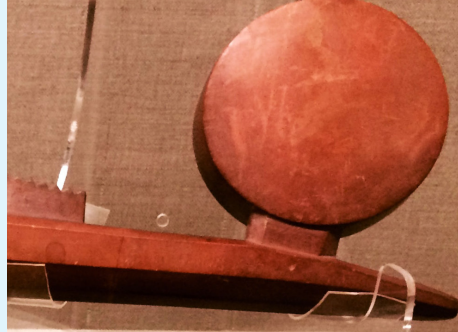


# Situation Assessment



## Eastern Corridor: SR-32 Relocation, Segments II/III (PID 86462)

A Report of Stakeholder Perspectives to Inform  
Decision Makers and Other Key Parties

**Prepared for the:**

U.S. Institute for Environmental Conflict Resolution  
Ohio Department of Transportation  
Federal Highway Administration

**November 2014**

## List of Acronyms

<b>ANCOR</b>	Anderson Nitration Corporation Industrial Area
<b>CBI</b>	Consensus Building Institute
<b>EIS</b>	Environmental Impact Statement
<b>FEIS</b>	Final Environmental Impact Statement
<b>FTA</b>	Federal Transit Administration
<b>FHWA</b>	Federal Highway Administration
<b>NHL</b>	National Historic Landmark
<b>NEPA</b>	National Environmental Policy Act
<b>MIS</b>	Major Investment Study
<b>Oasis</b>	Oasis Rail Transit Project
<b>ODOT</b>	Ohio Department of Transportation
<b>ROD</b>	Record of Decision
<b>SORTA</b>	Southwest Ohio Regional Transit Authority (aka METRO)
<b>SR</b>	State Route
<b>TID</b>	Transportation Improvement District
<b>TIP</b>	Transportation Improvement Plan
<b>Institute</b>	United States Institute for Environmental Conflict Resolution

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# Executive Summary

The Ohio State Route 32 (SR-32) Relocation Project, a component of the Eastern Corridor Program, raises important and at times conflicting interests from transportation, environmental, historical and community standpoints. In late 2013, the Ohio Department of Transportation (ODOT) and Federal Highway Administration (FHWA) sought assistance from the U.S. Institute for Environmental Conflict Resolution (Institute). Following a competitive bid process the Institute selected the Consensus Building Institute (CBI) to prepare this situation assessment and examine whether a collaborative process might be feasible to help inform future decisions about the project.

The key objectives of this situation assessment are to articulate key themes that emerged from discussions with a representative range of interested parties; evaluate where stakeholder interests are shared, complementary, or opposing; identify any issues that might be negotiable and potentially tractable through consensus building as well as any matters that appear irreconcilable; and assess the feasibility of designing a collaborative process that could be helpful to the key stakeholders. *This report is not intended to arbitrate facts or put forward a particular substantive recommendation, but rather to reflect the range of stakeholder views and identify possible ways forward through a collaborative process.*

The Eastern Corridor Program, covering approximately 165 square miles east from downtown Cincinnati through Hamilton County into western Clermont County, has been of interest to transportation planners since the 1960s and the subject of a Major Investment Study (MIS) and a federal Environmental Impact Statement (EIS). FHWA issued a Record of Decision (ROD) in 2006 authorizing more intensive evaluation and design of the Eastern Corridor projects, including the relocation of SR-32. The concerns of both supporters and opponents of a SR-32 relocation have intensified in recent years.

During the summer of 2014, CBI interviewed over one hundred stakeholders as the basis for preparing this document. While the primary focus of these conversations related to the proposed relocation of SR-32, interviewees also raised issues related to the OASIS rail component and, to a lesser extent, the Red Bank Corridor project, and other transit options such as bike paths, bus transit, and streetcars.

Three key perspectives emerged from the interviews CBI conducted. One prevailing view is that SR-32 is an essential and well-conceived element of the Eastern Corridor Program. Those holding this view believe the project will yield multiple, widespread and needed benefits related to connectivity, congestion relief, safety and economic development. A second prevailing perspective is that the relocation of SR-32 is not necessary—there is no pressing purpose or need for such a project, and it would cause unacceptable impacts to the natural environment, historic resources, community character and quality of life. Those with this perspective believe the costs of the project clearly outweigh any benefits it might provide and highlight what they see as a lack of sufficient financial and public support to make it feasible. The third narrative is that there may well be legitimate transportation and economic development needs that a relocated SR-32 could address but that the current situation does not provide a feasible basis on which to move forward. Those holding this perspective have suggested various approaches that might attract a broader range of support.

The key interests underlying these perspectives are to varying degrees shared, complementary or opposing, and include: improving transportation safety and efficiency; protecting the natural environment; facilitating regional economic development; protecting quality of life issues; being fiscally responsible and allocating limited dollars to the most pressing needs; safeguarding historic and archeological resources; and making decisions in a reasonable timeframe.

CBI's analysis of the stakeholder interviews suggests certain dynamics have become prevalent between parties with interest in the project. These include a widespread difficulty of understanding more than one perspective and reciprocal feelings of being mischaracterized. Views differ about the actual level of support for a relocated SR-32 – some believe opposition is broad-based and growing while others feel that a silent majority of citizens back the project and a few active voices receive disproportionate attention. Moreover, concerns about trust have arisen among and between key players and has hampered productive dialogue. Views among the parties differ about the quality of the public engagement process to date, the adequacy of tribal coordination, and the value of this assessment process. While some describe the Eastern Corridor program as a pioneering model of “bottom up” development and collaborative public engagement, others see a process that has lacked transparency, accountability and responsiveness to concerns. Likewise, some interviewees welcomed this assessment process and expressed hope that it might provide a basis for greater clarity and consensus around the SR-32 issue; others feared it would be an ill-advised use of time and money that will only serve to delay reaching a needed decision.

This report identifies eight options for the transportation agencies to consider in deciding whether and how to move ahead with the SR-32 relocation component of the Eastern Corridor Program. These are presented in no particular order and could be combined or sequenced in different ways:

- Do not proceed with the project at the present time
- Obtain additional information related to the view of key regulatory agencies before making a decision of whether or not to proceed
- Convene a diverse and manageably sized group of representative interests to consider one or more paths forward
- Revisit project assumptions and fundamentally rethink the proposed plan
- Engage in joint fact-finding around purpose and need issues
- Develop a potential new SR-32 alignment to a greater level of detail
- Move ahead with a phased project
- Proceed as proposed fulfilling NEPA and its public engagement requirements

CBI and the Institute encourage all interested parties to consider the information provided in this assessment in thinking about the nature of the present challenge. While no solution may satisfy everyone, we believe it may be possible to take a more inclusive, collaborative approach to the decision making – an effort that has potential to build trust and generate more creative and useful options that have a better chance of meeting as broad a range of interests as possible.

# I. Overview and Background

The Eastern Corridor Transportation Program, including the State Route (SR) 32 Relocation Project involves numerous interested parties with important and at times conflicting interests from transportation, environmental, historical and community standpoints. This report provides some background information on the issue, the assessment process undertaken by the Consensus Building Institute (CBI), and the results of conversations with those interviewed. The document concludes with several options for parties to consider moving forward.

In 2013, the Ohio Department of Transportation (ODOT) and the Federal Highway Administration (FHWA) recognized the need to understand better the range of perspectives held by stakeholders before deciding how best to proceed with transportation improvements in the Eastern Corridor, particularly with respect to the proposed relocation of SR-32.<sup>1</sup> They elected to undertake a situation assessment before moving forward with the public engagement and environmental review process stipulated by the National Environmental Policy Act (NEPA). To that end, ODOT and FHWA requested assistance from the U.S. Institute for Environmental Conflict Resolution (Institute), a program of the Udall Foundation and an independent federal agency.<sup>2</sup> The Institute issued a Request for Proposals to initiate a competitive bidding process and ultimately selected CBI. CBI was charged with preparing this situation assessment and examining whether it might be feasible to design and facilitate a collaborative process, acceptable to a sufficient number of parties, to help inform future decisions about the project.<sup>3</sup>

The intent of the assessment is to reflect accurately and comprehensively the range of stakeholder views about the relocation project and possible ways the parties may move forward using a collaborative process. We emphasize that this report is not intended to arbitrate facts, put forward a particular substantive recommendation, or ascertain the number of individuals or groups with a particular view (such as polling might do). Accordingly, CBI did not attempt to track monies allocated, spent or remaining for the SR-32 relocation project, judge the adequacy of how various agencies have performed, evaluate the technical or legal merits of work done to date, canvass the number of project supporters or opponents, or identify a particular transportation choice moving forward. Please note that while the assessment is based on in-depth confidential interviews with numerous individuals, any errors or omissions are the sole responsibility of CBI.

The Consensus Building Institute, a not-for-profit [501c(3)] organization based in Cambridge Massachusetts, provides facilitation and mediation services to help public, private, and non-governmental organizations nationally and internationally reach agreement on complex public policy matters.<sup>4</sup> Through managed discussions, we assist groups to assess the scientific, economic, and political information needed to advance shared interests and where possible resolve differences. CBI seeks to serve as an effective bridge between government, interest groups and the public and to help parties interpret and apply information and manage uncertainty.

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<sup>1</sup> The SR-32 Relocation Project is also referred to as Segment II/III. The Oasis line, another component of the Eastern Corridor Program, also consists of several segments, with Segment 3 coincident with SR-32 Segment II/III.

<sup>2</sup> See [www.ecr.gov](http://www.ecr.gov)

<sup>3</sup> The CBI assessment team consists of Doug Thompson, Senior Mediator; Carri Hulet, Senior Associate; and Eric J. Roberts, Associate.

<sup>4</sup> See [www.cbuilding.org](http://www.cbuilding.org)



## A. Background<sup>5</sup>

Consisting of four core segments—the Red Bank Corridor Project (Segment I), the SR-32 Relocation Project (Segment II/III), Eastgate Area project (Segment IVA) and the OASIS Rail Transit Project—the Eastern Corridor Program covers approximately 165 square miles of land extending east from downtown Cincinnati through Hamilton County just past Interstate-275 in Clermont County. ODOT and the Tier 1 Final Environmental Impact Statement (FEIS) have described the four segments as related but able to stand alone; that is, the transportation improvements work most effectively in synergy with one another but each project provides independent transportation benefits.

ODOT manages this program in cooperation with FHWA, the Federal Transit Administration (FTA) and the local Eastern Corridor Implementation Partners, including the Hamilton and Clermont Counties Transportation Improvement Districts (TID), the City of Cincinnati, the Ohio-Kentucky-Indiana Regional Council of Governments, and the Southwest Ohio Regional Transit Authority (SORTA).

Transportation issues in the Eastern Corridor Program and the projects therein have long been studied.<sup>6</sup> Planning and investigations for the SR-32 relocation began during the 1960s and continued, with some periods of lesser or no action, to the present. The Eastern Corridor Major Investment Study (MIS) was completed in 2000 and the Eastern Corridor Land Use Vision Plan in 2002. Both were informed by public engagement processes. To assess potential socio-economic impacts, project proponents followed a two-tiered approach pursuant to the National Environmental Policy Act (NEPA).<sup>7</sup>

After concluding the Tier 1 investigation, which “identified feasible alternatives for different multi-modal components to be carried through to Tier 2 for more detailed study,” the FEIS was approved in 2005.<sup>8</sup> The stated purpose of the project in the Tier 1 FEIS was “to implement a multimodal transportation program consistent with the adopted long range plan for the region, addressing priority needs and supporting transportation goals and concept plans established during the Eastern Corridor Major Investment Study and subsequent metropolitan area planning actions.”<sup>9</sup> The Tier 1 FEIS also stated the need for action as stemming “from growing travel demand on an inadequate existing transportation network (including both highway and transit infrastructure), which is characterized by insufficient capacity, safety issues, limited transportation options, and inadequate linkage to the region’s key transportation corridors for efficient movement of people, goods and services.”<sup>10</sup> FHWA then issued a Tier 1 Record of Decision (ROD) in 2006, authorizing the four proposed segments of the Eastern Corridor Program to proceed to Tier 2 evaluation.

The Tier 1 ROD elaborated on the purpose of the Eastern Corridor Program, the associated projects (highway, bus transit, rail transit, and transportation systems management improvements), and implementation strategy. The stated purpose of the Eastern Corridor Program in the Tier 1 ROD is

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5 The purpose of the background section is to provide brief context to the core questions about whether and/or how to move forward with the SR-32 Relocation Project, not to offer an exhaustive history of events leading up to the current situation.

6 At times CBI heard different recollections of the project history during the interviews. Given this assessment is not intended to be a fact-finding exercise, CBI has included only the most widely recognized milestones in this background. It may be of value to all parties to consider constructing a jointly-developed historical record of the development of this project if “Option 5” is selected (see Section III of the Assessment).

7 A tiered approach in NEPA may be taken on large, complex projects to align information needs with decision-making processes. Tier 1 consists of a broad review of issues such as purpose and need, identification of a reasonable range of alternatives and study corridors, collection of environmental data, preliminary assessment of impacts and an initial cost-benefit analysis. A Tier 1 ROD does not constitute clearance to build the project; rather, it allows a set of possible options to be carried into Tier 2 for more detailed analyses including project specific assessments, impact evaluations, and mitigation planning.

8 Tier 1 Final Environmental Impact Statement. Eastern Corridor Multi-Modal Projects, Hamilton and Clermont Counties, Ohio. PID 22970. September 30, 2005.

9 *Ibid.*

10 *Ibid.*

“to implement a multimodal transportation program that increases capacity, reduces congestion and delay, improves safety, and provides transportation options and connectivity to the region’s key transportation corridors and social and economic centers for the efficient movement of people, goods and services.” The ROD described the implementation strategy as “structured as a comprehensive short and long term development framework for public and private investment, where various parts of the transportation program are anticipated to be constructed incrementally over time, in a planned and mutually understood environment, until all parts of the multimodal plan are in place. This implementation framework is based on a program-level approach, where major new capacity improvements in highway and transit are coordinated with and benefited by a variety of local network improvements.”

Tier 2 investigations, which began after establishment of the ROD, undertook a more detailed analysis of the engineering and environmental impacts associated with specific alignments within the approved corridors, including a “no-build” alternative. In March 2012, an SR-32 Relocation Feasibility Study was issued and a study addendum was published in December 2012 to update the March 2012 document; both the study and the addendum are part of the Tier 2 record. Public comments and agency input received about the Village of Mariemont National Historic Landmark (NHL) status form the basis of the addendum and the revised recommendations therein. The final Tier 2 NEPA documentation would present a preferred alternative.

Over the years, the SR-32 Relocation Project has elicited a wide range of reactions from government agencies, local municipalities, various interest groups, and the public. These contrasting and at times strongly held views have played themselves out through numerous meetings large and small, lengthy written correspondence, and litigation.<sup>11</sup> Some stakeholders, including several agencies, have indicated that they will become more involved than they have to date once a specific alignment has been selected, making it possible to assess the associated impacts in more detail.

## B. Objectives and Methodology

A situation assessment aims to help stakeholders understand each other’s concerns, test assumptions about the perspectives of other parties, produce a well-informed, impartial test of the feasibility of resolving differences, and provide stakeholders with a roadmap for moving forward if a consensus-building or more collaborative process has a reasonable chance of helping parties move forward. If a facilitated negotiation process is not likely to be helpful (or at least the return is not worth the investment), the situation assessment provides an opportunity to “stop before you begin,” saving time, money, and preventing the frustrations and disappointments associated with a process that does not meaningfully move matters forward.

The objectives of this assessment process include:

- Articulate key themes based upon interviews with a representative range of stakeholders and interested parties;
- Evaluate where stakeholder interests are shared, complementary and opposing, and consider the breadth of similarities and differences among the parties;
- Identify issues that might be negotiable and potentially tractable through consensus building as well as matters that appear irreconcilable;

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<sup>11</sup> See e.g., *Rivers Unlimited, et al., v. U.S. Department of Transportation, et al.* (U.S. District Court, District of Columbia, 2008).

- Investigate degree of stakeholder willingness and capacity to participate in some kind of consensus building process; and
- Assess the feasibility of designing a collaborative process that would be acceptable to a sufficient range of stakeholders and help facilitate decision-making.

Between late June and mid-August 2014, the CBI team conducted phone or in-person interviews with individuals or groups, including many who represent local, state, and federal agencies; elected officials; municipal interests; and local, regional, and national non-governmental organizations. Several interested and knowledgeable individuals not representing any particular constituency or organization were also interviewed. The list of interviewees initially took shape with suggestions from ODOT of individuals who had expressed interest in the issue from various perspectives. It increased as interviewees identified others who should be included; in addition other interviewees self-identified and requested to participate. CBI continued to interview individuals and groups until it believed it had heard a reasonably comprehensive range of perspectives on the issues.

In September 2014, CBI wrote a draft situation assessment to present the interview findings and identify some possible steps forward. On October 1, 2014, CBI distributed the draft assessment to interviewees and provided a two-week review period. The intent of the review period was to afford interviewees the opportunity to review the document and suggest edits, corrections, or clarifications to ensure their viewpoints were clearly, correctly and adequately captured in the text. After closing the comment period on October 17, CBI compiled and reviewed all the submitted comments and suggested edits and determined whether and how to integrate them into this final assessment. The responses to the draft assessment provided some detail and additional perspectives that resulted in refinements throughout the document. A few comments introduced issues that were not raised or fully explored in the initial interviews; where applicable, we have made note of these issues as critical to investigate further in future conversations, but have not attempted to give them full treatment here. Also, several reviewers suggested CBI conduct additional interviews and specific recommendations.

CBI contacted a few additional individuals who it thought could provide some missing perspectives. CBI has also added all recommended groups and individuals to a list of interested parties to be shared with ODOT and FHWA for any future coordination.

Discussions between stakeholders and CBI were informal in nature and lasted 45 minutes on average.<sup>12</sup> To establish the context, CBI provided a brief personal and organizational introduction. While CBI used a set of discussion topics to prompt dialogue, each interview adapted to the flow of the conversation; additional questions were posed to probe further on points of particular interest or importance. In all cases, CBI sought to understand perspectives, obtain some sense of the key issues, understand the dynamics among the parties and explore options for moving forward collaboratively. Discussions included but were not limited to substantive matters (e.g., project purpose and need, alternatives, various impacts of concern and mitigation opportunities); procedural aspects (e.g., perspectives about the legitimacy of the process, adequacy of information and prospects for collaborative engagement); and other “human” concerns and issues (e.g., desired outcomes, fears, aspirations).

While CBI sought to hear from a sufficient number and range of parties to obtain a representative spectrum of perspectives, we realize that we have not heard every point of view or talked with everyone holding a particular perspective about the issues. We acknowledge one particular set of perspectives not directly reflected in this assessment is that of interested tribes. Because ODOT and FHWA

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<sup>12</sup> We thank all the interviewees for making time available for these discussions. Moreover, we also appreciate those parties who assembled written material and provided it to CBI either electronically or by hard copy.



had previously engaged the tribes by holding on-site meetings with them, the tribes were not automatically included in the initial list of potential interviewees provided to CBI. Upon hearing in several early interviews that cultural resources were a prominent issue, CBI and the Institute recommended it might be appropriate to expand the assessment effort. After some interagency discussions between FHWA, ODOT and the Institute, the agencies agreed to contact the tribes. FHWA sent a letter of invitation in late June, 2014 to all federally recognized tribes who had been invited to participate earlier in the NEPA process except those who had asked not to be contacted further about the project. None of the tribal representatives responded to the invitation to participate in the interviews. ODOT has prepared a summary describing the tribal coordination that occurred previously and requested that CBI include it in this assessment; it can be found at Appendix I of this document.

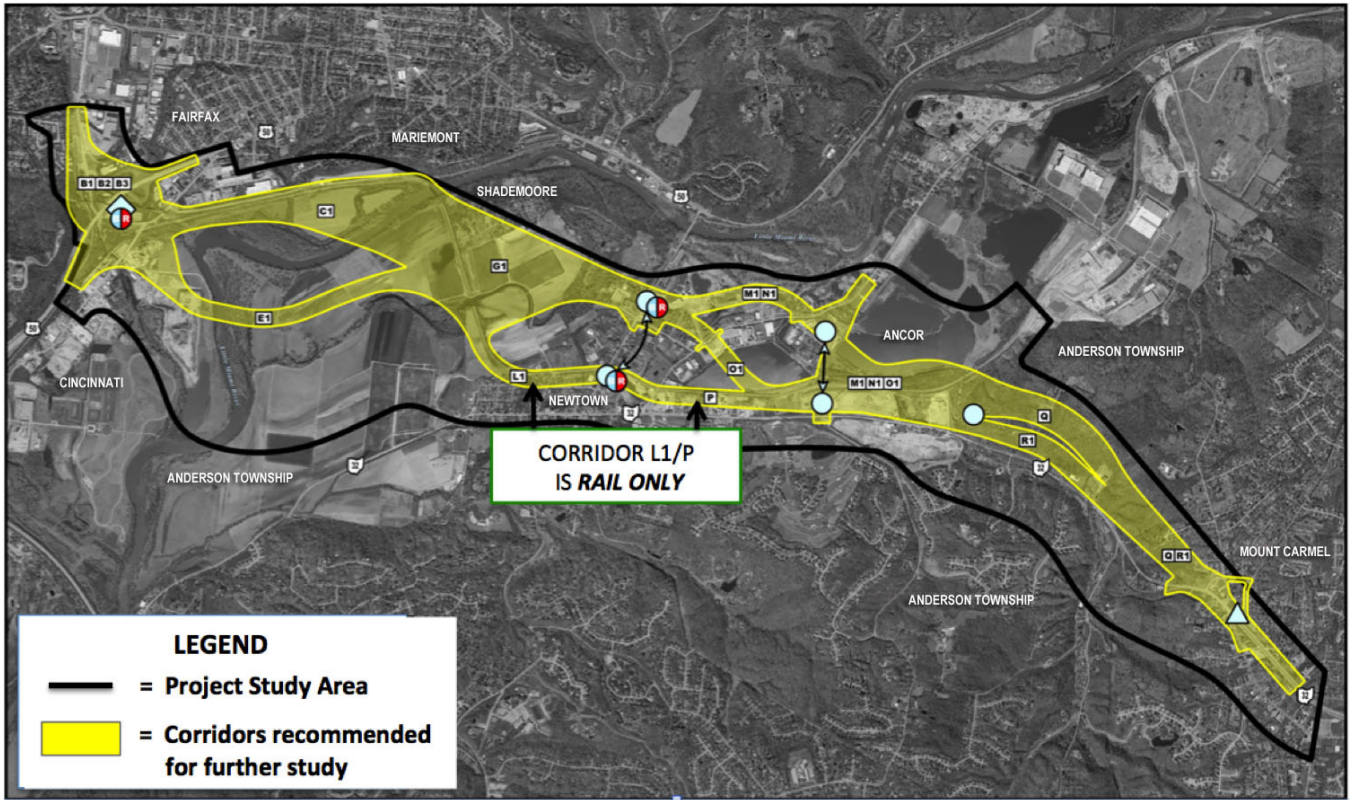
In terms of more recent coordination, on October 1, 2014, FHWA sent Native American tribes hard copies of the draft situation assessment. FHWA also sent electronic versions of the draft assessment and made follow-up phone calls with each tribe that had been sent the draft.<sup>13</sup> FHWA intends to provide each of the contacted tribes with a copy of this final assessment. Tribal coordination will continue as required by statute throughout the NEPA phase project development process.

The remainder of this report contains three main sections:

- > **Three Fundamental Perspectives** – While numerous individual narratives exist, this section describes three representative perspectives that emerged from the interviews. This section intends to present stakeholder views as they were expressed to us, in a direct and relatively unfiltered way.
- > **Dynamics and Interests of the Parties** – This section groups and describes the major interests of the parties, and includes CBI's assessment of where these interests are shared, complementary, and antagonistic. It also describes from a neutral standpoint some of the predominant dynamics among the parties and the elements that contribute to the conflict such as values, concerns about legitimacy of process, substantive issues, and psychological/emotional aspects.
- > **Collaboration Opportunities / Challenges and Potential Options Moving Forward** – This section describes several options that ODOT, FHWA, and other stakeholders might consider moving forward, and the possible advantages or disadvantages of each one.

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<sup>13</sup> The tribes contacted were: The Delaware Nation; Delaware Tribe of Indians; Eastern Shawnee Tribe of Oklahoma; Miami Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Seneca Nation of Indians; Seneca-Cayuga Tribe of Oklahoma; Towawanda Band of Seneca Indians of New York; and the Wyandotte Nation.



## II. The Assessment

For the most part, people with a stake in the Eastern Corridor Program share a sense of commitment to the region's well-being and long-term viability. We heard from many that the Little Miami River Valley and the areas surrounding it is "a special place" with rich history and thriving communities. Stakeholders also share a passionate view that a relocated SR-32 and/or new Oasis line is an important part of the future story of this area, though the views diverge dramatically from here. For some, a relocated SR-32 would imperil much they hold dear. For others, it is critical for the area's long-term growth and stability.

### A. Three Fundamental Perspectives

While no two perspectives could be accurately described as identical, three somewhat iconic stories surfaced with regularity, either as a party's own orientation or as how it viewed the positions of others. These three narratives may be seen as benchmarks along a more nuanced continuum. We believe most of the individuals we interviewed will identify primarily with one of these centers of gravity.

One view is that the relocation of SR-32 is an essential and well-conceived part of the overall transportation needs of the Eastern Corridor and should proceed.<sup>14</sup> A second perspective is that the project is not necessary, particularly in light of more pressing transportation needs, and that it would cause unacceptable impacts to natural, community, and historic resources. A smaller and less cohesive group of those CBI interviewed did not fall squarely into either of the perspectives outlined above (although most probably align more with one orientation than the other). This group believes there may be legitimate transportation and economic development needs that a relocated SR-32 would help to address but that the current situation does not provide a feasible footing on which to move forward.

The distribution of views held by those with whom we talked is bimodal, with a clear majority identifying primarily with the first or second narratives. Those holding the third perspective tended to take a less stark view of the choices than those strongly favoring or opposing a relocated SR-32. The degree of homogeneity differs among these three groupings. Those in support of a relocated SR-32 generally have a shared vision and a consistent view of the issues. Project opponents, while unified in their lack of support for the project, sometimes differed about what issues they found of greatest concern. Those falling into the third perspective were also more heterogeneous when it comes to ideas about whether and how to move forward. In presenting these perspectives, we seek to give direct voice to those who have experience with the Eastern Corridor; the characterizations in this section should be taken in that light and not as conclusions independently reached by CBI.

### **PERSPECTIVE: A Well-Conceived and Much Needed Regional Solution**

A relocated SR-32, in conjunction with the other program components, will relieve worsening congestion, improve safety and enhance connectivity, and stimulate long-term economic progress in the region. Steps will be taken to address concerns about a new crossing of the Little Miami River, avoid

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<sup>14</sup> No significance is intended nor should be inferred from the order of the narratives in this assessment.

and minimize impacts to historic and archeological resources, as well as safeguard the vitality of local businesses. The key components of the Eastern Corridor transportation improvements, including the relocation of SR-32, have been strategically linked as the effective and desirable solution to the current and future needs of western Clermont and eastern Hamilton Counties. While each aspect can stand alone, discarding any will diminish the value of the rest and the synergies that result from proceeding with the program as a whole.

Viewed from this perspective, the transportation need for and the benefits provided by the relocation of SR-32 are plain to see and have been repeatedly documented. The decision to put SR-32 on a new alignment was not arrived at out of a reflexive “build new roads” mentality but through decades of careful planning and studies, including during the MIS and Tier 1 NEPA processes. It is a project developed in response to reliable projections showing that over the long term traffic congestion will continue to increase. It is an integral piece of the overall regional Transportation Improvement Plan (TIP) and economic opportunities envisioned for the Eastern Corridor (e.g., the potential Anderson Nitration Corporation Industrial Area (ANCOR) development in Anderson Township anticipates the improved connectivity that will be provided by a relocated SR-32). Unlike many road projects that gestate primarily within the confines of agencies, this effort has been a “bottom-up” approach where a collection of thoughtful and forward-looking people, after close consultation with local interests, went to the transportation professionals to help realize their vision.

Indeed, in some ways, the situation feels somewhat in the category of “no good deed goes unpunished.” The project is part of a pioneering effort for the greater Cincinnati area, and incorporates all modes of travel, including car, rail, bike, and pedestrian. Despite misinformation being portrayed by detractors, the project would not cut a swath through the project area but be built as an aesthetically appealing and sensitively designed boulevard that would include extensive mitigation measures to address the legitimate environmental and cultural concerns. Moreover, it will also have positive environmental impacts such as decreasing the use of carbon fuels and air pollution in the region. Detractors incorrectly portray the road as something of monstrous proportions that rises above or covers homes and that would mar the valley permanently. Perhaps the real issue is that opponents simply don’t like cars, think everyone should work where they live, view the world as they would like it to be rather than the way it is, or simply want to avoid the inevitable change that comes with passing time.

Any major public works project will cause unavoidable adverse impacts on certain interests, but the benefits outweigh the costs. Mariemont has legitimate concerns about protecting the historical quality of its town and its issues have to be addressed through avoidance and/or mitigation. Newtown’s official opposition seems harder to understand. Main Street is a bottleneck. It would be nice to get all that pass-through traffic off the local roads. Moreover, Newtown is also the nearest potential industrial center to Cincinnati, with developable land that no one is buying now simply because it is too hard to get to. This project could put the town on the map and benefit local businesses, not to mention the tax base. It would also ensure that the athletic fields in the valley continue to be used for large tournaments, which bring thousands of potential customers to the area, and provide reliable transportation routes when other roads are closed due to flooding.

The multimodal aspect of the Eastern Corridor makes it a national model. The OASIS component has been extensively studied including the business case assessment and return on investment, as well as station area planning and ridership. OASIS has the potential to bring to reality the multimodal vision for the Eastern Corridor and be a forward-looking component, the value of which will only increase through time.

Federal and state transportation agencies must look at what makes the most sense from a transportation perspective; it would be an abdication of responsibility to leave demonstrably worsening problems unaddressed. Steps will be taken to address concerns about a new crossing of the Little Miami River as well as the other impacts of concern. Thus, while every effort should be made to avoid, minimize, and compensate for adverse impacts, the issue, put plainly, is that the needs of the many should outweigh the wishes of the few. In time, even the detractors will drive on the new road or ride on the train and, over the long term, will appreciate the reduction in congestion on local roads.

There have been a plethora of opportunities for public engagement through the MIS and Tier 1 NEPA processes and more will occur during the Tier 2 process. Everyone should be willing to engage in a collaborative process aimed at moving a well-conceived and articulated plan forward. The alternatives of saying, “This is just too hard” or creating an “analysis paralysis” situation in a futile effort to please everybody would, respectively, be a failure to serve the public and a waste of taxpayer dollars. ODOT and FHWA should not fall into the trap of letting the perfect become the enemy of the good. Indeed, the debate about this project has already dragged on far too long. We risk losing the continuity of important institutional knowledge as agency personnel and government leaders transition elsewhere. The prospect that the voices of a minority of vocal opponents could drown out the quiet support of a silent majority and unravel the extensive good work that has been done is disheartening. The time is well past to exercise leadership, make some tough decisions, and move forward.

### **PERSPECTIVE: A Fundamentally Flawed Project**

Whether or not a relocated SR-32 ever made sense, it is now clearly ill advised as more becomes known about both the diminishing need for the project, the unacceptable adverse impacts it would cause and the burgeoning public opposition. Indeed, the whole idea of a relocated SR-32 has become something of a solution in search of a problem.

The purported need for the project is simply not borne out from the experience of the people who ought to know best—those that live in the area. Congestion problems are, if anything, diminishing; insofar as they exist they are the normal small delays one would expect at rush hour. The area is uncongested compared to what many other areas of the country face. ODOT, tellingly, has not provided the raw data on which the assertions of need are based. Need issues aside, the Tier 1 EIS documents contain numerous flaws such as not properly delimiting the boundaries of the historic resources in Mariemont.

The more that is learned, the more problematic the project becomes. One example is the crossing of the Little Miami River, a national Wild and Scenic river, so designated because of its outstanding natural resource and recreational importance. Much of the state’s endowment of such riverine ecosystems has been lost; the Little Miami River is one of the few jewels remaining. Already stressed in some reaches, the river can scarcely afford an insult of the magnitude this project would cause. Residents and neighbors of Shademoore Park have enjoyed the valley as an oasis of calm and community for over a hundred years. It is one of the few communities of its kind left in the country. In addition, those in the valley live on the rooftop of a priceless and sacred hidden world—an uncommon concentration of American Indian burial grounds and artifacts. A major roadway would permanently despoil these areas for the massive borrow and fill areas that its construction would require. A new highway will simply bring more traffic to the valley, and with it an increase in greenhouse gas emissions (an intolerable outcome and irresponsible act given the threat of climate change) as well as deleterious effects on air quality linked to a variety of health concerns, especially in young children. While each of these and other negative impacts are troubling in their own right, they are especially unacceptable when viewed cumulatively.



Mariemont and Newtown have concerns both related and distinct. Any new road in or near Mariemont, a historically and architecturally unique community, poses a threat to its identity and character.<sup>15</sup> An alignment passing through or near the “South 80 Park”<sup>16</sup> would be especially noisome and potentially cause vibrations during construction and thereafter that could destabilize the bluff and endanger the homes above. As for Newtown, a relocated SR-32 would force some large businesses out due to their position in the proposed corridors, while the backwatering effect of the road would slowly starve the remaining local establishments of much needed business. The so called “business community alternative” is not supported by many in Newtown and is probably primarily motivated by the self-interest of those promoting it. Both towns are concerned about encouraging more traffic, particularly trucks and tractor-trailers to come rumbling through the valley. In addition to the impacts on air quality and the hillside, how will the project affect the quality of the underlying aquifer, the scenic valley views, flooding issues, noise, and property values? Increased traffic traveling at greater velocities may lead to more frequent traffic accidents and require local law enforcement to dedicate limited time and resources to patrolling the road for traffic violations that would take time away from addressing other concerns within the communities.

The problems associated with the project are borne almost wholly by those who do not realize its benefits. To the extent anyone would benefit from the project it would be those in Clermont County to the east. People who live in that area and work in Cincinnati chose to do so knowing the realities of commuting. Moreover, the impacts are far more certain than the benefits—ODOT has not adequately explained the regional or local benefits.

Opponents have said “no” for decades, yet ODOT and FHWA continue to throw millions of precious taxpayer dollars at a misguided idea. There should be a complete accounting of the enormous amount of money that has been and continues to be spent on this project, which mainly benefits a few agency favored contractors including a public relations firm. There is weariness of repeated processes and new project incarnations and it is time for ODOT and FHWA to move on to more worthy ideas. In fact, the monies provided to the Institute and CBI would be better spent if directed to local road improvements, rather than on trying to settle an essentially unresolvable conflict. Finally, notwithstanding all the arguments on the merits, there is no reason to think that there will be money to underwrite a project of this magnitude so why invest further time and energy into a project that lacks the funds to be built?

It is hard to trust ODOT since it blindsided the public at an August 2012 meeting with the appearance of a more northerly alignment and the disappearance of the more southerly alignment. Also, the Tier 1 documents contained significant mistakes. So far it has proved impossible to get clear answers from ODOT or any actual data underpinning ODOT’s conclusions. It is even unclear what the road would actually look like and doubts about ODOT’s assurances are borne of experience. In other nearby locations ODOT said it would create a boulevard, but it turned out more like a highway. In another case, ODOT also said it could construct a road without destabilizing a bluff in the region, but a major landslide still occurred.

Then there is the Oasis rail component. While Oasis has some support, it seems ODOT’s main motivation to include it is to make the SR-32 relocation more palatable to the environmental community and FHWA. It is unlikely that there would be sufficient demand to support train service; ridership would be episodic (e.g., for Bengals games) and more a “novelty” than a commuter benefit. Addition-

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<sup>15</sup> Throughout this assessment we at times characterize views as being held by “some” or “many” of those persons with whom we spoke. In general, we intend “some” to mean more than one but less than a clear majority; we use “many” to convey a majority though not necessarily unanimous view.

<sup>16</sup> Also referred to as the “Lower 80 Park,” or simply the “South 80” or “Lower 80.”

ally, there are serious concerns about the locations of several of the proposed rail stations, many of which sit in the floodplain. Still, if Oasis can really function, it may be worth considering on its own.

It appears this project has roots in thinking typical of the mid-twentieth century, i.e., highways are the answer to inevitable suburban growth. The need is based on outdated, overstated traffic and growth projections and inasmuch as the project would yield transportation benefits, the proposed cure is worse than the malady.

Moreover, there are legitimate transportation problems needing attention (e.g., Brent-Spence Bridge) and toward those areas the efforts should be directed. Even if the need for the project were better demonstrated, given the wealth of natural and human resources in the corridor, the only realistic choice is “no build.” ODOT and FHWA should leave well enough alone; sometimes the best things you do are those you don’t.

### **PERSPECTIVE: The Project Involves Complex and Difficult Trade-offs and Needs New Thinking If It Is to Move Forward**

Legitimate transportation needs in the Eastern Corridor may in fact warrant attention and, if one thing is certain, the project faces formidable hurdles. Nevertheless, while there are pros and cons to any of the possible ways the SR-32 relocation might happen, a workable solution, or at least one that garners more support or fewer objections, will only be possible if some hard thinking and creativity are brought into the mix. For example, ODOT could revisit ideas shelved during Tier 1, investigate new alignment concepts, use a phased approach, or fundamentally change the direction of the project. Various combinations of the following ideas could be mixed, matched, or sequenced in ways that may help the project move forward.

**Commit to finding the solution that has a net gain for many interests.** The project should have both transportation and regional economic benefits, but those goals should be no more important than measurable, significant net improvements to the environment, recreational interests, pedestrian and bicycle safety, and local community benefits, such as increases in property values and more livable communities. The project could be designed to provide more habitat, wetlands, forest, and remediation of impacts of invasive species. It could improve habitats for specific species and add many acres of permanently protected conservation areas, including the restoration of riparian zones that have been previously developed for agricultural and commercial use. The project could improve an existing river crossing by improving storm water management practices and thus river quality. It could expand walking trails and paved bike paths; add new picnic areas; enhance or expand community garden programs; improve river access for kayaking, canoeing, and fishing; and overall result in a net increase of park and recreation land. The project could include hillside stabilization measures. In terms of community benefits, it could include walkability improvements to local villages, such as traffic calming on traditional streets.

**Avoid the “South 80” by going south.** The most significant avoidable concern relates to the historic character of Mariemont and the integrity of the South 80 Park and the undisturbed archeological resources in that area. By largely avoiding or minimizing these impacts, the project would encounter reduced opposition although still face hurdles common to any new alignment (e.g., crossing of the Little Miami River and potential impacts to archeological resources).

**Reexamine ideas discarded during the Tier 1 NEPA process.** In light of the complications facing any of the potential corridors currently under consideration, it now makes sense to revisit the initial Tier 1 screening decisions in which certain concepts were ruled out. It may be that with more now known about historic and archeological resources or environmental issues and community concerns, the

original calculus for dismissing certain concepts may have changed. To the extent that any such concepts would avoid an entirely new crossing of the Little Miami River, they would address what may be the project's most significant regulatory and environmental hurdle.

**Step back and revisit the purpose and need.** ODOT should work collaboratively with a range of interests to reassess the purpose and need for the project. This reassessment may be a distressing step for parties who believe the need has already been amply demonstrated; nonetheless, it would be an important foundation on which to build any chance of moving forward with greater consensus. As one commenter remarked, "We need to start with a mental clearance sale—everything must go!" If this path is chosen, ODOT and others should not let their thinking be constrained by the existing termini as doing so might limit exploration of other worthy options. This "go slow to go fast" approach could provide greater clarity and room for consensus among those now operating on different assumptions.

**Look at more aggressive upgrading of the existing road network.** A relocated SR-32 is not the answer, but the region does need transportation improvements. All practicable efforts should be made to upgrade and improve the existing road network. This could mean anything from relatively minor "spot" improvements to more substantial upgrades. This approach creates its own set of concerns (e.g., potential takings) but on balance the long-term impacts might be less severe than those associated with a relocated SR-32. A variation on this idea would be to upgrade existing SR-32 (and related roads) insofar as possible and construct a short bypass around Newtown. The existing SR-32 in Newtown would remain as a "business loop" alternative and a percentage of through travellers would continue to stop in town for services or other reasons.

**More detailed exploration of private sector proposals.** A subset of business interests in the Newtown area proposed an alignment concept that would relocate SR-32 but, among other things, would be aimed at reducing impacts to the Lower 80 and maintaining rapid access to the center of Newtown (e.g., via roundabouts). By dealing largely with willing property owners, the approach could reduce the level of conflict associated with right of way acquisition. However, the extent to which this concept is supported by the broader business community is questionable; some people seem genuinely interested in the proposal while others characterize it as designed to benefit select individuals were it to move forward. Supporters counter that even if the proposal contains an element of self-interest that does not inherently disqualify it as it being worthy of further examination.

**Focus on Oasis.** As one person put it, let's stop fighting and get going on something that many favor and may do some good. The OASIS rail component and bike trail system improvements seem to have broad support, but it is less clear to what extent they have been analyzed on their own. If given the chance, perhaps they could meet some of the goals of a relocated SR-32 without the roadway improvements. In the alternative, they could be constructed first, assessed for effectiveness, and then the need for relocating SR-32 could be examined anew.

**Proceed only if it appears likely that an alternative can gain regulatory approval.** This pragmatic approach focuses on the reality that this project would require various state and federal regulatory approvals. Some of these authorizations appear relatively routine; others may be more difficult to obtain (e.g., gaining approval for a new crossing of the Little Miami River pursuant to the Wild and Scenic Rivers Act). Before grappling with the inevitable trade-offs among various public interest factors, ODOT should seek a clear reading from the regulatory agencies about whether some, all, or none of the relocated SR-32 concepts would be likely to obtain approval.

## B. Dynamics and Interests of the Parties

The perspectives presented above attempt to capture what CBI heard from interviewees in their own voices. Below, we analyze what we heard by pulling apart the perspectives into two important aspects: CBI's interpretation of the **dynamics** among the parties (e.g., the relational aspect of how they view one another and how they interact) and their respective **interests** in the project itself (e.g., why this project matters to them; their hopes, concerns, and ideas).

### 1. Dynamics Among the Parties

As one would expect from a project with a gestation that has waxed and waned for decades, interactions among stakeholders around the Eastern Corridor has a somewhat complicated and checkered history. While some say the high degree of collaboration and local influence have been “unprecedented” in the development of the Eastern Corridor projects, others see a lack of transparency, poor communication, and unreliable behavior.

The number of parties with interest in this project has grown over the years. In the beginning, the project was conceived through a regional collaboration of local entities, but over time, more local communities and interest groups, the State of Ohio, and the federal government have become involved as an understanding of the resources needed to implement the project and the breadth of the potential impacts have become more apparent. The people interviewed had much to say about how this ever-growing cast of stakeholders has worked together over the years, and the state of those relationships at present.

The interviewers identified the following dynamics among the parties:

- **Widespread difficulty in seeing different perspectives.** While some people are well able to articulate a viewpoint different from their own, most struggle to do so. Often, the “other side” is characterized as irrational, presenting selective or misleading information or operating primarily out of self-interest. There is a strong sense among many stakeholders that those who disagree with them simply don’t “get it,” and would have a different view (theirs) if they simply understood the truth or would not let themselves be led astray by others using persuasive but inaccurate information.
- **Disagreement about the actual level of support or opposition to the project.** In general, project supporters think there is a silent majority that supports a relocation of SR-32. Proponents note that those in opposition are the ones galvanized, but that doesn’t mean they represent the majority view. As evidence of this belief, they point to many supportive comments submitted over the life of the project (though others dispute the validity of some of these letters and comments). Project supporters also say people in favor of the proposal to relocate SR-32 exist in Newtown and Mariemont, but hesitate to speak openly for fear of backlash from their neighbors. Project opponents, conversely, feel they speak for the majority of the citizens in Newtown and Mariemont and perhaps Hamilton County as a whole. They believe that while there may be an “indifferent majority” in some places, of those who have looked at the issue of a relocated SR-32 closely, most do not support the project.
- **Reciprocal feelings of mischaracterization.** While members of a given community may not fully agree among themselves, they tend to be uniformly disturbed by being mischaracterized by “outsiders.” Individuals from several communities and interest groups expressed dismay at statements reportedly being made by other parties about what their community wants. Project proponents said the opponents will “say anything” to make people oppose the road, in-

cluding misrepresenting facts about the roadway design and degree of impacts. Residents in Mariemont and Newtown are upset by claims that they previously supported the project and now oppose it (whereas those who say this simply consider it a matter of record). Some Madisonville residents take issue with reports that Madisonville is fully “on board” with any portion of the Eastern Corridor as currently presented, including the preferred alternative on Segment 1, the SR-32 relocation, or the Oasis line.

- ***Different views about the transparency of the project and the quality of the public engagement process to date.*** A number of interviewees raised the issue of transparency. Some applaud the high level of openness and inclusivity while others characterize the project as a “black box.” For example, some said the project website is full of useful information and records of all public meetings and public comments, which are available at all times to the public. Other said ODOT uses the website to paint a rosy picture by including only the most positive media articles and deliberately omits negative responses or records of public meetings that went poorly. Various individuals said they are unable to get answers from ODOT on what they see as basic questions, particularly how much has been spent on the project so far (and on what and to whom, specifically) or how much it is expected to cost in the future.

In terms of public engagement, some of those with whom we spoke said, “ODOT keeps asking for public input, but then they don’t listen,” while others say the project is what it is today precisely because of the careful and open collaboration that has taken place. Those who say it has taken shape through a “context-sensitive” approach point to certain project aspects, such as the existence of the multimodal concept, the fact that the rail would share the right of way with the road to reduce impacts and save costs, and that the roadway design is a parkway rather than a highway as direct results of public input and feedback. Proponents say it is frustrating that these attributes seem unappreciated as meaningful responses to public input.

Others tell a different story. They say that had ODOT truly listened to them the project would have been abandoned long ago or valid ideas would not have been shelved during the Tier 1 process. Moreover, some parties report an impression that ODOT is not really engaging with them during public meetings and might just be going through the motions to “check the box” on public engagement. Some project proponents, in contrast, say that ODOT has listened to its opponents—it just does not agree with them on every point. As a practical matter, project proponents note, ODOT simply cannot please everyone.

- ***Issues of trust among ODOT, FHWA, and other key players.*** Over the years many groups have played a key role in developing or reviewing the concept of a relocated SR-32 and new Oasis rail line. Currently ODOT is the agency primarily responsible for the project because SR-32 is a state route undergoing environmental review. FHWA is involved because the project would result in a “federal action” due to potential federal funding and the need for federal regulatory approvals. The coalition of regional implementation partners remains involved in close coordination with ODOT. Numerous state and federal agencies play a regulatory or advisory role. With so many stakeholders closely involved in developing or reviewing the project, little surprise then that most of the people interviewed had something to say about how well these parties have performed, and how the relationships between them affect the project.

Some groups and individuals commend ODOT for managing a tough task and operating in a mostly open and good faith fashion. Several of the state and federal agencies with limited involvement in this project thus far expressed confidence that ODOT would adequately and responsibly follow the correct processes, based on a positive track record on previous projects.



Exceptions to this view include concerns from some that ODOT does not consistently follow through in the construction and mitigation phase on commitments made during earlier stages of a project's development.

Among the interested parties thus far deeply involved in this project, the views are more nuanced. One party, for example, acknowledged that ODOT has put a lot of effort into meeting with them and trying to understand their needs, but also conveyed the impression that ODOT staff seem pre-disposed to think in terms of highways, not quality of life, and therefore will at times fail to see the big picture. This observation was echoed by a few stakeholders who said one of the fundamental problems with the project is that it should be about much more than transportation, but a highway department is not equipped to understand or manage the full range of interwoven opportunities, benefits, and impacts.

Other interviewees more pointedly criticized ODOT's management of the project. Some project proponents remember the process as being "seamless" before ODOT assumed the lead from the coalition of local and regional implementation partners. Since then, they say, it has become more political, deadlines have been missed, and the public has grown more distrustful. Some also feel the involvement of FHWA has slowed progress because it is too cautious to "ruffle feathers." Some acknowledge that the process became inherently more complicated when the project moved into the environmental review phase and that ODOT's management and FHWA's involvement are not the only contributing factors. Others expressed discontent with ODOT's work on the Tier 1 EIS, in particular citing what they saw as inadequate coordination with tribes (see more below), an incorrect depiction of other agencies' comments on potential environmental impacts, and the omission of the Mariemont National Historical Landmark designation. More than one agency said ODOT has misrepresented or disputed serious issues raised in their comments on the Tier 1 EIS and attributed this to a desire on ODOT's part to "water down" concerns. These actions were cited as contributing to a loss of trust in the department and an anticipation of "a fight" in the Tier 2 process.

More broadly, some interviewees said ODOT has not done itself any favors with its approach toward the public. One example mentioned repeatedly was a public meeting in 2012 where maps were shown depicting a "surprise" northern corridor through the Lower 80 in Mariemont, and the "disappearance" of a more southerly corridor closer to Newtown. It appears from the interviews that this meeting represented a turning point for many stakeholders, causing an erosion of trust in ODOT that has since persisted. (ODOT does not share the perception that the 2012 meeting involved revealing a "surprise" alignment). Other examples included ODOT's perceived unwillingness to talk about certain controversial topics in public, failure to acknowledge contrary views about the project on its website, and the omission of important (but negative) points in the minutes from public meetings. A few people said they do not necessarily believe ODOT's statements that a relocated SR-32 will be more "parkway" than "highway," recalling similar assurances given about the US-50/Wooster Pike, which they now consider a freeway.

While there is some diversity in the views among implementation partners, almost all believe the project has been becalmed for too long. Eager for action, they see their partnership with ODOT as an uneasy necessity and are frustrated with the environmental review process. They fear that something they have worked so hard to bring to fruition is now vulnerable to bureaucratic procedures led by agencies insufficiently committed to success in the face of opposition. A disconnect between the implementation partners and the agencies is how each interprets the Tier 1 ROD. ODOT and the regulatory agencies see it as a necessary step that does not guarantee environmental clearance in Tier 2; in contrast, most of the implementation partners seem to have viewed

issuance of the ROD a promising sign of eventual project approval and eventual construction. Some partners may have seen “approval of the Tier 1 ROD” as equal to regulatory approval of the project itself rather than an acknowledgement that the ROD is adequate pursuant to NEPA.

Other issues raised by those interviewed include suggestions that perspectives vary even within ODOT (e.g., between the district office and central office, and within each). Also, some have noted that the relationship between FHWA and ODOT would seem to lack the degree of trust and cohesion that might be expected from agencies with supposedly aligned interests. Few people mentioned METRO (SORTA) in their analysis of the parties and those who did tended to criticize its small role, given that the Oasis line has been portrayed as an independent component of the Eastern Corridor Program, but is seldom discussed independent of SR-32 (see more on Oasis below).

- ***Differing views on quality, breadth, and value of tribal coordination.*** Federal law requires consultation with federally recognized tribes and such consultation was conducted by ODOT in order to complete the Tier 1 EIS. In 2012, ODOT undertook an additional and separate process to engage tribes with historical connections to the Eastern Corridor region. ODOT representatives have remained in touch with these tribes since, and expressed a firm commitment to meet all legal requirements for tribal coordination. However, concerns about this issue remain for some interviewees. Although some felt that tribal and cultural resource issues receive too much attention and ODOT should do less consultation, the prevailing sentiment among those attentive to this topic is that more needs to be done. One view is that other tribes (beyond those that are federally recognized) should be included in the process. Some speculated that the whole matter of tribal coordination is confounded because some of the resources are so ancient there are no living ancestors to lay claim to them.
- ***Some parties speculate about possible hidden agendas or ulterior motives at work.*** Many stakeholders take the project and other groups and individuals interested in the project at face value, but some do not. Certain interviewees conveyed suspicions about the full range of motives for the project itself and the process that has been followed to develop it (including this assessment and its timing).

In terms of the project’s purpose and need, some surmise that it has become entangled in political considerations. One view is that ODOT wishes to abandon the project, but could not do so until after the 2014 election, so the timing of this assessment was in essence a delay tactic. Some believe the project is more about placating lawmakers and politicians in Kentucky than helping Ohio commuters. In spite of the fact that ODOT has been open about its concern for increasing traffic in and out of Kentucky, and the potential impact on the bridges over the Ohio River, some think the project is disproportionately motivated by what they see as another state’s problems. Another example voiced by a few interviewees is that the SR-32 Relocation project is part of a grand vision to provide a smooth truck route from the Great Lakes to the Mid-Atlantic coast.

CBI heard many qualms from parties about one another. Some reported believing that just a few “ring leaders” are unduly influencing those who oppose the project. People perceive others of creating exaggerations, not playing by the rules, influencing the media, and being so oriented toward a legal framework that their entire focus is more on building a case rather than looking for solutions. Some cited what they saw as deliberately deceptive behaviors by others, such as claims from opponents that “bogus” drawings were brought to public meetings, “propaganda” was distributed to residents in Mariemont and even suspicions that “bones” were being buried to make the cultural resources seem more significant than they already are. Some proponents of the projects wondered about opponents who say they want to protect the environment from the

impacts of a road, but seem untroubled about environmental impacts from a train. Some speculate that Mariemont's effort to designate the Lower 80 as a National Historic Landmark may have been motivated by a desire to halt the project as much as anything else. Interestingly, a number of those holding different views shared the sense that others had so let their own identities become wrapped up in the outcome of the project, they are unable to think objectively or act constructively: "Winning" or "being right," they say, has now become more important than "getting it right."

- **Mariemont and Newtown viewed somewhat differently.** Generally speaking, parties understand why many in Mariemont oppose the project (especially a more northern alignment). At the same time, many of those with whom CBI spoke report being more perplexed by Newtown's posture. Few of those outside of Newtown acknowledged or expressed empathy for the potential impacts in Newtown, while even some strong project proponents think the conceivable harm to the historic and cultural resources in and around Mariemont may be too great under some scenarios. This lack of understanding for Newtown's concerns causes some to wonder whether the village truly has a unified view, or if certain voices are dominating the conversation. On the other hand, a number of Newtown stakeholders and their allies say the village has long been clear in its unified opposition, and the only support for a relocated SR-32 comes from several business owners who stand to gain from the project. Some people stated that a "rich vs. poor" dynamic also shadows the debate between a more northern alignment that would affect Mariemont, and a more southern alignment that would affect Newtown.

## 2. Interests of the Parties

Interviewees were thoughtful and cogent about how the SR-32 relocation and/or the Oasis line could affect the things they care about in the Eastern Corridor study area. One fault line between proponents and opponents is that the former focus chiefly on what they see as the regional benefits associated with a relocated SR-32, particularly when coupled with other Eastern Corridor projects, while the attention of the latter is directed on the what they see as significant destructive impacts the road would cause to the natural and human environment in various specific areas. The people whose chief interests are improving connectivity and reducing congestion see a relocated SR-32 as the clear answer. Most who focus on long-term regional economic development consider both the relocated SR-32 and new Oasis line to be critical components of their hopes to open new commercial centers around transit/transportation hubs along the corridor, and to connect people to jobs in Cincinnati and throughout the corridor. For many others, however, their primary interests are protecting the environmental, historical or cultural values in the area and their current way of life, and such individuals tend to oppose the project. Still others focus less on the potential impacts and benefits because their chief concerns are about the practicalities—namely a transparent and legitimate process that ensures regulatory and legal compliance. Regardless of perspective, nearly everyone acknowledges the uncertainty about whether and how the project would be funded and the timeframe for completion, though some note that funding and scheduling uncertainty is common to nearly all major projects that are in the midst of the NEPA process, and this project has had more careful planning around funding than most. Concerns about money range from not having enough clearly dedicated to the project to a belief that whatever funds become available ought to be allocated to more pressing transportation needs. Many people mentioned feeling "exhausted" at how long the process is taking, or a hope that a decision can be made to finally put the issue to rest or to move forward to construction.

The interviewees identified the following interests of the parties:

- **Improving connectivity and reducing congestion.** While most recognize that there is no convenient, direct route between Cincinnati and Eastern communities in Hamilton and Clermont

Counties, people disagree about whether or not it is a problem worth addressing. Some say the congestion is unbearable now and will only get worse—that the current highway configuration between the Eastern suburbs into Cincinnati are “nonsensical,” forcing drivers to travel well out of their way, thus creating unnecessary congestion in Newtown, Mariemont, Madisonville, and other communities. Some people whose homes abut local routes the commuters currently take say it is unsafe for children and people living in the surrounding neighborhoods. Those holding this view believe that others fail to grasp the true implications of the “no build” option, and what will happen over time if the road is not relocated. Current roads, they say, will need to be expanded to accommodate an ever-growing population of commuters in and out of Cincinnati, which could mean property taxes and damaging losses to community character. Some are concerned about the wear and tear on existing routes, particularly bridges across the Ohio River, and say that a relocated SR-32 could extend the life of existing structures.

Others say the traffic is scarcely noticeable except during peak hours, and even then it is easily manageable. They strongly doubt the “purpose and need” for the project, including the data that would purport to justify it. Several said the population models used to project growth in the area are outdated and do not take into account various transportation improvements made since the data was produced and, in any event, were not properly applied. Other studies, including cost/benefit analyses and traffic models were also criticized. Stakeholders who question the need for the project say it presupposes an antiquated idea that future growth will be in the suburbs, rather than the city, and point to studies that support their point of view.

On a related matter, some interviewees dispute the claim that the four segments of the Eastern Corridor have “independent utility”—meaning that each could be built and function effectively on its own even if the other segments were never built. Most agree that this is likely true for Segment 4 (Eastgate), but some interviewees say the utility of Segment 1 (Red Bank Corridor) as designed in the preferred alternative fully anticipates the construction of Segment 2 (SR-32 Relocation). They say that if SR-32 is not relocated, there is no need for the Red Bank project to proceed as planned. As discussed above, there is considerable uncertainty about whether Segment 3 (Oasis rail) could function independent from the other projects. Notably, there is also some doubt about its chance at success with the relocated SR-32 (because commuters will continue to choose to drive if the new road and the new train essentially follow the same path).

- **Multimodal aspects of the Eastern Corridor Program.** Perspectives on the Oasis line as a factor in the SR-32 relocation conversation are so varied, there is even dispute about whether it should have been included in this assessment. Comments on the draft assessment revealed both objection that Oasis was mentioned at all and dismay that it was not treated with more depth. Based on the interviews conducted by CBI, it is apparent that while the OASIS line and SR-32 are technically distinct projects, in this part of the Eastern Corridor many stakeholders see them as inextricably linked. Many interviewees mentioned Oasis without prompting, and spoke of the two projects as if they were two aspects of the same project. In order to capture something that is clearly important to many of those with whom we spoke, CBI has included the feedback received on Oasis, with a few notable caveats. One person who reviewed the draft said it’s possible that some interviewees did not realize Oasis would be part of the assessment and were, therefore, ill-prepared to discuss it. This suggests that the feedback received may not be complete. Also as noted below, most people whose interests are primarily aligned with the relocation of SR-32 also appear to be primarily concerned about Oasis through the SR-32 relocation project area only. The information in this assessment should not, therefore, be seen as commentary on any section of Oasis that is outside the SR-32 project area, unless explicitly stated. For example, a potential first leg of Oasis is currently under consideration from downtown to Fairfax, an aspect that would not

necessarily have been on the minds of those interviewed for this assessment.

That said, several people expressed excitement about the Oasis line's potential to provide a modern transit option in and out of Cincinnati that would take cars off the road and reduce congestion. Some even see Oasis as the catalyst for a regional multimodal transportation system. Many spoke of the economic opportunities transit provides, particularly due to transit-oriented development. Some, however, are skeptical that Oasis will be successful. Even among those who claim to have looked carefully at the feasibility studies, there are significant differences of opinion about whether there would be sufficient ridership and whether enough work has been done to predict this with any confidence. Some also voiced concern about building transit stations in the floodplain. While those who support the Oasis line are enthusiastic about its potential to grow in ridership over time, the less optimistic predict such growth to be unlikely, particularly if the rail is built next to a new road. Indeed, some say the Oasis line is just an attempt to "greenwash" the SR-32 project, meaning a tactic to mask the impacts of the road with an environmentally friendly partner. CBI heard concerns that SORTA—the transit entity potentially responsible for the Oasis line's long-term operation and maintenance—has not to this point played a sufficiently large role in the development of this project aspect. While some interviewees said the rail would perform better if it were analyzed apart from a relocated SR-32, two individuals who seem to be in a position to know said no such study has been done, while another interviewee with similar credentials claimed it has. A few people said the only projections available assume that SR-32 will be relocated and the train will run alongside it, or at least in close proximity to it. Some interviewees laid out a number of risks related to building an expensive piece of infrastructure absent sufficient support to sustain it, including funding challenges and infrequent daily trips. Some of those with whom CBI spoke believed the transit authority would need to reconfigure its service plan in the area in order to accommodate the new train. Bus routes that currently serve the same origins and destinations would likely either be replaced by the train service, or be otherwise affected, but the region does not have experience with operating a rail, so the changes would require experimentation in an environment without enough demand to support it.

*Bicycle Path:* Few people mentioned the bike path, except as an assumed piece of the "multi-modal aspects" of the project. This pattern frustrates bike path advocates because they see it as evidence that the path is considered an "extra" attached to the roadway, rather than a significant and critical part of this project. Bike path proponents report that it has been hard to get ODOT or the TID to discuss the issue or study it in great detail and one person said there were rumors that the bike infrastructure had been removed from the project altogether. They speculated there might be a reluctance to pursue this project aspect because if a bike path is built and used more for "recreation" than "transportation," it could trigger a 4(f) designation (a permanent recreation feature) that could limit the possibility of a roadway or transit expansion in the future. Some bike path advocates report feeling some ambivalence—while it would be a boon to have the path/trail funded and built as part of the Eastern Corridor, it might force the path to run alongside the highway or limit the opportunity for bicyclists to determine its location independent from the roadway or transit project. Several interviewees indicated that there is wide-ranging public support for a bike path and that it would likely be built with or without ODOT support.

*Other Modes:* Some interviewees suggested extending or enhancing public transit options, instead of SR-32 or perhaps even in place of the Oasis line, to meet the purpose and need. One interviewee suggested extending the street car system from Cincinnati to benefit communities and promote development as opposed to constructing the Oasis project. Another suggested



enhancing the existing public bus transportation system to run quickly and efficiently and be more appealing than driving a personal vehicle before constructing the Oasis project. Others suggested adding bus routes, developing bus rapid transit, or “complete streets” designs to provide more and better public transit opportunities throughout the region.

- **Encouraging regional economic development and creating jobs.** If transportation benefits cover most proponents’ primary interest in the projects, a close second is economic development. As one person put it, “our regional economic development plans have been built around a future that includes the new SR-32—it’s that critical.” From this perspective, the new roadway is not only important in terms of connecting people to jobs in Cincinnati, it is also essential for creating jobs and commercial centers throughout the corridor, particularly around interchanges and/or transit stations. One person said the multimodal nature of the project is especially important because studies show the potential for transit-oriented development (TOD) around transit hubs increases several fold if they are built in proximity to a major intersection or interchange, thus establishing strong connectivity between different modes of transportation. Some interviewees stated that the multimodal aspects of the project would help attract young professionals, as studies show that “millennials” want to live in places where they don’t need cars. Another perspective was that lower income workers from Cincinnati could access jobs in the suburbs by train if, for example, ANCOR is developed in Anderson township.

The alternative view is that a relocated SR-32 would have disastrous effects on the commerce and economic life of the communities between Eastgate and Cincinnati. Interviewees in Newtown and Mariemont expressed strong views that their local economic vitality would significantly suffer if the commuter traffic were redirected away from their commercial centers. While some in Mariemont do like the idea that a relocated SR-32 would draw congestion out of the village, they don’t claim it would strengthen the local economy. Newtown does not have the same unified vision. In Newtown, there may be some who think a relocated SR-32 through the village would bring growth, investment, and an increase in the tax base, while many others contend that it would impoverish local businesses and the vision for their village they have been working to build. Several people report being skeptical about the proposed economic development projections associated with development around transit hubs. They say that in the Eastern Corridor, every Oasis transit station would be in a floodplain so the cost to develop around them would be prohibitive.

- **Preserving “our way of life.”** In many ways, the public controversy over these projects boils down to competing visions of “the good life” and discontent about who might “win or lose.” SR-32 is unashamedly regional in scope and ODOT and the implementation partners have consistently promoted the regional benefits. Not surprisingly, then, eastern commuters who would benefit most from more direct access to Cincinnati tend to focus on how the relocated road and new transit line would enable their vision of the good life: a thriving suburban region full of bedroom communities with small, but vibrant commercial centers and convenient access to the city for daily work and occasional entertainment. For commuters from Clermont County, the project appears to be an “all gain, no pain” solution. The closer one moves to Cincinnati, the more varied the viewpoints become, as the residents see themselves as either bearing the adverse consequences of the current situation (dealing with pass-through traffic on their local streets) or the negative impacts of the proposed changes (a new road through the Miami River Valley) in order to help their more easterly neighbors. Those living closer to Cincinnati also want convenient transportation that does not impact their neighborhoods and way of life, but that means something different in different communities. For some in Fairfax, Mt. Lookout, and Linwood, for example, the prospect of a relocated SR-32 means less traffic in their neigh-

borhoods. For some in Madisonville, which sits right where Segment 1 (Red Bank Corridor) of the Eastern Corridor Program meets Segment 2 (SR-32 Relocation) the question is about where to funnel traffic and with what consequences. For the individuals in this community, it is less important where Segment 1 ends and Segment 2 begins than the overall combined effect of the proposed transportation options on their way of life. Given the scope of the assessment, CBI could not do a comprehensive inquiry into the full range of views in Madisonville, but from those with whom we spoke, the current state of local views on the two projects is nuanced and evolving. While we heard from the people we interviewed that people in Madisonville are generally tolerant of traffic and in favor of managing the movement of vehicles in and out of their neighborhood, the community has carefully considered where to funnel traffic and has pleaded with ODOT to match their plans to local goals and design concepts. Among their chief concerns is any potential impact to local schools, and the possible risk of displacement of people who have been relocated from other parts of the city because of highway projects in the past. While some of those interviewed state emphatically that the community of Madisonville is now supportive of the projects and point to recent agreements made between the local community council, the county, and ODOT as evidence, the views expressed in interviews with CBI told a more complex story. It appears there is uneven support for the outcomes of negotiations with ODOT, and the process is ongoing.

Some fear that project opponents are so focused on the short-term impacts, they cannot see the potential benefits in their own backyards. They say many creative options could be pursued, such as covering and reusing the landfill, strengthening and reinforcing the eroding hillside in Mariemont, enabling brownfield development in Newtown, and creating conservation areas that would guarantee preservation of lands currently privately held and vulnerable to development at any time. They say people are so concerned about the potential loss to their property values, they don't think about how a relocated SR-32 could improve the attractiveness of their homes. They contend the project can actually enhance the river by creating better opportunities for people to value it, including through the use of bike paths and improved access for recreation or quiet appreciation. They say reducing the number of miles cars drive will improve air quality and that drawing traffic off local roads will prove to be a major local benefit over time as congestion is only bound to get worse.

- **Preserving natural, environmental, and cultural resources.** Both project proponents and opponents cited interests in protecting the environment. Proponents feel the project could bring resources to the area to create more conservation areas and dedicated greenspace. They say air pollution and greenhouse gas emissions will be reduced as traffic will have to cover fewer miles with a more direct route. They also say Oasis will provide a more environmentally responsible transportation option to people who currently have none other than to drive into the city. Others see the SR-32 relocation project as an environmental disaster, citing exactly the opposite effects of those stated above: loss of greenspace and habitat, particularly along the river, and higher air pollution and greenhouse gas emissions from increased car and truck traffic and the attending impacts on climate change. There is also concern about increased noise pollution, negative impacts to the viewshed and general tranquility of the valley, and on water quality in terms of both ground water and the Little Miami River.

Several interviewees also commented on the historical resources, both properties that are officially designated as historical, and the relics and sacred places of the original inhabitants of the area. Of the interviewees who commented on the cultural resources, nearly all (regardless of their view on the merits of a relocated SR-32) said a high priority on the project should be to avoid or minimize impact to areas of high archeological significance.

- **Meeting regulatory and legal standards.** As with every project in the United States that stands to impact environmental and cultural resources, the SR-32 relocation and Oasis projects would need to receive permits from several federal and state agencies in order to be built. Indeed, the NEPA process is in place to ensure that projects are reviewed by the agencies tasked with the protection and preservation of resources of national or state value and significance. As many interviewees stated, the SR-32 relocation faces a particularly challenging regulatory puzzle because seemingly any potential alignment faces significant hurdles.

Perceptions about regulatory issues among stakeholders are of interest because they contribute to public opinion, even if those perceptions are inconsistently informed by fact. A dominant view among a range of stakeholders with different opinions about the project is that a more southerly alignment would likely avoid or minimize impacts to important historic and cultural resources near Mariemont, but that the trade-off would be a more problematic crossing of the Little Miami River. The reverse is also commonly believed to be true—that a more northerly alignment could more easily cross the river, but would have greater historic and cultural resource impacts.

At this stage in the project’s development, most regulatory agencies were hesitant to signal clearly whether or not SR-32 is likely to receive a authorization because, as they explained, it is impossible to assess impacts until a set of more specific alignments are selected for analysis. Nearly every agency interviewed referred to the comments they submitted during the Tier 1 process as the perspective they continue to hold until more information becomes available. Nevertheless, the interviews revealed the following important regulatory considerations:

- o Although a number of federal statutes (see Appendix II) bear directly upon the project, the most significant of these would appear to be complying with the requirements of Section 7 of the Wild and Scenic Rivers Act. Absent a Section 7 permit from the Department of Interior, a new river crossing could only be authorized by an act of Congress.<sup>17</sup> It is possible to avoid the “show-stopping” challenge of Section 7 if a relocated SR-32 can be designed and built without impact to the “bed and bank” of the river (even during construction), and ODOT’s response to concerns expressed by the agencies on this point in the Tier I FEIS emphasized its commitment to “clear span” the river. In interviews, the agencies confirmed that Section 7 would not be triggered as long as that commitment is kept on whatever alignment is ultimately selected. They added, however, that Section 10 of the same act also sets a high bar, as it requires any project to “protect and enhance the values for which the river was designated.” These include: scenic, recreational, geologic, fish and wildlife, historic, cultural, “and other similar values.” The regulatory view is that it is hard to imagine how a relocated SR-32 could enhance or protect any, let alone all of these values (except perhaps through extensive mitigation), and a failure to do so could be grounds for denying a permit.

Another point of possible contention related to this Act is a possible difference of opinion between ODOT and the agencies with jurisdiction over this regulation (Department of Interior, the National Park Service, and at the state level, the Ohio Department of Natural Resources) on the meaning of the “baseline condition” of the river. Wild and Scenic River designations range from *Wild* to *Scenic* to *Recreational*, with *Wild* being the least impacted or “primitive.” The Little Miami in the area of interest to this project is designated as “recreational,” which the federal regulators’ interpret as meaning it should be treated with particular care and protection to prevent further degradation. There is a perception,

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<sup>17</sup> Sometimes referred to as a “St. Croix River situation” in reference to a case on the Minnesota/Wisconsin border that bears some similarities to this one.

however, that ODOT interprets the “recreational” designation to mean that additional impact should be judged less harshly, given the fact that the river is already far from pristine. The agencies may not be unified in their views on this point as it relates to the SR-32 relocation project; rather, it is a matter of further discussion.

- o Another significant regulatory issue is the identification and review of all archaeological sites and historical properties. Various agencies are tasked with consideration of these resources at the federal and state level. One interviewee commented that tribe members should be trained to help complete the archeological work and that questionable funeral items should be determined by those with expertise and in consultation with an affiliated tribe (if there is one). One agency’s representatives said they trust ODOT will conduct a thorough analysis, but also warned that it can be a long process because the rules demand the careful consideration of each historic property or archaeological site. Several representatives noted that conditions on the ground change – new properties are added to the registry and new research or science can become available throughout the process. One agency’s representatives said this project is likely to undergo a high level of scrutiny at the federal level because there is a perception that the Tier 1 work on cultural resources was inadequate, thus prompting the 2012 feasibility study.

In the Tier 1 Draft EIS, ODOT responded to many of the regulatory concerns expressed by the agencies at the time, including descriptions of long-standing coordination with agency partners, preliminary mitigation plans, and justification for decisions made to that point (including the elimination of some options). The ROD was issued at the time, indicating that ODOT had responded satisfactorily to these concerns and any remaining issues would be resolved, as expected in the Tier 2 EIS process. A few interviewees expressed concern about loss of institutional memory on these and other critical decision points over time, and, it seems, with good reason. A few of the regulatory entities CBI interviewed knew little about the project, either because personnel had changed since the Tier 1 process, or because they typically engage in a project’s review process when it is further along. While some of the interviewees expressed no opinion on the project at all, more of them conveyed substantial concern, based on current knowledge about the project and the potentially affected areas. One regulator with intimate knowledge of the project said, “this could be the most impactful project I will work on in my career.” Most regulatory representatives expressed strong interest in regular coordination with the project designers going forward. Some emphasized that the analysis takes time, so the earlier the potential alignments are identified, the sooner the evaluation can get underway. They noted that while every law has its own stipulations for review, one common criterion is a clear understanding of the purpose and need, given that the question of impact is often weighed against the projected benefits of a project.

- **Funding the project(s) and allocating the money responsibly.** Funding is on nearly everyone’s mind. Everyone agrees this is an expensive project and that resources are finite. One of the requirements of the Tier 1 EIS was an economic feasibility analysis, which passed muster at the time of the ROD. The FEIS states, “The financial strategy for implementing this multimodal plan at a program-level will incorporate innovative tools for coordinating, phasing and managing financial investments, community priorities, and land use and development activities across jurisdictional boundaries.”<sup>18</sup> It is followed by 13 key components that could support the strategy. Some of those most involved in the funding activities on the project insist that careful planning, studies, and coordination are ongoing and that one of the key tasks in the Tier 2 EIS is to refine the economic feasibility studies, so it is too early to make judgments based on fund-

ing possibilities. Skeptics' concerns, however, range from doubt about finding enough money to adequately fund the project, to the high cost of the project overall, to mismanagement of the funds once secured. Some people say the money spent on this project has already been wasted and they bemoan more of the same in the future. Related to the topic of transparency, several people requested more public accounting of the expenditures to date – particularly those dollars spent on consultants and contractors such as public relations firms and mediators. Some people wonder whether commitment to relocate SR-32 has led to, and will continue to require a diversion of resources to one large project over many years at the expense of building, repairing, or maintaining several smaller projects, such as the Brent-Spence Bridge, which was mentioned in this context by a number of interviewees.

Both proponents and opponents are keenly aware of how funding may affect the design and construction of the projects after the environmental review is complete. A few opponents said they no longer worry about the project going forward because they believe even if it clears the environmental review, it will be too expensive to build and the money will never come through. Others see it differently and are confident that the need for the project, as well as the benefits it would enable will attract state and federal dollars once the environmental process is complete. One group said, for example, that they have advocates in Washington now working to position the region for adequate future funding. Some proponents also say that when the hard choices have to be made, they are prepared to make the case that the economic return on investment makes the choice to fund the project a clear one. Unlike other projects, they believe there is exceptionally high potential to make several times more in tax revenue over the medium-term than the amount of the investment in construction costs.

The Oasis line has its own unique set of funding concerns. First, like the roadway, stakeholders say it will be hard to get enough up-front capital, particularly to build stations in an area that is mostly floodplain. Large transit projects have to compete for federal funding against other transit projects in a manner distinct from the process for roads (which have huge pools of money by comparison). One of the top criteria for awarding support is potential ridership, which the Oasis line may be able to demonstrate. In addition, the financial calculations on transit are almost the reverse of roads. As one person said, "Build a road and your costs are basically done. Build a train and your money problems have just begun." Since both transit costs and revenue are largely in the long-term operation and maintenance, there is significant disagreement about whether the economics on the Oasis line are feasible.

- ***Working within a reasonable timeframe.*** The length of time that these projects have been in development, and the long horizon before they would be realized, raises its own set of concerns. Many stakeholders, on every side of the issue, expressed "process fatigue" and said that, in effect, any decision at this point is better than no decision. Others fear being trapped in a "sunk cost conundrum," where they have invested so much already (in time, money, political clout, regional plans, economic development aspirations) that they need to see the project through. People worry that as every year passes it gets harder to realize the project because studies and data expire and people with institutional knowledge at the agencies and in the corridors leave or move on to different projects. There is a widespread, though by no means complete, sense of fatalism that the current level of controversy remains destined to continue if not intensify as parties look to the future.



# III. Through the Looking Glass: Options for Moving Ahead

A project that would meet the key interests expressed by stakeholders would improve connectivity, encourage sustainable economic development and protect local businesses, have minimal or no impacts to the Lower 80, not damage the Little Miami River and other environmental resources, protect archaeological resources and the area's rich cultural heritage, and be developed and constructed through a process that was transparent, trust-building, and inclusive of all parties.

Although not wishing to dampen the capacity for human ingenuity, such a “perfect” alternative has not emerged to date, despite many years of dialogue, analysis, and planning. Less clear is whether there may be one or more options that a critical mass of interested parties would be able to coalesce around on a spectrum ranging from support to not actively opposing. Any scenario—whether it falls under the umbrella of no build or a new SR-32—will necessarily involve difficult questions about trade-offs and mitigation.

Despite the little substantive common ground that emerged, most of those with whom we spoke agree on a few things, namely: funding these projects is a significant unknown; crossing the Little Miami River is the most challenging issue from a regulatory perspective; the cultural resources throughout the Eastern Corridor are significant in number and value; protecting affected communities is important, and the “holding pattern” the project seems to be stuck in needs to end.

While CBI heard a shared sense that the current situation could be made better, perspectives varied as to how that should be accomplished. Since the diagnoses differ, so do the favored remedies; reaching consensus that the present circumstances could be improved is easier than agreeing on how to do it. Even within this challenging context, however, some parties expressed a view that the moment may be at hand to seek a mutually more satisfactory future and offered several suggested approaches for doing so.

## A. Options for Consideration

The list below includes CBI's analysis of possible options ODOT and FHWA could pursue at this time. At this juncture, the key threshold question for ODOT and FHWA is the “go/no-go” decision—whether or not to proceed with the environmental review of a relocated SR-32 and new Oasis line, with the hope that it will eventually be built. If the transportation agencies decide to retire the plan to relocate SR-32, work would presumably continue on the other Eastern Corridor Program components (though, as noted, some said Segment 1 would need to be revisited). In that case, it may make sense to look anew at addressing transportation issues in the corridor through other projects, such as local road improvements of various kinds. If ODOT decides to move forward with SR-32 and/or Oasis, some options exist for proceeding in a manner that is more collaborative, transparent, and likely to

build trust than the status quo NEPA process. A decision whether or not to proceed further with a relocated SR-32 could be made based on currently available information or, as described below, be informed by further consultation with regulatory agencies.

Not all of these options are mutually exclusive, and aside from a logical sequence, they might be combined and ordered in different ways. Each of these choices carries with it a set of implications or “ripple effects” that would need to be fully fleshed out and carefully considered before a decision is made. We provide these options in high-level relief for the sake of comparison and as catalysts for the necessary decision-making processes that may follow.

**Option 1: Do not proceed with the project at the present time.**<sup>19</sup> The transportation agencies could decide not to proceed with a relocated SR-32 for the foreseeable future. This decision would presumably be based upon the conclusion that the anticipated transportation benefits do not outweigh the potential adverse impacts to natural and human resources or that it faces insuperable regulatory challenges. It could also in part reflect a public policy decision that this aspect of the Eastern Corridor lacks sufficient support (or faces too much opposition) from the public, if the agencies deem that to be the case. Funding uncertainties could also be a contributing factor. The obvious potential drawback to this option is that the intended benefits of a relocated SR-32 would not be realized. Another potential drawback of this option is the likely outcome that many people will feel (rightly or wrongly) that the money, time, and other resources invested to develop the project have been wasted. Though not necessarily a drawback, depending on one’s point of view, this option also begs the question, “If not SR-32, then what?” to address the various transportation and development interests the project has intended to advance. A decision along these lines could take different forms. One would be, essentially, to select the “no build” option. No further funds would be spent to evaluate or design the project, and it would not be carried further into the Tier 2 NEPA process. Another would be to postpone the project for the present, focus on other transportation needs and revisit the issue in the future if appropriate and if circumstances warrant doing so.

If the transportation agencies decide to step away from relocating SR-32, then it may still be of value for ODOT to explore how it can help parties advance key interests such as improving safety and connectivity and facilitating economic development while protecting important resources. If the transportation agencies decide now or in the future to proceed with the planning and design of a new SR-32, the approaches described below, used singly or in combination, have potential to improve prospects for meaningful collaboration and public engagement.

**Option 2: Obtain additional information before making a “go/no-go” decision.** Before reaching the threshold decision, the transportation agencies could first confer with the key state and federal resource agencies to determine the likelihood of obtaining needed environmental approvals. This option may provide the transportation agencies with legal and technical information that could either moot or increase the appeal of some of the options mentioned below. One potential drawback is that often it is difficult to get definitive answers from regulatory agencies early in the process (e.g., “We cannot really predict the likelihood of approval absent a complete permit application for review and evaluating public comments received.”).

**Option 3: Convene a manageably sized group of representative interests to consider recommended path(s) forward.** This option would involve a neutral party assembling and facilitating conversations among a relatively small group (e.g., 20-25 individuals) of diverse and credible individuals with different viewpoints who are willing to work together. This group would be tasked with considering and, if possible, recommending a set of the most promising and practical next steps (which could take any

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<sup>19</sup> No preferential bias is intended nor should be inferred from the order of the options as presented.

number of forms). The group would ideally be composed of people who, though representing different perspectives, are willing to work together collaboratively and in good faith. The work of the group would need to be sufficiently transparent to maintain credibility in the eyes of those being represented. While the group would not necessarily be expected to recommend a specific outcome, it would be tasked with proposing a process for moving forward. This could take the form of one or more of the ideas articulated in this assessment or the group could draw on the collective wisdom of the representatives to develop something new. The advantage to this approach is the potential force and value associated with any consensus suggestions put forward by such a multifaceted group and it may represent the best option for beginning a truly collaborative process. Importantly, participation by parties would not waive or cede any legal rights or authorities or otherwise prejudice their current status. There are also potential drawbacks. Undertaking a process of this sort would take time and may not sit well with those who feel the process has already been too drawn out and want to move forward quickly or those who want a hard stop put on the project now. Given the degree of interest in the project it may be challenging to assemble a group of the limited size suggested here that will have credibility with all key constituencies. Moreover, there cannot be a guarantee that even with a good faith effort such a group is able to reach consensus-based recommendations.<sup>20</sup>

**Option 4: Fundamentally re-think the project.** In response to the view that the SR-32 relocation project is at least as much about growth, development, conservation, and community as it is about transportation, this option would bring questions of regional economic and community development and natural resource preservation to the forefront and re-position transportation questions as subtopics within that framework. The State of Ohio would designate a different agency or entity to oversee the development of, or revision to a regional plan that takes up the issues the current SR-32 stakeholders hope it will address (i.e. regional connectivity, economic development, job creation, congestion) and protection of the resources and ways of life they want to preserve. The advantage of this option is that it opens the door for solutions to emerge that could satisfy a broad range of stakeholders in the Eastern Corridor. The disadvantage is the risk that already weary stakeholders would have a hard time committing to yet another process of future planning with no clear end in sight. Also, the success of this option relies on significant unknowns, not least of which is who/what organization/entity could take the leadership role in this endeavor.

**Option 5: Engage in a joint fact-finding approach around purpose and need and other issues.** “Joint fact-finding” is an approach where parties agree upon questions that need to be investigated and the method for answering them. With help from a third party neutral, a diverse, representative group would jointly develop the set of questions or “facts” that need to be investigated and then decide together who could provide the appropriate analysis and be trusted by all sides. The chosen experts agree to work for the group, which collectively reviews all aspects of the analysis in an ongoing and transparent manner. In some circumstances, parties agree to certain actions or positions contingent upon the yet-to-be discovered results. As one interviewee put it, “Can we all agree to set aside our pre-conceived notions and revisit the question of what is really needed in the Eastern Corridor?” Some of the core questions would likely focus on transportation issues related to SR-32 (e.g., congestion and safety), population and growth projections, and questions about the viability and impact of the OASIS rail component and bike trails. This group may also consider the various route options that have been suggested and provide credible assessments of their advantages and disadvantages. Another area of inquiry might be around funding, including costs to date and projected costs, potential sources of future funding and economic “cost/benefit” or other return on investment modeling. A group dedicated to joint fact-finding could also produce criteria for transparency in disseminating information. The advantage of joint fact-finding

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<sup>20</sup> A challenge with this type of process can be creating a safe place for candid and if need be confidential discussions while also striving for a high level of transparency and complying with any applicable open meeting laws.

is that it can avoid the “dueling experts” dynamic and help parties acquire an agreed upon base of information for decision-making.<sup>21</sup> The potential drawback is that joint fact-finding sometimes narrows but does not eliminate uncertainties. It is also less helpful in situations where disputes are less fact-based and more grounded in interpretative issues, priorities or values, such as opinions on how communities should develop over the next thirty years.

**Option 6: Develop a potential new SR-32 alignment to a greater level of detail.** One observation arising from the interviews CBI conducted was a reciprocal belief that certain other parties were mischaracterizing the nature of the road. Under this option ODOT would prepare a sufficiently detailed rendering (not an official preferred alternative or final design) that sufficiently describes the key characteristics of the road (width, pavement type, elevation, safety features, etc.) for parties to evaluate with clarity and see to what extent it does or does not address key concerns. An advantage of this approach is that it might help clarify competing images of a low profile boulevard on one hand and a significantly elevated roadway on the other. It may also be a means to identify where there is greater or lesser flexibility when it comes to project design features. A limitation of this option is that many of these features may depend significantly on the actual physical location of the road, and while it may clarify some issues, it would do little to address more fundamental concerns such as whether the project is needed or warranted in light of potential impacts.

**Option 7: Move ahead with a phased project.** This option would attempt to capitalize on those project aspects—most likely the OASIS rail and bike path improvements—that attract the most support. Some of those we interviewed speculated that with the rail aspect in place, it would be easier to assess the nature and extent of needed roadway improvements. The advantage of this approach is that it would presumably attract greater support (or at least reduced opposition) than moving forward immediately with a plan to relocate SR-32. It would also provide a forum for answering some of the existing questions about long-term operation and maintenance and the impacts on the regional transit network, including bus routes and riders. This sort of phased approach might also provide a window to consider collaborative approaches for addressing questions about the purpose and need for a SR-32 relocation. A possible drawback would be the potential complications and loss of any synergy associated with separating the road and rail components and the probable loss of support from those who are primarily interested in the regional economic development opportunities associated with the combined road/transit projects.

**Option 8: Move forward with NEPA and its public engagement requirements.** In a sense, this is the default option: go forward following all NEPA requirements for the Tier 2 process. This assessment would serve as one of a number of sources of information to be considered moving forward. NEPA provides various opportunities for public involvement as do a number of the regulatory programs that would be applicable to the project. A number of interviewees, regardless of perspective about the merits of a relocated SR-32, did not support a significant amount of extra process (although that preference was regularly coupled with the expectation that the chosen alternative would be whatever course of action they thought best). This option may make sense if the transportation agencies decide to move forward with plans to relocate SR-32 and believe that the NEPA and various regulatory processes will offer sufficient opportunities for public input.

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<sup>21</sup> Several different individuals and groups suggested that public resources should be set aside for stakeholders to hire their own experts so they can be on a level playing field with ODOT. CBI suggests that it may be more productive to create a sense of fair play through a transparent joint fact-finding process, rather than creating an environment for ongoing debate among experts.

## Appendix I

# Summary of Tribal Engagement to Date

### Summary of Tribes' Comments Regarding Section 106 Tribal Consultation Conducted May 31 and June 1, 2012 (Drafted September 4, 2014)

On May 31 and June 1, 2012 the Federal Highway Administration (FHWA) and the Ohio Department of Transportation (ODOT) held a Section 106 Tribal Consultation meeting in Cincinnati, Ohio. Sixteen Tribes were invited to participate and five participated. A list of the tribes' general comments and concerns raised during the meeting are as follows.

#### Requests and Recommendations from Responding Tribes

1. FHWA/ODOT should provide the schedule for selecting the preferred alternative and activities after the preferred alternative is selected.
2. FHWA/ODOT should provide clear information on who the decision-makers are for various aspects of this project and identify a single point-of-contact for the tribes.
3. While not supportive of destructive analysis on human remains or associated funerary objects, one Tribe is interested in learning from sites using non-invasive studies.
4. Avoidance of burials and sites is greatly preferred, and respect for human remains is of the highest importance. The tribes requested that project documents should clearly state that avoidance of disturbance is the preferred approach for all human remains and that leaving burials in place should be the preferred disposition of any encountered remains. There needs to be additional discussion and consultation with tribes regarding—
  - the identification of cemetery/burial areas;
  - the protection of discovered and reported burials, including human remains and associated funerary objects, and security and protection from future disturbance;
  - the appropriate level of reporting for burials;
  - the level of reporting and security of information included in the Ohio State Historic Preservation Office's (SHPO) online database;
  - the location and protection from further disturbance of reburials;
  - the nature of the agreement document;
  - timeframes for requesting review and comments
5. Regarding identification of human remains and funerary objects, the tribes also stated that:
  - the soil matrix should be considered an integral part of a burial;
  - some items that may not seem to be funerary objects to others can be identified by tribal monitors based on context;
  - if burials must be removed and reburied, a plan must be in place to prevent future disturbance



6. Several Tribes have guidance that includes how to approach possible archaeological sites and for post-review discoveries that they recommended to ODOT/FHWA.
7. The tribes would like the opportunity to review and comment on research designs, data recovery plans, and reports on data recovery prior to construction. The tribes wish to be consulted about research designs at each phase of the archaeological studies. They need to be actively involved in recommending mitigating measures.
8. Plans/procedures for core sampling/deep testing within the floodplain should be provided to the tribes for review; tribal monitoring may be requested.
9. Fill materials should come only from culturally sterile locations.

**In addition to the above general comments and concerns, the tribes had many specific comments on a Draft Programmatic Agreement approach and below is a list of recurring themes taken from the responding Tribes' comments:**

1. Emphasis was placed on compliance with The Native American Graves Protection and Repatriation Act (NAGPRA) and ensuring all NAGPRA requirements are met.
2. One Tribe wants to participate in developing a Programmatic Agreement (PA) for the undertaking, but the issue of access to information required to assess the alternatives is a major concern. Another Tribe has stated that a consultation protocol in advance of the final Section 106 agreement document might not be productive as it could be seen as approval to impact the sites.
3. Some Tribes may request signatory status. One Tribe indicated that they would not sign an agreement but would defer to other Tribes.
4. Tribes would prefer that the Section 106 agreement document for this project be a PA rather than a Memorandum of Agreement.
5. The protocol for treatment of human remain, whether it is part of the PA or is a stand-alone document appended to the PA, should include provisions for case-by- case notification to the tribes about any encountered remains.
6. ODOT will need to define the process, and implementation thereof, for when remains are discovered regarding time uncovered, notification, review, study, privacy and security.
7. When human remains are encountered during archaeological investigations, define the process for protection in place before and after ODOT acquires the property.
8. The security of Ohio SHPO's online database is a concern including the restriction of access from vocational archaeologists.
9. Consideration of a provision for the inadvertent discovery of human remains on site is recommended. Address whether such a discovery can change the eligibility of the site.
10. Define "immediate further disturbance" regarding the treatment of human remains. Additionally, define how the risk will be determined.

11. The Tribes want to be involved with making recommendations and determining which archaeological or forensic labs may be used for study.
12. Define the steps taken and training provided for individuals who might encounter human remains at the project site. Define the notification process for informing appropriate individuals and other steps to secure and protect burials.
13. Define the methodology, which will be used for identifying defining boundaries and determining conditions of newly identified sites.

## Appendix II

### List of Interviewees<sup>22</sup>

**Tim Aichholz**, Local businessman in Newtown

**Matthew Ayer**, Mariemont Resident

**Bob Anderson**, Chief of the Recreation Grants Division, National Park Service: Midwest Region

**Jeff Blanton**, Director of Program Development, Federal Highway Administration (FHWA)

**Luke Brockmeier**, President of the Madisonville Community Council

**Tracy Buchanan**, Ohio Environmental Protection Agency (OEPA)

**Geoffrey Burt**, National Historic Landscape Coordinator, National Park Service: Midwest Region

**Tom Caruso**, Anderson Trails Coordinator & Property Maintenance Inspector, Anderson Township

**Peter Clingan**, Primary Local Contact, United States Army Corps Engineers (USACE): Huntington District

**Suzanne Clingan**, Greenspace Inspector, Anderson Township

**Bill Collins**, Madisonville

**Curt Cosby**, Mayor, Village of Newtown

**Kimberly Courts-Brown**, Acting Chief, United States Army Corps Engineers (USACE): Huntington District

**Scott Degerberg**, Member, Mariemont Citizens Action Group

**Paul Drury**, Director of Planning and Zoning, Anderson Township

**Charlene Dwin-Vaughn**, Assistant Director, Advisory Council on Historic Preservation (ACHP)

**Vicky Earhart**, Administrator, Anderson Township

**Mark Epstein**, Department Head, Ohio State Historic Preservation Office (SHPO)

**Doug Evans**, Evans Landscaping

**Stephen Ewald**, General Counsel, MedPace

**Tom Ewing**, Senior Legislative Policy Analyst, Cincinnati Chamber of Commerce

**Turpin Fischer**, Owner, Turpin Farms

**Andy Fluegemann**, Engineer, Ohio Department of Transportation: District 8

**Larry Fronk**, TID Chair, Miami Twp. Administrator, Clermont County

**Bob Gable**, Scenic Rivers Coordinator, Ohio Department of Natural Resources (ODNR)

**Butch Gaut**, Director, SORTA/Metro

**Jay Gohman**, Mayor, Village of Terrace Park

**Paul Grether**, Manager, SORTA/Metro

**Rick Grewie**, Ohio River Way

**Rob Griffith**, Assistant Division Administrator, Federal Highway Administration (FHWA)

<sup>22</sup> This List of Interviewees contains the names of all individuals with whom CBI spoke directly. Representatives of the Horizon Community Church and Eric Partee of the Little Miami Conservancy also submitted written comments. A number of the people CBI interviewed in person also followed up with additional information in writing. All of the feedback provided to CBI during the assessment period, whether verbal or written, was taken into consideration in the development of this assessment.

**Thomas Grooms**, Archaeology Transportation Reviews Manager, Ohio State Historic Preservation Office (SHPO)

**Karen Hallberg**, Fish and Wildlife Biologist & Transportation Liaison, United States Fish and Wildlife Service

**Ross Hamre**, Planning Director, Hamilton County Parks

**Tim Hill**, Ohio Department of Transportation Environmental

**Allison Hodson**, Planner, Anderson Township

**Ted Hubbard**, County Engineer, Hamilton County

**Ed Humphrey**, Commissioner, Clermont County

**Bob Igoe**, Council Member, Madisonville Community Council

**Adam Johnson**, Division Major Projects Engineer, Federal Highway Administration (FHWA)

**Martha Kelly**, P.E., Principal Engineer, Transportation Planning Section, Department of Transportation and Engineering, City of Cincinnati

**John Kessler**, Environmental Services Administrator, Ohio Department of Natural Resources (ODNR)

**Don Keyes**, Mariemont CPC, Mariemont Preservation Foundation

**Mary Knapp**, Field Supervisor, United States Fish and Wildlife Service

**William Knutson**, Deputy Branch Chief of St. Louis Coast Guard Bridge Office, United States Coast Guard (USCG)

**Mark Kobasuk**, Council Member, Village of Newtown

**Bob Koehler**, Deputy Executive Director, Ohio-Kentucky-Indiana Regional Council of Governments

**Laurie Leffler**, Division Administrator for Ohio, Federal Highway Administration (FHWA)

**Carol Legard**, FHWA Liaison, Advisory Council on Historic Preservation (ACHP)

**Mike Leslie**, United States Environmental Protection Agency (USEPA): Air Quality

**Joni Lung**, ODOT Transportation Projects, Ohio Environmental Protection Agency (OEPA)

**Tony Maietta**, United States Environmental Protection Agency (USEPA): Air Quality

**Pat Manger**, Clermont County Engineer, Clermont County

**Andrea Martin**, Environmental Protection Specialist, U.S. Federal Railroad Administration

**Steve Mary**, Deputy Director, Ohio Department of Transportation: District 8

**Robert McCaskey**, Bridge Specialist, United States Coast Guard (USCG)

**Joan McClellan**, Resident, Shademoore Park

**Heather McColeman**, Ohio Department of Transportation Environmental

**Cheryl McConnell**, Newtown Village Council

**Tim McDonald**, Ohio Department of Transportation Planning

**Noel Mehlo**, Environmental Program Manager, Federal Highway Administration (FHWA)

**Betsy Merritt**, Deputy General Counsel, National Trust for Historic Preservation

**Michael Moore**, R.A., Director, Department of Transportation and Engineering, City of Cincinnati

**Andrew Moran**, Resident and business owner in Clermont and Hamilton Counties

**Lindy Nelson**, Regional Environmental Officer, United States Department of the Interior (DOI)

**Deb Osborne**, Environmental Manager, Stantec

**Dan Policastro**, Mayor, Village of Mariemont

**Mark Policinski**, Executive Director, Ohio-Kentucky-Indiana Regional Council of Governments

**Elizabeth Poole**, Opportunity Corridor Liaison, United States Environmental Protection Agency (USEPA): NEPA Reviewer

**Todd Portune**, TID Chair, Commissioner, Former President of OKI: Hamilton County

**Ric Queen**, Section Manager, Ohio Environmental Protection Agency (OEPA)

**Nick Ragland**, CFO, Gorilla Glue

**Aaron Rourke**, Board Member, Rivers Unlimited

**John Russell**, former Mayor, Village of Newtown

**Eric Russo**, Executive Director, Hillside Trust

**Jennifer Sandy**, Senior Field Officer, National Trust for Historic Preservation

**Hector Santiago**, Wild and Scenic Rivers Coordinator, National Park Service: Midwest Region

**Erica Schneider**, Ohio Department of Transportation Environmental

**Rusty Schuermann**, Kegler, Brown, Hill, & Ritter

**Eliot Schwartz**, Anderson Township Planning and Zoning Co-op (University of Cincinnati, DAAP)

**Steven Shadix**, Senior Transportation Engineer, Stantec

**Chuck Short**, Councilman, Village of Newtown

**Steve Sievers**, Assistant Administrator for Operations, Anderson Township

**Bob Slattery**, Local businessman in Newtown

**Keith Smith**, Engineer, Ohio Department of Transportation: District 8

**Stefan Spinosa**, Administrator, Ohio Department of Transportation: District 8

**Joseph Stelzer**, Councilman, Mariemont Village Council

**Craig Stephenson**, Chief Deputy, Clermont County

**Dan Stewart**, Resident, Shademoore Park

**Karen Sullivan**, Trustee, Mariemont Preservation Foundation

**Jack Sutton**, Director, Hamilton County Parks

**Thomas Synan, Jr.**, Police Chief, Newtown Police Department

**Dr. Kenneth Barnett Tankersley**, Associate Professor of Anthropology, Associate Professor of Geology, and Curator of the Court Archaeological Research Facility

**Rachel Taulbee**, Supervisor, Ohio Environmental Protection Agency (OEPA)

**Jennifer Townley**, Acting Deputy Director, Division of Planning, Ohio Department of Transportation: Central Office

**Matt VanSant**, Clermont Chamber of Commerce

**Reggie Victor**, Supervising Planner, Transportation Planning Section, Department of Transportation and Engineering, City of Cincinnati

**Marilyn Wall**, The Sierra Club, Miami Group

**Ken Westlake**, Chief, NEPA Implementation, United States Environmental Protection Agency (USEPA): NEPA

**Laura Whitman**, Razor Marketing

**Chris Wilson**, Historic Preservation Specialist, Advisory Council on Historic Preservation (ACHP)

**Dennis Wolter**, Member, Mariemont Council



## Appendix III

# Sample List of Laws and Regulatory Requirements Relevant to the SR-32 Relocation and Oasis

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|---|--|
| A. Clean Air Act (CAA) (42 U.S.C. 7401-7671 (q))  | R. Land and Water Conservation Fund Act (LWCF), 16 U.S.C. 4601–4604  |
| B. Compliance with the noise regulations at 23 CFR Part 772   | S. Safe Drinking Water Act (SDWA), 42 U.S.C. 300(f)–300(j) (6)   |
| C. Section 7 of the Endangered Species Act of 1973, 16 U.S.C. 1531–1544, and Section 1536                 | T. Wild and Scenic Rivers Act, 16 U.S.C. 1271–1287   |
| D. Marine Mammal Protection Act, 16 U.S.C. 1361   | U. Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931  |
| E. Anadromous Fish Conservation Act, 16 U.S.C. 757(a)–757(g)  | V. Mitigation of Impacts to Wetlands and Natural Habitat, 23 CFR Part 777  |
| F. Fish and Wildlife Coordination Act, 16 U.S.C. 661–667(d)   | W. TEA-21 Wetlands Mitigation, 23 U.S.C. 103(b) (6) ( m), 133(b) (11)  |
| G. Migratory Bird Treaty Act, 16 U.S.C. 703–712   | X. Flood Disaster Protection Act, 42 U.S.C. 4001–4128  |
| H. Magnuson-Stevenson Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 et seq. | Y. 23 U.S.C. 138 and Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303 and implementing regulations at 23 CFR Part 774 |
| I. Section 106 of the National Historic Preservation Act of 1966, as amended, 16 U.S.C. 470(f) et seq.    | Z. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675   |
| J. Archeological Resources Protection Act of 1977, 16 U.S.C. 470(aa)–11                                   | AA. Superfund Amendments and Reauthorization Act of 1986 (SARA)  |
| K. Archeological and Historic Preservation Act, 16 U.S.C. 469–469(c)                                      | BB. Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k)  |
| L. Native American Grave Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3001–3013                    | CC. E.O. 11990 — Protection of Wetlands  |
| M. American Indian Religious Freedom Act, 42 U.S.C. 1996  | DD. E.O. 11988 — Floodplain Management   |
| N. Farmland Protection Policy Act (FPPA), 7 U.S.C. 4201–4209  | EE. E.O. 12898 — Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations                             |
| O. Clean Water Act, 33 U.S.C. 1251–1377: Section 404, Section 401, and Section 319                        | FF. E.O. 13112 — Invasive Species  |
| P. Coastal Barrier Resources Act, 16 U.S.C. 3501–3510   | GG. National Environmental Policy Act  |
| Q. Coastal Zone Management Act, 16 U.S.C. 1451–1465   |  |

