

State Environmental Quality Review

FINDINGS STATEMENT

Pursuant to Article 8 (State Environmental Quality Review Act - SEQRA) of the Environmental Conservation Law and 6 NYCRR Part 617, the New York State Department of Environmental Conservation, makes the following findings.

Name of Action: U.S. Route 219 (Southern Expressway)
Springville to Salamanca

Description of Action: This action is the construction of a four-lane controlled access freeway on a new alignment between the southern terminus of the existing four-lane U.S. Route 219 at New York State Route 39 east of the Village of Springville, to Interstate Route 86 south of the Allegheny River and the hamlet of Killbuck. Three alternatives, the Null Alternative (maintaining status-quo), an Upgrade Alternative (upgrades to the existing Route 219) and the selected Freeway Alternative, were evaluated in the Environmental Impact Statement (EIS). Additional alternatives were evaluated in the preliminary planning process which is summarized in the Draft EIS. The Draft and Final Environmental Impact Statements were prepared by New York State Department of Transportation (DOT) in collaboration with the Federal Highway Administration (the Lead Agencies), in accordance with the requirements for the National Environmental Policy Act (NEPA) and SEQRA.

This Findings Statement is based on the Draft and Final Environmental Impact Statements (DEIS and FEIS respectively) for the entire 28-mile Route 219 Project (the action) and upon DOT's application for this Department's jurisdictional approvals listed below, required for construction of the northernmost section of the Freeway - Section 5, the Hinman Valley consolidated wetland mitigation site and the McKinstry Creek consolidated stream mitigation area. The freeway is being designed and constructed in phases or sections, beginning with Section 5. Phased design and construction is normal for such large highway construction projects. Avoidance, minimization and mitigation for affected natural resources for freeway segments to be designed and constructed in the future, will be dependent on the progression of design. Therefore, supplemental Findings will be prepared by the Department after receipt of permit applications for construction of additional freeway sections where the Department has approval authority (the Department does not have approval authority for the southern-most section because it is on the lands of the Seneca Nation of Indians).

Records of Decision, required by NEPA and also satisfying the requirement for the Lead Agency's (DOT) SEQRA Statement of Findings, were filed by the Federal Highway Administration on September 4, 2003 and by DOT on October 23, 2003.

Location: The proposed location is from the end of the existing Route 219 Expressway at its intersection with NYS Route 39 in the Town of Concord, Erie County south through the Towns of Ashford, Ellicottville, Great Valley and Salamanca, in Cattaraugus County, to intersect with Route I-86 south of Killbuck in Salamanca.

Section 5 is the northern-most section and will extend from the south end of the existing 219 freeway at New York State Route 39, east of the Village of Springville in the Town of Concord, Erie County, to west of the existing two-lane Route 219 at the Peters Road intersection in the Town of Ashford, Cattaraugus County.

Department of Environmental Conservation Discretionary Jurisdictions:

- Article 24, Freshwater Wetlands, of the Environmental Conservation Law
- 6NYCRR Part 608 (Water Quality Certification) pursuant to U.S. Clean Waters Act

Date Final EIS Filed: January 31, 2003

Facts and Conclusions in the EIS Relied Upon to Support the Decision:

1. **General.** The Draft and Final EIS provide a thorough search and identification of resources that will be affected by the project. Adverse impacts of the preferred Freeway Alternative on natural resources will be greater than the adverse impacts of the Upgrade Alternative. Adverse impacts of the Upgrade Alternative on cultural resources, including 4(f) eligible resources (in this case historic and prehistoric cultural resources) would be greater than the adverse impacts of the Freeway Alternative. Considering the feasible mitigation measures proposed in the FEIS for the Freeway Alternative, when compared against the Null Alternative the social and economic benefits of the freeway on balance outweigh its adverse impacts on the natural and cultural environment. However, the social and economic benefits of the Upgrade Alternative do not outweigh the impacts on natural and cultural resources, especially 4(f) eligible properties.
2. **Streams.** The majority of the streams that will be impacted are ephemeral or intermittent. The FEIS provides that direct and indirect impacts to streams will be avoided and minimized through design and construction of the expressway. The abutments for the bridges over the Cattaraugus Creek gorge will be located well back from the gorge. The impacts on the Cattaraugus Creek gorge and creek will be temporary construction related impacts. Restoration after construction will adequately mitigate such impacts. The project's impacts on Great Valley Creek have been minimized to the extent practicable and remaining impacts will be adequately mitigated.

The design, including mitigation measures, proposed for Section 5, avoid and minimize adverse impacts to water courses and drainage patterns to the extent practicable. The mitigation proposed in the Section 5 design will compensate for unavoidable impacts. In their letter of October 6, 2006 the U.S. Fish and Wildlife Service (F&WS) by David A. Stilwell, Field Supervisor, to Lt Colonel John S. Hurley, District Engineer, Buffalo District U.S. Army Corps of Engineers (COE), accepts that project design changes substantially reduce impacts to natural resources and avoid, minimize and provide compensatory mitigation for stream and wetland impacts. Said letter withdraws F&WS previous objection to issuance of Section 404 Clean Waters Act Permits by the COE, for Freeway Section 5. This Department concurs that design avoidance, minimization and mitigation is adequate.

3. **Wetlands.** Although the expressway will not have a direct impact on any freshwater wetlands regulated by this Department pursuant to Article 24 of the Environmental Conservation Law, it will impact the 100 foot wide adjacent areas of two State regulated wetlands and will directly impact up to 77 smaller wetlands presumed to be regulated by

the COE pursuant to Section 404 of the U.S. Clean Waters Act. However, many of these wetlands are small isolated wetlands less than 2 acres in size, that provide very limited wetland resource values. The FEIS provides a commitment to avoid and minimize to the extent possible, adverse impacts to all wetlands within and adjacent to the purchased right-of-way through design and construction, and to provide adequate compensatory mitigation for wetland impacts that cannot be avoided. Although compensatory mitigation measures are not fully detailed, the FEIS does provide that mitigation will include a combination of wetland creation, wetland improvement and wetland preservation. Two sites are identified for providing most of this compensatory mitigation, at the Hinman Valley Wetland (State Regulated Wetland No. EL-1) in the Town of Ellicottville and in the floodplain of Great Valley Creek in the Town of Great Valley.

Pertinent to the pending permit application for Section 5, impacts (primarily loss of acreage) on Federally regulated wetlands have been reduced from 12.2 acres to 10.8 acres through design changes that occurred subsequent to receipt of the permit application. As noted in item # 2, the U.S. Fish and Wildlife Service, has withdrawn its previous objection to issuance of Section 404 Clean Waters Act Permits by the COE, for Freeway Section 5 based on project design changes that substantially reduce impacts to natural resource and acceptably avoid, minimize and provide compensatory mitigation for unavoidable stream and wetland impacts. This Department concurs that design avoidance, minimization and mitigation is adequate.

4. **Historic Preservation.** The FEIS includes evaluation of impacts on historic and prehistoric cultural resources required by the National Historic Preservation Act and Section 4(f) of the Federal Transportation Act and concludes that “all possible planning to minimize harm to Section 4(f) properties” has been performed and that mitigation of unavoidable impacts to these properties will be satisfactory. A determination, by this Department, of cultural resource impacts is not required when the National Historic Preservation Act preempts the State Historic Preservation Act, as is the case here. Based on the review by NYS DOT and the NYA Office of Parks, Recreation and Historic Preservation, this Department accepts the information and conclusions in the FEIS that the Freeway Alternative will have less impact on cultural resources, including 4(f) properties, than the Upgrade Alternative and that cultural resources avoidance has been maximized to the extent practicable.
5. **Floodplains and Drainage Patterns.** Mitigation will be provided to fully compensate for impacts to floodplains so that there will be no increase in the 100-year flood elevation upstream and downstream of affected floodplains. The freeway design will minimize changes to drainage areas, including seeps and other near-surface groundwater that provide baseline flows to creeks and wetlands.
6. **Surface Water Quality.** According to the FEIS, surface water quality will be adequately protected during construction by compliance with the requirements of the NYS General SPDES Permit No. GP-02-01 for stormwater discharges from construction activities.

Since this is a ministerial approval based on compliance with technical standards in the general permit, it is not listed with the Department's discretionary approvals above. The FEIS provides for mitigation of potential long term water quality impacts with such measures as providing for retention and detention of highway runoff.

7. **Ground Water.** The project will not have a significant adverse impact on any of the aquifers that occur along the route. The FEIS identifies these water resources and provides an analysis of potential impacts. EPA determined that the project will not create contamination that would be a public health hazard. The FEIS includes an analysis of impacts from deicing salt. It also addresses impacts on bedrock cuts that may intersect ground water contained in bedrock fractures and the potential for impacting private water supply wells that are nearby.
8. **Air Quality.** The FEIS contains an analysis of air quality impacts and concludes that the project will not interfere with the affected area's progress toward achieving the air quality goals in the State's Implementation Plan (SIP).
9. **Other Natural Resources.** The project does not have any significant adverse impacts on the habitats of any listed endangered or threatened species and unique habitats that had been identified in the FEIS. All of the habitat types that will be impacted are well distributed throughout the project area. However, the FEIS provides that mitigation will occur if species of concern are encountered within the purchased right-of-way. The FEIS also adequately addresses forest fragmentation and concludes that the selected freeway minimizes fragmentation to the extent practicable on balance with avoidance of other sensitive resources (i.e. 4(f) properties, prime farmland, floodplains, wetlands and etc.).

After completion of the FEIS, the rare Cobblestone Tiger Beetle, *Cicindela marginipennis*, was found during NYS Natural Heritage Program surveys on gravel bars in Cattaraugus Creek. The status of this species in New York State is being studied; but to date, it has only been found on bars along Cattaraugus Creek and along the Genesee River. One gravel bar that is potential habitat for this Tiger Beetle is located in the Cattaraugus Creek gorge where access to the construction site for the freeway bridges is proposed. DOT will insure that the contractor's access route avoids this gravel bar.

Also after completion of the FEIS, the Hellbender Salamander, *Cryptobranchus alleganiensis alleganiensis*, was determined to be a special concern species. Hellbenders are found in the Allegheny River and in Great Valley Creek where habitat depends on erosion of large slabs of shale into the streams. Future design of the freeway sections along Great Valley Creek will insure that the highway does not cause depletion of Hellbender habitat.

10. **Existing Contaminated Sites.** State records and ground reconnaissance were used to identify 6 sites of contamination that may require further investigation. Removal of contaminated soil or other mitigation will be performed, if indicated by the results of these investigations. These site remediation investigations will be performed in conjunction with detailed design work for the affected freeway sections.

11. **Alternatives Analysis.** The FEIS adequately compares the impacts of three alternatives, the Null Alternative (no action alternative), the Upgrade Alternative and the Freeway Alternative. Previous to preparation of the DEIS, a rigorous assessment of 29 potential routes for the Upgrade and Freeway Alternatives, and of other potential alternatives was performed. A summary of this assessment is included in the DEIS.

CERTIFICATION OF FINDINGS TO APPROVE, FUND OR UNDERTAKE

Name of Action: U.S. Route 219 Springville to Salamanca
DEC Facility ID: 9-9909-00099
Town of Concord, Erie County and
Towns of Ashford, Ellicottville and Great Valley, Cattaraugus County

Having considered the Draft and Final EIS, and having considered the preceding written facts and conclusions relied upon to meet the requirements of 6NYCRR Part 617 and this Statement of Findings, it is certified that:

1. The requirements of 6 NYCRR Part 617 have been met;
2. Consistent with the social, economic and other essential considerations from among the reasonable alternatives thereto, although the action to be approved is not the alternative with the least adverse environmental impacts, it is one which minimizes or avoids adverse environmental effects to the maximum extent practicable, including the effects disclosed in the environmental impact statement, and
3. Consistent with social, economic and other essential considerations, to the maximum extent practicable, adverse environmental effects revealed in the environmental impact statement process will be minimized or avoided by incorporating as conditions to the decision those mitigative measures which were identified as practicable.
4. (And if applicable) Consistent with the applicable policies of Article 42 of the Executive Law, as implemented by 19 NYCRR 600.5, this action will achieve a balance between the protection of the environment and the need to accommodate social and economic considerations.

Name of Agency: New York State Department of Environmental Conservation

Kenneth C. Taft
Name of Responsible Official


Signature of Responsible Official

Deputy Regional Permit Administrator
Title of Responsible Official

11/13/06
Date

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