

SEQRA DETERMINATION OF NO SIGNIFICANT EFFECT (DONSE)

NOTICE OF ENVIRONMENTAL DETERMINATION

NEW YORK STATE DEPARTMENT OF TRANSPORTATION
PROJECT IDENTIFICATION NUMBER 5758.79
BRIDGE REPLACEMENT AND HIGHWAY REHABILITATION
OLD ROUTE 17 FROM BUNKER HILL RD TO BREED RUN RD
BRIDGE IDENTIFICATION NUMBER (BIN) 6012230 OVER ALLEGHENY RIVER
SENECA NATION OF INDIANS (SNI) ALLEGANY TERRITORY CATTARAUGUS COUNTY

This notice is a "negative declaration" for the purposes of Article 8 of the New York State Environmental Conservation Law. The New York State Department of Transportation, being the agency having principal responsibility for carrying out or approving the project within the State, is the lead agency pursuant to Part 15 of Title 17 of the Official Compilation of Codes, Rules and Regulations of New York State (17 NYCRR Part 15).

The purpose of the project is to address existing structural deficiencies of BIN 6012230 (Old Route 17 over Allegheny River) and address pavement deficiencies along the project corridor. The objectives of the project are to provide an adequate structure with a service life of greater than 75 years and correct identified pavement deficiencies.

The NYSDOT has determined that this project does not meet the conditions to qualify as a State Environmental Quality Review Act (SEQRA) Type II Action in accordance with 17 NYCRR Part 15- Procedures for Implementation of State Environmental Quality Review Act. The project does not exceed the thresholds of 17 NYCRR Part 15.14(d)(1) through (d)(5), (d)(7) and (d)(8). However, the project does exceed the constraints identified in 17 NYCRR Part 15.14(d)(6) and therefore, requires a notice of environmental determination.

This project was also progressed as a Class II action (Categorical Exclusion) in accordance with the Federal Highway Administration's (FHWA) regulations in 23 CFR 771.117(c).

A Project Scoping Report/Final Design Report (PSR/FDR) was prepared to provide documentation of the analyses and conclusions used for determining whether the proposed action may or will not have a significant effect on the environment. The PSR/FDR was prepared in accordance with the NYSDOT Project Development Manual, 17 NYCRR (New York Codes, Rules, and Regulations) Part 15, and 23 CFR (Code of Federal Regulations) 771. A public meeting was conducted at the Seneca Allegany Community Center in Salamanca, NY on October 26, 2022. The comments received in response to the public meeting and the meeting with town officials have been documented in the PSR/FDR.

NYSDOT determined that this project will not have a significant effect on the environment as set forth in 17 NYCRR Part 15.11. This determination is based upon the findings and considerations noted in the PSR/FDR, which included the following:

Environmental Justice - Although significant minority and low-income populations are identified within the affected community (AC), this project will not result in disproportionately high and adverse human health or environmental effects, including social and economic effects, on those minority and low-income populations. Residents in the affected community and surrounding area will benefit from the new bridge and infrastructure, which will increase connectivity between communities and enhance the safety of the traveling public. The project also serves to establish new infrastructure along a route with significant historic and cultural importance to the Seneca Nation. In addition, there has been full and fair participation by the Seneca Nation during the project's transportation decision-making process.

Cultural Resources - This federal-aid project is an undertaking subject to review under Section 106 of the National Historic Preservation Act and its implementing regulation, 36 CFR Part 800 and, therefore, is not subject to separate review under Section 14.09 of the New York State Historic Preservation Act. The project will replace the existing State and National Register Eligible (S/NRE) Warren Truss Old NY Route 17 bridge over Allegheny River (BIN 6012230) with a five-span concrete beam superstructure on a similar horizontal alignment. Archaeological surveys identified multiple Native American and 19th and 20th Century

archaeological sites. NYSDOT recommended that the preferred alternative would result in an "Adverse Effect" based on the proposed removal and replacement of an S/NRE bridge and impacts to archaeological sites. A Finding Document was submitted to the Seneca Nation of Indians Tribal Historic Preservation Office (SNITHPO) and the FHWA. THPO concurred with the Adverse Effect determination on February 2, 2022. On February 28, 2022, FHWA determined that the project would have adverse effects on five (5) Native American archaeological sites, eight (8) 19th and 20th Century sites, and BIN 6012230. A Memorandum of Agreement (MOA) between FHWA, NYSDOT, and the SNITHPO was finalized on January 11, 2023. The MOA includes provisions for Historic American Engineering Record (HAER) documentation of the existing bridge, incorporation of a decorative architectural panel and architectural mural on the new bridge, data recovery and curation of archaeological materials found during data recovery, and installation of commemorative signage and historical markers along the project corridor.

Surface Waterbodies - There are five (5) mapped surface waters within the project limits. These include the Allegheny River (Class B), Robinson Run (Class C), Meetinghouse Run (Class C), and two unnamed tributaries to the Allegheny Reservoir (Class C and C(T)). Replacement of BIN 6012230 over the Allegheny River will involve temporary and permanent impacts to the river below ordinary high-water (OHW). A SNI Work Within Waterways (Section 401) permit will be required for the replacement of BIN 6012230 and five (5) of the small culvert locations.

Threatened and Endangered Species – Federal: One (1) candidate species and four (4) federally listed or proposed endangered or threatened species are listed as potentially occurring within the project limits: the monarch butterfly (*Danaus plexippus*), the northern long-eared bat (NLEB) (*Myotis septentrionalis*) and the clubshell (*Pleurobema clava*), northern riffleshell (*Epioblasma torulosa rangiana*) and rayed bean (*Villosa fabalis*) mussels. The project anticipates the removal of a maximum of 6.2 acres of trees determined to be suitable habitat for the NLEB. A bridge bat survey was completed for BIN 6012230 on August 17, 2021, and the survey did not indicate any sign of bats being present or bat activity. Tree removals will take place in the winter cutting window (October 1st to March 31st). NYSDOT made a preliminary "May Affect, Not Likely to Adversely Affect" (MA, NLAA) determination for the NLEB. Based on the programmatic agreement between USFWS and FHWA, concurrence with the MA, NLAA determination was assumed after no comments were received during the fourteen (14) day review period. A freshwater mussel survey was completed in August 2021. A total of 11 mussel species were identified during the survey: rayed bean, wavy-rayed lampmussel, black sandshell, creeper, elktoe, fat mucket, paper pondshell, flutedshell, mucket, plain pocketbook and spike. Based on the survey results, the NYSDOT made a preliminary "No Effect, No Suitable Habitat" (NE, NSH) determination for the clubshell and northern riffleshell mussels and submitted the project to FHWA for review on February 23, 2022. FHWA concurred with this determination on February 24, 2022. A preliminary "May Affect, Likely to Adversely Affect" (MA, LAA) determination was made for the rayed bean mussel. NYSDOT prepared a Biological Assessment (BA) and the USFWS issued a Biological Opinion (BO) on October 31, 2022 (and amended the BO on December 12, 2022), which states that the project is Likely to Adversely Affect the rayed bean mussel; however, it is not likely to jeopardize the continued existence of the rayed bean. An Incidental Take Statement (ITS) was issued as part of the BO.

State: In addition to the state listing of the NLEB, clubshell, northern riffleshell and rayed bean mussels, five (5) other state listed species were identified: Downy lettuce, fairywand, round-leafed water cress, northern wild comfrey and purple wild bergamot were identified within 0.5 miles of the project location. Based on the results of the mussel survey, NYSDOT made a preliminary determination of "Take Likely" for the wavy-rayed lampmussel. To minimize the impact, NYSDOT is proposing to salvage and relocate any mussels within the action area prior to construction.

NYSDOT worked in conjunction with the SNI Conservation Department to complete a plant survey for SNI culturally significant plants and state threatened and endangered plant species in June and July 2008. Due to the sensitive nature of the SNI culturally significant plants, documentation was completed by the Seneca Nation's Faithkeeper School. SNI initiated a multi-season plant survey in October 2022 to update the plant survey for threatened, endangered and culturally significant plants. On September 29, 2022, the Seneca Nation Environmental Protection Department indicated that the SNI would be responsible for relocating any threatened, endangered or culturally significant plants.

The NYSDOT has determined this project will not have a significant effect on the environment as set forth in 17 NYCRR Section 15.11.

Further information on this project may be obtained from:

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Regional Design Engineer

02/22/2023
Date