

Dear Mayor Christian and Village Trustees,

This weekend, I reviewed public documents related to the environmental impact of the New New York Bridge and the Shared Use Path, including its Rockland Terminus and Spur Path. It became apparent that South Nyack still has a narrow opening to fully evaluate its environmental impacts and to modify Alternative F.

Before undertaking monumental changes to our village, it is incumbent upon South Nyack elected officials and community members to **exhaust all avenues available to develop a solution for the Spur Path of the Shared Use Path that limits lasting environmental damage and minimizes ongoing taxpayer costs.**

The single most important finding is that the Esposito Trail is a parkland that should be protected under Section 4(f):

- **“Section 4(f) of the USDOT Act of 1966 (49 USC § 303; 23 CFR § 774) prohibits the Secretary of Transportation from approving any program or project that requires the “use” of (1) any publicly owned parkland, recreation area ...”** (p. S-26-27)
- **“A ‘use’ under Section 4(f) of the U.S. Department of Transportation Act of 1966 is prohibited unless there is no feasible and prudent alternative to the use of such land and such program or project includes all possible planning to minimize harm.”** (p. S-26-27)

Despite impact on parkland and availability of feasible alternatives, the spur trail connection was able to get environmental approval because the **Village of South Nyack designated the impact as “de minimis,” which abrogated the rigorous requirements of Section 4(f):**

- **“The Shared Use Path Facilities and Bicycle/Pedestrian Connections in South Nyack will connect and be adjacent to the Esposito Trail which is a publicly owned recreational resource, and is also a Section 4(f) resource. The Mayor of Village of South Nyack, as the official with jurisdiction over the Esposito Trail, has agreed that the Proposed Action meets the criteria for a determination of de minimis impact finding under Section 4(f). FHWA determines the Proposed Action to be de minimis under Section 4(f) because, as described in the EA, it does not adversely affect the activities, features, or attributes that qualify the resource for protection under Section 4(f).”** (FHWA FONSI letter p. 2)

South Nyack elected officials and community members have several avenues that should be pursued to potentially reverse the “de minimis” designation:

- **Importance of statute:** Section 4(f) is a major federal environmental regulation with a long history. Given the weight of this statute, can the applicability of section 4(f) be reopened in light of environmental concerns raised by community members?
- **Unaddressed environmental impacts:** In the reports, the “de minimis” designation

is based on limited changes to vegetation and to recreational uses of the Esposito Trail. The reports do not address lighting, motorized police patrols, drainage issues, and de-icing chemicals among other environmental impacts. Are these new impacts sufficient to re-open the applicability of Section 4(f)?

- **Issues of jurisdiction and procedure:** Did the Mayor of South Nyack have sole jurisdiction to make the “de minimis” designation? Did the South Nyack Village Board vote for this designation? Is there a record of this vote? Is there any procedural gap that could help to re-open the issue?
- **Public review:** Details of the “de minimis” designation and its implications were included in the Shared Use Path Environmental Assessment, which was submitted for public review in February, 2016. However, the rights to parkland under Section 4(f) and the implications of “de minimis” designation were not discussed at the public meeting on March, 16, 2016. Was the public fairly and completely informed?
- **Sale of Esposito Trail land to Thruway Authority:** South Nyack will lose 0.81 acres of parkland, when it sells some property around the Esposito trail to the Thruway Authority, as required by Alternative F. This also was not described in public meetings.
- **Draft status:** The section of the current Environmental Assessment that relates to Section 4(f) is labeled "Draft." Has it not been finalized? Can it therefore still be modified?
- **Specifications not yet approved:** According to Appendix B, the Plan, Specifications, and Estimate (PS&E) will not be approved until 2/9/17. Does this provide a small window of opportunity to alter the plans?

Several other points help clarify the ability to make changes to current plans:

- **Changes possible:** The New New York Bridge Final Environmental Impact Statement (FEIS) allows **changes within an "envelope" to reduce environmental impact and costs.**
- **Not all modifications require a full environmental impact statement.** The move of the terminus from Smith Avenue to Broadway and Cornelison did not trigger a new environmental study, only amendments to the FEIS.

Together, we may still be able to reverse the “de minimis” designation and advocate a simpler, cleaner, and cheaper solution for secondary access to the Shared Use Path.

Thank you for your attention to these important and timely matters.

Sincerely,

Laura Steinberger

P.S. For ease of reference, the rest of this document lists excerpts from various relevant documents available online at <http://www.newnybridge.com/environmental-doc/> .

New New York Bridge Final Environmental Impact Statement: Executive Summary (February 2012)

Relevant agencies

"The Federal Highway Administration (FHWA) is the federal lead agency for the project, and the New York State Department of Transportation (NYSDOT) and the New York State Thruway Authority (NYSTA) are joint lead agencies." (p. S-1)

Ability to change what is in the FEIS

"While preliminary designs are identified in this FEIS, the Design- Builder has the option to propose alternative design concepts so long as they meet the criteria of the RFP and the Contract Documents. The design options presented in the DEIS and this FEIS provide an envelope for the possible final design of the Replacement Bridge Alternative. The options represent the extent of work that is expected to be reflected in the proposals that are received out of the design build process, thereby enabling the team to identify and analyze the potential impacts and mitigation measures necessary relevant to the resources in the project area. The Design-Build process enables the Design-Builder to use innovation to further avoid, **minimize and mitigate environmental effects and promote efficiency in cost and construction duration.**" (p. S-2)

"The options are intended to demonstrate the possible range of impacts of the Replacement Bridge Alternative and to identify potential mitigation measures. Should an alternative design concept be proposed and selected, FHWA, NYSDOT, and NYSTA would evaluate whether the new design would affect the conclusion of this NEPA process and whether additional documentation of its potential effects is necessary." (p. S-2)

The adoption of Alternative F saved money

"The modified Rockland County landing supersedes the profile identified in the DEIS [draft statement], and as a result, there is no longer the need to reconstruct the South Broadway Bridge in South Nyack and acquire six residential properties (nine households) near the South Broadway Bridge." (p. S-5)

What an EIS addresses

"Analyses were performed to determine the potential for adverse and/or beneficial impacts in the following categories: transportation; community character; land acquisition, displacement, and relocation; **parklands and recreational resources**; socioeconomic conditions; visual and aesthetic resources; historic and cultural resources; air quality; noise and vibration; energy and climate change; topography, geology, and soils; water resources; ecology; hazardous waste and contaminated materials; and construction impacts" (p. S-16)

Commitment to minimize impact

"Environmental Performance Commitments (EPCs) to minimize the environmental impacts from construction" (p. S-16)

Section 4(f) applies

"Section 4(f) of the USDOT Act of 1966 (49 USC § 303; 23 CFR § 774) prohibits the

Secretary of Transportation from approving any program or project that requires the “use” of (1) any publicly owned parkland, recreation area, or wildlife and waterfowl refuge of national, state, or local significance; or (2) any land from a historic site of national, state, or local significance (collectively, “Section 4(f) properties”), **unless there is no feasible and prudent alternative to the use of such land and such program or project includes all possible planning to minimize harm to the park, recreation area, wildlife refuge, or historic site.**” (p. S-26-27)

New New York Bridge Final Environmental Impact Statement: Chapter 5 Community Character (February 2012)

Lid feasibility study

"On February 23, 2012, following the issuance of the Tappan Zee Hudson River Crossing Project Draft Environmental Impact Statement for public comment, NYMTC's Program Finance and Administration Committee (PFAC) adopted a resolution to amend the Regional Transportation Plan (2010-2035) to include a feasibility study for the “Tappan Zee Interstate 287 Cap Project,” also known as the South Nyack Lid Park initiative. The amendment responded to a request for \$500,000 to fund a feasibility study to construct a “lid” or deck over Interstate 87/287 as it bisects the Village of South Nyack. As envisioned by the Village of South Nyack, the “lid” and Thruway-owned land in the vicinity of Interchange 10 (Route 9W) would be used to create an environmental, recreational, and light commercial asset. The goal of the project is to promote economic revitalization for the river villages region through the conversion of unutilized space above a major urban freeway, in an ecologically sensitive manner, to promote local sustainable community development, setting a new standard for sustainable urban parks.” (p. 5-7)

Applicability of the Hudson River Valley Greenway act (p. 5-8)

"Rockland County became a Greenway Compact County on January 18, 2012, with the adoption of its compact plan, “Rockland Tomorrow,” by the Hudson River Valley Greenway Communities Council.” (p. 5-9)

"Within the Rockland County portion of the study area, the Greenway-designated trails include the Hader Park Trail (Village of Grand View-on-Hudson), Raymond G. Esposito (Village of South Nyack), Esposito-Hader Link (Town of Orangetown), and Esposito-Gesner Avenue Park Link (Village of South Nyack).” (p. 5-9)

Rockland county comprehensive plan notes trail links and "cap"

"The Plan recommends that open space be integrated into the Tappan Zee Corridor Project. In particular, it recommends examining the feasibility of reconnecting parkland or open space properties that were divided by the construction of Interstate 87/287 in the 1950s. One idea being studied by the Village of South Nyack as part of their Comprehensive Plan is the construction of a partial “cap” or deck over a segment of a rebuilt Interstate 87 approach to the Tappan Zee Bridge that would connect existing trails and create new open space. The Plan states that the “addition of new green space will help mitigate potential negative impacts associated with the Interstate 287/Tappan Zee Bridge Corridor.” (p. 5-13-14)

South Nyack Draft Comprehensive Plan on pages 5-14-15, includes goals for

connecting Esposito trail and the "lid."

South Nyack self-designated as a critical environmental area (CEA), not recognized by the state

"There are two CEAs within the study area, "Upper Grandview and Environs," which was designated by the Town of Orangetown in 1988 (see Figure 5-4), and the "Hudson River," which was designated by Westchester County in 1990 (see Figure 5-5)." (page 5-18)

"Section 110-4.5 "Critical Environmental Areas" of the Village of South Nyack Code breaks up the entire Village into three CEAs: CEA 1 – Hudson River Area; CEA 2 – Run-Off Area; and CEA 3 – Mountainous Area. **These CEAs are not identified on NYSDEC's list of CEAs in Rockland County.**" (p. 5-19)

South Nyack recognizes the area west of South Broadway (including the portion of the Esposito trail in question) as a CEA

"Its proximity to the steep hillsides to the west makes it subject to water run-off and drainage concerns. The Village also identified this area as being affected by the pollution, noise, and traffic generated by the New York State Thruway. The goal of this CEA designation is to address the following characteristics:

"a. in order to benefit and protect human health, this designation should address the specific issues associated with the noise and air pollution associated with the area's proximity to the New York State Thruway; and,

"b. the inherent ecological, geological and hydrological sensitivity of this area due to its susceptibility to drainage and water run-off problems must be scrutinized carefully and thoroughly so as to protect against erosion and damage caused by water and drainage problems." (p. 5-20)

Grandview is a state-recognized CEA, has impact of trail in Grandview been addressed (for example, trail lighting or police vehicular traffic)?

"Approximately 200 linear feet of Interstate 87/287 traverses the northeast corner of the Upper Grandview and Environs CEA. This section of Interstate 87/287 is located within the limits of construction of the Replacement Bridge Alternative. However, since this portion of the Upper Grandview and Environs CEA is already affected by the presence of Interstate 87/287, the project would not substantially alter existing conditions or the character of this CEA. Furthermore, the construction of the Replacement Bridge Alternative would not involve blasting or substantial tree removal within the Upper Grandview and Environs CEA."

Shared Use Path: Federal Highway Administration (FHWA) Finding of No Significant Impact (FONSI) for Plan F

Spur path and partial paving of Esposito trail designated as de minimis impact

"The Shared Use Path Facilities and Bicycle/Pedestrian Connections in South Nyack will connect and be adjacent to the Esposito Trail which is a publicly owned recreational resource, and is also a **Section 4(f) resource**. **The Mayor of Village of South Nyack, as the official with jurisdiction over the Esposito Trail, has agreed that the**

Proposed Action meets the criteria for a determination of de minimis impact finding under Section 4(f). FHWA determines the Proposed Action to be de minimis under Section 4(f) because, as described in the EA, it does not adversely affect the activities, features, or attributes that qualify the resource for protection under Section 4(f)." (FHWA FONSI letter p. 2)

"With respect to Section 4(f), alternative F will have a de minimis use on the Esposito Trail because it would not adversely affect the activities, features, or attributes qualifying it as a park or recreation area." (p. 3)

Shared Use Path: Environmental Assessment

The move of the SUP terminus plans from Smith Avenue to Broadway and Cornelison did not require a new EIS:

"In response to community feedback during the ongoing public outreach efforts, a modification was proposed to extend the western (Rockland County) terminus of the shared-use path approximately one block farther west in South Nyack to allow a direct connection with South Broadway and Cornelison Avenue. This proposed modification was examined and documented in a Re-evaluation Statement prepared in accordance with NEPA and SEQRA. The Re-evaluation Statement concluded that the proposed modification would not result in new significant adverse impacts not previously identified in the FEIS. Accordingly, the design modification was incorporated into the TZHRCP and this forms the No Build Alternative analyzed in this document." (p. 2-2)

Section 4(f) protects parkland unless there is no feasible alternative

"A "use" under Section 4(f) of the U.S. Department of Transportation Act of 1966 is prohibited unless there is no feasible and prudent alternative to the use of such land and such program or project includes all possible planning to minimize harm." (p. 2-4)

Significant adverse impact requires a new EIS

"If new and significant adverse environmental impacts are identified, a Supplemental EIS may be required." (p. 2-9)

What is Alternative F?

Parking: "A dedicated parking area and a comfort station for users would be provided on vacant land within the southeastern section of Interchange 10. Access to this parking area would be from Route 9W North. The parking area would comprise 54 spaces and the comfort station would be located within the center of the parking lot between parking aisles" (p. 3-3)

Path to parking: "The shared-use path would continue from the Replacement Bridge along the northeastern side of Interstate 87/287 within NYSTA right-of-way and pass through a new pedestrian underpass under the South Broadway bridge [... and] would then continue to the parking area adjacent to the existing local access ramp to Interstate 87/287 southbound/eastbound from South Broadway (which is closed to vehicular traffic). Access to Interchange 10 for the Interstate 87/287 southbound/eastbound on-ramp would be maintained from Route 9W North." (p. 3-3)

Spur path: "Alternative F would also include a pedestrian and bicycle 'spur path' from the

shared-use path that would extend across the closed local access ramp to Interstate 87/287 southbound/eastbound, then behind South Nyack Village Hall and, like Alternative E, would cross the Esposito Trail and continue as a paved side path on the west side and adjacent to the Esposito Trail to Clinton Avenue to facilitate local pedestrian and bicycle access to the shared-use path." (p. 3-3)

Traffic routing: "Alternative F would include several roadway modifications in and around Interchange 10 to handle the diverted traffic from repurposing the existing local access ramp off South Broadway. The intersection of Hillside Avenue (Route 9W) and Shadyside Avenue would be reconfigured, with new traffic signals installed. Some minor reconfiguration would also occur at the South Franklin Street/Clinton Avenue intersection and the South Franklin Street Extension/Route 9W (Hillside Avenue) intersection, where traffic signals would also be installed." (p. 15-4)

Cost is \$14.5 million for the entire Rockland SUP terminus

Cost: "The estimated cost to implement Alternative F would be approximately \$1.5 million on the Westchester County side and \$14.5 million on the Rockland County side." (p. 3-4)

Some land around the Esposito Trail would be sold to the Thruway authority

"While the realigned Esposito Trail would remain within its existing property limits, construction of the side path and realigned Esposito Trail may temporarily encroach on the South Nyack Village Hall property, also requiring a temporary easement from the Village. Since the side path would also provide a direct connection to the Esposito Trail, this would need to be coordinated with the Village of South Nyack as well." (p. 6-5)

"Alternative F would include a new paved side path adjacent to and on the west side the Esposito Trail from about South Nyack Village Hall to Clinton Avenue, which would be within the existing Esposito Trail property, **requiring a partial acquisition of approximately 35,200 square feet (0.81 acres) of this property from the Village of South Nyack.**" (p. 6-7)

New sound wall traverse the current on ramp

"New sound wall would be built along South Broadway up to the South Nyack Village Hall, replacing the existing concrete sound wall along South Broadway and the wood wall between the South Nyack Village Hall property and the local access ramp to Interstate 87/287 southbound/eastbound." (p. 7-16)

Shared Use Path: Environmental Assessment, DE MINIMIS FINDING

Goals of Alternative F, referred to as "Proposed Action"

"Development of the Proposed Action has not precluded and will continue to not preclude reasonable local planning initiatives, such as those associated with potential future development of Interchange 10 of Interstate 87/287 in the Village of South Nyack. The following objectives have been established to support the purpose of the Proposed Action:

- Provide off-street parking accommodations, connection(s) to parking from the shared-use path, and limited ancillary facilities within the Public Right-of-Way;
- Provide access from existing bicycle and pedestrian routes to the shared-use path;

- Minimize impacts on the community; and
- Provide emergency service access to the shared-use path extension, parking accommodations, and limited ancillary facilities." (p. 15-2)

Definition of "de minimis"

"A de minimis impact is one that, after considering any measures to minimize harm (such as avoidance, minimization, mitigation or enhancement measures), results in either:

- 1) A Section 106 finding of no adverse effect or no historic properties affected on a historic property; or
- 2) A determination that the project would not adversely affect the activities, features, or attributes qualifying a park, recreation area, or refuge for protection under Section 4(f)." (p. 15-5)

Because spur path impact is "de minimis," alternatives do not have to be pursued

"A use of Section 4(f) property having a de minimis impact can be approved by FHWA without the need to develop and evaluate alternatives that would avoid using the Section 4(f) property." (p. 15-5)

De minimis designation may not have had proper public review or official (trustee) review

"For parks, recreation areas, or wildlife and waterfowl refuges, the official or officials with jurisdiction over the property must be informed of the intent to make a de minimis impact determination, after which an opportunity for public review and comment must be provided. After considering any comments received from the public, if the official or officials with jurisdiction concurs in writing that the project will not adversely affect the activities, features, or attributes that make the property eligible for Section 4(f) protection, then FHWA may finalize the de minimis impact determination. The public notice and opportunity for comment as well as the concurrence for a de minimis impact determination may be combined with similar actions undertaken as part of the NEPA process and may be part of a public meeting or another form of public involvement. The final determination should be made by the FHWA Division Administrator." (p. 15-5)

If "de minimis" plan does not have to minimize harm

"No avoidance or feasible and prudent avoidance alternative analysis is required, and a de minimis impact determination does not require the traditional second step of including all possible planning to minimize harm because avoidance, minimization, mitigation, or enhancement measures are included as part of the determination." (p. 15-7)

Principal defense of de minimis status

"As the **gravel or cinder surface** of the Esposito Trail surface is not conducive to thin tire bicycles, the paved side path would provide a continuous paved surface for users of the shared-use path to the local street and trail network (Alternatives E and F) and/or the proposed parking area (Alternative E). In addition, construction of the side path would mean that the Esposito Trail would need to be shifted slightly east, which would require some regrading and removal of some vegetation. While this vegetation is within the Esposito Trail property, which is publicly owned parkland, it serves as a **vegetative**

buffer and does not currently serve a recreational purpose. Further, even though the Esposito Trail would be shifted, it would remain a gravel and cinder path, and this realignment would not alter the use or function of the Esposito Trail." (p. 15-7)

Esposito Trail will be closed for only 2 months and constructions will have minimal impact

"The Proposed Action involves construction of a complementary pedestrian and bicycle path adjacent to the Esposito Trail and would not substantially alter the character of the Esposito Trail. The Proposed Action would only affect a short (approximate ¼ mile) section of the trail, thereby having minimal effect on the overall trail." (p. 15-7)

"The Proposed Action would not result in adverse physical impacts to the Esposito Trail. The section of trail adjacent to the side path would be shifted slightly east, but would retain its existing gravel and cinder surface and its use would not be affected." (p. 15-8)

"The Esposito Trail would be restored to its existing condition and character with vegetation replaced to the extent practicable." (p. 15-8)

Appendix B: Project scoping report, Design report, Timetable

"Exhibit 1.2 - Project Schedule

Activity	Date Occurred/Tentative
Scope Approval	5/15/16
Design Approval	6/21/16
PS&E	2/9/17
ROW Acquisition	TBD
Construction Start	7/6/17
Construction Completion	7/7/18