Ohio EPA 07/19/2024

Entered Director's Journal

Environmental Protection Agency

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Mike DeWine, *Governor* Jon Husted, *Lt. Governor* Anne M. Vogel, *Director*

I certify this to be a true and accurate copy of the official documents as filed in the records of the Ohio Environmental Protection Agency.

By: _____ Date: 07/19/2024

July 19, 2024

TRANSMITTED ELECTRONICALLY

Re: LAW-7-2.17, PID 75923/113211 (Phase 2A/2B)
Permit - Intermediate
Approval
401 Wetlands
Lawrence
DSW401238961A

Jack Marchbanks
Ohio Department of Transportation
1980 West Broad Street
Columbus, OH 43223
adrienne.earley@dot.ohio.gov

Subject: LAW-7-2.17, PID 75923/113211 (Phase 2A/2B)
/ Chesapeake
Grant of a Section 401 Water Quality Certification
Corps Public Notice No. LRH-2022-165-OHR
Ohio EPA ID No. 238961A

Dear Stakeholders:

I hereby authorize the above referenced project under the following authorities, and it is subject to the following conditions:

Section 401 Water Quality Certification

Pursuant to section 401 of the Federal Water Pollution Control Act, 33 U.S.C. section 1341; Ohio Revised Code chapters 119 and 6111; Ohio Administrative Code chapters 3745-1, 3745-32 and 3745-49, I hereby certify that the above-referenced project will comply with the applicable provisions of sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act. This authorization is specifically limited to a Section 401 Water Quality Certification (here after referred to as "certification") with respect to water pollution and does not relieve the Certification Holder of further Certifications or Permits as may be necessary under the law. I have determined that a lowering of water quality in the Raccoon-Symmes watershed (HUC 05090101) as authorized by this certification is necessary. I have made this determination based upon the consideration of all public comments, if submitted, and the technical, social, and economic considerations concerning this application and its impact on waters of the state. The discharge from this project will comply with all federal and state water quality requirements, as defined at 40 C.F.R. § 121.1(n).

Preliminary - Not for Construction 07/29/2024

Section 401 Water Quality Certification Waiver

Ohio EPA is specifically waiving its authority to certify proposed impacts to ephemeral features due to jurisdictional concerns and state law implications.

PART I ON-SITE WATER RESOURCES AND IMPACTS

A. Watershed Setting

This project is located across Three HUC12 drainages: McKinney Creek-Symmes Creek (HUC 05090101-10-05) has an area of 22.07 square miles; Wolf Creek-Indian Guyan Creek (HUC 05090101-07-08) has a drainage are of 28.45 square miles; and Paddy Creek-Ohio River (HUC 05090101-07-09) has a drainage area of 70.2 square miles. The project will impact 38 steams, most of which are Unnamed Tributaries, but including Symmes Creek (two impact points), Bear Creek, Bent Creek, Indian Guyan Creek, and Little Paddy Creek (two impact points), all of which are Warmwater Habitat (WWH) streams and primary contact recreation waters with antidegradation categories of general high quality water. Symmes Creek and Indian Guyan Creek are proposed Exceptional Warmwater Habitat (EWH) streams. Other Ohio EPA Aquatic Life Use Designations located in the project watershed, as found in OAC rule 3745-1-16, include EWH and WWH.

B. Project Description

The project is to construct phase 2A/2B of the Chesapeake Bypass; a section of State Route 7 is to be constructed on a new alignment between the cities of Chesapeake and Proctorville just west of Rome, Ohio in Lawrence County (38.43426557494165, -82.45769837097185). Bridges and culverts will be used to cross 38 streams, and fill will be placed in 18 wetlands for roadbed.

C. Impacts to Waters of the State

These conditions are authorized by OAC 3745-32-03(K)(1) and are necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

1. Streams

Thirty-eight streams will be impacted by filling and displacement, culverting, bridge piers and abutments, and RCP/embankment modification.

Preliminary - Not for Construction 07/29/2024

Stream ID	Designated Use	Type* E, I, or P	HHEI or QHEI Score*	Impact Type	Total Length on Site (LF)	Total Length Impacted (LF)
3	Undesignated	I	77	Roadway Fill	741	617
3a	Undesignated	I	63	Roadway Fill	343	343
5	Undesignated	I	47	Roadway Fill	528	527
7	Undesignated	I	57	Roadway Fill	916	822
8	Undesignated	I	36	Roadway Fill	261	250
9	Undesignated	P	78	Roadway Fill	1688	1544
10	Undesignated	I	65	Roadway Fill	4092	4085
12	Undesignated	P	51	Roadway Fill	349	337
13	Undesignated	I	78	Roadway Fill	913	787
14	Undesignated	I	62	Roadway Fill	1199	1195
16	Undesignated	I	66	Roadway Fill	1876	1746
16a	Undesignated	I	49	Roadway Fill	1075	1075
SymmesCreek Point 2	WWH (EWH Proposed)	P	N/A	Bridge	400	100

Preliminary - Not for Construction 07/29/2024

Symmes Creek Point 3	WWH (EWH Proposed)	P	N/A	Bridge	475	100
Bear Creek	WWH	P	50.5	Roadway Fill	147	41
Bent Creek	WWH	P	67.5	Culvert	1421	1245
Indian Guyan Creek	WWH (EWH Proposed)	P	62	Culvert	368	100
Little Paddy Creek	WWH	P	51.5	Roadway Fill	1996	180
Little Paddy Creek Ramp 1	WWH	P	51.5	Roadway Fill	1996	85
				Totals	**20784**	**15179**

*Additionally, this project includes impacts to 5048 LF feet of federally jurisdictional streams that are listed as ephemeral in the application.

2. Wetlands

Wetlands will be impacted for roadway filling.

Wetland ID	Isolated or Non-isolated?	Forested or Non-Forested	Category	Total Acreage on Site	Total Acreage Impacted	Percent Avoided
Wetland A	Non-Isolated	Forested And Non-Forested	1	0.79	0.11 (non-forested only)	86.07
Wetland B	Non-Isolated	Non-Forested	2	0.12	0.12	0

Preliminary - Not for Construction 07/29/2024

Wetland C	Non-Isolated	Non-Forested	2	0.03	0.03	0
Wetland D	Non-Isolated	Non-Forested	2	1.77	0.07	96.04
Wetland E	Non-Isolated	Non-Forested	2	0.71	0.59	16.90
Wetland F	Non-Isolated	Non-Forested	2	0.55	0.55	0
Wetland G	Non-Isolated	Non-Forested	1	0.01	0.01	0
Wetland H	Non-Isolated	Non-Forested	2	0.1	0.1	0
Wetland I	Non-Isolated	Non-Forested	2	0.6	0.6	0
Wetland K	Non-Isolated	Non-Forested	2	0.02	0.02	0
Wetland L	Non-Isolated	Non-Forested	2	0.13	0.13	0
Wetland M	Non-Isolated	Non-Forested	2	0.26	0.21	19.23
Wetland N	Non-Isolated	Non-Forested	2	4.78	2.54	46.86
Wetland P	Non-Isolated	Non-Forested	2	0.06	0.06	0
Wetland Q	Non-Isolated	Non-Forested	1	0.27	0.13	51.85
Wetland R	Non-Isolated	Non-Forested	1	0.02	0.02	0
Wetland S	Non-Isolated	Non-Forested	1	0.03	0.03	0
Wetland T	Non-Isolated	Non-Forested	2	0.34	0.18	47.05
			Totals	**10.59**	**5.5**	**48.06**

3. Lakes

Impacts to lakes are not authorized under this certification.

Preliminary - Not for Construction 07/29/2024

PART II TERMS & CONDITIONS

Granted with Conditions (40 CFR 121.7(d)(2)) Ohio EPA has determined that the potential discharges from the project will comply with water quality requirements, as defined at 40 C.F.R. § 121.1(n), subject to the following conditions pursuant to CWA Section 401(d):

A. This certification shall remain valid and in effect as long as the 404 Permit issued by the U.S. Army Corps of Engineers for this project is in effect.
This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

B. Terms and conditions outlined in this section apply to project construction as described in this certification.
This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

C. The Certification Holder shall notify Ohio EPA, in writing, and in accordance with *Part IV* (*NOTIFICATIONS TO OHIO EPA*) of this certification, upon the start and completion of site development and construction.
This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

D. A copy of this certification shall remain on-site for the duration of the project construction activities.
This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

E. In the event of an inadvertent spill, the Certification Holder must immediately call the Ohio EPA Spill Hotline at 1-800-282-9378, as well as the Ohio EPA Section 401 Manager (614-644-2001)
This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, ORC 6111.04(A)(1), and Section 303 of the Clean Water Act.

Preliminary - Not for Construction 07/29/2024

F. Unpermitted impacts to surface water resources and/or their buffers occurring as a result of this project must be reported within 24 hours of occurrence to Ohio EPA, Division of Surface Water, Section 401 Manager (614-644-2001), for further evaluation. **This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, ORC 6111.05, and Section 303 of the Clean Water Act.**

G. This project may affect the drinking water wells for the City of Proctorville and potable water intake for the City of Ironton PWS. Precautions must be taken to limit any effect on the water supply. Officials at the Cities of Proctorville and Ironton must be notified before beginning the project and activities shall be coordinated with them. Officials can be contacted at:

Ironton Public Water System
Administrative Contact: Samuel Cramblit
Business Number: 740-532-3833
Email: irontonmayor@ironton-ohio.com

Proctorville Village Public Water System
Administrative Contact: Mark Root
Emergency Number: 740-886-6691
Email: proctorvillewater@yahoo.com

This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, and Section 303 of the Clean Water Act.

H. Pesticide application(s) for the control of plants and animals shall be applied in accordance with the NPDES General Permit to Discharge Pesticides In, Over or Near Waters of the State available at: https://www.epa.ohio.gov/portals/35/permits/OHG870002%20FINAL%20PERMIT.pdf and may require a pesticide applicator license from the Ohio Department of Agriculture.
This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

Preliminary - Not for Construction 07/29/2024

I. Any authorized representative of the director shall be allowed to inspect the authorized activity at reasonable times to ensure that it is being or has been accomplished in accordance with the terms and conditions of this certification.
This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, ORC 6111.05, and Section 303 of the Clean Water Act.

J. In the event that there is a conflict between the certification application and the conditions within this certification, the condition shall prevail unless Ohio EPA agrees, in writing, that the certification application or other provision prevails.
This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

K. To ensure the proposed project is constructed in accordance with the certification, the Certification Holder shall provide electronic maps of the development area to Ohio EPA 401 Section within 30 days of the date of this certification.
This condition is authorized by OAC 3745-32-03(K)(1) and is necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

When sending the electronic files, include the Ohio EPA ID Number and the Army Corps of Engineers Number (if applicable). If possible, these electronic maps shall be GIS shape files or Geodatabase files. If this is not possible, the electronic maps shall be in another electronic format readable in GIS (GIF, TIF, etc). The electronic files shall be sent to the following e-mail address: EPA.401Webmail@epa.ohio.gov. If the files are too large to send by e-mail (over 25 MB), they shall be sent using the following file share link: https://fileshare.epa.ohio.gov/filedrop/401Wetlands.

L. This proposal may require other permits from Ohio EPA. For information concerning application procedures, contact the Ohio EPA District Office as follows:

Ohio Environmental Protection Agency
Southeast District Office
2195 Front Street
Logan, Ohio 43138
740-385-8501

Preliminary - Not for Construction 07/29/2024

Additional information regarding environmental permitting assistance at Ohio EPA can be found at https://epa.ohio.gov/wps/portal/gov/epa/stay-compliant/get-help/permit-assistance

M. Best Management Practices (BMPs)

The following conditions are authorized by OAC 3745-32-03(K)(1) and are necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

1. All water resources and their buffers which are to be avoided, shall be clearly indicated on site drawings demarcated in the field and protected with suitable materials (e.g., silt fencing) prior to site disturbance to protect aquatic resources from unauthorized discharge of pollutants. These materials shall remain in place and be maintained throughout the construction process and removed after completion of construction.

2. To reduce sedimentation of aquatic resources and increased turbidity, all BMPs for storm water management shall be designed and implemented in accordance with the most current edition of the Ohio Department of Natural Resources Rainwater and Land Development Manual, unless otherwise required by the National Pollutant Discharge Elimination System (NPDES) general permit for storm water discharges associated with construction activities (construction general permit), if required.

   A copy of the Rainwater and Land Development Manual is available at: https://epa.ohio.gov/divisions-and-offices/surface-water/guides-manuals/rainwater-and-land-development

   A copy of the NPDES construction general permit is available at: https://epa.ohio.gov/static/Portals/35/permits/OHC000005.pdf

3. To reduce sedimentation of aquatic resources and increased turbidity, straw bales shall not be used as a form of sediment control.

4. To reduce sedimentation of aquatic resources and increased turbidity, grass filter strips shall be established adjacent to all avoided/relocated and un-culverted waters of the state, including wetlands and existing buffer areas. Filter

Preliminary - Not for Construction 07/29/2024

strips shall be vegetated with non-invasive species native to Ohio and shall be designed and implemented in accordance with the most current edition of the Rainwater and Land Development Manual.

5. To reduce sedimentation of aquatic resources and increased turbidity, fill material shall consist of suitable non-erodible material and shall be stabilized to prevent erosion.

6. To protect the water quality of aquatic resources, materials used for fill or bank protection shall consist of suitable material free from toxic contaminants in other than trace quantities. Broken asphalt is specifically excluded from use as fill or bank protection.

7. To reduce sedimentation of aquatic resources and increased turbidity, concrete rubble used for fill or bank stabilization shall be in accordance with ODOT specifications; free of exposed re-bar; and, free of all debris, soil and fines.

8. To protect the water quality of aquatic resources, chemically treated lumber which may include, but is not limited to, chromated copper arsenate and creosote treated lumber shall not be used in structures that come into contact with waters of the state.

9. To minimize soil erosion and reduce the adverse effects associated with invasive plant species, trees removed from temporary impact areas to facilitate construction shall be replaced with appropriate tree species native to Ohio.

10. To protect the water quality of aquatic resources, all temporary fill material must be removed to an area that has no waters of the state at the completion of construction activities and the stream bottom restored to pre-construction elevations to the maximum extent practicable.

11. Culverts

    a. Stream culverts shall be installed and designed at the streambed slope to allow for the natural movement of aquatic organisms and bedload to form a stable bed inside the culvert to minimize effects to aquatic species.

Preliminary - Not for Construction 07/29/2024

b. The culvert base or invert with the substrate shall be installed below the sediment to allow natural channel bottom to develop and to be retained to protect the water quality of aquatic resources.

c. The channel bottom substrate shall be similar to and contiguous with the immediate upstream and downstream reaches of the stream. The culvert shall be designed and sized to accommodate bankfull discharge and match the existing depth of flow to facilitate the passage of aquatic organisms.

d. Where culverts are installed for temporary crossings, the bottom elevations of the stream shall be restored as nearly as possible to pre-project conditions to protect the water quality of aquatic resources.

N. Wildlife Protection

The following conditions are authorized by OAC 3745-32-03(K)(1) and are necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

1. No in-water work shall take place during the environmental window April 14 to June 30, unless specifically approved by the Ohio Department of Natural Resources, Division of Wildlife, in writing, with a copy provided to Ohio EPA prior to undertaking any in-water work during the environmental window to minimize effects to aquatic species.

2. If native mussels and/or mussel beds, not previously identified, are encountered at any time during construction or dredging activities, work must cease immediately and the Ohio Department of Natural Resources' Division of Wildlife must be contacted for further evaluation to minimize effects to the species.

PART III MITIGATION

The following conditions are authorized by OAC 3745-32-03(K)(1) and are necessary to comply with water quality requirements per OAC 3745-1-04, OAC 3745-1-05, OAC 3745-1-07, OAC 3745-1-51, OAC 3745-1-54, and Section 303 of the Clean Water Act.

Preliminary - Not for Construction 07/29/2024

A. Description of Required Mitigation

As mitigation for the wetland impacts associated with this project, the applicant will use 3.1 acres from the mitigation project completed as part of Phase 1 of the Law-7-2.17 Project, Ohio EPA ID 010392, located near 801-735 Township Rd 158, Chesapeake, OH 45619, Lawrence County (38.440106, -82.452279), and use 7.8 non-forested wetland credits purchased from The Nature Conservancy's In-Lieu Fee Program servicing the Raccoon-Symmes HUC 8 (05090101).
As mitigation for stream impacts associated with this project, the applicant has purchased 19,944 stream credits from The Nature Conservancy's In-Lieu Fee Program (Raccoon-Symmes 05090101). Additionally, the applicant will restore and enhance 14809 LF of streams and buffers at a permittee-responsible mitigation site known as Mudsoc Farm as described in the plan dated March 2024, updated via technical comment response on June 27, 2024, and finalized July of 2024.

B. Mitigation and Monitoring Plan

As mitigation for impacts described in Part I.C of this certification the Certification Holder shall implement the mitigation plan dated July 2024, and in accordance with the conditions in this certification.

C. Timing of Mitigation Requirements

1. Mitigation construction shall be initiated concurrently with the stream and wetland impacts and shall be completed within one year of the initial impacts.

D. Long Term Protection

1. For the above described stream mitigation area, including buffers, the Certification Holder shall submit to Ohio EPA an acceptable, notarized, recorded, and filed Environmental Covenant prior to or with the first annual report submittal. The Environmental Covenant shall include, as attachments, a metes and bounds (survey) description of the protected area, survey map, and an aerial photograph showing the boundaries of the protected area and all mitigation areas inside the protected area as presented in the Permittee Responsible Mitigation plan.

Preliminary - Not for Construction 07/29/2024

2. Signs shall be placed within visual distance along the mitigation area that indicate the area is a protected wetland and stream mitigation project and that mowing, dumping, or any other activity that would result in a degradation of the wetland and stream without prior authorization from Ohio EPA is prohibited.

E. Agency Site Visits

The Certification Holder shall arrange on-site mitigation meetings with Ohio EPA during the growing season that follows the submittal of the second, fifth, seventh, and tenth annual mitigation monitoring reports. The purpose of this inspection is to determine if the mitigation project has been constructed in accordance with the mitigation and monitoring plan approved by Ohio EPA and the terms and conditions of this certification, as well as to determine progress toward compliance with the performance goals for the site. The Certification Holder is responsible for undertaking any modifications identified by Ohio EPA.

F. Reporting

1. Annual Update Reports

To ensure the proposed project is constructed in accordance with the provided information, a project construction update report shall be submitted to Ohio EPA by December 31 of each year following the date of this certification and until project construction is complete. Each update report shall contain, at a minimum, the following information:

a. The status of all of the mitigation required for the project as specified in the application and certification including the filing of the required Environmental Covenant;

b. The status of the filling activities at the development site including dates filling was started and completed, or are expected to be started and completed. If filling activities have not been completed, a drawing shall be provided, which shows the locations and acreage/feet of wetlands/streams that have not yet been filled. If filling activities have been completed, then as-built drawings shall be submitted, which show where fill was placed;

Preliminary - Not for Construction 07/29/2024

c. Mitigation construction start date, completion date, or expected start and completion date;

d. A discussion of the extent to which the mitigation has been completed according to the timelines specified in this certification;

e. Current contact information for all responsible parties including phone number, e-mail, and mailing addresses. For the purposes of this condition, responsible parties include, but may not be limited to the Certification Holder, consultant, Environmental Covenant holder, and Environmental Covenant owner;

f. As-built drawings sized 11" by 17" (to scale) of each of the mitigation areas, once construction is complete.

2. Annual Mitigation Monitoring Reports

a. The mitigation monitoring period shall commence immediately following completion of mitigation construction and shall continue through a 10 year monitoring period, except as provided for in the contingency plan.

b. Annual mitigation monitoring reports shall be submitted to Ohio EPA by December 31 of the first full year following the end of the first full growing season and completion of mitigation construction. All subsequent reports shall be submitted by December 31st of each of the monitoring years.

c. Annual mitigation monitoring reports shall be prepared in the format prescribed in the Ohio EPA Monitoring Report Guidelines document available at https://epa.ohio.gov/static/Portals/35/401/401MonitoringReportGuidelines.pdf and include the Monitoring Report Checklist provided at https://epa.ohio.gov/static/Portals/35/401/401MonitoringReportChecklistTable.pdf

Preliminary - Not for Construction 07/29/2024

d. Each annual report shall contain the **current contact information** for the Certification Holder, agent, environmental covenant holder, and environmental covenant owner including phone number, e-mail, and mailing addresses.

e. Each annual report shall clearly identify the specific monitoring period the report is intended to represent, as well as the calendar year the monitoring occurred. The report shall also provide a summary of current mitigation status, which compares the previous years' monitoring information with the current report including graphs and tables showing trends, etc.

f. Each annual report shall include a cover letter. The cover letter shall identify the status of the mitigation project and identify any items needing immediate attention or questions for the regulatory agencies.

g. The first monitoring report shall contain a full copy of the final U.S. Army Corps of Engineers 404 permit for the project.

h. Each annual monitoring report shall contain a list of species planted in all mitigation areas.

i. The first-year report shall include plan views and cross sections of the as-built mitigation area including the location and types of planting.

j. At a minimum, the first, third, fifth, seventh, and tenth annual reports shall contain updated drawings sized 11" by 17" or larger (to scale) of each of the mitigation streams reflecting the current conditions, corrective or other actions that occurred, changes in dominant vegetation, and other pertinent information.

k. Each annual report shall include photographs to be collected as follows:

    i. An adequate number of fixed observation points shall be selected, with no fewer than three fixed observation points per distinct mitigation area, to provide representative overviews of each distinct mitigation area. Additional fixed observation points

Preliminary - Not for Construction 07/29/2024

will be placed upstream and downstream of the two culverts that cross under SR 775. The use of stakes with unique numbers to designate photo locations is recommended;

ii. Photographs shall be taken from these points at the same position and angle during the growing season of each monitoring year. The fixed observation points shall be marked on the base map;

iii. Additional photographs of areas of interest within each distinct mitigation area shall be marked on the base map and provided in each monitoring report.

G. Monitoring Requirements – Streams

1. Site Drawings

At a minimum, the first, third, fifth, seventh-, and tenth-year annual reports shall include longitudinal (profile view along the thalweg) and cross-sectional plan view measurements of the restored mitigation streams and shall be taken to include those measurements necessary to determine bank height ratio, entrenchment ratio, pool spacing ratio, percent riffle, and sinuosity for a minimum stream reach of 100 meters.

As follows, cross section measurements shall:

i. Be collected over an appropriate stream assessment reach, with at least one cross section through a pool area and another through a riffle area;

ii. Include bankfull width, bankfull maximum depth, flood prone area width, entrenchment ratio, bankfull cross-sectional area, and bank height;

iii. Encompass two consistent permanent cross sections for each analysis; and,

iv. Lowest bank height elevations shall be collected where those differ significantly from bankfull stage.

Preliminary - Not for Construction 07/29/2024

As follows, longitudinal profile measurements shall:

i. Include those measurements necessary to determine average water surface slope, riffle slope, pool slope, and riffle/pool or step/pool sequences over the entire measured reach; and,

ii. Provide elevation data for the thalweg, water surface, and bankfull stage over the entire measured reach.

2. Stream Stability

Observations of the stream mitigation channel and banks, including up and downstream, shall be made. Signs of negative effects from the stream mitigation such as excessive bank erosion, sedimentation, headcutting, aggradation, entrenchment, or degradation shall be noted in the annual report, and corrective actions shall be taken.

3. Hydrology Monitoring

Water level data and estimated flow shall be collected once during high flow season (February 15 – April 30) and once during low flow season (August 16 – October 31) of each monitoring year. Ground water levels shall be measured in the absence of inundated conditions. Observations should be made at base flow conditions. Large rain events or drought conditions occurring within the immediate watershed should be noted in this section. Additional hydrology data should be collected if monitoring events occur outside of normal conditions to document the flow regime of the stream.

4. Riparian Buffer Vegetation Monitoring

a. The location and name of each plant community type within the mitigation area and buffer area shall be marked on a scaled drawing or scaled aerial photograph (base map) and named. The dominant plant species shall be visually determined in each vegetation layer of each community type, and the scientific names of these species shall be included in the report.

Preliminary - Not for Construction 07/29/2024

b. For forested riparian buffers, tree height, frequency, density, and dominance for all woody species shall be calculated. These data shall be graphed against time to demonstrate that each of these areas is developing into a functional forested ecosystem.

5. Headwater Macroinvertebrate Field Evaluation Index (HMFEI)
Sampling shall be performed in accordance with the Field Methods for Evaluating Primary Headwater Streams in Ohio (Version 4.1). This sampling shall be performed in years 1, 3, 5, 7 and 10. An HMFEI score shall be calculated from each sampling event.

H. Performance Goals – Streams

Within 10 years after completion of construction of the mitigation, the Certification Holder shall have:

1. Developed a minimum of 5,623.00 linear feet of Perennial flow regime, a minimum of 7,651.00 linear feet of Interstitial flow regime, and a minimum of 1535.00 linear feet of Intermittent flow regime of warmwater habitat.

2. Developed a minimum HMFEI score that exceeds the baseline monitoring score for all HMFEI monitored streams and ensure post-construction class is equivalent to baseline monitoring.

3. Developed approximately 55 acres of native upland buffer as identified in the mitigation plan, and with no more than five percent relative coverage of all non-Typha invasive plant species as listed in Appendix 16 of the Guidelines for Wetland Mitigation Banking and In-Lieu Fee Programs in Ohio available at https://usace.contentdm.oclc.org/digital/collection/p16021coll11/id/6537/rec/26. Due to the difficulty of distinguishing the three species of cattails (Typha latifolia, Typha angustifolia, and Typha x glauca), as well as the likelihood that at least one of these will be present in many riparian areas in Ohio, the total relative cover of all invasive species, including Typha spp., will be less than ten percent.

4. Demonstrated that a minimum of 400 native, live and healthy (disease and pest free) woody plants per acre (of which at least 200 are tree species at least 2.0 meters in height) are present at the end of the monitoring period in the upland buffer.

Preliminary - Not for Construction 07/29/2024

5. Demonstrated that the stream mitigation channel and banks including up and downstream of the mitigation are stable and show no signs of excessive bank erosion, sedimentation, headcutting, aggradation, entrenchment, or degradation.

I. Contingency Plans

If the mitigation areas are not performing as proposed by the end of the tenth year of post construction monitoring, the monitoring period may be extended and/or the Certification Holder may be required to revise the existing mitigation or seek out new or additional mitigation areas.

Ohio EPA may reduce or increase the number of years for which monitoring is required to be conducted based on the effectiveness of the mitigation.

PART IV NOTIFICATIONS TO OHIO EPA

All notifications and reports regarding this certification shall be uploaded using the "View Compliance" action for the corresponding certification and/or permit through the 401 service in the Ohio EPA eBusiness Center.

You are hereby notified that this action of the director is final and may be appealed to the Environmental Review Appeals Commission pursuant to Section 3745.04 of the Ohio Revised Code. The appeal must be in writing and set forth the action complained of and the grounds upon which the appeal is based. The appeal must be filed with the Commission within 30 days after notice of the director's action. The appeal must be accompanied by a filing fee of $70.00, made payable to “Treasurer, State of Ohio," which the Commission, in its discretion, may reduce if by affidavit you demonstrate that payment of the full amount of the fee would cause extreme hardship. Notice of the filing of the appeal shall be filed with the director within three days of filing with the Commission. Ohio EPA requests that a copy of the appeal be served upon the Ohio Attorney General’s Office, Environmental Enforcement Section. An appeal may be filed with the Environmental Review Appeals Commission at the following address:

Environmental Review Appeals Commission
30 East Broad Street, 4th Floor
Columbus, Ohio 43215

Preliminary - Not for Construction 07/29/2024

Sincerely,

Anne M Vogel

Anne M. Vogel
Director

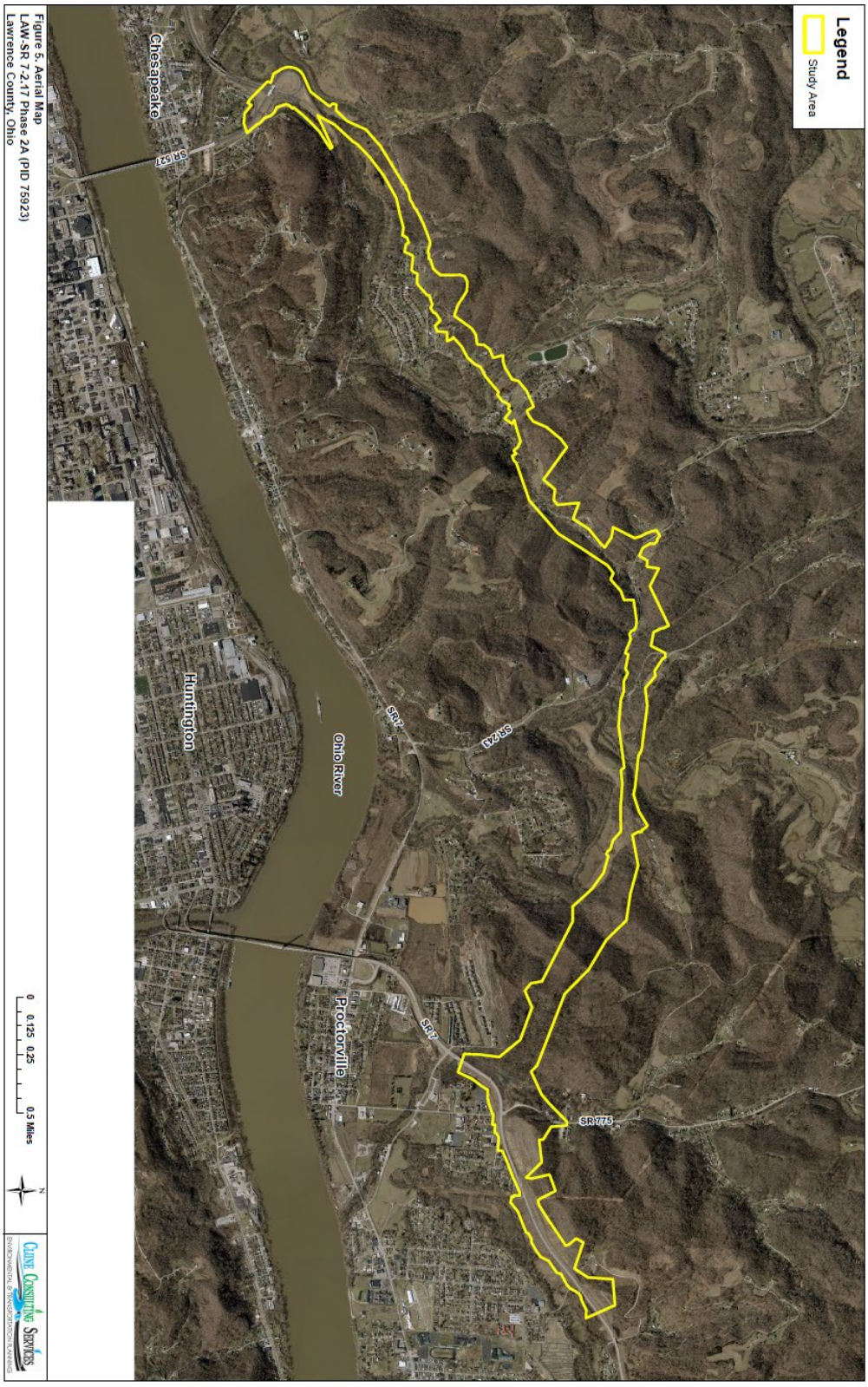
ec: Peter Clingan, peter.m.clingan@usace.army.mil, Department of the Army, Huntington District ORTO, Corps of Engineers
Wes Barnett, wes.barnett@usace.army.mil, Department of the Army, Huntington District, Corps of Engineers
U.S. EPA, Region 5, R5Wetlands@epa.gov
U.S. Fish & Wildlife Service, Ohio Ecological Services Field Office, Ohio@fws.gov
Mike Pettegrew, mike.pettegrew@dnr.state.oh.us, ODNR, Office of Real Estate
Ohio State Historic Preservation Office, Section 106, section106@ohiohistory.org
Jeff Boyles, Jeffrey.boyles@epa.ohio.gov, Ohio EPA 401/Wetlands Supervisor
Anna Kamnyev, anna.kamnyev@epa.ohio.gov, Ohio EPA 401/Wetlands Manager
J. Brent Glover, james.glover@epa.ohio.gov, Ohio EPA, DSW, 401/Wetlands/Mitigation Section
Andrea Kilbourne, Andrea.Kilbourne@epa.ohio.gov, Ohio EPA, DSW, Mitigation Coordinator
Max Moore, max.moore@epa.ohio.gov, Ohio EPA, PIC
Marco Deshaies, Marco.Deshaies@epa.ohio.gov
Vince Messerly, vmesserly@streamandwetlands.org, Stream + Wetlands Foundation
Devin Schenk, dschenk@TNC.org, The Nature Conservancy
Katie Dunlap, kathleen.dunlap@dot.ohio.gov, ODOT Waterway Permits Coordinator

Attachments:
Project Location Map
Project Impact Maps
Mitigation Location Map
Mitigation Site Map
Response to Comments

Preliminary - Not for Construction 07/29/2024

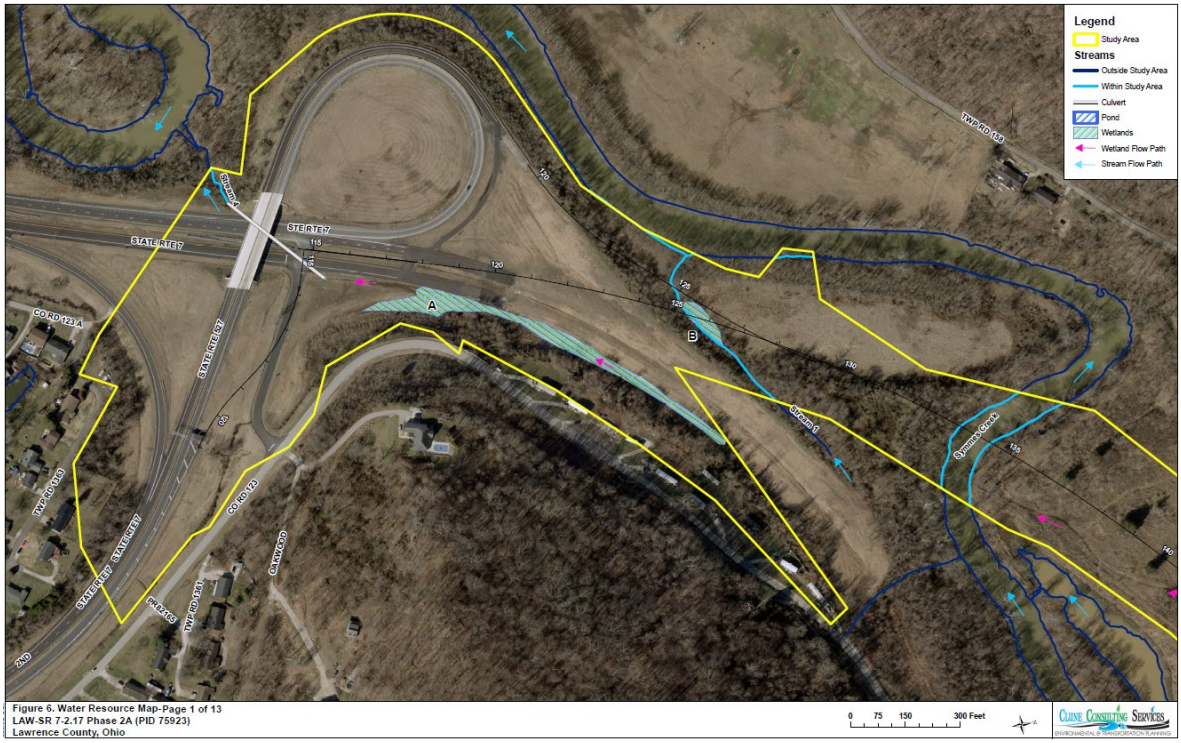
Ohio EPA has developed a customer service survey to get feedback from regulated entities that have contacted Ohio EPA for regulatory assistance, or worked with the Agency to obtain a permit, license or other authorization. Ohio EPA's goal is to provide our customers with the best possible customer service, and your feedback is important to us in meeting this goal. Please take a few minutes to complete this survey and share your experience with us at http://www.surveymonkey.com/s/ohioepacustomersurvey

Preliminary - Not for Construction 07/29/2024

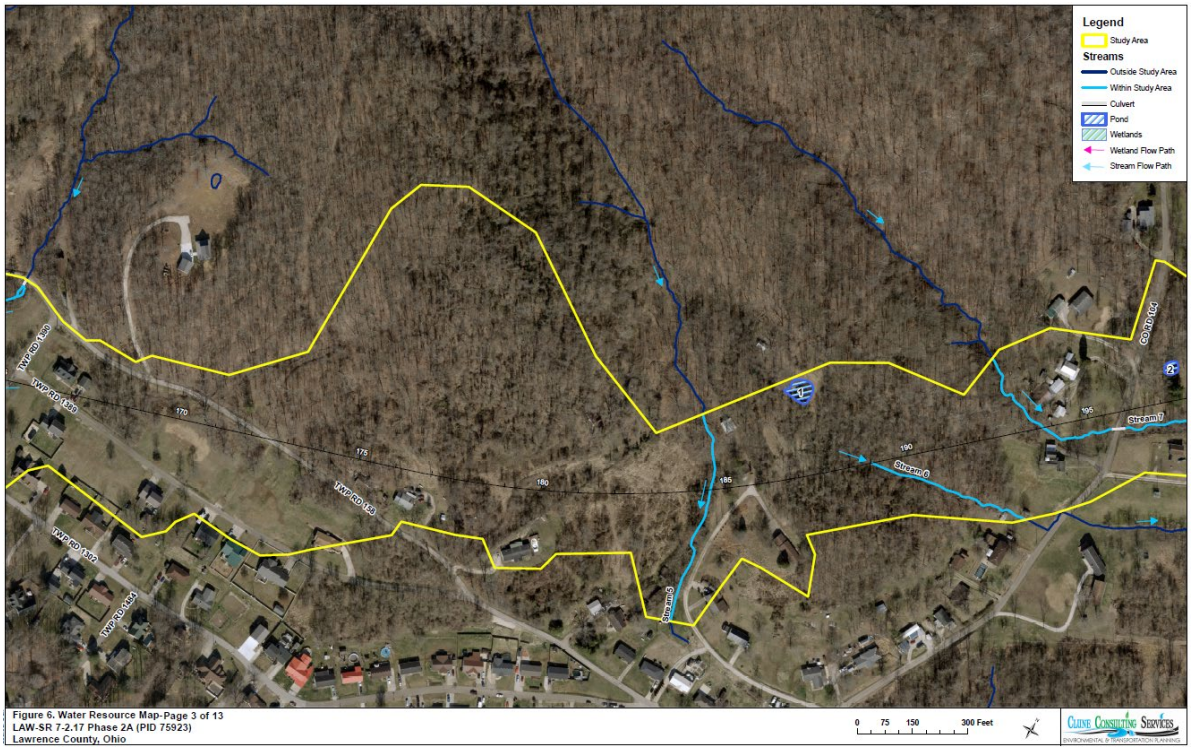


Project Location Map

Preliminary - Not for Construction 07/29/2024



Impact map 1



Impact map 2

Preliminary - Not for Construction 07/29/2024

Figure 6. Water Resource Map-Page 4 of 13
LAW-SR 7-2.17 Phase 2A (PID 75923)
Lawrence County, Ohio

Impact Map 3

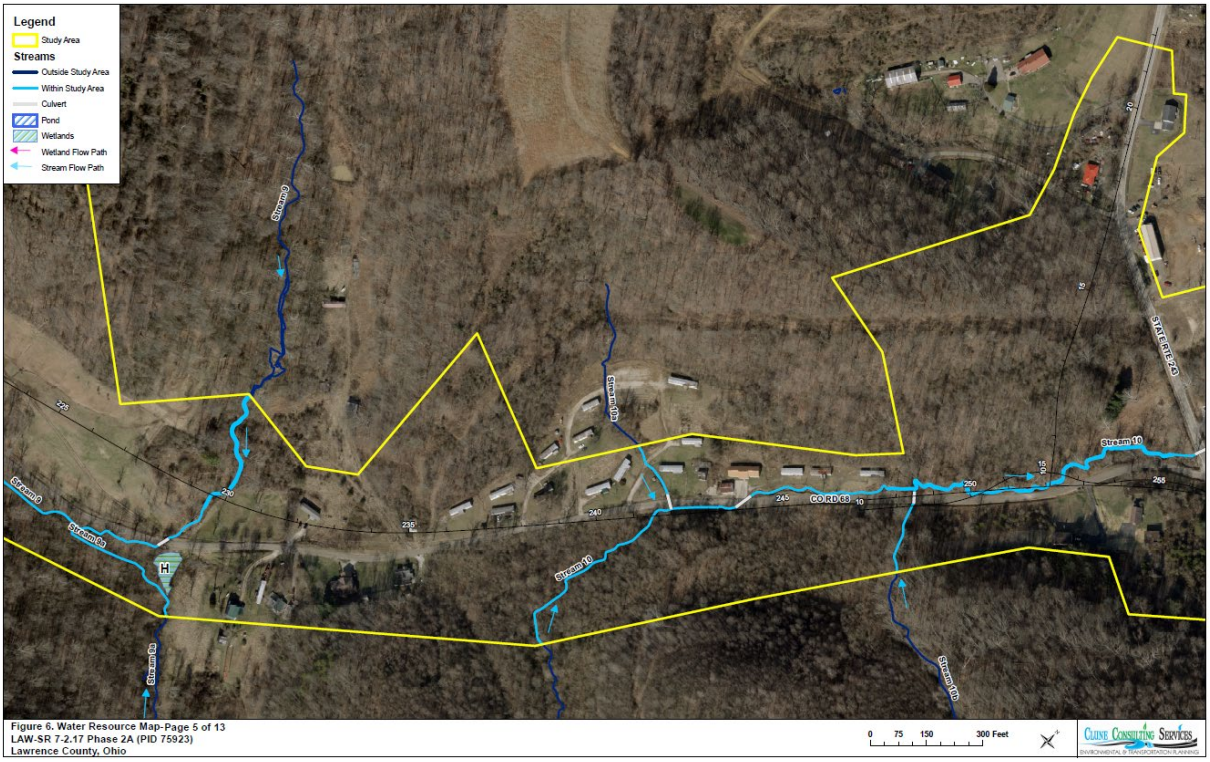


Figure 6. Water Resource Map-Page 5 of 13
LAW-SR 7-2.17 Phase 2A (PID 75923)
Lawrence County, Ohio

Impact Map 4

Preliminary - Not for Construction 07/29/2024

Figure 6. Water Resource Map-Page 6 of 13
LAW-SR 7-2.17 Phase 2A (PID 75923)
Lawrence County, Ohio

Impact Map 5

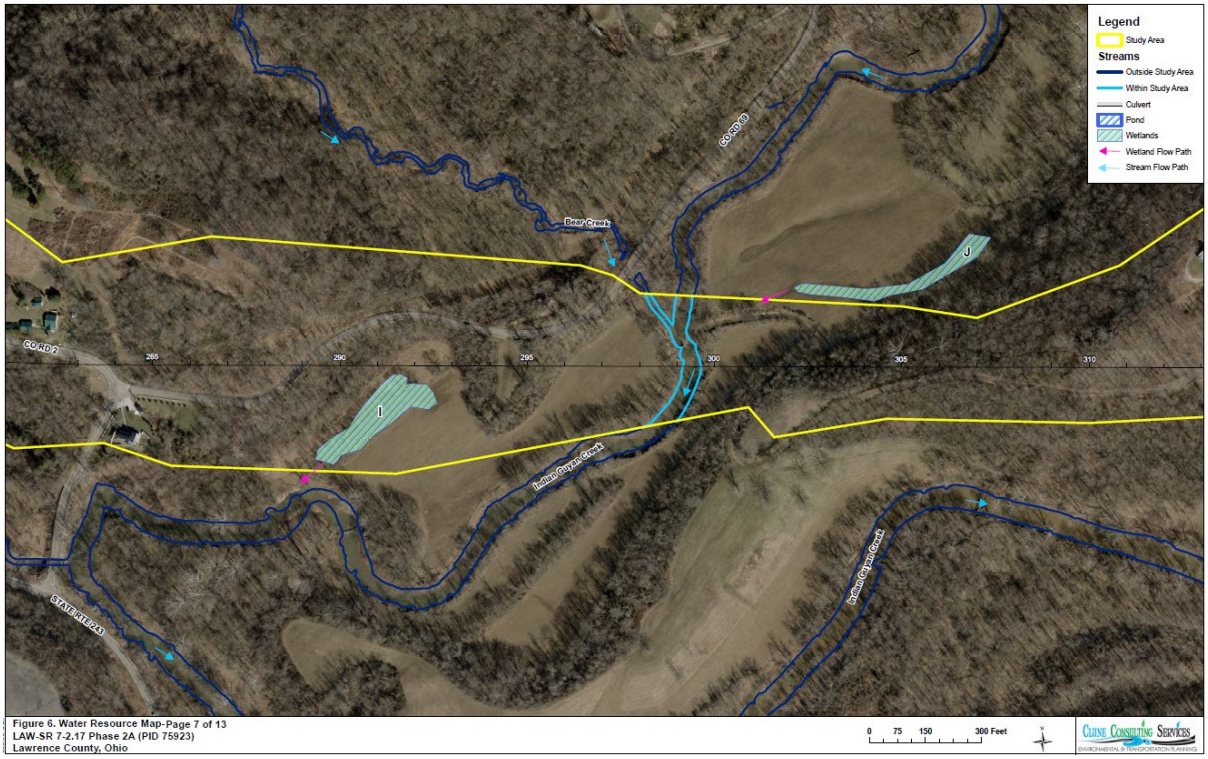


Figure 6. Water Resource Map-Page 7 of 13
LAW-SR 7-2.17 Phase 2A (PID 75923)
Lawrence County, Ohio

Impact Map 6

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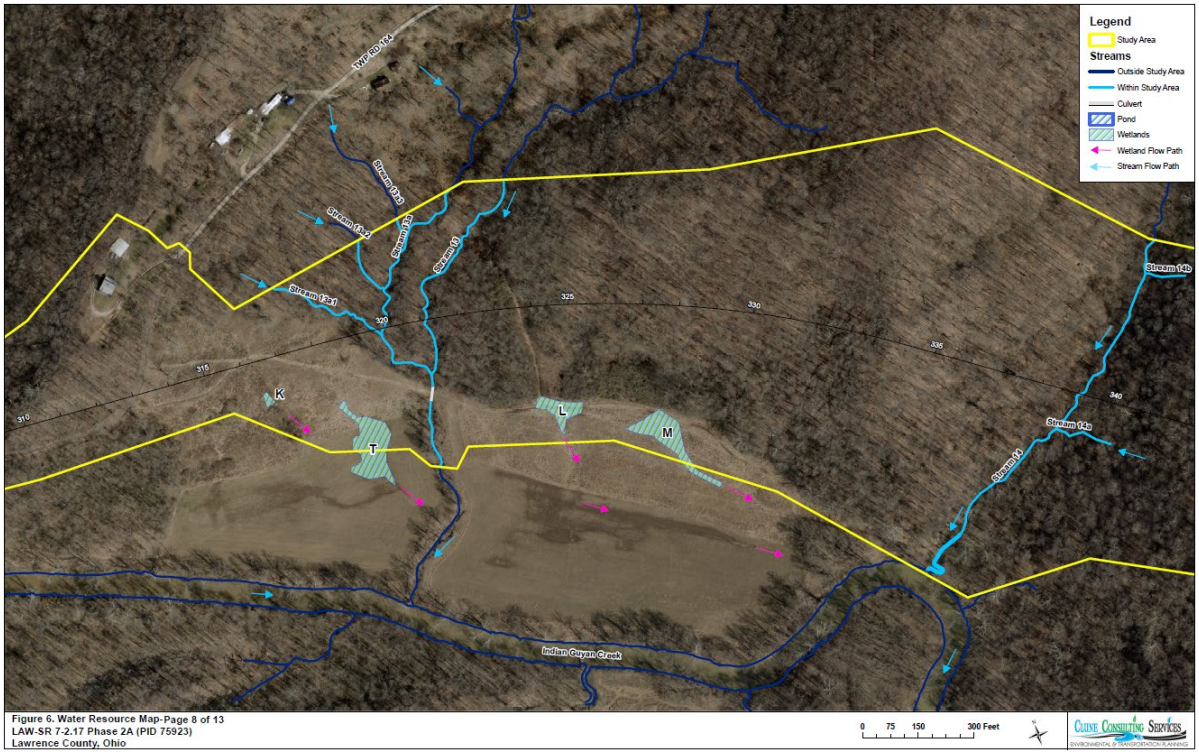
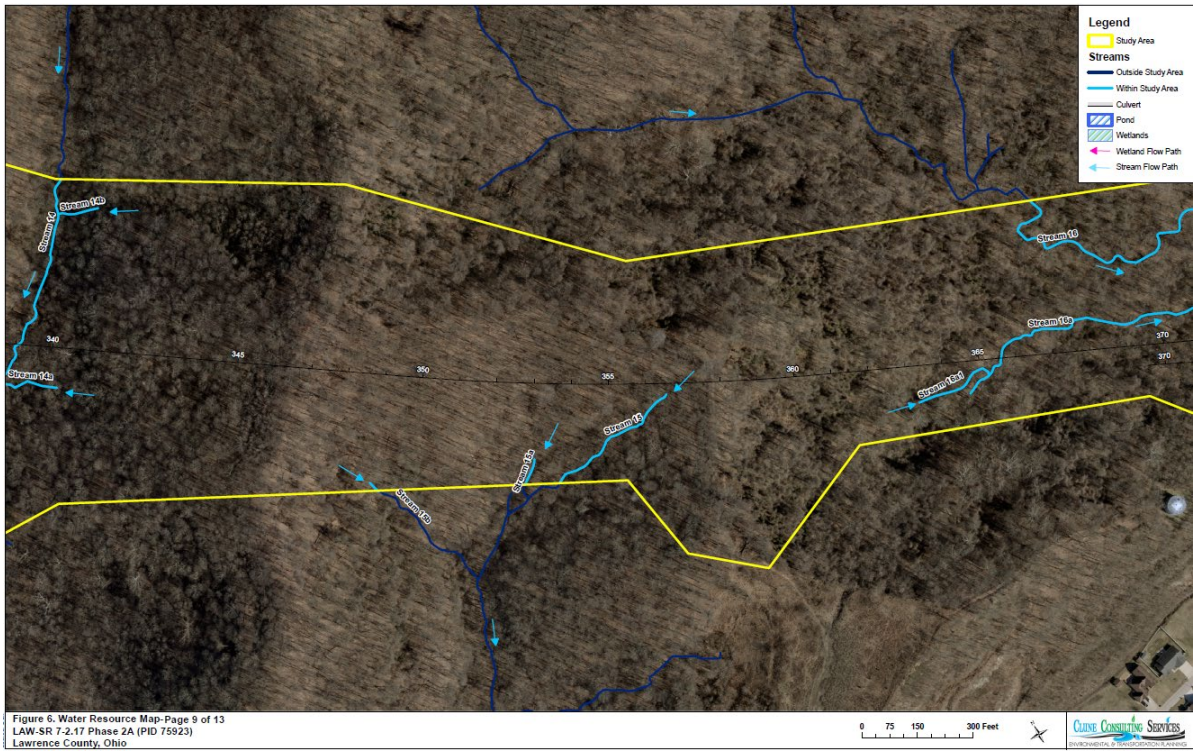


Impact Map 7



Impact Map 8

Preliminary - Not for Construction 07/29/2024

Figure 6. Water Resource Map-Page 10 of 13
LAW-SR 7-2.17 Phase 2A (PID 75923)
Lawrence County, Ohio

Impact Map 9

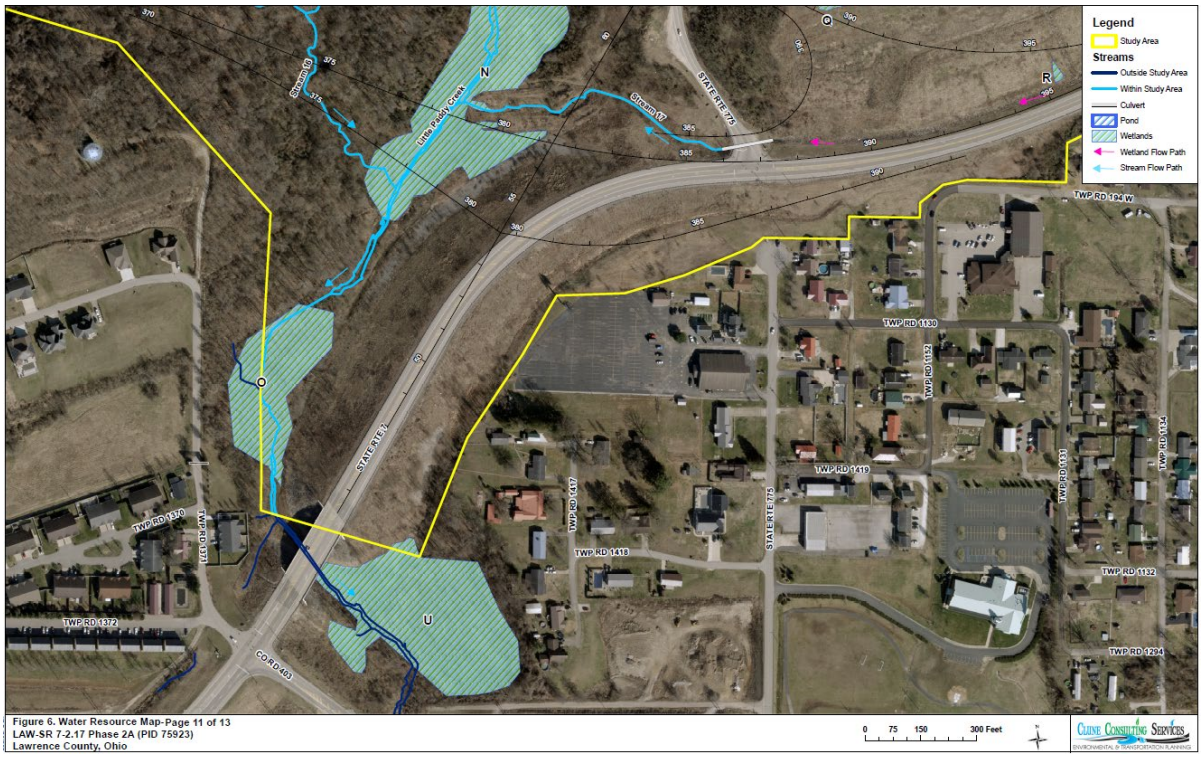
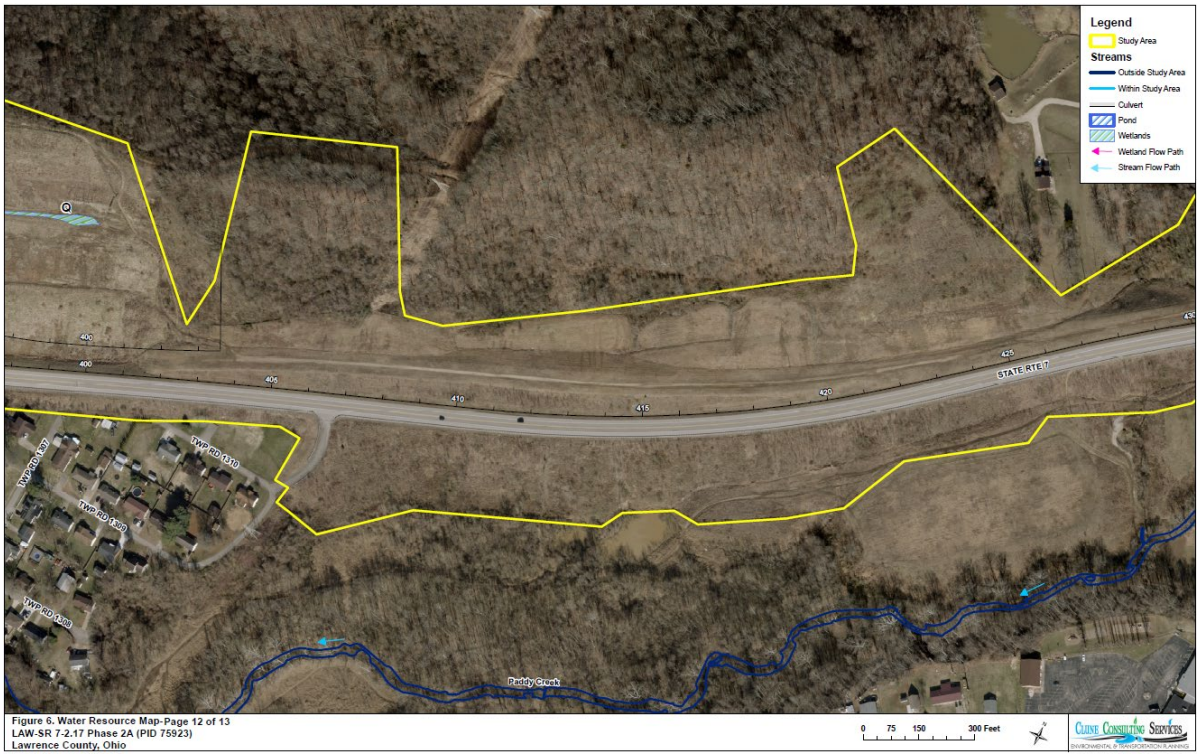


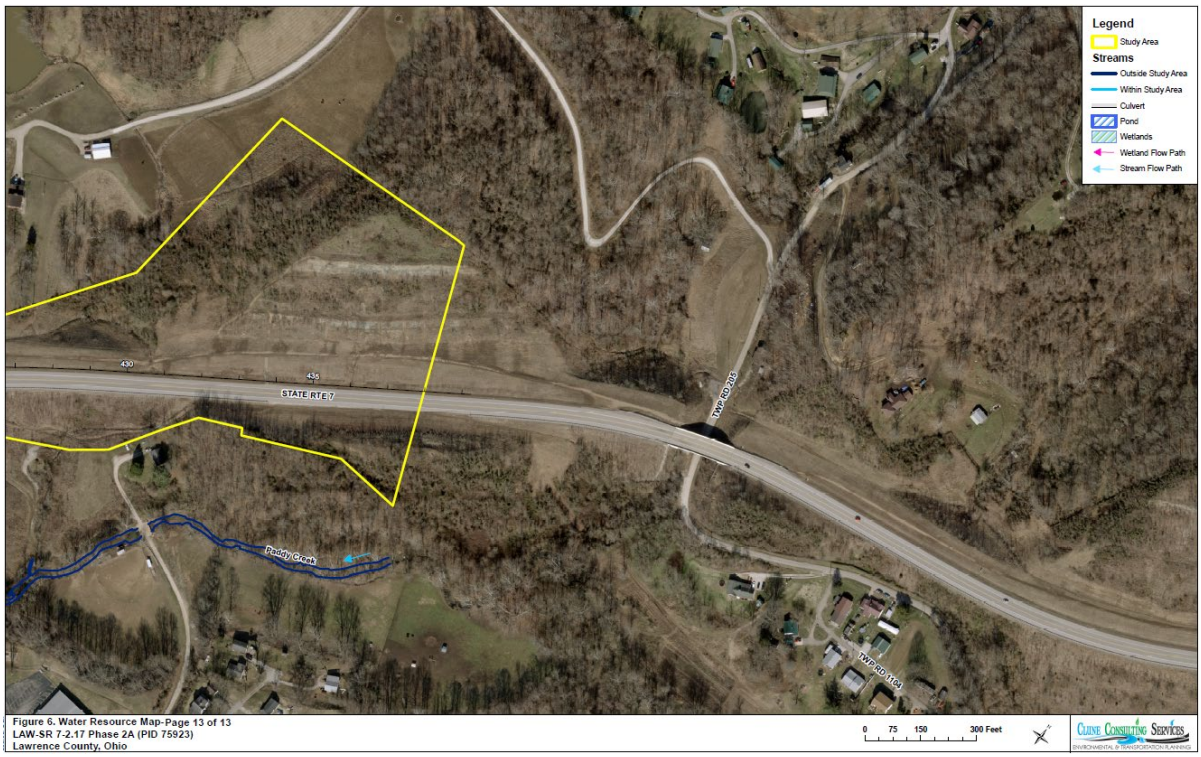
Figure 6. Water Resource Map-Page 11 of 13
LAW-SR 7-2.17 Phase 2A (PID 75923)
Lawrence County, Ohio

Impact Map 10

Preliminary - Not for Construction 07/29/2024



Impact Map 11

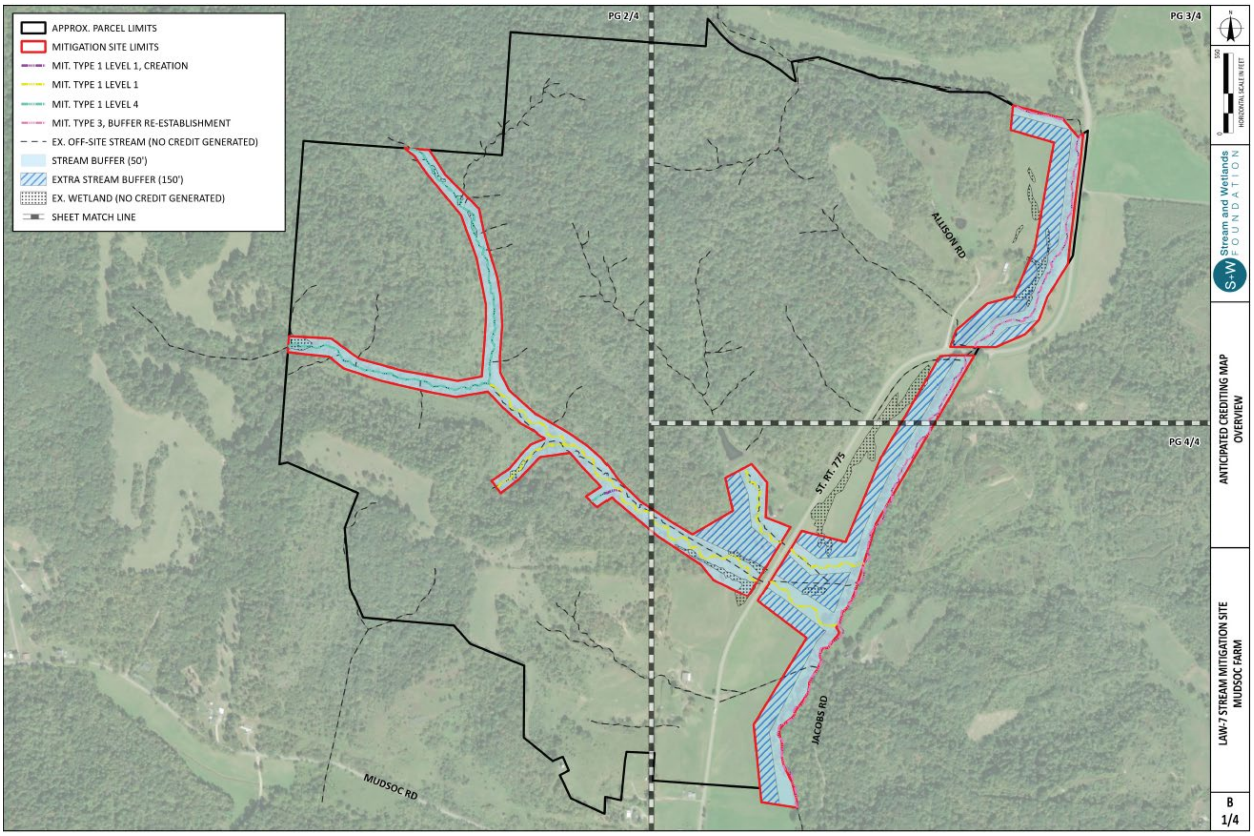


Impact Map 12

Preliminary - Not for Construction 07/29/2024

Mitigation Location Map (site centroid: 38.714064, -82.387608).

Preliminary - Not for Construction 07/29/2024



Mitigation Site Map

Preliminary - Not for Construction 07/29/2024

Environmental Protection Agency

Division of Surface Water
Response to Comments

Project: LAW-7-2.17, PID 75923/113211 (Phase 2A/2B)
Ohio EPA ID #: DSW401238961A

Agency Contacts for this Project

Division Contact: J. Brent Glover, 614-644-2052, james.glover@epa.ohio.gov
Public Involvement Coordinator: Max Moore, 614-728-0039, max.moore@epa.ohio.gov

Ohio EPA held a public hearing and/or comment period on 3/5/2024 regarding the ODOT Individual 401 Water Quality Certification application: LAW-7-2.17, PID 75923/113211 (Phase 2A/2B). This document summarizes the comments and questions received at the public hearing and during the associated comment period, which ended on 3/12/2024.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health. Often, public concerns fall outside the scope of that authority. For example, concerns about zoning issues are addressed at the local level. Ohio EPA may respond to those concerns in this document by identifying another government agency with more direct authority over the issue.

Comments from Emails Received:

Comment 1: **I live in a Sub-division called Brentwood Village in Chesapeake. I am a Seventy-One-Year-old resident. I believe strongly for multiple reasons the important of this long-awaited project. Question: So, would it have been prudent for these EPA Permits signatured approval before Budget Approval by the Legislators? -Jack R. Finch**

Response 1: Ohio EPA contacted ODOT for a response to this procedure question, and ODOT answered:
ODOT typically waits to receive funding for construction prior to applying for 401 Water Quality Certification to ensure that the project will be constructed in the foreseeable future. This approach is a responsible way to spend taxpayer dollars and utilize time for ODOT and Ohio EPA employees. If permits are secured prior to funding approval and funding is not approved, the project would be put on

Preliminary - Not for Construction 07/29/2024

hold, which could result in the need to reapply for 401 certification, along with other permits, assessments, surveys, and environmental documents.

Comments from Judith Dumke:

Comment 2: **I would like to know if the -- under the consideration of species of concern, if the Phacelia previously known as Phacelia ranunculacea -- it now has a newer name, which I spent too many years learning the old one, and it is -- its occurrences in Ohio are clustered about the Handley Branch Wildlife Special Interest Area of the US Forest Service, which is very close to Mudsock. Therefore, I would ask that that be checked to see if that is on the list.**

Response 2: Please see additional follow-up comment (3) for full response.

Comment 3: **I spoke in the comment section of the public meeting but reserved the right to submit a corrected verison of a plant name. My concern is with Phacelia corvillei Watson ex. A. Gray Corville's Phacelia, aka Corville's scorpion weed, a state endangered species. It is known from the Handley Branch Special Interest Area of the Wayne National Forest which is proximal to the area of mitigation. Is this species included in the species searched for in the mitigation area? Thank you for considering this correction.**

Response 3: Ohio EPA asked the applicant for additional information about this potential issue in the submitted mitigation plan. ODOT coordinated with Stream+Wetlands(S+W) and ODNR to determine if the species might be present. An investigation of the literature and coordination with experts indicated that the areas to be impacted by the mitigation project was likely not ideal for the species. ODNR and S+W did conduct a survey and provided the following response:

- This morning (4/9/2024), ODNR-DNAP botanists Andrew Gibson and Iris Copen met S+W biologists Josh Anzalone and Mariola Casterjon at the LAW-7-2.17 Mudsoc Farm stream mitigation site. The purpose of the site visit was to survey the mitigation area for the potential presence of Coville's scorpionweed. The survey included the riparian areas along the mitigation streams as well as on adjacent upland slopes. No Coville's scorpionweed was identified during the survey.

Preliminary - Not for Construction 07/29/2024

End of Response to Comments

Preliminary - Not for Construction 07/29/2024