UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

April 6, 2012

U.S. Army Corps of Engineers
New Orleans District (CEMVN)
James A. Barlow, Jr., Ph.D
7400 Leake Avenue
New Orleans, LA 70188

Dear Dr. Barlow,

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 (CEQ) regulations for implementing NEPA, the U.S. Environmental Protection Agency (EPA) Region 6 office in Dallas, Texas, has completed its review of the Final Environmental Impact Statement (FEIS) prepared by the U.S. Army Corps of Engineers (USACE). The Louisiana Department of Transportation and Development (LADOTD) is proposing to construct a new highway, the proposed LA 3241, between Interstate Highway 12 (I-12) and Bush, Louisiana in St. Tammany Parish.

EPA rated the Draft EIS as "EC-2" i.e., EPA had "Environmental Concerns and Requests Additional Information" due to concerns with the Purpose and Need, land use, greenhouse gases, traffic and transportation, impacts to water resources, including wetlands, ecological resources, cumulative impacts, and mitigation. EPA believes that while some of our comments were addressed, a majority were not. Detailed comments are below regarding the Purpose and Need, travel time savings and economic development, traffic and transportation, air quality, ecological resources, cumulative impacts, and mitigation.

1.0 Purpose and Need

In our previous comment letter dated October 21, 2011, we stated that we believe that the Purpose and Need statements should be re-evaluated and re-stated to justify why significant adverse environmental impacts identified in the document are acceptable. We would point to the Federal Highway Administration's Environmental Review Toolkit[1] that states "a clear, well-justified purpose and need section explains to the public and decision makers that the expenditure of funds is necessary and worthwhile and that the priority the project is being given relative to other needed highway projects is warranted. In addition, although significant environmental impacts are expected to be caused by the project, the purpose and need section should justify why impacts are acceptable based on the project's importance."

Statement number 4 of the Purpose and Need states that economic activities in both St. Tammany and Washington Parishes need the proposed highway to reach their markets more efficiently. We still believe that the analysis does not demonstrate a travel time savings that

[1] http://www.environment.fhwa.dot.gov/projdev/tdmneed.asp

would substantially enhance regional GDP, business investment, and product movement and that business investment and product movement is being adversely affected by the current transportation network. Therefore, none of the alternatives meet the Need statement number 4, thus, the need is not justified.

3.4.5.3 Sensitive and Protected Sites

As stated in our DEIS comment letter, the description of the location of Mossy Hill should be revised to state that it is adjacent to the Bayou Lacombe Mitigation Bank, not the Talisheek Pine Wetlands Mitigation Bank.

3.6 Air Quality (p. 3-57)

The third paragraph of this page states that EPA expects to make final designations under the new (2008) 8-hour Ozone NAAQS by the end of 2010, on the basis of 2006-2008 monitoring data. This statement is no longer accurate. EPA is currently proceeding with implementation of the 2008 8-hour Ozone NAAQS on the basis of 2008-2010 monitoring data, with final area designations projected for completion by April 30, 2012. The statement that St. Tammany Parish would remain an attainment area is still accurate under the 2008 8-hour Ozone NAAQS, based on 2008-2010 monitoring data.

3.9 Traffic and Transportation

We would restate that the EIS should assess the effectiveness of transportation improvements such as bypasses, intersection improvements (interchanges), signalization improvements, and/or improving the existing infrastructure/upgrading existing roadways as a way to address the congestion problems at issue. These improvements would certainly be more cost effective and less environmentally damaging and may solve some of the congestion issues mentioned in the document.

4.4.2 Sensitive Terrestrial and Aquatic Habitats

We would restate that impacts to state rare and/or imperiled natural communities should be mitigated. We suggest LADOTD contact the Louisiana Department of Wildlife and Fisheries' Natural Heritage Program to discuss appropriate mitigation measures.

4.4.2 Wetlands

We reiterate that we concur with the USACE finding of Alternative Q as the least environmentally damaging practicable alternative (LEDPA), pursuant to the Clean Water Act (CWA) Section 404(b)(1) Guidelines. In the case of this proposed highway, even the LEDPA has the potential for significant adverse impacts to wetlands. Thus, extensive minimization and compensatory mitigation measures will be needed to avoid significant degradation of aquatic resources.

Enclosed is a letter dated December 7, 2006 from the EPA to the New Orleans USACE District Engineer, where EPA states that we believe that LADOTD's preferred route would have substantial and unacceptable impacts on aquatic resources of national importance pursuant to Part IV 3(b) of the 1992 Memorandum of Agreement (MOA) between the EPA and the Department of the Army regarding CWA Section 404(q). EPA maintains our right to elevate this project pursuant to the MOA.

4.11.4 Travel Demand Summary

A REMI TranSight model was completed after the release of the DEIS to better demonstrate the economic benefits of the proposed project. We recommend the section include an explanation of the REMI TranSight model and the goals of the model run, including the variables (changes in travel time and delays; traffic safety, including crashes and severity of crashes; changes in vehicle operating expenses). Please clarify if truck traffic is included in the model run as the movement of goods is listed as a need for the proposed project.

4.18 Cumulative Impacts

In our DEIS comment letter, we asked that this section be expanded upon by establishing geographic and temporal boundaries for all past, present, and reasonably foreseeable projects. We recommend for each project listed in this section, a characterization and description of the baseline conditions, the resources' response to change, the stresses affecting the resource, and the resources' relation to regulatory thresholds. The discussion should go on to identify the important cause and effect relationship between human activities and the resource and determine the magnitude and significance of the cumulative effects. This section should delineate appropriate geographic areas including natural ecological boundaries, whenever possible, and should evaluate the time period of the project's effects. For instance, in the discussion of cumulative wetland impacts, a natural geographic boundary such as a watershed or sub-watershed could be utilized. The time period, or temporal boundary, could be defined as from 1972 (when the CWA established Section 404) to the present.

4.21.3 Compensation

Pursuant to the 2008 EPA/USACE Final Compensatory Mitigation Rule (Rule), the USACE will coordinate fully with EPA in the development of a mitigation plan. EPA would need to review the details of a proposed mitigation plan before we could concur with a finding that unavoidable adverse wetland impacts would be effectively offset and the risk of significant degradation of aquatic resource has been addressed, consistent with the CWA Section 404(b)(1) Guidelines. The Record of Decision (ROD) should include a clear commitment that the mitigation plan will be fully consistent with the 2008 Rule, and that the USACE will coordinate fully with EPA in the development of the plan.

Furthermore, the Council on Environmental Quality's 2011 Memorandum "Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact" states that the ROD should "identify those mitigation measures that the

agency is adopting and committing to implement, including any monitoring and enforcement program applicable to such mitigation commitments."

The Memorandum goes on to state that "funding for implementation of mitigation commitments [is] critical to ensuring informed decision making". It continues by stating "a commitment to seek funding is considered essential and if it is reasonably foreseeable that funding for implementation of mitigation may be unavailable …, the agency should disclose … the possible lack of funding and assess the resultant environmental effects." Thus, the ROD should include a commitment to seek funding and should disclose the possible lack of funding to fully implement a mitigation and monitoring plan.

Responses to our comments, including the mitigation commitments described in the above paragraphs, should be included in the ROD. 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. For wetlands and mitigation specific questions, please contact John Ettinger at 504-862-1119 or ettinger.john@epa.gov.

Sincerely,

Rhonda Sutton for

Debra A. Griffin
Associate Director
Compliance Assurance and
Enforcement Division

Enclosure

cc: Sherri LeBas, LADOTD