



DEPARTMENT OF THE ARMY
BALTIMORE DISTRICT, U.S. ARMY CORPS OF ENGINEERS
P.O. BOX 1715
BALTIMORE, MD 21203-1715
NOV 19 2013

Operations Division

Mr. Bruce Johnston
Montgomery County Department of Transportation
100 Edison Park Drive, 4th Floor
Gaithersburg, Maryland 20878

Dear Mr. Johnston:

This is in reference to the Montgomery County Department of Transportation application, CENAB-OP-RMN (Mid County Corridor Study) 2007-07102-M15 for a Department of the Army (DA) permit under Section 404 of the Clean Water Act, to develop transportation improvements in Montgomery County east of I-270 between Clarksburg and Gaithersburg in Montgomery County, Maryland.

This letter provides a summary of the comments received in response to the U.S. Army Corps of Engineers (Corps)/Maryland Department of the Environment (MDE) joint public notice (PN 13-37), as well as the those prior to the public notice, the Corps review of the revised Draft Environmental Effects Report (DEER), and sets forth our request to you for additional information concerning the subject permit application.

As stated in the Joint Corps/MDE Public notice, the Corps' evaluation of a Section 404 permit application is a two-part test, which involves determining whether the project complies with the Clean Water Act Section 404(b)(1) Guidelines (Guidelines) and a Corps public interest review. A fundamental precept of the Clean Water Act Section 404 regulatory program is that impacts to wetlands and other waters of the US will be avoided and minimized, where it is practicable to do so. Under Section 404, only the least environmentally damaging practicable alternative (LEDPA) can receive DA authorization. Note that an alternative is practicable if it is available and capable of being done after taking into consideration cost, logistics, and existing technology in light of overall project purposes.

Furthermore, the decision whether to issue a DA permit is also based on an evaluation of the probable impacts, including cumulative impacts, of the proposed activity and its intended uses on the public interest. This is known as the Corps public interest review [See 33 CFR Part 320.4.] The evaluation of the probable impacts which the proposed activity may have on the public interest requires a careful weighing and balancing of the benefits which reasonably expected to accrue from the project, balanced against the reasonably foreseeable detriments. Among the factors that must be evaluated as part of the Corps public interest review include: conservation, economics, aesthetics, general environmental concerns, wetlands and streams, historic and cultural resources, fish and wildlife values, flood hazards, floodplain values, land use,

navigation, shore erosion and accretion, recreation, water supply and conservation, energy needs, safety, food and fiber production, mineral needs, water quality, consideration of property ownership, and in general, the needs and welfare of the people. All comments received during the review period are evaluated for their merit and provided to the applicant for response. Please consider all these comments and the Corps requirements of a LEDPA in your efforts to select a Preferred Alternative.

In response to the Corps and MDE joint public notice and public hearing, this office received hundreds of e-mails, numerous letters, and heard testimony from members of the public including several homeowners associations; nonprofit groups TAME, Sierra Club, Audubon Society; and the local Maryland State delegation, including Senator King and Delegate Barkley, who expressed their objections, comments, and concerns. In addition, we received comments from the government entities including the Environmental Protection Agency (EPA), the City of Gaithersburg, and the Maryland Historical Trust (MHT).

As would be expected with a proposed large capital project with a long history, involving the evaluation of multiple alternatives and alignment options; the comments received are diverse and often conflicting. Concerns raised span the Corps public interest review factors including conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood plain values, land use, recreation, water supply and conservation, water quality, safety, and consideration of property ownership. In addition, concerns were also raised about air quality, construction impacts, community disruption, transit, traffic, smart growth, and environmental justice.

Comments received concerning the Master Planned alignment (Alternative 9 with Northern Terminus A) were divided for and against. Only one commenter expressed a preference for another Terminus Option (Option D), while others expressed opposition to Option D. Many citizens opposed impacts to the Agricultural Preserve and other conservation areas like parklands. Citizens who identified their place of residence were generally opposed to alternatives that would adversely affect them and their neighborhoods and supported an alternative that would benefit them (e.g., Montgomery Village residents opposed the Master Planned alignment, residents of Clarksburg generally support the Master Planned alignment, and residents along Alternative 4 Modified opposed it). Some commenters pointed out that residents of Montgomery Village, the Day Spring Retreat, and even, Watkins Mill Elementary School were aware of the Master Planned alignment prior to moving, buy, or building in the vicinity of the Alternative 9. Some cited the lack of transportation infrastructure to support the level of development in the Clarksburg area as a justification for the Master Planned alignment while other felt there were less disruptive solutions available through Alternatives 5 and 2. Similarly, many commenters opposed to Alternative 4 Modified felt they "had done their homework" and made decisions after consulting with County planning documents. Many commenters were in favor of Alternative 2 but oppose any build alternative citing cost and various impacts. Several commenters indicated that Alternative 2 should be combined with another alternatives and re-evaluated to see if the combination would reduce or

eliminate the need the Master Planned alignment. Commenters also felt that Alternative 4 should be limited to the reserved right-of-way and re-evaluated in combination with other alternatives.

Transit was advanced as a solution by most commenters opposing the build alternatives and many indicated that the Draft Environmental Effects Report should have evaluated a transit only alternative. Bus rapid transit (BRT) routes along MD 355 were seen by several commenters as a possible solution to rush hour capacity needs. Conversely, several commenters indicated that mass transit would not address residents other transportation needs (e.g., doctor visits, shopping, picking up & dropping children from various community activities). Some commenters acknowledge that transit alternatives might be built one day; however, they felt that did not eliminate the need for a new build alternative. Other commenters indicated that a build alternative combined with transit was the only way to address long-term transportation needs. Many commenters residing along specific alignments felt expansion of existing or new alignments within residential areas would be disruptive to community life, bring additional noise and traffic/safety concerns and diminish quality of life. Citizens were also concerned about Alternative 4 Modified and potential impacts to Pratherstown. Several commenters expressed concern and provided information about air quality concerns in close proximity to schools. The focus of their concern was the close proximity of Alternative 9 to Watkins Mill Elementary School and the potential to increase asthma and other air pollution-borne/aggravated health concerns in school children. Several of these commenters indicated they had expressed these concerns previously to County officials. Some commenters were concerned about bridge heights and the impacts of shading under bridges, noting that clearing and subsequent shading would result in either a conversion or a permanent impact to areas below the bridge spans. Similarly, some commenters indicated that construction access and areas affect by construction activities within limits of disturbance would result in permanent impacts to resources and should not considered a temporary impact. Many commenters indicated that stormwater associated with a new highway would be impact water quality and water resources. Commenters also questioned if the Master Planned alignment would only relocate traffic congestion to new areas/intersections at the end of the alignment. The commenters questioned if the receiving intersections were designed to handle the increase traffic volume. The DEER was cited as unbalanced by some commenters, supporting the Master Planned alignment, ignoring transit options, and not providing alternative combinations for evaluation (despite stating the preferred alternative may be a combination of entire alternatives or portions of the alternatives).

Based on our review of the DEER and the comments received during the comment period, the Corps has determined that additional information is required in order for the Corps to proceed in our evaluation of the project. The additional information is necessary to fulfill the requirements of Corps regulations, the Clean Water Act Section 404(b)(1) Guidelines, and the Corps public interest review process. The following items must be addressed:

1. Please submit your responses to the enclosed public/agency comments.
2. Please include an evaluation of the Alternative 4 Modified alignment limited to the currently reserved right-of-way in an analysis of other possible combinations with the alternatives (e.g., Alternative 4 Modified alignment with 80' ROW combined with Alternatives 5 and 2).
3. Please respond to the Woodland Hills Home Owners Association and other citizens concerns regarding air quality and Alternative 9's close proximity to Watkins Mill Elementary School by addressing if there is any increase in respiratory-related health issues in school children in similarly situated schools (e.g., those located along Great Seneca Parkway and the Intercounty Connector). Please describe which air pollutants would be most likely to affect an adjacent school and children and, if possible, evaluate each of the alternatives likelihood to pose such an air quality health risk.
4. Please address comments concerns about bridge elevations, shading, and conversion of wetlands, streams, and riparian areas located below any proposed bridges. Also, please address any construction best management practices (e.g., timber matting, grubbing but no clearing, additional mulch layers) to help assure construction activities do not permanently impact access areas. Please be advised that the Corps would require inspection and confirmation that all temporary impacts associated with construction are fully restored as part of any authorization compliance.
5. Please provide additional information on the transit options already being implemented by the county within the study area. In addition, please provide any additional information about a possible RBT system along MD 355 and Alternatives 8 and 9. Please address the comments that combining Alternative 2 with other alternatives or adding transit like a BRT system to other alternatives could reduce the amount of travel capacity necessary for Alternative 9. Also, please update transit options within the study area respective to the recently approved State funding approvals for projects in Montgomery County.
6. Please provide additional information about the current and proposed future status of the Shady Grove Metro station. Specifically, address comments that the station is already at capacity (parking and train) and does not offer a transit solution for travelers who would utilize a build alternative to take transit from the Shady Grove metro.
7. Please update information concerning the Watkins Mill interchange at I-270 and any potential ramification for the study area and proposed project.

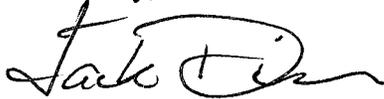
8. Please clarify if M-83 would be a state or county controlled road if constructed. Please provide additional information about MD SHA control roads in the study area (e.g., I-270 and MD 27) and future improvements requested by the County.
9. Please address the environmental justice concerns raised in EPA's comment letter.
10. Please address the concerns raised by citizens in the Fetrows neighborhood, Wacomor Drive, and Ward Avenue regarding traffic concerns and Alternative 9.
11. Please address the City of Gaithersburg comments.
12. Please include aspects of community disruption and fragmentation in the quality of life analysis for each alternative.
13. Please clarify if impact fees are collected from development in Clarksburg and if any are dedicated to transportation projects. Please clarify what type of development is allowed within the Agricultural Preserve, parkland, and Special Protection Areas within the study area.
14. Please clarify if the proposed project will include environmental stewardship projects.
15. Please correct labeling errors on maps in the DEER as noted in citizen's comments.
16. Please provide information of the alternative potential impacts to Green Infrastructure (e.g., hubs and corridors) within the study area and forest interior dwelling bird habitat.
17. Please clarify whether roadway intersections on the alignments are viewed as increased transportation system connectivity or traffic delay points for each alternative.
18. Please note that in accordance with the Corps/EPA Compensatory Mitigation Rule, prior to a permit decision, the Corps must approve a final mitigation plan to compensate for the permanent impacts to waters of the U.S., including jurisdictional nontidal wetlands. In addition, permanent conversion of waters of the U.S., including jurisdictional nontidal wetlands, may also require compensatory mitigation. Functional assessments will be required for all proposed impacts to waters of the U.S. and any compensatory mitigation requirements will be based upon full replacement of permanently impacted (including conversion) aquatic resources.

In accordance with DA regulations, this office provides applicants with the opportunity to furnish proposed resolutions or rebuttals to all objections and comments received. Therefore, in order for us to more fully consider the responses we received, and to enable us to assess the total impacts of the project and continue with our evaluation, a response regarding each comment, concern, or recommendation is requested. **Please provide this office with your response to the issues raised in the enclosed correspondence and this letter, as well as the additional information requested by the Corps, by COB March 1, 2014.** If additional time is necessary, please advise this office. Please send your response to the U.S. Army Corps of Engineers, Baltimore District, [Attn: Mr. Jack Dinne, CENAB-OP-RMN], P.O. Box 1715, Baltimore, Maryland 21203-1715. It is also recommended that you provide a copy of your response to this letter to Mr. Sean McKewen of MDE.

In summary, the Corps review for the project will proceed once the required information is provided. The information cited above is required in order for the Corps to completely evaluate the proposed project. By copy of this letter, we request that Montgomery County Department of Transportation respond to all of the concerns detailed in this letter and enclosures to ensure that the information is adequate to fulfill the requirements of Corps regulations, the Clean Water Act Section 404(b)(1) Guidelines and the Corps public interest review process. This information will be used to render a final Corps permit decision.

We look forward to coordinating with you as the review process proceeds. A copy of this letter is being sent to Mr. Sean McKewen of MDE, Nontidal Wetlands Division, for coordination purposes. If you have any questions concerning this matter, please contact me at (410) 962-6005 or john.j.dinne@usace.army.mil.

Sincerely,



Jack Dinne
Biologist, Project Manager
Maryland Section Northern

Enclosures

Cc (w/enclosures):
Mr. Sean McKewen, MDE – Nontidal Wetlands Division