



## Response to Comments

**Project: Ft. Scott Property ATF 401 Water Quality Certification**  
**Ohio EPA ID #: 062979**

### Agency Contacts for this Project

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Ohio EPA held a public hearing on June 28, 2007 regarding an application for 401 Water Quality Certification for Ft. Scott Residential Development located near the intersection of Blue Rock and River Road, within the Great Miami River watershed in Crosby Township, Hamilton County, Ohio. This document summarizes the comments and questions received at the public hearing and during the associated comment period, which ended on July 5, 2007.

Ohio EPA reviewed and considered all comments received during the public comment period. By law, Ohio EPA has authority to consider specific issues related to protection of the environment and public health. Often, public concerns fall outside the scope of that authority. For example, concerns about zoning issues are addressed at the local level. Ohio EPA may respond to those concerns in this document by identifying another government agency with more direct authority over the issue.

In an effort to help you review this document, the questions are grouped by topic and organized in a consistent format.

- Comment 1:** You recall that this group got zoning through without community collaboration or input. They have gone ahead, knowing full well they had to have Army Corps 401 certification. I do not think they can be trusted to continue to develop, and I propose this be given back to the developer to redevelop the entire area.
- Response 1:** **Ohio EPA would like to clarify that there are two regulatory agencies involved with granting authorization to discharge fill or dredged material under Section 404 and 401 of the Clean Water Act. The U.S. Army Corps of Engineers (USACE) issues the 404 permit and Ohio EPA issues the 401 Water Quality Certification (WQC). Neither of these two regulatory agencies is involved with local zoning determinations. It is noted that there is little trust associated with this developer among the community.**
- Comment 2:** I think we go to a three to one fix. We have to assume these streams are at least Class II headwater streams and none of these streams are ever going to recover a Class II category.
- Response 2:** **Mitigation for after-the-fact applicants is greater than a 1:1 replacement ratio. Stream mitigation is usually a negotiated ratio since mitigation ratios for stream impacts currently is not spelled out in Ohio's rules, as it is for wetlands. Ohio accepts no less than a 1:1 mitigation ratio. In the case of Ft. Scott, the mitigation ratio is approximately a 2:1 ratio and will take place on-site. Mitigation includes stream restoration in addition to stream creation, as well as enhancement and creation of riparian/buffer areas.**
- Comment 3:** I'm proposing, we have at least several off-site mitigation. I'm proposing Crosby's Township's little park. Next to the park is a swamp forest that could easily have a walkway in it.
- Response 3:** **Ohio EPA's preference for mitigation in-kind replacement on-site. In-kind replacement means replacing the resource that was lost with one that is like or the same as the resource which was lost. If on-site or in-kind mitigation is not possible, then we consider off-site locations and other replacement options for mitigation.**

- Comment 4:** I would like to see this completely re-vegetated with trees and not little switches of spray on.
- Response 4:** **Consideration must be given to the location of the utility right-of-way. Native trees will be planted in areas located outside of the utility right of way. Native prairie plants will be planted within those areas that correspond with utility right-of-ways.**
- Comment 5:** One stream that is not eroded is the back stream on the property. I would like to see them preserve this stream.
- Response 5:** **Ohio EPA requires all mitigation sites to be protected in perpetuity through an environmental covenant, conservation easement or similar legal mechanism.**
- Comment 6:** The permit should be for the entire project and not for this little piecemeal, and there is no other way to make this developer be responsible than deny that permit.
- Response 6:** **Proposed projects are looked at as single and complete projects, rather than as separate pieces of the whole project. However, in this case, a portion of the project was started prior to applying for the necessary permits. In 2006, USACE issued a “cease and desist” order and allowed the applicant to apply for an “after-the-fact” permit on the 141 acre parcel. In 2007, USACE conducted a site visit to evaluate the 280 acre parcel known as Century Farms. USACE issued a jurisdictional determination letter that declared there were no regulated “Waters of the United States” on these remaining parcels of the development site, therefore a permit was not required to develop this parcel.**
- Comment 7:** Our concern is that when you don’t get the application before work, you set a very dangerous precedence for an area that is going to experience a development boom.
- Response 7:** **Authorization from Ohio EPA through a 401 Water Quality Certification is required prior to the placement of fill or dredged material into Waters of the State.**
- Comment 8:** Based on the lack of information on streams prior to construction, we recommend that Stream One be a Class II channel throughout the entire length.

**Response 8:**            **Mitigation Sites A and C are designed to achieve Class II headwater habitat scores.**

**Comment 9:**            We feel the delineation of the stream channel on the north end of the property was missed based on aerial photos and CAGIS mapping.

**Response 9:**            **The report titled “Waters of the U.S. Delineation on 237 acre Fort Scott Property” was conducted to identify wetlands and streams on-site within the project area that are considered regulated waters and subject to 404/401 permitting requirements. A site visit and historical aerial photos and maps were used to help identify these resources. USACE reviewed this report and concurred that four streams have a direct surface water connection to navigable waters and would be regulated under the 404/401 permit. Other drainage features were identified on-site. However, these did not exhibit the criteria to be considered regulated waters.**

**Comment 10:**            Mitigation is insufficient. There is no ability for fish and macroinvertebrates to migrate between Great Miami River and the proposed channel, there is a lack of woody vegetation, prairie plants can not provide needed shade to cool headwaters.

**Response 10:**            **In stream habitat will be created within the mitigation streams by creating riffle-pool complexes with the installation of grade control riffle structures. Large natural stone will be placed at stream junctions. Water will flow and connect to the Great Miami River. Areas within the utility Right of Way will be planted with prairie plants, while areas outside of this Right of Way will include native trees.**

**Comment 11:**            If off-site mitigation locations are chosen, we feel they should be located within the 11 digit HUC.

**Response 11:**            **Mitigation will occur on-site.**

**Comment 12:**            Monitoring of mitigation areas should occur over a 5 year period and if mitigation sites do not perform, then monitoring should continue past the 5 year mark.

**Response 12:** Ohio EPA requires a minimum of 5 years of monitoring on all mitigation areas. If performance goals are not accomplished by the end of the 5 year period, monitoring will continue until goals are reached or a new mitigation plan will be developed to accomplish these goals.

**Comment 13:** The importance of preserving and protecting primary headwater streams and their function in improving water quality is recognized among the community.

**Response 13:** Ohio EPA recognizes the importance of protecting headwater streams and the role these streams play in improving water quality in larger streams.

**Comment 14:** The community dislikes the idea of an after-the-fact permit and the associated message that issuing one may give to others.

**Response 14:** Ohio EPA agrees and does not like the idea of an after-the-fact permit. The 401 water quality certification that is issued by Ohio EPA is triggered by the actions and decisions made by USACE.

**End of Response to Comments**