

# **EXHIBIT B**



July 20, 2018

*Via Email*

Quincy Allen, P.E.

TxDOT Houston District Office

P.O. Box 1386

Houston, Texas 77251

**Re: Comments on Draft Technical Reports; North Houston Highway Improvement Project**

Dear Mr. Allen,

Lower Brazos Riverwatch appreciates the opportunity to provide our comments on the Draft Technical Reports, made available on June 20, 2018. We previously provided our comments on the DEIS as part of the Coalition of Houston nonprofits and neighborhood groups. Our comments here address the Draft Technical Reports on Waters of the United States, Water Resources, and Biological Resources.

***Comments***

All of the Technical Reports lack detail, and project specific information. They typically provide data base information on a county or stream segment level. The only alternatives discussed in the Technical Reports are an under-described “project” and the no action alternative. Since much of the technical reports involved describing future analyses and coordination, we are left trying to compare promises of future information, with no alternative. Since these Technical Reports appear to be intended as supporting documents for the FEIS, and they still lack substantive information on the actual impacts of the project, they are inadequate to fully inform either TXDOT or the public about the environmental impacts of the project. It is also concerning that they do not appear to have addressed any of the substantive comments provided on the DEIS.



### *Draft Technical Report on Waters of the United States*

In general, the Draft Waters of the United States Technical Report (the Report) appears to be done appropriately. The methodology employed seems appropriate for the level of access currently available. It is assumed that the data will be supplemented with complete field delineations, once access to all parcels is acquired, and that such field work will look at the entire right-of-way and not just ground truth the remote sensing work provided here.

There is no discussion of how impacts to Waters of the United States will be mitigated. At least some idea of the proposed mitigation methodology should be provided for inclusion in the FEIS, in order to adequately assess the actual impacts of the project. The ultimate mitigation should be based on the final numbers for impacts, as determined by the complete field delineation of the project.

TXDOT appears, in the tabular listing of Waters of the United States and in discussion, to be determining that some of the identified waters are not jurisdictional. While we understand and agree with this position in regard to the water fountain, we believe that the determination of the jurisdictional status of the remaining waters, including the detention basins, should not be presumed and should be determined by the Corps of Engineers.

### *Draft Technical Report on Water Resources*

#### *General Comments*

The information provided in this report is very basic and superficial. It provides generally available literature and data base information on the various water bodies and aquifers potentially impacted by the project, but does not provide any detail on the impacts of the project on the water, or of specific water quality parameters that might be affected by the project. It appears that essentially no project-specific data has been developed in the preparation of the report. This report does not provide any analysis of alternatives other than a poorly described proposed project and a no action alternative. The public is being asked to compare a no action



alternative, and one that is insufficiently developed to actually quantify effects or fully inform the public as to the environmental impacts of the project.

### *Surface Water*

The surface water section provides a general review of the water bodies potentially impacted by the project, their stream segment numbers, and their state category designation. It specifies which of the waters have TMDLs established and for what general parameter the waters are considered impaired. There is no specific discussion about the condition of the waters in the specific areas of impact or about the nature of the specific impacts. While some of this information can be gleaned from the Draft Technical Report on Waters of the United States, it is also quite general and lacks sufficient specificity to determine impacts to the waters. TXDOT does not address, or appear to consider at all any recreational use of the water bodies impacted. The project includes portions of the TPWD approved Buffalo Bayou Paddling Trail and portions of the proposed Greens Bayou Paddling Trail.

In discussing short term water quality impacts, the report mentions that a SW3P would be developed, and generally discusses the potential BMPs for water quality protection. It provides no detail at all as to approaches to be employed for specific major water crossings. There is no discussion of the nature of the habitat at the area of impacts or how TXDOT intends to address and mitigate water quality impacts. There is merely a general statement that BMPs will be employed and that contractors will be in compliance with applicable laws and regulations for waste disposal.

In discussing long-term impacts to water quality TXDOT provides a very general statement concerning the types of pollutants to be expected from roadways. Without any quantification of current conditions, or modeling of future conditions, the report makes a conclusory statement that the impacts of the project to surface waters would be minor and localized. As provided to TXDOT in comment on the DEIS, we request that current conditions be quantified through sampling and future conditions be modeled to assure that the project, as proposed, will not result in further degradation of water quality in already impaired waters and will not contribute to



exceeding of the TMDLs or be detrimental to water quality management strategies. TXDOT lists as potential pollutants particulates from tire wear, oils and greases, and urban litter much of which is either light (specific gravity less than 1.0) or floatable. They then assert that the detention basins will provide for settling of particulates and the consequent reduction of pollutants being conveyed to receiving waters. TXDOT, in this section, uses volumes and concentrations interchangeably, which results in potential erroneous conclusions. For example, without specific oil and grease and floatables control, the upper layer discharge to the receiving waters could actually have increased pollutant concentrations, though the total volume of discharge and particulates may be reduced. We suggested floatables control for detention and discharge in our comments on the DEIS, but there is no evidence here that they are being included. We reiterate that suggestion here.

This section is excessively general, does not discuss actual conditions at locations to be impacted, and ignores public use of the waters. It does not appear that previous suggestions have been considered or incorporated.

#### *Groundwater*

The groundwater section provides a good general discussion of the aquifers underlying the project area. Much of this discussion is very broad and relates to the entire Gulf Coast area. The specificity in this section as to activities that could potentially impact shallow groundwater is better than in the surface water discussion and gets into considerably more detail concerning such matters as pollutants from demolition such as lead-based paint and asbestos containing materials- which are more likely to be surface water pollutants- and specifics of the SW3P provisions for managing accidental spills. Much of this would have been more appropriately provided under surface water as well and tied to specific waters.



### *Public Drinking Water Systems*

The Report identifies six water supply wells, two of which are public supply wells, but does not provide any information about the wells. No information is provided concerning the distance of the wells from the project and the nature of the disturbance in the vicinity of the wells. In addition, no information is provided as to the population or business/industry relying on the wells. The “project area” is not defined for the purpose of the well search.

### *Floodplains*

While the report does provide acreage impacts for the existing right-of-way and the proposed new right-of-way, the impacts TXDOT uses for project design purposes, continue to be 100 year floodplain impacts. In comments provided on the DEIS the use of the 500 year floodplain was suggested. This would comport with the general changes in approach in Houston and Harris County for other types of development. The Report notes that bridges, culverts and cross-drainage structures would be designed to accommodate the 100 year flow without impacting upstream or downstream areas. It is already clear that some of the existing infrastructure, designed to this standard has resulted in flow impingement and upstream flooding.

Once again, we are being asked to compare no action to an incompletely described preferred alternative, and a promise of future studies, which will not be open to public comment.

### *MS4s*

All this section does is acknowledge that the project will occur within the boundaries of the City of Houston’s MS4 and promise future coordination. There is no information at all provided on the anticipated difference in load on the MS4 system, or on the potential effects of the additional load on the receiving waters. We suggest that this analysis be conducted prior to the conclusion of the DEIS, and be provided for comment.



### *CZMP*

All this section does is promise future coordination with GLO for CZMP consistency determination. No information is provided as to the area of or nature of impacts within the Texas Coastal Management Zone.

### *EFH*

The Report provides a statement that the NOAA Essential Fish Habitat Mapper was reviewed and no Habitat Areas of Particular Concern or Essential Fish Habitat Areas protected from fishing were identified in the area. There is no evidence provided of any coordination or communication with NOAA.

### *Draft Technical Report on Biological Resources*

#### *General Comments*

The *Draft Biological Resources Technical Report* (the Report) is extremely general and contains little detail relating to the resource to be impacted. There is no comprehensive list of species observed during the 2017 field surveys or any detailed description of the habitats encountered. The report provides us with a list of six common mammals, and then states that “a number of birds, snakes, frogs, and insects would also be expected to occur within the project area”. No effort is made to describe what these species might be.

Other than to briefly discuss, in tables, Rafinesque’s big-eared bat and the southeastern myotis, there is no mention here of bats, which frequent a number of bridges in the area of the project. There is a mention of no evidence of bats being observed in the bridges in the project area in December 2017, however there is no information provided to indicate that TPWD urban biologists were consulted. Anecdotally, the bridges in the vicinity of Sesquicentennial Park were occupied by small bat colonies in 2016 and early 2017. Possibly winter observations, post Harvey, are not representative of typical conditions. This should be reevaluated prior to any disturbance.



There is no evidence presented that an effort was made to determine what bird species actually use the areas of habitat to be impacted by the project. There is no reference to the Audubon CBCs for the vicinity or any breeding bird data.

Other than to note that there were “unidentified small fish” observed during the December 2017 field work, no mention is made of fish species occurring in the waters to be impacted, or of these fish providing an urban sport fishery. The ichthyofauna is quite diverse in the impacted streams and all of the impacted perennial waters are used for fishing. This needs to be expanded and the fish species present actually identified, as well as locations where fisherman access the waters in the project area.

An EIS should provide both what species are known to occur and where they occur within the area to be impacted. The Report does neither.

### *Specific Comments*

In species tables, the Report discusses the alligator snapping turtle and acknowledges that it is potentially present. The tables also indicate that the last recorded observation in the project area was in 1968 with a ten mile buffer distance from the project right-of-way. This species should be regarded as present in all of the perennial waters impacted by the project. It has been documented as being present in Buffalo Bayou at least to downtown, by the Turtle Survival Alliance (TSA) and has been observed in lower White Oak Bayou and Greens Bayou. On September 12, 2017 the Houston Chronicle ran an article documenting the rescue of a large individual from Memorial Drive. The TSA is referenced in the article as having documented the species presence to downtown. Evidence indicates that this is a viable reproducing population. It is concerning that the Report makes no mention of this. While the mitigation measures suggested in the Report may provide some margin of protection during construction, the presence of this species should be regarded as confirmed. Surveys immediately prior to disturbance should be conducted and efforts made to relocate individuals from the impact area.



The species tables also discuss the American and arctic peregrine falcons as being species that might make incidental use of the project area. There is a wintering population of peregrine falcons in downtown Houston. They do actively forage in the project area. While unlikely to be seriously disturbed by the project, they are more than an incidental user of the project area and are observed feeding on birds that roost in the area bridges and overpasses and on emerging bats. Again, it is concerning that this is not noted and addressed in the Report.

The tables also reference three species of freshwater mussels as being potential occurrences; the Louisiana pigtoe, sandbank pocketbook, and Texas pigtoe. The Report notes that these species are state listed, as threatened, but does not recognize that the Louisiana pigtoe is under review for potential Federal listing under the ESA. The choice of these species also seems to be based on county rather than watershed. Another concern is the failure to include the smooth pimpleback (*Quadrula houstonensis*), a candidate species for Federal listing that is known to occur on the San Jacinto watershed. Howells (1996) includes Harris County in the likely range for this species.

### *Conclusion*

The Report is insufficiently complete and detailed to be the technical support for an Environmental Impact Statement. It relies almost entirely on database information from databases that appear to be substantially out of date. There is virtually no site specific information provided, no real characterization of the wildlife and fisheries resources in the project area, and minimal detail in description of impacted habitats. There is no evidence that people and organizations with knowledge of the area were consulted, or that more detailed documents were reviewed. Some of this information was provided in earlier comments on the DEIS, but there is no evidence here that it was considered in the production of the Report. As a result, we believe that the analysis is general and superficial and not adequate to fully inform either TXDOT or the public as to the impacts to biological resources of the proposed project.



We appreciate the opportunity to comment on the Draft Technical Reports released to date. We look forward to continuing to work with TXDOT in analyzing the environmental impacts of this project.

Very truly yours,

Lower Brazos Riverwatch

*Bruce R. Bodson*

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President/Executive Director