

FINAL ENVIRONMENTAL IMPACT STATEMENT

Proposed Project:

Wal-Mart Supercenter - No. 4597-00

Project Location:

**866 Niagara Falls Boulevard (U.S. 62) near the intersection
of Erie Avenue (NYS Route 425)
North Tonawanda, Niagara County, New York**

Project Sponsor / Applicant:

**Wal-Mart Stores, Inc.
2001 S.E. 10th Street
Bentonville, AR 72716-0550**

Lead Agency:

**City of North Tonawanda Planning Commission
City of North Tonawanda City Hall
216 Payne Avenue
North Tonawanda, New York 14120**

May 12, 2008

FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS)

PROPOSED WAL-MART SUPERCENTER – STORE NO. 4597-00
CITY OF NORTH TONAWANDA, NIAGARA COUNTY, NEW YORK

Positive Declaration Issued:	April 2, 2007
Public Scoping Session Held:	April 25, 2007
Final Scope Accepted:	June 4, 2007
Draft Environmental Impact Statement Accepted by Planning Commission:	August 6, 2007
Public Hearing held on DEIS:	September 10, 2007
Second Public Hearing held on DEIS:	March 11, 2008
Final Environmental Impact Statement Accepted by Planning Commission:	May 12, 2008
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PROPOSED WAL-MART SUPERCENTER – STORE NO. 4597-00
CITY OF NORTH TONAWANDA, NIAGARA COUNTY, NEW YORK

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1.0 EXECUTIVE SUMMARY

1.1 PROJECT DESCRIPTION

The proposed project involves the demolition of the vacant Melody Fair venue and the Bluebird Coach Lines station and the construction of a 185,312+/- square-foot Wal-Mart Supercenter on a 38.0+/- acre site near the intersection of Niagara Falls Boulevard (U.S. 62) and Erie Avenue (SR 425) in the City of North Tonawanda. The Wal-Mart Supercenter is proposed to occupy 26.0+/- acres of the site with the remaining acreage to be subdivided into four separate outparcels, one of 6.8+/- acres fronting Niagara Falls Boulevard and one of 1.3+/- acres fronting Bluebird Drive at the rear of the site which will be residual Wal-Mart outparcels. The other two outparcels, one of 1.5+/- acres fronting Wurlitzer Drive and one of 1.5+/- acres fronting Niagara Falls Boulevard, will be retained by the sellers. Primary access to the site will be from a 3-lane road from Niagara Falls Boulevard and a secondary access is proposed from Bluebird Drive at the rear of the site.

1.2 FINAL ENVIRONMENTAL IMPACT STATEMENT

This document is the Final Environmental Impact Statement (FEIS) for the City of North Tonawanda Wal-Mart Supercenter. The FEIS was developed pursuant to 6 NYCRR Part 617 pertaining to Article 8 of the Environmental Conservation Law (State Environmental Quality Review [SEQR]).

The City of North Tonawanda Planning Commission, as SEQR Lead Agency, declared that the proposed Wal-Mart Supercenter may have a significant impact on the environment on April 2, 2007 and required that the project sponsor, FRA Engineering, on behalf of Wal-Mart Stores, Inc., prepare a Draft Environmental Impact Statement (DEIS). The purpose of the DEIS is to assess the potential environmental impacts associated with the proposed project. The applicant submitted a DEIS to the City of North Tonawanda on July 27, 2007. The DEIS was deemed to be complete and was accepted by the Planning Commission on August 6, 2007 for review by all Involved and Interested Agencies and the public. The DEIS was made available to the public at the City Library, City Clerk's Office, and on the City's website. The Planning Commission held a Public Hearing on the DEIS at the North Tonawanda City Hall on September 10, 2007 to allow the public to comment on the submitted DEIS for the project. Following a comment from CSX Transportation denying the at-grade access to Erie Avenue, the project was revised to provide secondary access to Wurlitzer Drive through Bluebird Drive. The Planning Commission reopened the DEIS comment period and held a second Public Hearing at Grant Elementary School to gather input on the project change on March 11, 2008.

The Wal-Mart Supercenter Final Environmental Impact Statement (FEIS) includes any revisions and/or supplements to the DEIS, summaries and copies of the Substantive Comments and their source, and the City of North Tonawanda Planning Commission's, as Lead Agency, responses to all Substantive Comments.

2.0 DRAFT ENVIRONMENTAL IMPACT STATEMENT

The Draft Environmental Impact Statement for the proposed Wal-Mart Supercenter was submitted by the project sponsor, FRA Engineering, on behalf of Wal-Mart Stores, Inc., to the City of North Tonawanda Planning Commission, as SEQR Lead Agency, on July 27, 2007. The DEIS, was accepted for public review by the Planning Commission on August 6, 2007 and a Public Hearing on the DEIS was held September 10, 2007. The DEIS comment period was reopened and a second Public Hearing held on March 11, 2008 to gather input on the project

change. The DEIS shall form part of this Final Environmental Impact Statement (FEIS) and is incorporated by reference.

3.0 REVISIONS TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

3.1 Revisions to the DEIS throughout

Change the following:
City of North Tonawanda Planning Board.

To Read...
City of North Tonawanda Planning Commission.

3.2 Revisions to the DEIS throughout

Throughout the individual reports in the appendix, there are several conflicting references to the number of lots that make up the current site. Please identify the correct number of lots currently existing on the site.

There are three (3) lots that make up the current site.

3.3 Revisions to the DEIS throughout

Change the following:
Page II-3: The context study and photo renderings are included in Appendix J

To read:
Page II-3: The context study and photo renderings are included in Appendix L.

3.4 Revisions to the DEIS throughout

Change the following:
Page III-16: The City's consultant, Wendel Duscherer.

To read:
Page III-16: The City's consultant, Wendel Duchscherer.

3.5 Revisions to the DEIS throughout

Change the following:
Page IV-29: The proposed signage is shown in Appendix J.

To read:
Page IV-29: The proposed signage is shown in Appendix L.

3.6 Revisions to the DEIS throughout

Change the following:
Page 6 of 11 in the Engineering Stormwater Report: The 10-year storm event for the post-development of the site will be 37.22 cfs less than the existing 39.30 cfs.

To read:

Page 6 of 11 in the Engineering Stormwater Report: The 100-year storm event for the post-development of the site will be 37.22 cfs less than the existing 39.30 cfs.

4.0 SUPPLEMENTS TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

The following supplements are included in Appendix B and are provided to complement the DEIS.

- 4.1 **"Site Plan Alternative"** by FRA Engineering dated September 10, 2007.
- 4.2 **"Supplemental Traffic Analysis for Proposed Wal-Mart Project (No CSX/ Erie Ave. entrance driveway)"** by FRA Engineering dated September 20, 2007.
- 4.3 **"Supplemental Traffic Analysis for Proposed Wal-Mart Project (Niagara Falls Boulevard only access)"** by FRA Engineering dated November 5, 2007.
- 4.4 **"Supplemental Traffic Analysis #3 for Proposed Wal-Mart Project (full access at Bluebird Drive)"** by FRA Engineering dated February 4, 2008.
- 4.5 **Revised "Wal-Mart Signage Package"** by FRA Engineering dated December 19, 2007.

5.0 SUBSTANTIVE COMMENTS TO THE DRAFT ENVIRONMENTAL IMPACT STATEMENT

The City of North Tonawanda Planning Commission, as Lead Agency, has determined that the following comments/ questions, submitted by Involved and Interested Agencies and the public during the Wal-Mart Supercenter Draft Environmental Impact Statement public review period, which included a Public Hearing held September 10, 2007 and March 11, 2008, are substantive in nature. These Substantive Comments are addressed in the Final Environmental Impact Statement. This section includes summaries of all verbal and written Substantive Comments, along with the Lead Agency responses for each. The Lead Agency's responses are shown in "bold text" below each comment.

A copy of each of the written Substantive Comments received during the DEIS public review period is included in Appendix C. Verbal comments are included in Appendix C through a summary of the September 10, 2007 and March 11, 2008 Public Hearings.

Written comments from the New York State Department of Transportation January 9, 2008

5.1 Comment

The table included in the study summarizing the capacity analysis for the intersection of Niagara Falls Boulevard and Ruie Road shows some movements will have a drop in Level of Service (LOS). The study states that reductions could theoretically be mitigated by adding a green left turn arrow but that it is not warranted based on projected left turn volumes. This alternative should be analyzed along with any other improvements that may eliminate the LOS drops at this intersection.

Response

The applicant has investigated the alternative of providing an advance green left turn arrow on Niagara Falls Boulevard for northbound lefts to Ruie Road. The overall operations are better without the advance left turn phase included primarily because the

volumes using the left turn lane are very small compared to the volumes using Niagara Falls Boulevard. It is recommended that the current signal phasing remain in place.

5.2 Comment

We were advised that CSX will not allow a crossing necessary for Wal-Mart to have access on Erie Avenue. Without the Erie Avenue access, projected traffic at the intersections along Niagara Falls Boulevard will change except at Ruie Road. Therefore, the conclusions of the study in the DEIS are not valid for the affected intersections.

Response

Since the at-grade railroad crossing had been denied by CSX Transportation, the applicant has provided several revised traffic impact studies. A secondary site access is proposed at Bluebird Drive (to Wurlitzer Drive) at the rear of the site. The New York State Department of Transportation (NYSDOT) has provided review letters, included in the Appendix, concurring with the review of supplemental traffic analyses and requiring the placement of a secondary access to the site.

5.3 Comment

At the intersection of Niagara Falls Boulevard and the proposed access road, we concur with the recommendation in the study to install a traffic signal, converting the two-way center turn lane on Niagara Falls Boulevard into an exclusive northbound left turn lane, and constructing an exclusive southbound right turn lane on Niagara Falls Boulevard.

Response

Comment taken, no response necessary.

5.4 Comment

The supplemental Traffic Analysis recommends coordinating the proposed signal on Niagara Falls Boulevard at the proposed access road with the existing signals at Ruie Road and at Erie Avenue/ Shawnee Road. However, this supplemental did not include a LOS analysis or summary associated with the proposal to coordinate the signals.

Response

The applicant has recommended the coordination of the proposed traffic signal at the intersection of Niagara Falls Boulevard and the primary access with the traffic signal at the intersection of Niagara Falls Boulevard and Erie Avenue/ Shawnee Road. The Niagara Falls Boulevard/ Ruie Road intersection is greater than ¼ mile and operates at an acceptable LOS, however, to further improve traffic flow, this traffic signal should also be included in the coordination and will be incorporated as a condition of the Findings.

5.5 Comment

The supplemental states that there are LOS drops at the intersection of Niagara Falls Boulevard with Shawnee Road and Erie Avenue. It also states that geometric improvements are not practical due to right-of-way constraints, close proximity of the CSX Railroad, and Sawyer Creek. While we agree that geometric improvements are not practical, the analysis does not explore other alternatives in an attempt to improve the LOS. For example, an option to consider is converting the through lane on Erie Avenue and/or Shawnee Road into a shared through/ left lane and split the signal phasing.

Response

The alternative of providing a combined through/ left lane and providing split signal phasing was analyzed and actually resulted in a worse LOS for the intersection. It is recommended that the current traffic signal phasing be maintained. The intersection LOS

will be maximized through maintaining the existing traffic signal phasing plan and providing signal timing optimization.

5.6 Comment

We identified some errors for values entered in the Synchro capacity model. The eastbound Niagara Falls Boulevard left turn storage length is 70 feet not 125 feet, the northbound Erie Avenue right turn storage length is 75 feet not 0 feet, and the southbound Shawnee Road right turn land storage length is 100 feet not 200 feet.

Response

Field observations conducted by the applicant's traffic consultant confirmed that the eastbound Niagara Falls Boulevard left turn lane storage length of 125 feet includes the defined 70 feet white storage lane delineation and 55 feet of storage length that is a transition area to the dual use left turn lane further to the west. The northbound Erie Avenue right turn storage length has been corrected. The southbound Shawnee Road right turn lane storage length was reinvestigated to confirm the white line storage lane delineation of 150 feet.

5.7 Comment

We concur with the supplemental TIS statement (single access scenario) that providing dual left turn lanes on Erie Avenue at Niagara Falls Boulevard would improve the left turn lane delay and understand that it would not be practical to construct due to constraints at this intersection. However, without the dual left turn lanes, the analysis shows an excessive queue length during the Saturday peak hour that would be greater than 300 feet for vehicles turning left from Erie Avenue.

The Synchro analysis shows that the queue length for vehicles turning left from Niagara Falls Boulevard to the proposed access driveway would be in excess of 500 feet. Dual left turn lanes would be required on Niagara Falls Boulevard to mitigate this impact. Due to right-of-way constraints, this mitigation does not appear to be practical either.

We do not support this option to have only one access to Wal-Mart since it does not appear feasible to mitigate the traffic impacts.

Response

A single access to Niagara Falls Boulevard is not supported since excessive queue lengths for vehicles turning left from Erie Avenue to Niagara Falls Boulevard and for vehicles turning left from Niagara Falls Boulevard into the site would occur and since due to constraints at the intersection of Niagara Falls Boulevard and Erie Avenue/ Shawnee Road, including limited right-of-way, the railroad, and stream crossing, additional intersection modifications to provide mitigation is not feasible. This includes widening of the intersection to allow for dual left turn lanes.

An alternative access scenario includes primary access to Niagara Falls Boulevard with a proposed traffic signal and full secondary access to Wurlitzer Drive via Bluebird Drive with stop control on Bluebird Drive only.

**Written comments from the New York State Department of Transportation
April 7, 2008**

5.8 Comment

FRA Engineering recommended that the current signal phasing should remain in place at the intersection of Niagara Falls Boulevard and Ruie Road. They state that the overall operations are

better without the left turn arrow. The overall intersection delay does increase by just a few seconds with the left turn arrow, but, there is a significant improvement to the left turn movement for northbound Niagara Falls Boulevard with the arrow. Therefore, the Department will require the developer to install a left turn arrow as mitigation

Response

The Planning Commission concurs, and the applicant installing a left turn arrow at the intersection of Niagara Falls Boulevard and Ruie Road will be made a condition of the Findings.

5.9 Comment

In our January 9, 2008 letter, we recommended that FRA Engineering explore other options to improve the level of service at the intersection of Niagara Falls Boulevard and Erie Avenue/ Shawnee Road. FRA Engineering investigated split phasing and concluded in their February 4, 2008 letter that the original phasing should remain. We concur that the level of service would decrease if the signal phasing was split. Also, as previously identified, there are no practical geometric improvements due to the right-of-way constraints. Therefore, this intersection would experience increased delays with the additional Wal-Mart traffic, most notably in the afternoon peak for the left turn movement from Niagara Falls Boulevard to Shawnee Road and for the Erie Avenue through movement.

Response

The applicant submitted a supplement to the Traffic Impact Study dated February 4, 2008 that analyzed the site with full primary access to Niagara Falls Boulevard and full secondary access at Wurlitzer Drive (through Bluebird Drive).

The analysis evaluated the impact of site generated traffic associated with the full build-out of the Wal-Mart against the projected background traffic conditions that would exist without the project being built. The background traffic includes projected annual traffic growth as well as additional traffic generated from proposed developments in the Town of Wheatfield. The full build out of the Wal-Mart project includes the background assumptions plus the 185,312 square foot Wal-Mart Supercenter, a 3,000 square foot fast food restaurant with drive thru, a 3,000 square foot fast food restaurant without drive thru, a 5,000 square foot sit down restaurant, and a 37,250 retail shopping plaza. The traffic analysis of the full build out of the Wal-Mart project includes all proposed mitigations.

In evaluating the impact of the site generated traffic associated with the full build out of the Wal-Mart project on existing traffic, the overall LOS at the intersection remains the same during the weekday AM peak hour, decreases from a LOS D to LOS E (a 4 second additional delay) during the weekday PM peak hour, and decreases from a LOS C to LOS D (a 3 second additional delay) during the Saturday midday peak hour. Although there is a LOS decrease, the decreases in delay for the overall intersection are minor.

In evaluating the impact of the site generated traffic associated with the full build out of the Wal-Mart project on background traffic, the overall LOS at the intersection of Niagara Falls Boulevard and Erie Avenue/ Shawnee Road would improve during the weekday AM peak hour and remain constant during the weekday PM peak and Saturday midday peak hours.

The evaluation of the full build-out of the Wal-Mart project indicates that there are individual approaches at the intersection that experience increased delay from existing conditions. The left turn movements from westbound Shawnee Road to Niagara Falls

Boulevard will experience increased delay during the weekday PM peak hour of 47 seconds and Saturday midday peak hour of 40 seconds, mostly due to additional traffic generated by developments in Wheatfield. The left turn movements from northbound Niagara Falls Boulevard to Erie Avenue will experience increased delay due to additional vehicles stacking in the thru lanes that will inhibit vehicles making a left from entering the left turn lane. Increases in delay are projected to be 70 seconds during the weekday AM peak hour, 31 seconds during PM peak hours, and 11 seconds during the Saturday midday peak hour. The left turn movements from southbound Niagara Falls Boulevard to Shawnee Road will experience increased delay during the weekday PM peak hour of 102 seconds. The through movements on eastbound Erie Avenue are projected to experience increases in delay of 69 seconds during the weekday AM peak hour, 51 seconds during the weekday PM peak hour, and 31 seconds during the Saturday midday peak hour due to additional vehicles. Several of these decreases in delay are projected with or without the full build out of the Wal-Mart project.

There are also several approaches that will experience a decrease in delay as a result of mitigations put in place from the development of the Wal-Mart project. Any LOS improvements at the intersection are due to signal timing optimization that provides more green time to specific movements thereby improving the LOS. Signal timing improvements are an efficient way to improve traffic operations and reduce delay at signalized intersections.

Following a meeting with the NYSDOT, the Planning Commission understands that further mitigation at this intersection in the form of geometric improvements is not practical due to right-of-way constraints and the presence of the creek and railroad.

In summary, this intersection's overall LOS will remain somewhat constant, although certain approaches will experience increased delay. Without the necessary right-of-way to allow for additional lanes, this intersection would need to be monitored following the opening of the Wal-Mart. The Planning Commission should make it a condition of the Findings that the applicant provides a retesting of traffic volumes six months to one year after the opening of the store to validate projected traffic volumes at key locations, including the intersection of Niagara Falls Boulevard and Erie Avenue/ Shawnee Road. The new data collection will provide an accurate review of the post-opening traffic conditions and shall be presented to the City Planning Commission. Any further mitigation to address traffic issues can be required at this time, if deemed necessary by the Planning Commission. In addition, the Planning Commission can require traffic impact studies for the development of the outparcels and can restrict their use during site plan review.

5.10 Comment

An additional item that the Department will need to know is whether the proposed signalized access road connecting Wal-Mart with Niagara Falls Boulevard will be a private driveway or a city road.

Response

The City is not interested in dedication of this primary access road for reasons such as snow plowing and future operation and maintenance costs to the City. The primary access road should remain under private ownership.

If the primary access drive were to become a public street, the proposed traffic signal becomes a state maintained signal. If the drive remains private, the applicant will be required to provide a maintenance agreement with NYSDOT for the signal.

5.11 Comment

A NYSDOT Highway Work Permit will be required for any work within the State Highway Right-of-Way. Additional site engineering review will be done as part of the Highway Work Permit process. This letter does not constitute approval for the purposes of a Highway Work Permit.

Response

Comment taken, no response necessary.

Written comments from the Niagara County Department of Economic Development

5.12 Comment

Page II-3 of the report references photo renderings and detailed building design drawings in Appendix J. The reference should be changed to Appendix L.

Response

The change has been noted in Section 3.0 of the FEIS, Revisions to the Draft Environmental Impact Statement.

5.13 Comment

Page IV-30 of the report states, "...the large grass islands that cross the site are used for pretreatment of stormwater...no plantings have been provided here." Are there any shrubs or trees that can be incorporated into this area that would help meet the City's 30% shade requirement yet still allow for proper treatment of stormwater? Adding more shrubs/ trees to this area will help break up the parking lot and create a more visually pleasing atmosphere.

Response

The proposed drainage/ watershed areas for the project are broken into two areas:

- **Access roadway to Niagara Falls Boulevard that sheds stormwater through a culvert, to be bored under Niagara Falls Boulevard, to Sawyer Creek. This stormwater is treated through a centrifugal vortex unit prior to outletting to Sawyer Creek.**
- **The Proposed Wal-Mart Supercenter and associated parking areas will convey stormwater to the stormwater detention basin, which eventually outfalls to the 90 inch stormwater culvert on Wurlitzer Drive.**

A NYSDEC document titled "Landscape Guidance/ Plant Lists for Ponds and Wetlands and Bioretention" has been incorporated into Appendix C under comments submitted by Planning Commission member Joy Kuebler, which suggests landscaping that may be used within the stormwater swales that could add to the internal landscaping of the parking area. The applicant should make appropriate changes to the Alternative Site Plan to incorporate suitable landscaping within the swales and stormwater management areas. This will be incorporated into the Findings.

5.14 Comment

Page IV-30 further indicates, "...areas to the east of the parking lot limits are proposed to be grassed and seeded". As much of this area as practicable should be filled with trees and shrubs.

Response

A landscaped row of trees and shrubs will line the east end of the parking area to compliment the vegetative area that includes trees and brush that exists to the east of the parking area. Grass will be laid to fill in other areas that have been disturbed.

5.15 Comment

On Page IV-31, it is indicated that the City's 30% shade requirement is unable to be met and a variance will be sought for relief from this provision. It is recommended that as much of this requirement is met as possible. This section should include a more detailed discussion of why the requirement cannot be met. The discussion should include all the components of the balancing test as required by New York State for the granting of an area variance. In addition, the City's code requirement and amount provided should be added to the landscape requirement table on the landscape plan.

Response

Based on input from the City Planning Commission and the City Engineer, FRA has designed the internal islands within the parking areas as "swales". These swales collect stormwater and provide water quality treatment by removing phosphorous and suspended solids before entering the closed drainage system.

A NYSDEC document titled "Landscape Guidance/ Plant Lists for Ponds and Wetlands and Bioretention" has been incorporated into Appendix C under comments submitted by Planning Commission member Joy Kuebler, which suggests landscaping that may be used within the stormwater swales that could add to the internal landscaping of the parking area. The applicant should make appropriate changes to the Alternative Site Plan to incorporate suitable landscaping within the swales and stormwater management areas.

Landscaping could be placed in other locations throughout the parking area to meet the City's shade tree ordinance, but this would require expanding the parking lot footprint and encroaching upon the existing vegetative buffer to the east. Rather than placing plantings within the parking area, the parking lot footprint has been minimized and shade trees will be placed and retained along the exterior of the lot.

The test for granting area variances, as required by New York State Law, is as follows:

- 1. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community by such agent. In making such determination, the Board shall also consider:**
 - a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the variance;**
 - b. Whether the benefit sought by the applicant can be achieved by some method feasible for the applicant to pursue, other than an area variance;**
 - c. Whether the requested area variance is substantial;**
 - d. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and,**
 - e. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the Board of Appeals, but shall not necessarily preclude the granting of the area variance.**
- 2. The Board of Appeals, in granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety, and welfare of the community.**

5.16 Comment

A copy of North Tonawanda's newly adopted site plan regulations should be included in Appendix D [of the DEIS].

Response

The City's site plan regulations are on file at the City Hall and will be referenced during site plan approval.

5.17 Comment

The sign package information in Appendix L contains a site location map of Wellsville, NY. The map should be removed and replaced with a map of the North Tonawanda site.

Response

A revised sign package is included in Appendix B of the FEIS that includes a map of the North Tonawanda site.

5.18 Comment

In accordance with General Municipal Law 239-nn, I recommend contacting the Town of Wheatfield early in the process to allow for adequate time to review and comment on the project.

Response

The Town of Wheatfield has been included in the SEQR coordinated review of this project since the onset. They have provided a response letter to the Planning Commission, included in Appendix C.

5.19 Comment

Furthermore, in accordance with the New York State law, the project sponsor should comply with the DEIS and FEIS website posting requirements.

Response

The DEIS was posted on the City of North Tonawanda's website and the Notice of Acceptance of the DEIS and Notice of DEIS Public Hearing were both advertised on the New York State Department of Environmental Conservation Environmental Notice Bulletin (ENB). The Notice of Acceptance of the DEIS was advertised on the ENB on August 15, 2007. The Notice of DEIS Public Hearing was advertised on the ENB on August 15, 2007 and September 5, 2007. The FEIS will be posted similar to the DEIS.

Comments from the City of North Tonawanda Engineering Department

5.20 Comment

It is our understanding that in a letter from CSX Railroad, CSX has denied a new at-grade crossing to Wal-Mart at the City's driveway on Erie Avenue. This is not a new crossing at this location. The City pays tens of thousands of dollars in rent annually to CSX for all City driveways and roads which cross their rail lines throughout the City. The CSX billing is itemized for each location and the Bluebird/ Melody Fair crossing is included in their bill. Therefore, it is either an existing crossing, or the City has been overcharged significantly by CSX over the past decades for this location.

Response

The CSX letter indicates that the denial of this at-grade crossing is because it is proposed to become a private crossing in stating "After careful consideration of the subject project

request, CSX Transportation, Inc. has determined that the application for a private crossing Agreement is declined.” The City is not interesting in owning and maintaining a public railroad crossing solely for the purpose of serving the Wal-Mart development.

The applicant has tried repeatedly to obtain a private access crossing from CSX Transportation for the existing crossing at Erie Avenue. Wal-Mart’s first request for a private right of access was denied. Since July 2007, Wal-Mart appealed the denial of its request and had numerous discussions with CSX and local officials regarding the private crossing. Because these discussions have not yielded any change in CSX’s position, Wal-Mart is proposing to advance the Alternative Site Plan, as presented to the Planning Commission, consisting of primary access to Niagara Falls Boulevard and secondary access to Wurlitzer Drive via Bluebird Drive, and removing the access at Erie Road.

The City will continue its investigation into the payment issue for the public crossing.

5.21 Comment

A secondary entrance to Wal-Mart is imperative because the traffic study prepared by the FRA Engineers predicts that approximately 45% of the trips generated due to Wal-Mart will be coming northbound on Erie Avenue. It would be imprudent to allow this many vehicles to make a left hand turn onto Niagara Falls Boulevard, at this already poor intersection, if the Boulevard was the only Wal-Mart entrance.

Response

The applicant has tried repeatedly to obtain a private access crossing from CSX Transportation for the existing crossing at Erie Avenue. Wal-Mart’s first request for a private right of access was denied. Since July 2007, Wal-Mart appealed the denial of its request and had numerous discussions with CSX and local officials regarding the private crossing. Because these discussions have not yielded any change in CSX’s position, Wal-Mart is proposing to advance the Alternative Site Plan, as presented to the Planning Commission, consisting of primary access to Niagara Falls Boulevard and secondary access to Wurlitzer Drive via Bluebird Drive, and removing the access at Erie Road. Included in Appendix B is an analysis of the impacts of a single access point on Niagara Falls Boulevard and why it was not chosen.

During site plan approval, the Planning Commission will work with the applicant on business signage and wayfinding signage for the secondary access at Wurlitzer Drive.

5.22 Comment

The plan calls for an unsignalized intersection at the Erie Avenue Wal-Mart entrance. An evaluation of signalization must be considered here for a protected left hand turn lane, as well as an additional dedicated right hand turn lane, as is the case at Wurlitzer Drive. A right lane is necessary for vehicle storage when rail traffic interrupts access to the west. The queue must be independent and not block through traffic to the southwest direction on Erie Avenue.

Response

The applicant has tried repeatedly to obtain a private access crossing from CSX Transportation for the existing crossing at Erie Avenue. Wal-Mart’s first request for a private right of access was denied. Since July 2007, Wal-Mart appealed the denial of its request and had numerous discussions with CSX and local officials regarding the private crossing. Because these discussions have not yielded any change in CSX’s position, Wal-Mart is proposing to advance the Alternative Site Plan, as presented to the Planning Commission, consisting of primary access to Niagara Falls Boulevard and secondary access to Wurlitzer Drive via Bluebird Drive, and removing the access at Erie Road.
