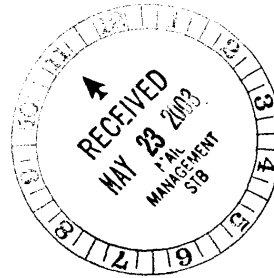


207872

May 20, 2003



To the Honorable Vernon A. Williams, Secretary
Surface Transportation Board
1925 K Street N.W. Room 711
Washington, D.C. 20423-0001

Dear Secretary Williams:

Enclosed is a Petition to Revoke STB Finance Docket No. 34284 and the supporting documents for consideration.

Sincerely,

Robert T. Fitzgerald

Dr. Robert T. Fitzgerald

Encl.

FILED

MAY 23 2003

U.S. DEPARTMENT OF
TRANSPORTATION

ENTERED
Office of Proceedings

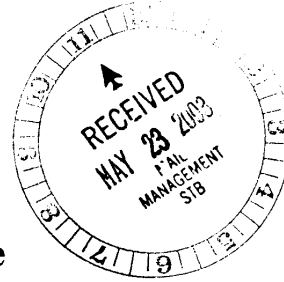
MAY 23 2003

Part of
Public Record

FILING FEE WAIVED

May 20, 2003

Re: STB Finance Docket No. 34284
Southwest Gulf Railroad Company



Petition to Revoke

This petition is filed by the Medina County Environmental Action Association. We are asking the Surface Transportation Board to revoke the conditional authority granted to Southwest Gulf Railroad Company (SWGR) to construct a rail line on the grounds that (1) proper notice was not given to the public in accordance with 49 CFR 1150.10, and (2) there is no current need for a rail line because there is no quarry.

1. No local public notification concerning the petition for exemption on Finance Docket No. 34284 was given. Inquiries made to the three major Medina County newspapers, The Hondo Anvil Herald, the Medina Valley Times, and the Devine News, the only radio station in Medina County which is local radio station KCWM, and the Hondo City Public Library showed that there were no public notices posted. Therefore, the public had no opportunity to request denial of the petition for exemption filed on February 27, 2003, Finance Docket No. 34284.
2. Although SWGR says the purpose of the proposed line is to serve a quarry, there is no quarry. Therefore, the railroad line is not required. By checking county records of deeds recorded for land transfers and ownership of land, neither Vulcan Materials nor any of its subsidiaries has acquired the land for the proposed quarry. Further evidence that there is no quarry is that the required permits for the proposed quarry have not been obtained from other agencies:
 - a. No permit has been issued by the U.S. Fish and Wildlife Service. According to their letter of March 20, 2002, outlining the requirements of the bird protocol study, this study would be conducted for a minimum of 3 years. (Copy enclosed) 1. Therefore no permit by U. S Fish & Wildlife Service can be issued, if they ever do, until these three years studies have been completed, prior to March 2005.
 - b. None of the required permits for a rock crusher have been issued by the Texas Commission on Environmental Quality, as per our frequent inquiries by mail and telephone to this agency. As of this date, we have received no notification of application for the required permits.

Additionally, neither Southwest Gulf Railroad, nor its parent company Vulcan Materials, Inc., nor MedTex Lands, Inc. has acquired the land for any of the proposed routes for the line. One hundred and six landowners in this area have drawn up, signed, and recorded in the county records three restrictive covenants on their deeds covering over 9,500 acres. These restrictive covenants state that no railroad or other type of conveyor system can be placed upon their property. The landowners will not sell voluntarily. Parts of the needed property for all of the proposed lines are in these covenanted acreages.

3. The petition is misleading in that it understates the population of Medina County by approximately 22%. The population of Medina County is 40,000 instead of 33,000 persons, and is projected to grow to 44,000 in the next 12 to 18 months. Most of this growth is occurring in the eastern half of the county, consisting primarily of bedroom communities for the city of San Antonio. These communities would be adversely affected by the railroad line. See No. 5 below.
4. We strongly disagree that this proposed line would ever be used as a common carrier because the line routes as proposed would traverse as many as three floodplains, according to FEMA maps.

Currently, there are not any other prospective shippers on or near these proposed routes, and future shippers locating on or near these routes, which as proposed would be in these floodplains, is highly unlikely. Flooding occurs frequently, and severe flooding requiring FEMA assistance has occurred on all the proposed routes three times during the past seven years. Therefore the likelihood of shippers other than Vulcan Materials, Inc., locating here is extremely remote. Thus, the product from the proposed quarry is the only freight that would be shipped on this line.

5. We also object to the statement that the four county roads crossed by the proposed grade level crossings are 'lightly traveled'. (See copy of Synopsis of the Southwest Gulf Railroad Company Rail Project in Medina County Texas, submitted to the STB titled "Description of SGR's Preferred Route"). Two of these roads are actually the main arteries that connect the area to San Antonio and Castroville. Without grade level separations, severe traffic problems for commuters and school buses, delays for fire emergency medical services and police protection, would be caused by the one-mile-long trains crossing these roads four times daily, 250 days per year, as described in Southwest Gulf memorandum to SEA dated February 27, 2003, Part III, No.2,4,5,8.(Copy enclosed). Also see County Judge Jim Barden's letter supporting our concerns to URS Corporation dated April 24, 2003. (Copy enclosed)
6. We believe that the railroad line would present hazards to public health and safety and will endanger over two dozen historic sites by flooding and vibration. These structures are located in the floodplain in close proximity to all the proposed routes.
7. Concerning the necessity for shipping the proposed quarry's product as it pertains to regional necessity, consultation with Martin Murietta reveals that, although the demand for limestone varies from time to time, the Houston and Gulf Coast area is already being serviced efficiently by Vulcan Materials and other companies by shipments by rail. In addition, the above areas are already being supplied by Vulcan Materials by its Yucatan plant by vessel. Additionally, Alamo North Railroad Company is authorized by STB Docket No. 34002 to build a railroad line in Wise County Texas. This authorization was granted in part to service the Houston area. According to a spokesperson at Martin Murietta, this rail line has not been built. Should the need arise, this Wise County line could be constructed and utilized. It costs taxpayers money to have STB authorize railroad lines that are not needed.

CONCLUSION

For these reasons, citizens of Medina County, represented in part by the Medina County Environmental Action Association, respectfully request the Surface Transportation Board to revoke the petition filed on STB Finance Docket No.34284. There is no need for the railroad since there is no quarry.

Respectfully,

Robert T. Fitzgerald

Dr. Robert T. Fitzgerald, President
Medina County Environmental Action Association
202 CR 450
Hondo, TX 78861

I affirm the above statements are true, to the best of my knowledge, information, and beliefs.

Robert T. Fitzgerald
Dr. Robert T. Fitzgerald

May 20, 2003
Date

I swear that on this the 20 day of May, 2003, I mailed a copy to David H. Coburn, Scott Mirelson,

Stephoe & Johnson, LLP
1330 Connecticut Ave.,
Washington, D.C. 20036
Attorneys for Southwest Gulf
Railroad Company

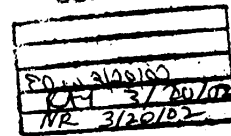
Robert T. Fitzgerald
Dr. Robert T. Fitzgerald

Encl.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
10711 Burnet Road, Suite 200
Austin, Texas 78758
(512) 490-0057



March 20, 2002

Dr. William J. Rogers
West Texas A&M University
Department of Life, Earth, and Environmental Sciences
WTAMU Box 60808
Canyon, Texas 79016-0001

Consultation #2-15-00-I-0658

Dear Dr. Rogers:

This is a response to the January 3, 2002 letter from Tom Ransdell of Vulcan Materials Company (Vulcan) providing the U.S. Fish and Wildlife Service (Service) with a copy of the Biological Assessment, "Phase I, Medina County Project, Medina County, Texas, December 2001." Mr. Ransdell requested that we direct our response correspondence to you at your university address. The Biological Assessment was completed to voluntarily assess potential effects to threatened and endangered species from a proposed limestone quarry located approximately 5 miles north of Quihi, Medina County, Texas.

Vulcan has purchased or leased 3 large tracts totaling approximately 1760 acres for the proposed quarry, plus a fourth smaller tract for the Plant Maintenance Facility and Fuel Storage Area associated with the quarry. An additional easement may be required for the construction of a rail line to transport limestone spoils from the quarry to an existing rail line approximately 6.7 miles to the south of the proposed quarry site. The quarry is expected to have at least a 50-year life span, with quarry operations progressing within the 1760 acres generally from the south to the north over time. Not all of the 1760 acres will be quarried, depending upon the locations of stream corridors, endangered species habitat, and appropriate geology for quarry operations.

The Service's interest in the proposed quarry project began in the spring of 2000 when we were contacted by neighbors of the proposed quarry site who were opposed to the project and were concerned that the project may impact endangered species or other sensitive natural resources. In response to the proposed quarry's neighbors' concerns, we sent a letter dated June 15, 2000 to Tom Ragsdell of Vulcan to inform him of the potential for the proposed quarry to impact Federally listed and proposed threatened and endangered species and designated wetlands. However, according to the December 2001 Biological Assessment provided by Mr. Ragsdell, Vulcan had assembled a team of environmental experts in April 1999, over a year before our June 15, 2000 letter, to assess the geological, biological, and historical resources of the proposed quarry site. The team's responsibilities included determining the potential environmental impacts from proposed quarry operations, developing avoidance and mitigation plans for

sensitive resources, proposing wildlife habitat improvements on non-quarried sections of the site, and assessing the economic feasibility of a quarry at the site, given the environmental and historical resources present.

On April 16, 2001, Mary Orms and Ray Brown of the Austin Service office visited the proposed quarry site with you and project geologist Dr. Darrell T. Brownlow to discuss the potential for the project to impact protected resources, the endangered species surveys you had planned and/or conducted, and the procedural hurdles that needed to be addressed under the Endangered Species Act. We discussed the potential for the endangered golden-cheeked warbler to occur on the property, the protection of some potential warbler habitat in riparian corridors, and the protection of additional habitat areas as on-site mitigation depending upon the eventual quarry plan and the results of bird surveys on the property. On March 21, 2002, Dr. Brownlow met with Dawn Whitehead, Supervisory Fish and Wildlife Biologist for the Austin Service office, to discuss the proposed quarry and to ensure that senior Service staff members were fully informed of the project and concurred with the minimization and mitigation measures that Vulcan has proposed to protect sensitive resources in the area.

You, Dr. Brownlow, and Service staff have discussed your plans for conducting bird surveys on the property that would provide adequate information to ensure protection of the golden-cheeked warblers and black-capped vireos that may currently, or may at some point in the future, occupy portions of the over 1700 acres that have been leased or purchased for the project. Normally, the Service requires a minimum of three years of Service-approved bird surveys to determine the absence of golden-cheeked warblers and black-capped vireos from potential habitat areas before we will concur that a development project will not adversely affect the species. Bird survey results are typically considered to be valid for up to three years, after which new surveys would have to be conducted to show absence of the endangered birds from an area of potential habitat.

The Service must consider the impacts of development projects, such as the proposed quarry, in their entirety, and cannot consider the potential impacts of particular phases or segments of a project without taking into consideration the other project phases or project segments. Typically the Service requires that adequate assessments for endangered species be conducted for all phases or segments for a particular project up front, before any habitat destruction or "take" of endangered species is authorized on any part of the project. However, given the long life span of the project and incremental nature of potential impacts associated with the proposed quarry project, it would not be prudent for the Service to require surveys over the entire quarry property at this time. Some portions of the quarry property may not be impacted by quarry operations for 10, 20, 30, or 40 years into the future. Surveys conducted by Vulcan would expire 3 years after completion, so Vulcan would have to conduct additional surveys at additional expense in the future for those areas not impacted within three years of the initial surveys. If the Service were to require that Vulcan conduct three years of presence/absence bird surveys over its entire property up front, Vulcan may be inclined to immediately bulldoze all areas where no endangered species were recorded, and to maintain those areas in a barren condition to avoid having to conduct additional surveys on those areas in the future. Of course, that would not be in the best interest of the wildlife in the area. This outcome would definitely not be desirable to the Service, as we

would prefer to see the site provide habitat for the area's native flora and fauna for as long as possible. This outcome would not be desirable for Vulcan either, since Vulcan is endeavoring to develop this project in a responsible, environmentally friendly manner. Furthermore, the vegetation on the site in 40 or 50 years may differ drastically from the current condition, and therefore any surveys conducted in the next few years may provide little or no information on the wildlife communities and threatened or endangered species that will occur on the site just prior to vegetation clearing and quarrying activities at later phases of the project.

Therefore, we concur with Vulcan's environmental team's recommendation to conduct the endangered bird surveys on the property in a somewhat unconventional manner. Vulcan intends to (1) periodically conduct broad-scale low-intensity surveys over the entire 1700+ acre site throughout the life of the project to get a general idea of the distribution of endangered species across the site, and (2) conduct Service-approved high-intensity annual presence/absence surveys beginning a minimum of three years prior to vegetation disturbing activities for each phase of the project. Current survey protocols call for three years of surveys for golden-cheeked warblers and black-capped vireos to prove absence of these birds from areas of potential habitat, so Vulcan's environmental team should plan to initiate Service-approved annual bird surveys in areas of potential habitat at least three years prior to clearing of habitat for each phase of the proposed project. Vulcan's environmental team will have to communicate effectively throughout the life of the project with Vulcan's quarry operators and planning teams to ensure that the appropriate surveys are initiated at least three years prior to vegetation clearing for each phase of the project. We have enclosed our latest survey protocols for your use this survey season.

The broad-scale, low intensity surveys that will be conducted across the property throughout the life of the project are an important part of the project for several reasons: (1) these surveys will help Vulcan's environmental team monitor the populations and locations of endangered birds on the property (if any) to help Vulcan avoid any major surprises from arising in the future during the high-intensity Service-approved bird surveys; (2) these low-intensity surveys will help Vulcan plan for any on-site or off-site mitigation of endangered species habitat that may be deemed necessary to compensate for any destruction of endangered species habitat associated with quarry operations; (3) the low-intensity surveys will help to provide the Service with reassurance that Vulcan's environmental team is aware of the natural resources on the entire site and that no areas of potential endangered species habitat will be cleared or disturbed without proper surveys and adequate mitigation.

We appreciate Vulcan's desire to develop the proposed Medina County quarry as a showcase project to demonstrate the compatibility of quarry operations and environmental and endangered species habitat protection. We are pleased with Vulcan's willingness to cooperate with us and maintain open lines of communication for the Medina County project. Your proactive approach to addressing the potential impacts from your project, i.e. early awareness of sensitive resource locations during the project design phases, avoidance of those areas where possible, and planned mitigation for those sensitive resources that may be disturbed or destroyed by the proposed project, is the preferred method of minimizing impacts to threatened and endangered species and other sensitive resources. We appreciate that Vulcan has acquired extra acreage at the quarry site and plans to acquire extra right-of-way for the proposed rail lines so that they may have some

Dr. Rogers

4

additional leeway for avoiding sensitive resource locations when you and the rest of the environmental team provide them with more precise information on the sensitive resources in the project area. We believe that Vulcan and its environmental team will continue to develop this project in an environmentally sensitive manner, and will continue to work and communicate with the Service, the Texas Natural Resource Conservation Commission (TNRCC), the Edwards Aquifer Authority (EAA), and other interested parties to ensure appropriate consideration and protection of sensitive resources in the area. We look forward to working with and maintaining a positive relationship with you, the rest of the environmental staff, and Vulcan representatives on this project and others in the future.

If we can be of further assistance or if you have questions about these comments, please contact Ray Brown at the Service's Austin Office at (512) 490-0057, ext. 243. Please refer to the Service Consultation number listed above in any future correspondence with this office regarding this project.

Sincerely,

/s/ Dawn Whitehead

David C. Frederick
Supervisor

Enclosure

cc: Dr. Darrell Brownlow

***** -COMM. JOURNAL- ***** DATE MAR-20-2002 ***** TIME 14:17 *****

MODE = MEMORY TRANSMISSION

START=MAR-20 14:15

END=MAR-20 14:17

FILE NO.=568

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-US FISH & WILDLIFE -

***** -AUSTIN ES FIELD - ***** 1 512 490 0974- *****



U.S. Fish and Wildlife Service
Ecological Services Field Office
10711 Burnet Road, Suite 200
Austin, Texas 78758

FAX TRANSMITTAL MEMORANDUM

DATE: 3/20/02 TIME: 2:10 AM/PM NO. OF PAGES (includes cover pg.) to 2

TO: Dr. Rogers

VOICE PHONE:

FAX PHONE: (806) 651-2928

FROM: Ray Brown

VOICE PHONE: (512) 490-0057 EXT: _____

FAX PHONE: (512) 490-0974

SUBJECT: Page 2 of the Bird Survey
protocol.

2.

SYNOPSIS OF THE SOUTHWEST GULF RAILROAD COMPANY RAIL PROJECT IN MEDINA COUNTY, TEXAS

Background

Southwest Gulf Railroad Company (SGR), a wholly owned subsidiary of Vulcan Materials Company (VMC), plans to construct and operate a rail line to connect a proposed VMC stone quarry to the Union Pacific Railroad Company (UP) main line railroad in Medina County, Texas, about 30 miles west of San Antonio, Texas. SGR has filed with the Surface Transportation Board (Board) a petition for exemption from the requirements of 49 U.S.C. 10901 to construct and operate approximately 7 miles of single-track railroad. SGR has also proposed to construct and operate either a 2-mile long loading loop or a 1-mile long straight track, which could include one or more parallel tracks, within the quarry property, which would not be subject to Board jurisdiction. Pursuant to the Council on Environmental Quality's regulations for implementing the provisions of the National Environmental Policy Act at 40 CFR 1508.25 both the proposed Board jurisdictional rail line and the loading loop will be considered in the Board's environmental review.

VMC plans to locate the new quarry in the north central part of Medina County. The quarry would produce crushed stone aggregate for highway and other construction purposes. Although the proposed rail line would primarily serve VMC's new stone quarry, it would also be available to serve any other nearby industries, including other quarries, in the future. According to SGR, when the rail line is in operation, it will be shipping about 5 million tons of rock per year (416 trains, with 100 cars each, per year) or about four movements per day (2 leaving loaded and 2 returning empty), assuming a 250-day work year.

> Description of SGR's Preferred Route

SGR states that the proposed rail line would consist of a single-track rail line between the planned quarry site and the nearest Class I rail line, which is UP's Del Rio Subdivision, as shown on the attached map. The UP rail line is located approximately seven miles south of the quarry site, and the SGR line would meet the UP rail line at approximately milepost 250 of the UP line, at a point near Dunlay, Texas.

Despite its proximity to San Antonio, Medina County has a population of about 33,000 persons. The area is mostly rural, composed of relatively dry and flat farmland and pastureland. The proposed rail line would not traverse any incorporated or densely populated areas and would not cross any other rail lines. SGR's preferred route would cross some lightly traveled county paved and unpaved roads and one state maintained road (FM 2676), but would not cross any major highways. No Federal lands would be traversed and, apart from the road crossings, no state owned property would be traversed. SGR states that the line would cross only two drainage features with intermittent seasonal flow (Quihi and Elm Creeks).

COPY

II. Construction

1. Electronic Maps of Alignment and Location Maps

These will be forwarded under separate cover.

2. Schedule of Construction and Operation

- | | |
|-------------------------------------|-------------------|
| A. Clearing and Preparation of ROW: | Begin in Month 1 |
| B. Construction of Roadbed: | Begin in Month 3 |
| C. Placement of Tracks: | Begin in Month 5 |
| D. Begin Operation: | Begin in Month 12 |

3. Construction Phases

- A. Clearing and Preparation of Right of Way
- B. Fencing and Utility Relocations
- C. Earth Work - Cut and Fill:
- D. Roadbed Construction
- E. Structures/Bridges Construction
- F. Track Placement
- G. Signaling and Grade Crossings
- H. Seeding and Erosion Control

Details of each of these elements are provided in the accompanying TRAX Conceptual Design Report.

Responses to items 4-11 may be found in accompanying TRAX Conceptual Design Report

> III. Operation and Maintenance

1. Describe the types of locomotives to be used.

Gross train weights exceeding 14,000 tons can be expected from a 100, 100-ton car, capacity train. A minimum of 9000 horsepower will be required to move these heavy trains to the main Union Pacific track. Once on the UP main track, since their grades and speeds exceed those planned for the line, additional locomotives will be added.

COPY

2. Describe the number and type of cars to be used, average number of cars per train.

The typical car will be a gondola or bottom-dump hopper type with a capacity to carry 100 to 120 tons of aggregate. The typical train length will be 100 of these cars.

3. Describe switching operations and interface with UP.

Southwest Gulf Railroad or Union Pacific will own, lease, and or operate the engine and cars on the track. SWG anticipates entering into an arrangement with UP regarding the interface with the UP, the details of which will be determined at a later date.

4. Describe the length of typical train in terms of number of cars and length.

The average car ranges from 50 to 58 feet in length, therefore, including variable numbers of engines, the average train length will range from 5,200 to 5,800 feet.

5. Describe the number of Train movements per week (where a movement is either loaded or unloaded).

An annual volume of 5,000,000 tons would require four train movements per day (2 leaving loaded, 2 returning empty), assuming a 250-Day work year.

6. How many workers will be employed by and what is the estimated payroll for the operation of the train.

Operation of the railroad would require approximately 24 people, with a combined compensation and benefits package estimated to be \$ 1.15 million dollars.

7. Describe maintenance procedures including weed control.

Maintenance procedures would be consistent with Union Pacific standards.

8. Describe any public or private road crossings, and type of safety or warning devices proposed.

Crossing	Road Type	Safety/Warning Device
County Road 454	(un-improved)	At grade - Warning Signs
County Road 4516	paved	At grade - Warning Signals
County Road 365	(gravel surface)	At grade - Warning Signs
FM 2676	paved - State Maint.	As Dictated by State DOT
County Road 353	(gravel surface)	At grade - Warning Signs
County Road 353	(gravel surface)	At grade - Warning Signs

9. What are the average and maximum speeds expected

Track geometry will allow 40-mph maximum speed operations; however, 25 mph will meet the needs of the quarry for the foreseeable future and operating

Jim Barden

1100 16th Street
Room 101
Hondo, Texas 78861

(830) 741-6021 Fax (830)741-6025



April 24, 2003

COPY

Ms. Jaya Zyman-Ponebshek
URS Corporation
P.O. Box 201088
Austin, Texas 78720-1088

Re: TB Finance Docket No. 34284, Southwest Gulf Railroad
Company-Construction and Operation Exemption-Medina
County, TX

Thank you for the opportunity to comment on the above matter. As you can imagine it is a subject of some concern and controversy among the citizens who live in or near the affected area.

Before outlining the county's concerns regarding the project, I want to correct a few misimpressions in the Synopsis attached to the STB letter of March 31, 2003. First, Medina County has a population of 40,000 persons rather than 33,000 as stated in the Synopsis. This number is increasing dramatically as developers are opening subdivisions in the eastern half of the county to accomodate San Antonio's growth. By the time any such rail line be put in operation, I expect the population will have grown by another 10% or more with most of it in the eastern part of the county where the quarry and railroad are proposed.

Second, while the roads to be crossed are lightly traveled when compared to urban interstates, they do carry a significant amount of traffic and are major east/west routes for our county citizens.

Third, the synopsis states that the proposed line traverses only two drainage features with intermittent seasonal flow (Quihi and Elm Creek). Substitute the word "flood" for "flow" and a more accurate picture emerges. Placing a rail line across these areas without significant length of open bridges or trestles will exacerbate our almost annual flooding problems.

Having said the above, the county governments concerns regarding the proposed rail line center on two areas. If the rail line is built we want to see the safest possible road crossings and the least intrusive creek, draw and slough crossings. Several years ago when this project was first announced the proposed quarry owners represented to the Precinct

Commissioner that there would be elevated road or RR crossings on FM 2676 and CR 4516. Now we understand they are only proposing grade crossings. With at least 4 trains per day at 100 cars for at least 250 days each year this presents a major safety concern and traffic flow impediment. I urge serious consideration of having elevated roadway crossings at these two major arteries in Medina County.

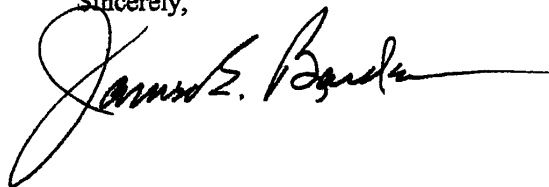
The other concern (water flow and flooding) is equally great. The history of this area is not one of gently flowing streams that rise with a big rain. Rather it is a history of flash flooding that can inundate large areas of land in a matter of minutes and hours. Any structure placed across these flood areas is a problem. I hope that sufficient construction requirements will be imposed to alleviate this problem as much as possible.

Regarding which of the four proposed routes is preferable, there appears to be little difference as far as our concerns of traffic safety and movement and flooding are concerned... or at least none of that can be discerned without expensive further study.

The individual citizens in the area have substantial and additional concerns which should be heard. The issues outlined above (traffic safety and flooding) are the principal concerns of the county government.

Again, thank you for the chance to have our views heard. I will be glad to visit further with you if you wish.

Sincerely,

A handwritten signature in cursive script, appearing to read "James E. Bonds", with a long horizontal flourish extending to the right.

JEB/jaa