

1/02/12

Comments on the published: Supplemental Draft Environmental Impact Statement.

Priority Mailed to:

C.26; E.3

John Sacksteder
Community Transportation Solutions
305 North Hurstbourne Parkway, Suite 100
Louisville, KY 40222

As the SDEIS states, the FHWA required the Louisville and Southern Indiana Ohio River Bridges Authority (*Bridges Authority*) to conduct a public hearing seeking comments on its plan for the project, stating in the SDEIS, Section D.5, that "The purpose of this analysis is to consider whether alternative construction techniques or reconsideration of that original decision in favor of a bored shaft tunnel should be pursued" which is "intended to assist KYTC, INDOT and FHWA in deciding whether any alternative construction method...warrants additional study".

At the Dec 19 *Bridges Authority* meeting, this writer met and had a conversation simultaneously with both CTS Project Manager John Sacksteder and Gary Valentine, Kentucky Transportation Dept Project Manager. After informing them of the filing of my petition submitted to the Kentucky Heritage Council and the NRHP requesting Chief Keeper Carol Shull to remove 1992 listing of the Drumanard 55 acre "boundary increase" from the National Register, Gary Valentine stated "Even if the National Register removed the property from the National Register, there would be little savings realized by eliminating the tunnel." After reviewing the SDEIS, and specifically appendices D.5, his response appears to be inaccurate. Also, he added that "the Mayor of the City of Prospect was strongly in support of a tunnel".

During that meeting this writer submitted a verbal 3 minute public comment during the "comment period" of the December 19 meeting announcing the filing of a petition to De-List the Drumanard 55 acre property from the National Register. Afterwards John Sacksteder was interviewed by news reporter, Braden Lammers of the *News & Tribune*. As reported in the Dec 20 edition of the *News & Tribune*, in response to the suggestion "that the tunnel be removed from the project, which...would cut nearly one-third of the cost out of the \$795 million Kentucky approach on the east end", Sacksteder was quoted as having inappropriately and inaccurately stated:

"Removing the tunnel is not an option and would actually cost the project too much time and money."

This proved to not only usurp the intent of the Dec. 19 & 20 meetings with respect to the FHWA, the KYTC, and INDOT, but it compromised the intent of the purpose of the two Bridges Authority meetings likely creating disincentive for public participation in the ensuing meeting on December 20.

During the *Bridges Authority* meeting conducted the next evening in Indiana, this writer spoke with reporter Braden Lammers inquiring as to a possible misquote of Sacksteder. Lammers' response: "Not possible. I have Sacksteder's comments of last evening on tape".

In addition, Sacksteder, Valentine, and other members of the *Bridges Authority* made, and have been quoted making, inaccurate statements relative to the SDEIS' published financial analysis of the estimated inflation costs of \$7 million per month as related to delays in the project. In fact, Sacksteder was quoted in the *News & Tribune* referring to an inaccurate \$10 million per month. Other news articles as well as e-mails received from members of the Bridges Authority have misstated this number as being as high as "\$30 million per month",

more than four times what the SDEIS states. This has resulted in substantial misinformation transferred to the general public which should be recanted and corrected as soon as possible in a public forum.

Also, Sacksteder inappropriately speculated publically and to the press as reported: "If there was a decision to take it (the tunnel) out, we would have to look at prudent and feasible alternatives, which means we have to go back and re-examine alternatives," he said. "So, there would almost certainly be several years delay in backing up and saying we're not going to do a tunnel anymore." Noting that Sacksteder boasted (and justifiably so) that the *Bridges Authority* and CTS "turned the [draft SEIS] around in nine months" which is "normally a two to three year effort" his publically generated speculative estimate of "several years" to change one element of one of the two bridges projects to alter the SDEIS is not plausible, nor is it an appropriate statement for the Project Manager to have made publically. This writer believes such an alteration to the EIS could be generated in 90 days, given the proper resources to do so.

Due to the above referenced inaccurate and inappropriate public comments made by top ranking project managers and officials of CTS and the Bridges Authority, this writer recommends the FHWA and *Bridges Authority* consider conducting a "Special Public Meeting" as soon as possible in order to correct inaccurate and inappropriate statements made, as indicated herein, offering apologies to the public and allowing for additional comments from the public.

If not, why then did the FHWA require the *Bridges Authority* to conduct a public hearing seeking comments on its plan for the project, stating in the SDEIS that "The purpose of this analysis is to consider whether alternative construction techniques or reconsideration of that original decision in favor of a bored shaft tunnel should be pursued"? And why make the written comment that this is "intended to assist KYTC, INDOT and FHWA in deciding whether any alternative construction method...warrants additional study"? When in reality Project Manager John Sacksteder inexplicably made it clear that the options listed on page 2 of "Construction Options" are "NOT AN OPTION".

The writer requests that the FHWA and *Bridges Authority* restate publically that the "options" cited on page 2 of "Construction Options" are, in fact, viable potential options. And in particular the "open cut" method in lieu of the "bored shaft tunnel" resulting in the published estimated "savings of \$203.7 million to the KY Approach to the East End Bridge" is a viable potential option. Especially in view of the now exposed fact that the Drumanard 55 acre "boundary increase" was listed on the National Register without merit and under questionable conditions as indicated by a) my petition, b) the exhibits to my petition, and c) the conclusions of consultants Robert Rollins and Christine Amos published in Section D.5 of the SDEIS. Also that "operation and maintenance cost savings of \$1 million per year", if an open cut method is selected, is still a viable potential option. And when the Chief Keeper of the National Register of Historic Places elects to remove the 55 acre Drumanard property from the National Register, the Bridges Authority, and the KYTC, INDOT, and FHWA agree to consider altering the planned \$255,000,000 "bored shaft tunnel method" in favor of the "open cut method" in order to realize the substantial savings as indicated in D.5 of the SDEIS.

Furthermore, Appendices D.5 contains a number of inaccuracies listed below that should be corrected. These are:

- 1.) Page 3 of "Construction Options", third paragraph, refers to the Drumanard property including a "Tudor Revival style architectural cluster". In fact page 5 of exhibit "J" of the group of exhibit documents provided with my petition, accessible on www.eastendbridgeconspiracy.com, clearly indicates this description of architecture is inaccurate. In fact the minutes of the September 22, 1988 Kentucky Historic Preservation Review Board, (copy attached) indicate that upon making a motion for the property's approval the Chairman stated as a caveat to the approval, "provided a correction is made about the style of the house" noting "there was nothing Tudor about the house". Based upon this

provision, the motion passed. Thus this description of the type of architecture of the property should be removed from the SDEIS.

- 2.) Page 3 of "Construction Options", third paragraph refers to "The boundary of the Drumanard Estate Historic District was later expanded by the Keeper of the Register based on an amended nomination to include the entire 42-acre estate." In fact the 1988 nomination was not an "amendment" of the original 1979 nomination for the home, and the subsequent December 16, 1982 "Additional information requested by NPS" for the ".8 acre parcel including the house and formal gardens" which led to the 1983 listing.

In fact, the 1988 nomination, (Exhibit "A" of my petition) was a completely new nomination generated for the purpose of changing the name of the property from the "Fitzhugh House" to "Drumanard" and increasing the boundary from the already listed .8 acres (inclusive of the house) to encompass all 55 acres of the property. Many of the assertions made in this nomination as they relate to the historic values of the property are invalid or in question per my petition filed with the Kentucky Heritage Council and National Register and confirmed by the conclusions of the consultants reports published in D.5 of the SDEIS.

- 3.) Page 4, Item 2, third paragraph. "The boundary was later expanded to include the entire estate of 42 acres". This is in error. In fact, the boundary was clearly expanded to include the entire estate of 55 acres.
- 4.) Page 4, Section 2 "2003 Record of Decision", paragraph 3. The sentence: "The property features a historic landscape designed by the nationally known firm of Olmsted Associates.." is incorrect and a request should be made for the Federal Government to amend and correct the 2003 ROD. Clearly, as stated in the last paragraph of page 3, consultant Robert Rollins, recommended by none other than the Olmsted Conservancy, after thorough investigation concluded – as does the evidence supporting my petition - that "there is no evidence that the Olmsted Landscape Plan was ever implemented..".
- 5.) Page 8, 3.1 "Potential for Finding of De Minimis Impacts" – This entire section, a) incorrectly assumes the Drumanard Estate Historic District is legitimately included on the National Register (in spite of the acknowledgment of paid consultants debunking a number of the purported "facts" stated in the original 1988 nomination which ultimately resulted in the property being inappropriately listed on the National Register in 1992. Also this section speculates on what the "Kentucky SHPO and the Advisory Council are expected to concur", i.e. "that the project will still have an Adverse Effect on these historic properties" with no consideration given to the distinct possibility that the listing for the "boundary increase" of Drumanard's 55 acre listing could likely be removed from the National Register. In fact, with the information brought to light by consultants Robert Rollins and Christine Amos of Amos Consulting, The Bridges Authority and CTS should have recognized prior to publishing the SDEIS, that the legitimacy of the listing of the "boundary increase" of the 55 acre Drumanard property in the National Register is highly questionable and potentially reversible.

This section (3.1) continues with additional speculation that "the Kentucky SHPO and the Advisory Council are unlikely to concur in a finding of No Adverse Effect for any of the three construction options, INDOT and KYTC do not think that a de minimus determination is likely with respect to any of these options, and have recommended that the de minimus 4(f) option not be pursued further."

Under the circumstances, such speculation should be eliminated from the SDEIS.

In fact, the Bridges Authority, CTS, INDOT, KYTC, and the FHWA should be aware that the present Kentucky SHPO (Mr. Lindy Casebier), in a statement made to *Courier Journal* reporter Marcus Green,

as published in the C-J December 22, 2011 edition (copy attached), placed the public on notice “stressing that Bob Griffith, the council chair” (Kentucky Heritage Council), is also “attorney for River Fields, which opposes an eastern bridge...”. Thus by making his statement, Mr. Casebier admitted to, and exposed Mr. Griffith’s conflict of interest as it relates to anything related to the East End Bridge project.

As such, because of this admitted conflict of interest, and in keeping with the five “*General Standards of Conduct*” (one being: “Employees should not engage or be involved in any activity which has the potential to become a conflict of interest with their state employment”), as published in the Commonwealth’s “*Guide to the Executive Branch Code of Ethics*”, Governor Beshear has been formally requested by this writer (copy attached) to remove Bob Griffith from his position as chair of the KHC, which could lessen the effects of any speculative decision the SHPO may have on the project.

- 6.) Page 13, 4.13 Construction Impacts - While this section reveals “The bored shaft tunnel..would take the longest to complete, estimated to last three to four construction seasons”, there is an obvious absence of any reference to amount of time the option of an open cut would require. This, in addition to the description of the option of the “open cut method” described on page 2, should be included in the SDEIS.
- 7.) Page 15, 4.14 Historic and Archaeological Resources – The entire content of this section incorrectly assumes the 55 acre Drumanard “boundary increase” listing in the National Register to be legitimate. In fact the information contained in this report, i.e. the published conclusions of consultants, adds support and validation to many of the elements contained in my petition to de-list the Drumanard 55 acre “boundary increase” from the National Register. With the advent of this information, the SDEIS should include viable alternatives for potential “Adverse Effects” as they relate to Section 106 and any potential previous mitigation planned as it relates to the 55 acre Drumanard Estate.
- 8.) Page 16, 4.15 General Public Acceptance - The following statement is in total contradiction to page 2 of the same report and absurdly false and incorrect:

“The current design of the Modified Selected Alternative includes the bored shaft tunnel option. This has been the only option presented during the extensive public involvement process both during the original environmental phase of the project and subsequent project development.”

In fact, in contradiction, Page 18, Section 5.2 states: “The basic question to be considered is whether a cut-and-cover tunnel option and/or an open-cut option would be approvable under Section 4(f)”. And the SDEIS gives no consideration to a scenario in which the 55 acre Drumanard “boundary increase” is removed from the National Register. Under the circumstances of the stated conclusions of consultants published in this report, such consideration should have been given to alternatives to the bored shaft tunnel and approval of those options should the 55 acre Drumanard property become removed from the National Register.

Furthermore, the following statement contained in this section should be stricken from the SDEIS due to its highly speculative nature and totally inaccurate speculative conclusion:

“As a result of past experiences with the community, KYTC predicts strong public opposition if the open cut is studied again”.

The facts are just the opposite as stated in contradiction on page 18, 5.2 Construction Options to a Bored Shaft Tunnel for Alternative A-15) “Members of the public have requested consideration of construction options that reduce the project cost by eliminating the tunnel altogether...”.

In fact, there has been an overwhelming public outcry for the removal of the ridiculously expensive \$255,000,000 tunnel, and this has been **prior to** the revelation that the Drumanard 55 acre "boundary increase" nomination of 1988 is severely flawed and inaccurate. Not to mentioned the proven egregious activities of government officials who sought to block the progress of I-265 by having the then Drumanard property owner recant her objection to her property being listed on the National Register. (See Exhibit "B" of the group of exhibit documents).

This section should be stricken from the SDEIS, and replaced with new and accurate information.

- 9.) Page 18, 5.2 - This section should be completely re-written due to the absence of any consideration of the 55 acre Drumanard property being de-listed from the National Register. In addition, the statement that "Members of the public have requested consideration of construction options that reduce the project cost by eliminating the tunnel altogether.." is in direct conflict with the statement in 4.15, "the bored shaft tunnel option...has been the only option presented during the extensive public involvement process both during the original environmental phase of the project and subsequent project development."
- 10.) Page 20, Section 5.2.2 Open Cut Option - This section should be re-written due to the absence of any consideration of the 55 acre Drumanard property being de-listed from the National Register, thus eliminating issues as they relate to 4(f).
- 11.) Page 21, Section 5.2.2, second to last paragraph. - The mathematical calculations contained in this section are inaccurate and incorrect thus obviously being misleading to the general public. To wit, the author of this section of the report makes the following inaccurate statement:

"The elimination of the tunnel and the construction of an open cut for Alternative A-15 through the Drumanard Estate Historic District are contrary to the ROD commitments and stakeholder expectations. The savings would amount to only 5.6% of the total project costs over a 70-year life cycle."

Contrary to this statement, the elimination of the tunnel and construction of an open cut method as documented in the report (page 2) will reduce the project by \$203.7 million. Also documented is the annual reduction of operation and maintenance costs of the open cut will result in of \$1 million per year savings vs. the tunnel. Thus the correct mathematical computations that should be published in the report are as follows, (dollars expressed in millions):

Savings for an open cut vs. the proposed tunnel as published =	\$ 203.7
Savings for 70 years of operation and maintenance costs as published =	<u>70.0</u>
TOTAL	273.7

The East End Bridge "2011 Modified Alternative" total estimated cost (as published) = \$ 1,352.7

The total of the "2011 Modified Alternative" for the two bridge project, (as published) = \$ 2,916.2

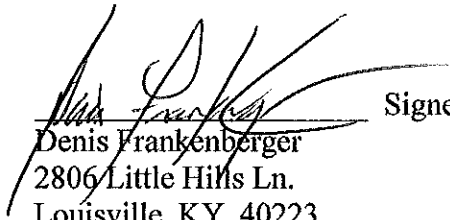
(Bridges Authority Cost Comparisons 2003 Selected Alternative and 2011 Modified Alternative attached herein)

$\$273.7 / \$1,352.7 = 20.2\%$ savings on the East End Bridge project over a 70-year life cycle, or 3.6 times MORE savings than the SDEIS states.

Even if the author of this misstatement and inaccurate mathematical calculation had attempted to incongruously compare the savings of the "open cut method" in lieu of the "bored shaft tunnel method" to the ENTIRE Two Bridges Project cost of \$2,916.2 billion, the published statement would still be considerably flawed, to wit:

$\$273.7 / \$2,916.2 = 9.4\%$ savings on the entire Bridges Project over a 70-year life cycle, or 1.68 times MORE savings than the SDEIS states.

With all due respect it is for these reasons, and the substantial inaccuracies cited herein, that I appeal to the Bridges Authority, CTS, INDOT, KYTC, and the FHWA that the Supplemental Draft of the Environmental Impact Statement be corrected and redrafted.

 Signed, 1-02-12
Denis Frankenberger
2806 Little Hills Ln.
Louisville, KY 40223