



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 1
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Boston, MA 02109-3912

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

12/10/10

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

Dear Colonel Feir:

On November 15, 2010, the EPA New England Region ("the Region") submitted comments on the above referenced Public Notice. As explained in our detailed letter, the Region stated its assessment that the proposed project may have a substantial and unacceptable impact on aquatic resources of national importance and recommended that the Corps deny the permit for Alternative 17/Circ A/B. In accordance with 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(b), regarding 404(q) of the Clean Water Act, 33 U.S.C. 1344(q), we reaffirm our assessment and conclude that the proposed project will have a substantial and unacceptable impact on aquatic resources of national importance.

The Region has continued to analyze the record for proposed Alternative 17/Circ A/B, including additional review of key citations referenced in our November 15th letter, and of the compensatory mitigation plan proposed by the Vermont Department of Transportation ("VTrans"). Having done that, we remain convinced that even if the mitigation were fully implemented, the proposed project would cause or contribute to significant degradation of waters of the U.S. in violation of 40 C.F.R. §230.10(c) of the Section 404(b)(1) Guidelines, and would cause or contribute to violations of applicable state water quality standards in violation of 40 C.F.R. § 230.10(b). Furthermore, we maintain that the proposed project would violate 40 C.F.R. §230.10(a) because it is not the least environmentally damaging practicable alternative ("LEDPA"). We continue to believe that the Corps erred in its conclusion that Alternative 17/Circ A/B is the LEDPA. As explained in our November 15th letter, we believe the Corps under-estimated the ecological values of the aquatic resources that would be affected; vastly under-estimated the range, extent and severity of direct and secondary adverse impacts that would occur; and greatly over-estimated the ability of VTrans' proposed compensatory mitigation plan to adequately address those adverse impacts and bring them below the threshold of significance under Section 230.10(c). These errors led the Corps to incorrectly agree with the Federal Highway Administration's analysis that Alternative 17/Circ A/B is a "prudent and feasible" alternative to the VT 2A upgrade, and to incorrectly conclude that the VT 2A upgrade is not the LEDPA because the Federal Highway Administration's Section 4(f) regulations would preclude its use. Because we do not believe the record supports a conclusion that Alternative 17/Circ A/B is "prudent" in light of the severity of impacts even after mitigation, it remains our position that the Corps should reject FHWA's informal determination, and conclude, as we do, that the VT 2A upgrade is the LEDPA.

Moreover, as a result of our recent review of the record for this project, our concerns about the significance of impacts have intensified due to readily identifiable cumulative adverse impacts to aquatic resources and wetland dependent wildlife habitat. In looking back at the file for the original Chittenden County Circumferential Highway project (CCCH), we noted that the Corps' 1988 Public Notice identified the scope of aquatic impacts from the complete highway to be an estimated 33.4 acres. At that time, VTrans indicated its intent to build the CCCH project in segments, and the Corps and EPA agreed that because each segment had independent utility, it was permissible to issue separate permits for each segment. The Corps issued the first permit in 1989 for "Segment 1," comprised of Segments A-B of the overall highway. This is the same segment that is currently under review. That permit identified approximately 19 acres of direct impacts to wetlands and streams.¹ It expired in 1994, was reissued in 1998, and again expired in 2008. The Corps issued a permit in 1991 for "Segment 2," comprised of Segments C-F of the overall highway. This permit authorized approximately 20 acres of direct impacts to wetlands and 2,725 linear feet of streams. This project was constructed and opened to traffic in 1993 as a 2-lane road, with the intention of expanding to four lanes in the future (it remains a 2-lane road). The Corps issued a third permit in 1993 for "Segment 3," comprised of the remaining Segments G-J. The permit authorized direct impacts to 24.5 acres of wetlands and 3,615 linear feet of streams. This permit expired in 2003, and the segment has not been built. To the best of our knowledge, none of the environmental reviews performed for these permits evaluated secondary or cumulative impacts to aquatic resources from construction of the various segments.

Cumulative impacts on the aquatic ecosystem include those associated with past, present, and reasonably foreseeable discharges to waters of the U.S. Alternative 17/Circ A/B would result in 27.1 acres of direct wetland impact, at least 815 acres of secondary wetland impacts, and over 14,000 linear feet of stream impacts. When combined with the impacts associated with the already-constructed Segment 2, the cumulative loss of aquatic resources would be 47.1 acres of direct wetlands impact, over 1,000 acres of secondary effects to wetlands and wetland dependent wildlife habitat,² and nearly 17,000 linear feet of stream impacts. If the impacts associated with Segment 3 (Segments G-J) were added, then the cumulative direct wetland impacts would rise to 71.6 acres, (assuming that the 1993 permit's assessment of the direct impacts is accurate) and the cumulative impacts to streams would exceed 20,000 linear feet (close to 4 miles). A quick review of aerial photographs portraying the landscape through which Segment 3 would be constructed shows clearly that the cumulative secondary adverse impacts to aquatic resources and wetland dependent wildlife habitat would be extremely destructive. In our opinion, the cumulative impacts stemming solely from the CCCH – without even considering past and reasonably foreseeable impacts associated with *other* activities in the watershed – would be severely damaging to the aquatic ecosystem and reinforce our conclusion that construction of Alternative 17/Circ A/B would cause or contribute to significant degradation in violation of Section 230.10(c) of the Guidelines.

¹ In our comment letter to the Corps on the 1988 Public Notice, the Region did not object to permit issuance for this segment. At that time, the Region was less concerned about the adverse impacts because the majority of the aquatic resources identified by VTrans and the Corps that were to be filled were recently abandoned agriculture fields with limited ecological value. In the nearly 23 years since that time, those former agricultural fields have naturally recovered most of their wetland characteristics and ecological functions, and substantial additional aquatic resources have been identified by more thorough field work performed by VTrans, the Corps and EPA.

² While secondary impacts were not evaluated for Segment 2, a brief desk-top analysis by EPA staff revealed that they likely exceeded a few hundred acres.

In reaffirming our position, the Region concludes that Alternative 17/Circ A/B does not comply with the Section 404(b)(1) Guidelines for the reasons summarized above and explained in our November 15th letter. Accordingly, the Corps should deny the permit.

Should the Corps decide to issue a permit over the objections explained above and in our November 15th letter, then in accordance with the procedures outlined in the August 1992 Memorandum of Agreement (MOA) between EPA and the Army Corps of Engineers, Part IV, paragraph 3(c)(1), regarding 404(q) of the Clean Water Act, 33 U.S.C. 1344(q), the District must, within five calendar days of notifying us of your proposed decision, forward a copy of the draft permit and decision document (i.e., a statement of findings and environmental assessment) by overnight (or electronic) mail to Matt Schweisberg, Chief of the Region's Wetlands Program (schweisberg.matt@epa.gov). In that event, in accordance with Part IV, paragraph 3(d) of the MOA, within 15 calendar days from receipt of the draft permit, I will notify you by faxed (or electronic) letter that I either will not request higher level review, or have forwarded the issue to EPA's Assistant Administrator for Water with a recommendation to request review by the Assistant Secretary of the Army for Civil Works.

Again, the Region continues to consider 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 at 617-918-1628.

Sincerely,



A handwritten signature in black ink, appearing to read "H. Curtis Spalding / Acting For". The signature is written in a cursive style.

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