

October 4, 2016

Rebecca J. Williams
ODOT Office of Civil Rights
355 Capitol Street NE
Salem, OR 97301

Dear Ms. Williams:

Thank you again for taking the time to listen to my concern regarding compliance with the National Environmental Policy Act (NEPA) for the Franklin Boulevard Project currently under development by the City of Springfield. As I review your response letter from July 15, 2016, I notice that it does not fully capture all elements of my concern related to NEPA compliance on the Project. I realize that you did not have the benefit of having my comments in writing, and that the detailed nature of the issue can make it hard to follow in a discussion. I am also aware that elements of my concern may go beyond the purview of the Office of Civil Rights, and these elements might be more properly addressed elsewhere.

For these reasons, the main body of this letter is devoted to a full description of my concern and the information upon which my concern is based, rather than a point-by-point response to your letter of July 15. At the end of this letter I will include a section summarizing key issues pertaining to the Office of Civil Rights and any specific questions I have for you.

This letter is organized in the following sections:

- An update on the status of the NEPA classification process for the Franklin Boulevard Project.
- An overview of the Franklin Boulevard Project and the Project Area.
- A summary of my concern regarding the use of Categorical Exclusion for the Franklin Boulevard Project.
- Key conclusions supporting my concern, with supporting evidence and analysis.
- A focus on issues relevant to the ODOT Office of Civil Rights.

Status of NEPA approval for the Franklin Boulevard Project

In July 2015 the City of Springfield posted a "7-16-15 Franklin Blvd. Project Update" on the Franklin Boulevard Project web site. This Project Update focused on the NEPA classification for the Project, and included the following statement:

"Recently, staff completed the environmental process to qualify for a National Environmental Policy Act (NEPA) Categorical Exclusion and was approved by the Federal Highway Administration. Staff has now started the design and right-of-way phase."¹

This notice states that a Categorical Exclusion was approved for the Project. From this statement I believed that a Categorical Exclusion was a "done deal." While I was in the process of writing this letter, Michele Eraut of the Federal Highway Administration (FHWA) contacted me to discuss my concerns with the Project. In that discussion I learned that a Categorical Exclusion had not yet been approved by FHWA. Subsequent to my conversation with Ms. Eraut, on or about August 9, 2016, the City of Springfield changed the text of the 7-16-15 Project Update, which now reads:

"In 2014 staff completed a preliminary determination that the project qualifies for a National Environmental Policy Act (NEPA) Categorical Exclusion. The Federal Highway Administration agreed with the approach. Since then, we have been working hard to meet our obligations under NEPA and hope to have final Categorical Exclusion approval soon. Staff has now started the design and right-of-way phase."²

The City changed the text of the Project Update from a Categorical Exclusion being "approved by FHWA" to "we hope to have final Categorical Exclusion approval soon." This is a substantial change in the status of the Franklin Boulevard Project in regards to its NEPA Classification. There are two critical points related to this change:

¹ 7-16-15 Franklin Blvd. Project Update. <http://newfranklinblvd.org/2015/07/franklin-blvd-project-update-7-16-15/> Accessed on 8/4/16.

² Ibid. Accessed on 9/27/16.

First, since a Categorical Exclusion is under consideration, but has not yet been approved, comment from the ODOT Office of Civil Rights can have a significant impact on whether a Categorical Exclusion is approved for the Franklin Boulevard Project.

Second, the City made this change to a Project Update that was over a year old without posting any other notice of this change on the Franklin Boulevard Project web site. Rather than posting a correction and providing appropriate notice of the change, the City changed the record of their having posted misinformation about the status of NEPA classification of the Project. For this reason, the public has not been given adequate notice that a Categorical Exclusion is being sought for the Franklin Boulevard Project. In addition, this substantive change in the status of NEPA approval calls into question City actions that have been taken based on the presumption that a Categorical Exclusion or federal funding had been approved for the Franklin Boulevard Project.

Overview of the Franklin Boulevard Project and Conditions in Glenwood

This section summarizes key aspects of the Franklin Boulevard Project and conditions in Glenwood that are relevant for understanding the context my concerns.

The Franklin Boulevard Project is occurring within a roughly one-mile corridor in a neighborhood known locally as Glenwood. Franklin Boulevard in Glenwood is currently a 5-lane facility with no bike lanes and narrow sidewalks in poor condition.

The Franklin Boulevard Project will reconstruct the existing roadway as a multi-way boulevard with multi-lane roundabouts at every major intersection. As a result of the Project, Franklin Boulevard will have five multi-lane roundabouts within the one-mile corridor. The multi-lane roundabouts will be connected by short sections of multi-way boulevard, with four center travel lanes flanked by raised medians and local access lanes. On-street parking will be provided on some sections of local access lanes, adding to the

width of the Project. Bike lanes and improved sidewalks will be added through the length of the corridor.³

The multi-way boulevard elements of the Franklin Boulevard Project will widen right-of-way from the existing 70-75 feet to 128-175 feet.⁴ The five multi-lane roundabouts will be even wider. To accommodate the widened roadway, the Project requires acquisition of 7.11 acres of land from 56 parcels with 31 owners.⁵ Nineteen businesses with 106 employees will be displaced. The City's 2015 application for a TIGER grant puts the total cost of the Franklin Boulevard Project at \$31.2 million.⁶

Glenwood is an area located between the cities of Eugene and Springfield. While Glenwood is now within the Springfield Urban Growth Boundary, it developed primarily under County jurisdiction and a majority of the area and its residents are currently outside of city limits.

Glenwood has a small and predominantly low-income population. Residents of Glenwood are concentrated in several small residential neighborhoods. In my experience it is common to meet residents of Glenwood who have lived there for twenty years or more, and the neighborhoods have a high degree of social cohesion—people who know and look out for each other.

The residential neighborhoods of Glenwood are located mostly south of Franklin Boulevard, but the area north of Franklin Boulevard also has residents including those in the 48-unit Ponderosa Mobile Village and in other dispersed residences.

The City of Springfield adopted the Glenwood Refinement Plan in 2012. The Glenwood Refinement Plan calls for the complete redevelopment of the area

³ More information on the Franklin Boulevard Project can be found at the Project web site www.newfranklinblvd.org

⁴ City of Springfield. Correspondence to Dustin Woods, FHWA. "Re: Classification, Franklin Boulevard Project." July 17, 2014. Page 6.

⁵ DRAFT CE Closeout Document 7/17/14 (revised 6/28/16). Project Name: Franklin Blvd: I-5 Bridge to McVay Hwy. (Springfield).

⁶ FY 2015 TIGER Capital Project Grant Application Submitted by the City of Springfield. Franklin Boulevard Complete Street Reconstruction Project. Page 10. "Total Project: 48% TIGER Funds (\$15,000,000) 52% State/Local Funds (\$16,225,000)."

north of Franklin Boulevard (the “Glenwood Riverfront”). The Glenwood Refinement Plan acknowledges that it will result in the displacement of existing residents living in affordable housing, and that new housing developed in Glenwood will likely be out of reach for existing low- and moderate-income residents. The Glenwood Refinement Plan identifies policies and strategies that the City could adopt to mitigate the impact on existing residents.⁷

The City has identified the remaining areas of Glenwood as the subject of a future Phase II Refinement Plan. The City of Springfield has been actively seeking to implement the Glenwood Refinement Plan and to encourage redevelopment of the Glenwood Riverfront.

Summary of concern regarding NEPA compliance for the Franklin Boulevard Project

This section summarizes my concerns regarding the City of Springfield’s application for a Categorical Exclusion classification for the Franklin Boulevard Project. I will follow this section with analysis and evidence in support of the concerns summarized here.

The use of Categorical Exclusion for the Franklin Boulevard Project is not consistent with the criteria established in Federal regulation or case law. A review of applicable regulations and case law as they apply to the proposed Project and conditions in Glenwood overwhelmingly indicates that an Environmental Assessment or Environmental Impact Statement (EA/EIS) should be conducted for the Project.

While conducting research into the use of CE for the Franklin Boulevard Project, I discovered evidence that the City is seeking a CE in order to avoid conducting analysis as part of an EA/EIS that might require them to modify the Project design. Specifically, the City is seeking to obtain NEPA compliance while retaining the multi-lane roundabouts and multi-way boulevard elements. The City is on record stating that they want to avoid “sacrificing” these Project elements for NEPA compliance. The City is also on record that the inclusion of multi-lane roundabouts in the Project creates more transportation capacity than is needed over the next 20 years. The City’s

⁷ City of Springfield. Glenwood Refinement Plan. Pages 114-118. <http://www.springfield-or.gov/dpw/GlenwoodRefinementPlan.htm>

statements are an admission that the Project is larger than needed and strongly suggest that a less costly and less impactful design could meet existing and future transportation needs in Glenwood.

Categorical Exclusion is not the appropriate NEPA class of action for the Franklin Boulevard Project. Categorical Exclusion lacks the procedural and analytical requirements suitable for a project of this nature. Approval of a Categorical Exclusion for the Franklin Boulevard Project would allow the City to circumvent fundamental environmental and civil rights protections that are built into the NEPA process. Proceeding under a Categorical Exclusion means that the Franklin Boulevard Project will be more expensive and impactful than it needs to be, and will go forward without adequate mitigation for its adverse impacts. These adverse impacts include the likely displacement of most existing residents of Glenwood resulting from redevelopment that the Franklin Boulevard Project is intended to support. Approval of a Categorical Exclusion for the Franklin Boulevard Project will result in real harm to people and the environment.

As noted earlier, the following sections provide evidence and analysis in support of these conclusions.

Approval of a Categorical Exclusion for the Franklin Boulevard Project is not consistent with regulatory guidance or case law

Regulatory guidance for selecting the proper class of action⁸ for NEPA compliance is provided in Title 23, Part 771 of the Code of Federal Regulations (CFR). Given the conditions in Glenwood and of the proposed Project, my review of the regulatory guidance overwhelmingly indicates that an EA or EIS should be conducted for the Project.

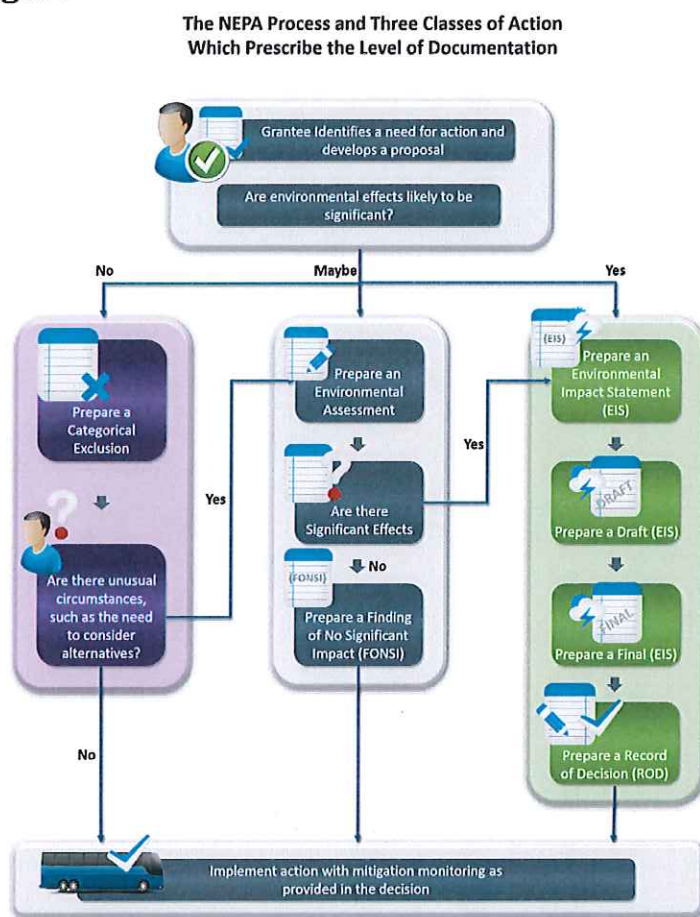
The following sections focus on the most glaring contradictions of the Project with the regulatory guidance and case law.

Classification of the Project as a Categorical Exclusion is not consistent with the regulations in CFR 771.117.

⁸ "Class of action" refers to the level of documentation required to seek NEPA approval. There are three classes of actions in NEPA: a Categorical Exclusion (CE), an Environmental Assessment (EA), and an Environmental Impact Statement (EIS). 23 CFR §771.115

Criteria for actions that qualify for a Categorical Exclusion are established in CFR 771.117. These regulations state that a Categorical Exclusion includes actions that do not involve significant environmental impacts or any unusual circumstances that require environmental study. Figure 1 shows a graphic from the Federal Transit Administration that summarizes the steps involved in determining the appropriate NEPA class of action. The steps in Figure 1 show that an EA should be prepared any time there is a question about whether a Project may result in significant impacts, when there are unusual circumstances, or when there is a need to consider alternatives.

Figure 1



Source: Federal Transit Administration. Determining NEPA Class of Action. Updated March 17, 2016. <https://www.transit.dot.gov/regulations-and-guidance/environmental-programs/determining-nepa-class-action> Accessed August 4, 2016.

The Franklin Boulevard Project has the following conditions for which the process in Figure 1 would result in a determination to “Prepare an Environmental Assessment”:

1. The potential for significant environmental impacts, particularly when the indirect and cumulative impacts of the Project are considered.
2. Unusual circumstances, including the unique nature of the Project design—five multi-lane roundabouts, plus a multi-way boulevard, all in one mile.
3. A need to adequately consider alternatives in order to justify the added expense and impacts, including additional land acquisition, resulting from the use of multi-lane roundabouts and multi-way boulevard.

The following sections will address each of these conditions in more detail.

The documentation in support of a Categorical Exclusion does not consider the indirect and cumulative impacts of the Franklin Boulevard Project, particularly impacts resulting from future redevelopment in Glenwood. Consideration of these impacts increases the likelihood of significant impacts resulting from the Project.

The documentation prepared in support of a Categorical Exclusion for the Franklin Boulevard Project focuses on the direct impacts of the Project, without addressing any of the potential indirect and cumulative impacts of the Project. Most notably, the documentation in support of a Categorical Exclusion ignores the substantial adverse impacts resulting from future redevelopment in Glenwood.

The Franklin Boulevard Project is intended to support future redevelopment in Glenwood. The Project web site states “The project will also have a catalytic effect on land redevelopment in the Glenwood Riverfront District that includes properties along the boulevard.”⁹ Catalytic means causing or accelerating change—in this case, the Project is going to help cause and accelerate planned and unplanned redevelopment in Glenwood.

The Glenwood Refinement Plan calls for the complete redevelopment of the Glenwood Riverfront. The Glenwood Refinement Plan includes numerous illustrations of future conditions in the Glenwood Riverfront after planned redevelopment, and none of these illustrations show any recognizable buildings or existing features of the area. In addition, the Glenwood

⁹ <http://newfranklinblvd.org> Accessed August 19, 2016.

Refinement Plan includes diagrams showing new interior streets and the development of two park blocks in the Glenwood Riverfront, with streets and a portion of a park block shown in the location currently occupied by the 48-unit Ponderosa Mobile Village.

In NEPA a Land Use impact occurs when an action results in development that is not consistent with adopted plans. For this reason, documentation in support of a Categorical Exclusion for the Project concludes that redevelopment in Glenwood will not result in a Land Use impact because that redevelopment will be consistent with the adopted Glenwood Refinement Plan.

But the Project will result in Land Use impacts by creating pressure for redevelopment in areas of Glenwood outside of areas covered by the Refinement Plan, including the area south of Franklin Boulevard that has the largest cluster of residents in Glenwood.

More significantly, redevelopment in Glenwood will have impacts on other environmental resource categories in NEPA, and those impacts do not magically go away because they result from development that is consistent with an adopted plan. Redevelopment in Glenwood will result in impacts in other resource categories including Social, Economic, Air Quality, Noise, Wetland, Floodplain, and Threatened or Endangered Species.

The regulatory definition of CE clearly requires consideration of the indirect and cumulative impacts of a proposed action when determining the proper class of action for NEPA compliance:

§771.117 FHWA categorical exclusions.

(a) Categorical exclusions (CEs) are actions which meet the definition contained in 40 CFR 1508.4, and, based on past experience with similar actions, do not involve significant environmental impacts. They are actions which: ... do not otherwise, either individually or cumulatively, have any significant environmental impacts.

The regulatory guidance clearly shows that a focus on direct impacts alone is not sufficient or appropriate for determining the proper class of action for NEPA compliance. The indirect and cumulative impacts of the Franklin Boulevard Project include the impacts resulting from future redevelopment in Glenwood north and south of Franklin Boulevard. The impacts of redevelopment will affect the full range of resource areas covered by NEPA,

including impacts on residents, residential neighborhoods, businesses, and the natural environment. Consideration of indirect and cumulative impacts, particularly given the predominantly low-income population in Glenwood and the extensive nature of planned redevelopment, greatly increases the likelihood that the Project will result in significant impacts. In this context, an EA or EIS should be conducted to adequately address the potential impacts of the Project.

Approval of a Categorical Exclusion for the Franklin Boulevard Project will allow it to use federal funds with out any assessment of its indirect and cumulative impacts, and without any consideration of potential mitigation measures for those impacts. These impacts will likely resulting in the displacement of most existing residents of Glenwood.

Categorical Exclusion is intended for actions that do not involve significant impacts, based on past experience with similar actions. The Project will construct of facility that will be unique in North America—five multi-lane roundabouts in a one-mile corridor, linked by a multi-way boulevard. So there are no similar past actions on which to base a determination that the Project will not involve significant environmental impacts.

The Franklin Boulevard Project will create a facility that has 5 multi-lane roundabouts within a one-mile corridor, linked by sections of multi-way boulevard. In my 25-year career in planning urban development, and from research conducted for this letter, I am not aware of a similar facility anywhere in North America. I cannot find a corridor with a density of roundabouts, single-lane or multi-lane, that approaches the density of five-per-mile that will result from the Franklin Boulevard Project. I also cannot find an example of a multi-way boulevard that uses multi-lane roundabouts for traffic control at its major intersections.

23 CFR §771.117(a) states that CEs are actions that “...based on past experience with similar actions, do not involve significant environmental impacts.” If a CE is approved for the Franklin Boulevard Project, what “similar actions” will be used to determine that the Project does not involve significant environmental impacts?

It is true that expectations about impacts of the Project can be based on past experience with impacts in transportation corridors where additional right-of-way was needed for a project. What is missing, however, is any basis for an

expectation about exactly how the Project will operate, and the impacts that operation of the Project for users of all modes traveling in the corridor as well as on residents, neighborhoods, businesses, and commercial districts.

Of particular relevance to the Franklin Boulevard Project is uncertainty about how well multi-lane roundabouts will function for pedestrians and cyclists. An assessment of roundabout performance for pedestrians and cyclists by FHWA finds that:

“Multilane roundabouts tend to have higher motor vehicle speeds due to their location on multilane roads and create more conflicts between bicycles (and pedestrians) and motor vehicles. Given these higher speeds and volumes, they can present a challenge to bicyclists and may not make the corridor safer for their use.”¹⁰

In addition, concerns have been raised about how measures to protect people crossing in the vicinity of a multi-lane roundabout intersection will affect the performance of the corridor:

“...the U.S. Access Board has recommended that all multi-lane roundabouts include pedestrian signals (HAWK signals) at each pedestrian crossing. If the pedestrian and vehicular volumes are heavy at your particular intersection, the presence and frequent use of the pedestrian signals may significantly reduce the vehicular capacity of your roundabout, possibly making signalization a better option.”¹¹

Given the unusual and unique nature of the design of the Franklin Boulevard Project, assumptions about its performance cannot be based on general statements about the performance of roundabouts elsewhere. In order to sufficiently assess the likely performance of the Project design for all users, and impacts resulting from its construction and operation, an EA or EIS should be undertaken for the Project.

¹⁰ Federal Highway Administration. BIKESAFE: Bicycle Safety Guide and Countermeasure Selection System. Countermeasures: Roundabouts.
http://www.pedbikesafe.org/BIKESAFE/countermeasures_detail.cfm?CM_NUM=17
Accessed October 3, 2016.

¹¹ R. Moses. Ask R. Moses: Are Roundabouts Safer For Pedestrians? March 21, 2016.
<http://www.strongtowns.org/journal/2016/3/17/ask-r-moses> Accessed October 3, 2016.

The design of the Project constitutes an “unusual circumstance” for which “appropriate environmental studies” should be prepared. The appropriate environmental study would be an Alternative Analysis. The City has not conducted an Alternatives Analysis sufficient to justify the added expense and impacts resulting from the Project’s use of multi-lane roundabouts and multi-way boulevard segments.

The regulatory guidance in CFR 771.117 states that projects that “...could involve unusual circumstances will require FHWA, in cooperation with the applicant, to conduct appropriate environmental studies to determine if the CE classification is proper.”¹²

In the case of the Franklin Boulevard Project, a notable “unusual circumstance” is the design of the Project, which will create a corridor with five multi-lane roundabouts within one mile, linked by a multi-lane boulevard. As noted in the previous section, this design will be unique in North America. The unusual design elements of the Project—the roundabouts and multi-way boulevard segments—directly contribute to the footprint of the Project and thus to the magnitude of many of the Project impacts. For the unusual circumstance of the Project design, the appropriate environmental study would be an Alternatives Analysis that compares the Project design to a more traditional alternative in terms of their cost, operational performance, and impacts.

I am aware that the City has conducted, and is continuing to conduct, analysis related to the impacts of the Project in order to support their application for a documented Categorical Exclusion. I also know that the City has conducted extensive analysis and public outreach related to the Project over the last decade and more. My review of planning studies prepared for the Project show that a rigorous Alternatives Analysis is missing from the project development process.

The only Alternative Analysis I have found for the Franklin Boulevard Project uses subjective assessments of likely facility performance and general statements of preference to select a design using multi-lane roundabouts and multi-way boulevard segments. The City’s preference for using multi-lane roundabouts and multi-way boulevard segments was established early in

¹² CFR §771.117

development of the Franklin Boulevard Project.¹³ After the City selected its preferred design for the Project in 2009, all subsequent refinement of the Project design or assessment of potential impacts focused only on the preferred design. There has been no formal Alternatives Analysis that compares the current Franklin Boulevard Project design with a more traditional approach in terms of their transportation operation, cost, and impacts. The analysis conducted for the Project is not at a level suitable for an Alternatives Analysis conducted for NEPA.

The Project is not consistent with the examples of actions that may be classified as Categorical Exclusions.

The City's letter in support of a CE for the Project states that "The Project most resembles the example actions listed in 771.117(d)(1), which reads, "Modernization of a highway by resurfacing, restoration, rehabilitation, reconstruction, adding shoulders, or adding auxiliary lanes (e.g., parking, weaving, turning, climbing)." The City of Springfield is proposing to process the action using this designation."¹⁴

The Project is outside of scale of actions listed in 23 CFR 771.117(d), which appear to be intended for projects that take a portion of frontage properties for the widening of right-of-way. With the addition of local access lanes, parking lanes, medians, and multi-lane roundabouts, the Project will require acquisition of over 7 acres and displace 19 businesses with 106 employees.

Also apparent from list of actions listed in 23 CFR 771.117(d) is that Categorical Exclusion is not appropriate for use on large impactful projects for which alternatives may exist. The types of actions listed in 23 CFR 771.117(d) are those for which there are typically no substantial alternative to the action. But that is not the case for the Franklin Boulevard Project. The Project is proposing to use non-traditional roadway elements—roundabouts and local access lanes—that directly result in the Project requiring more right-of-way than a standard five-lane roadway design. The City has not adequately justified why the use of roundabouts and multi-lane boulevard sections is necessary to meet a transportation-related need.

¹³ City of Springfield. Franklin Boulevard Study. March 2009. Pages 6-7 and Appendix H.

¹⁴ City of Springfield. Correspondence to Dustin Woods, FHWA. "Re: Classification, Franklin Boulevard Project." July 17, 2014. Page 7.

In addition to the criteria for use of a documented Categorical Exclusion in 23 CFR 771.117(d), a review of the criteria for when an EIS is normally required also provides guidance on the appropriate class of action for the Project. 23 CFR 771.115 identifies actions for which that normally require an EIS. These actions include “construction of a fixed transit facility that will not be located within an existing transportation right-of-way” and “construction ...of a separate roadway for buses ...not located within an existing highway facility.”

§771.115 Classes of actions.

There are three classes of actions which prescribe the level of documentation required in the NEPA process.

(a) *Class I (EISs)*. Actions that significantly affect the environment require an EIS (40 CFR 1508.27). The following are examples of actions that normally required an EIS:

...

(3) Construction or extension of a fixed transit facility (e.g., rapid rail, light rail, commuter rail, bus rapid transit) that will not be located within an existing transportation right-of-way.

(4) New construction or extension of a separate roadway for buses or high occupancy vehicles not located within an existing highway facility.

The Project will be providing fixed transit facilities – stations for Bus Rapid Transit (known locally as EmX) with a separate roadway providing access to and from each station.¹⁵ Since the stations are located on the outside edges of the expanded roadway, some stations and their separate roadways for buses will be located outside of the existing right-of-way. 23 CFR 771.115(a)(3) indicates that the Project is an action for which an EIS is normally required because it includes fixed transit facilities outside of the existing right-of-way.

Use of Categorical Exclusion for the Project is not consistent with case law pertaining to the determination of NEPA class of action

The Center for Environmental Excellence provides a Case Law Update on the Environment, a database of case law summaries related to environmental issues. Searching this database for “Categorical Exclusion” under “NEPA” returns 11 case summaries. One of these is *West v Secretary of Transportation*, a recent case from the Ninth Circuit Court of Appeals over the

¹⁵ Franklin Boulevard Project. Project Information Flyer 5-23-16. Accessed from www.newfranklinblvd.org on 9/6/16. See Attachment X.

use of Categorical Exclusion for an interchange in Washington. This case makes findings that appear relevant to the Franklin Boulevard Project regarding the use of Categorical Exclusion for transportation projects.

The court found that the determination of NEPA class of action is largely a question of "first impression." The court's first impression of the new interchange was a Documented Categorical Exclusion (DCE) is not appropriate for a project of that magnitude:

"We must determine whether a categorical exclusion provides the appropriate level of environmental review for a new highway interchange construction project. The issue appears to be one of first impression." ¹⁶

"For guidance, we look to the non-exclusive list of actions identified in the regulations for DCEs [Documented Categorical Exclusions], as well as the itemized list of categorically excluded actions. See 23 C.F.R. S 771.117(c). The types of projects described in those places suggest strongly that a DCE is not appropriate for a highway interchange construction project. None of the examples listed in the DCE regulations approaches the magnitude of this project an entirely new, \$18.6 million, four-lane, "fully- directional" interchange constructed over a former Superfund site and requiring 500,000 cubic yards of fill material, 30,000 tons of crushed surfacing, and 32,000 tons of asphalt concrete pavement. To the contrary, the other examples provided in 23 C.F.R. S 771.117(d) suggest that the FHWA intends a very different scale of project to escape the more detailed environmental review that would occur in an environmental assessment." ¹⁷

The same logic appears to apply to the Franklin Boulevard Project. In the words of the court, none of the examples listed in the DCE regulations approaches the magnitude of the \$31.2 million Franklin Boulevard Project that will create a facility unique in North America, with five multi-lane roundabouts connected by a multi-way boulevard, requiring the acquisition of

¹⁶ 206 F.3d 920 (9th Cir. 2000). *Arthur S. West v. Secretary of the Department of Transportation et. al.* No. 97-36118. United States Court of Appeals for the Ninth Circuit. Argued and Submitted March 11, 1999. Filed March 20, 2000. Page 5. Accessed via http://environment.transportation.org/clue/view_cases.aspx?statute_filter=15

¹⁷ *Ibid.* Page 7.

over 7 acres and displacement of 19 businesses with 106 employees, that is intended to serve as a catalyst for extensive redevelopment in an area of predominantly low-income residents in affordable neighborhoods.

The court also found that NEPA requires that the class of action chosen for a project represent the most appropriate “path” given NEPA’s procedural requirements, regardless of whether or not the project is expected to result in significant impacts. In the West case, the court found that FHWA selected the wrong path by proceeding with a documented Categorical Exclusion and that an Environmental Assessment was required:

“The district court failed to consider the procedural requirements for using a categorical exclusion and looked only to the agencies’ conclusion that the project would not result in any significant environmental impact. The issue, however, is not just whether the interchange will cause a significant environmental impact, but whether the path taken to reach that conclusion was the right one in light of NEPA’s procedural requirements. See *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 340 (1989) (“NEPA itself does not mandate particular results, but simply prescribes the necessary process.”). By proceeding under a DCE, the FHWA selected the wrong path. We conclude that an environmental assessment was required and the review process should have been different. See 23 C.F.R. S 771.119.”¹⁸

For the Franklin Boulevard Project, the court finding means that the question of determining the class of action is one of choosing the most appropriate process, regardless of whether FHWA agrees with an applicant’s determination that a project does not result in significant impacts. By the court’s logic, a Categorical Exclusion for the Franklin Boulevard Project would be selecting the “wrong path” for determining whether the impacts of the Franklin Boulevard Project are significant.

¹⁸ Ibid. Page 8.

The City is seeking Categorical Exclusion in order to avoid steps in the EA/EIS process that might require them to modify the Project design. In so doing the City is seeking to actively circumvent fundamental protections built into NEPA.

In 2013 the City of Springfield developed a “white paper” that identifies a strategy for obtaining NEPA compliance for the Franklin Boulevard Project. The introduction to this “white paper” makes it clear that the City actively strategized to obtain a Categorical Exclusion for the Franklin Boulevard Project:

“In particular, this paper outlines how the City and project team will navigate the preliminary NEPA process to the point of ODOT, FHWA and FTA classifying the project as either a Categorical Exclusion (CE), an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). While it is ultimately the responsibility of the Federal lead agencies to determine a project’s NEPA classification, the City of Springfield has expressed its intent to propose a project that would be classified as a CE, if that project can meet local needs and expectations. This paper outlines a strategic approach intended to try to achieve that goal. ... This paper outlines strategies for optimizing the likelihood of a CE classification, understanding the risks and uncertainties inherent in that process.”¹⁹

The City’s determination to seek a Categorical Exclusion for the Project occurred early in the process of determining NEPA classification, possibly before initiation of the formal NEPA classification process with FHWA.

The City’s motivation for seeking a CE for the Franklin Boulevard project is indicated by a memorandum to the Springfield City Manager that accompanies the “white paper” as part of the April 15, 2013 City Council Work Session Packet:

“The first goal for the Project in NEPA is to maintain the hybrid multi-way boulevard/urban arterial design concept to support the ‘place making’ vision for the Glenwood Riverfront District. The Franklin reconstruction project is a once in a lifetime opportunity to build high

¹⁹Franklin Boulevard: I-5 Bridge to McVay Highway Project Strategic Overview March 6, 2013. Attachment 3 in City of Springfield, April 15, 2013 Council Work Session Packet. Page 1 [See Attachment B]

quality infrastructure that will serve the Glenwood area, and the City, for decades to come. The second goal is to work diligently to refine the Project design to minimize impacts to private property as practical without sacrificing the qualities of the Project that will leverage community reinvestment. One strategy here is to work with abutting property owners on the timing of the access lane construction so that it can coincide with redevelopment of property fronting on Franklin. The third goal heading into NEPA is to spend some time and effort at the front end of the process to see if it is possible to get to the least costly and time consuming NEPA classification while not sacrificing project elements that will be of a high benefit to Glenwood and its redevelopment."²⁰

Note that this passage states that the City's "first goal for the Project in NEPA is to maintain the hybrid multi-way boulevard/urban arterial design concept" In making this statement the City has clearly put maintaining the Project design above all other considerations. This passage also shows the City's intent to not consider any alternatives to their chosen design. The Project design at this time included multi-lane roundabouts with multi-way boulevard connections.

The City's memorandum goes on to say that the City seeks to obtain "...NEPA classification while not sacrificing project elements..." This begs the question – why might the City need to "sacrifice project elements" in the process of complying with NEPA? From my experience in preparing NEPA documentation, the only conditions that would cause the "sacrifice" of a project element would be (a) that the element was not necessary to meet the Project purpose and need, or (b) that there is a less impactful alternative for meeting that purpose and need.

The City's memorandum provides some clue as to why some elements of the Project might be "sacrificed" in the NEPA process:

"What staff has discovered is that including roundabouts at Mississippi, Henderson and Glenwood Blvd. creates significant vehicular mobility throughout the corridor and over time. This vehicular mobility in turn makes it unnecessary for at least 20 years, and possibly much longer, to run EmX vehicles in dedicated guide-ways because traffic flow is such that there is no advantage to being

²⁰ Communication Packet Memo from 4-8-2013. Attachment 1 in City of Springfield, April 15, 2013 Council Work Session Packet. Page 1 [See Attachment B]

in a dedicated system.”²¹

Note that the Project has so much capacity that including dedicated bus lanes is not necessary for at least 20 years, even for the frequent service provided by EmX. This means that the Project has more capacity than needed for the volume of traffic expected in the 20-year planning horizon used in analysis for NEPA compliance. This suggests that there may be a less costly and impactful alternative that could provide the capacity needed to accommodate future travel demand.

The City’s memorandum goes on to admit that the Project has more capacity than needed for expected levels of travel demand in the corridor:

“Further, by avoiding dedicated bus guide-ways for the foreseeable future, space for future capacity improvements can be preserved as depicted on the draft cross sections on pages 5 and 6 of Attachment 2. Preserving future capacity insures that the design can remain flexible over time to add what may become needed, but cannot today be anticipated. Examples of how future capacity could be used include additional vehicle lane capacity, capacity for dedicated freight movement, capacity that could be used for additional bicycle and/or pedestrian improvements, space for potential additional on street parking, or capacity for future EmX dedicated guide-ways. The point is that by moving to roundabout intersections the project maintains a much larger degree of flexibility to address the needs of the future that may not be anticipated today, as well as increases vehicular mobility and improves safety.”²²

In this passage the City attributes the excess capacity to the Project “moving to roundabout intersections.” The excess capacity provided by the use of multi-lane roundabouts suggests that a Alternatives Analysis would show that the level of travel demand over the next 20 years could be met by a less impactful and less costly alternative. The City is seeking to avoid conducting an Alternatives Analysis because this result might require the City to “sacrifice” some or all of the multi-lane roundabouts and multi-way boulevard segments from the Franklin Boulevard Project.

²¹ Ibid. Page 2.

²² Ibid. Page 2.

The City's statements and the Franklin Boulevard "white paper" clearly show that the City is gaming the system. The City is seeking a Categorical Exclusion classification to obtain NEPA approval for a Project design that they fear might not survive intact through the EA/EIS process. In so doing the City is circumventing the fundamental protections in NEPA intended to minimize costs and impact of federally funded projects.

NEPA Protections: What They Are and Why They Matter

In this letter I refer often to "fundamental environmental and civil rights protections" built into the EA/EIS process. While I am not an expert in NEPA, I feel that I need to explain my understanding of these protections to provide a context for the concerns in this letter.

The first sets of protections in an EA/EIS are the conditions required for approval of an action with adverse impacts. In order to obtain NEPA compliance in an EA or EIS, adverse impacts can only occur if the following conditions are met:

1. The action causing the impact is necessary to meet an established purpose and need.
2. There are no alternatives to the action that are less impactful.
3. Reasonable efforts have been made to avoid and minimize the impact.
4. Commitment to measures to mitigate impacts resulting from the action.

The EA/EIS process also requires procedural steps to help ensure that the protections in NEPA are applied in a fair and objective manner. These procedural steps include:

1. Analysis of potential impacts in a full range of resource areas using accepted methods of analysis and explicit data.
2. Requirement for documentation of agency decisions regarding NEPA compliance based on analysis in the EA/EIS, including decisions on the implementation of mitigation measures.
3. Requirements for Public Involvement, including notice for key steps in the NEPA process, and provision of draft impact reports and agency decision documents for review, and opportunities for public comment.

Projects classified as a Categorical Exclusion are not required to fully meet the conditions and requirements needed in an EA/EIS for NEPA approval. In the case of the Franklin Boulevard Project, classifying it as a Categorical Exclusion will allow it to proceed under conditions that would not be allowed in an EA/EIS, including the following:

- Without a rigorous Purpose and Need for the Project that establishes the fundamental reasons why the project is being built.

A typical project includes an analysis of future “No Build” traffic conditions that identifies objective transportation deficiencies that the project is intended to address, such as congestion (high vehicle/capacity ratio) or safety. No such analysis has been provided for the Franklin Boulevard Project. Instead, the City’s letter in support of a Categorical Exclusion for the Franklin Boulevard Project defines the Project’s purpose as the Project itself:

“Project Purpose

The purpose of the Project is to modernize Franklin Boulevard to implement and accommodate improvements called for by the City of Springfield’s comprehensive plan. The Project is expected to transform Franklin Boulevard into a modern multi-way boulevard that accommodates all urban travel modes, including cars, trucks, walking, bicycling, and transit, and improve overall roadway operations.”²³

FHWA guidance describes the Purpose and Need as “essential in establishing a basis for the development of the range of reasonable alternatives required in an EIS and assists with the identification and eventual selection of a preferred alternative.”²⁴ The City’s statement of purpose is not adequate to support the need for the Franklin Boulevard Project; it does not establish the basis for defining a reasonable range of

²³ City of Springfield. Letter to Dustin Woods, Federal Highway Administration. Re: Classification , Franklin Boulevard Project. July 17, 2014. Page 4.

²⁴ FHWA. Environmental Review Toolkit. Elements of Purpose and Need. <https://www.environment.fhwa.dot.gov/projdev/tdmelements.asp> Accessed October 2, 2016.

alternatives; and it does not provide criteria to assist in selecting a preferred alternative.

- Without an analysis of alternative designs that could satisfy the transportation need.

An Alternatives Analysis is typically conducted for a project with the magnitude of impacts associated with the Franklin Boulevard Project, particularly projects with non-traditional design elements such as multi-lane roundabouts and multi-way boulevard segments. An Alternatives Analysis conducted for an EA/EIS uses the project's Purpose and Need to define the range of reasonable alternatives, and then compare the alternatives in terms of their ability to meet the purpose and need, cost, and impacts. FHWA guidance states "The identification, consideration, and analysis of alternatives are key to the NEPA process and goal of objective decisionmaking."²⁵

A rigorous and objective Alternatives Analysis has not been conducted for the Franklin Boulevard Project. To the extent that any Alternative Analysis has been conducted for the Franklin Boulevard Project, it used subjective assessments of likely facility performance to justify the use of multi-lane roundabouts and multi-way boulevard segments. There has been no formal Alternatives Analysis that compares the current Franklin Boulevard Project design with a more traditional approach in terms of their transportation operation, cost, and impacts.

- Without a rigorous analysis of potential impacts resulting from the Project in a full range of resource areas.

Under a Categorical Exclusion, the Franklin Boulevard Project will be allowed to proceed without a rigorous analysis of its potential impacts in a full range of resource areas. We know the Project will result in adverse impacts. Without conducting a full analysis of potential impacts, the Project will invariably have impacts that are not identified or that are greater than anticipated in the documentation supporting Categorical Exclusion. Impacts that are not identified in the environmental analysis cannot be avoided, minimized, or mitigated as

²⁵ FHWA. Environmental Review Toolkit. Development and Evaluation of Alternatives. <https://www.environment.fhwa.dot.gov/projdev/tdmalts.asp> Accessed October 2, 2016.

required by NEPA. Among the impacts that have not been sufficiently identified in the City's documentation in support of a Categorical Exclusion are those resulting from the redevelopment of Glenwood that the Franklin Boulevard Project is intended to support. Redevelopment of Glenwood will result in the displacement of most its existing residents.

- Without any commitment to mitigation measures to address adverse impacts of the Project.

FHWA guidance on NEPA states "The mitigation of impacts must be considered whether or not the impacts are significant. Agencies are required to identify and include in the action all relevant and reasonable mitigation measures that could improve the action."²⁶ NEPA allows for mitigation measures to be incorporated into the action and eligible for federal funds when they represent a reasonable public expenditure. As noted in this letter, the City's application for a Categorical Exclusion ignores the potential displacement of existing residents of Glenwood resulting from redevelopment that is an indirect and cumulative impact of the Franklin Boulevard Project. Approval of a Categorical Exclusion for the Project means that no mitigation measures for residential displacements, and many other adverse impacts, will not be incorporated into the Project.

- Without an opportunity for public review of the analysis being conducted for the CE classification.

Classification of a project as a Categorical Exclusion allows the analysis and process required for NEPA compliance to occur at an administrative level without the requirements for Public Involvement associated with an EA/EIS. From my review of regulations, there is no requirement for public notice that an agency is seeking approval of a Categorical Exclusion or for public review and comment on the documentation submitted in support of a Categorical Exclusion.

²⁶ FHWA. NEPA and Transportation Decision Making: Mitigation of Environmental Impacts. <https://www.environment.fhwa.dot.gov/projdev/tdmmitig2.asp> Accessed September 27, 2016.

As noted earlier in this letter, the public has not been provided adequate notice that the City is seeking a Categorical Exclusion for the Franklin Boulevard Project. The City submitted a letter to FHWA in support of its application for a Categorical Exclusion on July 17, 2014²⁷, but this letter has never been posted on the Franklin Boulevard Project web site or otherwise been made available for public review and comment. So the public has never been made aware that an application for Categorical Exclusion is underway or had an adequate opportunity to comment on the suitability of that process.

In support of its application for a Categorical Exclusion, the City has produced substantial documentation related to impacts of the Franklin Boulevard Project, including reports on Noise and Air Quality impacts. The public was not notified that this documentation was being prepared and the reports have not been made available for public review and comment. The fact that the City has developed substantial documentation in support of its application, and NEPA requirements for Public Involvement, are a major red flag that Categorical Exclusion is not appropriate for the Project.

Approval of a Categorical Exclusion will allow the Franklin Boulevard Project to use move forward without meeting the following FHWA standards for public involvement and public hearings under NEPA:

“Early and continuing opportunities during project development for the public to be involved in the identification of social, economic, and environmental impacts, as well as impacts associated with relocation of individuals, groups, or institutions.

One or more public hearings or the opportunity for hearing(s) to be held by the State highway agency at a convenient time and place for any Federal-aid project which requires significant amounts of right-of-way, substantially changes the layout or functions of connecting roadways or of the facility being improved, has a substantial adverse impact on abutting property, otherwise has a significant social, economic,

²⁷ City of Springfield. Letter to Dustin Woods, Federal Highway Administration. Re: Classification, Franklin Boulevard Project. July 14, 2014. As amended June 28, 2016.

environmental or other effect, or for which the FHWA determines that a public hearing is in the public interest.”²⁸

The City’s actions in pursuit of a Categorical Exclusion have not met the requirement of CFR Title 40 §1506.6 which states that agencies shall:

“Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents so as to inform those persons and agencies who may be interested or affected.”

For these reasons, approval of a Categorical Exclusion for the Franklin Boulevard Project will lead to real harm to people and the environment. At a minimum, approval of a Categorical Exclusion will deprive people of their property without sufficient due process (which I believe is already happening), and result in impacts that might otherwise be avoided, minimized, and mitigated if an EA/EIS were conducted. Most significantly, a Categorical Exclusion will allow the Franklin Boulevard Project to go forward without addressing the impact of the substantial redevelopment in Glenwood that the Project is intended to support. This redevelopment will likely result in the displacement of many existing residents of Glenwood.

If an Alternative Analysis shows that there is a less costly and impactful alternative for meeting the transportation needs in Glenwood, then approval of a Categorical Exclusion would result in additional harm. This harm includes excessive costs to the taxpayer, unnecessary acquisition of property (including the taking of whole lots and structures), and excessive adverse impacts on the predominantly low-income population of Glenwood.

Issues related to ODOT Office of Civil Rights

This letter documents why Categorical Exclusion is not the right classification for the Franklin Boulevard Project and the harm resulting from its use. This section summarizes my concerns with the Franklin Boulevard Project that should be of relevance to the ODOT Office of Civil Rights. A review of some fundamental conditions of the Project show why the Office of Civil Rights should be concerned about this Project:

²⁸ Federal Highway Administration. Environmental Review Toolkit. Public Involvement Overview. <https://www.environment.fhwa.dot.gov/projdev/tdmpubinv2.asp> Accessed October 3, 2016.

- The residents of Glenwood are predominantly low-income and marginalized. These are the people that the Office of Civil Rights is supposed to help protect.
- The Franklin Boulevard Project is going to have adverse impacts on the residents of Glenwood.
- By using multi-lane roundabouts and multi-way boulevard segments, the Franklin Boulevard Project will be larger than a project with a more traditional design. By increasing the size of the Project, the use of multi-lane roundabouts and multi-way boulevard segments increase the magnitude of the Project impacts and their proximity to area residents.
- The Glenwood Refinement Plan, adopted by the City of Springfield in 2012, calls for extensive redevelopment of the Glenwood Riverfront. This Riverfront area includes an existing 48-unit mobile home park that will be displaced by redevelopment. The City is on record that the Franklin Boulevard Project is intended to support this planned redevelopment. The Project will also create pressure for redevelopment in other existing residential neighborhoods of Glenwood.
- NEPA requires that agencies take extra care and consideration for actions in areas with Environmental Justice populations to “ensure the full and fair participation by all potentially affected communities in the transportation decisionmaking process.”²⁹

This letter documents how the use of Categorical Exclusion for the Franklin Boulevard Project avoids procedural and analytical requirements of NEPA that help insure the full and fair participation by affected communities. Specifically, the use of Categorical Exclusion on the Franklin Boulevard Project will allow the City to move forward using federal funds without ever having to:

- Establish a Purpose and Need for the Project using objective and measurable transportation outcomes.

²⁹ Federal Highway Administration. Environmental Justice Reference Guide: Executive Summary.

https://www.fhwa.dot.gov/environment/environmental_justice/publications/reference_guide_2015/section02.cfm Accessed October 4, 2016.

- Justify the use of multi-lane roundabouts and multi-way boulevard segments, which are more costly and have a larger footprint than more traditional roadway designs.
- Assess the direct, indirect, and cumulative impacts of the Project on the range of resource areas covered in NEPA.
- Provide any commitment to mitigation of adverse impacts resulting from the Project.
- Providing any public notice of the NEPA classification process or opportunity for review and comment on documentation of impacts in support of the Categorical Exclusion classification.

For these reasons, the use of Categorical Exclusion for the Franklin Boulevard Project is grossly inappropriate and completely contradicts the fundamental purpose of NEPA, which requires that the policies, regulations, and laws of the Federal Government be interpreted and administered in accordance with its environmental protection goals “to the fullest extent possible.”³⁰

In this context, I am disappointed that the letter I received from the Office of Civil Rights dated July 15, 2016 finds that there is “no Environmental Justice issue on the Franklin Boulevard Project.” As I state in the beginning of this letter, I realize that you have only heard my concerns orally and have not received them in writing until now. I hope that you will reconsider your finding of “no issue” in light of the evidence I have presented here, particularly given that a Categorical Exclusion is being considered but has not yet been approved.

I do have several specific questions and issues with points in the July 15, 2016 letter from the Office of Civil Rights. First, the letter states that “OCR reviewed several documents that indicate extensive analysis of roadway impacts regarding traffic, noise, and pedestrian safety on the Project.”³¹ I must challenge you on this point as I see the lack of adequate traffic analysis as a major “red flag.” My concern is specifically with the lack of any analysis of

³⁰ Federal Highway Administration. Environmental Review Toolkit: Program Overview. <https://www.environment.fhwa.dot.gov/projdev/index.asp> Accessed October 4, 2016.

³¹ ODOT Office of Civil Rights. Letter to David Helton RE: Environmental Justice concern received June 7, 2016. July 15, 2016. Page 5.

future No Build traffic conditions, which typically provides the fundamental justification for a transportation project. I am also concerned with the lack of an Alternatives Analysis that compares the operation of the Project design to that of a more traditional design for all travel modes. This is the type of traffic analysis typically conducted for a project the size of the Franklin Boulevard Project. Your answer to my concern about the lack of traffic analysis does not indicate that you reviewed any analysis of future No Build conditions or any Alternatives Analysis based on traffic operation.

In addition, your response to my concern about the lack of traffic analysis does not indicate that you consulted with any experts on the subject of transportation analysis for decisionmaking. In ODOT those subject-matter experts can be found in the Transportation Planning Analysis Unit (TPAU). Did you consult with any experts on the subject of whether the level of analysis prepared for the Franklin Boulevard Project is adequate for a project of that magnitude? If not, are you qualified to make such an assessment yourself? (Please do not be insulted by the last question – transportation analysis is a complex field and some expertise is required to judge whether an analysis is sufficient and sound.)

In response to my concern about the lack of adequate public involvement in the development of alternatives and notice of the NEPA process, the OCR letter of July 15, 2016 states “The evidence shows that extensive Public Involvement has taken place on the Franklin Boulevard Project, with outreach continuing as the Project progresses. There are no official complaints from residents or business owners in the area.”³² As this letter documents, the City of Springfield established their preference for using multi-lane roundabouts and multi-way boulevard segments early in the project development process. The City then sought to obtain a Categorical Exclusion for the Project in order to protect their preferred design from “sacrifices” that may be needed under an EA or EIS. Once the City selected their preferred design in 2009, none of the subsequent public involvement for the Project included any consideration of alternative designs for any reason. The City’s unwillingness to consider alternative designs that might be less costly and impactful, and controversy over the proposed Project, is reflected in public comments on the record from 2008, including the following comments on the multi-lane roundabout / multi-way boulevard design:

³² Ibid. Page 5.

"We have 5 lanes currently. We do not need more. This proposal is obviously extremely expensive and unbalanced. It will destroy the Glenwood community and destroy many jobs for families in the community."

I think the width of the road is excessive and wasteful. You have callous lack of concern for those you plan to displace. The people in the trailer courts with low incomes have few choices for new dwelling places. Those of us whose businesses you don't find within your vision are just out of luck. Did it occur to you that these businesses contribute to our incomes? You seek the weak to look for little resistance. You need to offer alternatives to those you dispossess. You find no problem with removing elderly residents. You need to offer solutions. If you want to avoid lawsuits."³³

In regard to the lack of complaints about the Franklin Boulevard Project, this letter documents the lack of public notice about the NEPA compliance process. As documented earlier, the City submitted a letter to FHWA in support of a Categorical Exclusion in June 2014—this letter has never been posted on the Franklin Boulevard Project web site, nor has any of the extensive documentation developed in support of the Categorical Exclusion application. It is difficult for people to complain when they do not know what is going on and do not have access to relevant documents. In addition, the only contact information on the Franklin Boulevard Project web site is for the City. So how does OCR know that there have not been any complaints about the Project?

I am aware that NEPA is not a cure-all for every adverse impact that might occur in Glenwood. Given the complexity of the issues related to the Franklin Boulevard Project and in Glenwood, NEPA provides a framework and tools to effectively address these issues using a transparent process that involves affected communities. A full NEPA analysis is particularly needed for projects in a neighborhood such as Glenwood with long-established low-income neighborhoods that are slated for redevelopment. We are currently in the middle of what some call an "affordable housing crisis." In this context, we

³³ City of Springfield, Franklin Boulevard Study. Appendix B, Franklin Boulevard Open House #2 Summary. Pages 3-5.

should be working to ensure that the environmental protection goals in NEPA are applied to the fullest extent possible. Instead, the City is seeking to circumvent these protections when they matter most.

In summary, I believe that use of Categorical Exclusion for the Franklin Boulevard Project is grossly inappropriate for this type of project in this setting. An Environmental Assessment or Environmental Impact Statement is needed to adequately assess and mitigate adverse impacts resulting from the Project. I would like to see the ODOT Office of Civil Rights provide comment to the Federal Highway Administration on the Franklin Boulevard Project to help ensure there is adequate notice and opportunity to participate in the NEPA compliance process, and that adverse impacts to Environmental Justice populations are adequately addressed.

Sincerely,

(submitted electronically)