

January 9, 2012

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John Sacksteder, PE,
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Louisville - Southern Indiana Ohio River Bridges Project
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Re: Comments on Draft Supplemental Environmental Impact Statement (Draft SEIS) for the Ohio River Bridges Project

Dear Ms. Osadczuk and Mr. Sacksteder:

On behalf of the National Trust for Historic Preservation, we submit the following comments on the Draft Supplemental Environmental Impact Statement (Draft SEIS) for the Ohio River Bridges Project, pursuant to the National Environmental Policy Act (NEPA). At the outset, we note that the Environmental Protection Agency (EPA) has rated the Draft SEIS as "Environmental Concerns, Insufficient Information." We agree with the EPA's concerns.

In general, the data in the Draft SEIS show that the East End Bridge is unneeded, and is difficult to justify on a cost-benefit basis. Only a small fraction of the cross-river trips would use the East End Bridge (less than 17%), whereas the Kennedy Bridge would carry twice as much traffic—one-third of all cross-river trips in the metro area, even taking into account the traffic diversion caused by toll-avoidance. (DSEIS, p. 3-22). Yet the cost of both bridges would be the same. Furthermore, notwithstanding all the public hype about economic growth, the data in the Draft SEIS shows that the construction of the project would generate no increase in permanent employment whatsoever (not counting temporary construction jobs). Indeed, the current proposal to build both bridges with tolls would result in a decline in long-term employment, according to this data.

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As recognized in the Public Comments Report prepared by CTS (Aug. 31, 2011), there is a substantial segment of local public opinion (reflected in early scoping comments) that supports construction of an East End Bridge prior to, or instead of, a Downtown Bridge. (Public Comments Report, p.14.) While the Draft SEIS and Appendices have provided numerous reasons for rejecting the East End Only alternative, the Draft SEIS fails to address the impacts of phasing or sequencing the construction of the two bridges. (This was an issue raised in the National Trust's own scoping comments.) This is crucial, because of the fact that the East End Bridge will not attract sufficient traffic or generate sufficient toll revenue to pay for itself. Net toll

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revenue is projected to increase six-fold once the new Downtown Bridge opens, as opposed to the projected toll revenue from the East End Bridge alone. DSEIS, Appendix G.5. at p.4, Table 2 (\$19.02 million to \$112.91 million).

If the East End Bridge is built first, the result could be to make financing for the Downtown project more tenuous, and may jeopardize the ability to fund the Downtown project—already highly uncertain—or delay it for many years or even decades. The result would be the *de facto* construction of a project (East End Only) that has been rejected in both the 2003 FEIS and the current Draft SEIS as failing to satisfy a legitimate transportation purpose and need.

It is imperative that the SEIS disclose any plans for phased construction and phased financing of the bridges, and evaluate the specific impacts of constructing only one bridge prior to securing funding for the second bridge. The EPA comments emphasized this issue as well, and specifically recommended that the agencies

provide a construction sequence outline and rationale based on *actual available funding* identified in the Bridge Authority's future recommended financial plan, in order to *clarify the priority for constructing each segment* of the project. We understand that there are demonstrated existing safety and traffic issues with the downtown bridge and the Kennedy Interchange, which serve the majority of existing and projected vehicle traffic

EPA Comments at p.4 (Jan. 9, 2012) (emphasis added). This detailed information regarding construction sequence and phasing, and its implications for the viability of financing the project, must be disclosed *during* the NEPA process, in order to allow for public comment, not afterwards, as the states apparently intend. See "*Financial Plan for Bridges Project Expected in Spring*," Louisville Courier-Journal, Jan. 5, 2012. Even Tyler Allen of "8664" is saying: "I don't seem to hear that they know yet where the money is going to come from." *Id.*

Failure to disclose this information immediately, with opportunity for public comment, violates NEPA and thus endangers the project. See *Davis v. Mineta*, 302 F.3d 1104, 1123-24 & n.13 (10th Cir. 2001) (FHWA violated NEPA by failing to take a hard look at the potentially significant impacts of phased construction.) As in this case, the "phase two" project in *Davis v. Mineta* would have been delayed by three to eight years, or perhaps indefinitely. Similarly, "Kentucky is *'some years away'* from [even] hiring additional lawyers to represent the state when it sells toll-backed bonds, said Chuck Wolfe, a Kentucky Transportation Cabinet spokesman." "*Indiana Seeks Law Firm for Ohio River Bridges Project*," Louisville Courier-Journal, Jan. 6, 2012.

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CHAPTER 2: PURPOSE & NEED

2.2.1 Regional Context

Page 2-6: The base assumption in the Draft SEIS is that from 2007 to 2030, population will increase by 15% and employment will increase by 42%. (These statistics are repeated on p. 2-10.) These projections are fundamentally inconsistent. Moreover, the employment projection defies credibility. Employment growth would inherently be less than population growth, because some segments of the population are not employed (such as children and elderly people).¹ If employment grew at more than three times the population, additional workers would need to be brought in from other locations in order to fill the available jobs; otherwise, they wouldn't be filled and employment would not increase after all. In any event, the assumption that employment in the Louisville area will grow by 42% in such a short time span is a fantasy. This obvious error casts doubt on the validity of all of the other assumptions, and the models on which these false assumptions were built.

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Page 2-7: Table 2.2-3 projects that, under the 2030 No-Action scenario, the Sherman Minton Bridge would be at 119% of its capacity during the AM rush hour, and 126% of its capacity during the PM rush hour. See also DSEIS, pp. 2-18 and 3-23, Table 3.3-3. If this were the case without the new toll bridges, it is difficult to imagine how the Sherman Minton Bridge would be able to accommodate the additional diversion traffic caused by construction of the project. These data suggest that mobility on the Sherman Minton Bridge would be significantly degraded as a result of the project. In other words, one congestion problem would be resolved by displacing the traffic and creating another congestion problem of a similar magnitude, which calls into question the cost-benefit justification for the project as a whole.

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2.2.2 Population & Employment Growth & Land Use Plans

Page 2-10: If "planners in both Jefferson and Clark counties have indicated a desire to slow or reverse the rate of population decline in the downtown areas," this project will have the opposite effect.

2.2.3 Traffic Congestion

Page 2-21: Table 2.2-5 shows dramatic discrepancies that quantify how wrong the assumptions and projections were in the 2003 FEIS. In addition the data in the chart seems internally inconsistent. Even though the projection date in the FEIS was five

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¹ The U.S. Bureau of Labor Statistics projects that the labor force participation rate will decline to 64.5 percent in 2018. (*Statistical Abstract of the United States 2012*, Tables 586 and 587.)

years earlier (2025 vs. 2030), the FEIS predicted a degree of gridlock and delay in the Spaghetti Junction area (slow speeds & high VHD) that is now shown to be grossly exaggerated in light of the newly modeled projections (2030 No-Action). Even waiting five more years for the No-Action scenario to get worse (i.e., from 2025 to 2030), average speeds will be about double (i.e., better than) what was assumed in the FEIS, and hours of delay in the AM, for example, will be only one-quarter of the delays assumed in the FEIS for 2025.

- In light of these significant differences, it is highly implausible that the projected “Throughput as Percent of Demand” would be exactly the same for the AM under both the FEIS and 2030 No-Action (i.e., 84% in both cases).
- Even more inexplicable is the projection that the “Throughput” for the PM is much worse for 2030 vs. the FEIS (i.e., 76% vs. 91%), when all the statistics are so much better (i.e., much higher average speeds and far fewer hours of delay).
- Furthermore, the 91% PM “Throughput” projection for the FEIS seems utterly inconsistent with the 2010 data. If actual PM “Throughput” in 2010 was 92%, it is impossible that “Throughput” would only be reduced to 91% when speeds would be cut in half (31 mph to 16 mph), and hours of delay would almost triple (636 hrs to 1841 hrs).

All of these inconsistencies cast serious doubt on the validity of the projections regarding traffic congestion.

2.3 Performance Measures

Page 2-24: We have already raised objections to the proposal to measure “Cross-River Mobility” solely in terms of Vehicle Hours of Delay (VHD), rather than the additional two metrics that were used in the 2003 NEPA process—Vehicles Miles of Travel (VMT) and Vehicle Hours of Travel (VHT). (NTHP comments on Draft Range of Alternatives, pp. 1-2 (Aug. 31, 2011).) Eliminating two out of three metrics that were used in the 2003 EIS would undermine the analysis, preventing “apples-to-apples” comparisons, and resulting in an overly simplistic reliance on a single metric. Furthermore, it is a metric that appears less objective than VMT and VHT, because it inherently requires a comparison to a hypothetical baseline (i.e., vehicle hours that would have been traveled *without* the delay), which is subject to error or manipulation. VHD has been criticized by at least one state transportation official as a metric that does “not adequately describe mobility performance.”² As pointed out

² See <http://cospl.coalliance.org/fez/eserv/co:5247/tra2100813internet.pdf> (Jeremy Klop & Erik Guderian, “Linking of Mobility Performance Measures to Resource Allocation: Survey of State DOTs and MPOs” at 23 (Dec. 2008) (Colo. Dep’t of Transp., DTD Applied Research & Innovation Branch) (Report No. CDOT-2008-13)).

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in the report from Smart Mobility, Inc.,³ VHD is based in part on VMT, but amplifies exponentially any errors in input, further increasing its unreliability.⁴ We continue to strongly recommend that the original three-metric analysis be retained. The clear impression has been created that the primary reason for dropping the use of the VMT and VHT metrics is that they confirm that the East End Bridge would not significantly improve cross-river mobility.

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CHAPTER 3: ALTERNATIVES

3.2.1 No-Action Alternative

Pages 3-10 to 3-13: The list of 26 projects already currently planned in the vicinity of the Bridges Project includes a huge percentage (20 out of 26, or 77%) that were not included in the Metropolitan Transportation Plan in 2003. Another 4 from 2003 have already been completed. Together, these projects will improve capacity and mobility in the No-Action scenario. When combined with future traffic projections that have been significantly reduced since the 2003 projections, (see discussion above regarding p. 2-21, Table 2.2-5), the need for the East End Bridge is further called into question, because the No Action scenario includes greater capacity and less traffic demand than previously assumed. The report from Smart Mobility, Inc. also points out that assumptions about design capacity (vehicles per lane per hour) were substantially understated, and that actual design capacity is 38% to 50% greater than the assumptions. If these assumptions are corrected, virtually all volume-to-capacity problems are eliminated under the 2030 No-Action scenario. (Smart Mobility, Inc. Report, p.2 (Jan. 9, 2012).) These substantial discrepancies in the assumptions also undermine the ability to make apples-to-apples comparisons about future capacity under the No-Action scenario.

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3.2.3 Modified Selected Alternative

Page 3-19: The Draft SEIS states that doubling tolls from \$1 to \$2 would produce only a 1% increase in diversion traffic. This assumption lacks credibility, and is inconsistent with the conclusion in the 2003 FEIS that a \$3 toll would divert virtually all of the traffic. (See Smart Mobility, Inc. Report, p.11 (Jan. 9, 2012).)

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³ Smart Mobility, Inc. Report, p.12 (citing DSEIS p.2-6, Table 2.2-1) (Jan. 9, 2012). The Smart Mobility Report, which is cited throughout this comment letter, was attached to the comments on the Draft SEIS submitted by River Fields.

⁴ For example, the Smart Mobility, Inc. Report points out that a 26% increase in VMT between 2007 and 2030 would translate into a 161% increase in VHD. (Smart Mobility, Inc. Report, p.12 (citing DSEIS p.2-6, Table 2.2-1) (Jan. 9, 2012).)

3.3.2.1 Bridge Demand as Percent of Capacity

Page 3-22: Table 3.3-2 suggests that current capacity and congestion problems on the Kennedy Bridge would be resolved essentially by shifting the capacity and congestion problems to the Sherman Minton and Clark Bridges, and further calls into question the need for the East End Bridge.

- The row in Table 3.3-2 labeled “2030 Modified” shows that ***only 17% of all cross-river trips*** (52K/313K) ***would use the East End Bridge; yet the East End Bridge represents approximately 50% of the total project cost.*** It is difficult to defend the East End Bridge from a cost-benefit perspective in light of this data, especially when the data also show that the project would not generate a single permanent job (DSEIS, p.5-6, Table 5.1-3), and when a substantial portion of cross-river trips that would use the East End Bridge are discretionary trips that would not otherwise occur at all (see next bullet). Furthermore, the disparity between the high cost and low traffic utilization means that the bridge would not be self-sustaining in terms of toll funding, and thus, a substantial amount of the toll revenue from the Kennedy Bridge would need to be diverted to subsidize the East End Bridge, which otherwise would not be financially feasible. In other words, Indiana would not only be taking thousands of jobs and households from Kentucky (see discussion below regarding pp. 5-4 through 5-7), but would then add insult to injury by taking Kentucky’s toll revenues as well in order to fund the very highway that would carry away those jobs and households across the river.
- The Total River Crossings column projects a 29% increase in the number of cross-river trips in the 20-year period from 2010-2030 under the No-Action scenario (226.2K to 292K). This assumption is over-inflated, as described in detail in the report from Smart Mobility, Inc., since population is only projected to increase by 15%, and VMT growth in Kentucky is declining. (Smart Mobility, Inc. Report, pp. 6-11 (Jan. 9, 2012).) Furthermore, it is impossible to reconcile this inflated projection with the fact that the actual number of cross-river trips declined by 7% in the 10-year period from 2000 to 2010. (*Compare* 2003 FEIS, p. 2-10, Table 2.2-2 (242K in 2000) *with* DSEIS p.3-22, Table 3.3-2 (226.2K in 2010).) There is no credible basis for suggesting that a 7% decline in the past 10 years will be followed miraculously by a 29% increase in the next 20 years. Any projections that are based on this implausible assumption must be reevaluated.
- Table 3.3-2 projects even more spectacular increases in traffic under the two “build” scenarios: a 43% increase in the number of cross-river trips from 2010-2030 if the full FEIS project were built (226.2K to 324K); and a 38% increase in the number of cross-river trips during the same time period under the Modified proposal (226.2K to 313K). According to this data, building the Modified project would induce 21,000 cross-river trips per day (10,500 round-trips), which would otherwise not occur. Building the full FEIS project would

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induce an extra 32,000 trips per day (16,000 round-trips).⁵ Again, these projections seem over-inflated in light of the reality that cross-river trips declined by 7% from 2000-2010.

- For the Sherman Minton and Clark Bridges, the use of average daily capacity data (113% and 117%) in Table 3.3-2 downplays the fact that these bridges will be even more over-capacity during rush hour. This table should disclose and be based on the worst-case scenario.

Page 3-23 (Table 3.3-3): Table 3.3-3 is filled with errors and inconsistencies, which call into question the validity of all the data and assumptions used in the Draft SEIS.

- For the Clark Bridge, the data in Table 3.3-3 (p. 3-23) flatly contradicts the data in Table 3.3-2 (p. 3-22), and the data appears internally inconsistent as well. For example, p. 3-22 shows that daily demand for the Clark Bridge would be at an average of 117% of capacity (which would mean that rush hour would be more over-capacity, and other times of day would be less congested). However, the detailed breakdown on p. 3-23 suggests that, even during rush hour, demand for the Clark Bridge would be operating at only 78% to 80% of capacity. This is not only mathematically impossible, if average daily demand for the Clark Bridge in 2030 would be 117%, but highly implausible in light of the fact that current (2010) demand for the Clark Bridge during rush hour is 73% to 84%. By contrast, the FEIS projections for the Clark Bridge during rush hour, with no tolls on the new bridges, are 82% to 91%. The capacity of the Clark Bridge would not increase, and the Clark Bridge would be a major magnet for toll-avoiders in light of its close downtown proximity to the tolled Kennedy Bridge. The Traffic Forecasting Report (Appendix H.1) states that the Clark Bridge would experience disproportionate increases in traffic as a result of increases in tolls. (DSEIS, App. H.1, p.26.) Therefore, the assumption that congestion (demand-to-capacity ratio) on the Clark Bridge would decrease, as compared to the non-tolled FEIS plan (82% vs. 78% in the AM; 91% vs. 80% in the PM), is ludicrous. Even more absurd is the assumption that congestion during evening rush hour on the Clark Bridge would be lower than it is today (80% in 2030 vs. 84% today)!
- The 2030 Modified projection data for the Clark Bridge are also suspect because the patterns are dramatically different than for all of the other categories (2010, 2030 No-Action, and 2030 FEIS). Most of the bridges show a relatively small number of “reverse commuters”—except, inexplicably, the Clark Bridge under the 2030 Modified scenario. For example, the number of AM reverse commuters on the Clark Bridge (i.e., northbound) is currently 20%

⁵ The text fails to explain why would there be 11,000 fewer cross-river trips per day (5,500 round-trips) with the Modified proposal as opposed to the full FEIS project. Presumably, the assumption is that these 11,000 trips per day would be deterred by the introduction of tolls.

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of capacity, and is only projected to rise to 22% under the 2030 FEIS scenario. Why would the introduction of tolls cause the number of AM reverse commuters on the Clark Bridge to spike to 71% of capacity under the 2030 Modified scenario? In addition, the number of PM reverse commuters on the Clark Bridge (i.e., southbound) is estimated to be 76% of capacity—just 4% less than the number of primary-direction commuters (80% northbound). This seems inconsistent with AM commuting patterns, which reflect a dramatically lower percentage of reverse commuters.

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- The 2030 capacity projections for the Sherman Minton Bridge on p. 3-23 show virtually identical rush-hour congestion levels for 2030, regardless of whether the two new bridges are built (119% AM/126% PM for No-Action, and 119% AM/125% PM for the Modified project with tolls). This appears inconsistent with Table 3.3-2 on the previous page, which shows 10,000 more trips per day (a 9% increase) on the Sherman Minton Bridge in 2030 if the new toll bridges are built, as compared with No-Action.

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3.3.2.2 Bridge Levels of Service

Page 3-24: The data in Table 3.3-4 appears inconsistent with the demand-to-capacity data on p. 3-22 (Table 3.3-2).

- While we understand that LOS does not correspond precisely with demand-to-capacity ratio, it is implausible to conclude, under the Modified Selected project, that the Kennedy Bridge and East End Bridge would both operate at LOS D (when they would be at only 48% and 72% of their capacity, respectively), while at the same time concluding that the Clark Bridge would operate at LOS C, when it would be at 117% of its capacity.
- As another example of these inconsistencies, the Sherman Minton and Clark Bridges are both projected to operate at 93% capacity in 2030 under the FEIS scenario (Table 3.3-2). Given that data, it is difficult to imagine how Table 3.3-4 could conclude that the Clark Bridge would operate at LOS C, when the Sherman Minton Bridge would operate at LOS E under the same scenario.
- These discrepancies are also reflected in Table S.2-3 at p. S-19, and Table 3.3-7 at p. 3-31.

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3.3.4 Inadequate Cross-River System Linkage

Page 3-30:

- Table 3.3-6 projects a shocking 49% increase in the number of cross-river trips with east-to-east origins and destinations (an additional 20,000 car trips per day) as a result of building the East End Bridge. In other words, a total of 38% of the trips on the East End Bridge (20K/52K) would not even occur if the

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bridge were not built. The purpose and need for the eastern bridge is thus a classic example of “If you build it, they will come” – a self-fulfilling prophecy.

- Table 3.3-6 is also completely implausible (and inconsistent with other data in the Draft SEIS) by showing virtually no difference in the number of east-to-east daily trips in 2030, regardless of whether or not tolls are charged.
 - o Table 3.3-2 on p. 3-22 projects 11,000 fewer cross-river trips per day in 2030 under the Modified plan, as compared to the FEIS plan. This table makes the preposterous assumption that not a single one of those 11,000 foregone trips would have had an east-to-east origin/destination (because the estimate of 61,000 east-to-east daily trips remains identical under both the FEIS and Modified scenarios).
 - o At the same time, Table 3.3-6 shows that, for east-to-east trips in 2030, VHT would be identical (and VMT would increase a miniscule 0.07%) if tolls are added to the new bridges. Since the total number of trips on the East End Bridge in 2030 would be only 52,000 per day, that means 9,000 of the 61,000 east-to-east trips would be taking one of the downtown bridges, either because it’s more direct, or because the drivers want to avoid paying tolls. Table 3.3-6 appears to assume either that there would be no diversion to avoid tolls (because VMT and VHT are assumed to be virtually identical with or without tolls), or that the extra miles and hours required for the toll-avoiding diversion would magically be exactly equal to the miles and hours saved by the 52,000 cross-river trips that would be shorter because they would use the new East End bridge, which is not currently an option.

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CHAPTER 4: AFFECTED ENVIRONMENT

4.3 Historic and Archaeological Resources

In general, we intend to use the Section 106 process to raise our comments regarding historic properties. Some of the information in the Draft SEIS is outdated because it was prepared prior to the last consultation meeting on November 18, 2011. However, we note a few comments that should be corrected in the process of revising these sections of the SEIS.

4.3.1 Above-Ground Resources

Page 4-32: The description of the Section 106 process to date is inadequate and inaccurate.

- The Draft SEIS states that the SHPOs concurred in the proposed APEs (Areas of Potential Effects) “[a]s a result of [the Sept. 29, 2011 Section 106] meeting and further consultation” (p.4-32) (emphasis added). On the contrary, the

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proposed Extensions to the APEs were first presented to the SHPOs in secret, two and a half months before the Sept. 29 meeting, and concurrences were obtained behind closed doors three to seven weeks before the meeting, not “as a result of” it. The consulting parties have lodged multiple objections to the APEs, as well as to many of the effect determinations. Those objections remain unresolved.

- The summary of the themes raised in the Section 106 comments on the APEs is a distorted and incomplete summary. One of the major themes raised by the preservation groups participating as consulting parties has been that the APE is not expansive enough to cover all secondary and cumulative effects. The summary in the Draft SEIS mentions the issue of how effects on historic districts will be considered when only part of the district falls within the APE, and the gap along River Road (both relatively technical issues), but fails to mention consulting parties’ major objections regarding the omission of West Louisville, Portland, and sections of downtown Louisville, which will be subject to secondary and cumulative effects.

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CHAPTER 5: ENVIRONMENTAL CONSEQUENCES

5.1 Social and Economic

Pages 5-4 and 5-5: The maps in Figures 5.1-1 and 5.1-2 show that *Kentucky would be the big loser in terms of jobs and population as a result of this project.* Not a single gain is shown for any location on the Kentucky side of the Ohio River. Indiana, on the other hand, would be the beneficiary of *all* the employment and population that would be transferred across the river; Indiana’s gains would be almost entirely at Kentucky’s expense. (See also p.5-18: 12,000 jobs would shift from Kentucky to Indiana.) In addition, since the East End Bridge would not attract enough traffic to generate adequate toll revenue, Kentucky would be forced to use the downtown toll revenue to pay for Indiana’s bridge. It is difficult to understand why Kentucky would support this project that would generate nothing but losses for Kentucky in the long-term.

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Pages 5-6 and 5-7: The projections regarding future jobs and population trends in Tables 5.1-1 through 5.1-7 appear inconsistent with other assumptions in the Draft SEIS. At the same time, these data appear to demonstrate that building the bridges would result in no net long-term economic growth in the Louisville region.

- For example, Table 5.1-3 shows that in the long-term (2030), not a single additional job would be created as a result of the bridges project, and not a single additional household would be drawn to the Louisville metro area. (The 2030 estimates for “No-Action” and “Build” are identical.) Indeed, p. 5-18 and Table 5.1-11 show that there would be a net loss of 78 jobs as a result of the project being built.

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- Instead, Tables 5.1-1 and 5.1-2 show that, as a result of the bridges project, 2% of the jobs (6,201/231,563) and 0.7% of the households (1,554/211,411) that would otherwise be located more than 10 miles from downtown, would shift closer in to be located less than 10 miles from downtown. This projection seems squarely inconsistent with Table 3.3-6 on p. 3-30, which projects that cross-river trips with an east-to-east origin/destination would increase by 49% as a result of building the bridges. It is difficult to understand how eastern-oriented trips across the river could increase by 49% without generating enough economic activity to create a single new job. Furthermore, Table 5.1-4 shows a significant trend for households to shift more than 10 miles away from downtown Louisville by 2030 (a 29% increase beyond 10 miles, as opposed to only a 5% increase downtown). It is difficult to believe that this strong trend would be virtually unaffected by the construction of an eastern beltway. (It may be that the use of a 10-mile radius is not refined enough to measure trends relating to sprawl, since the East End Bridge itself would be well within the 10-mile radius.)
- Finally, the data in the last two tables (5.1-6 and 5.1-7) show significant inconsistencies with the data relied on in the 2003 FEIS, and confirm that many of the assumptions on which the project was originally approved were erroneous. Although these tables are comparing 2025 projections from the FEIS with more recently developed 2030 projections for the Modified project, the projections show dramatic discrepancies. For the area *beyond* 10 miles from downtown, the number of jobs is projected to be 30% higher in 2030 than was projected for 2025 (231,563 vs. 178,228), and the number of households is projected to be 23% higher (211,411 vs. 172,500). For the area *less than* 10 miles from downtown, the number of jobs is projected to be 16% lower in 2030 than was projected in 2025, while the number of households is projected to be 7% lower. It makes no sense that these strong trends would be halted or reversed by the construction of the eastern bridge, rather than exacerbated.

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5.1.6 Economic Impacts

Direct Impacts of FEIS Selected Alternative and Modified Selected Alternative

Page 5-18: The data in Table 5.1-11 shows that almost 12,000 jobs would shift from Kentucky to Indiana, with a net *decrease* in total long-term jobs, as a result of building the bridges (i.e., compared to No-Action). All of Indiana's growth would be at Kentucky's expense. The Draft SEIS goes on to extol the short-term economic boost from construction jobs,⁶ but none of that economic boost would translate into permanent economic growth, according to this data.⁷

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⁶ This portion of the Draft SEIS states that the first three years of project implementation, beginning in 2012, would be devoted to "planning and engineering,"

5.1.7 Environmental Justice

The environmental justice analysis looks at three types of potential impacts on environmental justice communities: direct impacts, monetary impacts of paying tolls, and impacts from diverted cut-through traffic. However, this analysis fails to evaluate the indirect and secondary impacts on environmental justice communities as a result of the massive economic disinvestment represented by the loss of 12,000 jobs and many households as well from Kentucky to Indiana. The EPA comments confirm that “further consideration” is needed regarding the indirect and cumulative impacts of the project on environmental justice communities. EPA Comments at p.13 (Jan. 9, 2012).

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With respect to the monetary impacts of paying tolls, the Draft SEIS estimates that low-income people making a round-trip on one of the toll bridges five days a week would be spending 9% of their annual income on tolls, as compared to just 2% for those with a median income of \$41,994. We agree with the EPA that “[t]his is significant, and suggests a disproportionate and adverse impact to low-income drivers.” EPA Comments at p.6 (Jan. 9, 2012).

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5.3 Historic and Archaeological Resources

We will continue to rely primarily on the Section 106 review process as the venue for our comments regarding historic and archaeological resources, since the material circulated to the consulting parties is more detailed and up-to-date than the information in the Draft SEIS. However, a few comments are noted below, most of which reference comments that have already been raised through Section 106.

DOWNTOWN PROPERTIES—INDIANA

Spring Street Freight House / Train Depot: Table 5.3-2 (p.5-54) correctly notes that the adverse effect determinations in 2003 for this historic property included both visual and vibration adverse effects. The text explains why the visual impacts have been changed to No Adverse Effect (i.e., elimination of the flyover ramp), but

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rather than actual construction (p.5-18). This contradicts the statement elsewhere in the Draft SEIS that construction itself would begin in 2012. (See pp. S-19 and 3-35.)

⁷ The Draft SEIS fails to explain why the estimated number of average annual construction jobs for the FEIS alternative is 64% higher than what was actually projected in the 2003 FEIS itself. *Compare* DSEIS, p.5-19, Table 5.1-12 (3,850 average annual construction jobs for FEIS Selected Alternative) *with* 2003 FEIS, p.5-35, Table 5.1-11 (2,345 average annual construction jobs for FEIS Preferred Alternative). Again, these substantial discrepancies cast doubt on the validity of all the assumptions and projections.

fails to explain why the determination for vibration impacts has been changed from Adverse Effect in 2003 to No Effect currently.

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Old Jeffersonville Historic District: Table 5.3-3 (p.5-54) states that the project will have No Adverse Effects from construction on the Old Jeffersonville Historic District. We have previously raised an objection to this determination, which remains unresolved.

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EAST END INDIANA PROPERTIES

Utica Lime Kilns: Page 5-56 cites a communication from the Indiana SHPO dated Oct. 23 [sic], 2011 that the quarries would not warrant preservation in place. (DSEIS, App. D.9.) As discussed in more detail below, the DSEIS does not accurately characterize the SHPO's communication, and we disagree with the FHWA determination that preservation in place is not warranted, which was made without any involvement from the consulting parties.

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EAST END RESOURCES--KENTUCKY

Pages 5-85 to 5-87: Objections or questions have been raised regarding the effect determinations for the following properties in Table 5.3-17 (East End Resources Impact Assessment Summary): Harrods Creek Historic District (including but not limited to The Avish); Nitta Yuma Historic District; Ashbourne; Harrods Creek Village Historic District; Cedarbrook Farm; St. Francis in the Fields Church; and Fincastle. In addition, objections have been raised to the No Adverse Effect determination for the Theodore Mueller House & Shady Brook Farm (p. 5-85, Table 5.3-16).

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Furthermore, we have reiterated in earlier comment letters our recommendations that the Nuttall House and the North Field of Belleview (transferred from Rosewell) be referred to the Keeper of the National Register for a formal determination of eligibility.

E5
N4
N5

HISTORIC PROPERTIES WITHIN THE EXTENSIONS TO THE ORIGINAL APE

Pages 5-88 to 5-89: Through the Section 106 consultation process, we have objected to the inadequate analysis and documentation that provided the basis for the "extensions" to the APE based on traffic diversion. These objections apply to the areas we believe have been improperly excluded from the APE, as well as the determinations of No Adverse Effect within the Extended APE. These objections still need to be resolved.

E.7

5.5.1 Noise Impact and Abatement Criteria

Pages 5-115 to 5-118: In our view, it is inappropriate for the FHWA to allow a double-

standard for noise mitigation in a major federal project such as this one, by allowing the states to set significantly different criteria for noise mitigation depending on which side of the river the affected property happens to sit. Kentucky defines a “substantial increase” in noise as 10 dBA or greater than current noise levels (which represents a doubling in perceived noise levels), while Indiana defines a “substantial increase” as 15 dBA or greater than current levels (p. 5-115). Because of the logarithmic scale of noise measurement, this represents a dramatic difference, and the Indiana threshold would fail to include a number of impacts that in our view would be significant. Certainly with respect to historic properties, it is not appropriate for the Section 106 process to allow this kind of double-standard with regard to the assessment of effects.

G.6

In addition, the two states differ regarding the maximum per-capita cost that will be allowed in evaluating the cost-effectiveness of noise barriers: \$35,000 for Kentucky, and \$25,000 for Indiana (pp. 5-117 to 5-118). For example, the barrier for Noise Sensitive Area 7 in Study Area 4 (Utica-Sellersburg Road, Surry Road, and Boulder Creek Subdivision, in Indiana) is projected to cost \$32,803 per benefitted home (p.5-162). This would qualify for mitigation if it were in Kentucky, but is rejected because Indiana’s rules are different.⁸

5.5.2 Assessment of Impacts and Proposed Mitigation by Study Area

Page 5-150: One issue that the Section 106 analysis has failed to consider so far is the potential visual impact of noise barriers on historic properties. For example, noise barriers are proposed for three noise sensitive areas within Study Area 4: Green Spring/Wolf Creek Subdivisions; Wolf Pen Woods Subdivision; and Harrods Creek (p. 5-150). These have the potential to be visible from nearby historic properties (see map at p. 5-153). This potential adverse effect needs to be addressed through Section 106 consultation.

E.14

5.5.3 Historic Properties Noise Assessment

Page 5-165: The Draft SEIS states that “[a]ll historic properties within 800 feet of a proposed build alternative were evaluated [for noise impacts] in TNM2.5.” This statement is false. As we discussed in our most recent Section 106 comments regarding proposed effect determinations, the agencies failed to evaluate noise impacts for the following historic properties within 800 feet of the projected project:

G.7

⁸ This particular outcome seems especially unfair because the noise barrier proposed for Noise Sensitive Areas 5 and 6 just across the highway would echo and exacerbate noise in Area 7 (see p.5-164). The map on p.5-158 strongly suggests that Noise Sensitive Area 5 would not even qualify for a noise barrier at all if it were not combined with Noise Sensitive Area 6, because the homes are further away from the alignment. Clearly the methodology is subject to manipulation.

Cedarbrook; the Edward L. Strater House; and the Nitta Yuma Historic District.

5.18 Summary of Impacts

Page 5-222: For the reasons discussed in our Section 106 comments, the numbers listed in Table 5.18-1 under “historic sites impacted” and “historic districts impacted” are incomplete, and will need to be updated as a result of Section 106 consultation. The same problem applies to Table S.3-1 on p.S-21.

E.11

CHAPTER 6: SECTION 4(f) EVALUATION

Page 6-4: Transylvania Beach. The Draft SEIS states that the Determan House and the house at 6212 Transylvania Beach Road are the two closest homes to the A-15 alignment. The failure to disclose specific proximities makes it difficult for the consulting parties to comment on this information. However, other Section 106 documents show that the house at 6212 Transylvania Beach Road is 350 feet from Alignment A-15, but the house at 6012 Transylvania Beach Road is even closer—just 250 feet away. The increases in noise levels for these homes will be staggering—more than 18 dBA. Therefore, we object to the determination that no constructive use will occur, based on noise and visual impacts.

N.5

Pages 6-5 to 6-8: Utica Lime Kilns. The project as currently designed would involve the physical taking of 1.06 acres from two of the quarries in the Utica Lime Kiln Multiple Property District (DSEIS, p.6-6). In addition, the kilns would be adversely affected in four different ways—through adverse encroachment, visual, construction, and vibration effects (*id.*). By contrast, the assumption in the 2003 FEIS was that the Lime Kilns would be adversely affected only by vibration impacts. (2003 FEIS, p.5-137, Table 5.3-37.)

We strongly object to the determination that the Utica Lime Kilns⁹ are exempt from the protection of Section 4(f) because they are “archaeological resources that are important chiefly because of what can be learned from data recovery, and therefore have minimal value for preservation in place,” (DSEIS, p.6-7 (citing 23 C.F.R. § 774.13(b)(1))). The e-mail communication from the Indiana SHPO dated Oct. 25, 2011 (DSEIS, App. D.9, p.1) confirms that the National Register eligibility of the Utica Lime Kiln district is not limited to Criterion D (“have yielded, or may be likely to yield, information important in prehistory or history”), but also includes Criterion A (“associated with events that have made a significant contribution to the broad patterns of our history”). 36 C.F.R. § 60.4. This further confirms the inappropriateness of attempting to apply the archaeological exemption under Section 4(f).

N.6

⁹ On p.6-7, a typographical error is used at least five times—Lime Kiln #48004 is erroneously labeled as Kiln #84004.

Quarries and their associated kilns are by their very nature a type of resource whose “place” is determined by geological formations and the physical features of the land. It is precisely in this place-based context that they are best understood and interpreted. It is disingenuous to suggest that a quarry is important “chiefly because of what can be learned from data recovery.” Nor did the Indiana SHPO make such a determination. (See DSEIS, App. D.9.) “Data recovery” from a quarry would make no sense, and would be unlikely to occur at all.¹⁰ In recognition of this inherent place-based significance, as well as the rarity and fragility of these unique resources, there are numerous examples around the country of lime kilns and quarries that are preserved in place for public interpretation.¹¹

We recommend that the Section 106 consultation process be used to develop alternatives and modifications to the project design that would embody “all possible planning to minimize harm” to these historic resources, including the potential for avoidance,¹² and that the Section 4(f) exemption for archaeological resources (which is both inapplicable by its terms and, in our view, unlawful) should not be invoked.

N.6
cont.

¹⁰ Although the Section 4(f) regulations state that the “exemption” for archaeological resources applies regardless of whether data recovery is actually undertaken or not, 23 C.F.R. § 774.13(b)(1), the National Trust has long taken the position that this regulation is unlawful. The one court case that upheld an earlier version of this regulation was conditioned on a “safeguard” that is no longer included in the regulation—the assumption that the agencies would “develop a ‘resource recovery plan’ that would remove and preserve the significant items.” *Town of Belmont v. Dole*, 766 F.2d 28, 33 (1st Cir. 1985), *cert. denied*, 474 U.S. 1055 (1986) (quoting 23 C.F.R. § 135(f)(1) (1984)).

¹¹ See, e.g., http://quarriesandbeyond.org/states/ca/quarry_photo/ca-scruz_ixl_gry_photos.html (Fall Creek, CA); http://en.wikipedia.org/wiki/Cowell_Lime_Works (Santa Cruz, CA); http://www.wabashanderiecanal.org/Lime_Kilns.html (Delphi, IN); http://www.westgov.com/recreation/rec_parks_lime.html (Westminster, MD); http://www.boltonconservationtrust.org/index.php?pg=8&id_trail=3 (Bolton, MA); <http://www.wvc.townofchelmsford.us/conservation/limequarryinfo.htm> (Chelmsford, MA); <http://www.nps.gov/bica/historyculture/lime-kiln-and-limestone-quarry.htm> (Bighorn Canyon, MT); <http://www.houstoncochamber.com/limekiln-history-cms-102> (Erin, TN); <http://theateratlimekiln.org/support-us/sponsorship-opportunities-2/> (Lexington, VA); <http://www.village.grafton.wi.us/DocumentView.aspx?DID=604> (Grafton, WI); <http://sanjuanislandtrails.org/trailsw/lime-kiln-park/> (San Juan Island, WA).

¹² The nature and magnitude of the adverse effects to these historic resources are greater than was assumed in 2003, and therefore, the measures to avoid, minimize, and mitigate harm should not be limited to those in the 2003 MOA or those described on p.6-8.

Ms. Janice Osadczuk
Mr. John Sacksteder, P.E.
January 9, 2012
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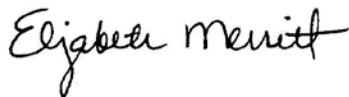
Page 6-8: Potential for Constructive Use

The draft Section 4(f) Evaluation applies an erroneous and unlawful standard in evaluating whether any historic properties would be affected by “constructive use.” The document states that any adverse effects on historic properties “would not impair the use of the properties *to the extent that they would no longer be eligible for NRHP listing*; and therefore, they would not result in a constructive use for any historic property or district.” DSEIS, p.6-8 (emphasis added). Even the FHWA’s own Section 4(f) regulations do not limit “constructive use” to cases where the adverse effect is so severe as to destroy the National Register-eligibility of a historic property. See 23 C.F.R. § 774.15(e). All constructive use determinations need to be reevaluated based on the proper standard.

N.5

Thank you again for the opportunity to comment on the Draft Supplemental EIS for this project. We look forward to reviewing the responses to these and other comments.

Sincerely,



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