

March 27, 2012

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4 Burnett Boulevard
Poughkeepsie, New York 12603

Re: DEIS Comments – Tappan Zee Hudson River Crossing Project

Herein are the Village of South Nyack's comments on the Draft Environmental Impact Statement for Tappan Zee Hudson River Crossing Project (PIN 8TZ1.00) dated January 18, 2012.

Project Sponsor Identification

Although the Lead Agencies for environmental review are identified, nowhere in the DEIS is there an explicit identification of the Project Sponsor as per SEQRA 617.2(ad). Since the Tappan Zee Bridge and the land areas constituting the I287 right-of-way within the defined project area are titled to the New York State Thruway Authority, we assume the Thruway Authority is the Project Sponsor. Please confirm.

Scoping Comments

The DEIS is presented as being in conformance with the Scoping Summary Report published January 2012. That report states that it “provides responses to all relevant comments.”

DEIS Section 3-2-1 states:

“A Scoping Summary Report, which summarized the comments received and provided responses as appropriate, was prepared and made available on the project website and at project repositories.”

The Village of South Nyack delivered written comments on the scoping to you on November 15, 2011. These comments are neither identified nor addressed in the Scoping Summary Report. The DEIS must be considered to be incomplete until such comments are addressed and any relevant updates to the DEIS pursuant to the comments are included.

SAFETEA-LU Coordination

The definition of Cooperating agency stated in Section 3-3-1 fails to identify that:

“A State or local agency of similar qualifications ... may by agreement with the lead agency become a cooperating agency.”

On October 26, 2011, the Village of South Nyack received an invitation from Mr. Anderson to be a Cooperating Agency. The Village Trustees accepted the invitation on November 8, 2011.

On November 10, 2011, the Village of South Nyack received a letter from Mr. Anderson inviting the Village to be a Participating Agency instead of a Cooperating Agency. The Village responded on November 16, 2011 that it had already accepted the invitation to be a Cooperating Agency and intended to proceed as such.

The project team has not included South Nyack in any of the subsequent cooperating agency meetings or communications. As such, South Nyack was excluded from and is not a signatory to the Cooperating Agencies' Agreement/Memorandum of Agreement.

Since the project lies partially within its borders, South Nyack is and should be considered to be a Cooperating Agency due to its jurisdiction over land use within its borders and due to its unique perspective on environmental, historic, and aesthetic impacts within its borders.

Section 3-3-1 also states:

“Discussions to date [with cooperating agencies] have included purpose and need, range of alternatives, methodology, impacts assessment, and mitigation measures.”

There have been no substantive discussions with South Nyack with regard to alternatives to the replacement of the South Broadway overpass, impact on Village historic resources, and the takings of South Nyack private and public properties.

The environmental review must not be deemed complete until the Village of South Nyack is given its due full opportunity.

Section 106 Coordination

Section 3-2-4 states:

“FHWA, NYSDOT, and NYSTA extended invitations to ... local planning agencies ... to participate as Section 106 Consulting Parties.”

The Village of South Nyack never received such an invitation. This is a critical omission,

since the project directly affects the Village's historic and historic eligible resources. This must be corrected. The Village must be added as a Consulting Party and be afforded appropriate opportunities to review and comment on Section 106 documents and findings.

Applicability of Local Zoning

Sections 5-4-4 and 5-5-2-4 state:

“However, since the replacement of the Tappan Zee Bridge and any associated improvements as part of a federal highway is exempt from local zoning, a detailed analysis of each jurisdiction's zoning regulations is not required.”

“The replacement of the Tappan Zee Bridge and any associated improvements as part of a federal highway is exempt from local zoning. Therefore, the project is not required to comply with any local Zoning Codes.”

These statements are unsubstantiated. This project involves land, waterways, and structures located solely within New York State. The Tappan Zee Bridge and Interstate 87/287 are owned and operated by the New York State Thruway Authority, which is the project sponsor.

Section 3-2-3 states that the project is subject to New York State regulation:

“Implementation and construction of the Tappan Zee Hudson River Crossing Project is subject to a number of state and federal permits and approvals in addition to NEPA and SEQRA.”

If this were in fact a Federal project, Federal supremacy would exempt it from SEQRA and these other state regulations. But it is not a “Federal project”; it is a “federally aided highway project.” The New York State Thruway charter does not exempt its actions from local zoning. Unless New York State or Federal law specifically exempts this project, elements may be subject to local zoning or other local regulations.

Critical Environmental Areas

There is no mention in the DEIS that the Village of South Nyack lies within designated Critical Environmental Areas pursuant to the provisions of 6 NYCRR 617.14(g). These provisions require:

“Following designation, the potential impact of any Type I or Unlisted Action on the environmental characteristics of the CEA is a relevant area of environmental concern and must be evaluated in the determination of significance prepared pursuant to Section 617.7 of this Part.”

The DEIS must evaluate the project impacts with respect to the CEA characteristics

defined in the Village of South Nyack Zoning Local Law.

Section 4(f) review

The “least overall harm” is determined by balancing in part:

“The views of the official(s) with jurisdiction over each Section 4(f) property”

The Village of South Nyack was excluded from participation in the Section 4(f) review process. As the local agency wherein the affected properties are located, it is the Village that has the most relevant perspectives on the significance of impacts and the reasonableness of alternatives and mitigations. The conclusions reached cannot be considered reasonable with the exclusion of the Village’s formal input.

Section 7-5-2, in reference to the small pocket park on South Broadway, states:

“...since this green space is not mapped as parkland and is not considered a resource of national, state, or local significance, Section 4(f) does not apply to this property.”

Thus this parcel is not reviewed in Chapter 23.

The statement is inaccurate. The pocket park (66.77-1-38) is indeed mapped as parkland and is thus subject to 4(f) analysis. The deed (1042-29 recorded April 17, 1980) explicitly states, “... convey said parcel to the Village of South Nyack for a river view pocket park.”

The pocket park should be reviewed under Section 4(f).

Regional Land Use Plans and Policies

Section 5-4-2-1 summarizes the Regional Land Use Plans and Policies of the New York Metropolitan Transportation Council (NYMTC). On February 23, 2012, NYMTC amended the 2010-2035 Regional Transportation Plan to include studying South Nyack’s proposal for an economic and recreational development in the area of Exit 10. This is the proposal mentioned in Section 5-4-3-3. This project is intended to interface with the new bridge, particularly the shared-use path. The DEIS should be updated to note that planning South Nyack’s development is now part of the RTP.

Impact Mitigation vs. Maximizing the Public Investment

The DEIS is inconsistent in its criteria for evaluating significance of effects and sufficiency of mitigations. In places it relies on a “least overall harm” criteria, arguing that the replacement bridge will leave conditions no worse than existing conditions, and

thus avoids mitigation. In other places it highlights purported benefits, such as the shared use path, to support its goal to “maximize the public investment.” But it conveniently chooses which criteria to rely upon, depending on the issue being addressed.

It is clear that elements of the project are designed to not only mitigate the impacts of the project itself, but to add additional benefits besides simply accommodating vehicular traffic. As such, it falls short in exploration of benefits and impacts of reasonably foreseeable related projects.

Reasonably Foreseeable Indirect Effects

The DEIS excludes analysis of certain indirect effects as not being “reasonably foreseeable.” Appendix A of the Scoping Summary Report states, “FHWA defines reasonably foreseeable as being part of the fiscally constrained portion of the Metropolitan Planning Organization’s long range plan.” There is no evidence presented to support this definition as a matter of FHWA policy, nor is it supported by case law or various FHWA guidance documents that define the term more broadly. (For example, see <http://environment.fhwa.dot.gov/projdev/qaimpact.asp>). This definition is overly restrictive and does not take into account projects that may be outside the scope of the MPO, such as local development plans. Excluding projects from consideration merely because they are currently unfunded is unacceptable.

Section 21-2 claims there will be no indirect effects. This fails to consider that the replacement bridge is specifically designed to accommodate future mass transit. This is an obvious indirect effect, as it is “likely to stimulate complementary development.”

Earlier drafts of the plans showed accommodation for BRT and CRT. The BRT was proposed to travel in a busway through South Nyack. The CRT was proposed to enter a tunnel just west of River Road. The current plans no longer show these features. The DEIS should demonstrate that the current plans for the Rockland landing would accommodate these features without additional negative impacts to South Nyack. The exclusion of this analysis constitutes a prohibited segmentation.

The South Nyack “cap” project initiative is another “reasonably foreseeable” project. The initiative was specifically proposed to be a complementary development to the bridge replacement project, especially in interfacing with the shared-use path. The NYMTC Regional Transportation Plan includes a feasibility study for the initiative. The exclusion of this analysis constitutes a prohibited segmentation.

These projects’ relationships to the bridge replacement project should be explored in depth.

Rockland Landing Alternatives

The proposed project is deficient in its exploration of alternatives and effects on the local Rockland communities. The project's two replacement bridge alternatives have identical components in the Rockland landing, with both the short span and long span options proposing the identical plan for replacement of the South Broadway overpass and the terminus of the shared-use path.

When placed in the context of the much larger TZB replacement project, the overpass is treated as a trivial detail. But if we were to imagine a proposal to replace the overpass completely independent of the TZB project, such a project would most assuredly require its DEIS to fully explore all practical alternatives. It is specifically the overpass replacement and shared-use path terminus that portends to have the greatest impacts on the local community.

Also, the DEIS consistently promotes the shared-use path as a benefit, but neglects to explore its potential down-sides, such as parking, impact on emergency services, and other necessary supporting infrastructure and services which may burden the local community.

Section 6-6-1-1 states:

“Efforts to avoid property acquisitions were included in the design of the Replacement Bridge Alternative to the maximum extent practicable.”

This statement is unsubstantiated. Alternatives to the proposed overpass design are given minimal mention in the DEIS. Prior to the publication of the DEIS there were no substantive discussions with South Nyack with regard to alternatives to the replacement of the South Broadway overpass, impact on Village historic resources, and the takings of South Nyack private and public properties.

In choosing the overpass realignment presented, the project sponsors have made assumptions as to the relative importance of costs and benefits without the involvement of local officials. It is these local officials who can best evaluate potential impacts and trade-offs in the selection of the alternative best suited to the needs of the local community.

It is well known that the Village of South Nyack is promoting an initiative to leverage the TZB replacement project with a coordinated plan to create an economic and recreational development including a “cap” or deck over I287 in the vicinity of Exit 10, directly adjacent to the project limits. The initiative's primary goal is to bring economic sustainability to the Hudson River Villages Region. This initiative has the support of the public and regional elected representatives. It is specially recommended in the Rockland County Comprehensive Plan. A feasibility study for the initiative has now been amended to the NYMTC Regional Transportation Plan. Smart planning would have the TZB project consider how alternatives to the South Broadway overpass configuration and the shared-use path would best integrate into this proposed future local development project.

The project sponsors have spurned overtures from South Nyack and other regional

officials to seriously study such integration issues and opportunities, instead retreating to a minimalist position that the project does not “preclude” future projects. This is disingenuous and violates the spirit of the NYS Smart Growth Public Infrastructure Act’s requirements to “promote sustainability by strengthening existing communities,” as well as the project’s own stated goal to “maximize the public investment.”

The EIS must not be finalized until there has been sufficient study of all reasonable alternatives to the South Broadway overpass realignment and the shared-use path terminus, with active involvement of local officials in the decision making process. This study must include coordinated planning with South Nyack’s reasonably foreseeable project to promote sustainability of the local community.

Overpass Design

The redesign of the South Broadway overpass should take into consideration the guidelines of the Federal Safe Routes to School (SRTS) Program.

The redesign of the overpass should consider incorporating pedestrian and bicycle “friendly” elements. Here is an example of designs employed by the State of Washington:



Shared-use Path

Section 4-5-2-4 states:

“In Rockland County, the shared-use path would connect to the Esposito Trail via the South Broadway Bridge in South Nyack.”
(Note: The statement is repeated in section S-4-2-4.)

This statement is inaccurate. The shared-use path terminates at South Broadway near the intersection of Cornelison Avenue. The Esposito Trail traverses I287 via the Route 9W overpass, approximately 500 feet northwest of the path terminus. There is no proximate

access to the trail from the path terminus. The nearest connections to the Esposito Trail are where it crosses South Broadway approximately ¼ mile to the south or at the intersection of Clinton and Franklin, about a ½ mile away.

Section 4-5-2-4 states:

“The shared-use path would increase the public’s access to trail systems and bicycle routes on both sides of the Hudson River and would substantially enhance mobility of cyclists and pedestrians.”

(Note: The statement is repeated in Table S-1.)

No evidence is presented to support this assertion. No studies have been conducted of existing bicycle and pedestrian traffic patterns and volumes, nor any projections of changes with the addition of new path.

Section 7-5-2 states:

“The ... shared-use path would be a benefit to parklands and recreational resources.”

(Note: The statement is repeated in Table S-1.)

Adverse impacts of the addition of the shared-use path have not been studied. The addition of the path would likely add demands on parking, as people drive to South Nyack to then walk or bike across the bridge, as well as adding demands on public safety services (police, ambulance).

Section 5-5-3, “Community Facilities and Services,” claims only benefits from the bridge replacement. It fails to explore increased demands on local emergency services, particularly due to the new shared-use path.

Visual Impacts

Section 9-5-2-1 states:

“The new South Broadway Bridge would be visible from the edge of Elizabeth Place Park and the residential properties on the ridge south of Interstate 87/ 287, e.g., on Hillside Avenue and Shadyside Avenue, but would not be expected to have a higher visibility as the new bridge would be constructed at the same elevation.”

and:

“The new South Broadway Bridge would not be any more visible than the existing bridge in views east from this trail. The new South Broadway Bridge would not obstruct views of the limited distant Hudson River vista...”

These statements are inaccurate. They neglect to consider that the replacement overpass is proposed to not have a center support column and instead have a large overhead truss

structure, which will make it much more visually prominent. The roadway will also be substantially higher in order to accommodate its greater span and conform with Federal guidelines. (The truss structure is not mentioned in the DEIS, but project team members have communicated this design feature to South Nyack officials.)

Visual simulations should be provided for viewpoints from Salisbury Apartments and from each of the affected properties on Ferris and Bight Lanes.

Diminished Properties Value

Several properties on Ferris Lane and Bight Lane that currently enjoy views of the Hudson River above and across the Thruway will have their views blocked by the new roadway and possibly a new sound barrier.

Section 9-6 concludes:

“Measures to avoid, minimize, rectify, or reduce the impact as well as compensate for the impact, have not been identified. Therefore, selection of either design option would result in unavoidable adverse impacts on visual resources.”

The blocking of the river views will most likely substantially reduce their market value. This should be evaluated. The property owners may be entitled to compensation for diminished value. If there is no legal entitlement, just compensation should be considered nevertheless. Also, any reduction in value would reduce the local property tax revenues a commensurate amount. This should be included in the fiscal impacts analysis.

Noise

As stated, FHWA noise analysis procedures require “coordination with local officials.” There have been no substantive discussions with the Village of South Nyack with respect to noise analysis, abatement, or mitigation.

Noise monitoring locations appear to be inadequate. The chosen Rockland “Prediction Receptor Locations” are limited to sites perpendicular to the Thruway and East of the Project Limit. Since noise radiates in all directions, it will not stop at the Project Limits. Additional receptor sites should include the hillside neighborhood uphill of the Thruway, along Hillside Avenue (Route 9W), Shadyside Avenue, etc. The Salisbury Apartments site should also be chosen receptor, as the new bridge and approach will be significantly closer to this residential use and the population affected is quite large.

Section 18-3-9-3, which discusses construction noise and vibration impacts, is wholly inadequate. It fails to:

- identify receptors most susceptible to construction noise and vibration impacts
- identify specific sources of construction noise

- quantify projected impacts to receptors
- quantify the effects of mitigations

The Salisbury Apartments will be one of the sites most impacted by construction noise. Piles will be driven just off the shoreline of Salisbury Point. There is no indication in the DEIS as to the expected noise levels or their duration. Pile driving is also not a continuous noise source; rather it is rhythmic pounding. Human perception of this type of noise should be discussed.

Impacts of noise reflection should be studied for receptors in the neighborhood uphill of the Thruway, along Hillside Avenue (Route 9W), Shadyside Avenue, etc. When the existing sound barriers were installed on the North side of the Thruway, uphill residents reported substantial increases in noise level. It is presumed that highway noise is reflected off of the barriers to the sites uphill. Abatement and mitigation measures should be explored to consider minimizing noise reflection to uphill sites. Measures might include sound absorbing surfacing of the barriers.

Section 12-6-6 states:

“FHWA regulations allow funds to be spent to improve the noise insulation of public use and nonprofit institutional buildings. However, there are no impacted institutional facilities in the corridor.”

The Village of South Nyack Village Hall is an impacted institutional facility.

“Capping” of the highway should be considered as a noise abatement mechanism.

Air Quality

“Capping” of the highway and capturing and scrubbing vehicle emissions should be considered as an air pollution abatement mechanism.

Community Character

Section 5-5-2-1 states:

“...the project would be expected to preserve and enhance the quality of life and character of the communities and neighborhoods in the study area”

There is no credible evidence presented that the character of the Village of South Nyack will be “enhanced”.

Chapter 5 overstates the benefits of the replacement and claims no adverse impacts. The benefits to South Nyack are speculative and minimal at best. The service improvements on the bridge will have an insignificant effect on overall mobility and any improvements

bring no measurable benefit to South Nyack.

Section 23-3 states:

“...the viewshed is not considered a character defining feature.”

The Village of South Nyack considers the viewshed to be a defining characteristic of the Village. The project area is located within a designated Critical Environmental Area, which states in part:

“This area includes unusual proximity to the Hudson River and the protection, preservation and enhancement of the important aesthetic and scenic qualities associated with such proximity is a primary goal.”

Section 5-6 concludes:

“Since the Replacement Bridge Alternative would not result in any adverse impacts on community character, no mitigation measures are required.”

Possible negative impacts from the addition of the shared-use path, such as increased demand for parking have not been evaluated.

Local Fiscal Impacts

Section 6-5-2-1 states:

“The relatively small aggregate loss of property taxes is not considered an adverse impact of the project; therefore, no mitigation has been identified.”

Section 6-6-2 concludes:

“...reduction in property tax revenues ... would be less than 1 percent of current total tax levies for all the affected jurisdictions. Therefore, there would not be any adverse impact and no mitigation is required.”

The Village disputes the conclusions that this is not an adverse impact and that mitigation is not required. The analysis fails to account that the loss of revenue will be in perpetuity and this loss will cause a net increase in taxes to the remaining South Nyack taxpayers.

Assuming:

- Inflation rate (discount rate) of 2% per annum over the period of the calculation;
- Including the pension exception to the 2% annual property cap, the target tax roll increase will be 3.4%

The terminal value calculation comes to a permanent present value loss to the Village of \$1,195,471.10.

The Village should be compensated by at least this amount.

Permanent present value losses for the other taxing authorities are:

NUFSD	\$3,186,853.89
Orangetown	\$162,429.59
County and other	\$805,065.47

This excludes tax revenue loss due to diminished value of properties not taken, but significantly affected by the project, such as for loss of views. It should be expected that affected property owners will seek reductions in assessment. This should be projected and additionally compensated for.

Use of Interchange 10

The Village strongly opposes the use of the Interchange 10 area for construction staging. Increased use of this location will only exacerbate the existing unacceptable conditions. The area is surrounded by residential neighborhoods. It is an eyesore.

Section 18-3-2-2 states:

“The vacant land included within the footprint of the existing interchange may be utilized for construction support for the RBSA. This site measures approximately 7.4 acres. This site would most likely be used as a laydown/storage area for unassembled construction equipment, light duty bridge elements such as sheet piles, reinforcing bars and cables and other material delivery and storage.

Trucks loading and unloading materials and the use of backup alarms will be an unacceptable disturbance to residents.

Section 18-4-8-1 states:

“This period of construction would include the relocation of the NYSTA Tappan Zee Bridge Maintenance Facility and New York State Police (NYSP) facilities directly north of the Interstate 87/287 near the Toll Plaza.”

Impacts of any relocation of these facilities to the Interchange 10 area, whether temporary or permanent, have not been studied. The increased activity associated with these facilities that would be expected is would be likely to be incompatible with the residential neighborhood.

We note that Section S-4-2-5 states:

“Upon completion of the Replacement Bridge Alternative, a new maintenance facility and New York State Police barracks would be constructed at approximately the same location within the existing NYSTA right-of-way.”

Informal proposals have explored the possibility of post-project permanent use of the

Interchange 10 area for relocating these facilities. The Village adamantly opposes any temporary or permanent relocation of State or Thruway facilities to South Nyack.

By order of
Board of Trustees
Village of South Nyack
March 27, 2012