

Breaking the Heart of It All:

How ODOT Subverts the NEPA Environmental Review Process and Damages Ohio's Environment and Communities

ENVIRONMENTAL LAW & POLICY CENTER



With the support of:

Coalition Against Superfluous Highways

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Sierra Club – Ohio Chapter



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A Report by the **ENVIRONMENTAL LAW & POLICY CENTER**

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Acknowledgments

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SUMMARY OF REPORT

During the next decade, the Ohio Department of Transportation (ODOT) is planning to complete more than 650 miles of new and expanded interstate and rural highway construction at a cost of at least \$4.5 billion. The figure below illustrates the major road corridors that ODOT has targeted for expansion in the agency's *Access Ohio* plan, primarily through construction of four- and six-lane highways.



Many of these projects will cut through prime farmland, forest, streams and other natural resources and wildlife habitat. ODOT's road expansions also will exacerbate sprawling development, especially around metropolitan areas.

Remarkably however, ODOT is largely evading required environmental reviews of its massive road expansion program by "segmenting" many projects into small pieces. Shorter projects usually have fewer significant environmental impacts, which is the threshold for detailed environmental review under the National Environmental Policy Act (NEPA). Dividing large road projects into shorter pieces reduces the significance of the impacts, and therefore the need for full environmental review. Segmentation distorts the transportation planning process by fragmenting statewide and regional transportation issues into artificially smaller pieces, circumvents the environmental review process, and masks the true environmental impacts of larger projects.

In this report, the Environmental Law & Policy Center (ELPC) explains ODOT's pervasive pattern of segmentation of major road construction projects. The report includes five case studies where ODOT has avoided serious environmental review for major highway corridors, including U.S. 30 across most of the State, and interstates and other highways connecting the State's major metropolitan areas. In every case ODOT has segmented lengthy highway projects into smaller pieces, thereby more easily justifying decisions — approved by Federal authorities — not to perform the detailed environmental review otherwise required by NEPA.

The five road projects discussed in this report include:

1. **U.S. Route 30 across Ohio** (page 7 of this report). ODOT already has constructed substantial portions of this highway without performing detailed environmental reviews, and ODOT is planning to construct seven additional segments of four-lane highways along the corridor without performing any detailed corridor-level environmental review.
2. **Interstate 71 between Cleveland and Columbus** (page 8 of this report). ODOT is planning to expand more than 75 miles of this major north-south highway to three lanes in each direction without performing any review of the sprawl-inducing consequences of increasing the highway's capacity by 30 percent. ODOT segmented this project into four pieces, thereby allowing ODOT to evade a detailed regional review of the environmental impacts of the expansion.
3. **U.S. Route 24 in Northwestern Ohio** (page 9 of this report). By dividing the so-called "Fort to Port" highway project into three pieces, ODOT avoided a systemic evaluation of the regional environmental and transportation impacts of the costly expansion project.
4. **U.S. Route 33 Southeast of Columbus** (page 10 of this report). ODOT's segmentation of this highway project into at least four segments means that ODOT will never systematically evaluate the regional environmental and economic impacts of the expanded highway corridor.
5. **State Routes 161, 37 and 16 from New Albany to Muskingum County** (page 11 of this report). ODOT is expanding this regional corridor in at least four segments, including one absurdly short one-mile long segment, and because of a fragmented planning process ODOT has not analyzed alternatives to the road expansion or examined the environmental consequences in a full review.

ODOT's systematic avoidance of NEPA requirements has serious negative environmental and transportation planning consequences. Farmland, forest, wetlands, wildlife habitat and other irreplaceable natural areas suffer greater losses. Fragmented planning leads to poor long-term transportation decision making. And new road construction becomes the default choice, even though other alternatives — such as regional passenger rail — might offer better, more cost-effective solutions for the State. ODOT's segmentation policy ultimately consumes more farmland and forest, creates more sprawl, and results in weaker long-term planning than otherwise would occur with systemic environmental review under NEPA.

The obvious solution to ODOT's failure to comply with NEPA is to stop segmenting highway projects. ODOT instead should systematically perform at least one NEPA-required environmental impact statement (EIS) for each of the state's major transportation corridors. Each EIS should thoroughly evaluate a wide range of reasonable alternatives to meet the State's transportation needs, including upgrading existing roads, regional rail networks and other mass transit, and other options. ELPC strongly urges ODOT to immediately reject segmentation and instead use tiered EISs. We specifically recommend that ODOT perform a regional EIS for the I-75 corridor between Dayton and Cincinnati.

NATIONAL ENVIRONMENTAL POLICY ACT REQUIREMENTS FOR ODOT'S ROAD CONSTRUCTION PROJECTS

NEPA requires that ODOT prepare a comprehensive EIS for major federally-funded road projects that are likely to have "significant environmental impacts."¹ An EIS fully informs government decisionmakers of the full range of alternatives and the environmental impacts of proposed major transportation projects, and provides meaningful opportunities for public participation. More specifically:

1. The EIS compels ODOT to clearly establish a valid "purpose and need" for the project. The purpose and need analysis is the basis for evaluating all transportation options from a strategic perspective, particularly for regional transportation corridors. ODOT cannot "skew" the purpose to suit a predetermined construction preference.

2. The EIS comprehensively evaluates and fully explores the range of reasonable alternatives to best achieve the stated purpose and need. This "alternatives analysis" is the heart of the EIS. ODOT must devote substantial treatment to each alternative (including non-road alternatives) so that decisionmakers and the public can intelligently evaluate the comparative merits of different alternatives.²

3. The EIS identifies in detail all of the environmental impacts of each alternative. Environmental impacts include the obvious *direct impacts* of construction projects, such as losses to farmland, forest, wetlands, streams and pollution, and harm to cultural, recreational and historic areas. Environmental impacts also include *indirect or secondary impacts*, such as sprawl, demographic shifts, and economic changes.³ Sprawling commercial and residential development, for example, may occur following construction or expansion of a major highway, especially in growing areas.



Faster than cars and often more convenient than air travel, high-speed passenger rail is becoming a viable transportation alternative for short and medium distance travel, such as the Cincinnati-Columbus-Cleveland corridor.

Since the primary trigger for EIS review is the possibility that the project will cause "significant environmental impacts," segmentation of larger projects into smaller ones masks the true significance of the overall impacts. ODOT cannot legally avoid "significance" by breaking a project into smaller parts,⁴ which is exactly what ODOT has done with large portions of its *Access Ohio* transportation program.

THE CONSEQUENCES OF ODOT'S SEGMENTATION POLICY

When ODOT divides large highway expansion projects into smaller sections, it circumvents both the letter and the spirit of NEPA. Even if the environmental impacts are significant enough to justify an EIS, the evaluation for the smaller segment will be much less comprehensive than if ODOT had studied the entire route corridor in a single EIS. As a result, ODOT reviews major transportation planning decisions by looking at only snippets of the larger transportation planning picture.

Segmenting large highway expansion projects has major negative environmental, public participation, and planning consequences.

First, segmentation undermines a sound long-term transportation planning process because ODOT considers fewer alternatives to highways, while committing billions of dollars to questionable or unnecessary projects.

The Route 161 corridor east of Columbus to Newark is an excellent location for a regional rail transportation network. Yet in part because ODOT has segmented expansion of this corridor into small pieces, the rail option does not receive fair evaluation as a cost-effective and environmentally preferable solution to traffic congestion throughout the corridor.



Most of the expanded highways discussed in this report will cross dozens of streams and other water bodies — which often requires the use of concrete diversion culverts — and the highway traffic pollutes the water with storm water runoff.

ODOT must take a hard look at *all* reasonable transportation alternatives, rather than making a pre-ordained choice for new highway construction.⁵

Second, segmentation can lead to irreparable damage to the environment. By avoiding a full examination of the environmental impacts of lengthy road improvement projects, ODOT is much more likely to select more environmentally damaging alternatives than the agency otherwise would choose through the EIS review process.

Third, segmentation closes the door on public involvement in the decision-making process. Citizens have less power to influence ODOT's strategic roadbuilding decisions, since no single EIS presents all possible transportation corridor improvement options. In many cases, ODOT avoids the need to do any EIS, which even more severely limits opportunities for public participation.

FIVE EXAMPLES OF UNLAWFUL SEGMENTATION TRANSPORTATION PROJECTS

Five recent transportation projects in Ohio demonstrate how ODOT uses segmentation to avoid NEPA review:

- 1. U.S. 30** is a 240-mile road that runs across the state and passes through Upper Sandusky, Bucyrus, Mansfield, Wooster, Canton and East Liverpool. ODOT has carved up the NEPA review process for U.S. 30 into at least seven separate pieces for recent road construction projects.
- 2. Interstate 71 between Cleveland and Columbus** connects two of the largest population centers in the state. ODOT has carved this major highway into four segments north of Columbus as it constructs an ambitious road widening project that will expand most of the highway's capacity by 30 percent.
- 3. U.S. Route 24 in Northwestern Ohio.** ODOT plans to convert this rural road into a new four-lane highway that will destroy farmland and draw traffic away from the Ohio Turnpike. By segmenting this project into three pieces, ODOT has avoided taking a hard look at a broader range of reasonable transportation alternatives to the costly expansion.
- 4. U.S. Route 33 Southeast of Columbus.** ODOT's decision to carve this road into more than four segments forecloses the chance to evaluate the regional impacts of the expansion.

5. **State Routes 161, 37 and 16** from New Albany to Muskingum County. ODOT's segmentation of this corridor into multiple projects illustrates how haphazard land transportation planning can accelerate induced demand and limit transportation alternatives.

All of these projects involve ODOT's expansion of existing road corridors. ODOT used segmentation in every case to narrow the scope of environmental review, thereby avoiding taking the required hard look at regional transportation issues, alternatives, and consequences. In the aggregate, nearly all of these projects will have significant direct and indirect environmental impacts: for example, residential relocations, farmland and forest losses, stream and wetland destruction, and sprawl.

In one case — the widening of I-71 between Columbus and Cleveland — the direct environmental impacts may be less significant, since the widening will occur largely within the median of the highway. ODOT's widening of I-71 will, however, cause major indirect environmental impacts: As lane expansions increase the road's capacity, more people will access more developable land. Therefore, more people will move farther away from Cleveland and Columbus and use I-71 as a commuter corridor. NEPA requires that ODOT consider these indirect environmental impacts — especially sprawl impacts — during the transportation planning process.



CASE STUDY 1: CREEPING EXPANSIONISM

U.S. 30 ACROSS OHIO



U.S. 30 (the Lincoln Highway) runs across the entire northern portion of Ohio and is about 240 miles long. Approximately 55 percent of the road is a four-lane divided highway, and the remaining 45 percent consists of two-lane or other undivided rural highway. ODOT has slated U.S. 30 for expansion to four lanes — including construction on all-new alignments — across nearly the entire state. ODOT is not planning any EIS for either the entire corridor or most of the smaller segments.

This report focuses on ODOT's segmentation of seven segments of U.S. 30. Five of the segments are in the vicinity of Upper Sandusky, Bucyrus and Mansfield, one segment is near Wooster, and another large segment runs between East Canton and West Point (near East Liverpool). The total cost of these projects is at least \$630 million.⁶ The segments include:

- U.S. 235 to U.S. 68 (26 miles, \$39 million);
- U.S. 68 to State Route 37 (7 miles, \$23 million);
- U.S. 37 to Upper Sandusky (12 miles, \$51 million);
- U.S. 23 (Upper Sandusky) to Bucyrus (11.5 miles, \$87 million);
- Stetzer Road (Bucyrus) to Route 314 (Mansfield) (16.3 miles, \$130 million);
- Wooster to Kansas Road (East Union) (7.5 miles, \$88 million);
- Trump Avenue (near East Canton) to Route 11 (West Point) (35 miles, \$225 million).

These seven segments make each smaller section of the project appear to have relatively small environmental impacts, masking the significant direct and indirect impacts of the larger project.

As required by NEPA, ODOT should have performed a corridor-wide EIS for U.S. 30 or, at the very least, considered all of the segments in the vicinity of Upper Sandusky as a single project for the purposes of environmental review. Now, however, by arbitrarily segmenting U.S. 30, ODOT is transforming the road into a new, four-lane highway without a full review of regional alternatives and environmental impacts.

ODOT's U.S. 30 expansion program will have significant environmental impacts, especially direct impacts. Many miles of the road will be constructed on new alignment.

For example, the Stetzer Road to Route 314 segment, which will be constructed three miles south of the existing highway, will impact 10 major stream crossings, 60 acres of woodlands, 614 acres of prime farmland, 12 archeological and historic sites and 15 residences.

ODOT's steamrolling of the U.S. 30 expansion through NEPA even ignored the recommendations of another agency. For the Wayne County segment near Wooster, the Ohio Department of Agriculture urged ODOT to upgrade existing U.S. 30 rather than construct an all-new highway because of the expected farmland losses. ODOT, however, rejected the Department's recommendation.⁷

The U.S. 30 expansion also will have significant indirect impacts. Several of the segments are miles away from the town centers through which U.S. 30 currently runs, and the new roads will draw traffic and business away from downtown areas, thereby accelerating their decline. ODOT has not comprehensively analyzed these serious indirect impacts.

CASE STUDY 2: SUPERCHARGING SPRAWL

INTERSTATE 71 BETWEEN CLEVELAND AND COLUMBUS



I-71 is Ohio's backbone, running between Cleveland and Columbus and Cincinnati. ODOT is in the process of major road expansion projects along I-71 between Columbus and Cleveland, including 76 miles of projects to widen the highway from four to six lanes.⁸ The projects will take up to a decade to complete and cost more than \$500 million.⁹ The four segments of I-71 are:

- U.S. 42 interchange in Cuyahoga County south to the Route 18 interchange in Medina County (15 miles, including 8 miles of one additional lane);
- Route 18 interchange south to the I-76 interchange in Medina County (9 miles);
- I-76 interchange south to the U.S. 36/37 interchange in Delaware County (79 miles, including 51.5 miles of one additional lane from the I-76 interchange to the Richland/Morrow County line, \$270 million);

- U.S. 36/37 interchange in Delaware County south to the S.R. 161 interchange in Franklin County (16 miles of one additional lane in each direction, \$51.3 million).

ODOT improperly segmented this major highway project into four segments instead of considering all of the planned work as a single project. By dividing the project into smaller pieces, ODOT more easily obtained sweeping "categorical exclusion" approvals from FHWA, which exempted the projects from any environmental review.

By segmenting the large I-71 highway project into small pieces, ODOT will circumvent NEPA's required consideration of all reasonable alternatives, which could include:

- Passenger rail service between Cleveland and Columbus. This plan has taken a back seat to expanding I-71;
- A separate regional rail transit system serving Franklin County and the surrounding counties that also would reduce congestion on I-71 northward of Columbus;
- Commuter rail service south of Cleveland.

ODOT did not comprehensively evaluate any of these alternatives under NEPA because the agency did not perform an EIS for the corridor.

Segmentation also masks the indirect and cumulative environmental impacts resulting from the 30 percent increase in capacity over much of I-71. Indirect impacts are especially likely to occur along I-71 north of Columbus since Delaware County is one of the fastest-growing counties in the United States.¹⁰ ODOT failed to comprehensively assess these impacts, claiming, without any support, that expanding the highway would not affect growth or development patterns.¹¹ ODOT did not address induced growth issues even when requested to do so by the public. According to the agency: "We have received comments regarding the issue of 'induced growth/development' due to the improvement of this corridor. *This is not an environmental but a socioeconomic issue. . . .*"¹²

NEPA requires that ODOT evaluate the sprawl-inducing effects of highway construction. By segmenting a \$500 million highway project into smaller pieces, ODOT avoided addressing the sprawl-inducing effects of highway expansion in detail. Increasing the capacity of a major interstate highway by 30 percent will fuel "induced demand" and create more sprawl, which will eventually mean even more highway expansions. ODOT therefore should have evaluated the entire corridor in an EIS.

CASE STUDY 3: THE “FORT TO PORT” BOONDOGGLE

U.S. 24 BETWEEN INDIANA AND MAUMEE



ODOT is planning to expand 70 miles of the existing two-lane U.S. 24, which runs from the Indiana/Ohio border near New Haven, Indiana along the Maumee River to Maumee, a Toledo suburb, where it becomes a four-lane divided highway. (Highway booster groups have nicknamed the project the “Fort to Port” project because Route 24 connects Fort Wayne with the port city of Toledo.) ODOT’s primary stated justifications for building a largely all-new U.S. 24 in parallel to the existing road, and at a cost of nearly \$400 million, include congestion relief, traffic safety and economic growth.

In 1994, ODOT divided the corridor into three segments for purposes of planning and environmental review:

- **New Haven to Defiance (36.4 miles, approximately \$200 million);**
- **Defiance to Napoleon (13 miles, approximately \$37 million);**
- **Napoleon to Maumee (21 miles, nearly \$153 million).**

ODOT currently is preparing EISs for the first and third segments. ODOT is claiming a “categorical exclusion” from NEPA review for the second segment on the grounds that the agency owns most of the rights of way for the expansion.

U.S. 24 is a textbook example of why segmentation is not appropriate for a road construction project of this magnitude. ODOT has a single plan to upgrade nearly the entire length of U.S. 24 in Ohio. Nevertheless, ODOT divided the project into three segments for NEPA review purposes, thereby avoiding a more comprehensive,

regional review of the environmental and development issues associated with the highway. Instead of carving U.S. 24 into three pieces, ODOT should have performed a single EIS for the entire project to address regional environmental and economic impacts.

Segmenting U.S. 24 allowed ODOT to more easily obtain a categorical exclusion for the Defiance to Napoleon segment, since ODOT intends to use the existing right of way for that segment. If ODOT had performed an EIS for the entire corridor, it would have included this middle segment in the environmental review. Instead, this section will not receive any serious environmental review under NEPA.

Segmenting U.S. 24 also masks the direct environmental impacts of the new road. For example:

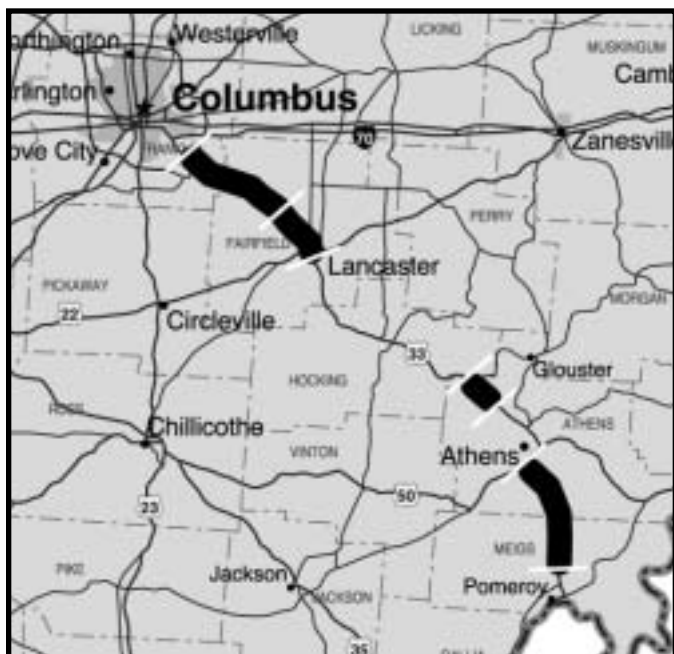
- The New Haven to Defiance segment will displace 63 residences, impact nearly 8 miles of streams and 24 acres of wetlands, and affect 75 acres of woodlands.¹³
- The Napoleon to Maumee segment will displace 38 residences, impact nearly 2.5 miles of streams and more than 10 acres of wetlands, and affect 30 acres of woodlands.¹⁴
- Farmland losses will be particularly acute. The two segments will affect nearly 2300 acres of farmland and hundreds of farmers. Slicing farmland into smaller pieces also renders the land more expensive to farm and therefore less productive.

The indirect environmental impacts also will be large. Induced demand will significantly increase truck traffic beyond the conservative estimates made by ODOT. Traffic that otherwise would use the Ohio Turnpike also will divert to U.S. 24 in order to avoid tolls and speeding tickets on the Turnpike. More traffic is also likely when Indiana completes its own planned expansion of U.S. 24 as the “Hoosier Heartland Corridor.” Yet ODOT’s review documents scarcely mention Indiana’s plans for U.S. 24 and the likely consequential impacts in Ohio.

Expanding U.S. 24 outward from Toledo also will increase the likelihood of migration away from Toledo into the suburbs. Lucas County, home of Toledo, lost population between 1990 and 2000, whereas two of the outlying counties (Fulton and Wood) grew at a faster rate than the state average. A comprehensive EIS for the entire U.S. Route 24 corridor would have evaluated those secondary land use and development impacts more comprehensively.

CASE STUDY 4: THE ROAD TO ATHENS

U.S. ROUTE 33 SOUTHEAST OF COLUMBUS



During the last several years, ODOT has initiated several major expansion projects on U.S. 33 southeast of Columbus that cumulatively will cost nearly \$500 million, including the following segments:

- Columbus to Lancaster highway (four-lane highway, 16 miles, \$135 million);
- Lancaster Bypass (all-new four-lane highway, 16 miles, \$153 million);
- Nelsonville Bypass (all-new four-lane highway, 9 miles, \$108.5 million);
- Athens to Darwin highway (largely all-new “Super 2” road, 12 miles, \$87.7 million).

ODOT has already expanded other portions of U.S. 33 south of Columbus to four-lane highways, and ODOT also is planning to expand U.S. 33 northwest of Columbus, including a \$140 million expansion in Auglaize and Logan Counties.

Ohio has failed to conduct an EIS for the entire corridor, under which ODOT should have more comprehensively transportation needs and alternatives, and evaluated environmental impacts, for the entire regional corridor. The latter three segments, which are furthest

along in ODOT’s planning process, will cause significant direct environmental impacts, including:

- 440 acres of farmland losses;
- 700 acres of forest and wildlife habitat impacts;
- 70 stream crossings; and
- 90 residences, farmsteads and businesses relocated.¹⁵

The projects also will cause significant indirect environmental impacts. Expansion of U.S. 33 will help to catalyze sprawl development south of Columbus. The two bypasses are likely to divert traffic away from Nelsonville and Lancaster. For example, nearly 60 percent of Nelsonville’s businesses are along existing U.S. 33 in the downtown area. Constructing the new bypass away from the downtown area will harm the existing businesses and cause development to shift away from the downtown area.



ODOT’s segmentation policy largely ignores the major indirect impacts, such as farmland loss and sprawling residential development, that occur from building and expanding major highways.

Since ODOT has planned the U.S. 33 expansion for more than a decade, ODOT should have comprehensively reviewed the entire project in a corridor-wide EIS. A single EIS — which would have helped to coordinate planning of the smaller segments — would have analyzed alternatives and environmental impacts in detail, especially the indirect impacts resulting from the corridor-wide expansion, and would have offered more and better opportunities for public participation.

CASE STUDY 5: MISSED CHANCES FOR PASSENGER RAIL

STATE ROUTE 161/STATE ROUTE 37/STATE ROUTE 16 EAST OF COLUMBUS



State Route 161 runs eastward from Columbus to Granville, where it meets State Route 37 (already a four-lane highway) in Licking County for approximately two miles before merging with State Route 16, which travels through Newark and into Muskingum County. ODOT's expansion of this corridor has a price tag of at least \$330 million.

ODOT is developing this corridor in multiple segments:

- **Route 161 bypass from Hamilton Road in Columbus to New Albany (7.4 miles, \$61 million) (construction complete);**
- **Route 161 from New Albany to Beech Road (1 mile);**
- **Route 161 from Beech Road to Granville (approximately 12 miles);**
- **Route 16 east of Newark to Dresden (12.6 miles, \$100 million).**

ODOT already has completed the first segment. ODOT now intends to widen 13 miles of Route 161 between New Albany and Granville to four lanes in two segments, and ODOT's current plans include substantial new construction through farmland and residential areas. The total cost of these two projects is at least \$176 million. The last segment (Newark to Dresden), which is nearly complete, involves widening 12.6 miles of existing two-lane road to four lanes. The FHWA approved ODOT's "finding of no significant impact" under NEPA for this segment in 1997, which meant that ODOT avoided performing an EIS for the construction of this highway.

All of these projects are part of ODOT's comprehensive plan to expand Routes 161/37/16 to four lanes through three counties. ODOT should have evaluated these projects in a single EIS because the actions involve expansions of a single transportation corridor, and the actions will have cumulatively significant environmental impacts. Segmenting them allows ODOT to avoid the "significance" designation and the resulting need to perform an EIS.

Segmenting this corridor into pieces also limits ODOT's consideration of other reasonable alternatives, including a regional passenger rail line running eastward from Columbus. This corridor is an excellent location for a rail system because most of the basic rail infrastructure is in place, and many of the motorists are commuters to Columbus. A plan to construct a rail line has been on the drawing board for years, and it has the strong support of local government leaders, including the Licking County commissioners, local mayors and members of the Licking County Area Transportation Study. Passenger rail in this corridor is a cost-effective alternative with fewer environmental impacts, yet ODOT refuses to comprehensively review this option as an alternative to new road construction.

ODOT has given the rail option short shrift primarily because ODOT is missing the big picture by carving up a major transportation corridor into smaller segments. For example, the recent major investment study for the Route 161 expansion plan summarily dismissed rail service as unworkable based on the unsupported conclusion that a "point-to-point" system such as rail would not attract riders.¹⁶ ODOT ignores the fact that the route is lined with population centers that would serve as excellent "park-and-ride" station locations. As ODOT commits hundreds of millions of dollars to expanding highways in this corridor, less money will be available for the rail alternative, and fewer people are likely to use rail (at least in the short term) because of the attraction of a new four-lane highway.

ODOT's expansion of this corridor has caused and will continue to cause significant cumulative direct environmental impacts. For example, at least 75 acres of property will be acquired just to construct an interchange at Beech Road and Route 161. ODOT's current plans for the remaining twelve-mile stretch of Route 161 include substantial new construction over farmland and probable stream and wetlands impacts.

Indirect environmental impacts also are likely to occur along this corridor. The New Albany area is rapidly growing, primarily because of the New Albany Company's aggressive residential development in the area, together with the construction of the first phase of the Route 161 expansion. After ODOT completes all of the expansion projects in the corridor, more than 50 miles of four-lane divided highway will extend eastward from Columbus into Muskingum County, thereby facilitating sprawl eastward from New Albany into Granville, which already is experiencing rapid development pressure.



The planned expansion of Route 161 threatens the small town of Granville, home to Denison University, with accelerated sprawl and more pollution.

Another important concern is that motorists are beginning to use the corridor as an alternative to I-70, ten miles to the south, to reach I-77 in Guernsey County. Completion of the additional "missing links" of four-lane highway will substantially increase this trend, which is a clear example of how "induced" or shifting demand causes a change in transportation behavior. More trucks also are likely to use this as an alternative to I-70, further increasing traffic and pollution.

RECOMMENDATIONS

ODOT's *Access Ohio* transportation strategic plan lays out an aggressive roadbuilding expansion program for Ohio's future. *Access Ohio* does address other transportation options, including public transportation and passenger rail, but roadbuilding is the centerpiece of ODOT's long-term plan. Collectively, these projects will cost billions of dollars, significantly impact the environment, and change patterns of development. Remarkably however, and largely because of segmentation, most of these projects will evade full review under NEPA. Even in those cases where ODOT reviews a small road segment in an EIS, the environmental review will not measure or reveal the impacts of the expansion of the entire highway corridor. Corridor-wide reviews alert decisionmakers to a broader range of environmental and social consequences than are examined in a piecemeal planning process.

Segmentation also has serious negative fiscal consequences. ODOT's commitments of billions of dollars to new road projects means that less money is available for other transportation alternatives, such as regional and inter-city passenger rail and expanded public transportation. Existing road maintenance also will suffer.

To address these shortcomings, ODOT should reject segmentation as a means to avoid review of planned corridor upgrades and flaunt NEPA requirements. Instead, ODOT should perform corridor-level EIS review for all major planned transportation improvements. The review will meet NEPA requirements and support local, regional and statewide planning efforts.

The NEPA EIS process serves important environmental review and planning functions, and is an excellent planning tool when used for regional and statewide development planning purposes. ODOT has circumvented this process, such as in the categorical exclusion documents for I-71, where ODOT dismissed the idea that expanding the capacity of I-71 by up to 30 percent would cause sprawl. An EIS would test that claim using transportation modeling programs and systematically evaluate what impacts are likely to occur.

NEPA regulations offer ODOT a solution to comply with NEPA while avoiding "paralysis by analysis." Depending on the size of the project, a "tiered" EIS process may be appropriate for corridor-level review.¹⁷ A first-tier EIS establishes the overall purpose and need for corridor-wide transportation improvements, and comprehensively

evaluates transportation alternatives. The first-tier EIS would also evaluate the broader environmental, social and economic impacts of different alternatives. Depending on the recommendations of the first-tier EIS, the second-tier EIS would scrutinize environmental impacts more closely within the corridor based on the chosen alternative. More than one second-tier EIS could be performed depending on the circumstances. For example, a first-tier EIS might recommend inter-city rail development between Columbus and Cleveland, and multiple second-tier EISs could be performed to evaluate track alignment alternatives for different segments of the route.

ODOT must use tiering carefully to avoid ineffectiveness and abuse. Used improperly, tiering can be rigged to avoid taking a hard and detailed look at alternatives and environmental impacts. Tiering, however, offers a good opportunity to address the direct, indirect and cumulative effects of road development between Ohio's major cities. In particular, tiering could be appropriate for corridor-wide review if the EIS is incorporated into the major investment study process for transportation corridors.

I-75: AN OPPORTUNITY FOR CHANGE

A major highway expansion project now in the planning stages in Ohio offers an excellent opportunity for ODOT to conduct a comprehensive corridor-wide EIS instead of segmenting the project into small fragments. The Ohio-Kentucky-Indiana Council of Governments (OKI) currently is evaluating several major transportation improvements for the heavily-traveled I-75 corridor between Dayton and Northern Kentucky. Nearly 100,000 cars and at least 15,000 trucks use this highway each day, with tens of thousands of additional vehicles traveling along well-known choke points around Cincinnati and Dayton. All three states are interested in long-term solutions to problems with the aging and overused highway.

Notably, OKI is not performing an EIS at this early planning stage. Instead, OKI is seeking public input on a broad range of alternatives to address congestion and other deficiencies. The state officials are at least giving lip service to a range of transportation alternatives, including commuter rail, more freight rail and local road upgrades. These alternatives will have different costs, benefits, and environmental impacts. By Fall 2002, OKI intends to winnow down the list of alternatives to a smaller "preferred program of projects" that it will recommend to ODOT and other state transportation agencies.¹⁸

As laudable as OKI's study program is, it is not occurring within the parameters of an EIS. Politics and other subjective factors are more likely to influence OKI's results and recommendations. As a result, there is a real risk that the final list of "preferred" projects (for example, lane widenings) will become the pre-ordained choices for expanding I-75, even before ODOT performs an EIS. An equally serious risk is that even if OKI's recommendations do include a range of alternatives, ODOT might ignore them, and instead segment the expansion program into small pieces for the EIS process. ODOT then would be much more likely to choose "business as usual" solutions – such as lane widenings – that do not solve long-term congestion problems and worsen sprawl.



Sprawl already is rampant along I-71 north of Cincinnati in Warren County, where land development has outpaced population growth by a 5-1 margin in recent years. Expanding I-75 north of Cincinnati and south of Dayton could fuel similar unplanned development.

ODOT now has a window of opportunity on the I-75 project to fully comply with NEPA and make better transportation decisions by performing an EIS for the entire highway corridor between the Dayton area and Cincinnati. This EIS would evaluate all reasonable alternatives that meet the purposes of the program, including system performance, community impacts, environmental impacts, economic development and cost. The EIS will be the best process for ODOT to evaluate regional alternatives such as commuter rail, which the public wants in Cincinnati and Dayton yet has received short shrift by ODOT in the past. Using state-of-the-art computer-driven transportation models, a corridor-level EIS also will better evaluate sprawl and other induced demand impacts than the OKI study. Finally, an EIS will

increase public confidence in the state's transportation decision-making process, which currently is under public scrutiny.¹⁹ ELPC and its Ohio supporters therefore strongly urge ODOT to affirmatively reject segmentation in the I-75 study process. ODOT instead should comprehensively evaluate a range of transportation alternatives and environmental impacts under the magnifying glass of a corridor-wide EIS.

CONCLUSION

Segmentation seriously undermines environmental protection and ODOT's transportation planning process. Segmentation obfuscates the long-term environmental and economic impacts of road construction, and limits review of the diversity of transportation alternatives, such as mass transit, high-speed rail, and other solutions. Since ODOT is rapidly expanding the State's major transportation corridors, now is the time for the ODOT to stop segmenting major road expansion projects, and instead evaluate the corridors through the prism of comprehensive and accurate NEPA environmental reviews. The public will be better served when ODOT follows the letter and spirit of the law.

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Notes

1. 42 U.S.C. § 4332(C).
2. 40 C.F.R. § 1502.14(b).
3. 40 C.F.R. § 1502.16. This regulation requires ODOT and other agencies to evaluate "growth-inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate."
4. 40 C.F.R. § 1508.27.
5. Ohioans strongly want ODOT to invest more in mass transit options such as high-speed rail and less in expanding the road network. In a poll conducted by the Ohio State University in 2001, 54% of respondents supported more investments in passenger rail and other services to relieve congestion, and only 28% thought that building more roads was the best solution. (Poll conducted by the OSU Center for Survey Research January 2001.)
6. The cost data for this project and other examples in this report are based on information from ODOT's Transportation Review Advisory Council (<http://www.dot.state.oh.us>) and NEPA review documents.
7. Ohio Department of Agriculture, Letter from Howard Wise to Timothy Hill (ODOT), at 1 (June 23, 1999).
8. Other work, including an expanded Polaris interchange and modifications to the Polaris Parkway, also is underway at additional cost.
9. Mark Ferenchik, Committee Backs Widening of I-71, Columbus Post-Dispatch, Oct. 13, 1998, at 1C.

10. See <http://eire.census.gov/popest/data/counties/tables/CO-EST2001-11.php> (Delaware County is the 15th fastest-growing county in the United States).
11. ODOT, Categorical Exclusion Form, at 10 (Sept. 17, 1999).
12. Id. at 11 (emphasis added).
13. <http://www.pbid.com/us24/summarytable/alternatives/alternatives.htm>.
14. See <http://www.usrt24.com/comparison.htm>.
15. These estimates are based on a range of alternatives for each of the projects.
16. See MIS for State Route 161 and State Route 37 Franklin and Licking Counties (Revised May 25, 2000).
17. 40 C.F.R. §§ 1502.20; 1508.28.
18. See www.nsinitiative.com/alternatives/alternatives.html.
19. For example, see the Columbus Dispatch's four-part series on ODOT's road construction decision-making process entitled "Paved with Problems," which appeared September 29, 2002 through October 2, 2002.

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ENVIRONMENTAL LAW & POLICY CENTER

The Environmental Law & Policy Center (ELPC) is the Midwest's leading public interest environmental legal advocacy and business innovation organization. We develop and lead strategic advocacy campaigns to protect our natural resources and improve environmental quality. We are public interest entrepreneurs who engage in creative business dealmaking that practices our belief that environmental progress and economic development can be achieved together.

ELPC proposes alternatives when we oppose threats to the Midwest environment. We say "yes" to better solutions; we don't just say "no." ELPC works to:

- Promote sustainable energy strategies by developing energy efficiency and renewable energy resources while reducing pollution from coal and nuclear plants that harms our environment and public health;
- Design and implement smart growth planning solutions to combat sprawl and innovative transportation approaches, such as the development of a high-speed rail network, that will lead to cleaner air and more jobs; and
- Advocate sound environmental management practices that preserve natural resources and improve the quality of life in our communities.

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