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Gentlemen:

Environmental Defense is a national, not-for-profit environmental advocacy group, headquartered in New York with regional offices throughout the United States. We take an interest in a broad range of regional, national and international environmental issues, and are known as a leading advocate of using economic incentives to solve environmental problems. Environmental Defense works with grassroots groups at the local and regional level in the United States.

We are particularly concerned about the interface between Clean Air Act programs and transportation investments, since our research shows that vehicular traffic is a major contributor to air pollution problems in metropolitan areas such as Philadelphia and Wilmington. We are also interested in how highway expansion investments have contributed to sprawl and the loss of forest and farm land in developing regions. As such, projects such as the proposal to expand Route 41 in Chester County are of great concern to us.

A considerable portion of the stretch of Route 41 targeted for expansion is a rural area – the largest remaining such area in Chester County – which features some of the world's most productive soils. Agriculture – including farming, mushroom, and equine businesses – is the region's number one industry. The corridor also includes the headwaters of four watersheds, each a source of municipal water. One watershed bears the federal Wild and Scenic designation, and portions of two are classified by the Commonwealth of Pennsylvania as High Quality or Exceptional Value Waters (the highest designations in the State). The corridor also includes four watersheds and their headwater zones, several of which have been given Pennsylvania's highest designations, High Quality or Exceptional Value Water. Being immediately outside a major metropolitan area, however, in one of Pennsylvania's most rapidly growing counties suffering from serious problems of sprawl, such an area should be presumed fragile and

endangered. Plans to carve a major thoroughfare for truck traffic through its heart must raise an alarm.

We wish to make five major points concerning the analysis of the environmental impact of any Route 41 project. First, any major changes to Route 41 must be supported by a statement of purpose and need that addresses the actual function of the corridor in terms of transportation of people and goods, not merely a laundry list of the current road's shortcomings. Second, major federal projects must not be used to undermine existing policy objectives – including land use and regional planning objectives. Third, the analysis of the environmental consequences must take into account the indirect effects of any expansion – including effects that directly pertain to road conditions (such as levels of traffic on the road) and the speed, extent, and character of new development resulting from the road. Of particular importance is the indirect impact on land use; since transportation and land use are largely inseparable, transportation planning and regional planning are mutually interdependent. Fourth, Chester County is already in Clean Air Act non-attainment for ozone, and projects that are not consistent with the State Implementation Plan (“SIP”) should not be adopted under any circumstances. Finally, alternatives must be explored that address the functional purpose and needs of the total project, always keeping in mind that a rigorous alternatives analysis must be structured in terms of regional planning and not mere traffic engineering.

Purpose and Need

From what we have gathered, it seems that the “purpose and need” of this project have been identified primarily in terms of repairing perceived inadequacies of the current Route 41 corridor in Chester County – specifically, inadequate safety and inadequate capacity. It seems that most people are in agreement that the road's *current* conditions are not conducive to safety, with serious accidents involving trucks a particularly troubling trend.

However, since the Purpose and Need portion of the EIS drive the development of alternatives, it needs to be presented in a way that does not obscure the range of possibilities for meeting the project's goals. “Safety” and, to a greater extent, “congestion” are both complex problems, each a function of exogenous factors ranging from vehicle use and alternative means of moving people and goods to the location and extent of residential development and commercial and warehouse centers. The range of possible solutions to congestion depends on what kinds of vehicles are coming through the corridor, when they are traveling and how rapidly, how much flexibility they have about when to travel, what corridors they are not choosing, why they are choosing that corridor over others, and so forth.

In other words, a useful statement of the purpose of a road expansion needs to be connected to the purpose(s) of the road itself – transportation and access. Has PennDOT clearly formulated the present and future expected users of this corridor, giving consideration to other ways various users might travel? While it might be convenient to

think of different entities' needs as one problem – not enough space on this particular road – in fact, different users' needs are different and may require different kinds of solutions. Has PennDOT considered the purpose of this project with respect to different kinds of travelers – particular kinds of cargo, traveling particular routes? Has PennDOT considered the possibility that local and through traffic might be separate issues calling for separate solutions? What other existing roadways with capacity could be used as alternative routes for movement of goods? What portion of goods moving by truck in the corridor are being transported at distances greater than 250 miles, a general threshold above which freight rail may be cost-effective? What opportunities are there to increase the percent of goods in the corridor moving by freight rail or water?

As discussed above, safety and transportation capacity are both questions that should be addressed not in terms of traffic engineering, but more broadly, in terms of regional planning. Trucks and cars do not simply appear on roads in particular numbers; they come from somewhere, carrying someone or something, and they are going somewhere. The “demand” for transportation is very much a function of where development takes place, and in what form. According to the Pennsylvania Department of Transportation, the region will lack adequate capacity for future transportation demand, particularly transportation of freight. Such projections are meaningless without consideration of where the increased demand for transportation is supposed to be coming from, and where those new (or increased) users are expected to go, and for what purpose. What are PennDOT's assumptions in making these projections? How does PennDOT account for differences in development patterns (and future demand) depending on available transportation?

Policy is Not an Afterthought

Under NEPA, major federal projects are not to be used as a way to end-run other policy objectives. Federal regulations require that an EIS include, among environmental consequences of a project, an examination of conflicts between the proposed plan and Federal, state, regional, and local objectives. *Landscapes*, the award-winning comprehensive plan for Chester County, evinces a strict growth-control policy. The large number of agricultural and conservation easements (including by far the largest concentration of conserved land in the region – quite close to the existing Route 41) and the increasing use of agricultural zoning in some townships suggest a strong commitment to preserving the area's unusually rich resources. These efforts toward land conservation and stewardship continue at the present time, surrounding the Route 41 corridor; for example, of 91 Agricultural Preservation easement applications in Chester County in 2000, 39 (4,522 acres, more than 55% of the land for which easements were sought) are within the nine municipalities along the corridor. The state, too, has a stated preference for encouraging such preservation efforts. In fact, agricultural easements previously purchased by the state and county for preservation purposes might so constrain the Route 41 route that the road can be widened only by using the power of eminent domain to destroy them. As impressive as efforts toward land conservation and stewardship along the Route 41 corridor have been, the fact remains that the majority of the land in the

corridor is in unprotected agricultural use – in the minds of most developers, such land is “undeveloped.” Indeed, the conservation easements that already exist make the remaining land even more attractive to residential developers.

Have the region’s land use policies figured as inputs in the front end of PennDOT’s planning process? Despite the fact that the PennDOT’s proposal risks disrupting many land use policy goals, it would appear, from the Revised Scope of Work, that the intended outputs of the Pennsylvania Route 41 Land Use/Management Alternatives Analysis being undertaken by the Delaware Valley Regional Planning Commission (in conjunction with PennDOT and the Chester County Planning Commission) are not recommendations on how to develop the road consistent with local objectives, but rather customized “growth management strategy and recommended implementation action programs” to help municipalities make *their* visions for the future conform to PennDOT’s plans for the road. We understand from this that you must be assuming that land use controls can control the extent and speed of development and that all vulnerable municipalities will rapidly take all those actions necessary to protect vulnerable lands. Is that PennDOT’s assumption? If so, what is the basis for this assumption? Some courts are likely to disagree with you, possibly in rather strong terms; one court, faced with a similar set of assumptions, found that “zoning changes inevitably follow development pressures” and “[t]o believe otherwise is to ignore reality.” *Mullin v. Skinner*, 756 F. Supp. 904, 921 (E.D.N.C., 1990). The *Mullin* court dismissed federal agencies’ contentions that the feared increase in development would only take place in the event of particular zoning changes as “so utterly devoid of common sense and inconsistent with NEPA that it cannot be taken seriously.” *Id.* Recognizing that a project makes a particular future zoning scheme more likely in the future, it found that “[e]ven though zoning changes may be necessary to alter existing uses of land, if a major federal action makes it likely that such changes will occur, the action will have an indirect effect on the environment.” *Id.*

Indirect Effects, Including Land Use Impacts

The NEPA EIS process – incumbent upon federal agencies working on major projects – must not be seen as simply a procedural hurdle to be overcome before rubber-stamping a predetermined plan. It requires agencies to perform a complex, multifaceted analysis of complex variables and effects before embarking on major projects. NEPA requires agencies to “insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations.” 42 U.S.C. §4332(2)(B). NEPA is about *balancing* environmental considerations along with technical and economic considerations; NEPA was not devised to “abolish economic or technical progress but to have federal agencies balance environmental concerns against the material gains of ‘progress.’” *Trinity Episcopal School Corp. v. Harris* (S.D.N.Y. 1978) 445 F. Supp. 204, 219. This *balancing* purpose is particularly apt in the case of federally funded highway projects, in which the economics tend to result in socially inefficient outcomes, because the users of

the road, motor vehicle operators, unwittingly impose significant negative externalities on others.

An EIS is required to address the environmental impact of the proposed action, any adverse environmental effects which cannot be avoided should the proposal be implemented, alternatives to the proposed action, the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented. At bottom, NEPA demands that the analysis must be a real part of the decision-making process; government agencies are required take "a hard look" at the environmental impact of major projects. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Kleppe v. Sierra Club*, 427 U.S. 390, 410 (1976). Agencies must "utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment." 42 U.S.C. §4332 (2001).

One cause for concern here is that the Route 41 environmental impact analysis appears to lack any integrated focus. It is hodge-podge of different transportation, environmental, and land studies. For example, some potentially vital alternatives that should be a vital part of the analysis were dismissed several years ago as part of the Delaware Valley Regional Planning Commission study to determine the need for a Major Investment Study – which itself was never performed. The analysis of land use impacts is particularly fragmented; while impacts on individuals sites are considered within the EIS itself, the overall land use implications are not being assessed by PennDOT at all, but are instead being examined as part of the separate Land Use Study referred to above, being carried out by the Delaware Valley Regional Planning Commission with PennDOT and the Chester County Planning Commission.

Given the threatened rural character of the area, land use effects are among the most critical environmental impacts to be expected from this road expansion project. Further, the consultant's scope of work for the DVRCP's Land Use Study suggests that traffic impacts and land use impacts, which are inextricably linked, are not being treated together as part of a single unified study effort. PENNSYLVANIA ROUTE 41 LAND USE/MANAGEMENT ALTERNATIVES ANALYSIS, REVISED SCOPE OF WORK (December 8, 2000) at 12. This segregation of key aspects of the analysis casts doubt on whether a "systematic, integrated approach" is being used, and the non-integration of its interdependent parts must be subject to scrutiny. While regulations allow material to be incorporated by reference, this is only permissible only where doing so does not "[impede] agency and public review of the action." 40 C.F.R. §1502.21. If, as a result of having taken a fragmented approach, key portions of the analysis do not figure in the decision-making process, the analysis will not serve as a safeguard against unnecessary environmental degradation, as intended by NEPA.

Our concern about separating the traffic study from the land use study is not merely procedural, but substantive. The NEPA EIS process requires that indirect effects

be included in the analysis. Indirect effects, in this case, would include the increased strain on land and water resources brought about by other development induced by any road expansion. The indirect effect of whatever alternative is chosen here will be to influence the future demand for transportation in the Route 41 corridor. Federal regulations expressly require the consideration of indirect effects – and expressly recognize the circular causal relationship between major projects and particular growth patterns. 40 CFR §1508.8 defines indirect effects to include “growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” Separating the land use from the traffic element of the EIS will make it impossible to do a rigorous analysis of either element. That in turn will make it harder to choose an alternative with appropriate consideration to the land use implications of that alternative. If the EIS falls short in that way, Chester County, municipalities, and the Commonwealth of Pennsylvania will all be impaired in their ability to realize their stated policy goals.

At each level of scale, the indirect effects of expanding the Route 41 corridor include feedback effects that may not be desirable. Significantly increasing highway capacity of Route 41 would most likely induce changes in development patterns that would result in considerably different growth patterns over time, leading to greatly increased rates of population growth, building construction, and land consumption. The long-term costs of this sprawl development include the loss of an irreplaceable resource – some of the world’s most productive soil – and threats to valuable watershed as well. What studies or analyses has PennDOT performed to estimate increases in rates of development in the corridor’s watershed that might be expected to result from the proposed major expansion in highway capacity?

The causal relationship between increased road availability and increased traveling and, ultimately, increased development and traffic, is well established. Advocates of increased development freely acknowledge this when they seek to increase transportation access to areas they wish to develop. The National Association of Home Builders, for example, found in a survey that “highway access” topped the list of factors that would encourage survey respondents to move to a new area. Michael Lewyn, *SUBURBAN SPRAWL: NOT JUST AN ENVIRONMENTAL ISSUE*, 84 Marq. L. Rev. 301, 321 (Winter 2000) (hereinafter “Lewyn”). A study at U.C. Berkeley found that in California, induced traffic typically nearly catches up with new road capacity within five years. Lewyn at 369. Moreover, a five year study may actually understate the problem by failing to account fully for induced development, since there is not enough time for it to occur. A longer-term study reveals that between 1982 and 1997, Hartford, CT and Providence, RI experienced similar rates of growth of both population and traffic congestion – despite the fact that Providence road mileage increased by nearly 59% while Hartford road mileage stagnated! Lewyn at 369.

The urgent implications of these effects are legally cognizable. As noted above 40 CFR 1508.8(b) recognizes the “growth inducing effects and other effects” of some major government projects. In *City of Davis v. Coleman*, the Court of Appeals for the

Ninth Circuit found that where the increased capacity of a proposed new interchange vastly exceeded anything that could be used by the local community at that time, it must be the case that – despite the area’s agricultural zoning – the road was really being built “to stimulate and service future industrial development.” 521 F.2d 661, 667 (1975). A federal court in North Carolina commented that it was “common sense” that a new road would spur development. *Mullin v. Skinner*, 756 F. Supp. 904, 920-921 (1990).

More recently, a federal court in Illinois found an EIS inadequate where it relied solely on one socio-economic forecast to examine the effect of construction on ozone production, and required the U.S. DOT to study ozone production *with and without* the tollroad or explain why that was impossible. *Sierra Club, Illinois Chapter v. U.S. Department of Transportation*, 962 F. Supp 1037, 1045 (N.D.I.L., 1997). The court concluded that “information about the growth inducing impact of tollroad construction is crucial to a reasoned conclusion as to alternatives and that the final impact statement was at least required to explain in some meaningful way why such a study was not possible.” *Sierra Club* at 1043. Having failed to do such an analysis, the FEIS “does not adequately justify its reliance on projected needs and thus fails to observe the procedures required by law.” *Sierra Club* at 1043. No doubt, accounting for effects such as induced traffic adds a challenging dimension to an EIS, particularly the alternatives analysis. However, it is increasingly accepted that *failing* to take such effects into account defies common sense and thus fails at the basic mandate of NEPA, that agencies take a “hard look” before acting.

The area on which impact needs to be studied in the EIS is broader than the corridor itself and land that actually touches it. It has been held, for example, that environmental impact on an area 13 miles from a proposed highway project had to be included in the EIS. *Appalachian Mountain Club v. Brinegar*, 394 F. Supp. 105, 117 (DC NH, 1975). Is it true that the land use portion of the EIS considers individual parcels that touch the corridor, leaving the broader area to Norman Day’s separate “land use” study, which is not part of the EIS? In light of NEPA’s obvious concern for broad effects, what can be your rationale for such an approach?

In reality, the indirect effects stretch well beyond Chester County and even Pennsylvania. One indirect effect of Route 41 expansion is to further increase the region’s already extensive reliance on trucks for transporting freight. In the major cities of the region and the nation, the central role of trucks and automobiles has already crowded out homes, neighborhoods, and much-needed open space. Health effects of air pollutants range include headaches, eye irritation, reduced lung function, lung damage, respiratory disease, and cancer. Already, the northeast includes five of the nation’s 25 most ozone-polluted metropolitan areas, of which three include parts of Pennsylvania. Together, these five cities account for 36 million people and 1.4 million asthma sufferers. In New York City, where the problem has reached catastrophic levels, epidemic levels of asthma in children (over a quarter million) are largely attributable to air quality problems due to the area’s reliance on trucks – and importantly, this may herald a sea change, as New York and other cities have already begun to respond to this crisis by increasing their investment in rail. Trucks also have negative environmental effects on a literally global

scale, accounting for 12 to 15% of the United States' greenhouse gas emissions and for a higher percentage of post-1990 increased U.S. greenhouse gas emissions – thus exacerbating global warming.

Courts have found this broad view, rising above the limited local view of a project's apparent benefits, to involve precisely the kinds of impacts that an EIS should address. “[O]ne of the fundamental purposes of NEPA is to require consideration of questions of general or broad significance, such as chemical pollution, alternative modes of transportation, and world resource exploitation. The act expressly requires recognition of ‘the worldwide and long-range character of environmental problems,’ 42 U.S.C. § 4332(2)(E), and one of the specific elements to be studied in the EIS is ‘the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity.’ 42 U.S.C. § 4332(2)(c). Thus NEPA is clearly intended to focus concern on the ‘big picture’ relative to environmental problems. It recognizes that each ‘limited’ federal project is part of a large mosaic of thousands of similar projects and that cumulative effects can and must be considered on an ongoing basis.” *Swain v. Brinegar*, 517 F.2d 766, 775 (7th Cir. 1975).

Clean Air

Chester County, PA is part of the Philadelphia-Wilmington-Trenton area, which is in non-attainment of Clean Air Act targets for ozone. In fact, Chester County is ranked among the dirtiest 10% of U.S. counties in terms of an average individual's added risk of cancer from hazardous air pollutants. According to the EPA's most recent data, 438,435 people in Chester County face a cancer risk more than 100 times the goal set by the Clean Air Act – with 89% of the air cancer risk coming from mobile sources, including onroad vehicles and offroad equipment.

Under Clean Air Act regulations, states cannot rely solely on improved automotive technology (mandated through the Federal Motor Vehicle Control Program, Enhanced Vehicle Inspection and Maintenance, and Reformulated Gasoline) to meet aggressive emissions improvement targets; states and localities must manage transportation plans as well. “The CAA (Section 17c) requires that emissions resulting from federally-funded or approved highway and transit plans, programs, and projects may not cause new air quality violations, worsen existing violations, or delay timely attainment of the national air quality standards.” COMMONWEALTH OF PA. DEP'T OF ENVTL. PROT., STATE IMPLEMENTATION PLAN (SIP) REVISION FOR THE PHILADELPHIA INTERSTATE OZONE NONATTAINMENT AREA MEETING THE REQUIREMENTS OF THE ALTERNATIVE OZONE ATTAINMENT DEMONSTRATION POLICY PHASE II (April 1998) (hereinafter “*SIP Revision*”). Under 40 CFR Part 51.390 and Part 93.100-128, transportation plans, programs, and projects must “conform” to SIPs, a determination that is made by the MPO before approving projects. As a result of the dubious distinction that Chester County shares with the rest of the Philadelphia metropolitan area as a “severe” non-attainment area, the area is obligated to reduce VOC emissions by at least 3% annually through 2005 and to offset any growth in emissions. *See SIP Revision* at 3.

(NO_x control measures can be substituted for VOC control measures to demonstrate compliance with reduction requirements, with NO_x reductions expressed in terms of VOC-equivalent reductions. *SIP Revision* at 27. PennDOT, PennDEP, and all local transportation planning organizations have signed a memorandum on transportation conformity procedures that “require a technical analysis to ensure that, on a regional basis, highway/transit improvements contribute to reductions in ozone precursor.” *SIP Revision* at 14-15.

Under the conformity rule, the region is subject to highway vehicle emission “budgets” that establish firm facts. While it may be possible for areas such as Chester County to place some of the responsibility for reductions on upwind polluters, the responsibility for mitigating *growth* in emissions remains. Emission targets are set with respect to particular vehicle miles traveled (VMT) and speed projections; in the long term, controlling emissions will most likely require that these variables be controlled at the outset.

Oddly enough, the proposed widening of the road purports to decrease vehicle emissions in the area. For that to be the case, the assumption would have to be that the level of trucks and other vehicles moving within the corridor will be largely the same with or without the expanded roadway being sited in the Route 41 corridor as the DOT is proposing. This is an untested assumption that has no empirical basis whatsoever. Is that in fact PennDOT’s assumption? If so, what is the basis for that assumption? Doesn’t it run counter to every study of induced traffic? What distinguishes this road expansion from all the others that are known to have induced traffic and, ultimately, *increased* congestion and total emissions?

Ultimately, air quality effects are inextricably tied back into the same induced growth problem as land use impacts. The air quality effects of an enlarged road would vary greatly depending on specific road conditions. For example, while traffic engineers typically consider higher speeds to be more “efficient,” NO_x emissions climb when vehicles exceed 30 mph; VOC does not increase until vehicles hit a higher speed. How are you modeling responses to changing speed and conditions? Is your air quality analysis sensitive to the fact that road conditions (including speed) will vary depending on the extent and type of development that occurs around the road?

Alternatives Analysis

The analysis of alternatives, including the proposed action, is “the heart of the environmental impact statement.” 40 C.F.R. §1502.14. Alternatives are to be developed to address the stated “purpose and needs” of the proposed project. 40 C.F.R. §1502.13. “An agency must look at every reasonable alternative, with the range dictated by the nature and scope of the proposed action, and sufficient to permit a reasoned choice.” *Alaska Wilderness Recreation v. Morrison*, 67 F.3d 723, 729 (9th Cir. 1995) (quoting *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1520 (9th Cir. 1992)). Failure to examine viable alternatives renders an EIS invalid. See *Citizens for Better Henderson v.*

Hodel (1985, CA9 Nev) 768 F.2d 1051, 1057. A rigorous alternatives analysis must acknowledge that any project that is selected will influence future growth and development, so long-term projections should vary consistently with what can be anticipated under any given scenario.

In general, PennDOT needs to perform a multivariate analysis that respects the existing vision for future land use in the area. A four-lane Route 41 – even if it addresses the stated “purposes” of improving safety and traffic flow, which is questionable – is very likely to be a recipe for sprawl and induced movement of goods by truck through this corridor, regardless of attempts to mitigate the road’s effects by adapting local zoning codes. Achieving a clearly-stated land use vision needs to be treated as one of the *goals* of the project itself. It should be built into the alternatives under consideration, not an institutional afterthought. To accomplish this, the EIS should incorporate a sustainable transportation and land use corridor study. PennDOT should set up a task force of informed agency experts, county and local officials, and citizens to help develop such a study.

Such a taskforce, focused on resolving Route 41’s capacity and safety problems and achieving land use goals, would be able to consider a broad range of alternatives – including some that might not meet all the project’s perceived “needs” in one fell swoop. The fact that a particular range of alternatives would achieve only some purposes of a multi-purpose project is not adequate reason to eliminate the entire range. See *Matthews v. United States Dept. of Transp.* 527 F.Supp 1055, 1057 (1981, WD NC). For example, in this case, solutions that address safety concerns, but don’t by themselves relieve all identified capacity concerns, should be on the table.

Additionally, some alternatives might meet the needs of some road users and not others, while doing far more to meet the region’s land resource goals than the current proposal. That is the point of NEPA – to provide a framework for *balancing* harms and benefits; different alternatives generally represent somewhat different packages of benefits. “Obviously, any genuine alternative to a proposed action will not fully accomplish all of the goals of the original proposal. One of the reasons that Congress has required agencies to set out and evaluate alternative actions is to give perspective on the environmental costs, and the social necessity, of going ahead with the original proposal.” *Matthews* at 1058. The taskforce, therefore, would probably want to consider such variegated solutions as these:

⇒ **Alternative prescriptions for Route 41:**

- The one thing that everyone seems to agree about is that the road itself is simply not safe at the present time. Alterations to the road that address safety concerns may be separated from alterations that increase capacity. Possibilities might include, for example, lower speed limits, traffic calming, and limiting truck access to the road.
- A traffic-calming approach such as that advocated by S.A.V.E. – which has been dismissed as a serious possibility because it does not allow truck drivers to go as fast as they would like to go – is a good example of an alternative that appears to

address certain purposes of the project (such as safety) extremely well while perhaps seeming to fall short on other purposes (such as allowing many trucks to move very quickly). Interestingly, while such an alternative may appear to be only a partial answer to the project's purpose, it may be superior to some alternatives that appear more "complete" but are fundamentally out of harmony with the shared land use vision for the region. Only a genuinely fair, preliminary alternatives analysis, performed in light of a sustainable transportation and land use corridor study, can compare such disparate approaches fairly.

⇒ **Substitutes for Route 41:**

- Can people and goods get where they need to go via different routes?
- **Road Routes**
 - Existing corridors that are already surrounded by sprawl are, generally, preferable to corridors that cross extremely endangered agricultural land. Such alternative corridors should not be dismissed lightly. And yet, it appears that when the DVRPC was deciding whether an MIS was necessary, that is what occurred.
 - For example, the pre-MIS alternatives study found that the Pennsylvania Turnpike, which could in theory carry some of the same east/west traffic, is unsatisfactory to truck drivers primarily because it is a toll road. In that study, this sentiment was considered a good reason to abandon the Turnpike as a serious option. That is, frankly, outrageous. Mobility is a precious commodity, and using roads generates tremendous externalities; the fact that trucks rarely pay the cost of any externalities they generate may appear good for business, but in reality, it's just bad, inefficient economics. There is no rational economic justification for governments to provide an endless supply of free roads to businesses; a policy of doing so guarantees inefficient decisions at a macro level. The very purpose of the NEPA EIS process is to ensure that economic and environmental concerns are weighed together; such cavalier dismissal of an economically sound option without due consideration to its environmental benefits is deeply inappropriate. It is altogether appropriate to include use of the Pennsylvania Turnpike as part of an alternative package. Indeed, its exclusion for the reason stated is altogether arbitrary and capricious.
 - Route 41 is one of very few designated "truck routes" in the region. That seems, frankly, rather odd, in light of the fragile agricultural context and nature of local development. What is the reasoning behind this designation?
- **Railroad Routes**
 - When rail is considered as an option, it must be considered *seriously* – not simply as an existing alternative that road users could choose (and don't) but as an alternative recipient of expansion funding. In this case, it appears that rail was eliminated as an option for relieving congestion by judging its viability according to the low-quality performance of antiquated tracks.
 - Since much of the freight traversing this region has a long way to go, rail should be evaluated in terms of regional, not merely local, infrastructure. For example, in light of the serious air quality problems choking the cities of the

northeast, New York and New Jersey have significantly increased their commitment to rail transportation of freight in the past three years.

⇒ **Time-shifting.** Spreading traffic over the course of a day relieves congestion at peak times and improves infrastructure utilization.

- **Congestion pricing.** Continuing on the above theme that an endless supply of free roads is a bad thing, PennDOT's sustainable transportation and land use corridor study should include consideration of congestion pricing for the Route 41 corridor. Roads are a precious resources at all times, but especially during peak periods. With congestion pricing, users of the road have an incentive to spread their use over more varied schedules. Different types of users may be more or less able to change their schedules, and road pricing can reflect this; it is also feasible to exempt local users from having to pay tolls.

Because there appears to be no scope of work available for the DEIS (if there is such a scope of work available, please furnish us with a copy), it is difficult to ascertain at the present time what approach is being taken to analyzing alternatives. Given their narrow construction of "purpose and need" in terms of this stretch of road (and not in terms of the function served by the road), however, PennDOT and the FHWA run a risk of inappropriately segmenting the project for purposes of the EIS by foreclosing the opportunity to consider alternatives. Inappropriate segmentation could cause the agencies to ignore alternatives that would address the overarching transportation need through some means other than increased capacity on this particular road. Additionally, records of the DVRPC determination that no MIS was needed seem to suggest that many reasonable alternatives were dismissed at that stage for insufficient reasons.

It is highly likely that the precious resources in Chester County are seriously threatened by the proposed changes to Route 41. From the information currently available, it also appears likely that a fragmented, incoherent environmental impact process may impede the state and federal government's ability to assess the full breadth of impacts and weigh an appropriate array of alternatives fairly, with an eye on long-term consequences. It is particularly troubling that this fragmented process appears to have emerged despite Chester County's, landowners' and some municipalities' unusually sophisticated efforts to develop and implement a coherent land use policy. We hope that the actual environmental impact statement will, contrary to current indications, rise above this flawed process in order to comply with federal law – and give the rich resources of Chester County the respectful consideration they deserve.

Sincerely,

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