



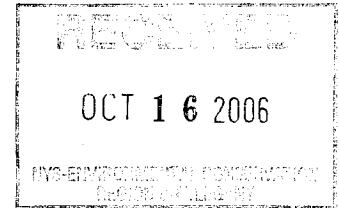
United States Department of the Interior



FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045

October 6, 2006



Lt. Colonel John S. Hurley
District Engineer, Buffalo District
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, NY 14207-3199

Attention: Lesta Ammons

Dear Colonel Hurley:

The U.S. Fish and Wildlife Service (Service) has reviewed the September 22, 2006, submittal of information from the New York State Department of Transportation (NYSDOT) in support of a U.S. Army Corps of Engineers (Corps) permit for the proposed U.S. Route 219 project, Application Number 2002-01814 (0). The NYSDOT proposes to place fill material into waters of the United States in order to construct a new 3-mile segment of 4-lane controlled access highway between the Town of Springville and Peters Road in Erie and Cattaraugus Counties, New York. The stated purpose is to improve U.S. Route 219 to make travel more efficient.

The proposed 3-mile segment (Section 5) is part of a larger 28-mile project to connect Interstate 86 at Salamanca with the existing 4-lane U.S. Route 219 near Springville. The NYSDOT indicates that a new 4-lane highway between Salamanca and Springville will close a gap between the existing 4 lane highways, provide a safer and more efficient link between Interstate 86 and Buffalo, and separate local and through traffic which currently share the 2-lane U.S. Route 219. We note that these comments only pertain to Section 5 of the project. The Service looks forward to working with the Corps and NYSDOT in the review of subsequent sections of the project.

Over the last 7 months, the applicant has met numerous times with the Service as well as representatives of the Corps, New York State Department of Environmental Conservation, U.S. Environmental Protection Agency, and the Federal Highway Administration to more clearly define the project need, purpose, and scope. In addition, several important documents have been provided and updated with the latest project information. Collectively, this information has given the Service a better understanding of the project and its potential impacts on resources in the project area. Importantly, several safety deficiencies and traffic issues on existing U.S. Route 219 were highlighted and clarified to support the need for the new road in this area.

Discussions among all parties have led to project design changes which substantially reduced impacts to natural resources. For example, with input from the agencies, the applicant worked diligently to reduce wetland impacts at the proposed Peters Road Interchange where more than

1 acre of aquatic habitat was avoided. Wetland impacts for Section 5 have been reduced from approximately 12.2 acres to 10.8 acres. The applicant also reviewed other portions of the highway design and incorporated measures which may benefit wildlife, such as wildlife passage structures. We appreciate the efforts of the applicant and commend them for their work.

As mitigation for wetland impacts, the NYSDOT proposes to create a 41.8-acre mixture of open water, emergent, shrub, and forested wetland on a site in Hinman Valley near Ellicottville. Impoundments, created with low berms, are proposed on the former agricultural site. Plantings and seeding will stabilize soils and eventually provide habitat. Because this site will have a forested wetland component, which will take quite a while to develop, we recommend the Corps require at least 10 years of site monitoring to ensure planting success. We note that two plant species selected for planting within the wetland mitigation area at Peters Road are not native, white fir (*Abies concolor*) and Norway spruce (*Picea abies*), and recommend that they be removed from the plant list.

There are a few outstanding issues that we have discussed with the applicant on October 5, 2006, and anticipate additional information is forthcoming. For example, the applicant requested mitigation credit for the creation of three channels within the wetland mitigation site at Peters Road Interchange. These channels may provide a means of conveying water through this site but will not effectively function as stream habitat; therefore, we recommend that no credit be given.

Credit is also requested for the preservation of 2.3 acres of wetland within excess right-of-way adjacent to the Peters Road Interchange. While we support efforts to preserve wetlands, the wetlands within the right of way were avoided (as required by regulations) during the project design process and should not be counted for preservation credit. We have been informed that the NYSDOT did purchase the Hinman Valley wetland mitigation site to prevent commercial development of that 119 acre parcel. Approximately half of the site contains wetlands, some of which were under development pressure. In this case, credit for preservation may be appropriate. However, at this time, it is not clear how much credit will be granted. We recommend the NYSDOT identify how much acreage was under reasonable development pressure and provide this information to the Corps.

During a field visit to the project site, we expressed concern about ditches and culverts maintaining hydrology to streams and wetlands down slope of the highway. We recommend the Corps require, as a special condition of the permit, the monitoring of these areas after construction to assess changes in hydrology. The information can be collected and reported as part of the wetland mitigation monitoring effort. In addition, all mitigation areas should be protected with a conservation easement.

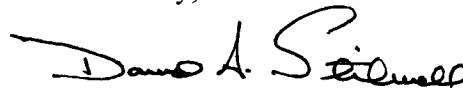
Mitigation for stream impacts involves channel rehabilitation along 2,000 feet of McKinstry Creek. We recommend that monitoring of the McKinstry Creek stream mitigation project include at least three bankfull events. In addition, structures installed to control erosion and provide habitat should be checked after each 25 year storm event. To gauge the success of the stream mitigation project, biological monitoring of new channels as well as reference reaches should be conducted. In some areas, there are bank erosion problems and the NYSDOT should work with landowners along the stream to prevent degradation from all-terrain vehicles. With regard to invasive species removal, the NYSDOT should identify where this will occur and the maximum percentage of aerial coverage which would trigger additional removal efforts. We

recommend that no more than 5 percent of invasive species be allowed to become established within any mitigation area.

The Service removes our objection to the issuance of a permit for Section 5 of this project, contingent upon an agreement being reached on wetland mitigation credits. The applicant has provided information which clarifies the project purpose and need, has reduced wetland impacts where practicable and provided a mitigation plan. We recommend appropriate monitoring, as mentioned above, be incorporated into the Corps permit as a special condition. For subsequent sections of this project, we recommend that the applicant revisit the environmental analysis of the highway design and attempt to avoid and minimize aquatic habitat impacts to the greatest degree practicable. Our staff looks forward to working with the applicant in developing a project which conserves wildlife resources while providing an improved transportation facility.

Thank you for the opportunity to review and comment on this project. If there are questions regarding this letter, please contact Timothy Sullivan at 607-753-9334.

Sincerely,

A handwritten signature in black ink that reads "David A. Stilwell". The signature is written in a cursive style with a large, sweeping initial "D".

David A. Stilwell
Field Supervisor

cc: Congressman Kuhl's office, Bath, NY (P. Tomasano)
NYSDEC, Buffalo, NY (Env. Permits)
NYSDEC, Allegany, NY (Env. Permits)
USEPA, Chief, Water Programs Division, New York, NY