



United States Department of the Interior

FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045



February 28, 2006

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

Attention: I.esta Ammons

Dear Colonel Touchette:

The U.S. Fish and Wildlife Service (Service) has reviewed the U.S. Army Corps of Engineers (Corps) Public Notice Application Number 2002-01814 (0). The applicant, New York State Department of Transportation (NYSDOT), proposes to place fill material into waters of the United States in order to construct a new 3-mile segment of a 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.

This is the report submitted by the Service and the Department of the Interior pursuant to, and in accordance with, provisions of the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 et seq.) and the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.). The Service previously provided comments to the applicant in letters dated January 10, 1996, July 24, 1998, July 11, 2002, and May 22, 2003. We note that information regarding Federally-listed species within the project area was collected approximately 3 years ago and may not reflect current conditions. We suggest that the Corps confirm that they have the most recent data on listed species in the project area prior to making a determination of effects under the Endangered Species Act.

The proposed 3-mile segment considered in this Public Notice 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. The existing Route 219 will remain in place with few improvements.

The new highway will be built in eight sections, with Sections 5 and 6 the subject of this permit application. Wetland impacts will total 31.2 acres for the entire 28-mile project with approximately 12.2 acres of wetland being destroyed for Sections 5 and 6 under this permit application. This would include the loss of 7.3 acres of forested, 2.3 acres of scrub-shrub emergent, and 2.6 acres of emergent wetland habitat. An upgrade to the entire existing

U.S. Route 219 would require the loss of only 11.6 acres of wetland. In our July 24, 1998, letter to the Federal Highway Administration, we recommended that the Upgrade Alternative be selected due to less impacts to fish and wildlife habitat in general and wetlands in particular.

In addition, the Public Notice text indicates that construction of Sections 5 and 6 will result in the permanent impact to approximately 7,190 linear feet of stream habitat including 222 linear feet of ephemeral, 3,378 linear feet of intermittent, and 3,590 linear feet of perennial stream channel. Approximately 4,675 linear feet of riparian habitat along Cattaraugus Creek will be disturbed to install a temporary access road for bridge construction. However, the table on Sheet 4 of 69 indicates that 6,271 linear feet of stream habitat will be lost. The applicant should clarify this discrepancy.

While the applicant has prepared a Final Environmental Impact Statement (FEIS) Report discussing the proposed action, the review of important environmental resources was limited. For example, the FEIS lists key environmental constraints as agricultural districts, residential and recreation areas, State mapped wetlands and forests, and contiguous tracts of forest. It appears that planning efforts to avoid and minimize wetland impacts were done at a gross scale and did not include site specific measures early in the project development phase. The NYSDOT alternative selection process does not seem to factor in all stream and wetland impacts. The primary rationale for selecting the preferred alternative, according to NYSDOT, is that more historic [Section 4(f)] properties will be affected by the upgrade option; however, the upgrade alternative has fewer impacts to other resources such as streams, wetlands, farmland, and terrestrial habitat, and costs much less than a roadway on new alignment.

We have twice questioned in previous correspondence, whether all wetland impacts have been identified in this report. Of particular concern were the effects of highway construction on wetlands remaining down slope of the road, and the disruption and loss of hydrology to these wet areas. Wetlands left within the median and interchange areas may have been considered unaffected by the project but will be functionally impacted. It is still not clear if the applicant has fully considered these potential indirect impacts. We recommend a more thorough discussion of these potential impacts be provided to the Corps.

In a response to similar concerns posed by the Environmental Protection Agency (EPA), a letter from the Federal Highway Administration dated September 9, 2003, stated that wetland issues were addressed under EPA's Clean Water Act Section 404b(1) guidelines. However, the Record of Decision (ROD) for this project states that wetlands less than one-third of an acre in size were not considered in terms of avoidance and minimization measures. The ROD also mentions that wetland and stream impacts will be addressed in the Section 404 permitting process with the Corps. It is not clear at what point this issue will be addressed.

It appears to us that the Section 404b(1) Guidelines were not completely implemented for this project. A review of the project design indicates that the Peters Road Interchange will impact a forested wetland and perennial stream. We saw no information from the applicant that indicates other interchange locations were considered to avoid these impacts. For a large project such as this, an alternatives analysis report should be prepared which examines each wetland and stream impact and describes all measures which were considered to avoid and/or minimize each loss. Such a report would facilitate project review and assure compliance with Section 404 requirements. As previously stated, we do not have specific information regarding project plans

or alternatives considered by the applicant to lessen aquatic impacts such as using retaining walls, steepening slopes, or narrowing the footprint of the highway. We would recommend that this information be supplied to the Corps before a permit decision is issued.

Transportation corridors can influence fish and wildlife movements and serve as barriers to some species. We did not find much discussion in the FEIS regarding this issue, with the exception of some discussion on the black bear (*Ursus americanus*) and white-tailed deer (*Odocoileus virginianus*). Many species of small mammals, reptiles, amphibians, and fish could be restricted by the new highway. The FEIS acknowledges that substantial impacts to large tracts of forest could sever and isolate habitat on both sides of the proposed road. Little discussion specifically addressed wildlife movements. While it is mentioned in the report that providing enlarged culverts and bridges would mitigate the problem, no commitment to do so was provided. Effective wildlife passage structures will facilitate movements and reduce road kills. It is unclear if the highway design addressed this issue. We recommend a more thorough discussion be provided by NYSDOT, which identifies all measures which were taken to facilitate safe wildlife passage for this project. Included in this discussion should be information on techniques such as culvert placement, streambed disturbance, and restoration, as it would relate to fish passage. This information is needed to more fully understand impacts and identify potential mitigation measures.

While we are not convinced that the applicant has conducted a complete alternatives analysis or incorporated all avoidance and minimization measures into the project design, we are providing comments on the applicant's mitigation concept for the Corps' review. 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. Six 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.

A total of 35 stream crossings are proposed for this portion of the project with approximately 128 total stream crossings proposed overall. As we have recommended previously, the NYSDOT should provide adequate compensatory mitigation for these impacts. We again recommend that NYSDOT use the Charleston Corps District Standard Operating Procedure method to quantify project impacts and determine the appropriate level of mitigation. A stream mitigation plan is found in the Public Notice which includes project plan sheets and typical sections of proposed stream enhancement projects. While the plan sheets provided in the Public Notice show approximate locations of relocated channels, there is no information to show if the new channels will match the pattern and profile of the existing stream. Erosion, over widening, loss of habitat quality, and water quality degradation are potential impacts to streams if the new channels are not constructed properly. We request that the applicant provide the rationale behind the stream designs. As we have recommended before, a fluvial geomorphologic method of stream design should be incorporated into new channel proposals.

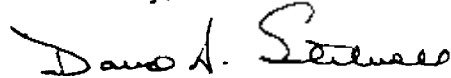
We understand that riverine systems are dynamic and subject to substantial change over time. Accordingly, we would suggest that the applicant monitor the site following construction to ensure that erosion does not occur within, upstream, or downstream of the project area. If erosion does occur, we suggest the Corps, as a permit condition, require the applicant to take

corrective measures to avoid further impacts. Monitoring of the site during at least three bankfull events should be incorporated into the permit as a special condition. In addition, biological monitoring of new channels as well as reference reaches should be conducted to gauge the success of the stream mitigation.

The Service objects to the issuance of a permit for this project, as proposed. Many of our previous concerns were not directly addressed by NYSDOT. We have previously recommended that the upgrade alternative be selected, as we view it as the least environmentally damaging alternative. While the NYSDOT has explained the selection process, it does not seem to factor in all stream and wetland impacts. The impacts to wetlands associated with the selected alternative may be higher if indirect impacts, such as disruption and loss of hydrology and isolation within roads, were not adequately considered. It also appears that the applicant did not comply with EPA's Section 404b(1) Guidelines to avoid and minimize wetland impacts to the greatest extent practicable. The ROD states that this process was not followed for wetlands less than 0.33 acre in size and that this issue would be addressed later. If this process was followed, NYSDOT should more clearly explain what avoidance and minimization measures were implemented at each impact location. A revised analysis is warranted, and this information should be provided to the Corps for review. Further information is needed on wildlife passage, including aquatic species. To adequately assess stream impacts, we recommend that the applicant use the methodology developed by the Corps' Charleston District. After all impacts have been assessed and avoidance and minimization measures implemented, appropriate mitigation measures should be identified. If stream relocation is necessary, the proposed channel design should match the plan, profile, and pattern of the existing stream. Rigorous monitoring of stream and wetland mitigation areas should be required.

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,



David A. Stilwell
Field Supervisor

cc: NYSDEC, Allegany and Buffalo, NY (Env. Permits)
USEPA, Chief, Water Programs Division, New York, NY

TRSullivan; Biologist File
Project, BR & Weekly Files
ES:NYFO:TRSullivan:trs:mlp