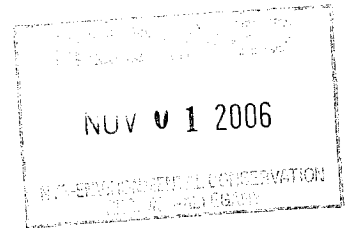




STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
REGION 5
125 MAIN STREET
BUFFALO, NY 14203
www.dot.state.ny.us



ALAN E. TAYLOR, P.E.
REGIONAL DIRECTOR

THOMAS J. MADISON, JR.
COMMISSIONER

October 31, 2006

Mr. Kenneth C. Taft
NYSDEC Region 9 Allegany Sub-Office
182 East Union – Suite 3
Allegany, NY 14706

**RE: US ROUTE 219
NY ROUTE 39 TO NY ROUTE 17
ERIE & CATTARAUGUS COUNTIES
PIN 5101.53**

**SUBJECT: RESPONSIVENESS SUMMARY
MR. GARY ABRAHAM (CONCERNED CITIZENS OF CATTARAUGUS
COUNTY - CCCC) COMMENTS REGARDING
NYS DEPARTMENT OF ENVIRONMENTAL CONSERVATION
APPLICATION ID NO. 9-9909-00099/00001**

Dear Mr. Taft:

The purpose of this **Responsiveness Summary** is to address comments received regarding the New York State Department of Transportation's (NYSDOT's) application for wetland and stream disturbances associated with the construction of "Southern Expressway Section 5". This project is the northern-most section of a larger project plan to extend the freeway south to Route I-86 near Killbuck in the Town of Salamanca. Review of the larger project plan was reviewed in accordance with Federal regulations known as the National Environmental Policy Act (NEPA) and State Regulations known as the State Environmental Quality Review Act (SEQRA). Records of Decision (ROD) on the project were issued by the Federal Highway Administration (FHWA) on September 4, 2003 and by the New York State Department of Transportation (NYSDOT) on October 23, 2003.

The NYSDOT has received three comment letters with respect to this application. This letter addresses comments expressed in Mr. Gary Abraham's letter (on behalf of the CCCC.) dated October 26, 2006. Responses to the other comment letters will be sent under separate cover.

With respect to Mr. Gary Abraham, the NYSDOT provides information below to address the comments provided. Mr. Abraham's comments are in shown in bold below, followed by our response.

Comment: Prior to approval of a Section 401 certification, the Department (*DEC*) must apply the criteria for a State Environmental Quality Review (“SEQR”), which requires the Department (*DEC*) to make findings. See 6 NYCRR § 617.11(c). The Department’s findings must “weigh and balance relevant environmental impacts with social, economic and other considerations,” 6 NYCRR § 617.11(d)(2), and ultimately must “certify that consistent with social, economic and other essential considerations from among the reasonable alternatives available, the action is one that avoids or minimizes adverse environmental impacts to the maximum extent practicable.” 6 NYCRR § 617.11(d)(5).

Response: With respect to the Final EIS and SEQR process, the NYSDOT and the NYSDEC have a long-standing Memorandum of Understanding in which “the Department of Environmental Conservation (NYSDEC) consistent with the provisions of paragraph 6 NYCRR 617.4(d) agrees to the Department of Transportation (NYSDOT) is Lead Agency for all NYSDOT capital projects requiring a SEQR review and involving DEC permit jurisdictions.” The NYSDOT, acting in its capacity as lead agency as described above, notified NYSDEC of its determination of environmental significance under 6 NYCRR 617 and NYSDOT’s agency regulations implementing SEQR by issuing a ROD for the entire US Route 219 Project on October 23, 2003.

In, addition, the NYSDOT followed Federal regulations known as the National Environmental Policy Act (NEPA) and state regulations known as the State Environmental Quality Review Act (SEQRA) to progress the entire 28-mile US Route 219 Project. These regulations establish three basic elements of the EIS process: the Draft EIS (DEIS), the Final EIS (FEIS), and the Record of Decision (ROD).

A DEIS was prepared that presented and evaluated reasonable alternatives for the entire 28-mile freeway, identified and compared impacts, both beneficial and adverse, and recommended measures to mitigate adverse impacts, where possible and prudent. The NYSDOT prepared this DEIS with and on behalf of the Federal Highway Administration (FHWA) and in coordination with appropriate local, state and federal agencies. The DEIS was distributed to public officials, interested groups, federal, state, and local agencies as appropriate in the spring of 1998. Public hearings on the DEIS were held on July 14, 15, and 16, 1998 to provide additional opportunity for public comment.

In response to comments received on the DEIS, several changes and additional studies were made relating to the proposed freeway alternative. The impact of those changes was considered minor by FHWA. However, in the interest of public disclosure, and in compliance with FHWA regulations, the NYSDOT and FHWA chose to present these changes to the public to facilitate additional public input. In addition, since three years had lapsed since the public hearings, a re-evaluation of the DEIS was conducted in addition to the additional studies. Two additional hearings were held on June 5 and June 11, 2002. The result of the re-evaluation, and subsequent response after the public hearings demonstrated that the impacts were not significantly more than disclosed in the earlier DEIS, and supported the determination that a supplemental EIS was not required.

A Record of Decision (ROD) was issued by FHWA on September 4, 2003. The ROD explained the reasons for selecting the recommended alternative (the freeway alternative) and summarized mitigation measures incorporated into the project. The Record of Decision was finalized based on information in the FEIS and the 2002 re-evaluation.

Comment: However, EPA's and FWS's earlier objections remain valid: total wetland fill for all phases of the Route 219 freeway alternative would be over 30 acres plus elimination of 37,000 feet of perennial and intermittent streams, compared to 11.6 acres and few impacts to streams for the "upgrade" alternative (June 4, 2003 EPA Comments, page 2).

Comment: The larger project's stated goal – to improve traffic conditions, address safety issues, and enhance economic opportunities – does not justify the impacts of the four-lane freeway option for Section 5 in light of the substantially lesser costs and impacts that would be expected from an upgrade from Springville to Peters Road along the existing Route 219 alignment.

Response: The Final Environmental Impact Statement (FEIS) indicates that there are less quantitative impacts to fish and wildlife habitat and wetlands under the upgrade alternative when compared to the freeway alternative. However, other environmental impacts, as well as economic and social issues, must also be considered. Furthermore, two of the project's primary objectives are to address safety deficiencies and improve traffic operations on 28 miles of U.S. Route 219. In this context, the environmental impacts noted cannot be the only factors that are considered when selecting the preferred alternative.

Safety and Traffic Operations: The following is a comparison of the Upgrade and Freeway Alternatives in relation to safety and operational issues, including system needs:

The Upgrade Alternative:

- Will improve traffic operations throughout the corridor to a lesser degree than a new freeway. However, without control of access our analysis indicates that this alternative will actually result in a greater number of accidents when compared to the existing Route 219 (Record of Decision, September 2003, page 3). By upgrading the existing Route 219 from a 2-lane rural roadway to a 4-lane rural roadway, the accident rate is projected to increase by 10% (2.19 accidents per million vehicle kilometer) compared to the null alternative (1.87 accidents per million vehicle kilometers).
- Provides no separation of slower local and thru traffic.
- Provides no separation of long distance truck traffic. Of the 263 accidents in the 15 High Accident Locations (HAL), 22 of the accidents involved trucks. Accidents involving trucks are more likely to involve severe personal injury and fatalities.
- Has a projected annual accident cost of \$23.1 Million (compared to \$20.9 Million for the Null Alternative).

The Freeway Alternative:

- Because it is a proposed divided highway, the freeway alternative will result in a decrease to the overall accident rate (on the freeway and the existing Route 219) by 33% (1.26 accidents per million vehicle kilometers) compared to the Null Alternative.
- Provides facilities for specific traffic types. Slower local traffic on local roads, high speed thru traffic on the freeway. This separation of traffic will result in a reduction in High Accident Locations (HAL's) throughout the corridor.
- Has a projected annual accident cost of \$14.1 Million (This cost includes both the freeway and old Route 219 accidents).

System Needs: An improved Route 219 freeway would bridge the existing gap between the end of the existing expressway at NY Route 39 and I-86 Southern Tier Expressway (formerly Route 17).

Another important factor that led to selecting the Freeway Alternative was balancing social, economic and environmental consequences. "In comparison of the two alternatives, the Upgrade Alternative impacts a more developed, man-made environment proximate to the existing roadway alignment. The Freeway Alternative impacts more forest, wetland and other undeveloped or open land, i.e. natural environment" (Federal Highway Administration Record of Decision, 2003).

Social Consequences: The Freeway Alternative is generally located to avoid the communities that are established along the valley floors. While numerous residences and commercial businesses would be impacted by both alternatives, the Upgrade Alternative would bisect many of the communities that have developed over time along existing Route 219. Input from interested agencies, public and local elected officials, and the community was carefully considered in choosing the freeway location and in doing so, a larger number of potential social impacts were avoided.

Economic Consequences: The issue of goods movement is a major concern in the Northeast. The Continental 1-US 219 Corridor Assessment (PENN DOT) and New York's new Statewide Master Plan (**Transportation Strategies for a New Age: New York's Transportation Plan for 2030**) identifies this corridor as a priority. The Freeway Alternative will close the existing gap that limits the north-south movement of goods in this corridor. There is no known local support for an upgrade alternative. The Cattaraugus County Government stated that "The long term, underlying need behind selecting the Freeway Alternative is to increase the number and quality jobs and businesses in Cattaraugus County, and to reduce the historically chronic poverty and dependence of local residents on transfer payments."

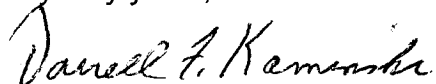
Environmental Consequences: In addition to considering the natural environmental such as wetlands and streams, DOT also considered the social and physical aspects of the human environment such as air quality, noise pollution, energy, agricultural lands, cultural resources, public recreation areas, and hazardous waste as described in the FEIS. Based on our understanding of the significant issues in the project area, FHWA/NYDOT believes that other significant environmental impacts resulting from the construction of the Upgrade Alternative are more damaging than the impacts from the Freeway Alternative. Comparison of the alternatives is full described in the Chapter 3 of the FEIS.

Comment: However, the Section 5 proposal offers little or nothing to allay such (social and economic) concerns. Indeed, the segmentation of review from the larger project hinders the ability of the public to comment on the actual impacts of the project.

Response: Again, the review of the US Route 219 Project was not segmented. Social and economic concerns for the entire 28-mile US Route 219 project were addressed during the SEQR/NEPA process, as previously described. The public had ample opportunity to comment on such issues during that process, and the NYSDOT has responded to all comments received.

We appreciate Mr. Abraham's (and the CCCC's) concern over NYSDOT's compliance with State statutes, regulations and criteria with respect to this application. We believe that the NYSDOT has adequately addressed all substantive comments raised in their letter. We do not believe these concerns constitute substantive or significant issues in the context of Section 621.8.

Very truly yours,



Darrell F. Kaminski
Regional Design Engineer, R-5

DFK/SLD/pam

cc: Daniel D'Angelo, Acting Director, Office of Design, POD #23
Mary E. Ivey, Director, Environmental Analysis Bureau, POD #41
Tom Perreault, Office of Legal Affairs, 6th Floor – 50 Wolf Road
Gary V. Gottlieb, Program Development & Mgmt., R-5
Frank H. Billittier, Asst. Regional Design Engineer, R-5
Shelah LaDuc, Western Environmental Zone Manager
Chris Gatchell, District Engineer, Federal Highway Administration
John Burns, Senior Operation Engineer, Federal Highway Administration
Lesta Ammons, US Army Corps of Engineers
Daniel Montella, Environmental Protection Agency
Grace Musumeci, Environmental Protection Agency
Tim Sullivan, US Fish & Wildlife Service
Steven J. Doleski, Regional Permit Administrator, NYSDEC