



OHIO DEPARTMENT OF TRANSPORTATION

CENTRAL OFFICE • 1980 WEST BROAD STREET • COLUMBUS, OH 43223
JOHN R. KASICH, GOVERNOR • JERRY WRAY, DIRECTOR

July 9, 2014

U.S. Army Corps of Engineers - Huntington District
Brett Latta
Building 10 - Section 10
PO Box 3990
Columbus, OH 43218-3990

Re: Scioto County, Ohio
Portsmouth Bypass Project, Phases 2 & 3 (SCI-823-0.00, PID 19415)
Response to Public Comments regarding the Public Notice for the 404 Application
USACE ID: LRH-2011-00646-OHR

Dear Mr. Latta:

On behalf of the Ohio Department of Transportation, this letter has been prepared in response to public and agency comments and concerns with the Portsmouth Bypass Project, Phases 2 & 3 (SCI-823-0.00, PID 19415) (**referred to within as the "Project"**). The original comments are summarized, followed by the response. In some cases, the original comment is broken into sections.

Mr. Andy Elridge – Phone Call – April 18, 2014

Mr. Eldridge resides at 4734 Dehner St. in Portsmouth, Ohio 45662 near the Little Scioto River. He has no problems with the project. He said he "should be fine" and that if he encounters any problems during construction he would let us know.

Comment noted – no response necessary.

Mr. Ed McLaughlin – Phone Call – April 18, 2014

Mr. McLaughlin resides at 14 Gampp Lane in Portsmouth, Ohio 45662 and owns about 110 acres of land near the Little Scioto River that is split by the railroad and other roads. He has no major concerns about the project, but commented that he "does not like erosion" and would like to see silt concentrations in local streams minimized both during and after the project. He commented that he likes to fish in local streams, particularly the Little Scioto River, and does not want to see concentrated flows into the Little Scioto River or within the river. He mentioned that he had spoken with Stormie Roberts (administrative staff in Huntington) and would be OK with a follow-up letter in the mail as a response to his inquiry.

The Project will be constructed in accordance with all federal, state, and local regulations designed to protect water quality, including regulations applicable to the management of sediment and erosion controls and construction best management practices (BMPs).

The Project is being constructed through the Design-Build Process. In this case, a developer will propose on the Project Scope, then design the final layout of the roadway, and work with a contractor to build the Project. The Project Scope contains requirements to manage sediment and erosion, maintain the applicable waterway permits, and also contains repercussions if construction BMP's are not compliant. The FEIS (Final Environmental Impact

Assessment), Waterway Permits, Waterway Permit Special Provisions, and Environmental Reevaluations are provided to the proposers (Developer) as Contract Documents. Therefore, the requirements and commitments within these documents must be incorporated into the Project by the Developer and are considered contractual requirements.

In addition, ODOT incorporated multiple mechanisms within the contract documents to ensure environmental commitments and constraints were monitored during design and construction to ensure compliance, which includes the proper managements of sediment and erosion controls. Requirements to satisfy BMPs include:

- The Developer is responsible for compliance with Ohio's National Pollutant Discharge Elimination System (NPDES) Construction General Permit, Ohio EPA Permit No. OHC000004 (NPDES Permit), which includes providing and maintaining all temporary sediment and erosion controls.
- The Developer shall design *Post Construction BMP* to meet the requirements of the NPDES permit. The Developer shall prepare their own Post Construction BMP design and provide a report comparing the previously approved design to the Developers design and submit to the Department for coordination with the OEPA.
- The Developer shall have prepared a compliant Storm Water Pollution Protection Plan (SWPPP) and applicable Notice of Intent application materials for the Project.

Mr. and Mrs. Richard Bobst – Letter dated April 14, 2014

Mr. and Mrs. Richard Bobst reside at 6703 SR 335, Portsmouth, OH 45662 and have indicated that they are opposed to the discharge of "fill material" into rivers and streams. They also have raised concerns of contamination of waterways resulting from the project.

The Project will be constructed in accordance with all federal, state, and local regulations designed to protect water quality, including regulations applicable to the discharge of fill material into jurisdictional waterways. Discharge of fill material is the result of construction such as culvert installation, bridge construction, and rock channel protection for placement of the bypass. Channel flow (quality and quantity) will be impacted temporarily, but allowed to return to normal flow following construction of the bypass.

The goal of the regulatory agencies, particularly in a situation where there is a need for a USACE Section 404 Individual Permit and OEPA 401 Water Quality Certification, is to evaluate situations where there is a significant impact and determine if there are less impactful alternatives that are also practicable and determine if the amount of compensatory mitigation is appropriate.

In this case, ODOT has selected the "Preferred Alternative", which proposes more waterway impacts than a "Minimal Degradation Alternative". Due to the nature of the Design-Build process and providing the contractor with a large footprint for design considerations, is unlikely that the extent of impacts proposed will result in actual impacts post-construction. However, compensatory mitigation is being provided for all wetlands and streams impacts proposed, and will result in the protection and restoration of more streams and wetlands than impacted within and adjacent to the project's watersheds.

****NOTE:** For a detailed account of how waterway permits, environmental commitments, sediment and erosion controls, and construction BMPs will be incorporated into the Design-Build process; a discussion and list of relevant Project scoping items is included on page 2 of this letter.

They also have concerns regarding the extinction of mussels and other animals including the Indiana bat and northern long-eared bat as a result of this project.

The Project will be constructed in accordance with all federal, state, and local regulations that are designed to protect the environment, including regulations applicable to aquatic life, wildlife, and threatened and endangered species. The Developer (of the Project) will confirm and conform to the applicable constraints contained in the environmental approvals, including, but not limited to: the ecological surveys, waterway permits, and isolated wetland permit applications and permits, the FEIS, the ROD, any Environmental Reevaluations, and all other applicable Environmental Commitments contained in the Contract Documents.

ODOT is currently working with the US Fish and Wildlife Service and the Ohio Department of Natural Resources to minimize any potential impacts to both the Indiana bat and northern long-eared bat. ODOT has committed to adhering to the seasonal cutting recommended by both of these agencies.

The construction of the Project is not expected to have an adverse impact on any state- or federally listed endangered or threatened species. While several state-listed species were identified within the project vicinity, it does not appear that the construction of this project will have any permanent adverse impact to these species, as potential habitat for the listed species is common throughout the surrounding area.

Only the Little Scioto River had suitable habitat for mussels within the project area. The bridge to be constructed over the river as part of the Project shall have no piers placed within the limits of the ordinary high water mark of the Little Scioto River. Prior to the construction of the bridge over the Little Scioto River, a federally approved malacologist will survey and relocate any mussels found beyond the footprint of the new bridge, ensuring that impacts to mussels will be minimized.

Virgil Laxton – Phone Call – April 7, 2014

Mr. Laxton resides at 2869c Lucasville-Minford Road, Lucasville, Ohio, 45648. Mr. Laxton is concerned with the amount of water that will enter the pond on his property, in that there may be too much water in periods of excessive precipitation and not enough at other times due to the bypass altering the hydrology of the hollow, upstream of his pond. He also indicated that he was concerned with the quality of the water that would be entering the pond.

The Project will be constructed in accordance with all federal, state, and local regulations designed to protect water quality, including regulations applicable to the discharge of fill material into jurisdictional waterways, sediment and erosion control, and construction BMPs. Discharge of fill material is the result of construction such as culvert installation, bridge construction, and rock channel protection for placement of the bypass. Channel flow (quality and quantity) will be impacted temporarily, but allowed to return to normal flow following construction of the bypass.

****NOTE:** For a detailed account of how waterway permits, environmental commitments, sediment and erosion controls, and construction BMPs will be incorporated into the Design-Build process; a discussion and list of relevant Project scoping items is included on page 2 of this letter.

David and Marsha Coriell – Email dated April 6, 2014.

David and Marsha Coriell reside at 845 Eunice Avenue, Sciotoville, Ohio. The Coriell's expressed concern on the compensation for the acquisition of their property and the apparent lack of communication between themselves and ODOT representatives.

Property owner notification, acquisition, and correspondence for the Portsmouth Bypass are handled through ODOT's District 9 Office and are not applicable to this Public Notice. However, ODOT is sensitive to your concerns with the administration of the property acquisition process for the project. Please contact Dan Frazee, District 9 Real Estate Administrator at the district office 740-774-8883 to discuss this matter further.

The Coriell's expressed concern the mist netting for the Indiana bat was not accurately located.

The protocols and mist net locations for the Indiana bat survey were conducted in accordance with the US Fish and Wildlife Service approved Indiana bat presence/ probable absence survey requirements. Two mist net sample locations were located within the proposed Portsmouth Bypass right of way as it crosses the Coriell property.

This concludes ODOT's response to the USACE Section 404 Permit Application, Public Notice Comments for Phases 2 and 3 of the Portsmouth Bypass Project. Please do not hesitate to contact us should you have any questions or require additional information regarding the information presented in this letter. (Waterway Permit Coordinator: Kathleen Dunlap @ 614-466-6983, or Waterway Permit Supervisor: Adrienne Earley @614-466-2159)


Timothy M. Hill
Administrator
Office of Environmental Services

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