UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
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DALLAS, TX 75202-2733

January 20, 2012

Charles Bolinger
Division Administrator
Federal Highway Administration
Louisiana Division
5304 Flanders Drive, Suite A
Baton Rouge, LA 70808

Dear Mr. Bolinger:

In accordance with our responsibilities under Section 309 of the Clean Air Act (CAA), the National Environmental Policy Act (NEPA), and the Council on Environmental Quality regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Tier 1 Draft Environmental Impact Statement (DEIS) prepared by the Federal Highway Administration (FHWA). The FHWA and the Louisiana Department of Transportation and Development are proposing to construct a new highway loop, the Baton Rouge Loop, in the Parishes of Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge, Louisiana.

EPA rates the Tier 1 DEIS as "EO-2", i.e., EPA has Environmental Objections and Requests Additional Information in the Tier 1 Final EIS (FEIS). EPA's Rating System Criteria can be found at: http://www.epa.gov/oecaerth/nepa/comments/ratings.html. Detailed comments are enclosed with this letter which more clearly identify our concerns and the informational needs requested for incorporation into the Tier 1 FEIS. Most importantly, the Tier 1 FEIS should include the full Baton Rouge Loop Implementation Plan as an appendix, as well as incorporate a more robust evaluation process, allowing for a meaningful comparison of the environmental impacts associated with each corridor alternative, particularly with regards to wetlands impacts. No decision on a Preferred Corridor should be made until adequate information is made available in the Tier 1 FEIS. Responses to comments should be placed in a dedicated section of the Tier 1 FEIS, or its appendices, and should include the specific location where the revision, if any, was made. If no revision was made, an explanation should be included.

EPA appreciates the opportunity to review the Tier 1 DEIS. Please send our office two copies of the Tier 1 FEIS and an internet link when it is sent to the Office of Federal Activities, EPA (Mail Code 2252A), Ariel Rios Federal Building, 1200 Pennsylvania Ave, N.W., Washington, DC 20004. Our classification will be published on the EPA website, www.epa.gov, according to our responsibility under Section 309 of the CAA to inform the public of our views on the proposed Federal action.

Re: NEPA 309 Review
Baton Rouge Loop Tier I DEIS

If you have any questions or concerns, please contact John MacFarlane of my staff at macfarlane.john@epa.gov or 214-665-7491 for assistance.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

cc: Carl Highsmith
Federal Highway Administration

Pete J. Serio
U.S. Army Corps of Engineers

DETAILED COMMENTS ON THE
FEDERAL HIGHWAY ADMINISTRATION'S
TIER 1 DRAFT ENVIRONMENTAL IMPACT STATEMENT
FOR THE
BATON ROUGE LOOP in the
PARISHES OF ASCENSION, EAST BATON ROUGE, IBERVILLE, LIVINGSTON, AND WEST BATON ROUGE, LA

BACKGROUND: The Federal Highway Administration (FHWA) proposes to construct a high-speed, toll facility project, proposed as a 90 to 105 mile long circumferential controlled access free-flow toll roadway with two new Mississippi River crossings. Because the project proposes work in wetlands and structural crossings of various waterways in the project area, a Department of the Army permit pursuant to section 404 of the Clean Water Act (CWA) is required before any construction activities.

EPA understands that a Tier 1 Environmental Impact Statement (EIS) focuses on broad issues over a wide area. However, we feel that the characterization of the project area and its analysis of impacts to the human and natural environment falls short of National Environmental Policy Act (NEPA) intentions. As 23 CFR § 771.111 states, "For major transportation actions, the tiering of EISs as discussed in the CEQ regulation (40 CFR § 1502.20) may be appropriate. The first tier EIS would focus on broad issues such as general location, mode choice, and area-wide air quality and land use implications of the major alternatives. The second tier would address site-specific details on project impacts, costs, and mitigation measures." As the regulation states, a first tier EIS should focus on "land use implications of major alternatives." No implications or consequences of constructing a major transportation project are analyzed, even on a broad scale in the Tier I DEIS. We believe that it does not provide vital information that would allow for accurate differentiation among alternative corridors.

The following detailed comments are offered for your agency's consideration:

DETAILED COMMENTS

Chapter 2 – Alternatives Considered

According to 23 CFR § 771.111(f), each preliminary corridor should have logical termini and independent utility. This section should define and discuss how and if the preliminary corridors meet this requirement.

The Tier I DEIS identifies several sensitive environmental elements, such as Spanish Lake and the Amite River. Ideally, in determining which corridors would be brought forward for analysis within the Tier 1 DEIS, a process should have been undertaken that would 1) identify large scale avoidance areas or constraints, and 2) utilize a computer based optimization tool, such as GIS or Quantm™ software. It is unclear from the Tier 1 DEIS if any such tools/processes were utilized. An Implementation Plan study is mentioned several times, and it is EPA's understanding that much of the corridor development and refinement occurred within the study.

However, the Implementation Plan is not included as an appendix, leaving the public and resource agencies unable to determine whether screening of corridor alternatives was done appropriately. EPA believes it is absolutely necessary that the full Implementation Plan be included in the Tier 1 FEIS in order for reviewers to understand the methodology used for corridor development. This is a vital consideration when considering the appropriate range of alternatives studied.

Chapter 3 – Project Environment – Resources and Potential Impacts

General Comments

This section should discuss appropriate and applicable laws, regulations, requirements, or Executive Orders and include the responsible agency. It should characterize the natural environment of the project area and disclose general/broad level environmental impacts of a major transportation project.

We feel that none of the resources were properly evaluated for impacts and that comments would be similar for each resource. However, we have included specific comments related to environmental justice, tribal issues, threatened/endangered species, and wetlands as impacts to these resources could rise to the level of significant.

Environmental Justice

Executive Order 12898 - Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations states that the EPA, when reviewing environmental effects of proposed action of other Federal agencies under section 309 of the Clean Air Act, 42 U.S.C. section 7609, shall ensure that the involved agency has fully analyzed environmental effects on minority communities and low-income communities, including human health, social, and economic effects. EPA recommends that an analysis of minority and low-income communities should be included in the Final Tier 1 EIS.

An Environmental Justice analysis will identify minority and low-income populations within the project area and evaluate project impacts to those communities. Identification of any significant low income or minority areas would determine avoidance areas. Thus, corridors could be routed away from these areas. Furthermore, if these low income or minority areas are unavoidable, it will provide mitigation efforts to minimize those effects. The Tier 1 DEIS makes no assessment on vulnerable communities in any of the alternative areas.

Tribal Issues

A review of the Cultural Resources section concluded that a distribution list of potentially affected Federally and State Recognized Tribes in Louisiana was not included. There is one tribe to the northwest of the project and several tribes to the south of the project that should be included in the public involvement process.

Re: Tier I DEIS
Baton Rouge Loop

On February 20, 2009, a solicitation of views was sent out and included the Choctaw Nation of Oklahoma and Alabama-Coushatta Tribe of Texas. The Choctaw Nation of Oklahoma recommended an archeological survey prior to construction and asked that they be allowed to review the survey.

The one Tribe to the northwest of the proposed project is the Jena Band of Choctaw. EPA recommends notifying them of the project and including them in any public involvement processes. The State also recognizes five coastal Tribes in Louisiana. Those tribes estimate about 36,000 Tribal members who for over 600 years, have lived near the Louisiana coast. While consultation with these tribes is not required by the Federal government due to the non- Federal Recognition status of these Tribes, it would be due diligence to include them in consultation meetings. At a minimum, these Tribes should have the opportunity to provide input on the proposed project. Below is the contact information for the Jena Band of Choctaw and the Coastal Louisiana Tribes:

Jena Band of Choctaw Indians
PO Box 818
1052 Chanaha Hina Street
Jena, LA 70532
337-584-1401

Grand Cailou/Dulac Band of Biloxi-Chitimacha
Chairwoman Marlene Foret
985-709-4161
www.lctci.com

Point au Chien Indian Tribe
Chief Albert Naquin
985-856-5336
www.lctci.com

Bayou Lafourche Band of Biloxi-Chitimacha
Chief Randy Verdun
225-485-8765
www.lcti.com

United Houma Nation
Chief Thomas Dardar
985-665-4085
www.unitedhoumanation.org

Isle de Jean Charles Band of Biloxi-Chitimacha
Chief Charles Verdin
985-232-1286
www.lcti.com

Public Involvement

Chapter 7 outlines the public involvement process. We are very concerned that underserved populations may not have attended meetings or even be aware of the proposed project. EPA suggests reviewing FHWA's Public Involvement Techniques for Transportation Decision-making for ways to involve underserved and vulnerable communities and to insure that these communities have an opportunity to be involved and provide comments.

Air Quality

This section of the Tier I DEIS refers to CFR 40 § 93.126 for an exemption from air quality conformity modeling at this Tier 1 development stage of the project. This is consistent with EPA and FHWA interpretation of allowable exemptions under CFR 40 § 93.126. However, please indicate how estimates of air emissions will be incorporated into the Tier 2

or later development stage of the project, to allow for a greater understanding of the anticipated magnitude of emissions, and how these emissions will or will not impact air quality for the Baton Rouge area.

Effective December 30, 2011, the Baton Rouge area will be redesignated to attainment of the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS) (76 FR 74000, November 30, 2011). Upon this redesignation, the area will be identified as a maintenance area for the standard, and still subject to the requirements of transportation and general conformity, as specified in Clean Air Act 176(c)(5)(B).

It should also be noted that EPA expects that the Baton Rouge area will be designated nonattainment for the 2008 8-hour ozone NAAQS, a more stringent air quality standard (0.075 ppm) than the 1997 8-hour ozone NAAQS (0.08 ppm). On December 9, 2011, EPA Region 6 submitted a letter to Governor Bobby Jindal stating EPA's initial intention to designate the Baton Rouge area (East Baton Rouge, Ascension, Iberville, Livingston and West Baton Rouge Parishes) as nonattainment of the 2008 ozone standard. The designation process for the 2008 ozone standard will be completed in April 2012.

Any demolition, construction, rehabilitation, repair, dredging or filling activities have the potential to emit air pollutants and we recommend best management practices be implemented to minimize the impact of any air pollutants. Furthermore, construction and waste disposal activities should be conducted in accordance with applicable local, state and federal statutes and regulations.

EPA encourages the use of clean, lower-emissions equipment and technologies to reduce pollution. EPA's final Highway Diesel and Nonroad Diesel Rules mandate the use of lower-sulfur fuels in non-road and marine diesel engines beginning in 2007.

Threatened and Endangered Species

The Tier I DEIS identifies several threatened and/or endangered species (T&E) and their critical habitat that may occur in the project area. It also states that many corridors cross important and designated critical habitat for these species. Important and critical habitat should have been included as avoidance criteria in the corridor development process. EPA strongly recommends that FWHA invite the U.S. Fish and Wildlife Service to collaborate on establishing avoidance areas for T&E species so as to avoid any unnecessary impacts to these rare and important species.

Wetlands

The Tier I DEIS correctly identifies wetland impacts as a potentially significant adverse environmental effect of the proposed Baton Rouge Loop. Clean Water Act (CWA) Section 404 requires that wetland impacts be avoided and minimized to the maximum extent practicable (with compensatory mitigation to offset unavoidable adverse impacts). This is accomplished first and foremost through the analysis of potentially less environmentally damaging alternatives.

The rigor of such an alternatives analysis should be commensurate with the magnitude of potential wetland impacts. A rigorous alternatives analysis appears warranted in this case, given the size and scope of the proposed loop project and the amount of wetlands in the study area. Beyond this statutory requirement, the fact that addressing coastal wetland loss in Louisiana is both a Federal and state priority only serves to increase the importance of avoiding wetland impacts. While much of the study area is not in the state's coastal zone, portions of the proposed project could adversely affect coastal aquatic resources (e.g., such as the Amite River floodplain as it relates to the Maurepas Swamp and the Pontchartrain Basin). Thus, there is a need for this proposed project to be consistent with the broader effort to restore coastal Louisiana.

The Tier I DEIS does not provide sufficient information to discriminate amongst corridor sections and corridor alternatives based on potential wetland impacts. In the Tier 1 DEIS, percentage of wetland land cover relative to total land cover is used as the primary means for comparing potential wetland impacts among various sections and alternatives. However, the percentage of wetlands in a given section or alternative does not necessarily correlate with the actual extent and severity of wetland impacts that would occur if the particular option were selected. Construction of a roadway in a section with a relatively low percentage of wetland land cover could in fact result in greater wetland impacts than construction of the road in a section with a higher percentage of wetland land cover depending on the size and shape of the section and the distribution of wetlands therein. Moreover, comparing sections or alternatives based solely on percent wetland land cover does not allow for consideration of the condition or functional value of wetlands within each option. Eliminating a section or alternative after having only assessed wetland impacts in terms of percent wetland land cover could rule out less environmentally damaging options which is contrary to the requirements of CWA Section 404.

According to the Tier I DEIS, a "selected corridor" is to be identified during the Tier 1 DEIS public comment period. It appears that such a selected corridor alternative would then be presented in the Tier 1 Final EIS. Tier 2 NEPA documents would focus solely on segments of the preferred corridor. As noted above, however, the Tier 1 DEIS does not provide sufficient information to differentiate among corridor alternatives based on potential environmental impacts. Less damaging corridor alternatives could be eliminated from consideration based on a faulty assumption regarding the correlation between percent wetland cover and the acreage and value of potential wetland impacts. Again, in the absence of more detailed information on potential wetland impacts, it would be premature to identify a preferred corridor alternative.

The Tier 1 EIS for this project would, by definition, not be of the same level of detail as a traditional EIS. Nevertheless, more information on potential wetland impacts is needed to identify a preferred corridor alternative. Such additional information should include estimated acreage of direct wetland impacts by sections and alternatives, broken down by wetland type. This could be done, for example, by drawing a representative road alignment for each alternative, based on a common set of assumptions regarding right of ways, water crossings and so on. While such a representative alignment might not be exactly the same as the actual alignment to be developed in subsequent phases, it would allow for an approximation and comparison of the acreage of potential wetland impacts for each alternative given a common

set of planning assumptions. Locations where the proposed roadway would likely be elevated to reduce wetland impacts should also be identified prior to selection of a preferred corridor alternative. This would help with the initial assessment of potential indirect impacts due to altered hydrology.

There should also be more detail on potential impacts to valuable aquatic resources such as the Spanish Lake area and the Amite River floodplain. Finally, there should be an effort to identify, at the programmatic level, the functional condition of wetland areas that might be impacted by the various sections and alternatives under consideration. This might be done, for example, by identifying and labeling wetland areas based on the degree to which such areas have been affected by human activities. A highly fragmented, drained or otherwise modified wetland is presumably of lower condition relative to the same type of wetland in a less degraded state. Such programmatic assessments can be made using aerial photography in conjunction with local knowledge and "ground-truthing" with site inspections.

Additional wetland impact assessment is necessary and would develop sufficient information to allow for accurate identification and selection of the least environmentally damaging corridor alternative, prior to initiation of more detailed analyses on segments of independent utility.

Once the least environmentally damaging practicable corridor alternative has been identified, subsequent phases of the NEPA process should rigorously examine ways to avoid and minimize wetland impacts within the selected corridor alternative (presumably on a segment-by-segment basis). To that end, EPA recommends the following strategies be considered:

- Site the road in non-wetland locations to the maximum extent practicable.

- Where it is not practicable to avoid wetlands, elevate the road and use end-on construction to the extent practicable to minimize short- and long-term impacts to wetlands associated with changes in hydrology and other adverse effects.

- Build atop or adjacent to existing roads and other linear rights of way to the maximum extent practicable. (This helps minimize fragmentation of existing habitat blocks.)

- Locate interchanges away from areas where wetlands comprise a significant portion of the undeveloped landscape. (This can reduce the potential for the proposed road to induce or facilitate development in wetlands.)

Again, however, this more detailed segment-by-segment analysis of ways to avoid and minimize wetland impacts should come only after there has been more effective analysis of the potential wetland impacts associated with the various sections and alternatives contained in the Tier 1 DEIS.

For questions regarding wetlands comments, please contact EPA, Region 6 wetlands staff member, Mr. John Ettinger, at 504-862-1119 or ettinger.john@epa.gov.

Chapter 5 – Comparison and Evaluation of Alternatives

The evaluation and ranking process is vague and confusing. It appears no overarching evaluation methodology was established. As stated in Section 5.1, "For each individual Unit Corridor Alternative, evaluation parameters were quantified or a 'desirability/feasibility' value assigned. Using best professional judgment, each Corridor Alternative evaluation parameter was then given a qualitative ranking of High, Medium, or Low on a Unit basis by the Project Team". Desirability is subjective and could be construed differently by different evaluators. However, we understand that "feasibility" in relation to evaluating cost, constructability, and traffic/transportation improvement is a standard criterion for highway projects and is an objective evaluation.

The qualitative ranking criteria are confusing. The Tier I DEIS rankings are high (H), medium (M), and low (L). Where H is the best/most desirable and L is worst/least desirable. However, in most cases, H would denote higher impacts and L would denote mean lower impacts. Perhaps a numerical ranking would be more appropriate. However, we believe the evaluation and ranking process is flawed. Resources such as wetlands, prime farmlands, and developed land are evaluated solely on percentage of the resource within the corridor. As stated in the Wetlands comments, the percentage of a particular resource in a given section or alternative does not necessarily correlate with the actual extent and severity of impacts to that resource. Beyond percent coverage, there is very little explanation of the methods used to apply the data and evaluate the corridors. In order for reviewers to be able to make a meaningful comparison of the environmental impacts associated with each corridor alternative, it is necessary that a more robust and detailed evaluation process be used. Based on the potential for significant impacts to Section 404 and other environmental resources, and the expanse of indirect and cumulative impacts of the project, EPA recommends forming a more meaningful and useful evaluation and ranking methodology. This could be accomplished by compiling a GIS database of various datasets and imposing a scoring structure on the data using various mathematical formulas.

We suggest reviewing the Geographic Information System Screening Tool (GISST) User's Manual for guidance on how to develop an environmental assessment identification and prioritization tool for the Baton Rouge Loop project. GISST is a system that uses GIS coverage and imposes a scoring structure on this data so that decisions can be made. The scoring structure consists of criteria, using 1 as a low concern and 5 as a high concern. An internet link to the GISST User's Manual is provided here: http://www.epa.gov/region6/6en/xp/enxp2a3a.htm. Another tool that could be used is the Regional Ecological Assessment Protocol (REAP). REAP is used to identify important ecological areas that should be avoided. REAP information is used to aid in project planning and scientific research, ultimately leading to better environmental assessments, improved understanding, and enhanced decision-making. We can provide the REAP GIS data upon request for use in project development and in determining avoidance areas.

EPA is concerned how a Preferred Alternative will be selected before the Tier 1 FEIS. The Tier 1 DEIS should have included an explanation as to how this will occur. It is mentioned in the document that several corridors would be appropriate to eliminate based on public and stakeholder input. It would be useful to clearly summarize public and stakeholder input if that will be utilized as an evaluation criteria.

In summary, there is insufficient information in the Tier 1 DEIS to enable differentiation among sections and alternatives. It would be premature to eliminate sections and/or alternatives from further consideration without having more accurately assessed potential adverse impacts to the various resources. To address these inadequacies, EPA believes that, at the minimum, the Tier 1 FEIS should include the full Baton Rouge Loop Implementation Plan as an appendix, as well as incorporating a more robust evaluation process, allowing for a meaningful comparison of the environmental impacts associated with each corridor alternative, particularly with regards to wetlands impacts. No decision on a Preferred Corridor should be made until appropriate information is made available to EPA and the public in the Tier 1 DEIS or Tier 1 FEIS.