



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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MAR 17 2005

Ref: EPR-EP

Mr. David Gibbs
Division Administrator
FWHA Utah Division
2520 West 4700 South, Suite 9A
Salt Lake City, UT 84118

Colonel Ronald N. Light
Commander, Sacramento District
U.S. Army Corps of Engineers
1325 J Street
Sacramento, CA 95814

Re: Legacy Parkway, I-215 at 2100 North in Salt Lake to
I-15 and US. 89 near Farmington in Salt Lake and Davis
Counties, Utah Draft Supplemental Environmental Impact
Statement and Draft Section 4(f), 6(f) evaluation

Public Notice No. 200350493
Utah Department of Transportation
Fill/Wetlands Salt Lake and Davis Counties, Utah

Dear Mr. Gibbs and Colonel Light:

In accordance with the National Environmental Policy Act (NEPA), Section 404 of the Clean Water Act (CWA), and Section 309 of the Clean Air Act, the Region 8 office of the U.S. Environmental Protection Agency (EPA) has reviewed the Draft Supplemental Environmental Impact Statement (DSEIS) for the proposed Legacy Parkway project.

EPA has actively participated as a Cooperating Agency in the process leading to the Legacy Parkway DSEIS. This DSEIS documents a proposed project that includes a larger mitigation preserve than that provided for in the June 2000 Final Environmental Impact Statement (FEIS), restoration of additional wetlands within the preserve, and fewer impacts to wetlands overall as a result of a reduction in the width of rights-of-way. The DSEIS also integrates improved mass transportation opportunities, and, overall, the project as it is now proposed will result in reduced environmental impacts when compared to the earlier FEIS.

When EPA commented on the original Draft Environmental Impact Statement for Legacy in 1999, the Agency expressed significant concerns, including concerns about the magnitude of impacts to aquatic resources of national importance. Since that time, changes have been made to the DSEIS, including narrowing the rights of way of the "build" alternatives, implementing alternatives in a manner that is consistent with mass transit opportunities, and in disclosing impacts to wildlife. In addition, the Utah Division of the Federal Highway Administration and the U.S. Army Corps of Engineers (COE) have committed to provide additional information and analysis regarding the project that will be presented in the Final SEIS.

In light of the progress FHWA and COE have made in addressing EPA's concerns, and in light of specific improvements made to the alignments of each of the "build" alternatives, EPA has decided to rate DSEIS Alternatives A and E as EC-2. A full description of EPA's EIS rating system is in Enclosure I. The concerns giving rise to our EC-2 ratings for Alternatives A and E are primarily based on the need for additional information in the DSEIS, including additional wetlands mitigation analysis and a description of the criteria used to reject alternatives as not practicable.

We commend the project proponents for planning to set aside 778 acres of wetlands for permanent protection as part of a 2,098 acre preserve in the unique Great Salt Lake ecosystem. The Great Salt Lake wetlands provide many valuable functions, from ameliorating the effects of floods to providing resting, feeding, breeding, nesting, and rearing habitat for numerous species and millions of individual shore birds, wading birds, and waterfowl, including both migratory and year-round residents. The inclusion of the Great Salt Lake in the Western Hemisphere Shorebird Reserve Network documents the habitat values of the project area wetlands. Clearly these aquatic resources are highly valuable, which makes it important that wetland impacts be fully mitigated. We remain concerned, however, that, as the DSEIS notes, the wetlands mitigation effectiveness analysis has not been completed.

Our EC-2 ratings are also based in part on questions about the criteria used for selecting or rejecting alternatives for analysis in the DSEIS. In particular, we believe the Final SEIS should more fully explain the criteria used to reject the Denver & Rio Grande alignment as an alternative. We also believe the Final SEIS should include a more detailed discussion of the use of cost, logistics, and technology information to determine whether an alternative is considered practicable under the CWA Section 404 (b)(1) guidelines. This is particularly true because information in the Final SEIS will be used in the Clean Water Act section 404 permitting process to evaluate which alternative is the least environmentally damaging.

EPA understands that many, if not all, of the improvements made to the alignments of Alternatives A and E have also been made to Alternatives B and C. However, selection of either Alternative B or Alternative C would result in an unacceptable loss of wetlands - approximately 187 and 148 acres of high quality wetlands, respectively. Because less environmentally damaging alternatives are available, Alternatives B and C would be considered environmentally unacceptable if either was identified as the preferred alternative. Moreover, for the purposes of

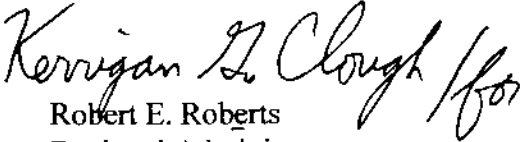
evaluating a permit under the Clean Water Act, neither of these alternatives would qualify as the least environmentally damaging practicable alternative under the section 404(b)(1) Guidelines. Consequently, EPA is not rating Alternatives B and C because the Agency does not believe they are feasible alternatives considering applicable environmental laws and regulations.

In regard to the Clean Water Act Section 404 public notice, EPA reiterates the concerns expressed above. A greater discussion of criteria used for rejecting alternatives will aid in reaching the determination of the least environmentally damaging practicable alternative, consistent with the 404(b)(1) Guidelines. In addition, documentation of the adequacy and effectiveness of the proposed mitigation is necessary before reaching a permitting decision.

In order to address the NEPA and CWA concerns outlined above, on February 9, 2005, EPA Region 8 met with the COE, the Utah Division of FHWA, and their contractor to discuss EPA's review of the DSEIS. In that meeting, our agencies agreed that FHWA and COE would provide additional information and analyses in the Final SEIS that would respond to EPA's comments on the DSEIS. A written summary of that agreement has been transmitted to FHWA and COE for their formal recognition. We envision that this agreement, once implemented, will resolve many of EPA's remaining concerns with the DSEIS and project.

Thank you for the opportunity to provide these comments. We look forward to working with both FHWA and the COE to identify environmentally sound solutions to the transportation needs of the Salt Lake community. If you have any questions, please contact Larry Svoboda at 303-312-6004 or Christine Lehnertz at 303-312-6649.

Sincerely yours,


Robert E. Roberts
Regional Administrator

Enclosure

EIS Rating System

cc: UDOT, Salt Lake Office
COE, Bountiful Office
USFWS, Salt Lake Office
EPA/OFA
EPA/OWOW

U.S. Environmental Protection Agency Rating System for Draft Environmental Impact Statements

Definitions and Follow-Up Action*

Environmental Impact of the Action

LO - - Lack of Objections: The Environmental Protection Agency (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 these impacts.

EO - - Environmental Objections: The EPA review has identified significant environmental impacts that should 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 Council on Environmental Quality (CEQ).

Adequacy of the Impact Statement

Category 1 - - Adequate: EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis of data collection 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 EPA to fully assess 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 National Environmental Policy Act 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 Federal Actions Impacting the Environment. February, 1987.