



COALITION FOR TRANSIT AND SUSTAINABLE DEVELOPMENT  
GREATER CINCINNATI

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3/8/2024

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**Comments in response to the Supplemental Environmental Assessment for the Brent Spence Bridge Corridor Project.**

Mr. Smith:

These comments are submitted by the Coalition For Transit and Sustainable Development in response to the Supplemental Environmental Assessment (SEA) for this Project dated January 12, 2024. For the reasons set forth below, we believe that a full Environmental Impact Statement (EIS) is required for this Project.

The purpose of an environmental assessment is to determine whether a proposed agency action will have significant impacts on the human or natural environment, in which case a full Environmental Impact Statement is required.

**Introduction**

The Federal Highway Administration determined back in August of 2012 that the then preferred alternative would have no significant impact on the human or natural environment. Almost a dozen years have passed since then, and much has changed over that time. The projected increases in traffic volume that were used then to justify the need for adding a new 10-lane bridge across the Ohio River have not occurred. The combination of the covid epidemic and the widespread adoption of video technology for working virtually has reduced commuting traffic volumes. Scientific knowledge and understanding of the impacts of greenhouse gas emissions has advanced, as has

recognition of the need to reduce such emissions in order to limit the magnitude of the enormous risks and harms resulting from climate change. Federal policies to address racial and ethnic inequity and disparities, including environmental injustice, have been strengthened. Moreover, the currently preferred alternative has changed in numerous ways from what was evaluated in 2012.

About a year ago, the Environmental Protection Agency on February 15, 2023, raised a number of serious concerns over a preliminary draft of the Supplemental Environmental Assessment:

Determining the appropriate level of NEPA analysis is FHWA's decision and responsibility. EPA is not requesting an EIS based on materials provided to date. Pursuant to CEQ NEPA regulations (40 CFR 1501.6), if FHWA is unable to mitigate impacts to a less than significant and reach a defensible mitigated Finding of No Significant Impact (FONSI), then an EIS would be required. EPA is concerned with potentially significant construction and operational air quality and noise impacts on low-income and minority communities that have already experienced longstanding environmental impacts from I-71/I-75. EPA is also concerned with impacts from induced travel demand, induced development/growth, and direct and indirect releases of greenhouse gases. On January 9, 2023, Council on Environmental Quality (CEQ) published interim guidance to assist federal agencies in assessing and disclosing climate change impacts during environmental reviews. See <https://www.federalregister.gov/documents/2023/01/09/2023-00158/national-environmental-policy-act-guidance-on-consideration-of-greenhouse-gas-emissions-and-climate> for further information.

While the Supplemental Environmental Assessment addresses some of these issues, it totally misses the mark on some, and it is incomplete, insufficient or misleading as to others. It cannot support a Finding of No Significant Impacts (FONSI). Reasonable alternatives were not considered, a number of important impacts were not considered at all, others were inadequately considered, and some of the impacts of the project that were identified are not to be mitigated. As a result, a finding of no significant impacts cannot be made, and an EIS must be prepared.

### **ODOT's obligation to take affirmative action to mitigate prior discriminatory harms**

Construction of the original I-75 project through a predominantly Black community concluded in 1963 and created ongoing disproportionate negative impacts on low-income communities and communities of color. The ODOT application for federal funding under the Multimodal Project Discretionary Grant program shows that the entire project impact area in the state of Ohio is made up of areas designated as Areas of Persistent Poverty, Historically Disadvantaged Communities, or both. Of note, the West End neighborhood is designated as both a Historically Disadvantaged Community and an Area of Persistent Poverty, and it was this neighborhood that was most severely impacted by the razing of properties during the initial construction of the interstate in the City of Cincinnati. **Where prior discriminatory practice or usage has tended to subject individuals to discrimination under any program or activity to which Title VI applies, the applicant or recipient, in this case ODOT, "must take affirmative action to remove or overcome the effects of the prior discriminatory practice or usage."** 49 C.F.R. § 21.5(b)(7).

### **EPA's Environmental Justice Screening Tools Demonstrate the Ongoing Harm to These Communities**

The SEA, at page 75, sets forth the DOTs' EJ Study Area. Interestingly, **that Study Area diverges as far from the Construction area as approximately 2.5 miles to the east and 2 miles to the southeast to include all of Census Blocks, 35,36, 44, 45, 46, 52, 53, 54, 62, 68. (each of which are designated as non-EJ blocks).** Meanwhile, **EJ Blocks 1, 4, and 63** line the entire western edge of the Construction zone in Ohio, and all of **EJ Block 63** hugs a significant length of the western edge in Kentucky. In Ohio, on the east side of the Construction zone, **EJ Blocks 5, 6, 11, 14, and 24** are immediately adjacent and line the great majority of its length, and **EJ Blocks 12 and 13** fall within  $\frac{1}{4}$  and  $\frac{1}{2}$  mile east of the Construction zone. In Kentucky, **EJ Blocks 39, 47, and 64** lie immediately adjacent to the east side of the Construction zone, and **EJ Blocks 42, 49, 50, 55, 56, 58, 59, 60, 61, 66, and 70** are within  $\frac{1}{2}$  to 1 mile from the Construction zone. **It should not need to be pointed out that the air pollution, noise, and dust impacts from construction of the project, and from operation of a greatly expanded highway would be much more intense and serious in areas closer to the highway – the area of actual construction and traffic -- than in areas farther from these activities. The SEA pays no attention to this and repeatedly simply compares the number of affected EJ and non-EJ blocks in assessing whether impacts on EJ communities are disproportionate.**

#### **The SEA erroneously discounts the project's harms to nearby minority residents**

The Supplemental Environmental Assessment attempts to discount environmental justice concerns regarding disproportionate adverse impacts on minority communities by claiming any harms to minority populations will not be predominately borne by minority populations and are not appreciably more severe or greater in magnitude than those experienced by non-minority populations.

This completely ignores the fact that the States and the Region are highly segregated, and the fact that **the residents in these minority neighborhoods are already disproportionately harmed by existing pollution.**

#### **Census Data Documents the Racial Segregation**

The neighborhoods along the expansion corridor in Covington and Cincinnati are more dominated by Black and Hispanic minorities than most other parts of those Cities, and much more dominated by those minorities than the population of either state.

The US Census Population total for 2020 are that the **State of Kentucky** had 4,505,836 residents, 82.4% non-Hispanic white, **9.7% Black**, 1.7% Asian, and **4.6% Hispanic**. Of the state's 437,066 Black residents, 23,407 or 5.3% of them lived in the 3-county N Kentucky region, where they make up 5.8% of the region's 398,108 population. 11,254 Black residents, 48% of those in the 3-county region, were concentrated in Kenton County, where they made up 6.7% of the County's 169,064 population. 4,668 of those living in Kenton County, were **further concentrated in the City of Covington, where they made up 11.4% of the City's 40,950 population. In Census tracts 607, 650, 651 which straddle the eastern side of the Brent Spence Bridge Corridor Expansion area in Covington, Black residents reside in a greater proportion 14.1%, 13.1%, and 33.1% than their share of the city's population and in a much greater proportion than their share of the state's population.** Of the state's 207,268 Hispanic residents, 17,757 or 8.6% of them lived in the 3-county N Kentucky region, where they make up 4.7% of the region's 398,108 population. 7,741 Hispanic residents, 43.5% of those in the 3-county region, were concentrated in Kenton County, where they made up 4.6% of the County's 169,064

population. 3,481 of those living in Kenton County, were further **concentrated in the City of Covington, where they made up 8.5% of the City's 40,950 population. In Census tracts 616, 650, 607 which straddle the western and eastern side of the Brent Spence Bridge Corridor Expansion area in Covington, Hispanic residents reside in a greater proportion 17.5%, 12.6%, and 9.6% than their share of the city's population and in a much greater proportion than their share of the state's population.**

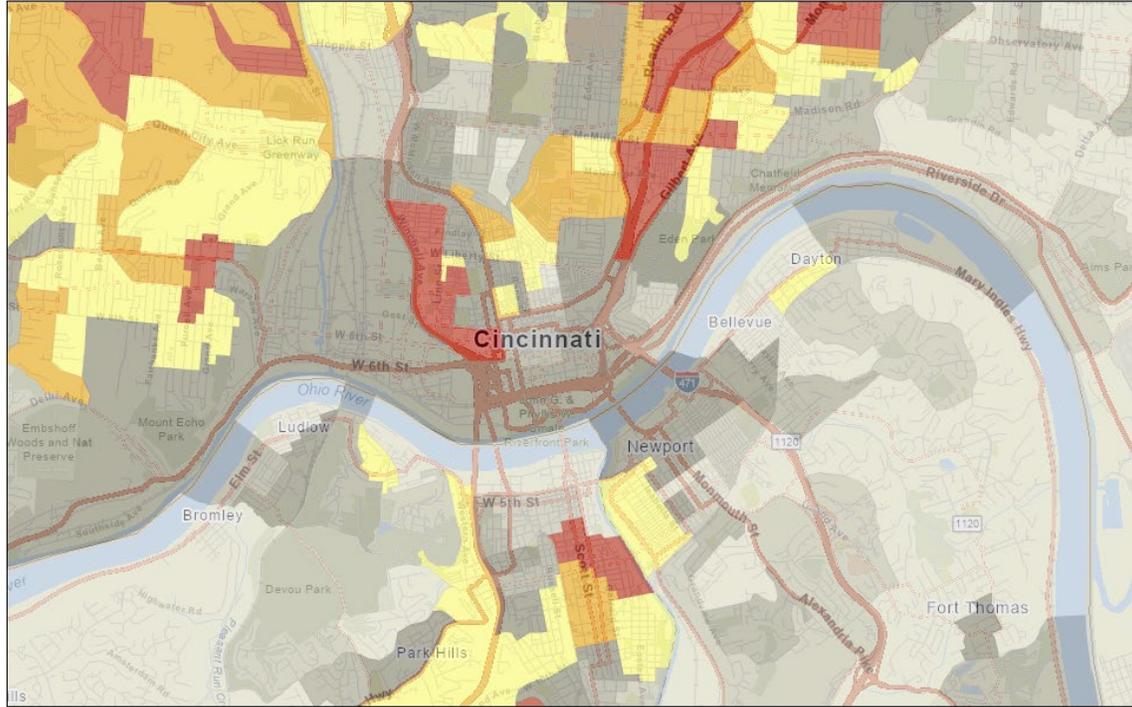
The US Census Population total for 2020 are that the **State of Ohio** had 11,799,448 residents, 80.9% non-Hispanic white, **13.3% Black**, 2.7% Asian, and **4.5% Hispanic**. Of the state's 1,569,326 Black residents, 286,813 or 18.3% of them lived in the 4-county SW Ohio region, where they make up 17.2% of the region's 1,671,934 population. 227,978 Black residents, 79.5% of those in the 4-county region, were **concentrated in Hamilton County, where they made up 27.5% of the County's 830,639 population**. 122,567 of those living in Hamilton County, were **further concentrated in the City of Cincinnati, where they made up 39.6% of the City's 309,317 population. In Census tracts 263, 269, 2, and 264 which straddle the eastern and western side of the Brent Spence Bridge Corridor Expansion area in Cincinnati, Black residents reside in a greater proportion 47.8%, 76.7%, 86.0% and 76.2% than their share of the city's population and in a much greater proportion than their share of the state's population**. Of the state's 530,957 **Hispanic residents**, 74,209 or 14.0% of them lived in the 4-county SW Ohio region, where they make up 4.4% of the region's 1,671,934 population. 36,250 Hispanic residents, 48.8% of those in the 4-county region, were concentrated in Hamilton County, where they made up 4.4% of the County's 830,639 population. 14,228 of those living in Hamilton County, were further concentrated in the City of Cincinnati, where they made up 4.6% of the City's 309,317 population. **In Census tracts 263, 92, and 93 which straddle and are adjacent to the western side of the Brent Spence Bridge Corridor Expansion area in Cincinnati, Hispanic residents reside in a greater proportion 6.1%, 31.4%, and 15.6% than their share of the city's population and in a much greater proportion than their share of the state's population.**

### **The EPA's EJA Screening Tool Documents Already Existing Harms**

The U.S. Environmental Protection Agency Environmental Justice Screening Tool (available at <https://ejscreen.epa.gov/mapper> ) ranks census blocks and tracts by percentile, compared to either the nation, or the state in which they are located, with EJ Indexes for exposure to air pollutants (PM 2.5, ozone, diesel particulate material, air toxics cancer risk, air toxics respiratory health) and by Socioeconomic Indexes for people of color, low income, and Health Disparities (Asthma). The census areas adjacent to or almost adjacent to the project corridor with higher proportions of minority residents repeatedly are identified by the EPA as in the 99-100 percentile, or the 90-95 percentile rankings of these indexes

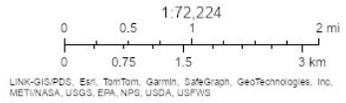
Thus, the EPA EJ Map People of Color vs. State confirms that the DOTs' EJ Census blocks correspond to relatively high concentrations of minority residents (ranging from the 70<sup>th</sup> percentile to the 100<sup>th</sup> percentile in their respective states. See below.

# People of Color VS State



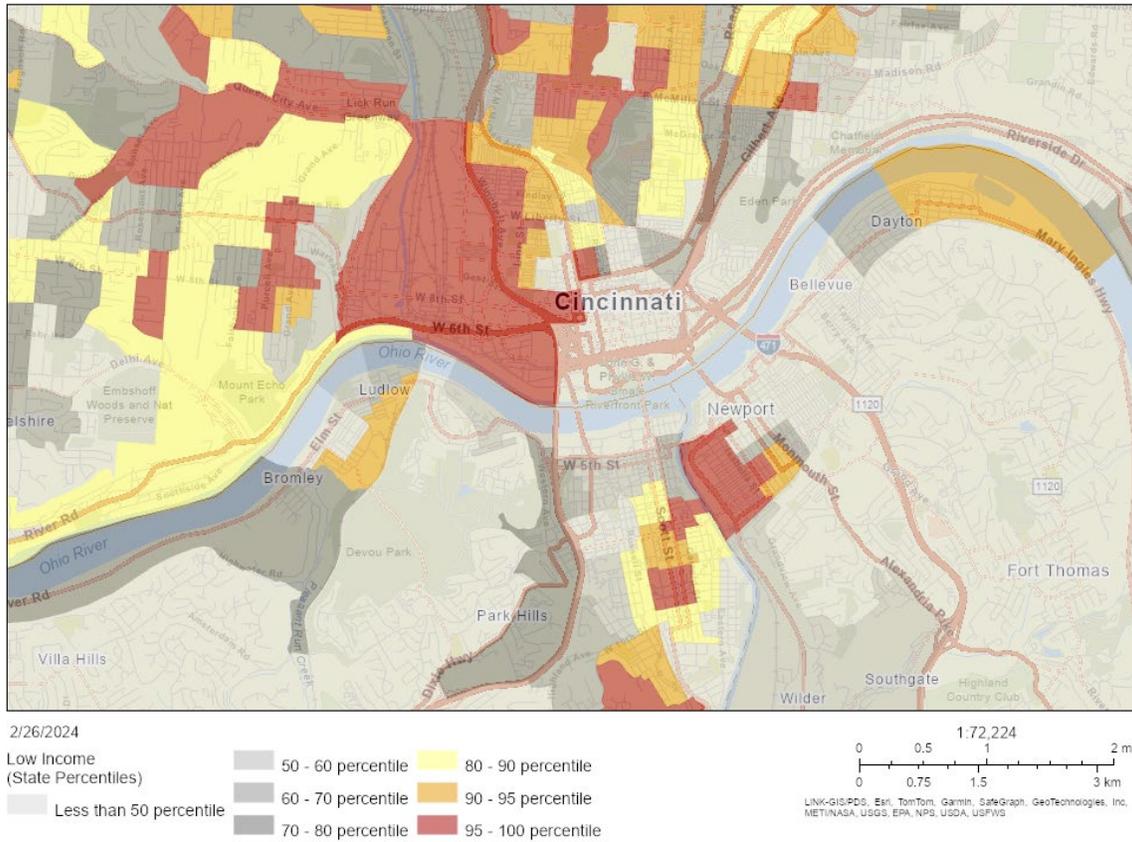
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People of Color  
(State Percentiles)



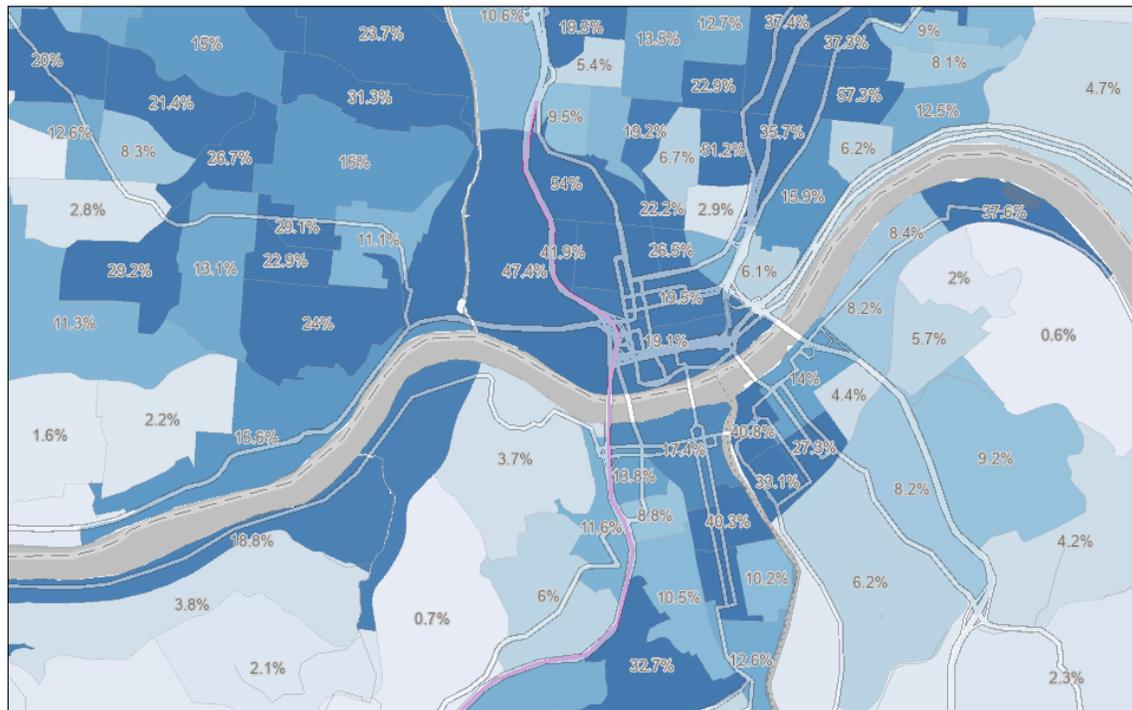
The EPA EJ Map Low Income vs. State presents a fairly similar pattern, but with higher percentiles prevalent near the highway in Ohio (compared to the "People of Color" map), and slightly lower percentiles prevalent along the highway in Kentucky (compared to "People of Color"). See below.

Low Income VS State

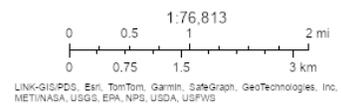


The EPA EJ Map Percentage of Households with No Vehicle Access unsurprisingly presents a largely similar pattern. Thus, 40-54% of the households in Ohio in substantial areas west and east of the highway have no access to vehicles (excluding the immediate downtown area east of the highway north of the Ohio River; in Kentucky, west of the highway there are considerably lower %s of households with no access to vehicles, but east of the highway, there are a series of blocks, some immediately adjacent to the highway and others within 1/2 to 1 1/2 miles from the highway with between 32.7% and 40.8% having no access to vehicles. Those areas correspond to the DOTs' EJ Census blocks. See below.

Percentage of Households with No Vehicle Access

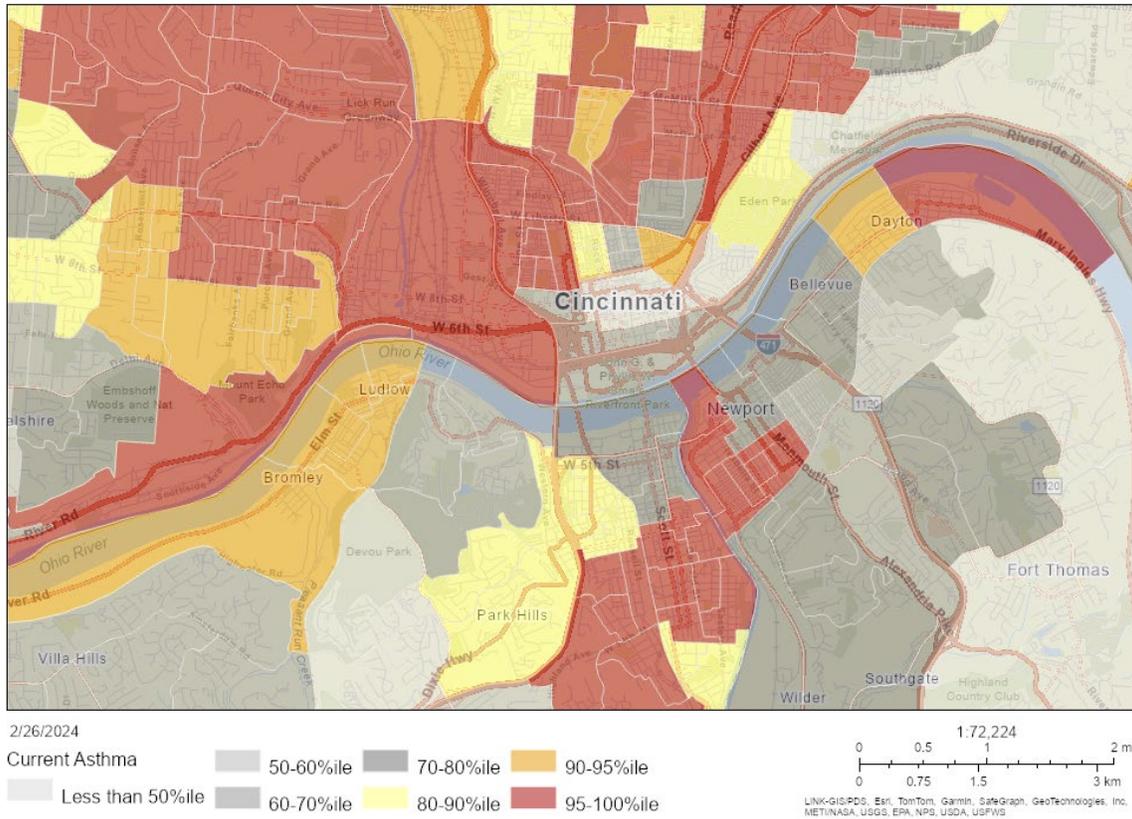


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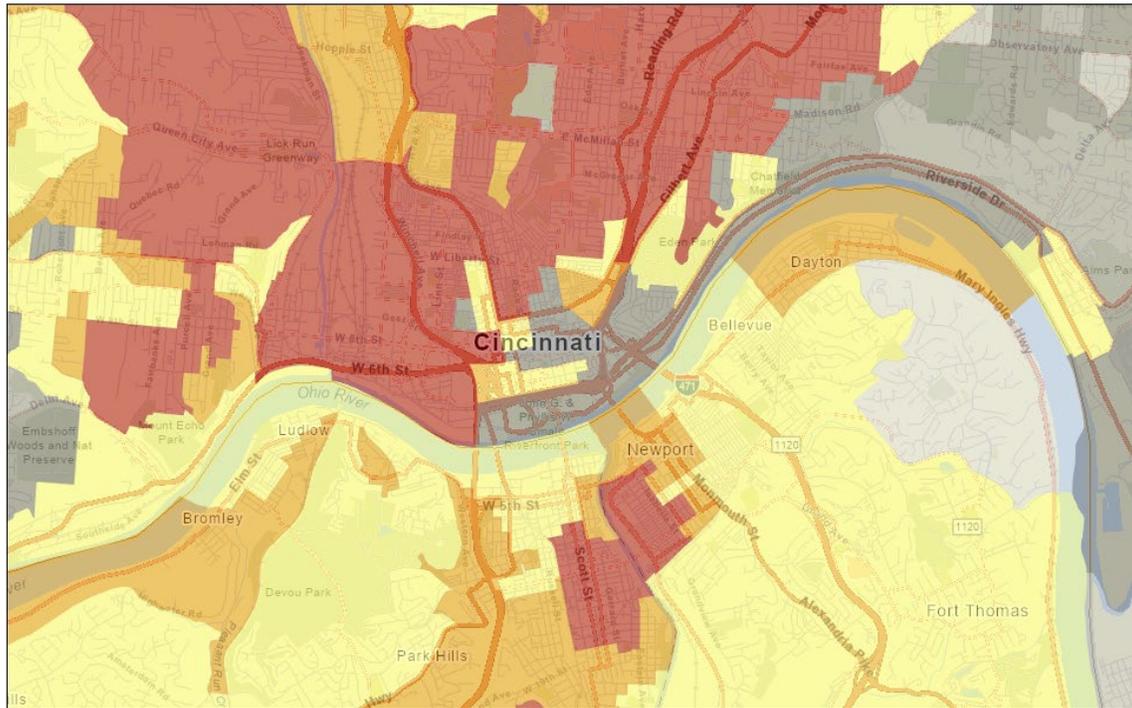
The EPA EJ Map Health Disparities: Asthma vs. Nation identifies the Areas west and east of the highway in Ohio (excluding the downtown area must north of the Ohio River) as being within the 95-100 percentile compared to the nation’s population with respect to prevalence of asthma. In Kentucky, immediately west of the highway and immediately east of the highway and near to the Ohio River, the prevalence of asthma ranges in the 80-100 percentile, and between the 95-100 percentile further south along the highway and through the series of EJ census blocks as one moves west and north from there. See below.

Health Disparities: Asthma VS Nation



The EPA EJ Map Air Toxics Respiratory vs. State, is largely similar to the Asthma Map, with the same general pattern of the areas identified in the SEA as Ohio EJ Census Blocks overwhelmingly being in the 95-100 percentile range, and the Kentucky EJ Census Blocks falling in the 80-100 percentile ranges. See Below.

Air Toxics Resp VS State



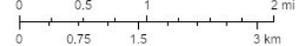
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Air Toxics Respiratory HI  
(State Percentiles)

Less than 50 percentile

- |   |                    |   |                     |
|---|--------------------|---|---------------------|
|  | 50 - 60 percentile |  | 80 - 90 percentile  |
|  | 60 - 70 percentile |  | 90 - 95 percentile  |
|  | 70 - 80 percentile |  | 95 - 100 percentile |

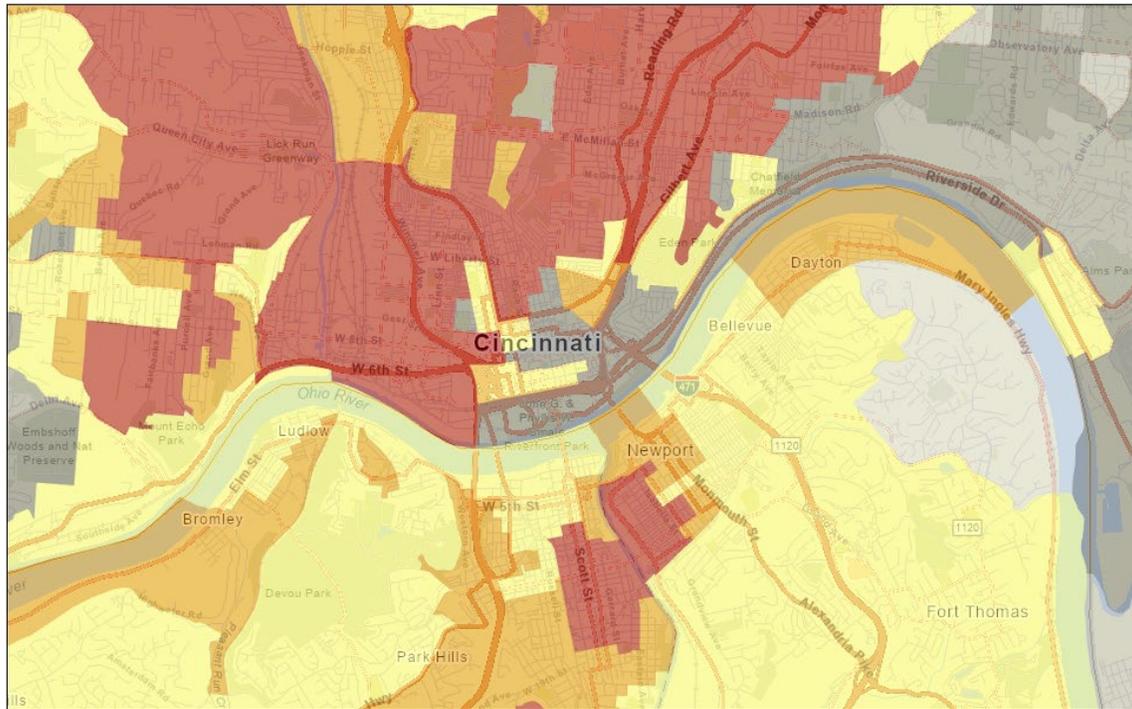
1:72,224



LINK-GIS/PDS, Esri, TomTom, Garmin, SafeGraph, GeoTechnologies, Inc., MET/NASA, USGS, EPA, NPS, USDA, USFWS

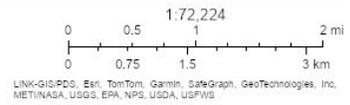
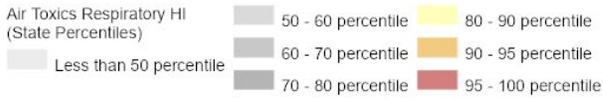
The EPA EJ Maps Air Toxics Respiratory vs. State and Air Toxics Cancer Risk vs. State show similar patterns of SEA EJ Census blocks being in the highest or near highest percentiles in their respective states. See two maps below

Air Toxics Resp VS State

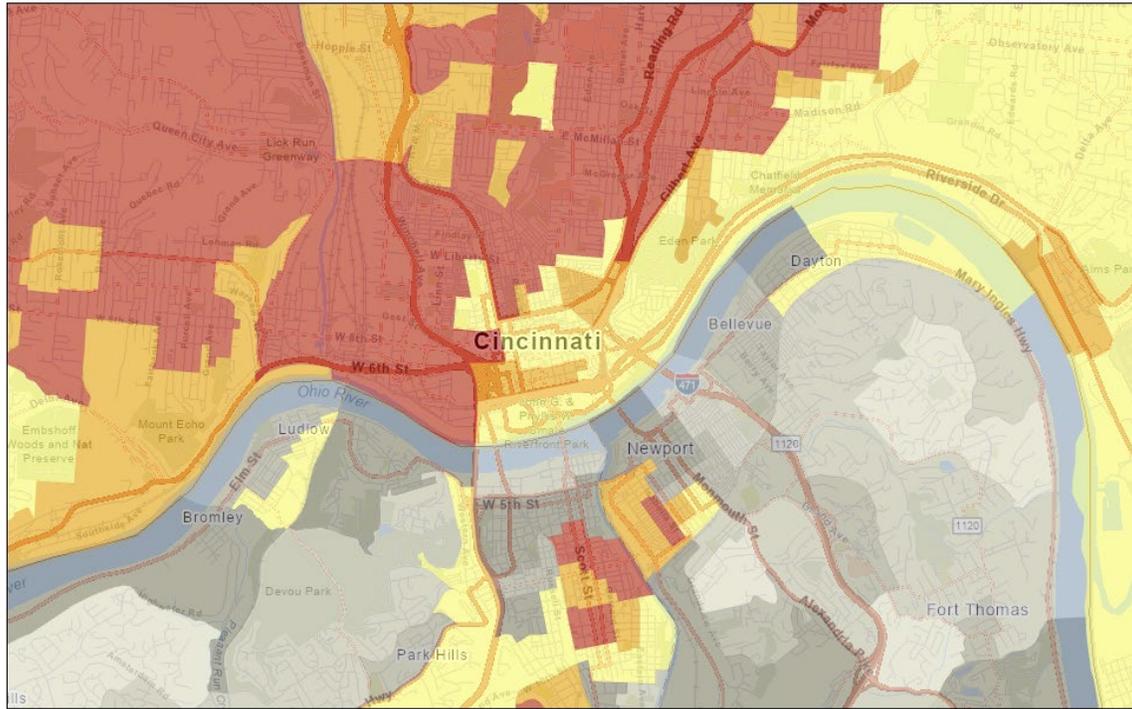


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Air Toxics Respiratory HI  
(State Percentiles)



# Air Toxics Cancer Risk VS State

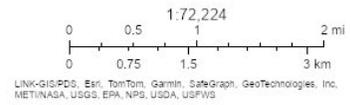


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Air Toxics Cancer Risk

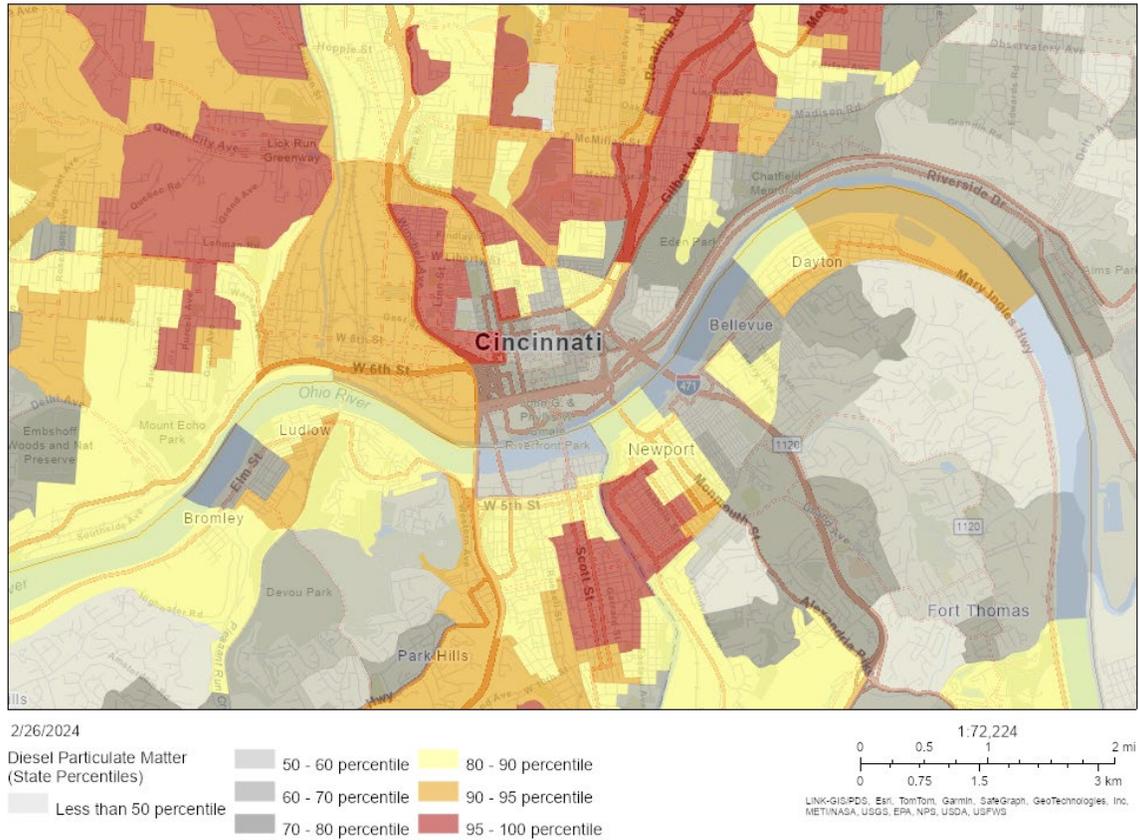
(State Percentiles)

- |   |                         |   |                    |   |                     |
|---|-------------------------|---|--------------------|---|---------------------|
|  | Less than 50 percentile |  | 50 - 60 percentile |  | 80 - 90 percentile  |
|  |                         |  | 60 - 70 percentile |  | 90 - 95 percentile  |
|  |                         |  | 70 - 80 percentile |  | 95 - 100 percentile |

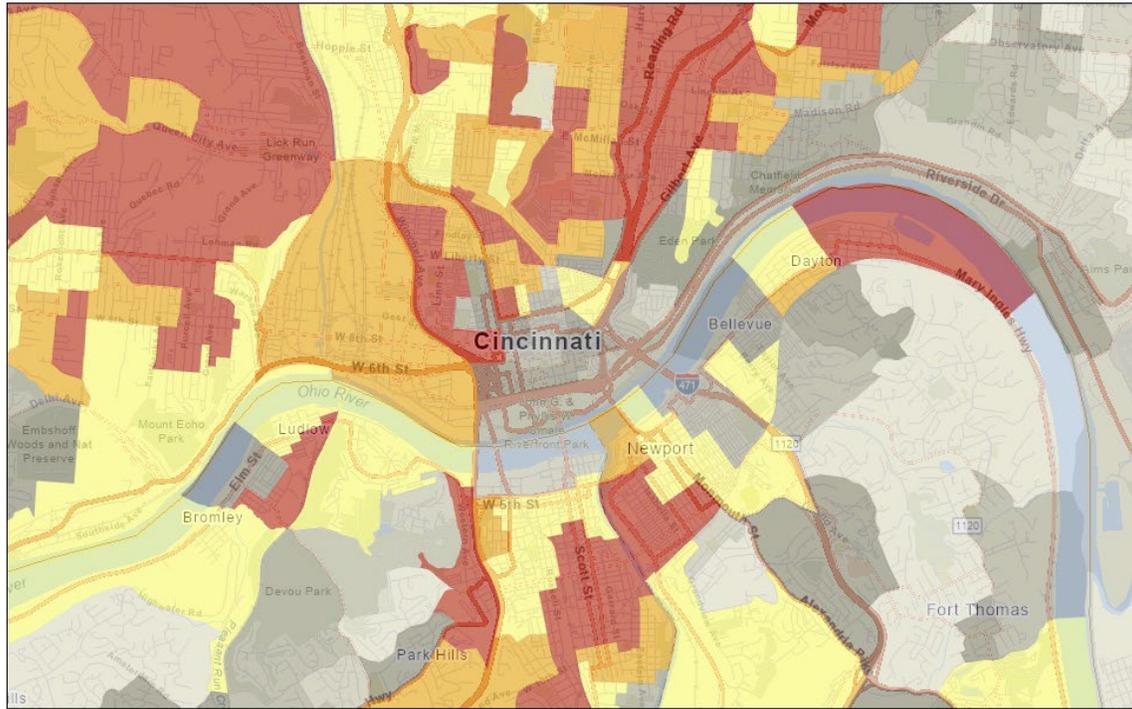


The EPA EJ Maps regarding air quality provide insight into at least some of the factors resulting in the health disparities evidenced above. While the EPA Maps regarding PM2.5 vs. State, Diesel PM vs. State, and Ozone vs. State each differ in some respects, they all show the pattern of patterns in which the 95-100 percentile, 90-95 percentile, and 80-90 percentile areas largely correspond with the SEA's EJ Census Blocks. See three maps below.

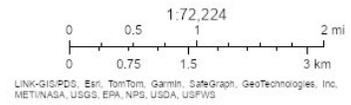
Diesel PM VS State



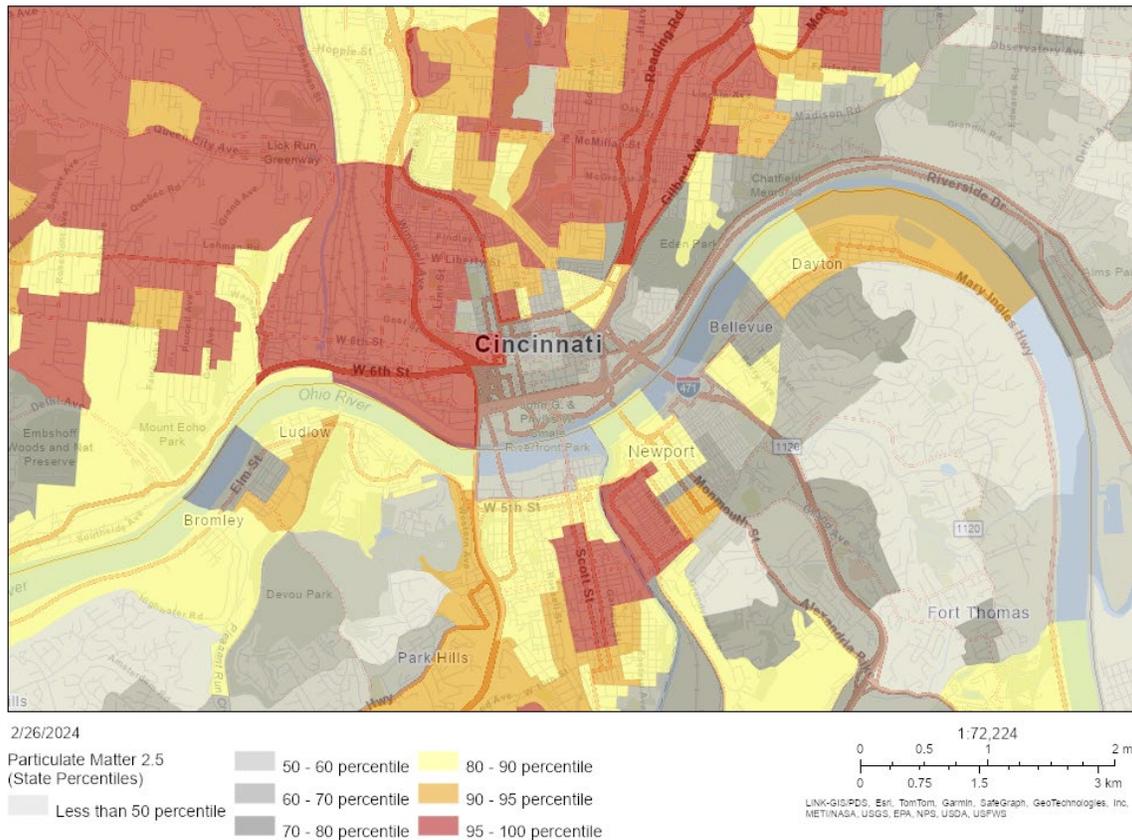
# Ozone VS State



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## PM2.5 VS State



The SEA completely fails to address the fact that disproportionate impacts exist if the *magnitude* of the adverse effect is appreciably greater on persons of color than on white persons. As already noted above, very many of the EJ areas are located immediately adjacent to or otherwise close to the highway Construction zone itself. They will be harmed and burdened much more by the noise, air pollution, dust, and disruption resulting from the many years during which the project would be constructed, than will the residents of the disproportionately majority areas farther from the highway itself, where those impacts are dissipated or even eliminated as a result of distance. The SEA acknowledges that the 1-W Alternative will result in increased traffic volumes, compared to non-build. That will result in more noise, air pollution, and dust than if the project is not constructed – and these harms will more significantly impact the residents of the nearby EJ areas during the long lifetime of an expanded highway.

In addition, the EPA environmental justice screens themselves – which the transportation agencies apparently did not even bother to collect, much less to consider in the SEA – show far greater already existing burdens related to pollution and adverse health effects in Black and Latinx neighborhoods. Even assuming (incorrectly) for the purpose of argument that a similar percentage of white residents might have the same pollution exposure, the adverse *effects* are almost certainly disproportionately greater on persons of color. The higher poverty rates and fewer assets generally available to Black and Latinx residents, will also increase the magnitude of the harms to them.

Consider insufficient income or wealth to afford air conditioners, air filters, or adequate medical care and treatment.

Where, as here, a discriminatory effect exists, Title VI requires agencies to “ensure that mitigation measures are taken and documented to eliminate or minimize the disparate impact. Where a disparate impact cannot be eliminated, [agencies] shall ensure that the activity will only be undertaken if a substantial legitimate justification for the action exists and is documented and that the activity is the least discriminatory alternative. (U.S. Dept of Transportation Order 1000.12C, U.S.DOT Title VI Program (June 11, 2021) at Ch. I, Sec. 7).

**Failure to include a reasonable alternative which included investments in and expansion of public transit as a means of reducing the amount of highway expansion**

Federal law states that “...all agencies of the Federal Government shall — (E) study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.” 42 U.S.C. § 4332 (E). Under 23 C.F.R. § 771.105(c), it is the government’s policy that “[a]lternative 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.”

As public comments and the history of this project demonstrate, there are significant conflicts concerning reasonable alternative uses of available resources, significant social, economic and environmental impacts of the action, and a significant failure to follow environmental protection goals, including those related to climate change and environmental justice. Yet the agencies entirely failed to evaluate an alternative that does not expand capacity, that rebuilds and makes focused improvements to the existing roadway, and that increases transit, would meet the purpose and need of the project. Improving transit – and thus considering a transit-inclusive alternative - is also required to ensure that communities of color receive a fair share of the benefits of transportation system investments.

Refusing to consider a transit alternative can be – and here is - the result of an inappropriately biased process. “[O]verburdened mass transportation systems” are one of the issues that “affect the urban ‘environment’....” *Trinity Episcopal School Corp. v. Romney*, 523 F.2d 88, 93 (2d Cir. 1975) (internal citations omitted). *See also First National Bank of Chicago v. Richardson*, 484 F.2d 1369, 1377-8 (7th Cir. 1973) (internal citations omitted):

Of necessity, NEPA must be construed to include protection of the quality of life for city residents, particularly in view of the profound influences of population growth, high-density urbanization, [and] industrial expansion .... [In the inner city] many of our most severe environmental problems interact with social and economic conditions which the Nation is also seeking to improve....

The failure to consider a transit inclusive alternative is also indefensible in light of long-standing FHWA policy:

The following range of alternatives should be considered when determining reasonable alternatives:

Mass Transit: This alternative includes those reasonable and feasible transit options (bus systems, rail, etc.) even though they may not be within the existing FHWA

funding authority. *It should be considered on all proposed major highway projects in urbanized areas over 200,000 population. . . [T]he relationship of the project to other Federal actions which may serve or adversely affect the ethnic or minority population should be identified."*

"Guidance for Preparing and Processing Environmental and Section 4(F) Documents," *FHWA Technical Advisory T 6640.8A* (Oct. 30, 1987) ("*Advisory T 6640.8A*") at Sec. V.E.3 (emphasis added). The requirement to consider transit to meet some or all the project need is true even if mass transit in the area is not a "sure thing." *Davis v. Mineta*, 302 F.3d 1104, 1121-2 (10th Cir. 2002). *See also, Utahns for Better Transp. v. U.S. Dept. of Transp.*, 305 F.3d 1152, 1170-71 (10th Cir. 2002) (agency should have considered reasonable alternatives including implementing transit improvements before highway improvements, and integrating highway and transit improvements). To fully consider such alternatives requires a careful evaluation of costs and benefits, and consideration of whether resources targeted for a road project might instead "be effectively directed toward expansion of mass transit and other traffic management strategies" in ways that avoid adverse impacts. *Davis*, 302 F.3d at 1122. Moreover, the state agencies could recommend that some federal Surface Transportation Program dollars which might be used for highway construction instead be used, as allowed by federal law, to support transit capital improvements, *see, e.g.*, 23 U.S.C. § 133(b)(1)(c).

Further, as a federal court made clear to USDOT in 2009, in the highway context agencies must evaluate less harmful alternatives to address transportation capacity needs.

[D]efendants cannot use the need for additional capacity on Highway 164 as a reason for refusing to study alternative means of providing that capacity. The very point of the reasonable alternatives exercise is to determine whether less destructive alternatives might achieve the purpose of the project. Here, defendants seem to have simply assumed that Highway 164 must be expanded to four lanes because local transportation plans document the need for additional capacity. Again, however, defendants must examine whether it is possible to provide this capacity through an alternative that is less environmentally destructive than expanding the highway to four lanes.

*Highway J Citizens Group v. USDOT*, 656 F.Supp.2d 868, 892 (E.D. Wis. 2009), *citing Simmons v. Army Corps*, 120 F.3d 664, 668-70 (7th Cir. 1997).

Title VI and environmental justice require the agencies to consider alternatives that will have fewer disproportionate adverse effects on communities of color, and doing so also comports with the agencies' own policies, including policies focused on urban residents. Moreover, improving transit – and thus considering a highway and transit expansion alternative - is also required to ensure that communities of color receive a fair share of the benefits of transportation system investments. In the absence of transit expansion, the minority residents in the primary study area who disproportionately do not own private vehicles or have drivers licenses will bear more of the burdens of construction, pollution, etc. while receiving proportionately fewer benefits.

A federal court long ago made clear that agencies "must consider such alternatives to the proposed action as may *partially* or completely meet the proposal's goal and it must evaluate their comparative merits." *Natural Resources Defense Council, Inc. v. Callaway*, 524 F.2d 79 (2d Cir. 1975) (emphasis added). In another case, a court rejected an EIS for a proposed highway reconstruction and widening project due to its failure to afford adequate

consideration to an alternative that would partially meet the stated purpose and need. The DOT justified its failure to consider the suggested bypass alternative on the ground that the project had two goals, repairing and upgrading the road, and the bypass would only accomplish the second purpose. The court found the EIS' discussion of alternatives inadequate, concluding that NEPA does not permit the agency to eliminate from discussion or consideration a whole range of alternatives merely because they would achieve only some of the purposes of a multi-purpose project. *Town of Matthews v. U.S. Dept. of Transp.*, 527 F. Supp 1055, 1057 (W.D.N.C. 1981). See also *Natural Resources Defense Council, Inc. v. Morton*, 458 F.2d 827 (D.C. Cir. 1972)(stating that "(it is not) appropriate . . . to disregard alternatives merely because they do not offer a complete solution to the problem.).

These principles are all the more applicable here, since the SEA clearly reveals that the proposed alternatives it has considered fail to offer a complete solution to the stated problem, and to the stated purpose and need. For example, while addressing design and safety shortcomings of the current highway, the selected alternative, Refined Alternative 1, includes 55 "design exceptions" from the agencies' standards. (SEA p. 28). Moreover, induced traffic caused by the dramatic increase in travel lanes, which the agencies have not properly considered or addressed, will inevitably result in a return to congested conditions after a few years, so the project's congestion elimination goal will not actually be achieved.

### **The SEA inadequately addresses air pollution impacts of the project.**

There is an extensive body of research documenting the negative effects of air pollution - particularly traffic-related air pollutants - and the disproportionate burden of air pollution on communities of color and low-income communities - including a higher COVID-19 mortality rate. "Traffic Related Air Pollution and the Burden of Childhood Asthma in the Contiguous United States in 2000 and 2010" (data sets available at <https://carteedata.org/library/webapp/trap-asthma-usa>) Achakalwisut et al., "Global, national, and urban burdens of pediatric asthma incidence attributable to ambient NO<sub>2</sub> pollution: estimates from global datasets," *Lancet Planet Health* (2019 "Finding pollution- and who it impacts most- in Houston," *Environmental Defense Fund* (June 3, 2020); Bell ML et al. "Challenges and recommendations for the study of socioeconomic factors and air pollution health effects," *Environmental Science and Policy* 2005 8:525-33; O'Neill MS et al. "Health, wealth, and air pollution: advancing theory and methods," *Environmental Health Perspectives* 2003;111:1861-70; Brender JD et al., "Residential proximity to environmental hazards and adverse health outcomes." *Am. J. Public Health* 2011;101:S37-52; Chakraborty J. "Automobiles, air toxics, and adverse health risks: environmental inequities in Tampa Bay, Florida," *Annals of the Assoc. of Amer. Geographers* 2009, 99:674-97; Gunier RB, et al., "Traffic density in California: socioeconomic and ethnic differences among potentially exposed children," *Journal of Exposure Analysis & Environ. Epidemiol.* 2003;13:240-46; Tegan K. Boehmer, "Residential proximity to major highways - United States, 2010," *CDC Division of Environmental Hazards and Health Effects* (2013); Xiao Wu and Rachel C. Nethery, "Exposure to air pollution and COVID-19 mortality in the United States," *Harvard T.H. Chan School of Public Health* (April 2020).

The SEA asserts that there will not be any significant adverse air pollution impacts of the project, based in part on the region's recent attainment or maintenance designations for particular pollutants. However, current levels of unhealthful air pollutants are the result of daily traffic volumes in this corridor that ranged between 150,000 and 160,000 vehicles per day between 2017 and 2021. The agencies predict daily volumes of 233,000 in 2035, about 50% higher than those recent years' actual counts. While they project gradual replacement of today's fleets of relatively highly polluting vehicles with vehicles that will emit fewer

pollutants per mile year after year into the future, they are also projecting growth in traffic volumes over the coming decade that will inevitably dramatically increase the amount of air pollution from vehicles driving in this corridor.

### **Failure to reasonably assess induced travel demand**

The SEA asserts that constructing 16 highway lanes crossing the Ohio River in this corridor where only 8 currently exist, and constructing numerous additional lanes on both ends of the bridges – ending up with as many as 20 parallel lanes in the project corridor where only 10 currently exist -- will lead to traffic volumes in 2050 that will be only 1.7% higher than the no-build option. Clearly the agencies have closed their eyes to the long-understood existence of induced demand. That is, “If you build more highway capacity, they will come and use it.” For a time, congestion will ease, and more and more people will decide to get in their cars and use that added capacity. The first order result is causing people to take longer or entirely new vehicle trips that would not have taken place if additional highway infrastructure had not been constructed and made available “for free” to motorists. If not for the added highway infrastructure, they would have walked, biked, taken transit, **or simply not taken those particular trips at all.** The nature of this “generated traffic” has been explained as follows:

Traffic engineers often compare traffic to a fluid, assuming that a certain volume must flow through the road system, but it is more appropriate to compare urban traffic to a gas that expands to fill available space (Jacobsen 1997). Traffic congestion tends to maintain equilibrium: traffic volumes increase to the point that congestion delays discourage additional peak-period vehicle trips. Expanding congested roads attracts latent demand, trips from other routes, times and modes, and encourage longer and more frequent travel. This is called generated traffic, referring to additional peak-period vehicle traffic on a particular road. This consists in part of induced travel, which refers to absolute increases in vehicle miles travel (VMT) compared with what would otherwise occur (Hills 1996).

Generated traffic reflects the economic “law of demand,” which states that consumption of a good increases as its price declines. Roadway improvements that reduce the user costs of driving (i.e., the price) encourage more vehicle use. In the short-run generated traffic represents a shift along the demand curve; reduced congestion reduces travel time and vehicle operating costs. Over the long run induced travel represents an outward shift in the demand curve as transport systems and land use patterns become more automobile dependent, so people must drive more to maintain a given level of accessibility to goods, services and activities (Lee 1999).

Litman, “Generated Traffic and Induced Travel: Implications for Transport Planning,” Victoria Transport Policy Institute (July 18, 2017) at p. 2

Litman’s article also summarizes numerous studies of the effects of this latent demand in cities around the world, including short-term reductions in congestion, followed by increases in the number and length of vehicle trips, particularly during peak periods, that reduces or eliminates the initial congestion improvements over time are summarized at pages 6-11.

This has certainly been the experience of many U.S. cities in recent decades. “In 2015, \$1 billion project to widen a 10-mile stretch of Interstate 405 through Los Angeles was completed. For a

period, 'congestion was relieved,' said Tony Tavares, the director of Caltrans, California's Department of Transportation. But that relief did not last. Rush hour traffic soon rebounded, he said." Eden Weingart, "Widening Highways Doesn't Fix Traffic," *New York Times* (Jan. 6, 2023). See also Katie Wilson, "How Fighting Congestion Can Create Congestion," *Crosscut*, (Oct. 20, 2021); and "The Congestion Con," *T4America* (2020).

'It's a pretty basic economic principle that if you reduce the price of a good then people will consume more of it,' Susan Handy, a professor of environmental science and policy at the University of California, Davis, said. 'That's essentially what we're doing when we expand freeways.'

The concept of induced traffic has been around since the 1960s, but in a 2009 study, researchers confirmed what transportation experts had observed for years: In a metropolitan area, when road capacity increases by 1 percent, the number of cars on the road after a few years also increases by 1 percent. (Weingart, at p. 5).

In Houston, after the Katy Freeway in Houston was expanded in 2008, "the project was hailed as a success. But within five years, peak hour travel times on the freeway were longer than before the expansion. Matt Turner, an economics professor at Brown University and co-author of the 2009 study on congestion, said adding lanes is a fine solution if the goal is to get more cars on the road. But most highway expansion projects, including those in progress in Texas, cite reducing traffic as a primary goal. "If you keep adding lanes because you want to reduce traffic congestion, you have to be really determined not to learn from history," Dr. Turner said. (Weingart at p. 9).

Efforts to quantify the effects of induced demand have been undertaken by the Institute of Transportation Studies at the University of California, Davis (ITS-Davis) through its National Center for Sustainable Transportation (NCST). NCST has developed an Induced Travel Calculator (Calculator) as a method for estimating the additional vehicle miles traveled (VMT) induced by expanding the capacity of major roadways. While ITS-Davis initiated the project to support Caltrans, the application can now be used to estimate induced demand for other regions of the country. (<https://travelcalculator.ncst.ucdavis.edu/about.html>) The tool enables users to estimate the VMT induced annually as a result of expanding capacity of interstate highways, other freeways and expressways and other principal arterials. While the tool is limited to certain facility types and conditions, it has the ability to estimate induced VMT for highway capacity expansion, such as that proposed by adding additional through lanes to the I-75/I-71 corridor. The Calculator produces a statistical range (95% confidence level, +/-20%) of induced VMT. Data sources and specifications for the equation include Lane Miles Added, Facility Type, State, and Metropolitan Statistical Area (MSA). (Calculator at: <https://shift.rmi.org>)

For this project, the following data was entered into the Calculator to estimate "Induced Demand". Results are also provided below.

- Lane Miles Added: approximately 26 miles of added interstate highway
- Facility Type: Interstate Highway
- State, MSA: Ohio, Cincinnati

Lane Miles Added: approximately 4 miles of added principal arterials

Facility Type: principal arterials

State, County: Ohio, Hamilton

Results of these inputs show the added through lanes would result in about 136 million additional vehicle miles travelled per year (the midpoint of the calculator's estimated range of 109-164 million). The agencies need to fully consider all of the impacts of these additional vehicle miles that would occur simply because of the great increase in traffic infrastructure that the project would provide.

**EPA has issued more stringent air quality standards for particulate pollution, in order to protect public health**

On February 7, 2024, the EPA "strengthened the National Ambient Air Quality Standards for Particulate Matter (PM NAAQS) to protect millions of Americans from harmful and costly health impacts, such as heart attacks and premature death. Particle or soot pollution is one of the most dangerous forms of air pollution, and an extensive body of science links it to a range of serious and sometimes deadly illnesses. EPA is setting the level of the primary (health-based) annual PM2.5 standard at 9.0 micrograms per cubic meter to provide increased public health protection, consistent with the available health science." See <https://www.epa.gov/pm-pollution/final-reconsideration-national-ambient-air-quality-standards-particulate-matter-pm> While the region may now be in attainment status for PM2.5, after years of being designated as nonattainment or maintenance, the SEA did not acknowledge that EPA had long proposed the tighter 9.0 ug/m<sup>3</sup> standard. This is important for several reasons. First, the SEA acknowledges that the project will cause PM2.5 pollution to increase by 3% compared to the No Build option. Second, the failure of the SEA to adequately address the large increase in vehicle miles traveled as a result of induced travel demand means that its estimates of the impact of the project on air pollution, including PM2.5 are too low. Third, the reported annual PM2.5 concentration for Cincinnati for 2021 was 10.0 ug/m<sup>3</sup>, which is 11% more than the level which the EPA has determined is necessary to protect human health. Fourth, air monitoring results for PM2.5 are available at IQAir, and as of 3 pm on February 19, 2024, the concentration of PM2.5 was 11 ug/m<sup>3</sup>. This is 22% above the standard that EPA has established to protect public health. The agencies' projection that traffic volumes on the corridor will increase by about 50% over roughly the next decade also needs to be factored in here. **An accurate assessment of the project's impact on air pollution, including proper consideration of induced travel demand, and the dramatically increased future traffic volumes predicted by the agencies is essential to determine the actual impacts of the project. This has not been done.**

**Noise, dust and mobility impacts will not be mitigated to insignificant levels**

Continual exposure to traffic noise can cause health effects, including increasing the risk of depression., Orban E, et al., "Residential road traffic noise and high depressive symptoms after five years of follow-up: results from the Heinz Nixdorf Recall Study," Environ. Health Perspect. 124:578-585; It is therefore critical that noise and health risks, and any racial or environmental disproportion of them, be assessed. The SEA admits at pages 192-193 that there are numerous areas along the project corridor that will be affected by noise levels higher than the agencies' established standards. Furthermore, while the SEA indicates that noise barriers were considered for several of those impacted sections of the corridor, there were areas that will be significantly impacted by increased noise for which effective noise barriers could be designed and installed, but the agencies do not plan to instruct them because of the cost. That includes, for one example, the Cincinnati Job Corps Training center west of the highway. (SEA p. 194). That alone contradicts the finding of no significant adverse impact. Noise impacts are also likely to be more significant than the SEA predicts

because of the agencies' projection of considerable growth in traffic volumes and SEA's inadequate consideration of induced travel demand.

Moreover, the SEA suggests that various mitigation measures will be put in place to reduce the impact of noise, dust, other air pollutants, access and congestion problems and other impacts during the many years of construction. (SEA p. 90)., However, these efforts to minimize these impacts "to the greatest extent practicable" does not suggest, much less demonstrate that these impacts will be "insignificant." but there is nothing in the SEA to support the conclusion that these harms to nearby residents, students, and businesses from noise, dust, other pollutants and obstacles to mobility during those many years will be mitigated to an "insignificant" level. The SEA admits at page 90 that "ODOT has also committed to restore roadways impacted by increased traffic during construction to pre-construction condition, which will primarily benefit EJ communities. Therefore, the temporary construction impacts will not result in a disproportionately high and adverse effect on EJ populations."

Read that a couple of times. What ODOT admits is that the areas whose roads will be damaged (and congested, and likely gridlocked) during the years of construction are primarily in EJ communities. They will primarily be the ones breathing the extra unhealthy exhaust emissions from cars and trucks that will be routed through their neighborhood. They will primarily be the ones listening to the engine and road noise from those extra vehicles in their neighborhoods. And it will primarily be the roads in their neighborhoods that will be congested and sometimes gridlocked during construction. What has ODOT promised as "mitigation" for all of those adverse impacts? In essence, they are saying: "When the project is finished construction, we will fix the roads we may have damaged or destroyed." That does not mitigate or reduce or compensate for any of these identified impacts – all it does is fix the roads that will be damaged because of constructing the project. If anything, this alone demonstrates that a finding of no significant impact cannot be issued for this project.

### **The SEA Fails to Adequately Address Greenhouse Gas Emissions and Climate Change**

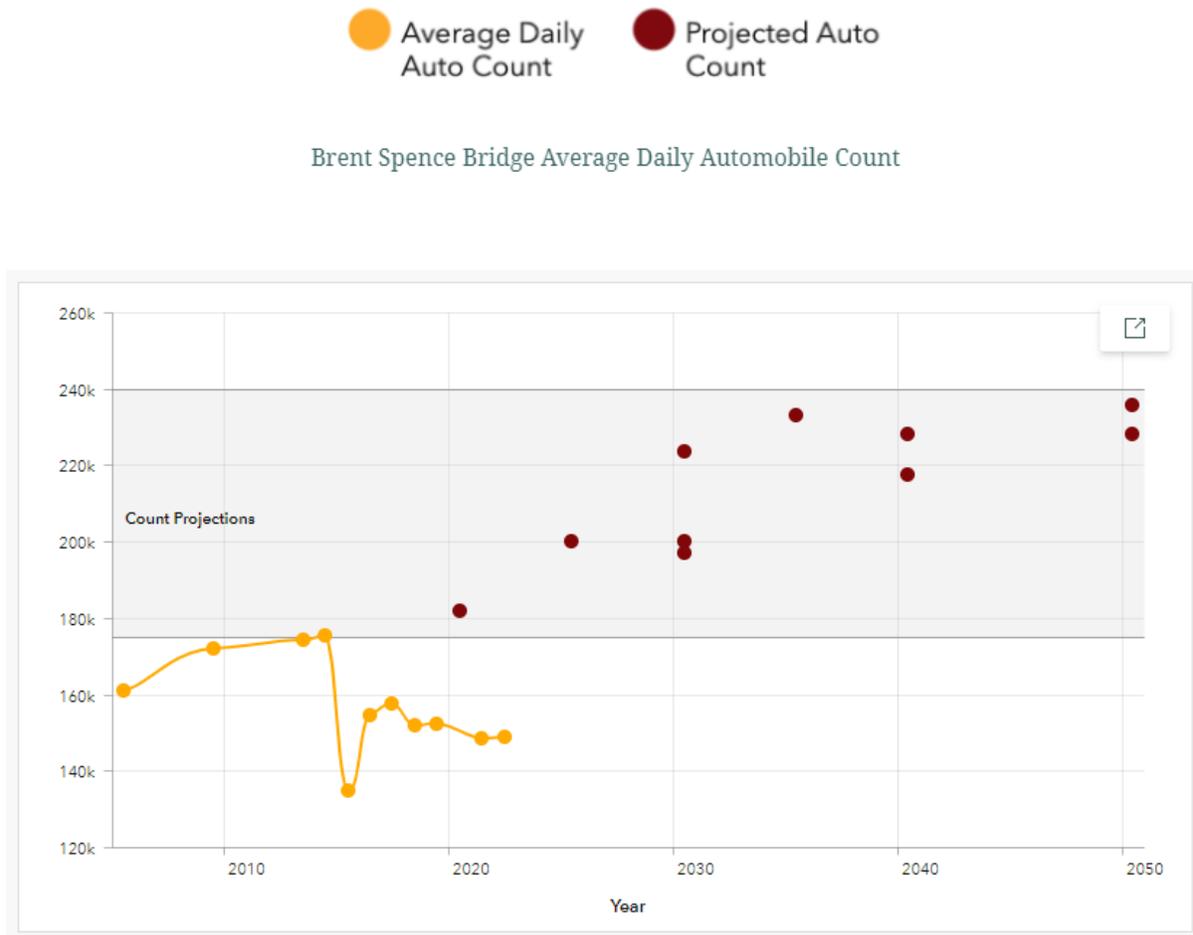
The SEA fails to even mention the Greenhouse Gas Emissions from construction – those resulting from producing and transporting the concrete, steel, asphalt, and other materials to the site, fueling the heavy equipment used to demolish existing infrastructure and to construct the billions of dollars of new infrastructure, operating lighting for night construction, and the like. Those emissions will be front-loaded, occurring during the first 4-8 years, and those emissions will remain in the atmosphere for as long as a century and will continue to cause additional warming year after year, adding to the resulting climate change impacts.

With respect to greenhouse gas emissions from use of the expanded highway corridor, the SEA's failure to adequately account for the induced travel that will result from the expanded highways renders its estimates unreliably low. The reductions over time in the agencies' projected emissions result from factors entirely **independent** of this project --federal fuel efficiency and exhaust emission standards and gradual replacement of current vehicles by newer vehicles with lower emissions. However, they project dramatically higher volumes of traffic in the future in this corridor than currently exist, an increase in daily traffic volume by 50% by 2035 from volumes in 2017-2021 and admit that the preferred alternative will result in 1.7% more traffic than the no build scenario.

Moreover, the impacts of climate change are not limited only to those living in the immediate vicinity of the emission sources, and climate change has been recognized by both state and federal governments as disproportionately impacting low-income and minority communities.

**Traffic projections used to justify the need for a new 10-lane bridge are unreliable and absurd**

Wildly inaccurate traffic projections are being used to justify a boondoggle project that only exacerbates the harms that were inflicted on minority communities when the Interstate was first constructed. Here is a graph showing in red, the highway agencies' predictions for daily automobile counts on the Bridge, and comparing the projections with the actual history of traffic counts there.



Sources: ODOT, Enquirer, Ohio-Kentucky-Indiana Regional Council of Governments, Brent Spence Bridge Corridor, and Cincinnati.com

Daily automobile traffic grew from about 160K in 2005 to almost 180K in 2014, then dropped to about 135K in 2015, recovered to about 160K by 2017, and then declined again to a about 150K in 2021 and 2022, for a net decrease of about 6% over 17 years.

Year	Projected Vehicles / day	Source(s)
2020	182,000	1/25/2003 - Enquirer
2025	200,000	10/31/2005 - Enquirer
2030	197,000	3/10/2004 - Enquirer
2030	200,000	<a href="https://www.oki.org/studies-plans/brent-spence-bridge-truck-ban-study/">https://www.oki.org/studies-plans/brent-spence-bridge-truck-ban-study/</a>
2030	223,619	<a href="https://www.oki.org/studies/pdf/northsouth/ns-complete.pdf">https://www.oki.org/studies/pdf/northsouth/ns-complete.pdf</a>
2035	233,000	<a href="https://brentspencebridgecorridor.com/wp-content/uploads/2022/10/BSB-Traffic-and-Concept-Analysis.pdf">https://brentspencebridgecorridor.com/wp-content/uploads/2022/10/BSB-Traffic-and-Concept-Analysis.pdf</a>  <a href="https://www.cincinnati.com/story/news/2021/04/14/infrastructure-brent-spence-bridge-ohio-cincinnati-kentucky-northern-traffic-numbers/4824736001/">https://www.cincinnati.com/story/news/2021/04/14/infrastructure-brent-spence-bridge-ohio-cincinnati-kentucky-northern-traffic-numbers/4824736001/</a>
2040	228,000	<a href="https://brentspencebridgecorridor.com/wp-content/uploads/2022/10/BSB-Traffic-and-Concept-Analysis.pdf">https://brentspencebridgecorridor.com/wp-content/uploads/2022/10/BSB-Traffic-and-Concept-Analysis.pdf</a>
2040	217,400	<a href="https://www.cincinnati.com/story/opinion/contributors/2023/02/23/opinion-a-new-bridge-means-cleaner-air-fewer-bottlenecks-money-saved/69932564007/">https://www.cincinnati.com/story/opinion/contributors/2023/02/23/opinion-a-new-bridge-means-cleaner-air-fewer-bottlenecks-money-saved/69932564007/</a>
2050	228,300	<a href="https://www.cincinnati.com/story/opinion/contributors/2023/02/23/opinion-a-new-bridge-means-cleaner-air-fewer-bottlenecks-money-saved/69932564007/">https://www.cincinnati.com/story/opinion/contributors/2023/02/23/opinion-a-new-bridge-means-cleaner-air-fewer-bottlenecks-money-saved/69932564007/</a>
2050	235,700	<a href="https://brentspencebridgecorridor.com/wp-content/uploads/2022/10/Traffic-Counts-Modeling-and-Forecast-Review.pdf">https://brentspencebridgecorridor.com/wp-content/uploads/2022/10/Traffic-Counts-Modeling-and-Forecast-Review.pdf</a>

The SEA says virtually nothing about the disruption caused by the pandemic, or that transformative changes had taken place over the last three plus years. The upheaval in living, working, shopping, recreating, and traveling, or any effects that all this might have in the long term on the need for expanding highways through the Cincinnati area is barely mentioned. Nor is there anything in the SEA, or its Appendices, that reflects any significant effort to assess the nature and size of current and likely future travel behaviors that would change the expected traffic demand on this corridor. This is an issue of great magnitude, rendering the agencies' astonishingly high future traffic projections even more arbitrary and unreasonable. Nor does the SEA discuss alternative methods, much less best practices, to *reduce* VMT, even if traffic volumes were to return to pre-pandemic levels. Increasing transit is clearly one method. Research shows that even relatively small declines in single occupancy vehicle travel - due to even modest shifts to transit - can significantly reduce

traffic congestion. (Emily Badger, "A Little More Remote Work Could Change Rush Hour a Lot," *New York Times* (June 11, 2021)).

### **The failure to consider tolling to reduce congestion and eliminate/reduce the need for adding lanes**

The stated purpose of this highway expansion project is to reduce congestion along the Brent Spence Corridor, allegedly justified by the agencies' inflated projections of increased future traffic demands. Neither ODOT nor OKI discuss the use of tolling or congestion pricing in a no-build scenario in their consideration of alternatives to this project. The Federal Highway Administration Office of Operations promotes congestion pricing as a "way of harnessing the power of the market to reduce the waste associated with traffic congestion."<sup>1</sup> While Kentucky state law may prohibit the use of tolling to finance an expansion project of this type ("a development agreement or financial plan"), no regulation exists which would prohibit the use of tolling for congestion relief in a no-build scenario. Tolling on the Ohio side of the Bridge, where Kentucky law does not apply, was not considered, making the agencies' consideration of alternatives fatally deficient. Use of tolling as a financing mechanism occurred in a similar project in Louisville, and the **charging of tolls resulted in a significant decrease in traffic across a previously un-tolled river crossing**. Evidence in the field of urban planning, including direct experience in the state of Kentucky, supports the use of congestion pricing or tolling as a "reasonable alternative" to highway widening for congestion relief, and no consideration of this alternative has been made in the development of the BSCP. Even if tolling might not eliminate the need for some highway improvements, it would certainly eliminate the need to build a new 10-lane bridge across the Ohio River.

### **Stormwater and water quality impacts of the project have not been adequately considered**

This project proposes to add almost 40 miles of highway lane miles, plus uncounted miles of on and off ramps, in a corridor with the Ohio River at its center. The SEA assures us that this will reduce flooding and water quality impacts. The EPA raised concerns about increased chlorides and metals in runoff from an expanded highway. See SEA Part 2, page B160. However, as far as we could tell, the SEA contains not a word about the impacts on water quality of salting all of this additional roadway during winter snow or ice storms. Nor does it mention the increased toxic pollution from tire wear, brake wear, and other particulate and toxic pollutants from the increased traffic that the highway expansion will bring to this corridor. When it rains, these pollutants will add to the pollutant loads in the River. Fine particulates from tire wear, sometimes described as tire dust, have been found to be particularly toxic to various species of fish, at extremely low concentrations. See: "Tyre dust: the 'stealth pollutant' that's becoming a huge threat to ocean life," *The Guardian*, July 25, 2022, (available at: <https://www.theguardian.com/environment/2022/jul/25/tyre-dust-the-stealth-pollutant-becoming-a-huge-threat-to-ocean-life>), and "How tyre emissions hide in plain sight," *Emissions Analytics*, (available at <https://www.emissionsanalytics.com/news/how-tyre-emissions-hide-in-plain-sight>).

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<sup>1</sup> "Welcome to the FHWA Congestion Pricing Website." Federal Highway Administration Office of Operations. <https://ops.fhwa.dot.gov/congestionpricing/>

The addition of so many lane miles of high-traffic roads, and the induced traffic that that will create, will result in considerable extra tire wear during the lifetime of the expanded highway, and the SEA has not considered the impact of this at all.

**The Highway Expansion Would disturb or destroy habitat of several protected bat species**

The SEA states at p. 139 regarding the federally protected gray bat:

Refined Alternative I (Concept I-W) will disturb or remove 4.38 acres of riparian forested habitat, **which will result in the loss of potential foraging areas for the gray bat.** Effects caused by the removal of this habitat will be offset by the minimization and mitigation measures described below. Therefore, the effect determination for the proposed project is “may affect, not likely to adversely affect” the gray bat.

The SEA at page 139 further states regarding the federally protected Indiana bat”

Approximately 90.00 acres of forested habitat that will be removed by Refined Alternative I (Concept I-W) may serve as foraging or maternity areas for Indiana bats, including 74.20 acres in Kentucky and 15.80 acres in Ohio.

Given the nature of the project, its location, and the commitment to adhere to seasonal tree clearing restrictions (described in the minimization and mitigation measures below), **the effect determination for the portion of the proposed project in Kentucky is “may affect, and likely to adversely affect” the Indiana bat.**

The clearing of 15.80 acres of suitable wooded habitat is all located within 100 feet of the edge of pavement. Seasonal tree clearing commitments described in the minimization and mitigation measures below will minimize impacts to Indiana bat habitat in Ohio. Therefore, **the effect determination for the portion of the proposed project in Ohio is “may affect, but not likely to adversely affect” the Indiana bat.**

At pages 139-140, it states regarding the federally protected northern long-eared bat (NLEB):

Refined Alternative I (Concept I-W) will disturb or remove 90.00 acres of forested habitat for the NLEB. . . . Seasonal tree clearing commitments described in the minimization and mitigation measures below will minimize impacts to NLEB habitat. Therefore, the effect determination for the proposed project is **“may affect, not likely to adversely affect” the NLEB.**

The US Fish and Wildlife Service has proposed to list the tricolored bat (*Perimyotis subflavus*) as a federally endangered species. At page 141, the SEA states:

Refined Alternative I (Concept I-W) impacts approximately 90.00 acres of wooded habitat that may contain suitable roosting habitat for the tricolored bat, including approximately 74.20 acres in Kentucky and 15.80 acres in Ohio.

impacts to the tricolored bat are primarily anticipated to result from the removal of the 90.00 acres of wooded habitat that may potentially serve as summer maternity, roosting, and foraging habitat. Measures incorporated into the project to avoid, minimize, and mitigate impacts to the Indiana bat, the NLEB, and the gray bat will similarly reduce and minimize the likelihood of potential project impacts to the tricolored bat. . . . **FHWA has determined that the project may affect but is not likely to jeopardize the continued existence of the tricolored bat, nor will it result in the destruction or adverse modification of critical habitat proposed to be designated for the species.**

In summary, the SEA acknowledges that the removal of 90 acres of forested habitat is likely to adversely affect the Indiana bat in Kentucky, may affect the tricolored bat but is not likely to jeopardize the continued existence of the tricolored bat, and asserts that it is not likely to adversely affect the gray bat in Ohio or the NLEB. **The SEA admits that clearing 90 acres of forested bat habitat may affect each of these federally protected species (and it would seem, the additional state protected little brown and tricolored bats). There is a real difference between on the one hand, committing to do the tree clearing consistent with a number of measures to reduce impacts (pages 145-147) and making a contribution to a bat supporting organization – and on the other hand, demonstrating that these minimization or mitigation measures would actually reduce adverse impacts to being “insignificant.”**

#### **A Civil Rights Complaint Regarding This Project is Pending**

The Coalition filed a Civil Rights Act, Title VI Complaint with the Federal Highway Administration regarding this project on January 23, 2023, Complaint 2023-0134. A letter with additional information was submitted to the Office of Civil Rights on May 10, 2023. Copies of the Complaint and of the later submission are attached to these comments, as they are relevant to the SEA’s discussion and conclusions regarding socioeconomic impacts, equity, and environmental justice. We respectfully suggest that it would be inconsistent for the FHWA to issue a finding of no significant impact and/or a record of decision regarding this project while a Civil Rights investigation regarding the project is pending.

#### **Adoption of Comments by Other Organizations**

We agree with and adopt the comments submitted by the Sierra Club Miami Group Ohio Chapter, and by Bridge Forward in response to the SEA, without repeating and setting them forth in this document.

#### **Conclusion**

For all of the above reasons, we submit that the Spence Brent Bridge Corridor Project, Refined Alternative 1-W, would result in significant impacts to the natural and human environments, and that the Supplemental Environmental Assessment does not demonstrate that approval of the Project would result in no significant impacts to the environment. As a result, the agencies are required to prepare a full Environmental Impact Statement, and to take necessary “hard look” at the entire range of issues raised by the Project.