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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
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BOSTON, MA 02109-3912

November 15, 2010

OFFICE OF THE
REGIONAL ADMINISTRATOR

Colonel Philip T. Feir
Commander, New England District
US Army Corps of Engineers
696 Virginia Road
Concord MA 01742-2751

RE: Vermont Agency of Transportation, Circ-Williston Highway Project (NAE-2004-2762)

Dear Colonel Feir:

In accordance with our responsibilities under Section 404 of the Clean Water Act ("CWA"), we hereby submit these comments in response to the Corps' August 10, 2010 public notice (revised September 14, 2010) related to the Vermont Agency of Transportation's ("VTrans' ") Circ-Williston Transportation Project in Chittenden County, Vermont.

The Corps issued an initial public notice for this project on September 11, 2007. On November 16, 2007, EPA New England (the "Region") provided joint comments to the Corps in response to that notice, and to the Federal Highway Administration ("FHWA") in response to its draft environmental impact statement ("DEIS") for the project. The Region provided comments on the final EIS ("FEIS") on August 24, 2010 and noted a number of unresolved concerns. In our comments on the FEIS, we expressed our concern that the FEIS comment deadline did not coincide with the Corps' comment deadline and stated that we would provide detailed comments regarding alternatives, impacts, and compensatory mitigation in response to the Corps' public notice. We also noted that our comments on the Corps' public notice would be relevant to the NEPA process and we recommended that FHWA's final record of decision ("ROD") be prepared only after considering and addressing comments on the public notice as well as the FEIS.

The Corps' September 14, 2010 revised public notice states that since the 2007 public notice, additional aquatic resources associated with Alternative 17/Circ A/B have been identified, Alternative 17/Circ A/B has been refined to minimize impacts¹, Alternative 17/Circ A/B has been found to be the least environmentally damaging practicable alternative ("LEDPA"), and additional mitigation has been proposed. Notwithstanding new information that has been developed over the past three years related to the identification of additional aquatic resources, scope of impacts, compensatory mitigation, and the Corps' LEDPA determination, the public notice only solicits comments on the proposed mitigation. Because of new and substantial information on these issues, and because of the importance of these issues in the context of NEPA as well as the Section 404 permit decision, our comments below and attached relate to all aspects of the project, not just compensatory mitigation. Furthermore, the adequacy of the

¹ Sometimes referred to as "Alternative 17 modified" or "Alternative 17m" in other documents.

mitigation is inextricably linked to the severity of the impacts, the full scope of which was not identified at the time of the original public notice. In addition, the adequacy of compensatory mitigation has a direct bearing on the Corps' LEDPA decision given the Corps' rejection of the upgrade alternatives based on the FHWA's Section 4(f) regulations.

As discussed in the enclosed detailed comments, we believe that the combined direct and secondary effects from Alternative 17/Circ A/B would be substantially greater than what FHWA and VTrans represent in the FEIS issued on July 13, 2010, and as described in the June 24, 2010 memo from the Corps' Vermont Field Office to the Chief, Regulatory Division, New England District. In our judgment, the impacts would cause or contribute to significant degradation of the waters of the United States, in violation of 40 C.F.R. Section 230.10(c). Although we applaud VTrans' sincere efforts to develop a robust compensatory mitigation plan, we do not believe the plan is sufficient to reduce the impacts below the level of significant degradation. In addition, we are concerned that several issues pertaining to project impacts on water quality remain unaddressed by the applicant (see the enclosed detailed comments). VTrans has not clearly demonstrated that the direct and secondary adverse impacts to streams tributary to Allen Brook, an impaired water body listed by the State under Section 303(d) of the CWA, and storm water discharges from construction and operation of the new road would not cause or contribute to violations of applicable state water quality standards, in violation of 40 C.F.R. Section 230.10(b).

Furthermore, we disagree with the Corps' conclusion that the VT 2A upgrade is not the LEDPA because the FHWA's Section 4(f) regulations would preclude its use. As discussed in the attached comments, the impacts associated with Alternative 17/Circ A/B would result in severe effects on the aquatic environment even with the compensatory mitigation proposed by VTrans, and therefore Alternative 17/Circ A/B is not a "prudent" alternative to the VT 2A upgrade. Consequently, the VT 2A upgrade would not be precluded, or rendered impracticable, by the Section 4(f) regulations.

From the early stages of project review, the Region expressed concern that the Circ A/B alternatives could be too environmentally harmful to receive a permit, a view which has been reinforced as we conducted a more detailed analysis. As first explained in our joint comment letter of November 16, 2007, and reiterated several times in the ensuing three years, the Region believes that construction and operation of any of the A/B alternatives would cause or contribute to significant degradation of the aquatic ecosystem. Over the last three years, my staff visited the corridor several times and examined the literature on the effects of roads on aquatic and terrestrial ecosystems. In addition, the knowledge and expertise gained from our experiences with major highway projects, notably the Connecticut Route 6 and Route 11 projects, inform us further on this subject, as the expected adverse impacts from the Circ A/B alternatives are similar in type. We remain confident that our conclusions regarding the significance of the impacts of Alternative 17/Circ A/B are correct scientifically and supported by the record.

In summary, the Region believes that construction and operation of Alternative 17/Circ A/B would severely and irreversibly degrade the ecologically valuable aquatic resources in the A/B corridor. Alternative 17/Circ A/B does not comply with the Section 404(b)(1) guidelines because it does not represent the LEDPA, would cause or contribute to violations of applicable state water quality standards, and, even assuming successful implementation of the proposed

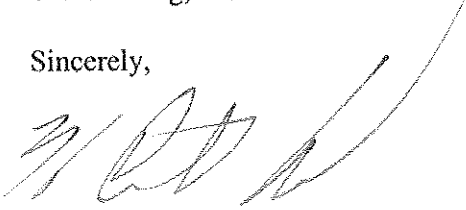
compensatory mitigation, would cause or contribute to significant degradation of waters of the U.S.

Based on the above and enclosed detailed comments, we believe the proposed project may have a substantial and unacceptable impact on aquatic resources of national importance. We recommend that the Corps deny the permit for Alternative 17/Circ A/B. This letter follows the field level procedures outlined in the August 1992 Memorandum of Agreement (MOA) between EPA and the Army Corps of Engineers, Part IV, paragraph 3(a), regarding 404(q) of the Clean Water Act, 33 U.S.C. 1344(q). After we have evaluated the project further, and as required by Part IV, paragraph 3(b) of the MOA, I will notify you within 25 calendar days of the date of this letter (i.e., no later than December 10, 2010) whether and why we believe the project will have substantial and unacceptable adverse impacts to aquatic resources of national importance.

Finally, the Region is also reviewing Alternative 17 and the other Circ A/B alignments as potential candidates for action under EPA's CWA Section 404(c) authority.

Please contact me if you want to discuss these comments, or have your staff contact Matt Schweisberg, Chief of our Wetlands Program, at 617-918-1628.

Sincerely,



H. Curtis Spalding
Regional Administrator

Attachments

cc: Tom Chapman, USFWS, Concord, NH
Robert DeSista, USACE, Concord, MA
Ernest Blais, FHWA, Montpelier, VT
David Dill, VTrans, Montpelier, VT
Jonathan Wood, VTANR, Waterbury, VT

