UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
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CHICAGO, IL 60604-3590

MAR 1 1 2010

REPLY TO THE ATTENTION OF:
E-19J

Mr. David Platz
Federal Highway Administration
525 Junction Road, Suite 8000
Madison, Wisconsin 53717-2157

RE: Comments on the Supplemental Draft Environmental Impact Statement (SDEIS) for Wisconsin State Highway 23, Fond du Lac to Plymouth, Fond du Lac and Sheboygan Counties, Wisconsin, Wisconsin Project ID 1440-13-00, CEQ #: 20100005

Dear Mr. Platz:

The U.S. Environmental Protection Agency has received the document listed above. Under the National Environmental Policy Act (NEPA), the Council on Environmental Quality regulations, and Section 309 of the Clean Air Act, EPA reviews and comments on major federal actions.

EPA has rated the SDEIS Preferred Build Alternative 1 as **LO** (Lack of Objections). We have rated the Corridor Preservation Alternative for the Wisconsin 23 Corridor as LO. There are 2 Corridor Preservation Alternatives for the US 151/Wisconsin 23 System Interchange. We have rated those two options (Option 23-1 and Option 23-2) as **EC-2** (Environmental Concerns-Insufficient Information). The rating definitions are provided in the enclosure, *"Draft Environmental Impact Statement Rating Definitions."* Therefore, we rate the entire SDEIS as **EC-2**.

We have some additional comments provided in the enclosure entitled, *"EPA's Detailed Comments on Wisconsin Highway 23, Fond du Lac to Plymouth SDEIS."* Our detailed comments pertain to wetlands, clean diesel initiatives, upland habitat loss, noise, and cumulative impacts. In our DEIS comment letter, we commented on wetlands and water quality, stormwater management, air quality, upland habitat loss, noise, cumulative impacts, hazardous substances or underground storage tanks. Many of the issues we raised in our DEIS comment letter were addressed in the SDEIS.

Background Information

The DEIS presented 6 action alternatives to reconstruct Wisconsin Highway 23 to a four-lane divided highway in order to alleviate the safety and congestion problems due to the increased traffic and numerous access points. After the DEIS was issued, Alternative 1 was chosen by your agency and the state as the Preferred Alternative.

The purpose of the SDEIS was to present the changes made to the Preferred Build Alternative 1 and to add and evaluate the Corridor Preservation Alternatives. The alternatives

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presented in the SDEIS are the No Build, the Dismissed Build Alternatives (alternatives 2, 3, 4, 5, and 6), and the Preferred Build Alternative 1 (including extending Old Plank Trail and adding interchanges at County K and UU). Corridor Preservation Alternatives are also presented for the Wisconsin 23 Corridor (future interchanges and overpasses) and the US 151/Wisconsin 23 System Interchange (Option 23-1 and Option 23-2).

Thank you for the opportunity to review your project. If you have any questions regarding EPA's comments, please contact Julie Guenther at (312) 886-3172 or email her at guenther.julia @epa.gov.

Sincerely,

Kenneth A. Westlake
Chief, NEPA Implementation Section
Office of Enforcement and Compliance Assurance

cc: Mr. Robert Wagner, P. E.
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944 Vanderperren Way
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Enclosures

SUMMARY OF RATING DEFINITIONS AND FOLLOW UP ACTION

Environmental Impact of the Action

LO-Lack of Objections
The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC-Environmental Concerns
The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impacts. EPA would like to work with the lead agency to reduce these impacts.

EO-Environmental Objections
The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU-Environmentally Unsatisfactory
The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potential unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1-Adequate
The EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alterative and those of the alternatives reasonably available to the project or action. No further analysis or data collecting is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2-Insufficient Information
The draft EIS does not contain sufficient information for the EPA to fully assess the environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information, data, analyses, or discussion should be included in the final EIS.

Category 3-Inadequate
EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

*From EPA Manual 1640 Policy and Procedures for the Review of the Federal Actions Impacting the Environment

Wetlands and Water Quality

Our DEIS comment letter contained several comments regarding wetlands and water quality. The majority of our concerns were addressed in the SDEIS, including:

- impacting the Old Wade House property wetland mitigation site,
- identifying impaired surface waters listed under Section 303(d) of the Clean Water Act,
- discussing how wetlands were identified and wetland quality established,
- providing accurate, clear, and informative wetland tables and maps,
- clarifying commitments to bridging water bodies and their associated floodplains,
- approaches being considered for the final wetland mitigation plan, and
- when the final wetland mitigation plan will be developed (during the engineering design phase estimated to be 2010-2015).

On Page 5-3 the SDEIS states, "Permanent retention facilities will be *considered* in areas adjacent to streams and wetlands so roadway runoff will be intercepted before entering the waterway." We suggest *committing* to building those retention facilities for adjacent roadway and bridges.

Several good measures to minimize harm to floodplains are found on page 5-6. However, page 5-6 of the SDEIS states, "... *consideration* of the use of wider structures that span more of the floodplain...the groundwater." We suggest *committing* to bridging the entire floodplain of each water body affected by the project as long as no other environmental impacts will be increased. This will provide greater flow space during flood conditions and a broader wildlife passage.

The SDEIS added Corridor Preservation Options 23-1 and 23-2 for the US 151/WIS 23 interchange. Option 23-1 impacts 11.9 acres of wetland (8.3 acres of riparian forested, 2.3 scrub shrub, and 1.4 acres of meadow) and 10 acres of upland/ woodland habitat. Option 23-2 impacts 8.8 acres of wetland (5.4 acres of scrub shrub, 1.6 acres of riparian emergent, 1.2 acres of riparian forested, and 0.6 acres of meadow) and 0.4 acres of upland/woodland habitat. The 1.6 acres of riparian emergent wetland associated with option 23-2 is a wetland mitigation site. Although the wetland mitigation site would be bridged, there may be one pier in the site and the bridge would shade a portion of the site. The mitigation site may also incur temporary damage during construction. We discourage using a prior wetland mitigation site for project construction, but the environmental impacts of Option 23-1 appear more severe. We suggest some additional discussion between us, the Wisconsin Department of Transportation (WisDOT), the Wisconsin Department of Natural Resources, and the Army Corps of Engineers before selecting the preferred option. Our discussion also needs to consider the zoning and land-use plans for the interchange area.

Air Quality

Our DEIS comment letter was written in January of 2005. Since then, EPA has

compiled more information about air toxics exposure during construction activities. Therefore, we are putting forth information and suggestions at this stage of the NEPA process of how to reduce air pollutants exposure during project construction.

Exposure to diesel exhaust by construction workers and those nearby a construction site can have serious health implications. For this reason, EPA recommends Best Available Diesel Retrofit Control Technology (BACT) on all significant construction projects. We believe this project is a significant construction project because of the size and duration of the project, the proximity to some residential areas, the use of diesel equipment during construction, and the existing problems with ozone in the area.

Typically BACT requirements can be met through the retrofit of all diesel-powered equipment with diesel oxidation catalysts or diesel particulate filters, in addition to other strategies or technologies (for example, cleaner burning fuels or anti-idling policies). The statement below is reflective of a study EPA completed on diesel exhaust health effects:

> Long-term (i.e., chronic) inhalation exposure to diesel exhaust is likely to pose a lung cancer hazard to humans, as well as damage the lung in other ways depending on exposure. Diesel exhaust is listed as a human carcinogen by the State of California and a likely human carcinogen by EPA. Short-term (i.e., acute) exposures can cause irritation and inflammatory symptoms of a transient nature, these being highly variable across the population. The assessment also indicates that evidence for exacerbation of existing allergies and asthma symptoms is emerging. EPA recognizes that diesel exhaust, as a mixture of many constituents, also contributes to ambient concentrations of several criteria air pollutants including nitrogen oxides and fine particulates, as well as other air toxics.[1]

In addition, we recommend that the FEIS contain a description of efforts to minimize the impact of idling vehicles and construction equipment, and how such anti-idling measures will be enforced. We recommend that the idling of all engines not exceed 5 minutes, and that proper enforcement is in place to ensure compliance. Shutting down gasoline and diesel vehicles and equipment when engine power is not required will reduce emissions of carbon monoxide, carbon dioxide, particulate matter, volatile organic compounds, oxides of nitrogen, and mobile source air toxics. These emissions can adversely affect local air quality,

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[1] U.S. Environmental Protection Agency (EPA). (2002) Health assessment document for diesel engine exhaust. Prepared by the National Center for Environmental Assessment, Washington, DC, for the Office of Transportation and Air Quality; EPA/600/8-90/057F. Available from: National Technical Information Service, Springfield, VA; PB2002-107661, and <http://www.epa.gov/ncea>.

adversely affect human health through exposure, and can seep into nearby buildings and adversely affect indoor air quality.

These air quality mitigation measures for construction should be considered by WisDOT. We recommend that WisDOT formalize their actions for the entire WIS 23 project by developing and implementing a construction emissions reduction plan. Although not required by EPA regulations, similar contract specifications have been established for large construction projects, including the O'Hare Airport Modernization Project and the Dan Ryan highway project in Chicago. While WIS 23 is not as large a project as these two examples, the residents near the project and the construction workers will benefit from exposure to less air pollution.

Options to include in such a plan include:

(a) retrofitting off-road construction equipment, including repower or engine upgrades,
(b) using ultra-low-sulfur fuels for all equipment,
(c) limiting the age of on-road vehicles in construction projects to 1998 and newer, and 1996 and newer for off-road equipment,
(d) fugitive dust control plans,
(e) diesel particulate traps and oxidation catalysts,
(f) using existing power sources or clean fuel generators rather than temporary power generators, and
(g) encouraging the use of off-road equipment that meets the Tier 3 standards.

EPA is available to assist in efforts to select mitigation strategies that would be included in the final project. EPA has developed a compendium of contract specifications and language to assist State DOTs and other proponents of construction projects. Please see the following link for the specifications and language: http://www.epa.gov/midwestcleandiesel/projects/index.html

Upland Habitat Loss

The SDEIS clarifies that upland habitat will be impacted and where that habitat is located (e.g., edge of forest). The Preferred Build Alternative 1 impacts 73 acres of Upland/Woodland Habitat (Table ES-1) and the Corridor Preservation Alternatives impact 13-23 acres. Upland habitat loss has increased since the DEIS due to the addition of connecting roads and interchanges, the Old Plank Trail, and the Corridor Preservation Alternatives. EPA recommends voluntary upland forest mitigation. We recommend native saplings be used, if practicable, at minimum acreage ratio of 1: 1.

Noise

The SDEIS indicates that notification to the local units of government of the predicted noise levels for undeveloped areas has been completed. We agree that this is an important step to aid the local governments with land-use planning and are pleased that the notification has taken place at this stage of the NEPA process.

Thanks for providing a summary table of households affected by the project. According to the tables in Factor Sheet N, there are 4 receptors in Activity Category B (from FHWA Noise Abatement Criteria) that will experience noise levels of 75 dBA or higher. The SDEIS does not disclose if these receptors are residences, schools, or churches, etc. From the tables and discussion, we are not sure if normal abatement measures are reasonable and feasible for these receptors. However, if abatement measures are not reasonable and feasible, FHWA's noise regulations (23CFR Section 772.13(d)) indicate that the State DOT may propose, and the FHWA may approve, abatement measures for other situations on a case-by-case basis where: severe traffic noise impacts exist or are expected, and normal abatement measures are physically infeasible or economically unreasonable. For example, many states use the threshold of 75 dBA before considering sound insulation for a residence. In the FEIS, please answer the following questions:

- What is Wisconsin's decibel threshold (dBA) for seeking approval from FHWA for these cases?
- If the decibel threshold (dBA) has been met on this project, will Wisconsin DOT seek approval from FHWA for those cases?
- If the decibel threshold (dBA) has been met on this project, what are those receptors (residence, school, etc.)?

Cumulative Impacts

Our DEIS comment letter requested the inclusion of a clearly labeled Cumulative Impacts Section. The SDEIS includes a fairly thorough section labeled "Indirect and Cumulative Effects." However, there are some more questions which could be answered within the section. Considering baseline conditions as pre-European settlement:

- What percentage (estimation) of wetland remains from the baseline condition?
- What percentage (estimation) of forest cover remains from the baseline condition?
- What percentage (estimation) of the 4 threatened and endangered species affected by this project remain from the baseline condition?
- Does this project have *significant* cumulative impacts on any of the resources listed in the section (i.e., agricultural land, wetlands, water quality, upland habitat, Niagara Escarpment, Kettle Moraine State Forest, and threatened and endangered species)?