. The FHWA has with diligence taken all necessary action to document and disclose all factors considered during the development of the Project in support of the NEPA decision making process.

4. Fourth, failure of the federal and state agencies' to follow their published Project Development Process ("PDP") demonstrates that decisions regarding the FEIS were made without the required systematic, progressive analysis and public feedback thereon required by the National Environmental Policy Act ("NEPA").

   Response: The FEIS/Section 4(f) evaluation discloses that for purposes of guiding projects through the NEPA process, ODOT created a Project Development Process (PDP), published

in November 2004. The PDP is not a formal regulation and it does not supplant existing FHWA or Council on Environmental Quality NEPA regulations. Instead, the PDP includes recommended steps for ODOT to collect data, develop analyses, and manage environmental reviews, public participation, and inter-agency coordination. In short, the PDP is not prescriptive. It is a framework for decision-making.

For the Cleveland Innerbelt Project, ODOT deviated from its published PDP. Specifically, ODOT decided to forego preparation of an Assessment of Feasible Alternatives (AFA) document in favor of directly proceeding to preparation of a Draft Environmental Impact Statement. Several comments, in addition to the comment provided above, questioned the validity of the process and whether this change prevented the public from commenting on the alternatives and identification of the preferred alternative.

The Cleveland Innerbelt Study began in August of 2000, prior to the adoption of the current ODOT PDP. However, it utilized ODOT's Planning Study Process which is very similar to the first four steps of the PDP. This constituted the planning phase for the project and resulted in a Strategic Plan at the conclusion of Step 4 in the summer of 2004. Step 5 was completed with the approval of the Conceptual Alternatives Study in August 2006, which was released for public review and comment. During the progression of Step 6 in 2006, ODOT and FHWA decided not to produce an Assessment of Feasible Alternatives document, but to instead begin preparation of the Draft Environmental Impact Statement. (See letters in Appendix F of the FEIS/Section 4(f) Evaluation document.)

Because of the urgent need to respond to the deteriorating condition of the Central Viaduct Bridge, ODOT decided to proceed with a DEIS. An updated Notice of Intent to prepare an EIS was published in the Federal Register on September 7, 2006.

The decision to proceed to the DEIS, rather than the interim step of publication of an AFA, did not compromise public participation required by NEPA and FHWA regulations. Specifically, project alternatives were discussed in detail in the Conceptual Alternatives Study, published in August 2006 and made available for public review. No preferred alternative was specifically identified; however, all but two segments of the project had but a single alternative carried forward from the CAS. Two sections had multiple alternatives remaining, the Central Viaduct/Central Interchange and the Trench.

The Central Viaduct/Central Interchange area had two options – the Northern Alignment alternative and the Southern Alignment alternative. The CAS disclosed that the Northern Alignment was assumed to be superior based upon available information as of that date. (See CAS Page 7-10.)

The Trench section had one main option with two potential interchange configurations – either all access at Chester Avenue or access split between Chester and Payne Avenues. In addition, the details of the Midtown Connector were still under study. The CAS noted that changes in access were a concern that would continue to be studied to resolve any issues on the local street system. (See CAS Page 5-15.) Additional discussion of Trench issues was included in FEIS Section 2.5.2.

Public comments on the CAS are summarized in the DEIS Chapter 5 and included in DEIS Appendix F, which was included in FEIS/Section 4(f) Evaluation Appendix G. Based on this accepted process for public review and comment, it was determined that preparation of an AFA would offer no additional benefit that had not already been obtained from the CAS and DEIS public review processes.

ODOT's public involvement procedures are documented in the ODOT Public Involvement Handbook, which was approved by FHWA on December 23, 2002. In accordance with these procedures, a specific public involvement program was developed and implemented for the

Cleveland Innerbelt Project. The program as implemented is described in the Strategic Plan Section 3.5.3, the Conceptual Alternatives Study Section 3.4, and the DEIS Chapter 5. Major project issues were the subject of extensive public involvement and interaction over a five-year period. Public involvement on stormwater issues are summarized in FEIS Table 4. For Trench Access issues, public coordination is summarized in FEIS Tables 5a and 5b.

In addition, ODOT and FHWA chose to apply the Section 6002 of SAFETEA-LU provisions to the project. Compliance with Section 6002 is described in DEIS Section 1.2, along with a table of federal agencies who were contacted. In addition, ODOT invited several state and local agencies to become participating agencies per Section 6002. By letter dated August 3, 2007, ODOT contacted:

- City of Cleveland
    - Mayor
    - Division of Engineering and Construction
    - Division of Traffic Engineering
    - Landmarks Commission
    - Planning Commission
- Cuyahoga County Engineer
- Northeast Ohio Areawide Coordinating Agency (NOACA)
- Ohio Environmental Protection Agency (OEPA)
- Ohio Department of Natural Resources (ODNR)

OEPA and the Cleveland Landmarks Commission responded with agreement to become a participating agency. The Mayor's office responded to indicate that the invitation was forwarded to the Director of City Planning. No other responses were received. Copies of correspondence are included in Appendix A of the FEIS/Section 4(f) Evaluation

.

In April 2007, prior to the project-specific correspondence, ODOT also initiated coordination per Section 6002 regarding proposed project methodologies on a program-wide basis with numerous federal and state review agencies, including US Army Corps of Engineers, Bureau of Underground Storage Tank Regulation (BUSTR), US Coast Guard, National Park Service, ODNR, and the U.S. Fish and Wildlife Service. This correspondence also is included for reference in Appendix A. of the FEIS/Section 4(f) Evaluation.

FHWA and ODOT, as joint leads for the project, used the DEIS to formally announce the Preferred Alternative per Section 6002 of SAFETEA-LU. The DEIS for the project was approved on March 3, 2009. The Notice of Availability appeared in the Federal Register on March 20, 2009. Copies were circulated to federal and state agencies. Public hearing notifications were made through local media, e-mail to stakeholders, and announcement on the project website. A public hearing was held on April 21, 2009. The public comment period ended May 21, 2009. Written comments, as well as verbal comments provided in the hearing transcript, are summarized and addressed in this FEIS/Section 4(f) Evaluation.

The Final Environmental Impact Statement/Section 4(f) Evaluation, for the Cleveland Innerbelt Project, CUY – 71/90 – 16.79/14.90, PID 77510 was signed by the ODOT Director on July 10, 2009 and approved by FHWA on July 22, 2009. On behalf of the FHWA, and in accordance with 23 CFR 771.125(g), the ODOT transmitted a copy of the FEIS/Section 4(f) Evaluation to stakeholders who made substantive comments on the March 3, 2009 Draft EIS/Section 4(f) Evaluation. In addition the ODOT submitted the FEIS/Section 4(f) Evaluation to the US Environmental Protection Agency for filling on July 22, 2009. The Notice of Availability of the FEIS was published in Federal Register Volume 74, Number 146, on Friday, July 31, 2009. The ODOT also published a notice of availability of the FEIS/Section 4(f) Evaluation within newspapers and public media in compliance with 23 CFR 771.125(g). Finally the FEIS/Section 4(f) Evaluation was made available for public review at several public locations and it was also made available for public review on-line at the following address:

http://www.dot.state.oh.us/projects/ClevelandUrbanCoreProjects/Innerbelt/Pages/FinalEnvironmentalImpactStatement.aspx

Based on the forgoing, it is the FHWA's position that the public involvement and agency review process as required by the National Environmental Policy Act ("NEPA") have been met. Furthermore the Project has been developed in accordance with FHWA's NEPA implementing regulations at 23 CFR 771. All major decision making documents developed for the Project that have been incorporated into the FEIS/Section 4(f) Evaluation have been independently reviewed by the FHWA to determine their acceptability. Additionally, FHWA has independently reviewed all public and agency comments received on the CAS, DEIS, and FEIS documents and assured that all Project issues brought forth by the public have been adequately addressed. It is FHWA's position that ODOT PDP deviations noted by the public and disclosed within the NEPA documentation (inclusive) have not adversely affected the development, public coordination, agency review and agency decision making responsibilities and obligations of the FHWA pursuant to NEPA and FHWA regulations.

5. Finally, the FEIS fails to substantiate the assertion that segmentation now of the EIS, or other postponement of a decision regarding the "Trench" area, is not possible to allow continued consideration of developing options, such as Opportunity Corridor.

Response: The FHWA is not obligated pursuant to NEPA to delay the systematic advancement of a project due to pubic disagreements with agency disclosed NEPA decision making documents and decisions. Public comment and request to "segment" and "postpone" the decision making process for the consideration and development of alternative options within the "Trench" area of the overall Project were addressed within the FEIS/Section 4(f) Evaluation. Even with the consideration of continued comment requesting Project segmentation and the postponement of the Record of Decision, it continues to be the FHWA's position not to do so for several reasons.

First, the project has been planned and considered as a whole. Bridge replacement and improvement design elements, for example, have a direct relationship to other project elements. Similarly, the number of planned lanes impact ramp alignments and the planned methodology to improve circulation into the project area from radial highways affects design in the Trench. It is inadvisable and inappropriate from an engineering standpoint to segment project elements after the fact. Moreover, the public participation process has been conducted with the understanding that decisions regarding the Innerbelt project would be made on all elements of the project as disclosed within the NEPA documents (DEIS and FEIS).

Second, the legal authority cited in comments concerning segmentation is inapplicable to a project at this stage of the NEPA process. Agencies are discouraged from dividing the environmental review for portions of a transportation proposed action because of the tendency to underestimate impacts to sensitive resources. The decision to establish appropriate project limits for environmental review and, by extension, whether certain project elements have "logical termini" and "independent utility," is made before the earliest stage of the NEPA process –i.e. during public scoping. Not one of the cases raised in the public comments involve a project, like this one, that progressed up to the penultimate NEPA stage, publication of a FEIS. In this case, the agency's consideration of important traffic performance data, as well as related socio-economic impacts, was conducted based on the entire project area. The project's Purpose and Need is discussed in detail in Chapter 2 of the DEIS. The project's termini are based upon this purpose and need.

Even if FHWA could at this point segment out just Trench elements, it remains inappropriate and unnecessary to do so in order to address continued public comment. As of the date of this ROD 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. Thus there are no substantive reasons for FHWA and the ODOT to reconsider or reassess the Cleveland Innerbelt Project in compliance with NEPA and there is no demonstrated need to delay the further advancement of the Project. The development of a Supplement to the FEIS/Section 4(f) Evaluation document, to address continued public comment is not necessary.

Conclusions and Decision:

The environmental record for Cleveland Innerbelt Project, CUY – IR 71/IR90 -16.79/14.90, PID: 77510, City of Cleveland, Cuyahoga County, Ohio includes the referenced DEIS/Section 4(f) Evaluation and FEIS/Section 4(f) Evaluation (March 2009 and July 2009, respectively). These documents, incorporated here by reference, and the documents specifically incorporated into the NEPA documents, constitute the statements required by the NEPA, Title 23 of the United States Code (USC), and implementing regulations.

Having carefully considered the environmental record, the mitigation measures as required herein, the written and oral comments offered by other agencies and the public on this record, and the written responses to comments, the FHWA has determined that (1) adequate opportunity was offered for the presentation of views by all parties with a significant economic, social, or environmental interest; (2) fair consideration has been given to the preservation and enhancement of the environment and to the interests of the communities in which the project is located; (3) all reasonable steps have been taken to minimize adverse environmental effects of the proposed project; and (4) where adverse effects remain, additional efforts will be undertaken during detailed design to further reduce and/or mitigate such effects.

The environmental record quantifiably substantiates that Alternative A satisfies the project's purpose and need and best minimizes impacts to the natural and human environment. Based upon the comparison of Feasible Alternatives, Alternative A is Selected for implementation because of:

- Fewer Adverse Effects under Section 106 and least net harm under Section 4(f)
- Ability to incorporate off-ramp to Broadway Avenue to maintain direct access to Quadrangle area, including main post office
- Ability to maintain 14th Street between Fairfield and Abbey Avenues to avoid impacting access the Annunciation Greek Orthodox Church
- Fewer relocations of residences and businesses
- More straightforward maintenance of traffic, which permits smaller construction segments and improves cash flow

In addition, FHWA and ODOT have determined that the No Build alternative would not address the project's needs and does not enable the Innerbelt Freeway system to function acceptably. Compared to the No Build and other alternatives considered, Alternative A best provides for the balanced consideration of the purpose and need for the action and justifies the impacts and costs. All substantive comments on the DEIS and FEIS/Section 4(f) Evaluation have been adequately addressed and considered. Appropriate mitigation measures are included in the project, as are commitments for future coordination and implementation. The project complies with all applicable laws, including Section 4(f) and Section 106. For future actions, the project's analyses provide reasonable assurance that all other requirements can be met.

In accordance with 23 CFR 774.3, FHWA determines that based upon the documented Section 4(f) considerations, that there is no feasible and prudent alternative to the use of land from the identified Section 4(f) properties and the proposed action, implementation of Alternative A, includes all possible planning to minimize harm to the Section 4(f) properties resulting from such use.

It is the FHWA's determination based upon the final NEPA decision contained herein that the March 2009 *Interchange Justification Study* for the *Cleveland Innerbelt Project*, CUY – 71/90 – 16.79/14.90, PID 77510 is acceptable and that no further analysis are required in order to comply with FHWA's February 11, 1998 Interstate Access Policy: *Additional Interchanges to the Interstate System,* provided that: 1) There are no substantive changes made to Alternative A during the further development of the *Project* in compliance with NEPA, and; 2) Compliance with all other applicable Federal-aid requirements.

Any changes to the geometric design and layout of Alternative A during detailed design and during overall Project implementation will require such changes to be operationally reassessed in sufficient manner so as to determine the acceptability of the change in compliance with FHWA's Interstate Policy and in order to determine the continued acceptability/validity of the *Study*. The enumerated geometric criteria, Interstate system mainline and ramp layouts, local street system layouts and intersection layouts, lane and turn lane dimensions and assessed operational characteristics as documented within the Study and the FEIS/Section 4(f) Evaluation shall be considered those determined to be minimally acceptable by the FHWA for project implementation. Through detailed design the FHWA expects operational performance and geometric design aspects to be optimized resulting in further overall project improvements.

It is the decision of FHWA to approve Alternative A (Northern Alignment Alternative), which is the environmentally preferred alternative, for the Cleveland Innerbelt Project and in so doing concludes that the project complies with all applicable provisions of the National Environmental Policy Act, specifically 42 U.S.C. 4332 (2) and implementing regulations.

The Record of Decision for the Cleveland Innerbelt Project is hereby approved. The measures to minimize harm/environmental commitments associated with the Decision made herein shall be implemented and complied with. Furthermore the strategies employed to avoid, minimize and mitigate resultant Project Alternative A social, economic, and environmental impacts, as disclosed in the environmental record shall be adhered to during the implementation of the Project. If during further project development, it is determined that there is a substantial change in the impacts of, or the scope of, the action, the environmental document will need to be reevaluated, as appropriate. Prior to requesting any major approvals, the environmental document must be reevaluated in accordance with 23 CFR 771.129(c) to establish whether or not this Record of Decision remains valid for the requested Administration action. These consultations will be documented when determined necessary by the FHWA.

Patrick A. Bauer, Acting Division Administrator

9-18-09

Date

Appendix E

Agency Coordination:

Ohio EPA
ODNR
US Department of the Interior, USFWS
US Army Corps of Engineers
Storm Water Coordination
Notice of Intent
Ohio Historic Preservation Office
Conceptual Alternatives Coordination
SAFETEA-LU 6002 Coordination
Burke Lakefront Airport Coordination
Air Quality Coordination

OhioEPA
State of Ohio Environmental Protection Agency

STREET ADDRESS:
Lazarus Government Center
50 W. Town St., Suite 700
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184
www.epa.state.oh.us

MAILING ADDRESS:
P.O. Box 1049
Columbus, OH 43216-1049

May 16, 2007

Timothy M. Hill, Administrator
Ohio Department of Transportation
Office of Environmental Services
PO Box 899
Columbus, Ohio 43216-0899

Re: Pre-Application Coordination
CUY-Innerbelt Corridor, PID 77510

Dear Mr. Hill:

We have completed our review of the above subject report. The report describes a proposed project that consists of the upgrading and improvement of the existing I-71/I-90 Cleveland Innerbelt and access points in the City of Cleveland, Cuyahoga County, Ohio. The construction work is necessary to improve bottle-necking, traffic flow, merge and weave problems, and to improve traffic safety. At this point, ODOT has identified several alternatives consisting of Innerbelt Curve Section (Innerbelt Curve Alternative F), Trench Section (Far Eastern Alignment with Payne Avenue, Chester Avenue without Payne Avenue), I-77 Access Section, Central Interchange and Viaduct Section (Dual Intersections Alternative with North Bridge, Southern Alternative with South Bridge), No-build Alternative, and Southern Innerbelt Section (I-77 Access Improvements Alternative). ODOT eliminated the No-build Alternative because it does not meet the Purpose and Need of the project. The report stated the Cuyahoga River is the sole aquatic feature identified within the project area. It will be impacted by bridge work. According to the report, no wetlands were identified during field investigations. As far as endangered or threatened species identified within the project area, peregrine falcons were observed nesting on the I-90 Bridge.

We do not have any major concerns with the project alternatives described in the report. Although the actual stream impacts do not exceed Ohio EPA's limits requiring individual 401 certification, we would like to know whether the bridge work is subject to Sections 9 or 10 of the Clean Harbors and Rivers Act, requiring individual 401certification, or if the project requires individual 404 authorization by the Army Corps of Engineers (Huntington). If the project requires individual 404 authorization it will also require individual 401 authorization. Also, please note for NWP 14 (Ohio EPA previous and proposed conditions) Ohio EPA restricts stream crossings to a total of three per stream mile per stream. Because the section of the Cuyahoga River targeted for construction work is designated a fish migratory corridor from February

through May, the necessary precautions should be used during construction to minimize any disturbances to migrating fish. We assume you are working with ODNR on procedures to protect the peregrine falcons nesting on the I-90 Bridge? We recommend using BMPs to minimize impacts and discharges in the Cuyahoga River during and subsequent to construction work.

This concludes our remarks on the proposed project. If you have any issues or questions you want to discuss with me, I may be reached at (614) 644-2138.

Sincerely,

Arthur L. Coleman, Jr., Environmental Specialist, DSW, Environmental Mitigation and Transportation Permitting Section

cc: Deborah L. Wegmann,, USACOE
Wayne Gorski, Region V, US EPA
William Cody, Asst. Administrator, OES/ODOT
Mike Pettegrew, Supervisor Water Permits Unit, OES/ODOT
Don Rostofer, Supervisor, Ecological Unit, OES/ODOT
Troy Wilson, USFWS
Ed Wilk, DSW/NEDO

Donald Rostofer/Environmental/CEN/ODOT

04/20/2007 07:59 AM

To Mark Carpenter/Planning/D12/ODOT@ODOT, Tom Sorge/Planning/D12/ODOT@ODOT
cc Larry Hoffman/Environmental/CEN/ODOT@ODOT
bcc Matthew Perlik/Environmental/CEN/ODOT
Subject Fw: 07-0080; ODOT EC for CUY-Innerbelt Corridor (PID 77510)

Mark/Tom:

Below are ODNR's comments and recommendations for the CUY-Innerbelt Corridor project. Please add these comments as environmental commitments and/or address appropriately.

Thanks.

Donald E. Rostofer, Environmental Supervisor
ODOT- CO- OES - Ecological Unit
1980 West Broad Street,Columbus, OH 43223
Phone: (614) 387-3057;FAX: (614) 728-7368
Email: donald.rostofer@dot.state.oh.us

----- Forwarded by Donald Rostofer/Environmental/CEN/ODOT on 04/20/2007 07:56 AM -----

"Bankey, Mindy" <Mindy.Bankey@dnr.state.oh.us>

04/19/2007 03:30 PM

To <tim.hill@dot.state.oh.us>, <donald.rostofer@dot.state.oh.us>
cc
Subject 07-0080; ODOT EC for CUY-Innerbelt Corridor (PID 77510)

ODNR COMMENTS TO Timothy M. Hill, Administrator, Office of Environmental Services, ODOT, 1980 East Broad Street, Columbus, Ohio 43223

Location: The project is located in the City of Cleveland in Cuyahoga County, Ohio.
Project: The project involves the upgrading and improvement of the existing I-71/I-90 Cleveland Innerbelt and access points.

The Ohio Department of Natural Resources (ODNR) has completed a review of the above referenced project These comments were generated by an inter-disciplinary review within the Department These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the National Environmental Policy Act, the Coastal Zone Management Act, Ohio Revised Code and other applicable laws and regulations. These comments are also based on ODNR's experience as the state natural resource management agency and do not supersede or replace the regulatory authority of any local, state or federal agency nor relieve the applicant of the obligation to comply with any local, state or federal laws or regulations.

Rare and Endangered Species: The ODNR, Division of Natural Areas and Preserves, Natural Heritage Database records for two additional species not included in the project documentation They are shown on the ...ed map. Both species were found in the vicinity of the railroad tracks in the Cleveland Flats area along the ...ahoga River.

1. *Cyperus schweinitzii* - Schweinitz' Umbrella-sedge, threatened
2. *Hieracium canadense* - Canada Hawkweed, threatened

In addition, on page 24 of the report, under the section on "Terrestrial Habitat Characterizations", it is mentioned that one of many "tree species common in this Dense Urban Area" is the White Cedar (*Thuja occidentalis*). This tree, also known as Arbor Vitae, is listed as potentially threatened in Ohio. Specific locations (preferably marked on a map and/or GPS points provided) and survey information (date seen, number of trees, who performed the survey, habitat description, etc.) for this species should be provided to the Natural Heritage Program for inclusion in the database. In addition, if any of these trees are encountered during the implementation of this project, they should be left undisturbed if at all possible.

Fish and Wildlife: The ODNR, Division of Wildlife (DOW) has the following comments

The DOW recommends no in-water work on the Cuyahoga River from March 15 to June 30 to reduce impacts to aquatic species and their habitat.

Records exist for the muskellunge (*Esox masquinongy*), a state species of concern, and the upland sandpiper (*Bartramia longicauda*), a state threatened species, within one mile of the project area. If either of these species is encountered during construction of the project, work should immediately be stopped, and the DOW should be contacted.

As indicated in the report, the DOW recommends that, during nesting season, a minimum distance of 300 feet be maintained around any peregrine falcon nest located on the I-90 Bridge to serve as a buffer against human disturbance. We recommend all activity (maintenance, inspection, etc.) that must occur in close proximity to any falcon nest located on the I-90 Bridge be scheduled for completion outside the falcon breeding season The breeding season is mid-March through July 30.

Parks and Recreation: The ODNR, Division of Parks and Recreation (DPR) has the following comments

The DPR would request that public access be maintained to the state park and recreational areas It is also requested that the Cleveland State Park management be kept up to date in terms of any traffic pattern changes made during the construction phases. And, "Best Management Practices" should be utilized during and after construction to control stormwater run-off and erosion.

ODNR appreciates the opportunity to provide these comments Please contact Mindy Bankey at 614.265.6836 if you have questions about these comments or need additional information.

Mindy Bankey
Environmental Administrator
Division of Real Estate & Land Management
Ohio Department of Natural Resources
2045 Morse Rd, C4
Columbus, Ohio 43229-6693
614.265.6836
Fax 614.267.4764

United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services
6950 Americana Parkway, Suite H
Reynoldsburg, Ohio 43068-4127

(614) 469-6923/Fax: (614) 469-6919
April 25, 2007

Timothy M. Hill
Office of Environmental Services
Ohio Department of Transportation
P.O. Box 899
Columbus, OH 43216-0899

Attn: Donald Rostofer
Matt Perlik
Re: **CUY-Innerbelt Corridor (PID 77510)**
Ecological Coordination

Dear Mr. Hill:

This is in response to your March 12, 2007 letter and Level 1 Ecological Survey Report received on March 16, 2007 requesting U.S. Fish and Wildlife Service concurrence and/or comments on your Endangered Species Act section 7(a)(2) effect determinations for Federally-listed species that may occur in the proposed project areas located within the City of Cleveland in Cuyahoga County, Ohio. The project involves the upgrading and improvement of the existing I-71/I-90 Cleveland Innerbelt and access points.

The proposed project lies within the ranges of the Federally-listed endangered **Indiana bat** (*Myotis sodalist*), **Piping plover** (*Charadrius melodus*), and the Federally-listed threatened **Bald eagle** (*Haliaeetus leucocephalus*). Due to the project type, size, and location, you have made a no effect determination for these species. Therefore, consultation will not be required.

The Service has reviewed the Level 1 Ecological Survey Report and provides the following comments. We note the presence of two active peregrine falcon nest boxes that are currently located on the Cleveland I-90 bridge. We recognize that ODNR, in conjunction with ODOT, has been actively working on providing suitable habitat for peregrine falcons on the Interstate 90 bridge understructure, and that it will be necessary in the future to perform major rehabilitation on the bridge, including possible demolition and replacement. The Service acknowledges ODOT's willingness to comply with all applicable regulations pertaining to the peregrine falcon including the Migratory Bird Treaty Act.

This technical assistance letter is submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act, of 1973, as amended, and is consistent with the intent of the National Environmental Policy Act of 1969, and the U.S. Fish and Wildlife Service's Mitigation Policy.

DEPARTMENT OF THE ARMY
HUNTINGTON DISTRICT, CORPS OF ENGINEERS
502 EIGHTH STREET
HUNTINGTON, WEST VIRGINIA 25701-2070

REPLY TO
ATTENTION OF: May 11, 2007

Operations and Readiness Division
Regulatory Branch
Cuyahoga River – 2006-2136-CUY
CUY-71/90, PID: 77510

Timothy M. Hill
Office of Environmental Services
Ohio Department of Transportation
Post Office Box 899
Columbus, Ohio 43216-0899

Dear Mr. Hill:

I refer to the Level I Ecological Survey Report (ESR) received in this office on March 19, 2007 requesting comments and jurisdictional determination. The ESR contains information concerning the proposed changes and improvements to Interstates 71 and 90 in the city of Cleveland, Cuyahoga County, Ohio.

Based on information presented in the ESR it was determined that one perennial stream, the Cuyahoga River, totaling 4,200 linear feet is present within the 1,390 acre study area.

The Corps of Engineers' authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328. Navigable waters, their tributaries and adjacent wetlands are waters of the United States (U.S.) subject to the provisions of Section 404 of the Clean Water Act. The determination of jurisdiction for streams is based on the presence of an ordinary high water mark (OHWM) and evidence indicating the streams exhibit surface water connections to tributary systems to navigable waters. The Corps regulates streams up to the point where they no longer exhibit an OHWM. The Corps is also directed under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the U.S. The Cuyahoga River is a navigable water of the U.S.

This determination has been conducted to identify the limits of the Corps of Engineers' Clean Water Act jurisdiction for the sites identified within the study area of the ESR. This jurisdictional verification is approved and is valid for a period of five years from the date of this letter unless new information warrants revision of the delineation prior to the expiration date. Should you disagree with our jurisdictional determination, you have the right to file an administrative appeal under the Corps regulations at 33 CFR Part 331.

Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Great Lakes and Ohio River Division Office at the following address:

Mr. Mike Montone
Great Lakes and Ohio River Division
550 Main Street, Room 10032
Cincinnati, Ohio 45202-3222
Phone: (513) 684-6212

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by 60 days from the date of this letter. **It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.**

This determination has been conducted to identify the limits of the Corps of Engineers' Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are United States Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service (NRCS), prior to starting work.

Please direct any questions regarding this letter to Peter Clingan of the Ohio Regulatory Transportation Office at (614) 692-4654.

Sincerely,

Rebecca Rutherford
Chief, North Regulatory Section

Enclosures

Copy Furnished w/o enclosures:

Mr. Art Coleman
Ohio Environmental Protection Agency
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43215

Mr. Ric Queen
Ohio Environmental Protection Agency
Division of Surface Water
P.O. Box 1049
Columbus, Ohio 43215

Mr. Michael Pettegrew
Office of Environmental Services
Ohio Department of Transportation
Post Office Box 899
Columbus, Ohio 43216-0899

Mr. Donald Rostofer
Office of Environmental Services
Ohio Department of Transportation
Post Office Box 899
Columbus, Ohio 43216-0899

SECTION I - NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Ohio Department of Transportation	File Number: 2006-2136-CUY	Date: MAY 11 2007
Attached is:		See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
	PERMIT DENIAL	C
X	APPROVED JURISDICTIONAL DETERMINATION	D
	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inet/functions/cw/cecwo/reg or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- OBJECT: If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- ACCEPT: If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- APPEAL: If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- ACCEPT: You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- APPEAL: If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION

If you have questions regarding this decision and/or the appeal process you may contact:
Ginger Mullins, Chief, Regulatory Branch, 304-399-5389
Rebecca Rutherford, Ch, North Regulatory Section 304-399-5210
Mark Taylor, Chief, South Regulatory Section, 304 399-5710

Address: U.S. Army Corps of Engineers
Regulatory Branch
502 8th Street
Huntington, WV 25701

If you only have questions regarding the appeal process you may also contact:

Mr. Mike Montone
Great Lakes and Ohio River Division
550 Main Street, Room 10032
Cincinnati, Ohio 45202-3222
Phone: (513) 684-6212

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

	Date:	Telephone number:
_____ Signature of appellant or agent.		

OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE, 1980 WEST BROAD STREET, COLUMBUS, OH 43223

OFFICE OF ENVIRONMENTAL SERVICES

February 27, 2009

Mr. Mark Epstein, Department Head
Resource Protection and Review
Ohio Historic Preservation Office
567 East Hudson Street
Columbus, Ohio 43211

Attn: Thomas Grooms
ODOT Review Manager, Archaeology

Re: CUY-Cleveland Innerbelt (PID 77510)
Archaeological Resource Coordination

Dear Mr. Epstein:

Previously submitted for your files and review was a copy of the cultural resources survey report entitled *Phase I Cultural Resources Survey for the Cleveland Innerbelt: CUY-Innerbelt (PID 77510) Cleveland, Cuyahoga County, Ohio*, prepared by Hardlines Design Company, and a set of aerial photos showing the position of the preferred alternative corridor. The report contains an assessment of land-use describing the level of land disturbance across the Area of Potential Effect. The proposed highway project will improve traffic flow and safety by reconstructing portions of the interstate highway system in the City of Cleveland, Cuyahoga County, Ohio. The Innerbelt refers to the actual interstate roadway that is the central focus of the study which begins at I-71 past the merger with State Route 176 (Jennings Freeway) to the I-71/I-90/I-490 interchange. From this interchange the Innerbelt proceeds north along I-90 over the Central Viaduct Bridge, which carries traffic over the Cuyahoga River and will be reconstructed as a part of the proposed project. From the Central Viaduct the Innerbelt continues north along the eastern edge of downtown Cleveland in a depressed section of freeway (Innerbelt Trench), through the Innerbelt Curve to where it merges with State Route 2 (The Shoreway).

On May 30, 2006, OES submitted the previously referenced cultural resource survey to the OHPO. Although the report recommended no further archaeological investigations because of the vast extent of modern disturbance, the OHPO recommended waiting until a preferred alternative was selected, or at least a more defined study corridor was established, before concurring on a "no further work" recommendation. In the Fall of 2008, a preferred alternative corridor was selected and aerial photographs with the project's current proposed footprint were produced. These aerials depicting the corridor were previously provided to Thomas Grooms prior to a joint field meeting held on February 17, 2009.

This field review, combined with the information provided in the 2006 cultural resources report and information from the current aerial photographs, indicated that the entire area is indeed thoroughly disturbed by commercial, residential, and industrial development, landscape modification, artificial landform construction, parking lot construction, and underground utility installation. Other areas are

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disturbed as a result of the demolition of houses and the subsequent grading and filling and, in some areas, paving. Nearly all available space within the preferred alternative corridor is occupied by buildings, streets and parking lots. Areas of fill were identified during the 2009 field meeting and during the Hardlines Design Company field investigations in 2006. Fill activity is also indicated by the USDA/SCS (1980) soil survey of Cuyahoga County as large areas of Urban Land (Ub) are depicted throughout the corridor. This soil is characterized as mostly miscellaneous materials places in fill and almost totally covered by roads, buildings, and other structures.

The February 17, 2009 joint field review with your staff focused on the preferred alternative corridor near the Central Viaduct Bridge. This alternative will cross open space along the Cuyahoga River Valley. During the field review, we observed heavy industrial development, a stone/gravel operation, piling along the channelized stream channel of the Cuyahoga River, and areas previously disturbed by bridge construction. Furthermore, the soil survey notes that areas along the Cuyahoga River are covered by the Urban Land soil type, which contains waste material from steel mills and other industrial activity. The severity of the disturbance, therefore, precludes the existence of intact archaeological deposits. The shallow nature of the land surface along the Cuyahoga River would also preclude the existence of stratified archaeological deposits.

Conclusion

We would appreciate the return of this letter, signed to indicate that you do not object to the archaeological finding. If no objection is received within 30 days, in accordance with the Advisory Council on Historic Preservation's current regulations under 36 CFR part 800.3 (c) (4), FHWA and ODOT will proceed to the next step in the process based on these findings.

Respectfully,

Paul Graham, for

Timothy M. Hill, Administrator
Office of Environmental Services

OHIO STATE HISTORIC PRESERVATION OFFICE CONCURRENCE:

Thomas Grooms 3/9/09
(Date)

TMH: jaw

c: M. Carpenter, District 12; Project File.; Reading File

Mark Carpenter/Planning/D12/ODOT
03/24/2009 09:28 AM

To mepstein@ohiohistory.org, ncampbell@ohiohistory.org, gdavis@wrhs.org, kcrowther@clevelandrestoration.org, mfleenor@clevelandrestoration.org, chrisgarland@twdc.org,
cc michael.armstrong@FHWA.DOT.GOV, Tim Hill/Environmental/CEN/ODOT@ODOT, Susan Gasbarro/Environmental/CEN/ODOT, Paul
bcc
Subject Fw: Environmental Mitigation vs. Enhancement

Dear Consulting Party Team Members:

As discussed that the March 18, 2009 meeting held at the ODOT District 12 Office, attached below is the FHWA definitions of enhancement and mitigation.

If you have any questions, please contact me at (216) 584-2089.

Thank you,

Mark Alan Carpenter, P.E.
District 12 Environmental Engineer
(216) 584-2089
----- Forwarded by Mark Carpenter/Planning/D12/ODOT on 03/24/2009 09:12 AM -----

"Armstrong, Michael" <Michael.Armstrong@fhwa.dot.gov>
03/20/2009 08:39 PM

To <Mark.Carpenter@dot.state.oh.us>
cc "Armstrong, Michael" <Michael.Armstrong@fhwa.dot.gov>, <Larry.Hoffman@dot.state.oh.us>, <Craig.Hebebrand@dot.state.oh.us>, <Paul.Graham@dot.state.oh.us>
Subject Environmental Mitigation vs. Enhancement

Mark,

In accordance with the commitment, to define the difference between environmental mitigation vs. enhancement, as made by FHWA during the Innerbelt Section 106 PA meeting on Wednesday March 18, 2009 I have assembled the following for your distribution to the consulting parties.

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Federal transportation policy, as reflected in the strategic goals of the U.S. Department of Transportation (DOT), the Federal Highway Administration (FHWA) and its Environmental Policy Statement, stress mobility; protection of the human and natural environment; and community preservation, sustainability, and livability.

Project enhancement activities, which go beyond what is customarily provided as environmental mitigation, are considered to be transportation enhancements by the FHWA.

The laws governing traditional Federal-aid project funding under Chapter 1 of Title 23 U.S.C. apply to both the funding of environmental mitigation and transportation enhancement activities. NEPA environmental mitigation measures are required to be incorporated into Federal-aid projects. Transportation enhancement activities may be incorporated into a project by ODOT and they may be funded with appropriate Federal-aid funding if they meet the eligibility requirements.

Environmental Mitigation:

Measures necessary to mitigate adverse impacts are eligible for Federal funding when the FHWA determines that: (a) The impacts for which the mitigation is proposed actually result from the FHWA action; and (b) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the FHWA will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy.

- *NEPA - 40 CFR Sec. 1508.20 Mitigation:*

  "Mitigation" includes:
  (a) Avoiding the impact altogether by not taking a certain action or parts of an action.
  (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.
  (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.
  (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.
  (e) Compensating for the impact by replacing or providing substitute resources or environments.

- ***It is FHWA's policy that (23 CFR § 771.105):***

  - *To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation.*
  - *Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, state, and local environmental protection goals.*
  - *Public involvement and a systematic interdisciplinary approach be essential*

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parts of the development process for proposed actions.

- *Measures necessary to mitigate adverse impacts be incorporated into the action.*

- *It is FHWA's responsibility to* ***(23 CFR § 771.109):***

  - *Implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to NEPA.*

    (a) The FHWA will assure that this is accomplished as a part of its program management responsibilities that include reviews of designs, plans, specifications, and estimates (PS&E), and construction inspections.

Transportation Enhancement Activities:

Transportation enhancement activities offer opportunities to help expand transportation choices and enhance the transportation experience. Transportation enhancement activities must relate to surface transportation and must qualify under one or more of the eligible categories in order to be eligible for the federal-aid funding. Transportation enhancement activities are a subcomponent of the Surface Transportation Program (STP). Transportation enhancement funds may not be used to fund or finance normal environmental mitigation work eligible under the regular federal-aid highway program. Transportation enhancements were enacted as a means of stimulating additional efforts to create an improved transportation environment and system, while making a contribution to the surrounding community.

- ***Definition (23 USC 101):***

  - *``Transportation enhancement activity" means, with respect to any project or the area to be served by the project, any of the following activities as the activities relate to surface transportation:*

    (a) Provision of facilities for pedestrians and bicycles.
    (b) Provision of safety and educational activities for pedestrians and bicyclists.
    (c) Acquisition of scenic easements and scenic or historic sites (including historic battlefields).
    (d) Scenic or historic highway programs (including the provision of tourist and welcome center facilities).
    (e) Landscaping and other scenic beautification.
    (f) Historic preservation.
    (g) Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).
    (h) Preservation of abandoned railway corridors (including the conversion and use of the corridors for pedestrian or bicycle trails).
    (i) Inventory, control, and removal of outdoor advertising.
    (j) Archaeological planning and research.
    (k) Environmental mitigation –
    (i) to address water pollution due to highway runoff; or
    (ii) to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.
    (l) Establishment of transportation museums.

Michael B. Armstrong, Highway Engineer
Federal Highway Administration
Ohio Federal-aid Division
200 North High Street, Room 328
Columbus, OH 43215

Telephone: (614) 280-6855
Fax: (614) 280-6876
e-mail: michael.armstrong@fhwa.dot.gov

OHIO DEPARTMENT OF TRANSPORTATION
CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223
TED STRICKLAND, GOVERNOR • JOLENE M. MOLITORIS, DIRECTOR

OFFICE OF ENVIRONMENTAL SERVICES

June 5, 2009

Mr. Mark Epstein, Department Head
Resource Protection and Review
Ohio Historic Preservation Office
567 East Hudson Street
Columbus, Ohio 43211

Subject: CUY-IR 71/77/90, Cleveland Innerbelt, PID 77510

Re: New Westbound, Interstate Route 90 Innerbelt Bridge over the Cuyahoga River
& Treatment Plans to Mitigate Section 106 Adverse Effects

Dear Mr. Epstein:

On May 20, 2009, the *Programmatic Agreement Among the Federal Highway Administration, The Ohio State Historic Preservation Office, and the Ohio Department of Transportation Regarding the Federal-Aid Highway Improvement of Interstate Route 71, 77 and 90 in the City of Cleveland, Cuyahoga County, Ohio, CUY-90 Innerbelt; PID 77510, Agreement Number 15498*, was executed. Enclosed is a copy of the executed agreement.

As a result of the first construction project, the construction of westbound, Interstate Route (IR) 90 Innerbelt Bridge over the Cuyahoga River, three properties eligible for inclusion on the National Register of Historic Places (NRHP) will be adversely affected. A Section 106 Consulting Party meeting was held on May 20, 2009 at the ODOT, District 12 office. Pursuant to the executed Programmatic Agreement (Agreement Number 15498), treatment plans to mitigate adverse effects were discussed, as well as, potential project specific enhancements and locally sponsored plans. Topics of discussion included: multi-use pedestrian trails; the reuse of the Central Viaduct Bridge abutment; the reuse of buried rail lines; the construction of scenic overlooks; the incorporation of aesthetic treatments into the adjacent bridge piers and abutments emphasizing the significance of the historic resources. All agreed the Section 106 mitigation measures, project specific enhancements, and locally sponsored plans should complement the intent of each. Enclosed are copies of the May 20, 2009 attendance sheet, slide presentation, and meeting notifications.

Project specific enhancements will be developed in conjunction with the aesthetic committee members and local agency officials. Project specific enhancement considerations may include: aesthetic treatments to the new bridge abutments and piers; pedestrian overlooks and facilities; the reuse of the Central Viaduct Bridge abutment; and commemorative parks. Locally sponsored enhancements may include reuse of buried rail lines and multi-use pedestrian trails.

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In accordance 36 CFR § 800 and Stipulation I (E) of the executed Programmatic Agreement (Agreement Number 15498), FHWA and ODOT propose the following treatment plans to resolve the adverse effect of the first construction project on Broadway Mills, Marathon Gas Station, and the Distribution Terminal Warehouse:

1. Broadway Mills, 300 Central Viaduct, is eligible for inclusion on the NRHP under Criteria A as a rare example of Cleveland's milling industry and under Criteria C for architecture.

   i) Level II documentation as specified by the Historic American Building Survey (HABS) in accordance with 36 CFR § 68, The Secretary of the Interior's Standards for the Treatment of Historic Properties (STANDARDS) will be prepared. Archival HABS documentation will be maintained at the State of Ohio Library, the designated archival repository. High quality copies of the HABS documentation will be provided to the Cleveland Landmarks Commission, Cleveland Public Library, Cleveland Restoration Society, Western Reserve Historical Society, Cleveland State University Library, the Western Reserve Fire Museum and Education Center, and will provide additional copies to other recipients upon request.

   ii) A commemorative display will be located at or near the existing mill site. The commemorative display will compliment the location of project specific enhancements to ensure the safety of the viewing public. Reuse of architectural components will be considered and incorporated into the display along with a plaque commemorating the significance of the resource. Location and design of the commemorative display will be refined as project design progresses and as a result of Section 106 consultation.

2) Marathon Gas Station, 300 Central Viaduct, is eligible for inclusion on the NRHP under Criteria A for its association with Cleveland's automobile history and under Criteria C for architecture.

   i) Level II documentation as specified by the Historic American Building Survey (HABS) in accordance with 36 CFR § 68, The Secretary of the Interior's Standards for the Treatment of Historic Properties (STANDARDS) will be prepared. Archival HABS documentation will be maintained at the State of Ohio Library, the designated archival repository. High quality copies of the HABS documentation will be provided to the Cleveland Landmarks Commission, Cleveland Public Library, Cleveland Restoration Society, Western Reserve Historical Society, Cleveland State University Library, the Western Reserve Fire Museum and Education Center, and will provide additional copies to other recipients upon request.

3) Distribution Terminal Warehouse, 2000 West 14th Street, is eligible for inclusion on the NRHP under Criteria A for its role in the evolution of Cleveland's food distribution network and under Criteria C for architecture.

   i) A historic context will be prepared documenting the significance of the resource in relation to the City of Cleveland's food distribution industrial history during the period of significance. ODOT will provide copies, of the historic context documentation to the Cleveland Landmarks Commission, Cleveland Public Library, Cleveland Restoration Society, Western Reserve Historical Society, Cleveland State University Library, the Western Reserve Fire Museum and Education Center, and will provide additional copies to other recipients upon request.

In accordance with Stipulation I (F), FHWA and ODOT are providing copies of the subject consultation and proposed treatment plans to the consulting parties for concurrent 30-day review. All comments received by FHWA and ODOT will be forwarded to the OSHPO at the end of the 30-day review period. The disposition of each and any appropriate revisions to the proposed treatment plans will be provided to the OSHPO for consideration at that time.

All consulting party comments received within the 30-day review period along with the written disposition of each, any appropriate revisions to the proposed treatment plans, and the OSHPO mitigation comment or acceptance letter to FHWA and ODOT, will serve as evidence of the Stipulations of the executed agreement are being carried out as documented within the agreement. Upon implementation of an accepted treatment plan, the appropriate documentation will be submitted to the OSHPO for their 30-day review and approval that the terms, conditions, and provisions of the accepted treatment plan have been implemented in full accordance with the executed agreement.

In accordance with the Advisory Council on Historic Preservation's current regulations and the executed *Programmatic Agreement Among the Federal Highway Administration, The Ohio State Historic Preservation Office, and the Ohio Department of Transportation Regarding the Federal-Aid Highway Improvement of Interstate Route 71, 77 and 90 in the City of Cleveland, Cuyahoga County, Ohio CUY-90 Innerbelt; PID 77510, Agreement Number 15498*, ODOT has determined the proposed treatment plans mitigate the adverse effects of the undertaking on historic cultural resources.

If no response is received within 30 days, in accordance with the Advisory Council on Historic Preservation's current regulation under 36 CFR Part 800.3(c)(4), it will be presumed that the State Historic Preservation Officer agrees with the determination made in the above coordination.

Respectfully,

Timothy M. Hill
Administrator
Office of Environmental Services

Ohio State Historic Preservation Office Concurrence:

_____
(Date)

TMH:sg
Enclosure

cc: Carol Legard	Advisory Council on Historic Preservation	w/attachments
Michael Armstrong	Federal Highway Administration	w/attachments
David Snyder	Federal Highway Administration	w/attachments
Nancy Campbell	Ohio Historic Preservation Office	w/attachments
Mark Epstein	Ohio Historic Preservation Office	w/attachments
Thomas Grooms	Ohio Historic Preservation Office	w/attachments
Dennis J Kucinich	US Congress House of Representatives	w/attachments
Robert Keiser	Cleveland Landmarks Commission	w/attachments
Kermit Pike	Western Reserve Historical Society	w/attachments
Patrick Reymann	Western Reserve Historical Society	w/attachments
Sarah J Beimers	Cleveland Restoration Society	w/attachments
Chris Garland	Tremont West Development Corp.	w/attachments
William Beckenbach	Quadrangle Incorporated	w/attachments
James Haviland	Midtown Cleveland, Inc.	w/attachments
Jamie Blackson-Baker	St. Clair Superior	w/attachments
Thomas Starinsky	Historic Gateway Neighborhood Corp.	w/attachments
Tom Newman	Flats Oxbow	w/attachments
Tim Tramble	Burten Bell Carr	w/attachments
Debbie Berry	City Planning Commission	w/attachments
Robert Brown	City Planning Commission	w/attachments
Joseph Cimperman	Councilperson, City of Cleveland Ward 13	w/attachments
Phyllis Cleveland	Councilperson, City of Cleveland Ward 5	w/attachments
Dean Tracy Lind	Trinity Cathedral	w/attachments
John J Boule	Cleveland State University	w/attachments
Gina Lattimer	Carnegie Prospect Holdings	w/attachments
Anita Perez	Central YMCA Cleveland	w/attachments
Michael Hageman	Zion Lutheran Church & School	w/attachments
Michael Chesler	Prospect Development, Inc.	w/attachments
George Graham	Pilgrim Congregation Church	w/attachments
Rev Dr Laurinda Hafner	Pilgrim Congregation Church	w/attachments
Paul Alsenas	Cuyahoga County Commissioner	w/attachments
Jimmy DiMora	Cuyahoga County Commissioner	w/attachments
Timothy Hagan	Cuyahoga County Commissioner	w/attachments
Marvin Hayes	Cuyahoga County Commissioner	w/attachments
Peter Lawson Jones	Cuyahoga County Commissioner	w/attachments
Scott Pollack	Cuyahoga Metropolitan Housing Authority	w/attachments
Scott Carpenter	Western Reserve Fire Museum/Education Center	w/attachments
Martha Eakin		w/attachments
Susan Miller		w/attachments
Paul Stubbs	Fire Chief, City of Cleveland	w/attachments

PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE OHIO STATE HISTORIC PRESERVATION OFFICE, AND
THE OHIO DEPARTMENT OF TRANSPORTATION
REGARDING THE FEDERAL-AID HIGHWAY IMPROVEMENT OF
INTERSTATE ROUTES 71, 77, AND 90 IN
THE CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO
CUY-90 INNERBELT; PID 77510
AGREEMENT NUMBER 15498

1) WHEREAS, the Federal Highway Administration (FHWA) is the AGENCY responsible for compliance with Section 106 of the National Historic Preservation ACT (NHPA) of 1966, as amended (16 U.S.C. Part 470), and the implementing regulations 36 CFR Part 800; and

2) WHEREAS, Ohio Department of Transportation (ODOT) administers Federal aid Highway projects in the State of Ohio as authorized by Title 23 U.S.C. Part 302 and Sections 5501.03, 5501.11, and Chapter 5531 of the Ohio Revised Code; and

3) WHEREAS, the FHWA, in cooperation with ODOT, will prepare an Environmental Impact Statement (EIS) for proposed improvements to Interstates 71, 77 and 90, and connecting radial freeways and local roadways, known as the Cleveland Innerbelt; and

4) WHEREAS, the purpose of the CUY-90 Innerbelt, PID 77510, the UNDERTAKING as defined in 36 CFR § 800.16(y), is to improve the physical condition of the existing bridge decks and roadway pavements, improve the operational performance of the roadway system, improve the safety of the roadway system, and improve the access provided by the roadway system, while supporting community goals and objectives; and

5) WHEREAS, FHWA, in cooperation with ODOT, may prepare independent environmental documents as warranted for components of the UNDERTAKING, that are constant in scope and Section 106 effect, relative to the overall UNDERTAKING, due to unforeseen circumstances related to, but not limited to public interest management of, funding, scheduling, or deterioration of the existing infrastructure; and

6) WHEREAS, the UNDERTAKING is a type of activity, located in an urban area with alternatives under consideration, that has the potential to cause effects on historic properties; and

7) WHEREAS, the intent of this PROGRAMMATIC AGREEMENT is to record the conditions agreed upon to resolve the adverse effect of this UNDERTAKING on historic properties, those resources that are listed in or eligible for inclusion in the National Register of Historic Places (NRHP), in accordance with 36 CFR Part 800; and

8) WHEREAS, it is also the intent of this PROGRAMMATIC AGREEMENT to satisfy all remaining Section 106 responsibilities for all elements of the UNDERTAKING covered by the AGREEMENT until it expires or is terminated by the FHWA or signatories.

9) WHEREAS, FHWA and ODOT have consulted with the Advisory Council on Historic Preservation (ACHP) and the ACHP has decided that they will not be participating in consultation; and

10) WHEREAS, FHWA and ODOT have consulted with the Ohio State Historic Preservation Office (OSHPO); and

11) WHEREAS, FHWA and ODOT will consult with Federally recognized Indian tribes that may attach religious and cultural significance to historic properties; and

12) WHEREAS, FHWA and ODOT have identified and consulted with consulting parties and have not denied any of the identified consulting parties such status for this UNDERTAKING; and

13) WHEREAS, FHWA and ODOT have invited the identified consulting parties to concur with this PROGRAMMATIC AGREEMENT and will continue to consult with the consulting parties as the UNDERTAKING progresses; and

14) WHEREAS, FHWA and ODOT have reduced the footprint of the UNDERTAKING and the need for new highway right-of-way by following avoidance and minimization measures in ODOT's project development process; and

15) WHEREAS, FHWA and ODOT will continue to incorporate avoidance and minimization measures into and during the detailed design and the construction of the UNDERTAKING as an integral part of ODOT's project development process.

16) NOW THEREFORE, FHWA, ODOT, and OSHPO agree that the UNDERTAKING shall be administered in accordance with the following stipulations to satisfy FHWA's Section 106 responsibilities for all aspects of the UNDERTAKING.

STIPULATIONS

FHWA shall ensure that the following measures are carried out:

STIPULATION I - ARCHITECTURE

A) In consultation with FHWA, OSHPO, and other consulting parties, ODOT has identified architectural historic properties in the Area of Potential Effects (APE) for the UNDERTAKING. The report titled CUY-IR71/90 PID: 77510 Section 106 Assessment of Effects for the Feasible Alternatives, September 2008, and the supplemental consultation identifies the anticipated effects to historic properties located within the APE by the alternatives under consideration.

B) The ODOT will propose treatment plans to mitigate the adverse effects of the UNDERTAKING.

C) ODOT will propose treatment plans that are commensurate with the level of effect to historic properties, that are appropriate for public recordation of the historic property, and that are of reasonable cost. Treatment plans will be developed in consideration of the qualities of the property that qualify it for eligibility or listing on the NRHP and they will take into account the views of the consulting parties.

D) The ODOT and FHWA will provide for the administration of the UNDERTAKING and treatment plan activities and associated reasonable cost, in accordance with available and eligible State and Federal program funds.

E) ODOT will propose treatment plans using, but not limited to, one or more of the treatments on the following list and in accordance with paragraphs C and D above:

i) Level II documentation as specified by the Historic American Building Survey (HABS) in accordance with 36 CFR Part 68, The Secretary of the Interior's Standards for the Treatment of Historic Properties (STANDARDS) will be considered. Archival HABS documentation will be maintained at a designated archival repository. High quality copies of the HABS documentation will be provided to the recipients, as determined in the treatment plan.

ii) A plaque or plaques commemorating the significance of the historic property will be considered in association with commemorative displays or as stand-alone treatments.

iii) The preparation of historic context documentation, documenting the architect, significant events, architecture, patterns in history, and people associated with the resource in relation to the City of Cleveland, the state, or the nation during the period of significance will be considered. ODOT will provide copies, of the historic context documentation, to consulting parties and will provide additional copies to other recipients upon request.

iv) The application of aesthetic treatments, to elements of the proposed UNDERTAKING highway infrastructure elements, as mitigation for the UNDERTAKING will be in accordance with the STANDARDS.

v) Salvage of architectural elements prior to demolition activities or construction activities, for reuse or for commemorative purposes, will be considered.

vi) The development of educational materials, magazine or journal articles, commemorative displays, and websites that provide a public benefit will be considered.

F) ODOT will concurrently submit proposed treatment plans to the consulting parties for review and comment, and to the OSHPO for AGREEMENT review, comment, and acceptance under the terms of this AGREEMENT. The ODOT submission will request that review comments be provided to the ODOT within 30-days. ODOT will consider and provide for the written disposition of all comments received within the 30-day time period. All comments received within the 30-day time period along with

the written disposition of each, and any appropriate revisions to the proposed treatment plan(s) will be provided to the OSHPO for consideration. The OSHPO will upon the receipt and consideration of all comments, comment disposition, and appropriately revised documentation, provide ODOT with comment or acceptance of the proposed mitigation under the terms of this AGREEMENT.

G) ODOT will provide a copy of all comments received within the 30-day time period along with the written disposition of each, any appropriate revisions to the previously coordinated treatment plan(s), and a copy of the OSHPO's mitigation comment or acceptance letter to the FHWA for their record as evidence that the STIPULATIONS of this PROGRAMMATIC AGREEMENT are being carried out as documented within the AGREEMENT. ODOT will also provide a copy of their written disposition of all comments received, any appropriate treatment plan revisions, and the OSHPO mitigation comment or acceptance letter to all consulting parties for their information.

H) ODOT will, upon the successful complete implementation of an accepted treatment plan, submit appropriate documentation to the OSHPO, for their 30-day review and approval that the terms, conditions, and provisions of the accepted treatment plan have been implemented in full, in accordance with the STIPULATIONS of this PROGRAMMATIC AGREEMENT.

I) ODOT will, upon the approval of OSHPO, provide a copy of the OSHPO correspondence documenting the successful complete implementation of each accepted treatment plan to the FHWA for their record as evidence that the STIPULATIONS of this PROGRAMMATIC AGREEMENT are being carried out and to the consulting parties for their information. ODOT will provide copies of documentation that validates the successful complete implementation of accepted treatment plans to the to the FHWA and consulting parties upon request.

STIPULATION II - DEVELOPMENT OF THE UNDERTAKING'S PREFERRED ALTERNATIVE

A) Upon the development of the UNDERTAKING'S preferred alternative or component of such, FHWA and ODOT will consult as necessary with the OSHPO and other consulting parties to identify areas outside of the APE that require additional identification efforts. If the APE is revised upon the development of the UNDERTAKING'S preferred alternative or component of such, FHWA and ODOT will consult with the OSHPO and other consulting parties to identify areas that require additional identification efforts.

B) ODOT will concurrently submit the results of additional historical or archaeological identification efforts, eligibility findings, and any anticipated effects of the UNDERTAKING or one of its components upon Section 106 resources within the revised APE, to the consulting parties for review and comment, and to the OSHPO for review, comment, concurrence in determinations of effect, and, if applicable, acceptance of proposed mitigation measures under the terms of this AGREEMENT. ODOT-proposed treatment plans, as may be necessary under this STIPULATION, will be developed consistent with the Architectural STIPULATIONS contained within this PROGRAMMATIC AGREEMENT. ODOT-proposed data recovery plans, as may be

necessary under this STIPULATION, will be developed in a manner commensurate with the level of effect to the archaeological resource, will be appropriate for the management of the archaeological resource, and will be of reasonable cost. The ODOT submission will request that review comments be provided to the ODOT within 30-days. ODOT will consider and provide for the written disposition of all comments received within the 30-day time period. All comments received within the 30-day time period along with the written disposition of each, and any appropriate revisions to the submitted documentation and proposed treatment plan(s) or data recovery plan(s) will be provided to the OSHPO for consideration. The OSHPO will upon the receipt and consideration of all comments, comment disposition, and appropriately revised documentation, provide ODOT with comment or concurrence in effect and acceptance of the proposed mitigation under the terms of this AGREEMENT as may be applicable.

C) ODOT shall be accountable for managing all documentation coordinated under this STIPULATION in accordance with the confidentiality provisions of 36 CFR § 800.11.

D) ODOT will provide a copy of all comments received within the 30-day time period along with the written disposition of each, any appropriate revisions to the previously coordinated documentation, and a copy of the OSHPO's comment or concurrence in effect and acceptance of the proposed mitigation under the terms of this AGREEMENT correspondence as may be applicable, to the FHWA for their record as evidence that the STIPULATIONS of this PROGRAMMATIC AGREEMENT are being carried out as documented within the AGREEMENT. ODOT will also provide a copy of their written disposition of all comments received, any appropriate documentation revisions, and the applicable OSHPO comment or concurrence in effect and acceptance of the proposed mitigation under the terms of this AGREEMENT correspondence, to all consulting parties for their information.

E) ODOT will, upon the successful complete implementation of any applicable accepted treatment plan or data recovery plan, submit appropriate documentation to the OSHPO, for their 30-day review and approval that the terms, conditions, and provisions of the accepted treatment or data recovery plan have been implemented in full, in accordance with the STIPULATIONS of this PROGRAMMATIC AGREEMENT.

F) ODOT will, upon the approval of OSHPO, provide a copy of the OSHPO correspondence documenting the successful complete implementation of each accepted treatment or data recovery plan to the FHWA for their record as evidence that the STIPULATIONS of this PROGRAMMATIC AGREEMENT are being carried out and to the consulting parties for their information. ODOT will provide copies of documentation that validates the successful complete implementation of accepted treatment plans and data recovery plans to the FHWA and consulting parties upon request.

STIPULATION III - PROFESSIONAL QUALIFICATIONS

Consultants working on ODOT projects in the fields of History, Archaeology, and Architectural History must be prequalified by ODOT for such work. These individuals must meet the requirements of the Secretary of Interior's Professional Qualifications

Standards (36 CFR Part 61, Appendix A) and the Personnel Qualifications in the OSHPO's Archaeology Guidelines (1994) and/or any successors to those standards and guidelines.

STIPULATION IV - PROJECT MODIFICATIONS

If the APE is revised due to modifications of the UNDERTAKING, ODOT will prepare cultural resource re-evaluation documentation and coordinate the revised APE pursuant to STIPULATION III.

STIPULATION V - DISPUTE RESOLUTION

A) Should any signatory to the PROGRAMMATIC AGREEMENT object at any time to any actions proposed or the manner in which the terms of the PROGRAMMATIC AGREEMENT are implemented, FHWA, with ODOT as FHWA's agent, will consult with such signatory to resolve the objection.

B) If FHWA determines that such objection cannot be so resolved, FHWA will:

1) Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP. The ACHP should provide FHWA with the ACHP's advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of FHWA's written response. FHWA will then proceed according to its final decision.

2) If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA will prepare a written response that takes into account any timely comments regarding the dispute from signatories and concurring parties to the PROGRAMMATIC AGREEMENT, and provide them and the ACHP with a copy of such written response.

3) FHWA's responsibility to carry out all other actions subject to the terms of the PROGRAMMATIC AGREEMENT which are not the subject of the dispute will remain unchanged.

STIPULATION VI - POST REVIEW DISCOVERIES

If previously unidentified archaeological or historic properties, or unanticipated effects on historic properties during construction are discovered after ODOT has completed its review under this PROGRAMMATIC AGREEMENT, that portion of the project will stop immediately, pursuant to Section 203.04 of ODOT's Construction And Material Specifications. The ODOT project engineer will immediately contact ODOT-Office of Environmental Services (ODOT-OES) and/or the ODOT District 12 Environmental Coordinator. No further construction in the area of discovery will proceed until the requirements of 36 CFR § 800.13 have been satisfied, including if

appropriate consultation with Federally recognized Native American Indian tribes that may attach traditional cultural and religious significance to the discovered property. ODOT will consult with OSHPO and other consulting parties, as appropriate, to record, document and evaluate NRHP eligibility of the property and/or the project's effect on the historic property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property. If neither the OSHPO, a Federally recognized Native American Indian tribe, or other consulting parties file a timely objection to ODOT's plan for addressing the discovery, ODOT may carry out the requirements of 36 CFR § 800.13 on behalf of FHWA and the ACHP need not be notified.

STIPULATION VII - TREATMENT OF HUMAN REMAINS

A) Historic and prehistoric human remains are subject to protection under Ohio Revised Code Sections 2909.05 and 2927.11. As such, if human remains are discovered during construction, work in that portion of the project will stop immediately. The remains will be covered and/or protected in place in such a way that minimizes further exposure of and damage to the remains, and the ODOT project engineer will immediately consult with the ODOT District Environmental Coordinator, ODOT-OES, and immediately notify local law enforcement and/or the County Coroner. If the project has a U.S. Army Corps of Engineers (USACOE) permit issued, the ODOT District Environmental Coordinator must notify ODOT-OES and the USACOE. If the remains are found to be Native American Indian, a treatment plan will be developed by ODOT-OES and OSHPO in consultation with FHWA, ACHP, and appropriate federally recognized Native American Indian tribes. FHWA and ODOT will ensure that any treatment and reburial plan is fully implemented. If the remains are not Native American Indian, the appropriate local authority (i.e., local law enforcement and/or county coroner) will be consulted to determine final disposition of the remains. Avoidance and preservation in place is the preferred option for treating human remains.

B) For Native American Indian human remains discovered on Federal lands, the Federal land managing agency will be responsible for consultation under the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601).

C) For skeletal remains discovered on property owned by the State of Ohio, ODOT will comply with Section 149.53 of the Ohio Revised Code. Under this section, the Director of the Ohio Historical Society shall determine final disposition of any discovered skeletal remains.

STIPULATION VIII - AMENDMENTS

Any signatory to the PROGRAMMATIC AGREEMENT may propose to other parties that it be amended, whereupon the signatories will consult in accordance with 36 CFR § 800.6(c) (1) to consider such an amendment.

STIPULATION IX - DURATION

If the UNDERTAKING has not been initiated within five (5) years of the date of the execution of this PROGRAMMATIC AGREEMENT, this PROGRAMMATIC AGREEMENT will be considered null and void, unless the signatories agree in writing to an extension for

implementation of its terms. Signatories will return four and one-half (4½) years after the execution of this PROGRAMMATIC AGREEMENT to amend or to extend the term of the agreement for an additional five (5) years.

Execution of this PROGRAMMATIC AGREEMENT by FHWA and implementation of its terms evidences that FHWA has taken into account the effects of the UNDERTAKING on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

Jolene M. Molitoris — 3/31/09
Ohio Department of Transportation — Date

5.19.09
Ohio State Historic Preservation Office — Date

Patrick A. Baer — 5-14-09
Federal Highway Administration — Date

CONCURRING PARTIES:

Dennis J. Kucinich, U.S. Congress, House of Representatives — Date

Cleveland Landmarks Commission — Date

Western Reserve Historical Society — Date

Cleveland Restoration Society — Date

Tremont West Development Corporation — Date

Quadrangle Incorporated — Date

MidTown Cleveland Incorporated — Date

St. Clair Superior — Date

Historic Gateway Neighborhood Corporation — Date

Flats Oxbow — Date

Burten Bell Carr — Date

City Planning Commission — Date

City of Cleveland — Date

Trinity Cathedral — Date

Cleveland State University — Date

Carnegie Prospect Holdings — Date

Central YMCA Cleveland — Date

Zion Lutheran Church & School — Date

Prospect Development, Inc. & Kies-Murfey House — Date

Pilgrim Congregation Church — Date

Cuyahoga County Commissioner — Date

Paul Alsenas — Date

Cuyahoga Metropolitan Housing Authority — Date

Western Reserve Fire Museum & Education Center — Date

Martha Eakin — Date

Susan Miller — Date

SECTION 106 CONSULTING PARTY
MITIGATION MEETING
CUY – Cleveland Innerbelt Project
PID 77510
May 20, 2009
ODOT, District 12 Office

Name	Organization	Phone #	E-mail
Mark Alan Carpenter	ODOT- D12	(216) 584-2089	markcarpenter@dot.state.oh.us
Susan Gasbarro	ODOT- CENTRAL OFFICE	(614)728-0719	susan.gasbarro@dot.state.oh.u
Tim Hill	ODOT- OES	614 644 0577	Tim.Hill@dot.state.oh.u
Nancy Campbell	OHPO	614-298-2000	ncampbell@ohiohis-tory.org
John M. Motl	ODOT Dist. 12	(216) 584-2085	john.motl@dot.state.oh.u
Dan Mussin	City of Cleveland	216.664.2575	dmusson@ci.cleveland.oh.us
CRAIG HEBEBRAND	ODOT D12	(216) 584-2113	craig.hebebrand@
SCOTT CARPENTER	FIRE MUSEUM	(216) 262-1723	carpenterdesign@me.com

Cleveland Innerbelt Project

Section 106 Consulting Party Meeting

May 20, 2009

Section 106 Consultation

Introductions
Handouts
Status of Section 106 PA

E 12

Section 106 Consultation

Intent of this meeting is to identify and consult on Treatment Plans to Resolve Adverse Effects pursuant to the Section 106 PA as a result of impacts from the first construction project.

Further consultation for future projects will be conducted as design progresses.

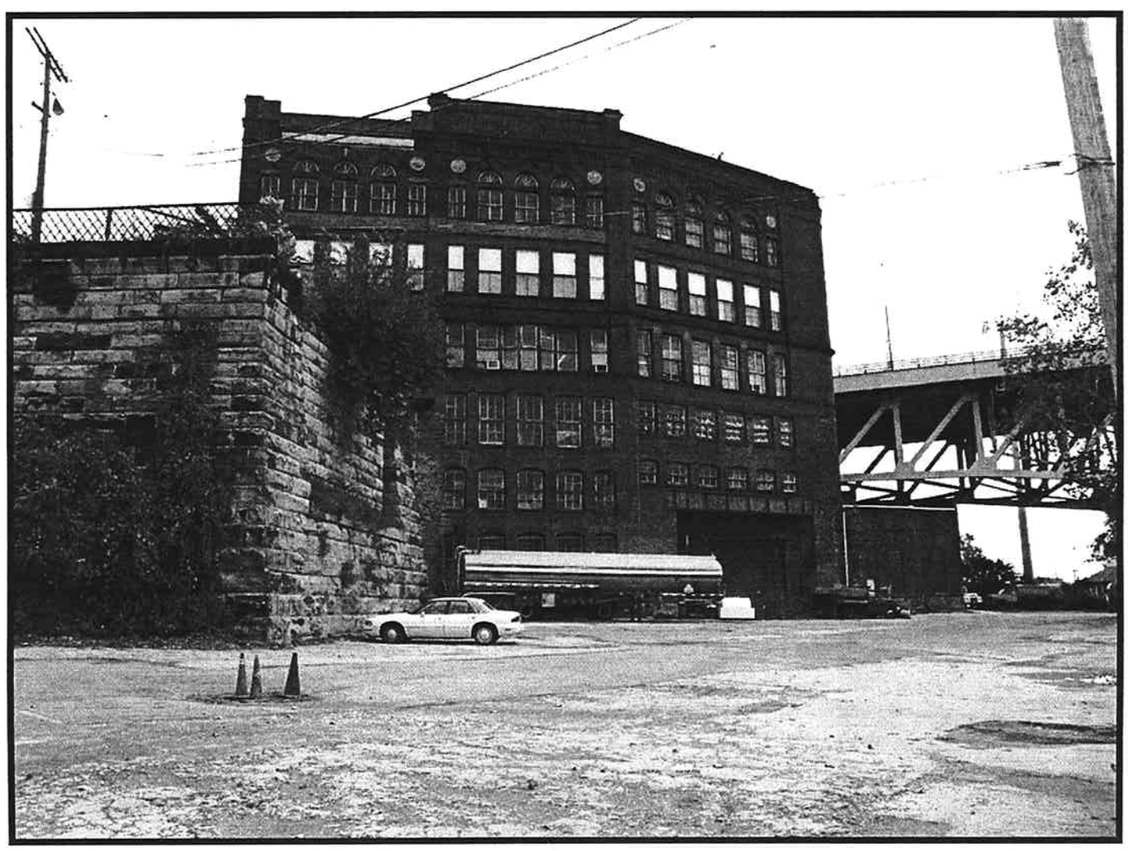
Section 106 Consultation

The first construction project will result in adverse effects to the following properties:

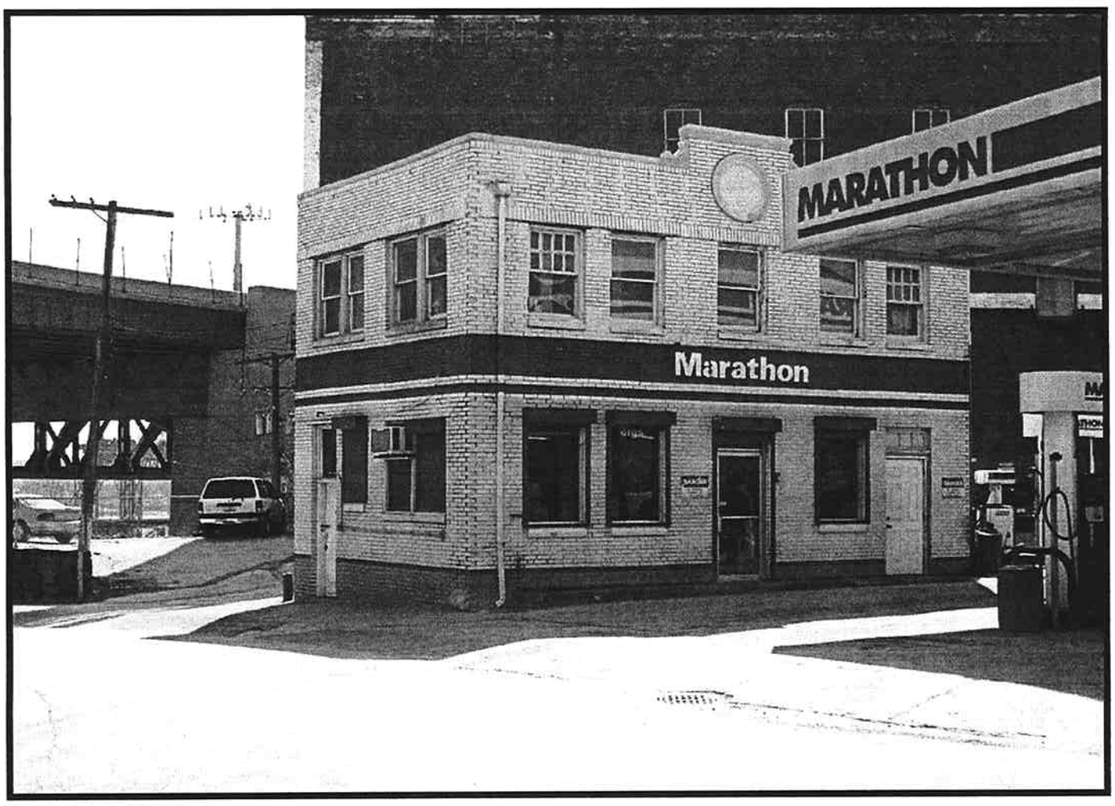
- Broadway Mills
- Marathon Gas
- Distribution Terminal Warehouse

E13

Broadway Mills - NR Criterion A & C (Cleveland's Milling Industry & Architecture)



Marathon Gas Station- NR Criterion A & C (Cleveland's Auto History & Architecture)



6

E 14

Distribution Terminal Warehouse- NR Criterion A & C (Cleveland's Food Distribution History & Architecture)

7

Section 106 Programmatic Agreement (PA) Treatment Plans (Stipulation I, Section E)

- 1. HABS Level II Documentation
- 2. Plaque(s)
- 3. Historic Context Documentation
- 4. Aesthetic Treatment
- 5. Salvage of architecture elements
- 6. Educational Materials

SI 3

Next Steps Section 106 PA (Stipulation I, F-I)

- ODOT will submit treatment plans to OSHPO & Consulting Parties for review and comment
- ODOT will provide for disposition of all comments received & any revisions to OSHPO & Consulting Parties
- Upon completion of treatment plans, ODOT will provide documentation to OSHPO (Consulting Parties upon request)

Questions?

Preserving America's Heritage

June 16, 2009

Timothy M. Hill
Administrator
Office of Environmental Services
Ohio Department of Transportation
1980 West Broad Street
Columbus, Ohio 43223

REF: *Proposed Cleveland CUY-90 Innerbelt Project*
Cleveland, Cuyahoga County, Ohio

Dear Mr. Hill:

On June 11, 2009, the Advisory Council on Historic Preservation (ACHP) received the Programmatic Agreement (PA) for the above referenced project. In accordance with Section 800.6(b)(1)(iv) of the ACHP's regulations, the ACHP acknowledges receipt of the PA. The filing of the PA, and execution of its terms, completes the requirements of Section 106 of the National Historic Preservation Act and the ACHP's regulations.

We appreciate your providing us with a copy of the PA and will retain it for inclusion in our records regarding this project. Should you have any questions or require additional assistance, please contact me at (202) 606-8509 or ljohnson@achp.gov.

Sincerely,

LaShavio Johnson

LaShavio Johnson
Historic Preservation Technician
Federal Permitting, Licensing, and Assistance Section
Office of Federal Agency Programs

ADVISORY COUNCIL ON HISTORIC PRESERVATION

1100 Pennsylvania Avenue NW, Suite 803 • Washington, DC 20004
Phone:202-606-8503 • Fax: 202-606-8647 • achp@achp.gov • www.achp.gov

OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223
TED STRICKLAND, GOVERNOR • JOLENE M. MOLITORIS, DIRECTOR

OFFICE OF ENVIRONMENTAL SERVICES

June 5, 2009

Mr. Mark Epstein, Department Head
Resource Protection and Review
Ohio Historic Preservation Office
567 East Hudson Street
Columbus, Ohio 43211

Subject: CUY-IR 71/77/90, Cleveland Innerbelt, PID 77510

Re: New Westbound, Interstate Route 90 Innerbelt Bridge over the Cuyahoga River
& Treatment Plans to Mitigate Section 106 Adverse Effects

Dear Mr. Epstein:

On May 20, 2009, the *Programmatic Agreement Among the Federal Highway Administration, The Ohio State Historic Preservation Office, and the Ohio Department of Transportation Regarding the Federal-Aid Highway Improvement of Interstate Route 71, 77 and 90 in the City of Cleveland, Cuyahoga County, Ohio, CUY-90 Innerbelt; PID 77510, Agreement Number 15498*, was executed. Enclosed is a copy of the executed agreement.

As a result of the first construction project, the construction of westbound, Interstate Route (IR) 90 Innerbelt Bridge over the Cuyahoga River, three properties eligible for inclusion on the National Register of Historic Places (NRHP) will be adversely affected. A Section 106 Consulting Party meeting was held on May 20, 2009 at the ODOT, District 12 office. Pursuant to the executed Programmatic Agreement (Agreement Number 15498), treatment plans to mitigate adverse effects were discussed, as well as, potential project specific enhancements and locally sponsored plans. Topics of discussion included: multi-use pedestrian trails; the reuse of the Central Viaduct Bridge abutment; the reuse of buried rail lines; the construction of scenic overlooks; the incorporation of aesthetic treatments into the adjacent bridge piers and abutments emphasizing the significance of the historic resources. All agreed the Section 106 mitigation measures, project specific enhancements, and locally sponsored plans should complement the intent of each. Enclosed are copies of the May 20, 2009 attendance sheet, slide presentation, and meeting notifications.

Project specific enhancements will be developed in conjunction with the aesthetic committee members and local agency officials. Project specific enhancement considerations may include: aesthetic treatments to the new bridge abutments and piers; pedestrian overlooks and facilities; the reuse of the Central Viaduct Bridge abutment; and commemorative parks. Locally sponsored enhancements may include reuse of buried rail lines and multi-use pedestrian trails.

In accordance 36 CFR § 800 and Stipulation I (E) of the executed Programmatic Agreement (Agreement Number 15498), FHWA and ODOT propose the following treatment plans to resolve the adverse effect of the first construction project on Broadway Mills, Marathon Gas Station, and the Distribution Terminal Warehouse:

1. Broadway Mills, 300 Central Viaduct, is eligible for inclusion on the NRHP under Criteria A as a rare example of Cleveland's milling industry and under Criteria C for architecture.

   i) Level II documentation as specified by the Historic American Building Survey (HABS) in accordance with 36 CFR § 68, The Secretary of the Interior's Standards for the Treatment of Historic Properties (STANDARDS) will be prepared. Archival HABS documentation will be maintained at the State of Ohio Library, the designated archival repository. High quality copies of the HABS documentation will be provided to the Cleveland Landmarks Commission, Cleveland Public Library, Cleveland Restoration Society, Western Reserve Historical Society, Cleveland State University Library, the Western Reserve Fire Museum and Education Center, and will provide additional copies to other recipients upon request.

   ii) A commemorative display will be located at or near the existing mill site. The commemorative display will compliment the location of project specific enhancements to ensure the safety of the viewing public. Reuse of architectural components will be considered and incorporated into the display along with a plaque commemorating the significance of the resource. Location and design of the commemorative display will be refined as project design progresses and as a result of Section 106 consultation.

2) Marathon Gas Station, 300 Central Viaduct, is eligible for inclusion on the NRHP under Criteria A for its association with Cleveland's automobile history and under Criteria C for architecture.

   i) Level II documentation as specified by the Historic American Building Survey (HABS) in accordance with 36 CFR § 68, The Secretary of the Interior's Standards for the Treatment of Historic Properties (STANDARDS) will be prepared. Archival HABS documentation will be maintained at the State of Ohio Library, the designated archival repository. High quality copies of the HABS documentation will be provided to the Cleveland Landmarks Commission, Cleveland Public Library, Cleveland Restoration Society, Western Reserve Historical Society, Cleveland State University Library, the Western Reserve Fire Museum and Education Center, and will provide additional copies to other recipients upon request.

3) Distribution Terminal Warehouse, 2000 West 14th Street, is eligible for inclusion on the NRHP under Criteria A for its role in the evolution of Cleveland's food distribution network and under Criteria C for architecture.

   i) A historic context will be prepared documenting the significance of the resource in relation to the City of Cleveland's food distribution industrial history during the period of significance. ODOT will provide copies, of the historic context documentation to the Cleveland Landmarks Commission, Cleveland Public Library, Cleveland Restoration Society, Western Reserve Historical Society, Cleveland State University Library, the Western Reserve Fire Museum and Education Center, and will provide additional copies to other recipients upon request.

In accordance with Stipulation I (F), FHWA and ODOT are providing copies of the subject consultation and proposed treatment plans to the consulting parties for concurrent 30-day review. All comments received by FHWA and ODOT will be forwarded to the OSHPO at the end of the 30-day review period. The disposition of each and any appropriate revisions to the proposed treatment plans will be provided to the OSHPO for consideration at that time.

All consulting party comments received within the 30-day review period along with the written disposition of each, any appropriate revisions to the proposed treatment plans, and the OSHPO mitigation comment or acceptance letter to FHWA and ODOT, will serve as evidence of the Stipulations of the executed agreement are being carried out as documented within the agreement. Upon implementation of an accepted treatment plan, the appropriate documentation will be submitted to the OSHPO for their 30-day review and approval that the terms, conditions, and provisions of the accepted treatment plan have been implemented in full accordance with the executed agreement.

In accordance with the Advisory Council on Historic Preservation's current regulations and the executed *Programmatic Agreement Among the Federal Highway Administration, The Ohio State Historic Preservation Office, and the Ohio Department of Transportation Regarding the Federal-Aid Highway Improvement of Interstate Route 71, 77 and 90 in the City of Cleveland, Cuyahoga County, Ohio CUY-90 Innerbelt; PID 77510, Agreement Number 15498,* ODOT has determined the proposed treatment plans mitigate the adverse effects of the undertaking on historic cultural resources.

If no response is received within 30 days, in accordance with the Advisory Council on Historic Preservation's current regulation under 36 CFR Part 800.3(c)(4), it will be presumed that the State Historic Preservation Officer agrees with the determination made in the above coordination.

Respectfully,

Timothy M. Hill
Administrator
Office of Environmental Services

Ohio State Historic Preservation Office Concurrence:

Nancy H. Campbell July 7, 2009
(Date)

TMH:sg
Enclosure

cc: Carol Legard	Advisory Council on Historic Preservation	w/attachments
Michael Armstrong	Federal Highway Administration	w/attachments
David Snyder	Federal Highway Administration	w/attachments
Nancy Campbell	Ohio Historic Preservation Office	w/attachments
Mark Epstein	Ohio Historic Preservation Office	w/attachments
Thomas Grooms	Ohio Historic Preservation Office	w/attachments
Dennis J Kucinich	US Congress House of Representatives	w/attachments
Robert Keiser	Cleveland Landmarks Commission	w/attachments
Kermit Pike	Western Reserve Historical Society	w/attachments
Patrick Reymann	Western Reserve Historical Society	w/attachments
Sarah J Beimers	Cleveland Restoration Society	w/attachments
Chris Garland	Tremont West Development Corp.	w/attachments
William Beckenbach	Quadrangle Incorporated	w/attachments
James Haviland	Midtown Cleveland, Inc.	w/attachments
Jamie Blackson-Baker	St. Clair Superior	w/attachments
Thomas Starinsky	Historic Gateway Neighborhood Corp.	w/attachments
Tom Newman	Flats Oxbow	w/attachments
Tim Tramble	Burten Bell Carr	w/attachments
Debbie Berry	City Planning Commission	w/attachments
Robert Brown	City Planning Commission	w/attachments
Joseph Cimperman	Councilperson, City of Cleveland Ward 13	w/attachments
Phyllis Cleveland	Councilperson, City of Cleveland Ward 5	w/attachments
Dean Tracy Lind	Trinity Cathedral	w/attachments
John J Boule	Cleveland State University	w/attachments
Gina Lattimer	Carnegie Prospect Holdings	w/attachments
Anita Perez	Central YMCA Cleveland	w/attachments
Michael Hageman	Zion Lutheran Church & School	w/attachments
Michael Chesler	Prospect Development, Inc.	w/attachments
George Graham	Pilgrim Congregation Church	w/attachments
Rev Dr Laurinda Hafner	Pilgrim Congregation Church	w/attachments
Paul Alsenas	Cuyahoga County Commissioner	w/attachments
Jimmy DiMora	Cuyahoga County Commissioner	w/attachments
Timothy Hagan	Cuyahoga County Commissioner	w/attachments
Marvin Hayes	Cuyahoga County Commissioner	w/attachments
Peter Lawson Jones	Cuyahoga County Commissioner	w/attachments
Scott Pollack	Cuyahoga Metropolitan Housing Authority	w/attachments
Scott Carpenter	Western Reserve Fire Museum/Education Center	w/attachments
Martha Eakin		w/attachments
Susan Miller		w/attachments
Paul Stubbs	Fire Chief, City of Cleveland	w/attachments