

## **Appendix E**

### **Agency Coordination:**

Ohio EPA

ODNR

US Department of the Interior, USFWS

US Army Corps of Engineers

Storm Water Coordination

Notice of Intent

Ohio Historic Preservation Office

Conceptual Alternatives Coordination

SAFETEA-LU 6002 Coordination

Burke Lakefront Airport Coordination

Air Quality Coordination



State of Ohio Environmental Protection Agency

STREET ADDRESS:

Lazarus Government Center  
50 W. Town St., Suite 700  
Columbus, Ohio 43215

TELE: (614) 644-3020 FAX: (614) 644-3184  
www.epa.state.oh.us

MAILING ADDRESS:

P.O. Box 1049  
Columbus, OH 43216-1049

May 16, 2007

Timothy M. Hill, Administrator  
Ohio Department of Transportation  
Office of Environmental Services  
PO Box 899  
Columbus, Ohio 43216-0899

**Re: Pre-Application Coordination**  
CUY-Innerbelt Corridor, PID 77510

Dear Mr. Hill:

We have completed our review of the above subject report. The report describes a proposed project that consists of the upgrading and improvement of the existing I-71/I-90 Cleveland Innerbelt and access points in the City of Cleveland, Cuyahoga County, Ohio. The construction work is necessary to improve bottle-necking, traffic flow, merge and weave problems, and to improve traffic safety. At this point, ODOT has identified several alternatives consisting of Innerbelt Curve Section (Innerbelt Curve Alternative F), Trench Section (Far Eastern Alignment with Payne Avenue, Chester Avenue without Payne Avenue), I-77 Access Section, Central Interchange and Viaduct Section (Dual Intersections Alternative with North Bridge, Southern Alternative with South Bridge), No-build Alternative, and Southern Innerbelt Section (I-77 Access Improvements Alternative). ODOT eliminated the No-build Alternative because it does not meet the Purpose and Need of the project. The report stated the Cuyahoga River is the sole aquatic feature identified within the project area. It will be impacted by bridge work. According to the report, no wetlands were identified during field investigations. As far as endangered or threatened species identified within the project area, peregrine falcons were observed nesting on the I-90 Bridge.

We do not have any major concerns with the project alternatives described in the report. Although the actual stream impacts do not exceed Ohio EPA's limits requiring individual 401 certification, we would like to know whether the bridge work is subject to Sections 9 or 10 of the Clean Harbors and Rivers Act, requiring individual 401 certification, or if the project requires individual 404 authorization by the Army Corps of Engineers (Huntington). If the project requires individual 404 authorization it will also require individual 401 authorization. Also, please note for NWP 14 (Ohio EPA previous and proposed conditions) Ohio EPA restricts stream crossings to a total of three per stream mile per stream. Because the section of the Cuyahoga River targeted for construction work is designated a fish migratory corridor from February

Ted Strickland, Governor  
Lee Fisher, Lieutenant Governor  
Chris Korleski, Director

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Timothy M. Hill, Administrator  
Ohio Department of Transportation  
CUY-Innerbelt Corridor, PID 77510  
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through May, the necessary precautions should be used during construction to minimize any disturbances to migrating fish. We assume you are working with ODNR on procedures to protect the peregrine falcons nesting on the I-90 Bridge? We recommend using BMPs to minimize impacts and discharges in the Cuyahoga River during and subsequent to construction work.

This concludes our remarks on the proposed project. If you have any issues or questions you want to discuss with me, I may be reached at (614) 644-2138.

Sincerely,

Arthur L. Coleman, Jr., Environmental Specialist, DSW, Environmental Mitigation and Transportation Permitting Section

- cc: Deborah L. Wegmann,, USACOE
- Wayne Gorski, Region V, US EPA
- William Cody, Asst. Administrator, OES/ODOT
- Mike Pettegrew, Supervisor Water Permits Unit, OES/ODOT
- Don Rostofer, Supervisor, Ecological Unit, OES/ODOT
- Troy Wilson, USFWS
- Ed Wilk, DSW/NEDO



Donald  
Rostofer/Environmental/CEN/  
ODOT  
04/20/2007 07:59 AM

To Mark Carpenter/Planning/D12/ODOT@ODOT, Tom  
Sorge/Planning/D12/ODOT@ODOT  
cc Larry Hoffman/Environmental/CEN/ODOT@ODOT  
bcc Matthew Perlik/Environmental/CEN/ODOT  
Subject Fw: 07-0080; ODOT EC for CUY-Innerbelt Corridor (PID  
77510)

Mark/Tom:

Below are ODNR's comments and recommendations for the CUY-Innerbelt Corridor project. Please add these comments as environmental commitments and/or address appropriately.

Thanks.

Donald E. Rostofer, Environmental Supervisor  
ODOT- CO- OES - Ecological Unit  
1980 West Broad Street, Columbus, OH 43223  
Phone: (614) 387-3057; FAX: (614) 728-7368  
Email: donald.rostofer@dot.state.oh.us

----- Forwarded by Donald Rostofer/Environmental/CEN/ODOT on 04/20/2007 07:56 AM -----



"Bankey, Mindy"  
<Mindy.Bankey@dnr.state.oh.us>  
04/19/2007 03:30 PM

To <tim.hill@dot.state.oh.us>,  
<donald.rostofer@dot.state.oh.us>  
cc  
Subject 07-0080; ODOT EC for CUY-Innerbelt Corridor (PID 77510)



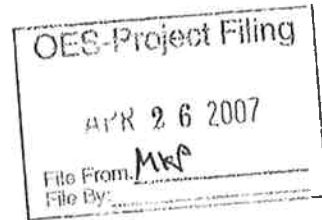
ODNR COMMENTS TO Timothy M. Hill, Administrator, Office of Environmental Services, ODOT, 1980 East Broad Street, Columbus, Ohio 43223

**Location:** The project is located in the City of Cleveland in Cuyahoga County, Ohio.

**Project:** The project involves the upgrading and improvement of the existing I-71/I-90 Cleveland Innerbelt and access points.

The Ohio Department of Natural Resources (ODNR) has completed a review of the above referenced project. These comments were generated by an inter-disciplinary review within the Department. These comments have been prepared under the authority of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the National Environmental Policy Act, the Coastal Zone Management Act, Ohio Revised Code and other applicable laws and regulations. These comments are also based on ODNR's experience as the state natural resource management agency and do not supersede or replace the regulatory authority of any local state or federal agency nor relieve the applicant of the obligation to comply with any local state or federal laws or regulations.

**Rare and Endangered Species:** The ODNR, Division of Natural Areas and Preserves, Natural Heritage Database



records for two additional species not included in the project documentation. They are shown on the attached map. Both species were found in the vicinity of the railroad tracks in the Cleveland Flats area along the Cuyahoga River.

1. *Cyperus schweinitzii* - Schweinitz' Umbrella-sedge, threatened
2. *Hieracium canadense* - Canada Hawkweed, threatened

In addition, on page 24 of the report, under the section on "Terrestrial Habitat Characterizations", it is mentioned that one of many "tree species common in this Dense Urban Area" is the White Cedar (*Thuja occidentalis*). This tree, also known as Arbor Vitae, is listed as potentially threatened in Ohio. Specific locations (preferably marked on a map and/or GPS points provided) and survey information (date seen, number of trees, who performed the survey, habitat description, etc.) for this species should be provided to the Natural Heritage Program for inclusion in the database. In addition, if any of these trees are encountered during the implementation of this project they should be left undisturbed if at all possible.

**Fish and Wildlife:** The ODNR, Division of Wildlife (DOW) has the following comments

The DOW recommends no in-water work on the Cuyahoga River from March 15 to June 30 to reduce impacts to aquatic species and their habitat.

Records exist for the muskellunge (*Esox masquinongy*), a state species of concern, and the upland sandpiper (*Bartramia longicauda*), a state threatened species, within one mile of the project area. If either of these species is encountered during construction of the project, work should immediately be stopped, and the DOW should be contacted.

As indicated in the report, the DOW recommends that, during nesting season, a minimum distance of 300 feet be maintained around any peregrine falcon nest located on the I-90 Bridge to serve as a buffer against human disturbance. We recommend all activity (maintenance, inspection, etc.) that must occur in close proximity to any falcon nest located on the I-90 Bridge be scheduled for completion outside the falcon breeding season. The breeding season is mid-March through July 30.

**Parks and Recreation:** The ODNR, Division of Parks and Recreation (DPR) has the following comments

The DPR would request that public access be maintained to the state park and recreational areas. It is also requested that the Cleveland State Park management be kept up to date in terms of any traffic pattern changes made during the construction phases. And, "Best Management Practices" should be utilized during and after construction to control stormwater run-off and erosion.

ODNR appreciates the opportunity to provide these comments. Please contact Mindy Bankey at 614.265.6836 if you have questions about these comments or need additional information.

Mindy Bankey  
Environmental Administrator  
Division of Real Estate & Land Management  
Ohio Department of Natural Resources  
2045 Morse Rd, C4  
Columbus, Ohio 43229-6693  
614.265.6836  
Fax 614.267.4764



United States Department of the Interior

FISH AND WILDLIFE SERVICE

Ecological Services  
6950 Americana Parkway, Suite H  
Reynoldsburg, Ohio 43068-4127

(614) 469-6923/Fax: (614) 469-6919  
April 25, 2007

Timothy M. Hill  
Office of Environmental Services  
Ohio Department of Transportation  
P.O. Box 899  
Columbus, OH 43216-0899

Attn: Donald Rostofer  
Matt Perlik  
Re: **CUY-Innerbelt Corridor (PID 77510)**  
**Ecological Coordination**

Dear Mr. Hill:

This is in response to your March 12, 2007 letter and Level 1 Ecological Survey Report received on March 16, 2007 requesting U.S. Fish and Wildlife Service concurrence and/or comments on your Endangered Species Act section 7(a)(2) effect determinations for Federally-listed species that may occur in the proposed project areas located within the City of Cleveland in Cuyahoga County, Ohio. The project involves the upgrading and improvement of the existing I-71/I-90 Cleveland Innerbelt and access points.

The proposed project lies within the ranges of the Federally-listed endangered Indiana bat (*Myotis sodalists*), Piping plover (*Charadrius melodus*), and the Federally-listed threatened Bald eagle (*Haliaeetus leucocephalus*). Due to the project type, size, and location, you have made a no effect determination for these species. Therefore, consultation will not be required.

The Service has reviewed the Level 1 Ecological Survey Report and provides the following comments. We note the presence of two active peregrine falcon nest boxes that are currently located on the Cleveland I-90 bridge. We recognize that ODNR, in conjunction with ODOT, has been actively working on providing suitable habitat for peregrine falcons on the Interstate 90 bridge understructure, and that it will be necessary in the future to perform major rehabilitation on the bridge, including possible demolition and replacement. The Service acknowledges ODOT's willingness to comply with all applicable regulations pertaining to the peregrine falcon including the Migratory Bird Treaty Act.

This technical assistance letter is submitted in accordance with provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.), the Endangered Species Act, of 1973, as amended, and is consistent with the intent of the National Environmental Policy Act of 1969, and the U.S. Fish and Wildlife Service's Mitigation Policy.



DEPARTMENT OF THE ARMY  
HUNTINGTON DISTRICT, CORPS OF ENGINEERS  
502 EIGHTH STREET  
HUNTINGTON, WEST VIRGINIA 25701-2070

REPLY TO  
ATTENTION OF: May 11, 2007

Operations and Readiness Division  
Regulatory Branch  
Cuyahoga River - 2006-2136-CUY  
CUY-71/90, PID: 77510

Timothy M. Hill  
Office of Environmental Services  
Ohio Department of Transportation  
Post Office Box 899  
Columbus, Ohio 43216-0899

Dear Mr. Hill:

I refer to the Level I Ecological Survey Report (ESR) received in this office on March 19, 2007 requesting comments and jurisdictional determination. The ESR contains information concerning the proposed changes and improvements to Interstates 71 and 90 in the city of Cleveland, Cuyahoga County, Ohio.

Based on information presented in the ESR it was determined that one perennial stream, the Cuyahoga River, totaling 4,200 linear feet is present within the 1,390 acre study area.

The Corps of Engineers' authority to regulate waters of the United States is based on the definitions and limits of jurisdiction contained in 33 CFR 328. Navigable waters, their tributaries and adjacent wetlands are waters of the United States (U.S.) subject to the provisions of Section 404 of the Clean Water Act. The determination of jurisdiction for streams is based on the presence of an ordinary high water mark (OHWM) and evidence indicating the streams exhibit surface water connections to tributary systems to navigable waters. The Corps regulates streams up to the point where they no longer exhibit an OHWM. The Corps is also directed under Section 10 of the Rivers and Harbors Act of 1899 (33 USC 403) to regulate all work or structures in or affecting the course, condition or capacity of navigable waters of the U.S. The Cuyahoga River is a navigable water of the U.S.

This determination has been conducted to identify the limits of the Corps of Engineers' Clean Water Act jurisdiction for the sites identified within the study area of the ESR. This jurisdictional verification is approved and is valid for a period of five years from the date of this letter unless new information warrants revision of the delineation prior to the expiration date. Should you disagree with our jurisdictional determination, you have the right to file an administrative appeal under the Corps regulations at 33 CFR Part 331.

RECEIVED

MAY 25 2007

OFFICE OF  
ENVIRONMENTAL SERVICES

Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal this determination, you must submit a completed RFA form to the Great Lakes and Ohio River Division Office at the following address:

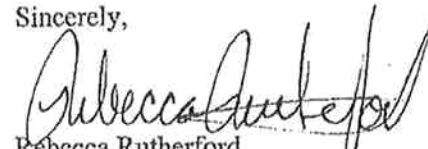
Mr. Mike Montone  
Great Lakes and Ohio River Division  
550 Main Street, Room 10032  
Cincinnati, Ohio 45202-3222  
Phone: (513) 684-6212

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria for appeal under 33 CFR Part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by 60 days from the date of this letter. **It is not necessary to submit an RFA form to the Division office if you do not object to the determination in this letter.**

This determination has been conducted to identify the limits of the Corps of Engineers' Clean Water Act jurisdiction for the particular site identified in this request. This determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985. If you or your tenant are United States Department of Agriculture (USDA) program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resources Conservation Service (NRCS), prior to starting work.

Please direct any questions regarding this letter to Peter Clingan of the Ohio Regulatory Transportation Office at (614) 692-4654.

Sincerely,

  
Rebecca Rutherford  
Chief, North Regulatory Section

Enclosures

Copy Furnished w/o enclosures:

Mr. Art Coleman  
Ohio Environmental Protection Agency  
Division of Surface Water  
P.O. Box 1049  
Columbus, Ohio 43215

Mr. Ric Queen  
Ohio Environmental Protection Agency  
Division of Surface Water  
P.O. Box 1049  
Columbus, Ohio 43215

Mr. Michael Pettegrew  
Office of Environmental Services  
Ohio Department of Transportation  
Post Office Box 899  
Columbus, Ohio 43216-0899

Mr. Donald Rostofer  
Office of Environmental Services  
Ohio Department of Transportation  
Post Office Box 899  
Columbus, Ohio 43216-0899

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCEEDINGS AND  
REQUEST FOR APPEAL**

Applicant: Ohio Department of Transportation	File Number: 2006-2136-CUY	Date: MAY 11 2007
Attached is:	See Section below	
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I:** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/ccewo/reg/or/Corps.regulations.at.33.CER.Part.33>.

**A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.**

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT: You may accept or appeal the permit**

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

**SECTION II: REQUEST FOR APPEAL & OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

*(This area is left blank for the appellant to provide reasons for appeal or objections.)*

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION**

<p>If you have questions regarding this decision and/or the appeal process you may contact:</p> <p>Ginger Mullins, Chief, Regulatory Branch, 304-399-5389                  Rebecca Rutherford, Ch, North Regulatory Section 304-399-5210                  Mark Taylor, Chief, South Regulatory Section, 304 399-5710</p> <p>Address: U.S. Army Corps of Engineers                  Regulatory Branch                  502 8<sup>th</sup> Street                  Huntington, WV 25701</p>	<p>If you only have questions regarding the appeal process you may also contact:</p> <p>Mr. Mike Montone                  Great Lakes and Ohio River Division                  550 Main Street, Room 10032                  Cincinnati, Ohio 45202-3222                  Phone: (513) 684-6212</p>
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**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.	Date:	Telephone number:
----------------------------------	-------	-------------------