



OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE, 1980 WEST BROAD STREET, COLUMBUS, OH 43223

OFFICE OF ENVIRONMENTAL SERVICES

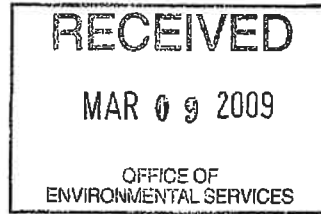
REC'D BY OHPO MAR 03 2009

February 27, 2009

Mr. Mark Epstein, Department Head
Resource Protection and Review
Ohio Historic Preservation Office
567 East Hudson Street
Columbus, Ohio 43211

Attn: Thomas Grooms
ODOT Review Manager, Archaeology

Re: CUY-Cleveland Innerbelt (PID 77510)
Archaeological Resource Coordination



Dear Mr. Epstein:

Previously submitted for your files and review was a copy of the cultural resources survey report entitled *Phase I Cultural Resources Survey for the Cleveland Innerbelt: CUY-Innerbelt (PID 77510) Cleveland, Cuyahoga County, Ohio*, prepared by Hardlines Design Company, and a set of aerial photos showing the position of the preferred alternative corridor. The report contains an assessment of land-use describing the level of land disturbance across the Area of Potential Effect. The proposed highway project will improve traffic flow and safety by reconstructing portions of the interstate highway system in the City of Cleveland, Cuyahoga County, Ohio. The Innerbelt refers to the actual interstate roadway that is the central focus of the study which begins at I-71 past the merger with State Route 176 (Jennings Freeway) to the I-71/I-90/I-490 interchange. From this interchange the Innerbelt proceeds north along I-90 over the Central Viaduct Bridge, which carries traffic over the Cuyahoga River and will be reconstructed as a part of the proposed project. From the Central Viaduct the Innerbelt continues north along the eastern edge of downtown Cleveland in a depressed section of freeway (Innerbelt Trench), through the Innerbelt Curve to where it merges with State Route 2 (The Shoreway).

On May 30, 2006, OES submitted the previously referenced cultural resource survey to the OHPO. Although the report recommended no further archaeological investigations because of the vast extent of modern disturbance, the OHPO recommended waiting until a preferred alternative was selected, or at least a more defined study corridor was established, before concurring on a "no further work" recommendation. In the Fall of 2008, a preferred alternative corridor was selected and aerial photographs with the project's current proposed footprint were produced. These aerials depicting the corridor were previously provided to Thomas Grooms prior to a joint field meeting held on February 17, 2009.

This field review, combined with the information provided in the 2006 cultural resources report and information from the current aerial photographs, indicated that the entire area is indeed thoroughly disturbed by commercial, residential, and industrial development, landscape modification, artificial landform construction, parking lot construction, and underground utility installation. Other areas are

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CUY-Cleveland Innerbelt (PID 77510)

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disturbed as a result of the demolition of houses and the subsequent grading and filling and, in some areas, paving. Nearly all available space within the preferred alternative corridor is occupied by buildings, streets and parking lots. Areas of fill were identified during the 2009 field meeting and during the Hardlines Design Company field investigations in 2006. Fill activity is also indicated by the USDA/SCS (1980) soil survey of Cuyahoga County as large areas of Urban Land (Ub) are depicted throughout the corridor. This soil is characterized as mostly miscellaneous materials places in fill and almost totally covered by roads, buildings, and other structures.

The February 17, 2009 joint field review with your staff focused on the preferred alternative corridor near the Central Viaduct Bridge. This alternative will cross open space along the Cuyahoga River Valley. During the field review, we observed heavy industrial development, a stone/gravel operation, piling along the channelized stream channel of the Cuyahoga River, and areas previously disturbed by bridge construction. Furthermore, the soil survey notes that areas along the Cuyahoga River are covered by the Urban Land soil type, which contains waste material from steel mills and other industrial activity. The severity of the disturbance, therefore, precludes the existence of intact archaeological deposits. The shallow nature of the land surface along the Cuyahoga River would also preclude the existence of stratified archaeological deposits.

Conclusion

We would appreciate the return of this letter, signed to indicate that you do not object to the archaeological finding. If no objection is received within 30 days, in accordance with the Advisory Council on Historic Preservation's current regulations under 36 CFR part 800.3 (c) (4), FHWA and ODOT will proceed to the next step in the process based on these findings.

Respectfully,

Timothy M. Hill, Administrator
Office of Environmental Services

OHIO STATE HISTORIC PRESERVATION OFFICE CONCURRENCE:

3/9/09

(Date)

TMH: jaw

c: M. Carpenter, District 12; Project File.; Reading File



Mark
Carpenter/Planning/D12/ODO
T
03/24/2009 09:28 AM

To mepstein@ohiohistory.org, ncampbell@ohiohistory.org,
gdavis@wrhs.org, kcrowther@clevelandrestoration.org,
mfeenor@clevelandrestoration.org, chrisgarland@twdc.org,
cc michael.armstrong@FHWA.DOT.GOV, Tim
Hill/Environmental/CEN/ODOT@ODOT, Susan
Gasbarro/Environmental/CEN/ODOT, Paul
bcc
Subject Fw: Environmental Mitigation vs. Enhancement

Dear Consulting Party Team Members:

As discussed that the March 18, 2009 meeting held at the ODOT District 12 Office, attached below is the FHWA definitions of enhancement and mitigation.

If you have any questions, please contact me at (216) 584-2089.

Thank you,

Mark Alan Carpenter, P.E.
District 12 Environmental Engineer
(216) 584-2089

----- Forwarded by Mark Carpenter/Planning/D12/ODOT on 03/24/2009 09:12 AM -----



"Armstrong, Michael"
<Michael.Armstrong@fhwa.d
ot.gov>
03/20/2009 08:39 PM

To <Mark.Carpenter@dot.state.oh.us>
cc "Armstrong, Michael" <Michael.Armstrong@fhwa.dot.gov>,
<Larry.Hoffman@dot.state.oh.us>,
<Craig.Hebebrand@dot.state.oh.us>,
<Paul.Graham@dot.state.oh.us>
Subject Environmental Mitigation vs. Enhancement

Mark,

In accordance with the commitment, to define the difference between environmental mitigation vs. enhancement, as made by FHWA during the Innerbelt Section 106 PA meeting on Wednesday March 18, 2009 I have assembled the following for your distribution to the consulting parties.

Federal transportation policy, as reflected in the strategic goals of the U.S. Department of Transportation (DOT), the Federal Highway Administration (FHWA) and its Environmental Policy Statement, stress mobility; protection of the human and natural environment; and community preservation, sustainability, and livability.

Project enhancement activities, which go beyond what is customarily provided as environmental mitigation, are considered to be transportation enhancements by the FHWA.

The laws governing traditional Federal-aid project funding under Chapter 1 of Title 23 U.S.C. apply to both the funding of environmental mitigation and transportation enhancement activities. NEPA environmental mitigation measures are required to be incorporated into Federal-aid projects. Transportation enhancement activities may be incorporated into a project by ODOT and they may be funded with appropriate Federal-aid funding if they meet the eligibility requirements.

Environmental Mitigation:

Measures necessary to mitigate adverse impacts are eligible for Federal funding when the FHWA determines that: (a) The impacts for which the mitigation is proposed actually result from the FHWA action; and (b) The proposed mitigation represents a reasonable public expenditure after considering the impacts of the action and the benefits of the proposed mitigation measures. In making this determination, the FHWA will consider, among other factors, the extent to which the proposed measures would assist in complying with a Federal statute, Executive Order, or Administration regulation or policy.

- *NEPA - 40 CFR Sec. 1508.20 Mitigation:*

"Mitigation" includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action.*
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.*
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.*
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.*
- (e) Compensating for the impact by replacing or providing substitute resources or environments.*

- *It is FHWA's policy that (23 CFR § 771.105):*

- *To the fullest extent possible, all environmental investigations, reviews, and consultations be coordinated as a single process, and compliance with all applicable environmental requirements be reflected in the environmental document required by this regulation.*
- *Alternative courses of action be evaluated and decisions be made in the best overall public interest based upon a balanced consideration of the need for safe and efficient transportation; of the social, economic, and environmental impacts of the proposed transportation improvement; and of national, state, and local environmental protection goals.*
- *Public involvement and a systematic interdisciplinary approach be essential*

parts of the development process for proposed actions.

- Measures necessary to mitigate adverse impacts be incorporated into the action.

- It is FHWA's responsibility to (23 CFR § 771.109):

- Implement those mitigation measures stated as commitments in the environmental documents prepared pursuant to NEPA.

- (a) The FHWA will assure that this is accomplished as a part of its program management responsibilities that include reviews of designs, plans, specifications, and estimates (PS&E), and construction inspections.

Transportation Enhancement Activities:

Transportation enhancement activities offer opportunities to help expand transportation choices and enhance the transportation experience. Transportation enhancement activities must relate to surface transportation and must qualify under one or more of the eligible categories in order to be eligible for the federal-aid funding. Transportation enhancement activities are a subcomponent of the Surface Transportation Program (STP). Transportation enhancement funds may not be used to fund or finance normal environmental mitigation work eligible under the regular federal-aid highway program. Transportation enhancements were enacted as a means of stimulating additional efforts to create an improved transportation environment and system, while making a contribution to the surrounding community.

- **Definition (23 USC 101):**

- "Transportation enhancement activity" means, with respect to any project or the area to be served by the project, any of the following activities as the activities relate to surface transportation:

- (a) Provision of facilities for pedestrians and bicycles.
 - (b) Provision of safety and educational activities for pedestrians and bicyclists.
 - (c) Acquisition of scenic easements and scenic or historic sites (including historic battlefields).
 - (d) Scenic or historic highway programs (including the provision of tourist and welcome center facilities).
 - (e) Landscaping and other scenic beautification.

- (f) Historic preservation.

- (g) Rehabilitation and operation of historic transportation buildings, structures, or facilities (including historic railroad facilities and canals).

- (h) Preservation of abandoned railway corridors (including the conversion and use of the corridors for pedestrian or bicycle trails).

- (i) Inventory, control, and removal of outdoor advertising.

- (j) Archaeological planning and research.

- (k) Environmental mitigation –

- (i) to address water pollution due to highway runoff; or

- (ii) to reduce vehicle-caused wildlife mortality while maintaining habitat connectivity.

- (l) Establishment of transportation museums.

Michael B. Armstrong, Highway Engineer
Federal Highway Administration
Ohio Federal-aid Division
200 North High Street, Room 328
Columbus, OH 43215

Telephone: (614) 280-6855

Fax: (614) 280-6876

e-mail: michael.armstrong@fhwa.dot.gov



OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223

TED STRICKLAND, GOVERNOR • JOLENE M. MOLITORIS, DIRECTOR

OFFICE OF ENVIRONMENTAL SERVICES

June 5, 2009

Mr. Mark Epstein, Department Head
Resource Protection and Review
Ohio Historic Preservation Office
567 East Hudson Street
Columbus, Ohio 43211

Subject: CUY-IR 71/77/90, Cleveland Innerbelt, PID 77510

Re: New Westbound, Interstate Route 90 Innerbelt Bridge over the Cuyahoga River
& Treatment Plans to Mitigate Section 106 Adverse Effects

Dear Mr. Epstein:

On May 20, 2009, the *Programmatic Agreement Among the Federal Highway Administration, The Ohio State Historic Preservation Office, and the Ohio Department of Transportation Regarding the Federal-Aid Highway Improvement of Interstate Route 71, 77 and 90 in the City of Cleveland, Cuyahoga County, Ohio, CUY-90 Innerbelt; PID 77510, Agreement Number 15498*, was executed. Enclosed is a copy of the executed agreement.

As a result of the first construction project, the construction of westbound, Interstate Route (IR) 90 Innerbelt Bridge over the Cuyahoga River, three properties eligible for inclusion on the National Register of Historic Places (NRHP) will be adversely affected. A Section 106 Consulting Party meeting was held on May 20, 2009 at the ODOT, District 12 office. Pursuant to the executed Programmatic Agreement (Agreement Number 15498), treatment plans to mitigate adverse effects were discussed, as well as, potential project specific enhancements and locally sponsored plans. Topics of discussion included: multi-use pedestrian trails; the reuse of the Central Viaduct Bridge abutment; the reuse of buried rail lines; the construction of scenic overlooks; the incorporation of aesthetic treatments into the adjacent bridge piers and abutments emphasizing the significance of the historic resources. All agreed the Section 106 mitigation measures, project specific enhancements, and locally sponsored plans should complement the intent of each. Enclosed are copies of the May 20, 2009 attendance sheet, slide presentation, and meeting notifications.

Project specific enhancements will be developed in conjunction with the aesthetic committee members and local agency officials. Project specific enhancement considerations may include: aesthetic treatments to the new bridge abutments and piers; pedestrian overlooks and facilities; the reuse of the Central Viaduct Bridge abutment; and commemorative parks. Locally sponsored enhancements may include reuse of buried rail lines and multi-use pedestrian trails.



Mr. Epstein
CUY-IR 71/77/90, Cleveland Innerbelt, PID 77510

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In accordance 36 CFR § 800 and Stipulation I (E) of the executed Programmatic Agreement (Agreement Number 15498), FHWA and ODOT propose the following treatment plans to resolve the adverse effect of the first construction project on Broadway Mills, Marathon Gas Station, and the Distribution Terminal Warehouse:

1. Broadway Mills, 300 Central Viaduct, is eligible for inclusion on the NRHP under Criteria A as a rare example of Cleveland's milling industry and under Criteria C for architecture.
 - i) Level II documentation as specified by the Historic American Building Survey (HABS) in accordance with 36 CFR § 68, The Secretary of the Interior's Standards for the Treatment of Historic Properties (STANDARDS) will be prepared. Archival HABS documentation will be maintained at the State of Ohio Library, the designated archival repository. High quality copies of the HABS documentation will be provided to the Cleveland Landmarks Commission, Cleveland Public Library, Cleveland Restoration Society, Western Reserve Historical Society, Cleveland State University Library, the Western Reserve Fire Museum and Education Center, and will provide additional copies to other recipients upon request.
 - ii) A commemorative display will be located at or near the existing mill site. The commemorative display will compliment the location of project specific enhancements to ensure the safety of the viewing public. Reuse of architectural components will be considered and incorporated into the display along with a plaque commemorating the significance of the resource. Location and design of the commemorative display will be refined as project design progresses and as a result of Section 106 consultation.
- 2) Marathon Gas Station, 300 Central Viaduct, is eligible for inclusion on the NRHP under Criteria A for its association with Cleveland's automobile history and under Criteria C for architecture.
 - i) Level II documentation as specified by the Historic American Building Survey (HABS) in accordance with 36 CFR § 68, The Secretary of the Interior's Standards for the Treatment of Historic Properties (STANDARDS) will be prepared. Archival HABS documentation will be maintained at the State of Ohio Library, the designated archival repository. High quality copies of the HABS documentation will be provided to the Cleveland Landmarks Commission, Cleveland Public Library, Cleveland Restoration Society, Western Reserve Historical Society, Cleveland State University Library, the Western Reserve Fire Museum and Education Center, and will provide additional copies to other recipients upon request.
- 3) Distribution Terminal Warehouse, 2000 West 14th Street, is eligible for inclusion on the NRHP under Criteria A for its role in the evolution of Cleveland's food distribution network and under Criteria C for architecture.
 - i) A historic context will be prepared documenting the significance of the resource in relation to the City of Cleveland's food distribution industrial history during the period of significance. ODOT will provide copies, of the historic context documentation to the Cleveland Landmarks Commission, Cleveland Public Library, Cleveland Restoration Society, Western Reserve Historical Society, Cleveland State University Library, the Western Reserve Fire Museum and Education Center, and will provide additional copies to other recipients upon request.

Mr. Epstein
CUY-IR 71/77/90, Cleveland Innerbelt, PID 77510

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June 5, 2009

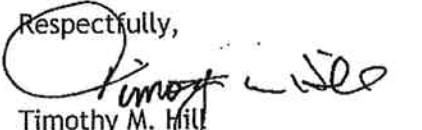
In accordance with Stipulation I (F), FHWA and ODOT are providing copies of the subject consultation and proposed treatment plans to the consulting parties for concurrent 30-day review. All comments received by FHWA and ODOT will be forwarded to the OSHPO at the end of the 30-day review period. The disposition of each and any appropriate revisions to the proposed treatment plans will be provided to the OSHPO for consideration at that time.

All consulting party comments received within the 30-day review period along with the written disposition of each, any appropriate revisions to the proposed treatment plans, and the OSHPO mitigation comment or acceptance letter to FHWA and ODOT, will serve as evidence of the Stipulations of the executed agreement are being carried out as documented within the agreement. Upon implementation of an accepted treatment plan, the appropriate documentation will be submitted to the OSHPO for their 30-day review and approval that the terms, conditions, and provisions of the accepted treatment plan have been implemented in full accordance with the executed agreement.

In accordance with the Advisory Council on Historic Preservation's current regulations and the executed *Programmatic Agreement Among the Federal Highway Administration, The Ohio State Historic Preservation Office, and the Ohio Department of Transportation Regarding the Federal-Aid Highway Improvement of Interstate Route 71, 77 and 90 in the City of Cleveland, Cuyahoga County, Ohio CUY-90 Innerbelt; PID 77510, Agreement Number 15498*, ODOT has determined the proposed treatment plans mitigate the adverse effects of the undertaking on historic cultural resources.

If no response is received within 30 days, in accordance with the Advisory Council on Historic Preservation's current regulation under 36 CFR Part 800.3(c)(4), it will be presumed that the State Historic Preservation Officer agrees with the determination made in the above coordination.

Respectfully,


Timothy M. Hill
Administrator
Office of Environmental Services

Ohio State Historic Preservation Office Concurrence:

(Date)

TMH:sg
Enclosure

Mr. Epstein
CUY-IR 71/77/90, Cleveland Innerbelt, PID 77510

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June 5, 2009

cc: Carol Legard	Advisory Council on Historic Preservation	w/attachments
Michael Armstrong	Federal Highway Administration	w/attachments
David Snyder	Federal Highway Administration	w/attachments
Nancy Campbell	Ohio Historic Preservation Office	w/attachments
Mark Epstein	Ohio Historic Preservation Office	w/attachments
Thomas Grooms	Ohio Historic Preservation Office	w/attachments
Dennis J Kucinich	US Congress House of Representatives	w/attachments
Robert Keiser	Cleveland Landmarks Commission	w/attachments
Kermit Pike	Western Reserve Historical Society	w/attachments
Patrick Reymann	Western Reserve Historical Society	w/attachments
Sarah J Beimers	Cleveland Restoration Society	w/attachments
Chris Garland	Tremont West Development Corp.	w/attachments
William Beckenbach	Quadrangle Incorporated	w/attachments
James Haviland	Midtown Cleveland, Inc.	w/attachments
Jamie Blackson-Baker	St. Clair Superior	w/attachments
Thomas Starinsky	Historic Gateway Neighborhood Corp.	w/attachments
Tom Newman	Flats Oxbow	w/attachments
Tim Tramble	Burten Bell Carr	w/attachments
Debbie Berry	City Planning Commission	w/attachments
Robert Brown	City Planning Commission	w/attachments
Joseph Cimperman	Councilperson, City of Cleveland Ward 13	w/attachments
Phyllis Cleveland	Councilperson, City of Cleveland Ward 5	w/attachments
Dean Tracy Lind	Trinity Cathedral	w/attachments
John J Boule	Cleveland State University	w/attachments
Gina Lattimer	Carnegie Prospect Holdings	w/attachments
Anita Perez	Central YMCA Cleveland	w/attachments
Michael Hageman	Zion Lutheran Church & School	w/attachments
Michael Chesler	Prospect Development, Inc.	w/attachments
George Graham	Pilgrim Congregation Church	w/attachments
Rev Dr Laurinda Hafner	Pilgrim Congregation Church	w/attachments
Paul Alsenas	Cuyahoga County Commissioner	w/attachments
Jimmy DiMora	Cuyahoga County Commissioner	w/attachments
Timothy Hagan	Cuyahoga County Commissioner	w/attachments
Marvin Hayes	Cuyahoga County Commissioner	w/attachments
Peter Lawson Jones	Cuyahoga County Commissioner	w/attachments
Scott Pollack	Cuyahoga Metropolitan Housing Authority	w/attachments
Scott Carpenter	Western Reserve Fire Museum/Education Center	w/attachments
Martha Eakin		w/attachments
Susan Miller		w/attachments
Paul Stubbs	Fire Chief, City of Cleveland	w/attachments

**PROGRAMMATIC AGREEMENT
AMONG THE FEDERAL HIGHWAY ADMINISTRATION,
THE OHIO STATE HISTORIC PRESERVATION OFFICE, AND
THE OHIO DEPARTMENT OF TRANSPORTATION
REGARDING THE FEDERAL-AID HIGHWAY IMPROVEMENT OF
INTERSTATE ROUTES 71, 77, AND 90 IN
THE CITY OF CLEVELAND, CUYAHOGA COUNTY, OHIO
CUY-90 INNERBELT; PID 77510
AGREEMENT NUMBER 15498**

- 1) WHEREAS, the Federal Highway Administration (FHWA) is the AGENCY responsible for compliance with Section 106 of the National Historic Preservation ACT (NHPA) of 1966, as amended (16 U.S.C. Part 470), and the implementing regulations 36 CFR Part 800; and
- 2) WHEREAS, Ohio Department of Transportation (ODOT) administers Federal aid Highway projects in the State of Ohio as authorized by Title 23 U.S.C. Part 302 and Sections 5501.03, 5501.11, and Chapter 5531 of the Ohio Revised Code; and
- 3) WHEREAS, the FHWA, in cooperation with ODOT, will prepare an Environmental Impact Statement (EIS) for proposed improvements to Interstates 71, 77 and 90, and connecting radial freeways and local roadways, known as the Cleveland Innerbelt; and
- 4) WHEREAS, the purpose of the CUY-90 Innerbelt, PID 77510, the UNDERTAKING as defined in 36 CFR § 800.16(y), is to improve the physical condition of the existing bridge decks and roadway pavements, improve the operational performance of the roadway system, improve the safety of the roadway system, and improve the access provided by the roadway system, while supporting community goals and objectives; and
- 5) WHEREAS, FHWA, in cooperation with ODOT, may prepare independent environmental documents as warranted for components of the UNDERTAKING, that are constant in scope and Section 106 effect, relative to the overall UNDERTAKING, due to unforeseen circumstances related to, but not limited to public interest management of, funding, scheduling, or deterioration of the existing infrastructure; and
- 6) WHEREAS, the UNDERTAKING is a type of activity, located in an urban area with alternatives under consideration, that has the potential to cause effects on historic properties; and
- 7) WHEREAS, the intent of this PROGRAMMATIC AGREEMENT is to record the conditions agreed upon to resolve the adverse effect of this UNDERTAKING on historic properties, those resources that are listed in or eligible for inclusion in the National Register of Historic Places (NRHP), in accordance with 36 CFR Part 800; and

CUY-90 Innerbelt PID 77510
Programmatic Agreement
Agreement Number 15498

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- 8) WHEREAS, it is also the intent of this PROGRAMMATIC AGREEMENT to satisfy all remaining Section 106 responsibilities for all elements of the UNDERTAKING covered by the AGREEMENT until it expires or is terminated by the FHWA or signatories.
- 9) WHEREAS, FHWA and ODOT have consulted with the Advisory Council on Historic Preservation (ACHP) and the ACHP has decided that they will not be participating in consultation; and
- 10) WHEREAS, FHWA and ODOT have consulted with the Ohio State Historic Preservation Office (OSHPO); and
- 11) WHEREAS, FHWA and ODOT will consult with Federally recognized Indian tribes that may attach religious and cultural significance to historic properties; and
- 12) WHEREAS, FHWA and ODOT have identified and consulted with consulting parties and have not denied any of the identified consulting parties such status for this UNDERTAKING; and
- 13) WHEREAS, FHWA and ODOT have invited the identified consulting parties to concur with this PROGRAMMATIC AGREEMENT and will continue to consult with the consulting parties as the UNDERTAKING progresses; and
- 14) WHEREAS, FHWA and ODOT have reduced the footprint of the UNDERTAKING and the need for new highway right-of-way by following avoidance and minimization measures in ODOT's project development process; and
- 15) WHEREAS, FHWA and ODOT will continue to incorporate avoidance and minimization measures into and during the detailed design and the construction of the UNDERTAKING as an integral part of ODOT's project development process.
- 16) NOW THEREFORE, FHWA, ODOT, and OSHPO agree that the UNDERTAKING shall be administered in accordance with the following stipulations to satisfy FHWA's Section 106 responsibilities for all aspects of the UNDERTAKING.

STIPULATIONS

FHWA shall ensure that the following measures are carried out:

STIPULATION I - ARCHITECTURE

A) In consultation with FHWA, OSHPO, and other consulting parties, ODOT has identified architectural historic properties in the Area of Potential Effects (APE) for the UNDERTAKING. The report titled CUY-IR71/90 PID: 77510 Section 106 Assessment of Effects for the Feasible Alternatives, September 2008, and the supplemental consultation identifies the anticipated effects to historic properties located within the APE by the alternatives under consideration.

B) The ODOT will propose treatment plans to mitigate the adverse effects of the UNDERTAKING.

C) ODOT will propose treatment plans that are commensurate with the level of effect to historic properties, that are appropriate for public recordation of the historic property, and that are of reasonable cost. Treatment plans will be developed in consideration of the qualities of the property that qualify it for eligibility or listing on the NRHP and they will take into account the views of the consulting parties.

D) The ODOT and FHWA will provide for the administration of the UNDERTAKING and treatment plan activities and associated reasonable cost, in accordance with available and eligible State and Federal program funds.

E) ODOT will propose treatment plans using, but not limited to, one or more of the treatments on the following list and in accordance with paragraphs C and D above:

i) Level II documentation as specified by the Historic American Building Survey (HABS) in accordance with 36 CFR Part 68, The Secretary of the Interior's Standards for the Treatment of Historic Properties (STANDARDS) will be considered. Archival HABS documentation will be maintained at a designated archival repository. High quality copies of the HABS documentation will be provided to the recipients, as determined in the treatment plan.

ii) A plaque or plaques commemorating the significance of the historic property will be considered in association with commemorative displays or as stand-alone treatments.

iii) The preparation of historic context documentation, documenting the architect, significant events, architecture, patterns in history, and people associated with the resource in relation to the City of Cleveland, the state, or the nation during the period of significance will be considered. ODOT will provide copies, of the historic context documentation, to consulting parties and will provide additional copies to other recipients upon request.

iv) The application of aesthetic treatments, to elements of the proposed UNDERTAKING highway infrastructure elements, as mitigation for the UNDERTAKING will be in accordance with the STANDARDS.

v) Salvage of architectural elements prior to demolition activities or construction activities, for reuse or for commemorative purposes, will be considered.

vi) The development of educational materials, magazine or journal articles, commemorative displays, and websites that provide a public benefit will be considered.

F) ODOT will concurrently submit proposed treatment plans to the consulting parties for review and comment, and to the OSHPO for AGREEMENT review, comment, and acceptance under the terms of this AGREEMENT. The ODOT submission will request that review comments be provided to the ODOT within 30-days. ODOT will consider and provide for the written disposition of all comments received within the 30-day time period. All comments received within the 30-day time period along with

the written disposition of each, and any appropriate revisions to the proposed treatment plan(s) will be provided to the OSHPO for consideration. The OSHPO will upon the receipt and consideration of all comments, comment disposition, and appropriately revised documentation, provide ODOT with comment or acceptance of the proposed mitigation under the terms of this AGREEMENT.

G) ODOT will provide a copy of all comments received within the 30-day time period along with the written disposition of each, any appropriate revisions to the previously coordinated treatment plan(s), and a copy of the OSHPO's mitigation comment or acceptance letter to the FHWA for their record as evidence that the STIPULATIONS of this PROGRAMMATIC AGREEMENT are being carried out as documented within the AGREEMENT. ODOT will also provide a copy of their written disposition of all comments received, any appropriate treatment plan revisions, and the OSHPO mitigation comment or acceptance letter to all consulting parties for their information.

H) ODOT will, upon the successful complete implementation of an accepted treatment plan, submit appropriate documentation to the OSHPO, for their 30-day review and approval that the terms, conditions, and provisions of the accepted treatment plan have been implemented in full, in accordance with the STIPULATIONS of this PROGRAMMATIC AGREEMENT.

I) ODOT will, upon the approval of OSHPO, provide a copy of the OSHPO correspondence documenting the successful complete implementation of each accepted treatment plan to the FHWA for their record as evidence that the STIPULATIONS of this PROGRAMMATIC AGREEMENT are being carried out and to the consulting parties for their information. ODOT will provide copies of documentation that validates the successful complete implementation of accepted treatment plans to the to the FHWA and consulting parties upon request.

STIPULATION II - DEVELOPMENT OF THE UNDERTAKING'S PREFERRED ALTERNATIVE

A) Upon the development of the UNDERTAKING'S preferred alternative or component of such, FHWA and ODOT will consult as necessary with the OSHPO and other consulting parties to identify areas outside of the APE that require additional identification efforts. If the APE is revised upon the development of the UNDERTAKING'S preferred alternative or component of such, FHWA and ODOT will consult with the OSHPO and other consulting parties to identify areas that require additional identification efforts.

B) ODOT will concurrently submit the results of additional historical or archaeological identification efforts, eligibility findings, and any anticipated effects of the UNDERTAKING or one of its components upon Section 106 resources within the revised APE, to the consulting parties for review and comment, and to the OSHPO for review, comment, concurrence in determinations of effect, and, if applicable, acceptance of proposed mitigation measures under the terms of this AGREEMENT. ODOT-proposed treatment plans, as may be necessary under this STIPULATION, will be developed consistent with the Architectural STIPULATIONS contained within this PROGRAMMATIC AGREEMENT. ODOT-proposed data recovery plans, as may be

necessary under this STIPULATION, will be developed in a manner commensurate with the level of effect to the archaeological resource, will be appropriate for the management of the archaeological resource, and will be of reasonable cost. The ODOT submission will request that review comments be provided to the ODOT within 30-days. ODOT will consider and provide for the written disposition of all comments received within the 30-day time period. All comments received within the 30-day time period along with the written disposition of each, and any appropriate revisions to the submitted documentation and proposed treatment plan(s) or data recovery plan(s) will be provided to the OSHPO for consideration. The OSHPO will upon the receipt and consideration of all comments, comment disposition, and appropriately revised documentation, provide ODOT with comment or concurrence in effect and acceptance of the proposed mitigation under the terms of this AGREEMENT as may be applicable.

C) ODOT shall be accountable for managing all documentation coordinated under this STIPULATION in accordance with the confidentiality provisions of 36 CFR § 800.11.

D) ODOT will provide a copy of all comments received within the 30-day time period along with the written disposition of each, any appropriate revisions to the previously coordinated documentation, and a copy of the OSHPO's comment or concurrence in effect and acceptance of the proposed mitigation under the terms of this AGREEMENT correspondence as may be applicable, to the FHWA for their record as evidence that the STIPULATIONS of this PROGRAMMATIC AGREEMENT are being carried out as documented within the AGREEMENT. ODOT will also provide a copy of their written disposition of all comments received, any appropriate documentation revisions, and the applicable OSHPO comment or concurrence in effect and acceptance of the proposed mitigation under the terms of this AGREEMENT correspondence, to all consulting parties for their information.

E) ODOT will, upon the successful complete implementation of any applicable accepted treatment plan or data recovery plan, submit appropriate documentation to the OSHPO, for their 30-day review and approval that the terms, conditions, and provisions of the accepted treatment or data recovery plan have been implemented in full, in accordance with the STIPULATIONS of this PROGRAMMATIC AGREEMENT.

F) ODOT will, upon the approval of OSHPO, provide a copy of the OSHPO correspondence documenting the successful complete implementation of each accepted treatment or data recovery plan to the FHWA for their record as evidence that the STIPULATIONS of this PROGRAMMATIC AGREEMENT are being carried out and to the consulting parties for their information. ODOT will provide copies of documentation that validates the successful complete implementation of accepted treatment plans and data recovery plans to the FHWA and consulting parties upon request.

STIPULATION III - PROFESSIONAL QUALIFICATIONS

Consultants working on ODOT projects in the fields of History, Archaeology, and Architectural History must be prequalified by ODOT for such work. These individuals must meet the requirements of the Secretary of Interior's Professional Qualifications

Standards (36 CFR Part 61, Appendix A) and the Personnel Qualifications in the OSHPO's Archaeology Guidelines (1994) and/or any successors to those standards and guidelines.

STIPULATION IV - PROJECT MODIFICATIONS

If the APE is revised due to modifications of the UNDERTAKING, ODOT will prepare cultural resource re-evaluation documentation and coordinate the revised APE pursuant to STIPULATION III.

STIPULATION V - DISPUTE RESOLUTION

A) Should any signatory to the PROGRAMMATIC AGREEMENT object at any time to any actions proposed or the manner in which the terms of the PROGRAMMATIC AGREEMENT are implemented, FHWA, with ODOT as FHWA's agent, will consult with such signatory to resolve the objection.

B) If FHWA determines that such objection cannot be so resolved, FHWA will:

- 1) Forward all documentation relevant to the dispute, including FHWA's proposed resolution, to the ACHP. The ACHP should provide FHWA with the ACHP's advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, FHWA will prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of FHWA's written response. FHWA will then proceed according to its final decision.
- 2) If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, FHWA may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, FHWA will prepare a written response that takes into account any timely comments regarding the dispute from signatories and concurring parties to the PROGRAMMATIC AGREEMENT, and provide them and the ACHP with a copy of such written response.
- 3) FHWA's responsibility to carry out all other actions subject to the terms of the PROGRAMMATIC AGREEMENT which are not the subject of the dispute will remain unchanged.

STIPULATION VI - POST REVIEW DISCOVERIES

If previously unidentified archaeological or historic properties, or unanticipated effects on historic properties during construction are discovered after ODOT has completed its review under this PROGRAMMATIC AGREEMENT, that portion of the project will stop immediately, pursuant to Section 203.04 of ODOT's Construction And Material Specifications. The ODOT project engineer will immediately contact ODOT-Office of Environmental Services (ODOT-OES) and/or the ODOT District 12 Environmental Coordinator. No further construction in the area of discovery will proceed until the requirements of 36 CFR § 800.13 have been satisfied, including if

appropriate consultation with Federally recognized Native American Indian tribes that may attach traditional cultural and religious significance to the discovered property. ODOT will consult with OSHPO and other consulting parties, as appropriate, to record, document and evaluate NRHP eligibility of the property and/or the project's effect on the historic property, and to design a plan for avoiding, minimizing, or mitigating adverse effects on the eligible property. If neither the OSHPO, a Federally recognized Native American Indian tribe, or other consulting parties file a timely objection to ODOT's plan for addressing the discovery, ODOT may carry out the requirements of 36 CFR § 800.13 on behalf of FHWA and the ACHP need not be notified.

STIPULATION VII - TREATMENT OF HUMAN REMAINS

A) Historic and prehistoric human remains are subject to protection under Ohio Revised Code Sections 2909.05 and 2927.11. As such, if human remains are discovered during construction, work in that portion of the project will stop immediately. The remains will be covered and/or protected in place in such a way that minimizes further exposure of and damage to the remains, and the ODOT project engineer will immediately consult with the ODOT District Environmental Coordinator, ODOT-OES, and immediately notify local law enforcement and/or the County Coroner. If the project has a U.S. Army Corps of Engineers (USACOE) permit issued, the ODOT District Environmental Coordinator must notify ODOT-OES and the USACOE. If the remains are found to be Native American Indian, a treatment plan will be developed by ODOT-OES and OSHPO in consultation with FHWA, ACHP, and appropriate federally recognized Native American Indian tribes. FHWA and ODOT will ensure that any treatment and reburial plan is fully implemented. If the remains are not Native American Indian, the appropriate local authority (i.e., local law enforcement and/or county coroner) will be consulted to determine final disposition of the remains. Avoidance and preservation in place is the preferred option for treating human remains.

B) For Native American Indian human remains discovered on Federal lands, the Federal land managing agency will be responsible for consultation under the Native American Graves Protection and Repatriation Act of 1990 (PL 101-601).

C) For skeletal remains discovered on property owned by the State of Ohio, ODOT will comply with Section 149.53 of the Ohio Revised Code. Under this section, the Director of the Ohio Historical Society shall determine final disposition of any discovered skeletal remains.

STIPULATION VIII - AMENDMENTS

Any signatory to the PROGRAMMATIC AGREEMENT may propose to other parties that it be amended, whereupon the signatories will consult in accordance with 36 CFR § 800.6(c) (1) to consider such an amendment.


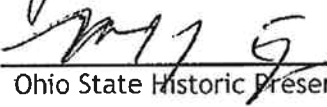
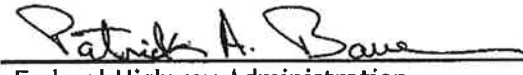
STIPULATION IX - DURATION

If the UNDERTAKING has not been initiated within five (5) years of the date of the execution of this PROGRAMMATIC AGREEMENT, this PROGRAMMATIC AGREEMENT will be considered null and void, unless the signatories agree in writing to an extension for

implementation of its terms. Signatories will return four and one-half (4½) years after the execution of this PROGRAMMATIC AGREEMENT to amend or to extend the term of the agreement for an additional five (5) years.

Execution of this PROGRAMMATIC AGREEMENT by FHWA and implementation of its terms evidences that FHWA has taken into account the effects of the UNDERTAKING on historic properties and afforded the ACHP an opportunity to comment.

SIGNATORIES:

	3/31/09
Ohio Department of Transportation	Date
	5.19.09
Ohio State Historic Preservation Office	Date
	5-14-09
Federal Highway Administration	Date

CONCURRING PARTIES:

_____	Date
Dennis J. Kucinich, U.S. Congress, House of Representatives	Date
_____	Date
Cleveland Landmarks Commission	Date
_____	Date
Western Reserve Historical Society	Date
_____	Date
Cleveland Restoration Society	Date
_____	Date
Tremont West Development Corporation	Date
_____	Date
Quadrangle Incorporated	Date
_____	Date
MidTown Cleveland Incorporated	Date

St. Clair Superior	Date
Historic Gateway Neighborhood Corporation	Date
Flats Oxbow	Date
Burten Bell Carr	Date
City Planning Commission	Date
City of Cleveland	Date
Trinity Cathedral	Date
Cleveland State University	Date
Carnegie Prospect Holdings	Date
Central YMCA Cleveland	Date
Zion Lutheran Church & School	Date
Prospect Development, Inc. & Kies-Murfey House	Date
Pilgrim Congregation Church	Date
Cuyahoga County Commissioner	Date

Paul Alsenas	Date
Cuyahoga Metropolitan Housing Authority	Date
Western Reserve Fire Museum & Education Center	Date
Martha Eakin	Date
Susan Miller	Date

Section 106 Consultation

Introductions

Handouts

Status of Section 106 PA

2

E 12

Section 106 Consultation

Intent of this meeting is to identify and consult on Treatment Plans to Resolve Adverse Effects pursuant to the Section 106 PA as a result of impacts from the first construction project.

Further consultation for future projects will be conducted as design progresses.

3

Section 106 Consultation

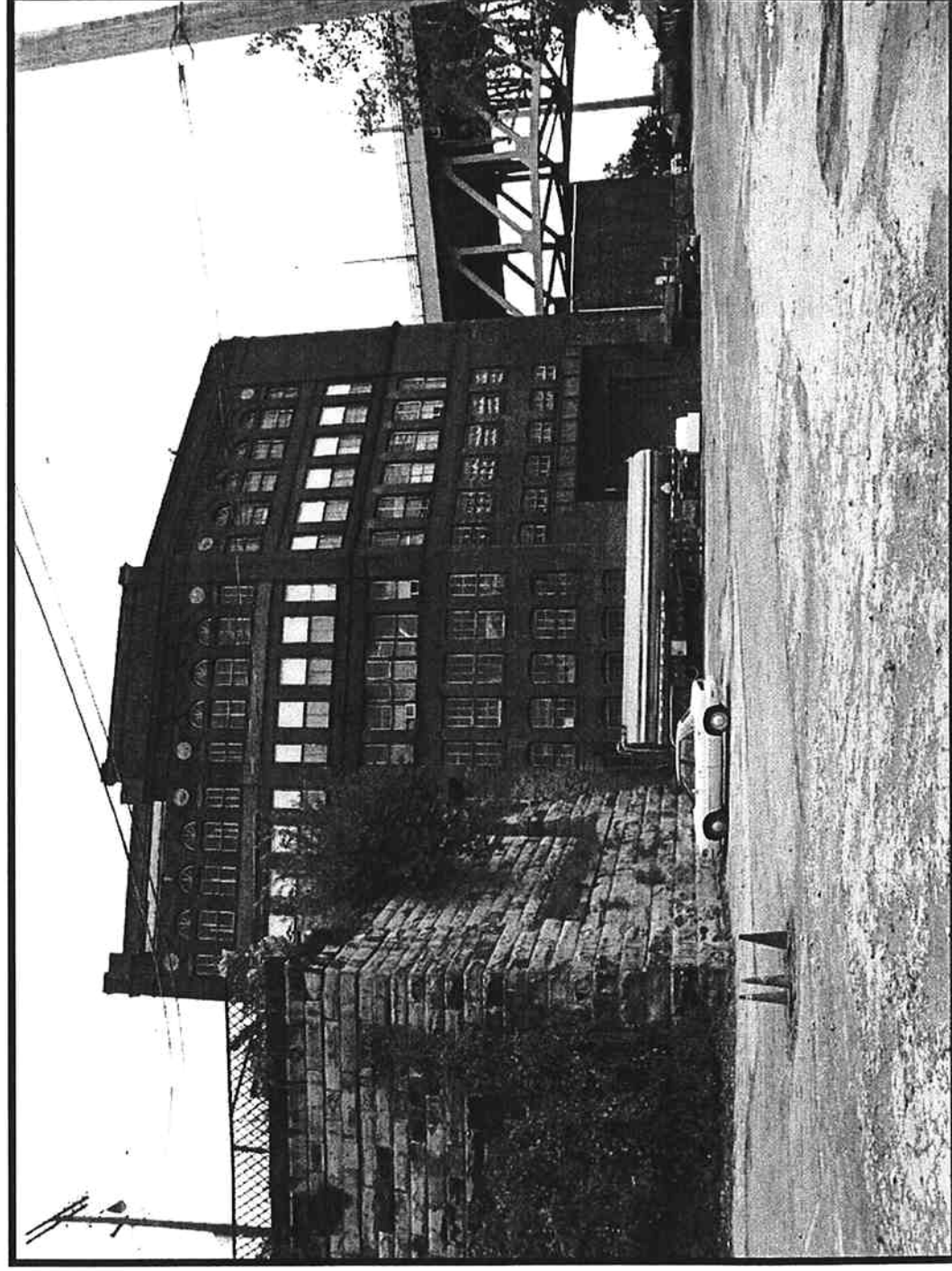
The first construction project will result in adverse effects to the following properties:

- Broadway Mills
- Marathon Gas
- Distribution Terminal Warehouse

E 13

4

Broadway Mills - NR Criterion A & C (Cleveland's Milling Industry & Architecture)



5