

JUL 12 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 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 County, New York. This letter is in further regard to our 404(q) "3b" letter dated February 28, 2006.

The applicant proposes to build a three-mile long, four-lane road between the existing four-lane U.S. Route 219 Expressway and Peters Road. According to the Public Notice, 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. Project area wetlands drain to Cattaraugus Creek, a tributary of Lake Erie.

The present application addresses just one of eight Route 219 freeway segments which are planned to extend 28 miles from Springville southwards to Salamanca (Cattaraugus County). The wetland fill required by the entire freeway, according to the 2003 Final EIS, will be about 32 acres. In contrast, an "upgrade" of the existing two-lane Route 219 to four lanes, including two or three bypasses, would require less than 12 acres of wetland fill.

EPA's previous letter focused upon the alternatives analysis and wetland fill minimization. Subsequent to the issuance of our February 28 letter, we have met with NYSDOT twice (April 12 and May 22-23) and we have received additional project information from the applicant. In an effort to justify the freeway alternative, NYSDOT has clarified issues regarding safety, accident rates, traffic flow (Level of Service), traffic reduction and segregation, and the potential social impacts of the upgrade alternative (community cohesion, acquisition of homes and businesses, farmland operations). In regard to freeway-related wetland impacts, EPA's concerns were centered upon the planned Peters Road interchange, because 7.1 acres of forested wetlands would be filled within and just south of this interchange.

To address this issue, NYSDOT provided information to explain the need for an interchange at Peters Road. Factors include safety (nearby high accident locations), traffic patterns (proximity to West Valley Demonstration Project, Ashford Business Park, a golf course, a concrete plant, a plant nursery), and topographical constraints at other potential interchange locations (steep hills and valleys at Schwartz Road, Edies Road, and 200 meters north of Peters Road). NYSDOT also redesigned the interchange to reduce wetland fill. The forested wetland fill has been reduced from 7.1 acres to 6.0 acres, and emergent wetland fill decreased about 0.4 acre. As a result, the total wetland fill associated with the first phase of the freeway has declined from 12.2 acres to 10.8 acres.

Based upon our review of supplemental project information submitted by NYSDOT, dated May 3 and June 12, 2006, EPA withdraws its previous objection to issuance of a Section 404 permit for the first segment of the Route 219 freeway. We would appreciate an opportunity to review the Hinman Valley mitigation proposal when detailed plans are submitted to your office by the applicant.

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,

**Signed by Alan J. Steinberg**

Alan J. Steinberg  
Regional Administrator

cc: USFWS, Cortland, NY