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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB 28 2006

Lt. Colonel Timothy B. Touchette
District Engineer, Buffalo District
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207

Dear Colonel Touchette:

The U.S. Environmental Protection Agency (EPA) has reviewed Public Notice number 2002-01814(0) concerning an application by the New York State Department of Transportation (NYSDOT) to discharge fill material into wetlands and other waters for the construction of the U.S. Route 219 freeway near the Town of Springville, Erie and Cattaraugus Counties, New York. This letter is in further regard to our 404(q) "3(a) letter" dated January 12, 2006.

The applicant proposes to build a three-mile long, four-lane road between the southern terminus of the existing four-lane U.S. Route 219 Expressway and Peters Road. Construction of this road segment will require filling 12.2 acres of federally regulated wetlands, including 7.3 acres forested wetland, 2.6 acres emergent wetland, and 2.3 acres scrub-shrub/emergent wetland. In addition, about 7,190 linear feet of perennial and intermittent streams will be permanently lost due to culverts and fill. In contrast, expansion of three miles of the existing Route 219 from two lanes to four lanes would require less than one acre of wetland fill and fewer stream impacts.

If the new freeway is constructed, about seven acres of forested wetland will be lost in the vicinity of the proposed Peters Road interchange. These wetlands drain to Cattaraugus Creek (Lake Erie basin). Portions of two large wetlands will be filled at Peters Road. Wetland 0211001 is a depressional palustrine forest associated with Nigh Creek, and is likely dominated by red maple, elm, and willow. Wetland 0211002 is a seep-fed slope palustrine forest, typically dominated by hemlock, green ash, and birch. According to the 2003 EIS, project area forested wetlands provide, depending upon hydrogeomorphic setting, wildlife habitat, flood control, groundwater discharge/recharge, and sediment stabilization (Appendix K). It appears that proposed wetland impacts in this particular area were not sufficiently avoided and minimized. We recommend that NYSDOT make an additional effort to relocate or redesign the freeway and interchange to reduce wetland fill in the Peters Road area.

The present application addresses just one of eight Route 219 freeway segments which are planned to extend 28 miles south from Springville (Erie County) to Salamanca (Cattaraugus County). The wetland fill required to build the entire freeway, according to the EIS, will be about 32 acres, including 12.5 acres of forested wetland. An upgrade of the existing two-lane Route 219 to four lanes, including two or three bypasses, would result in less than 12 acres (3.3 acres forested) of wetland fill. EPA's 2003 review of the EIS found that both the new freeway and the upgrade alternative are practicable and feasible, and both would fulfill the project purpose ("improve Route 219 to make travel along the route more efficient"). The upgrade alternative, however, is clearly less damaging to wetlands and streams, and therefore the new freeway is not the least environmentally damaging alternative. Further, NYSDOT did not adequately evaluate freeway-induced development and secondary wetland impacts within the Route 219 corridor (see enclosure).

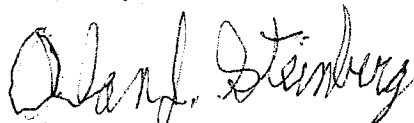
To mitigate for wetland impacts associated with the entire freeway, the applicant proposes to create and restore a 42-acre wetland complex in Hinman Valley, in Ellicottville, Cattaraugus County. The mitigation community types will be: shrub/forested (5.0 acres), wet meadow/shrub (18.1 acres), and emergent/open water (18.5 acres). Given that the present application includes the loss of 7.3 acres of forested wetland, and the entire freeway would impact about 12 acres of forested wetland, the mitigation plan is insufficient with regard to creation of this wetland type. As mitigation for stream impacts associated with the current permit application, the applicant proposes to relocate, reconstruct, and enhance about 4,530 linear feet of streams, allowing a net loss of about 2,660 linear feet.

In summary, EPA currently believes that the proposed discharge of fill material into 12.2 acres of wetlands in the Cattaraugus Creek watershed will have a substantial and unacceptable impact on aquatic resources of national importance. In addition, the applicant has not yet demonstrated compliance with the Clean Water Act Section 404(b)(1) guidelines through avoidance and minimization of adverse impacts to the greatest possible extent. Further, the proposed wetland and stream mitigation does not fully compensate for planned impacts. We therefore recommend the denial of a Corps permit for this project per part IV 3(b) of the 1992 Section 404(q) MOA.

When NYSDOT submits the additional project-related information which was discussed during a recent video teleconference, EPA will certainly reconsider its position regarding the permit application. We look forward to constructive discussions with the Corps and NYSDOT concerning the Route 219 project, as we work towards a resolution of our outstanding issues and concerns.

If you have any questions regarding this matter, please contact me at (212) 637-5000, or have your staff contact Mr. Walter Andrews, Chief of the Water Programs Branch, at (212) 637-3880.

Sincerely,

A handwritten signature in black ink that reads "Alan J. Steinberg". The signature is written in a cursive style with a large, stylized initial "A".

Alan J. Steinberg
Regional Administrator

Enclosure

cc: USFWS, Cortland, NY

ATTACHMENT
U.S. Route 219, Public Notice No. 2002-01814(0)

1. Phase 1 of the freeway has two interchanges: Route 39 and the Peters Road Extension (the entire freeway project has seven interchanges). Peters Road is a minor secondary connector between Route 219 and Henrietta Road, and it does not presently extend to the proposed freeway area. Perhaps this interchange can be relocated 1 km south (County Highway 12), or it might be redesigned to reduce wetland fill.
2. The stated project purpose is to “improve Route 219 to make travel along the route more efficient”. The predicted 2025 Level of Service (LOS) of the upgrade is A/B, while the LOS of the freeway would be A and the unimproved Route 219 would be C/E. Therefore, the improvement in LOS for the existing Route 219 under the freeway alternative would be marginal (D/E in 1996 vs C/E in 2025). Also, the substandard (and unsafe) roadway geometry of Route 219 will remain unchanged if the freeway is built.
3. Forecasted (2025) annual accident rates are: no build - 356, upgrade - 395, and freeway - 240. These are rough estimates based upon statewide averages for various road types (e.g., 2-lane highway, 4-lane divided highway, limited access highway). The margin of error associated with these predicted rates is not provided, and the authors of the EIS acknowledge that several planned safety measures could not be included in the analysis of the upgrade alternative (page 3-48). Therefore, the accident rate for the upgrade alternative is overestimated by an unknown percentage. Since the upgrade forecast is based upon a state average, it would be useful to know what percentage of four-lane divided highways in New York State possess substandard geometry and intersections.
4. Freeway-induced growth will result in indirect or secondary impacts. Most freeway-related establishments (gas stations, restaurants, lodging) tend to occur within 0.5 mile of interchanges. In the Route 219 EIS, wetlands were considered undevelopable, and were omitted from the analysis of secondary impacts within 0.5 mile of seven interchanges. Several of these areas (Peters Road, Route 242, Great Valley, Salamanca, I-86) contain large wetlands which may be threatened by induced growth. In addition, it is reasonable to presume that various types of commercial or residential development may occur within one or two miles of each interchange (e.g., retail, warehouse, office space).
5. Wetlands are relatively scarce in the Cattaraugus Creek watershed. The watershed covers about 550 square miles, and consists of 52% forest, 43% agriculture, 1% urban, and 1% wetland. With regard to water quality standards, the creek is considered an EPA Category 2 water, which indicates that some, but not all, of the designated uses are supported. The Category 2 rating suggests that some watershed management actions may be needed to sustain the creek’s good water quality. Note that Zoar Valley, a regionally important nature reserve and recreational area, is several miles downstream of the Route 219 project area.