



September 15, 2009

**BY ELECTRONIC MAIL**

Ray LaHood, Secretary  
U.S. Department of Transportation  
1200 New Jersey Avenue  
Washington, DC 20590

**Re: Potential negative impacts related to Kansas Department of Transportation application for TIGER grant funds for Burlington Northern Santa Fe's proposed intermodal facility in Gardner/Edgerton, Kansas**

Dear Secretary LaHood:

I represent Hillsdale Environmental Loss Prevention, Inc. ("HELP"), an organization of citizens and property owners in the vicinity of a proposed intermodal facility ("IMF") near Gardner, Kansas and Edgerton, Kansas. I write with information regarding the application by the Kansas Department of Transportation ("KDOT") for TIGER grant funds related to plans by Burlington Northern Santa Fe Railroad ("BNSF") and real estate developer The Allen Group ("TAG") to build and operate an intermodal facility, supplemented by a large warehouse development. HELP and others have long worked to inform the public that the project would involve the destruction of wetlands, significantly increase air pollution in the Kansas City area, and have a significant negative effect on the quality of life in the area.

Of perhaps more immediate concern, the project will almost certainly not be ready to proceed in the near future. Because the proposed facility involves the destruction of wetlands, it requires a permit from the Army Corps of Engineers under Section 404 of the Clean Water Act before it can proceed. That permit has not yet been issued. Even if the Corps issues a permit to BNSF in the coming weeks, it is highly likely that HELP and others will file a lawsuit challenging the Corps' issuance of that permit and its failure to prepare an environmental impact statement, as required by the National Environmental Policy Act ("NEPA").

In July 2009, the Corps issued a draft environmental assessment, which contained a preliminary finding that the project would cause no significant environmental harm. The Corps

received comments for only a short time, but during that time, a large number of individuals, governmental agencies, and local and national organizations submitted comments. Those comments reflect widespread concern that the Corps' conclusion was erroneous and failed to consider many factors that are likely to cause significant harm to the environment.

The concerns regarding the project are substantial. For example, the draft environmental assessment underestimates air pollution emissions from the facility, overestimates reduction in emissions from technological improvements, and fails to quantify cancer risk from diesel particulate matter and other pollutants. Moreover, in addition to the destruction of wetlands, the project will cause harm to waterways through stormwater runoff and the atmospheric deposition of air contaminants. One of the bodies of water the project will place at risk is Hillsdale Lake, the sole source of drinking water for tens of thousands of persons in the area. The Corps' environmental assessment did not adequately consider these potential environmental impacts.

If the Corps heeds the public comments regarding the inadequacy of its analysis and prepares an environmental impact statement, then significant additional delays would ensue before construction of the project could begin. If the Corps finalizes its environmental assessment and finding of no significant impact, then we intend to challenge that action in court. Based on the inadequacies in the Corps' analysis and the significant public controversy it has generated, we believe the Court will require that the Corps prepare an environmental impact statement. When these issues have been raised elsewhere in similar circumstances, the courts have responded favorably, requiring additional environmental analysis before projects may proceed.

As the Department considers KDOT's application for these funds, we ask that you consider the negative impacts the project will bring in terms of livability and sustainability, as well as the likely delays that may result from efforts to force BNSF and the Corps to comply with federal environmental laws.

Sincerely,



Mark V. Dugan