RECORD OF DECISION
U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION
U.S. ROUTE 219: SPRINGVILLE TO SALAMANCA
ERIE & CATTARAUGUS COUNTIES, NEW YORK
FHWA-NY-EIS-98-02F

This Record of Decision (ROD) considers the proposal to improve safety and traffic operations along the US Route 219 transportation corridor between Route 39 in the Village of Springville, Erie County and Route 17 / I-86 in the City of Salamanca, Cattaraugus County, New York. US Route 219 is a two-lane fully accessible rural highway having sub-standard geometric design features (shoulder width, grades, horizontal curvature and stopping sight distance) that contribute to accidents along the 45-kilometer (28 mile) study length. Due to expected increases in traffic volumes, minor congestion currently experienced on the majority of segments will deteriorate to a low level-of-service.

Decision

The freeway alternative is selected by the NYSDOT and adopted with stipulations by FHWA. This alternative, along with others considered in the Final EIS / Final Section 4(f) Evaluation, is fully described in Chapter Three of the document. The Federal Highway Administration approved the Final EIS/4(f) Evaluation on March 25, 2003 and published it's availability for review in the April 25, 2003 Federal Register.

The freeway alternative is designed to provide a safe and operationally efficient facility on new alignment while minimizing adverse social, economic and environmental impacts to the extent practicable. As summarized below and described in more detail in the Final EIS, the proposed project incorporates numerous measures to mitigate unavoidable adverse effects. A four-lane freeway would be constructed for the entire 45-kilometer length. Safety would be optimized and travel time substantially reduced. The level-of-service and safety will also improve on the existing route since traffic will divert to the new highway alignment.

Stipulations

While this decision is made without the clear and unconditional approval of the Seneca Nation of Indians to construct this project across their lands, the New York State Department of

Transportation (NYSDOT), as outlined in their attached March 18, 2003 letter to the Federal Highway Administration – New York Division, is committed to working cooperatively with the Nation to resolve all concerns.

The FHWA will not authorize construction of any part of the Route 219 project until clear approval is received from the Seneca Nation of Indians or, in the absence of such agreement, NYSDOT completes and documents in accord with NEPA appropriate studies (that address all costs and benefits) to support a partial-build alternative.

Pending resolution of the above issue, NYSDOT will limit land acquisitions to only those from landowners that voluntarily agree to transfer ownership to the state and/or those approved by FHWA as "protective buying", as defined in 23CFR 771.117(d).

Furthermore, comments by the U.S. EPA identify concerns that must be resolved in the Section 404 permit process. Therefore, pending approval of construction permits by the U.S. Army Corps of Engineers and in keeping with standard federal-aid program procedures, NYSDOT will limit project activities to preliminary engineering, (and land acquisitions consistent with the stipulation above). EPA's other comments have been carefully considered. They are reflected in this document and in addressed in more detail in a separate letter, attached.

The above stipulations will be modified, as appropriate and reasonable, upon progress toward agreement with the Seneca Nation and/or issuance of permits.

Alternatives Considered

Alternatives considered in the project environmental process for this project include: the null / no-build, upgrade, and freeway alternatives. A full description of each alternative is contained in Chapter Three – Sections B & C of the Final EIS / Final Section 4(f) Evaluation.

Null Alternative

The null alternative is the retention of the existing two-lane highway and continuation of normal maintenance activities. These activities include pavement patching, pavement overlays, bridge repairs, guide rail repair, cleaning of culverts and ditches and like minor work. This alternative does not address the congestion and safety problems associated with the corridor.

Upgrade Alternative

This alternative would widen the two-lane highway to four-lanes plus a narrow flush median and full-width shoulders. Turn lanes would be provided at selected intersections. Since widening the existing alignment would severely impact the Village of Ellicottville and City of Salamanca, the alternative bypasses most of these developed areas. A bypass option is also available for the Hamlet of Ashford Hollow. The upgrade alternative will improve traffic operations throughout the highway corridor to a lesser degree than a new freeway, but without control of access may actually result in a greater number of accidents. Based upon statewide experience, and consistent with national experience, a four lane rural highway without access control would have an accident rate about two to four times that of a fully access-control highway such as the proposed freeway. Traffic operations on a freeway are superior to those on a highway with intersections at-grade and numerous driveways because stops and starts are virtually eliminated and the delays for traffic entering and leaving the primary lanes are greatly reduced.

Freeway Alternative

The freeway alternative will provide a four-lane, divided highway on new alignment that will maximize safety and traffic operations. A great deal of traffic will divert off existing 219 onto the freeway thereby greatly mitigating hazards on existing 219. Traffic remaining on existing 219 will be faced with fewer potential conflicts, thereby improving safety for local traffic as well. The proposed alignment was selected following extensive coordination with many interested agencies, the public and local elected officials. The minimization of harm to key environmental features was a primary consideration, systematically pursued. In consideration of the qualitative nature of weighing and balancing the multiple environmental impacts of the alternatives, particularly views expressed by the impacted communities through state and local governmental agency input, and in recognition of the numerous incorporated plans to mitigate adverse environmental impact, I consider the freeway to be the environmentally preferred alternative.

Important Factors in the Decision

Please refer to Final EIS / Final Section 4(f) Evaluation Chapter Five for the evaluation and comparison of alternatives. Both the upgrade and freeway alternatives address project objectives to varying degrees. However, the freeway alternative was selected for the following reasons:

Transportation: The freeway alternative is best at relieving future congestion and assuring safe travel. Estimated travel time between Springville and Salamanca is eleven minutes less with a freeway than with an upgrade to the existing highway. A freeway connecting to existing freeways provides continuity to the state and regional transportation system that cannot be achieved with the upgrade, which would leave a gap. As mentioned above and more specifically estimated in the FEIS, the probability of accidents and their associated costs on a freeway would be about one-half or less than with the upgrade. More important, a freeway is the only alternative that can be relied upon to preserve the safety and capacity improvements sought for regional traffic. That is because only the freeway can control access and access control is necessary to preserve the safety and capacity benefits achieved by highway improvement at the scale of this proposal. The safety and capacity goals this project seeks to achieve flow directly from state and national transportation policy established in Title 23 and related federal legislation.

Public Support: Section 145 of Title 23 US Code establishes a national policy whereby federal officials are to defer to the state on the selection of projects. I am required to assure that the state develops federal-aid projects using standards that will assure safety and that are best suited to meet the needs of the locality, as stated in section 109 of Title 23. The process used to prepare the FEIS for this proposal included extensive, far-ranging opportunity for public review, comment, and analysis of the alternatives. There is unanimous support from local governments to improve Route 219. As the record shows, every local government in the project area endorsed the freeway alternative and opposed the upgrade alternative. I have considered the support of the freeway alternative by local government, as well as the state, consistent with the above provisions of Title 23. Endorsing the freeway alternative is consistent with state and national transportation objectives and the proposed improvements were examined in light of their potential impacts upon the human environment.

Economics: The freeway alternative requires far more building materials, labor and equipment for construction, compared to the upgrade alternative. Despite the increased construction cost, when highway user costs and benefits are considered the freeway offers much greater benefit. The increased construction requirements for a freeway will translate into more economic activity, as documented in the FEIS. On a broad economic scale, the FEIS plainly indicates how the specific economic effects of roadway improvement are more difficult to forecast. However that is

true of most long-range economic projections. I believe that most attempts to forecast long-term economic conditions, let alone the influence of any single activity on overall economic activity are fraught with uncertainty. State and local officials anticipate that a new freeway will maximize the potential for economic growth both locally and regionally. I recognize this viewpoint as one of paramount concern to state and local officials and one widely accepted.

Environment: In comparison of the two build alternatives, the upgrade alternative impacts a more developed, man-made environment proximate to the existing roadway alignment. The freeway alternative impacts more forest, wetland and other undeveloped or open land, i.e., natural environment. A key issue is to consider the weights assigned to the various factors involved, including public comment and related input to the process. Whereas the effects to the natural environment are heavily weighed, I have also considered the social and physical aspects of the human environment such as air quality, noise pollution, farmlands, cultural resources, public recreation areas, hazardous wastes, community disruption, as described in the FEIS. Either alternative must comply with every regulatory requirement established to protect public health and/or natural resources.

Secondary and cumulative effects have been considered. Pages 4-195 to 4-215 in Volume One of the FEIS evaluate the potential for such effects and forecast possible development scenarios. The FEIS reflects the fact that it is impossible to specify the future development or the related environmental consequences with precision. However, as indicated in the FEIS all such development would be subject to local governmental control, and to the control of other state and federal authorities to the extent that environmental resources are subject to their authority and may be impacted. The anticipated pressure for development would not be unusual or on a large scale. It would be consistent with the overall aims of the state and involved localities. The environmental effects of anticipated benefits to the regional economy are entirely speculative.

I see a notable superiority in the quality of transportation a freeway will contribute to the human environment, compared to the upgrade alternative. I also find a difference between the alternatives based upon the Section 4(f) Evaluation in Chapter 7. I note that section 4(f) is a key public policy that requires special efforts be made to protect historic sites, public parkland, recreation areas and wildlife refuges.

Publicly owned parks, recreation areas and wildlife refuges have been successfully avoided by the systematic process used to define and develop the two build alternatives. Through extensive coordination between FHWA, NYSDOT, the State Historic Preservation Officer, The Advisory Council on Historic Preservation, The Seneca Nation of Indians, and by seeking the views of others through the Section 106/NEPA/Section 4(f) process, the use of land from sites eligible for the National Register of Historic Places has been thoroughly evaluated. The freeway alternative uses land from fewer historic sites than would the upgrade alternative. There is no feasible and prudent alternative to the use of contributing lands from 12 Register-eligible properties with a freeway or 15 with the upgrade alternative. The freeway alternative incorporates all possible planning to minimize harm resulting from the use of historic sites in accordance with the terms of a fully approved Section 106 Programmatic Memorandum of Agreement, included in the document.

Measures to Minimize Harm

Measures necessary to mitigate unavoidable adverse impacts have been incorporated into the project to minimize environmental harm. Such measures are more fully described in Chapter Four of the Final EIS / Final Section 4(f) Evaluation. Also, there are many "best practice" requirements included in the State's standard construction contract specifications, standard plans / notes, and contract provisions that are for the purpose of avoiding, minimizing and mitigating adverse environmental impacts. These are incorporated in normal construction contracts per New York State highway department procedures.

Relocations: Owners of the sixty-three homes and one business to be relocated would be compensated fair market value. Decent, safe and sanitary replacement housing would be assured to displaced households. Moving costs would also be reimbursable to owners and tenants in accordance with applicable Federal and State statutes and regulations.

Noise: Noise impacts have been evaluated in accordance with FHWA noise standards and NYSDOT Statewide Noise Policy. Mitigation has been determined to be reasonable and feasible at two locations. Subject to community acceptance, noise barriers are proposed to mitigate impacts at six residences near Ellicott Street in the City of Salamanca and at twenty-four residences at / near the mobile home park in the Hamlet of Great Valley.

Aquatic Resources: The alternative will bridge (cross) four State designated trout streams and require the re-alignment of a portion of a fifth. Erosion control measures (re-seeding, silt-fencing and straw bales) are proposed to reduce sedimentation during construction and riprap and re-vegetation to minimize future sedimentation at the four streams to be crossed. For the re-aligned stream, gravel / cobble substrate, flow deflectors, in-stream snags and boulders and bio-engineered stream banks are proposed to re-establish riparian vegetation. The final and specific means to address these impacts will be resolved in the process of obtaining the various construction permits and in consultation with the resource agencies that participate in that process.

Wetlands: 13.00 hectares may be impacted by the Freeway Alternative and will be mitigated by the creation and / or restoration of wetlands of various types (primarily palustrine forested, scrub-shrub and emergent) at three separate locations, subject to Army Corps of Engineers and NYS Department of Environmental Conservation wetland permits requirements. There would be 9.4 hectares created at the existing Plum Brook North wetland. 3.6 hectares would be restored and 10.8 hectares created at the existing Hinman Valley wetland. And 4.1 hectares would be created along Great Valley Creek as part of the stream re-alignment discussed above under Aquatic Resources.

Surface Water: There will be an increase of copper concentrations in drainage areas, which could cause levels exceeding the USEPA acute criteria for sustaining aquatic wildlife. Grassed swales and ditches will be incorporated into the design to filter / settle out the copper particles and thereby mitigate this impact.

Floodplains: The freeway will impact the floodplain for Great Valley Creek by infringing on both the floodway and floodplain boundary. Mitigation has been incorporated into the design to address impacts associated with creek relocation / re-establishment and fish and wildlife habitat, flood storage and wetlands.

Cultural Resources: A Programmatic Agreement has been executed that provides the basis by which cultural resource impacts will be evaluated, avoided, minimized and mitigated. The

numerous details are included on pages 4-127 to 4-140 of the FEIS / Final Section 4(f) Evaluation.

Hazardous Waste / Asbestos: Six sites have the potential for containing hazardous and / or contaminated waste within the existing Route 219 corridor. Also, bridges and buildings, which will be demolished, may have asbestos containing materials. During project design, further evaluation will be conducted at the affected locations. All materials will be classified and disposed of in accordance with established requirements. In this regard, the project will have a positive effect on the human environment.

Aesthetics (Visual): Sensitive viewpoints are located in areas where bridges, interchanges and major cut & fill slopes are proposed. These impacts will primarily be mitigated by the landscaping plan, which will include indigenous plant types. Other potential mitigation to reduce the contrast will be the use of earth tones to the extent possible in the structural elements (e.g. colored / textured concrete wingwalls, retaining walls & abutments and weathering steel girders).

Monitoring / Enforcement Program

This project will be subject to further review and approvals by Federal and State agencies. Coordination will be required with the US Army Corps of Engineers for a Section 404 permit for dredging / depositing materials into waters / wetlands of the United States. Also, the NYS Department of Environmental Conservation must be consulted further on issuance of a Section 401 water quality certificate, a State Pollution Discharge Elimination System (SPDES) permit and a Freshwater Wetlands permit. For work in streams and archeological studies on Seneca Nation of Indian (SNI) lands, coordination must be undertaken and environmental permits obtained from the SNI. Also, further coordination will be necessary between the Federal Highway Administration, State Historic Preservation Officer and Seneca Nation of Indians on the satisfaction of the Section 106 “Programmatic Agreement”.

Comments on the FEIS / Final Section 4(f) Evaluation

The following agencies and individuals commented on the documents: U.S. Department of the Interior (DOI), U.S. Environmental Protection Agency (EPA), New York State Department of

Environmental Conservation (DEC), Erie County Department of Environment & Planning, Mr. William Norton, and Ms. Nancy Norton.

Comments from the EPA, DOI and DEC identify concerns about impacts to the ecology, including uplands, wetlands and other waters and offer suggestions and recommendations to refine, update and mitigate anticipated impacts. Impacts to waters of the United States will be addressed and resolved in the section 404 permit application and review process. EPA also comments about the analysis of indirect/cumulative benefits and impacts, as does Erie County. These comments have been carefully reviewed and I believe the FEIS adequately evaluates the issues pertinent to this decision. These concerns will be further considered by the NYSDOT to the extent required and as otherwise determined to be appropriate as detail design proceeds.

Erie County seeks signs related to bypassed businesses. These comments have also been considered and I believe the FEIS adequately evaluates the pertinent issues. NYSDOT personnel will give this further consideration in detail design.

DEC comments on forestry planning and industry and state requirements for water supplies, that the NYSDOT will further consider as they determine to be appropriate.

William Norton and Nancy Norton have commented extensively on the process and procedures used at numerous steps in preparing the proposed action, with a preponderance of comments criticizing the FHWA and NYSDOT application of laws and regulations implementing the National Environmental Policy Act, the requirements known as Section 4(f), and the Section 106 guidelines for the National Historic Preservation Act. The Norton's each offer numerous comments about the anticipated impacts of the proposed action, including critiques of the methods and adequacy of the studies undertaken to identify impacts. These comments on the FEIS follow their very extensive and generally similar comments on the Draft EIS (DEIS) and on the Environmental Assessment/Reevaluation (EA/R) (see pages T-40, T-321, T-697, T-724, T-726, and T-730 of FEIS Volume 6, Appendix T for comments on the DEIS and pages 169, 202 and 373 of FEIS Volume 7, Attachment VIII-1 for comments on the EA/R), including oral comments at three public hearings on the project, and in other comments in the administrative

record considered to be offered as consulting parties in the Section 106 process. All their comments have been considered before entering this decision.

9-4-03

Date

Robert Arnold, Division Administrator
Federal Highway Administration
New York Division Office