



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
NORFOLK DISTRICT CORPS OF ENGINEERS
FORT NORFOLK 803 FRONT STREET
NORFOLK VIRGINIA 23510-1096

September 7, 2012

Western Virginia Regulatory Section
Coalfields Expressway Section II (Proposed)

Mr. John Simkins
Federal Highway Administration
400 North 8th Street, Room 750
Richmond, Virginia 23219

Mr. Michael Russell, P.E.
District Administrator
Virginia Department of Transportation
870 Bonham Road
Bristol, Virginia 24201

Dear Mr. Simkins and Mr. Russell:

This letter provides the comments of the Norfolk District Corps of Engineers for the Environmental Assessment (EA) dated June 13, 2012 by the Federal Highway Administration (FHWA) and the Virginia Department of Transportation (VDOT) for the proposed Coalfields Expressway (CFX) Section II in Wise, Dickinson, and Buchanan Counties, Virginia. The Norfolk District was a cooperating agency for the Environmental Impact Statement (EIS) previously prepared for this project. We appreciate your granting a time extension for our comments.

Section II of the proposed Coalfields Expressway will consist of a four-lane road that is approximately 26 miles long and would extend from the east end of the proposed Pound Bypass (also referred to now as CFX Section I), near its connection with Route 83 in Wise County, to the proposed Route 460 Connector in Buchanan County (where CFX Section IIIA begins). You indicate that this EA is intended to serve as a reevaluation of the previous EIS as it pertains to Section II of the Coalfields Expressway, which is now proposed in a different location. You indicate that your EA is intended to assess potential changes in environmental impacts resulting from changes to the project components, changes in the affected environment, and changes in regulatory requirements and guidance since the ROD was issued.

Considering the size and scope of this project, it will almost certainly impact waters and/or wetlands regulated by the Norfolk District Army Corps of Engineers (Norfolk District) under Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C 403). Therefore, a permit or permits will likely be required if either a new highway facility or improvements to existing facilities is ultimately proposed.

As you know, our regulations require that we consider a full range of public interest factors and conduct an alternatives analysis in order to identify the least environmentally damaging practicable alternative (LEDPA), which is the only alternative we can authorize. The National Environmental Policy Act (NEPA) provides a broad-based approach to impact balancing. However, NEPA does not contain substantive requirements that compel agencies to choose a particular alternative as is required by Section 404(b)(1) of the Clean Water Act. Compliance with NEPA requirements may not necessarily translate to compliance with the Section 404(b)(1) guidelines during the Section 404 permit process. In addition, in order to determine the LEDPA, we must consider impacts to aquatic resources, land use (including displacements of homes and businesses), floodplain hazards and values, water supply and conservation, water quality, safety, cost, economics, threatened and endangered species, historic and cultural resources, and environmental justice. VDOT must clearly demonstrate that the preferred alternative in the EA is the LEDPA and the other alternatives are not practicable for reasons of logistics, technology, cost, or other elements of project viability. Failing this, other alternatives may be considered “practicable” for the Section 404 alternatives analysis.

Specific comments are below:

Jurisdictional Determination (JD) for the Project Corridor: The EA does not mention whether or not a JD has been completed on Section II of the proposed CFX or any other section of the proposed project. In order to determine the specific waters of the U.S. and wetland impacts that are as required for the permit process, eventually a full JD must be conducted for our review and verification, for any areas within the proposed roadway corridor for which there is no current valid JD. There is little discussion of purpose and need for this project. The purpose and need should identify and detail the problems that this project will address and should not so narrowly define the problem as to restrict consideration of a full range of alternatives. The purpose and need should be supported by traffic studies. It is recommended that VDOT meet with the Corps early in the permitting processes to discuss these reviews.

Waters of the U.S.: As mentioned earlier, waters of the United States, including wetlands, regulated by the Norfolk District will likely be impacted by the project. The EA does not go into detail on these proposed impacts to waters of the U.S. for Section II of the project. However, it does show that impacts to waters of the U.S. have increased substantially in the EA compared to the final Environmental Impact Statement (FEIS) in 2001. This conclusion does not support the LEDPA. How were these impacts estimated and what is the reason for their increase and the change in the project alignment? In order to make a determination of LEDPA, identification of waters of the U.S. in the study area must be sufficient for locating and comparing alternatives. At a minimum, all available information such as aeriels, U.S.G.S. quad sheets, National Wetland Inventory (NWI) maps of the study area should be used to approximate the location of wetlands and waters. The conclusion in the EA does not support the LEDPA.

Historic Resources: The EA indicates that coordination with the Virginia Department of Historic Resources is ongoing. All current documentation and coordination should be included in the NEPA document

Many projects proposed by the Virginia Department of Transportation (VDOT) and funded by Federal-Aid Highway Funds managed by the Federal Highway Administration (FHWA) require

permits from the Corps of Engineers. These projects are subject to compliance with Section 106 of the National Historic Preservation Act of 1966.

According to 36 CFR 800.2(a)(2):

“...If more than one Federal agency is involved in an undertaking, some or all [of] the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106. Those Federal agencies that do not designate a lead Federal agency remain individually responsible for their compliance with this part.”

The Corps authorizes FHWA to conduct Section 106 coordination on its behalf for the proposed Coal Fields Expressway. Any Memorandum of Agreement prepared by FHWA under 36 CFR 800.6 should include the following clause in the introductory text:

“WHEREAS, pursuant to Section 10 and/or Section 404 of the Clean Water Act, a Department of the Army permit will likely be required from the Corps of Engineers for this project, and the Corps has designated FHWA as the lead federal agency to fulfill federal responsibilities under Section 106; and”

In accordance with 50 CFR 401.07, FHWA is also designated as the lead Federal agency for consultation with the U. S. Fish and Wildlife Service concerning potential effects to Federally-listed threatened and endangered species.

Threatened and Endangered Species: The EA says, VDOT will implement time of year restrictions for species potentially in the corridor area (ie. Indian Bat (*Myotis sodalis*). This information seems to come from a Biological Assessment (BA) done in 2000. There are numerous Threatened and Endangered Species in the project corridor (not only Section II) that should be addressed in further detail. This is an old assessment and it would likely be required that more current information be provided in the NEPA documentation. We would like to emphasize that as the lead Federal Agency, FHWA is responsible for completing all coordination pursuant to ESA, regardless of whether it occurs during the NEPA process or during the permitting process. In addition, we recommend that all documentation and coordination, including the IPAC determination, be included in the NEPA document.

Corps-owned property: The preferred alternative right-of-way proposes to encompass approximately 120 acres of the John W. Flannagan Dam and Reservoir. As part of the alternatives analysis, you must coordinate road alignments, design, and ultimately construction with the Corps Operations Branch early in the process to assure that there will be no adverse effects to operations at the existing project. This must be coordinated through the Huntington District Corps office. A real estate agreement must be negotiated with their Real Estate office for any encroachment onto these areas.

Cumulative effects analysis: Council on Environmental Quality (CEQ) regulations require the cumulative impact, or “the incremental impact of past, present, and reasonably foreseeable future impacts” to be considered. These regulations further state that cumulative impacts can result from individually minor but collectively significant actions taken over a period of time. The impacts of future planned segments are certainly reasonably foreseeable and will need to be

assessed in the NEPA document on a cumulative basis, not just per section of road (ie. Section II). This analysis should include all current and future impacts in the watershed (ie. Coal mining, developments industrial parks)

Mitigation: Mitigation is mentioned briefly and should be discussed early with the Corps as the project develops.

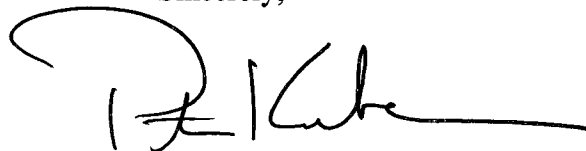
In order to ensure that the NEPA document addresses mitigation in accordance with our new regulations, please refer to the Corps/EPA 2008 “Compensatory Mitigation for Losses of Aquatic Resources, Final Rule.” A link to this publication is provided:
http://www.epa.gov/owow/wetlands/pdf/wetlands_mitigation_final_rule_4_10_08.pdf

Twelve years have passed since the FEIS was signed. The location of Segment II is on an entirely different alignment than it was at that time. Cumulative impacts have occurred in the watershed since that time. The project segment present in the EA includes potentially three times the number of miles of stream impact, 12 times the acres of wetland impacts, and almost twice the amount of total land disturbance than the alignment studied in the 2001 FEIS. Given these factors, as well as the fact that there are other segments of this project planned which will likely have substantial impacts, we believe that impacts associated with this project are potentially significant.

It does not appear that this EA with a Finding of No Significant Impact (FONSI), will be suitable for our purposes. We recommend preparation of a Supplemental or new EIS that addresses all the points outlined in this letter, plus any other updates that need to be made. If FHWA does not determine that impacts are potentially significant and that a Supplemental EIS must be prepared, the Corps may find it necessary to contract with a third-party consultant, at the applicant’s expense, to prepare an EIS or Supplemental EIS, if an application is submitted for any portion of this project. We also encourage you to conduct a thorough alternatives analysis as part of your current study to avoid future delays and repetition of effort, particularly given the extent of time that has passed since your prior studies. An alternatives analysis sufficient for the Corps to make a determination of the LEDPA is required in order to make a permit decision.

Thank you for the opportunity to comment. If you have any questions concerning our comments, please contact Mr. Vincent Pero at 434-973-0568 or Vincent.d.pero@usace.army.mil

Sincerely,

A handwritten signature in black ink, appearing to read "P. Kube", with a large, sweeping flourish at the beginning.

Peter Kube
Chief, Western Virginia
Regulatory Section