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

OCT 17 2014

REPLY TO THE ATTENTION OF: E-19J

George Poirier
Federal Highway Administration
525 Junction Road, Suite 8000
Madison, Wisconsin 53717

Gary Evans
Waukesha County Department of Public Works
515 West Moreland Blvd.
Waukesha, Wisconsin 53188

Rebecca Burkel
Wisconsin Department of Technical Services
Wisconsin Department of Transportation
P.O. Box 7965
Madison, Wisconsin 53707-7965

Re: Final Environmental Impact Statement for the West Waukesha Bypass – County TT, I-94 to WIS 59, Waukesha County, Wisconsin - CEQ # 20140271

Dear Messrs. Poirier and Evans and Ms. Burkel:

The U.S. Environmental Protection Agency (EPA) has reviewed the above-mentioned document provided by Federal Highway Administration (FHWA), Wisconsin Department of Transportation (WisDOT), and Waukesha County dated September, 2014. Our comments in this letter are provided in accordance with our responsibilities under the National Environmental Policy Act (NEPA), Council on Environmental Quality regulations (40 CFR Parts 1500-1508), and Section 309 of the Clean Air Act. EPA acknowledges and appreciates the efforts made by the project proponents to provide complete and current information on the natural resources located in the project area as well as to consider new alternatives and revise existing alternatives to meet the stated purpose and need while reducing resource impacts.

In our Draft EIS comment letter dated December 10, 2012, EPA stated concerns regarding a lack of conceptual mitigation; performance of the alternatives; cumulative effects; and impacts to state-listed threatened or endangered species. We stressed the need for a conceptual mitigation plan in order to assess project impacts and determine whether Pebble Creek will suffer adverse impacts as a result of the proposed project. Lastly, we recommended disclosure in the Final EIS of all available best management practices designed to eliminate surface water runoff from construction and operation of the road from entering the Pebble Creek wetland complex.

Our comments regarding alternatives, cumulative effects, and state-listed species have been adequately addressed. Our comments in this letter focus on issues that remain:

1) identification of and commitment to mitigation measures for impacts to aquatic and terrestrial resources, 2) ecopassages and exclusion fencing, and 3) non-native invasive plant species.

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Mitigation for Aquatic and Terrestrial Resources in Conjunction with our Preferred Alternative Conditional Concurrence

In our letter dated May 7, 2014, EPA provided conditional concurrence with Pebble Creek West as the preferred alternative for the segment south of Sunset Drive, under the condition that the mitigation measures discussed in our May 2014 letter were incorporated into the project and committed to in the Record of Decision (ROD). We clearly stated that our concurrence on the preferred alternative was contingent upon the assurance that the following mitigation measures were included as a part of the project and included in the ROD. Those mitigation measures are as follows:

- Permanent, legal protection of the remaining wooded upland; EPA does not view property owner participation in the state forest management program as sufficient permanent, legal protection.
- Tree mitigation for any loss of trees in the upland area at a 1:1 ratio.
- Preservation of a fen, offsite but within the Upper Fox River watershed to mitigate for impact to Wetland-8. We recommended that WisDOT and FHWA mitigate for the entire acreage of the fen, regardless of actual acreage of direct impacts, to account for indirect impacts.

Our concurrence was conditionally provided based on the premise that the above-mentioned three mitigation measures would be met to mitigate for direct and indirect impacts to both aquatic and terrestrial resources. Our position has not changed. The Final EIS indicates the agencies are working toward fulfilling these mitigation measures. We encourage the agencies to continue working toward these goals. Because these measures were not committed to in the Final EIS nor disclosed to the public, we look to the ROD to contain commitments from FHWA, WisDOT, and Waukesha County to fulfill these mitigation measures. We further expect these three mitigation measures to be part of the mitigation package proposed in the project's Clean Water Act - Section 404 permit application. We have serious concerns regarding how impacts for these resources will be addressed and when the details concerning mitigation will be available. We reserve the right to withdraw our conditional concurrence on the preferred alternative if these mitigation measures are not committed to in the ROD. We plan to participate in the Section 404 permit process and reserve the right to comment on the project's compliance with Section 404 (b) (1) guidelines when the Section 404 Public Notice is issued by the U.S. Army Corps of Engineers (USACE). We welcome continued mitigation discussions with FHWA, WisDOT, Waukesha County, and USACE.

Ground Water and Best Management Practices (BMPs)

We anticipate that, as more detailed construction plans are developed, FHWA, WisDOT, and Waukesha County will need to ensure ground water flow to the sedge fens is maintained. EPA is available to discuss specific actions that may need to be taken to protect ground water flow once the specific alignment is developed. Likewise, EPA is available to discuss the use of BMPs to reduce and/or filter runoff.

Ecopassages and Exclusion Fencing

EPA acknowledges the response to our Draft EIS recommendation regarding ecopassages. We understand that WisDOT and Waukesha County met with DNR to discuss the need for and location of three ecopassages. Even though ecopassages were initially proposed as a mitigation measure for impacts to the Butler's garter snake and Blanding's turtle, which have since been de-listed, we request FHWA, WisDOT, and Waukesha County commit to installing these ecopassages to help sustain viable populations of wildlife and increase safety for motorists. We request this commitment be added to the ROD.

The response contained in the Final EIS concerning our request for fencing designed to minimize movement of snakes and turtles into work areas and to allow provisions to remove animals from work areas to reduce mortality during construction indicates that snake and turtle exclusion barriers will not be erected because these species no longer enjoy protected status. We strongly recommend FHWA, WisDOT, and Waukesha County reconsider this request to reduce mortality at construction sites.

Non-Native Invasive Plant Species (NNIS)

Because new right-of-way will be acquired from the edges of wetlands and NNIS can easily colonize a disturbed area to eventually compromise large portions of aquatic or terrestrial habitat, EPA recommended the agencies draft and commit to implementing a NNIS monitoring/eradication plan, particularly for high quality habitat parcels. The Final EIS indicates that WisDOT and Waukesha County will not commit to a NNIS monitoring/eradication plan at this time, but are willing to discuss the issue with EPA, the Wisconsin Department of Natural Resources (WDNR), and the Southeastern Wisconsin Regional Planning Commission. The Final EIS also indicates that WisDOT has undertaken this type of activity only once before. We believe controlling NNIS is important to prevent their spread as a result of the proposed project, particularly given the project's proximity to high-quality wetlands, Primary Environmental Corridors, and other valuable habitats. EPA strongly recommends FHWA, WisDOT, and Waukesha County draft and implement a NNIS monitoring and eradication plan. We also recommend this activity be committed to in the ROD.

Additionally, we look to the ROD to contain such commitments as incorporating bioretention facilities, as indicated in Section 3.12.8 of the Final EIS and avoidance of in-stream construction work during late May and mid-July to avoid impacts to spawning fish. In summary, EPA appreciates the efforts taken by the transportation agencies to reduce impacts while providing a safe and functional travel corridor. We anticipate the ROD will contain commitments to mitigate for upland loss, provide upland protection, and to mitigate for impacts to Wetland-8. We look forward to further dialogue regarding wetland mitigation and stormwater runoff treatment as detailed construction plans are developed.

If you have any questions, please contact Kathy Kowal of my staff at 312-353-5206 or via email at kowal.kathleen@epa.gov and Sue Elston of the Wetlands Section at 312-886-6115 or via email at elston.sue@epa.gov.

Sincerely,

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

cc: Marie Kopka, U.S. Army Corps of Engineers
Michael Thompson, Wisconsin Department of Natural Resources
Don Reed, Southeastern Wisconsin Regional Planning Commission
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