

**Project Aerial Map
 USGS Quad - BROWNVILLE**

PIN 778009.121
 BIN 3338900

Route 971H over Black River
 Town of Hounsfield, Jefferson County, New York



Scale 1:10,000

Basemap Copyright
 New York State
 Department of Transportation

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Consultant:

AREA OF POTENTIAL EFFECT (NEW BRIDGE)
ROUTE 12E BRIDGE REPLACEMENT
OVER BLACK RIVER
 COUNTY OF JEFFERSON
 TOWN OF BROWNVILLE, NEW YORK 13615

Revision Number	Revision Date	Scale
		1" = 200'
		Date: 04/24/2020
		Drawn By: GUS
		Checked By: KJC
		Project: 16072.02
		Drawn:

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Comments

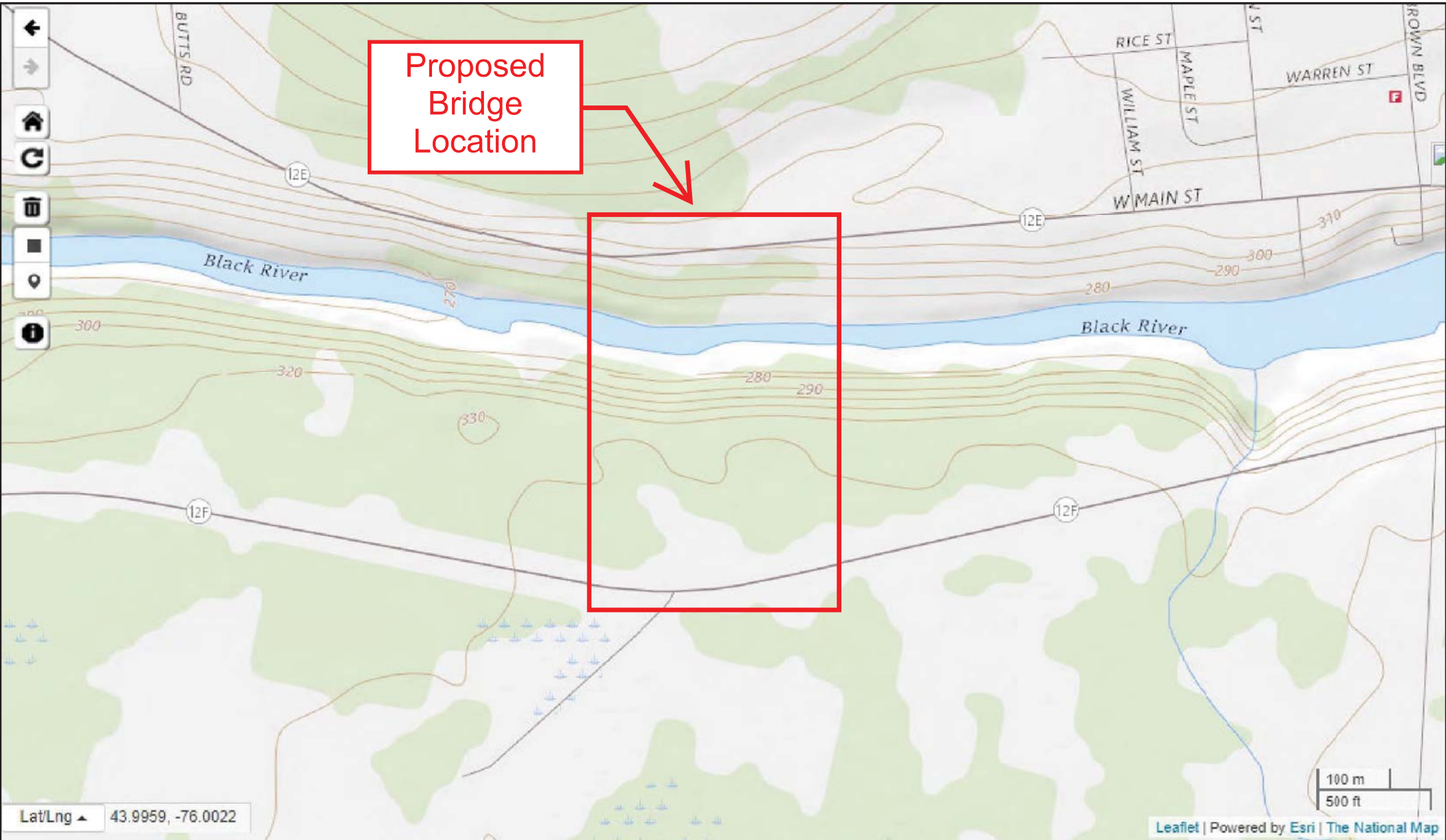
AREA OF POTENTIAL EFFECT (OLD BRIDGE)
ROUTE 12E BRIDGE REPLACEMENT
OVER BLACK RIVER
 COUNTY OF JEFFERSON
 TOWN OF BROWNVILLE, NEW YORK 13615

Revision Number	Revision Date	Scale
		1" = 200'
		Date: 02/03/2020
		Project Manager: GUS
		Drawn By: WPO
		Checked By: KJC
		Project: 16072.02
		Drawn:

**United States Geological Survey Topographic
Map**

United States Geological Survey Topographic Map

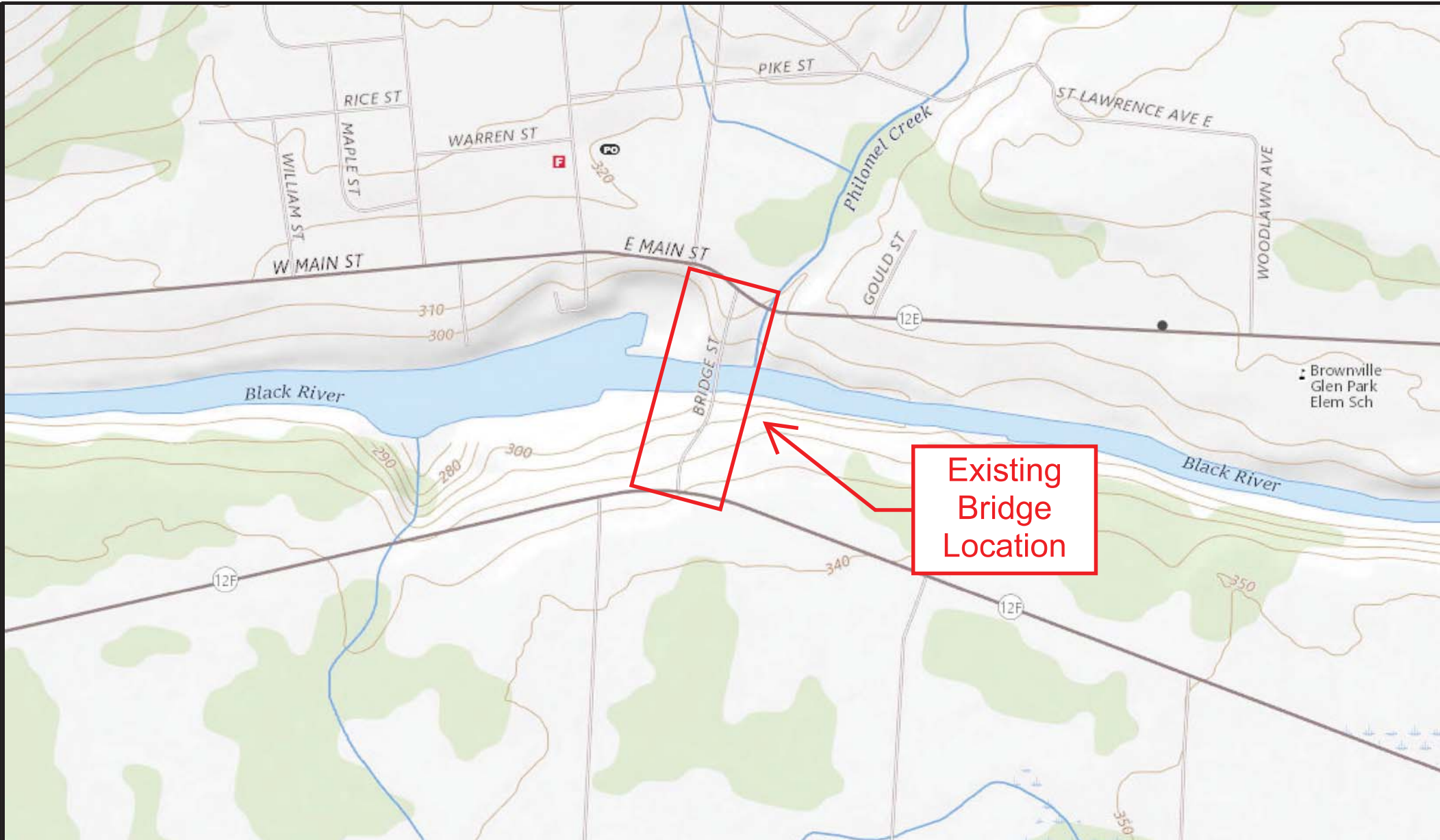
NY Route 12E over Black River Bridge Replacement Project - Proposed Bridge Location
Brownville, Jefferson County, New York



Lat/Lng ▲ 43.9959, -76.0022

United States Geological Survey Topographic Map

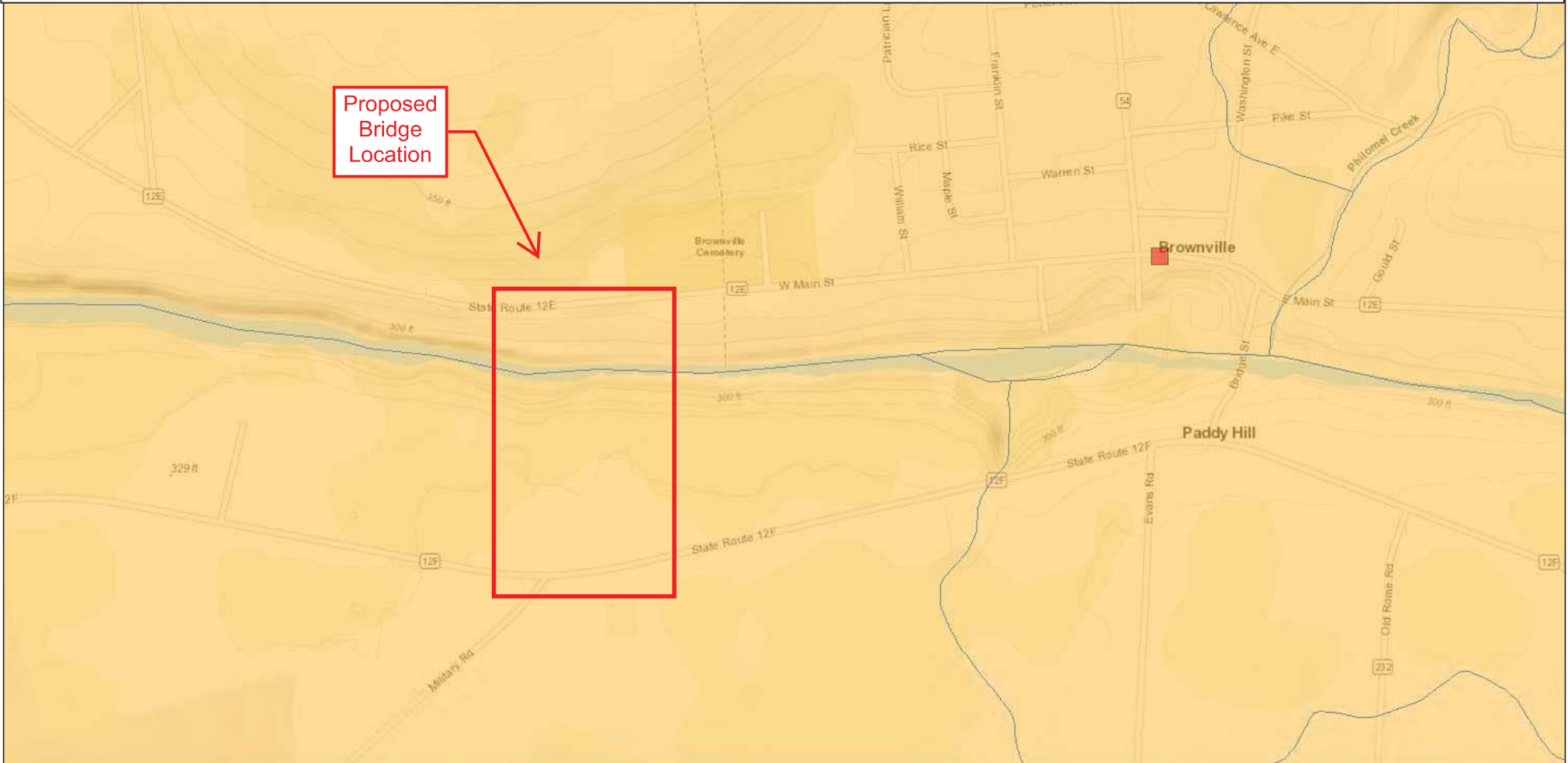
NY Route 12E over Black River Bridge Replacement Project - Existing Bridge Location
Brownville, Jefferson County, New York



**New York State Department of Environmental
Conservation – Endangered Species Map**

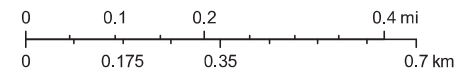
NYS Department of Environmental Conservation - State Endangered Species Map


Proposed Bridge
NY Route 12E over Black River Bridge Replacement Project
Brownville, Jefferson County, New York



September 26, 2019

1:9,028



 Rare Plants or Animals

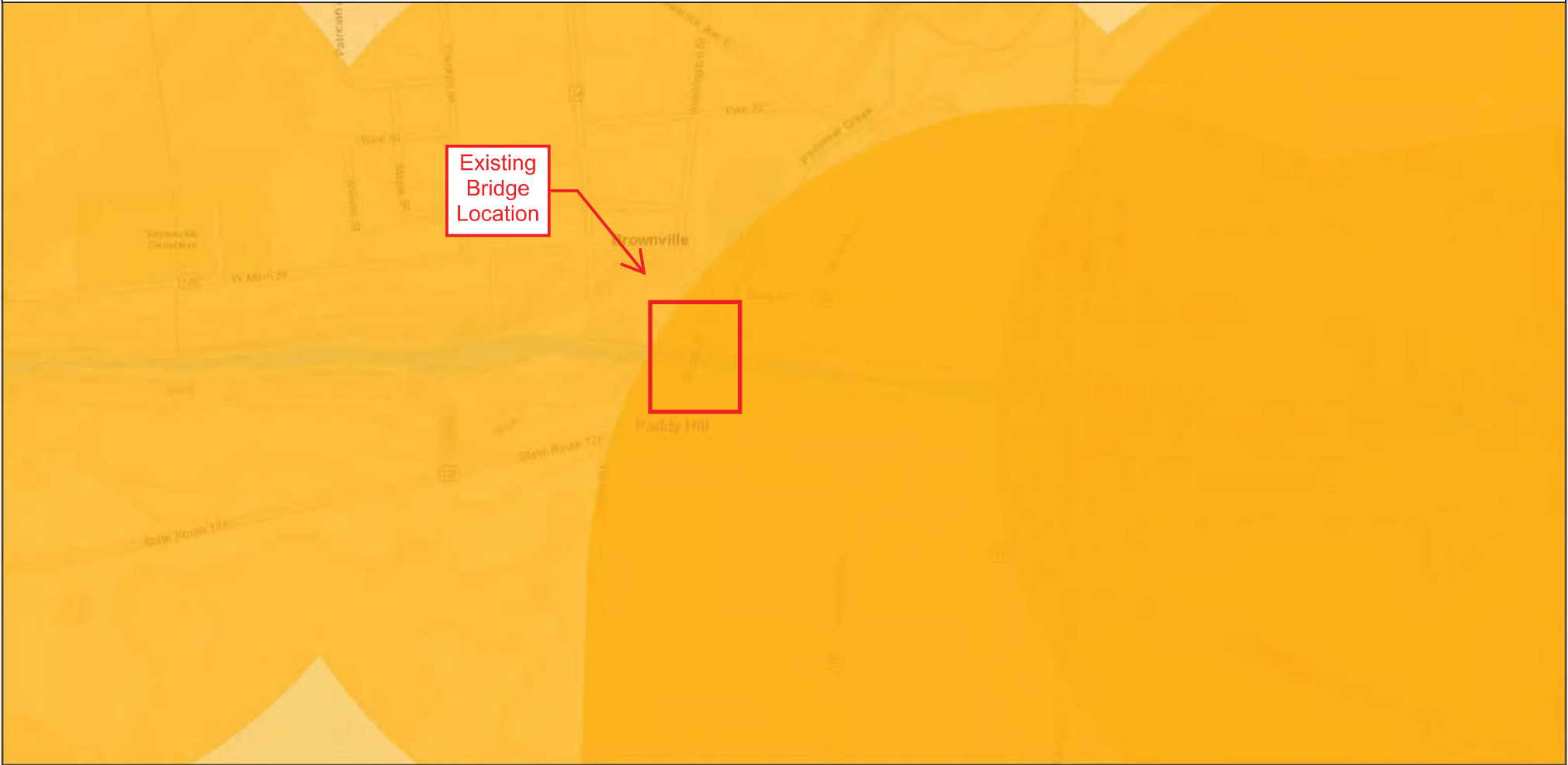
Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

NYS Department of Environmental Conservation - State Endangered Species Map


Existing Bridge

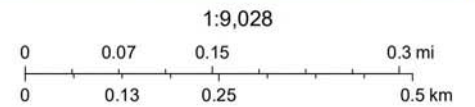
NY Route 12E over Black River Bridge Replacement Project

Brownville, Jefferson County, New York



April 22, 2021

 Rare Plants or Animals



Sources: Esri, HERE, Garmin, Intermap, increment P Corp., GEBCO, USGS, FAO, NPS, NRCAN, GeoBase, IGN, Kadaster NL, Ordnance Survey, Esri Japan, METI, Esri China (Hong Kong), (c) OpenStreetMap contributors, and the GIS User Community

NYS Department of Environmental Conservation
Not a legal document

ATTACHMENT B
CORRESPONDENCE

**New York Natural Heritage Program
Consultation Letter**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, New York Natural Heritage Program
625 Broadway, Fifth Floor, Albany, NY 12233-4757
P: (518) 402-8935 | F: (518) 402-8925
www.dec.ny.gov

December 10, 2019

Katy Stringer
Foit-Albert Associates
435 New Karner Road
Albany, NY 12205

Re: Route 12E over Black River
County: Jefferson Town/City: Brownville, Hounsfield

Dear Ms. Stringer:

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to the above project.

Enclosed is a report of rare or state-listed animals and plants, and significant natural communities that our database indicates occur in the vicinity of the project site.

For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our database. We cannot provide a definitive statement as to the presence or absence of all rare or state-listed species or significant natural communities. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

Our database is continually growing as records are added and updated. If this proposed project is still under development one year from now, we recommend that you contact us again so that we may update this response with the most current information.

The presence of the plants and animals identified in the enclosed report may result in this project requiring additional review or permit conditions. For further guidance, and for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the NYS DEC Region 6 Office, Division of Environmental Permits at dep.r6@dec.ny.gov, (315) 785-2245.

Sincerely,



Heidi Kraehling
Environmental Review Specialist
New York Natural Heritage Program



The following state-listed animals have been documented in the vicinity of the project site.

The following list includes animals that are listed by NYS as Endangered, Threatened, or Special Concern; and/or that are federally listed or are candidates for federal listing.

For information about any permit considerations for your project, please contact the Permits staff at the NYSDEC Region 6 Office at dep.r6@dec.ny.gov, (315) 785-2245.

The following species has been documented in fields surrounding the Watertown Airport and so could occur in the vicinity of the project site .

<i>COMMON NAME</i>	<i>SCIENTIFIC NAME</i>	<i>NY STATE LISTING</i>	<i>FEDERAL LISTING</i>
Birds			
Short-eared Owl <i>Breeding</i>	<i>Asio flammeus</i>	Endangered	7280

The following species has been documented within 1.75 miles of the project site. Additional locations have been documented within 2.25 miles. Individual animals may travel 2.5 miles from documented locations. An impact of concern is the cutting or removal of potential roost trees.

<i>COMMON NAME</i>	<i>SCIENTIFIC NAME</i>	<i>NY STATE LISTING</i>	<i>FEDERAL LISTING</i>
Mammals			
Indiana Bat <i>Hibernaculum and maternity colony</i>	<i>Myotis sodalis</i>	Endangered	Endangered 3122

The following species has been documented within 1.75 miles of the project site. Additional locations have been documented within 3.25 miles. Individual animals may travel 5 miles from documented locations. An impact of concern is the cutting or removal of potential roost trees.

<i>COMMON NAME</i>	<i>SCIENTIFIC NAME</i>	<i>NY STATE LISTING</i>	<i>FEDERAL LISTING</i>
Mammals			
Northern Long-eared Bat <i>Hibernaculum</i>	<i>Myotis septentrionalis</i>	Threatened	Threatened 14207

This report only includes records from the NY Natural Heritage database.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

Information about many of the listed animals in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage’s Conservation Guides at www.guides.nynhp.org, and from NYSDEC at www.dec.ny.gov/animals/7494.html.



The following rare plant has been documented at the project site.

We recommend that potential impacts of the proposed project on this species be addressed as part of any environmental assessment or review conducted as part of the planning, permitting and approval process, such as reviews conducted under SEQRA. Field surveys of the project site may be necessary to determine the status of a species at the site, particularly for sites that are currently undeveloped and may still contain suitable habitat. Final requirements of the project to avoid, minimize, or mitigate potential impacts are determined by the lead permitting agency or the government body approving the project.

The following plant is listed as Threatened by New York State, and so is a vulnerable natural resource of conservation concern.

<i>COMMON NAME</i>	<i>SCIENTIFIC NAME</i>	<i>NY STATE LISTING</i>	<i>HERITAGE CONSERVATION STATUS</i>
Back's Sedge	<i>Carex backii</i>	Threatened	Imperiled in NYS

Documented at multiple locations along the rim of the Black River Gorge southwest of Brownville. 2004-06-08.

11839

This report only includes records from the NY Natural Heritage database. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

Information about many of the rare animals and plants in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, from NatureServe Explorer at www.natureserve.org/explorer, and from USDA's Plants Database at <http://plants.usda.gov/index.html> (for plants).

Katy Stringer

From: Ross, Angelena M (DEC) <angelena.ross@dec.ny.gov>
Sent: Friday, February 12, 2021 3:17 PM
To: Katy Stringer
Cc: MacDuff, Andrew (DEC); Iloff, Donna L (DEC)
Subject: RE: Natural Heritage Consultation

Hi Katy,

Tree clearing won't be an issue as long as it is restricted to the winter dates mentioned.

As far as drilling, grouting and any blasting that needs to take place, we are far enough away from the hibernacula that there won't be an issue.

Thanks for reaching out about this.

Take care,

Angie

From: Katy Stringer <KStringer@foit-albert.com>
Sent: Thursday, February 11, 2021 5:03 PM
To: Ross, Angelena M (DEC) <angelena.ross@dec.ny.gov>
Cc: MacDuff, Andrew (DEC) <andrew.macduff@dec.ny.gov>; Iloff, Donna L (DEC) <donna.iloff@dec.ny.gov>
Subject: RE: Natural Heritage Consultation

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hello again;

I have received new information from the engineers regarding this project- this bridge replacement is taking place on karst cliffs, and it seems that karst fissures in the vicinity of the new bridge abutments may need to be grouted. As karst fissures can be suitable bat habitat, does this alter how we should proceed with tree clearing/ the consultation process?

Thank you very much,

Katy Stringer
Jr. Environmental Scientist
Foit-Albert Associates, Architecture, Engineering and Surveying, PC - MBE/DBE
p.518.452.1037
Buffalo / Albany / NYC
foit-albert.com

From: Ross, Angelena M (DEC) <angelena.ross@dec.ny.gov>
Sent: Tuesday, February 9, 2021 3:55 PM
To: Katy Stringer <KStringer@foit-albert.com>

Cc: MacDuff, Andrew (DEC) <andrew.macduff@dec.ny.gov>; Iloff, Donna L (DEC) <donna.iloff@dec.ny.gov>

Subject: RE: Natural Heritage Consultation

Yes. You are good with to proceed with tree clearing. The project is farther from the hibernaculum than the current bridge (current bridge is 1.2 miles and new locations is 1.9 miles from hibernaculum). That said, if there is to be any demolition of the old bridge and tree clearing necessary for that, those tree clearing dates would also apply.

Thank you!

Angie

From: Katy Stringer <KStringer@foit-albert.com>

Sent: Tuesday, February 09, 2021 3:43 PM

To: Ross, Angelena M (DEC) <angelena.ross@dec.ny.gov>

Cc: MacDuff, Andrew (DEC) <andrew.macduff@dec.ny.gov>; Iloff, Donna L (DEC) <donna.iloff@dec.ny.gov>

Subject: Re: Natural Heritage Consultation

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Thank you! We do intend to keep any tree clearing to the specified date range.

We are currently working with someone from the Department of Transportation who has indicated that identifying and mapping the proximity of any hibernacula to the riparian corridor where work is proposed must be resolved in order to proceed with a biological assessment- to the best of your knowledge, is this step (identifying a hibernaculum's specific location) unnecessary as long as we adhere to the winter tree clearing dates?

Thank you for the help,

Katy Stringer

From: Ross, Angelena M (DEC) <angelena.ross@dec.ny.gov>

Sent: Tuesday, February 9, 2021 3:23 PM

To: Katy Stringer <KStringer@foit-albert.com>

Cc: MacDuff, Andrew (DEC) <andrew.macduff@dec.ny.gov>; Iloff, Donna L (DEC) <donna.iloff@dec.ny.gov>

Subject: RE: Natural Heritage Consultation

Thanks for this, Katy. This is very helpful. At the current location, it would be important that any tree clearing for the bridge replacement be conducted prior to March 31 (allowable tree removal dates are Nov 1-March 31). There would be no other concerns if these dates were adhered to.

If tree clearing cannot be completed in the specified time frame, please reach out and we can discuss other options.

Thank you.

Angie

From: Katy Stringer <KStringer@foit-albert.com>
Sent: Tuesday, February 09, 2021 2:29 PM
To: Ross, Angelena M (DEC) <angelena.ross@dec.ny.gov>
Cc: MacDuff, Andrew (DEC) <andrew.macduff@dec.ny.gov>; Iloff, Donna L (DEC) <donna.iloff@dec.ny.gov>
Subject: RE: Natural Heritage Consultation

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

This project involves the removal of the existing bridge carrying New York 12E over the Black River, and the construction of a new bridge on a new alignment approximately 0.61 miles to the west. The proposed replacement bridge will have a span of approximately 200 feet with both abutments founded on rock and parallel with the Black River; additionally, the highway approaches, 12E and 12F, will be rehabilitated to accommodate the new replacement bridge crossing. I've attached two maps illustrating the areas of potential effects for both the new and old bridge locations.

Thank you,

[Katy Stringer](#)

Jr. Environmental Scientist

Foitt-Albert Associates, Architecture, Engineering and Surveying, PC - MBE/DBE

p.518.452.1037

Buffalo / Albany / NYC

foit-albert.com

From: Ross, Angelena M (DEC) <angelena.ross@dec.ny.gov>
Sent: Tuesday, February 9, 2021 2:01 PM
To: Katy Stringer <KStringer@foit-albert.com>
Cc: MacDuff, Andrew (DEC) <andrew.macduff@dec.ny.gov>; Iloff, Donna L (DEC) <donna.iloff@dec.ny.gov>
Subject: Natural Heritage Consultation

Hi Katy,

Can you send me a shapefile of the project area so I can have a better look? A PDF of the project area would also suffice. Also, what is being proposed at the project site?

Thank you.

Angie

Angelena M. Ross, Ph.D.

Wildlife Biologist, Division of Fish & Wildlife

New York State Department of Environmental Conservation

190 Outer Main St., Suite 103, Potsdam, NY 13676

P: (315) 274-3333 | F: (315) 265-2167 | angelena.ross@dec.ny.gov

www.dec.ny.gov |  |  | 



ATTACHMENT C

**TREE COUNT AND
DATA SHEETS**

BLACK RIVER TREE SURVEY

SOUTH SIDE OF RIVER

- **Community A** (closest to river)
 - Eastern Hemlock
 - 31 at/above 4
 - 3 below 4
 - Oak
 - 9 at/above
 - 5 below
 - Sweet Birch
 - 1 at/above
 - Eastern White Pine
 - 1 below
 - 50 trees total

- **Community B**
 - Black Locust
 - 15 at/above
 - Black Cherry
 - 10 at/above
 - Shagbark Hickory
 - 1 at/above
 - Sweet Birch
 - 2 at/above
 - European Buckthorn
 - 1 below
 - Green Ash
 - 1 at/above
 - 1 below
 - White Pine
 - 1 at/above
 - Sapling
 - 35 below
 - Dead
 - 2 at/above
 - 3 below
 - 72 trees total

- **Community C**
 - Black Locust
 - 5 at/above
 - Shagbark Hickory
 - 6 at/above

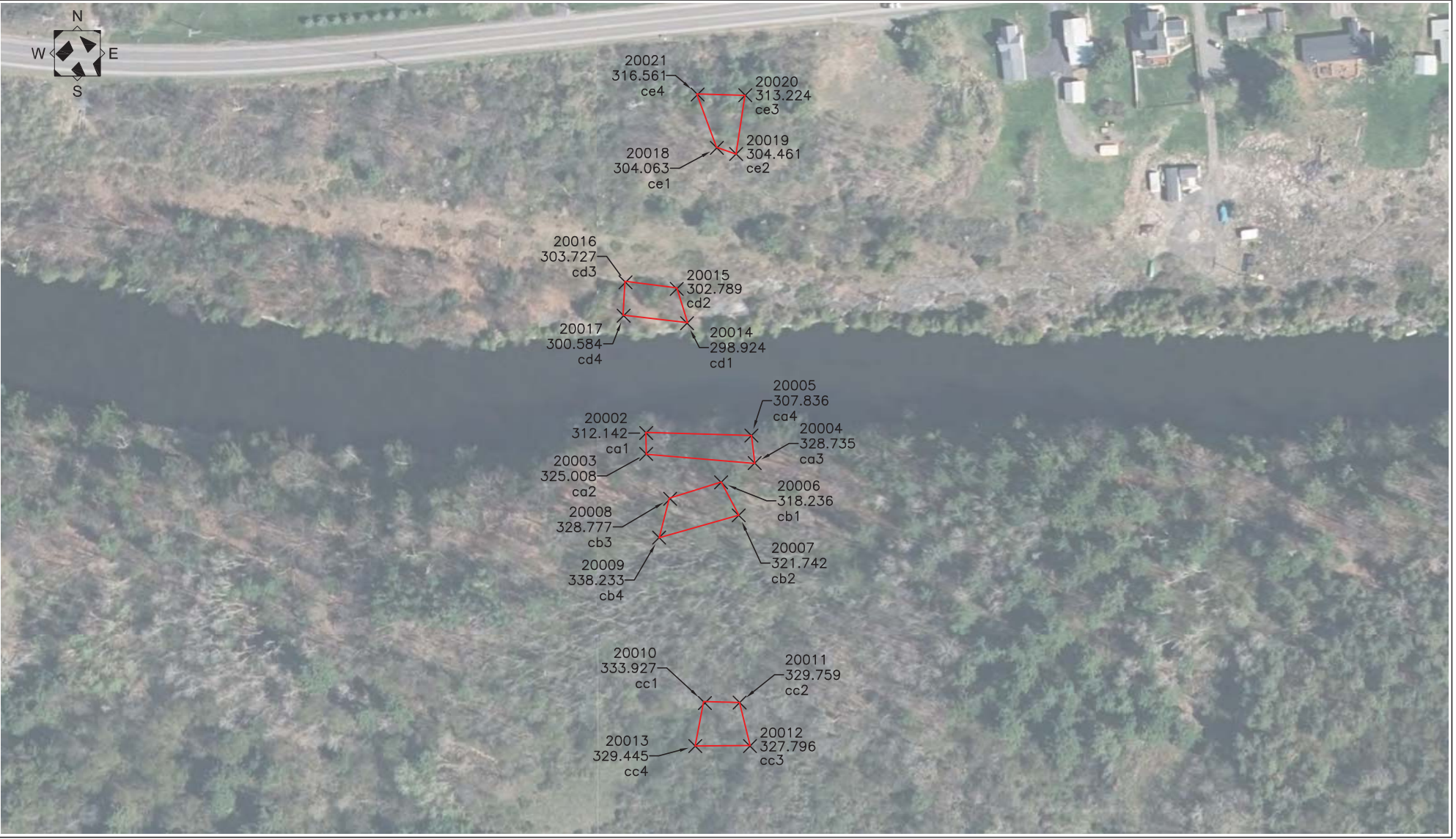
- Green Ash
 - 2 at/above
- Black Cherry
 - 12 at/above
 - 5 below
- White Pine
 - 1 at/above
- Sweet Birch
 - 2 at/above
- Dead
 - 3 at/above
 - 6 below
- 42 trees total

NORTH SIDE OF RIVER

- **Community D** (closest to river)
 - Cedar
 - 11 at/above
 - 19 below
 - Black Cherry
 - 3 at/above
 - 1 below
 - Eastern White Pine
 - 3 at/above
 - 2 below
 - Black Locust
 - 1 below
 - Oak
 - 6 at/above
 - 6 below
 - Blue Beech
 - 1 at/above
 - Sweet Birch
 - 1 at/above
 - 14 below
 - Dead
 - 2 at/above
 - 8 below
 - 78 trees total
- **Community E**
 - Eastern White Pine
 - 2 at/above

- Black Cherry
 - 2 at/above
 - 6 below
- American Elm
 - 1 at/above
- White Birch
 - 4 at/above
 - 1 below
- Cedar
 - 16 at/above
 - 11 below
- Shagbark Hickory
 - 2 at/above
- 45 trees total

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 ASSOCIATES
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 205 Main Street, Suite 200
 Buffalo, NY 14203 P: (716) 855-2853 www.foit-albert.com

Comments



TREE SURVEY
ROUTE 12E BRIDGE REPLACEMENT
OVER BLACK RIVER
 COUNTY OF JEFFERSON
 TOWN OF BROWNVILLE, NEW YORK 13615

Sheet Number	Plot Sheet Date	Scale
		1" = 100'
		Date: 04/24/2020
		Drawn By: WPO
		Checked By: KJC
		Project: 16072.02
		Sheet: 1

Tree Removal Area Map

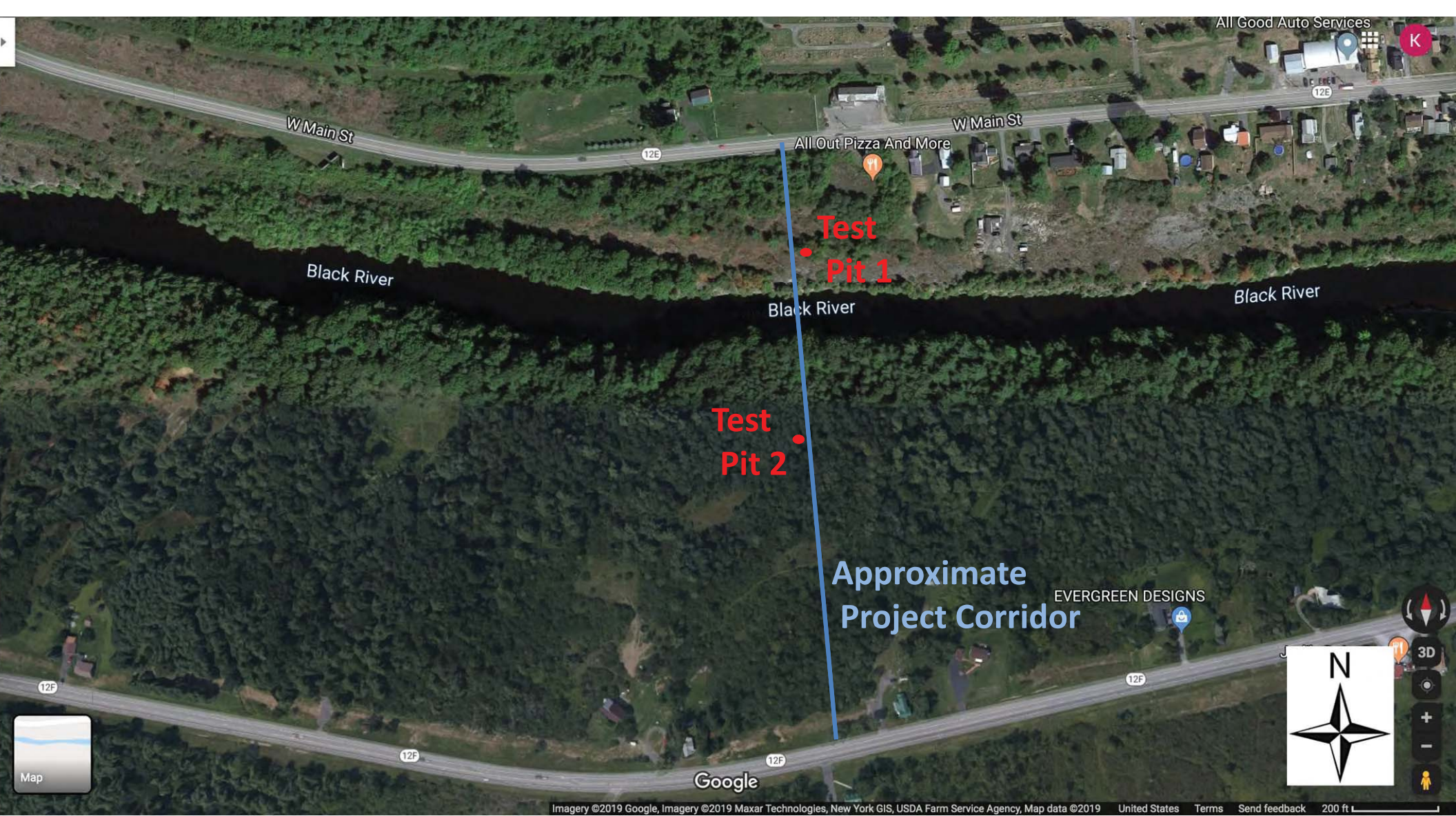
Route 12E over Black River
Hounsfield, Jefferson County, New York

Legend:

-  Approximate Tree Removal Area
-  Approximate Project Area Boundaries

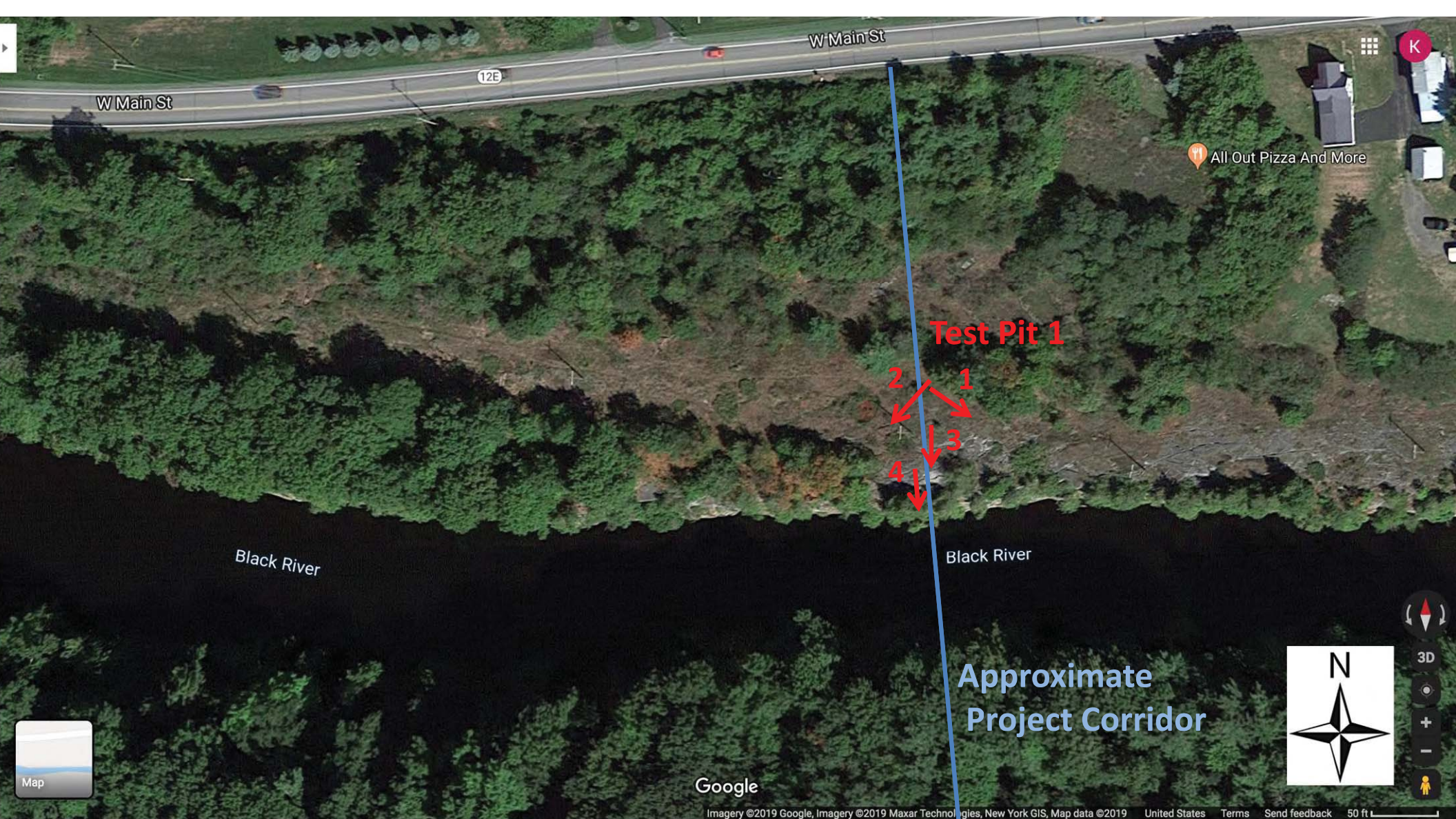


ATTACHMENT D
SITE PHOTOGRAPHS



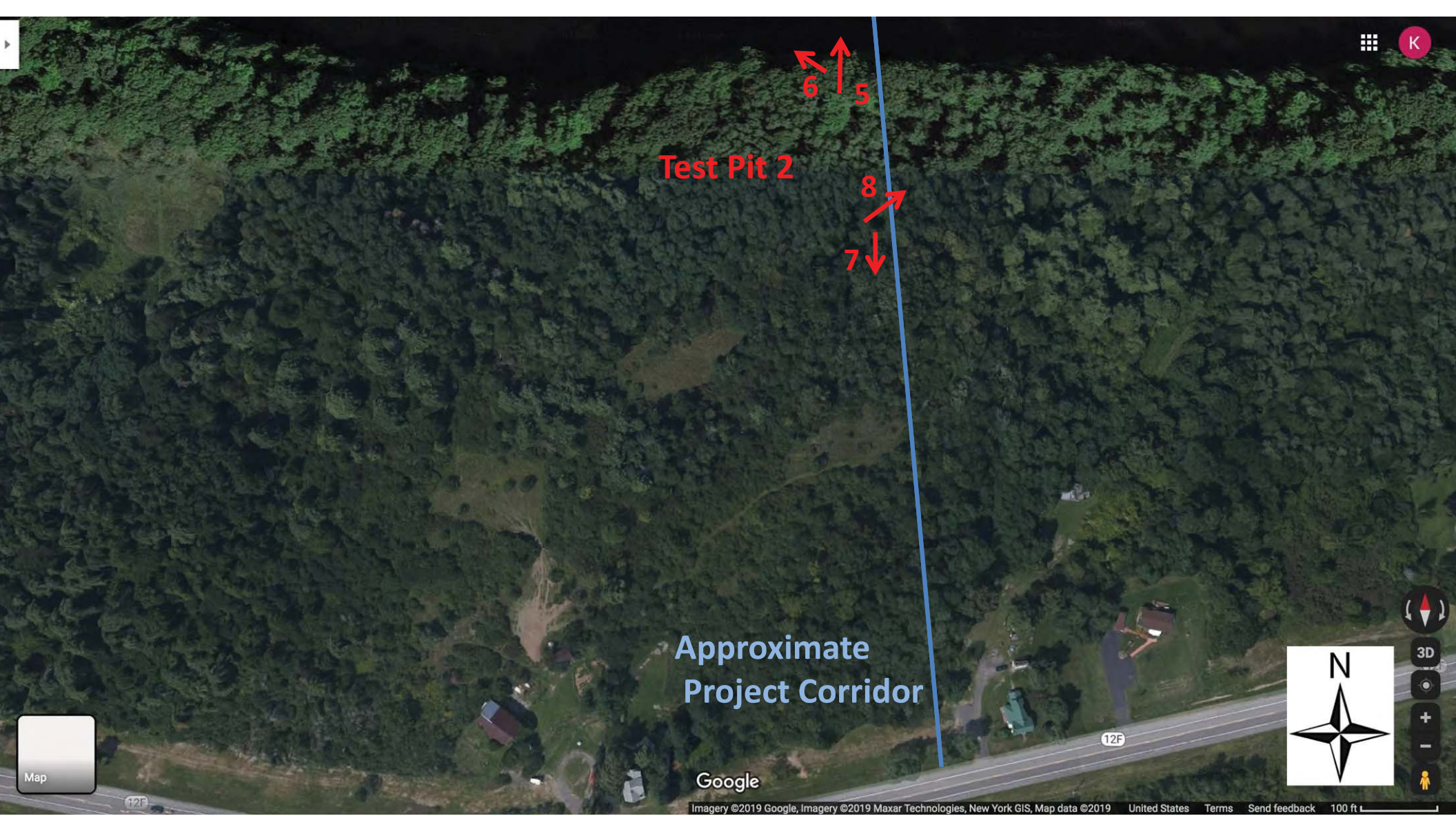
County Road 12E over Black River

Photographic Key Plan
Jefferson, New York



County Road 12E over Black River

Photographic Key Plan
Jefferson, New York



County Road 12E over Black River

Photographic Key Plan
Jefferson, New York



Photograph 1 – Image taken from Test Pit 1 (TP1) upland area, which is located in the project corridor to the north of the Black River. View facing southeast.



Photograph 2 – Image from TP1 upland area. View facing southwest.



Photograph 3 – Image approaching the northern bank of the Black River. View facing south.



Photograph 4 – Image taken while standing on the northern bank of the Black River. View facing south, and down about fifty feet from the top of the rock cliff to the water.



Photograph 5 – Photograph taken from the south bank of the Black River, looking down a steep slope to the water. View facing north.



Photograph 6 – Photograph taken from the south bank of the Black River; view facing northwest.



Photograph 7 – Image of Test Pit 2 (TP2), located in the project corridor to the south of the Black River. View facing south.



Photograph 8 – Image taken from TP2, facing northeast.

**Section 7 ESA Biological Opinion Concurrence
Letters**



08/30/2022

Terry Tyoe
Regional Permit Administrator R-6
New York Department of Conservation
5th Floor – Dulles State Office Building 317 Washington Street
Watertown, NY 13601

PIN 778009
BIN 3338900
Bridge Replacement Project
Route 12 E over Black River
Towns of Brownville and Hounsfield, Jefferson County

Dear Ms. Tyoe:

The new single span bridge over the Black River will be located 0.61 miles west of an existing structure in the Town of Brownville in Jefferson County, New York. The bridge will connect NYS Routes 12E and 12F. New connector roads leading to the proposed bridge will be constructed which will require the removal of approximately 2600 trees throughout a 3.40-acre area. The project is currently scheduled to be constructed in 2023.

In addition to site observation, screenings for state listed rare plants or animals were additionally researched using the NYSDEC Environmental Resource Mapper, the NYSDEC Natural Heritage Program, and the NYSDEC Nature Explorer mapping applications. The NYSDEC Natural Heritage Program identified two state listed species: the Short-Eared Owl (*Asio flammeus*, endangered) and Back's Sedge (*Carex backii*, threatened) known to occur in the vicinity of the project. Additionally, the NYSDEC Nature Explorer identified the possible presence within the project site and areas adjacent to the project site three (3) additional threatened or endangered species: Calypso (*Calypso bulbosa var. americana*, endangered, possible but not confirmed), Drummond's Rock Sedge (*Boechera stricta*, threatened, recently confirmed), and Northern Stickseed (*Hackelia deflexa ssp. americana*, endangered, historically confirmed).

With respect to the short-eared owl, their preferred habitat consists of large fields with high vegetation density, such as grasslands, meadows, marshes and open agricultural areas. The cutting/trimming of 3.40 acres of trees within a forested area is proposed for the completion of this project. As a result, it is unlikely that this action will cause harm or result in incidental take of the species. The NYSDEC Natural Heritage Program database indicates there are no known locations of the owl within the vicinity of the 1.5-mile radius of concern of the project, only potential locations in the grasslands

surrounding the nearby Watertown Airport. Previous site visits resulted in zero detections as well.

There are 3 known locations of Back's sedge within the 1.5-mile vicinity of the project area. These were last observed in 2004, and it is unknown if they are still present. They were not observed during any previous site visits. Northern stickseed was confirmed within the vicinity previously, but the most recent confirmation is in 1951. As a result, it is unlikely if still present, to be taken during construction activities. Drummond's Rock Sedge, although recently confirmed in the vicinity is unlikely to result in incidental take as the closest known location is approximately 0.7 miles from the boundaries of the project area. Calypso has no confirmed locations within the areas adjacent to the project area and has not been observed on any previous visits.

Given the above, no take is expected of the Short-Eared Owl due to lack of suitable habitat where the primacy of work will occur for the project. Attached is map showing where the work will occur to show that it is primarily forested habitat that will be affected by this project.

Via this letter, we kindly request that you conduct an environmental inventory for Threatened and Endangered Species and Critical Habitat Areas and determine their potential to be affected by this project. In particular, the ones mentioned in this correspondence.

The results of your information will be included in the Design Report or other documents pertaining to the subject project.

Please contact Jacob Dillon, at 315-785-2601, or jacob.dillon@dot.ny.gov with your comments or questions about this project

Sincerely,



Environmental Specialist, Trainee 2

Attachments: Aerial Project Location Map

cc: B. Poore, Regional Design Environmental Unit Supervisor, NYSDOT Region 7

Ecc: S. Gagnon, ARDE
J. Grill, Reg. Structures Engineer
K. Collier, Job Manager
Karen Carling, Env. Specialist, Foit-Albert



Location in County

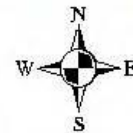


Location in Quad



**Project Aerial Map
USGS Quad - BROWNVILLE**

PIN 778009.121
BIN 3338900
Route 971H over Black River
Town of Hounsfield, Jefferson County, New York



Scale 1:10,000

Basemap Copyright
New York State
Department of Transportation

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 6

Dulles State Office Building, 317 Washington Street, Watertown, NY 13601-3787

P: (315) 785-2245 | F: (315) 785-2242

www.dec.ny.gov

September 15, 2022

Jacob Dillon
NYS DEC
317 Washington Street
Watertown, NY 13601

RE: Route 12E Bridge Replacement over Black River
State Environmental Quality Review (SEQR) Coordination
Towns of Brownville and Hounsfield, Jefferson County

Dear Jacob Dillon:

We received your letter dated August 30, 2022 asking us to do a SEQR review for the proposed project listed above. Below are the department's comments:

1. To ensure there are no negative impacts related to T/E species as a result of this project, all tree clearing must be conducted from November 1-March 31. We do not anticipate any negative impacts to other T/E species as a result of this project.

We cannot provide a definitive statement as to the presence or absence of all rare or state-listed species or significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental impact assessment. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

Our databases are continuously being updated and amended. If this proposed project is still under development one year from now, we recommend that you contact us again so that we may update this response with the most current information.

Thank you for contacting us regarding this matter. If you have any questions with this letter, I can be reached at (315) 785-2245 or donna.iloff@dec.ny.gov.

Sincerely,

Donna Iloff
Program Aide
Region 6





United States Department of the Interior

FISH AND WILDLIFE SERVICE
3817 Luker Road
Cortland, New York 13045



September 23, 2021

Mr. Timothy O'Donoghue
Area Engineer
Federal Highway Administration
Leo W. O'Brien Federal Building
Suite 719
Albany, NY 12207

RE: NYS Rte. 12E over the Black River Village of Brownville Jefferson County, New York (PIN 7780.09)

Dear Mr. O'Donoghue:

The U.S. Fish and Wildlife Service (Service) is responding to your request dated and received August 19, 2021, to verify that the proposed New York State Route 12E bridge replacement project located over the Black River, in the Village of Brownville, Jefferson County, New York (PIN 7708.09) may rely on the February 5, 2018, Programmatic Biological Opinion (BO) for federally funded or approved transportation projects that may affect the federally listed endangered Indiana bat (*Myotis sodalis*) and/or federally listed threatened northern long-eared bat (NLEB) (*Myotis septentrionalis*).

This letter provides the Service's response as to whether the Federal Highway Administration (FHWA) may rely on the BO to comply with Section 7(a)(2) of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) for the Project's effects to the Indiana bat and the NLEB. The FHWA has determined that the Project is *likely to adversely affect* the Indiana bat and the NLEB.

Conclusion

The Service has reviewed the effects of the proposed Project, which includes the FHWA's commitment to implement any applicable mitigation measures as indicated in your August 19, 2021, electronic mail. The Service finds a slight inconsistency with the definition of actions covered by the BO. The additional clearing beyond 300 feet of the existing road surface is a minor departure and does not meaningfully alter the analyses or conclusions of the BO. Therefore, the Service finds that the Project may rely on the BO, and the minor additional clearing beyond 300 feet of the existing road surface is included in the Project-increment of adverse effects attributed to the program as a whole and is not likely to jeopardize the continued existence of the Indiana bat and the NLEB. In coordination with your agency and the other

sponsoring Federal Transportation Agencies, the Service will reevaluate this conclusion annually in light of any new pertinent information under the adaptive management provisions of the BO.

Incidental Take

Indiana Bat

The Service anticipates that tree removal associated with the proposed Project will cause incidental take of Indiana bats. As described in the Incidental Take Statement (ITS) of the BO, such taking will be difficult to detect. The Service determined that it is appropriate to measure the amount or extent of incidental taking resulting from BO projects using the proposed acreage of tree removal from Indiana bat suitable habitat as a surrogate for the numbers of individuals taken.

The proposed Project will remove a total of 3.40 acre of trees from habitat that is suitable habitat for the Indiana bat. FHWA determined that 1.26 acres of tree removal is located within 100 feet of the existing road and 2.139 acres are located outside the 100 ft of the roadway (1.03 acres are greater than 100 feet of the road, but less than 300 feet of the road, and 1.11 acres is located greater than 300 feet from the road). All tree removal will occur in winter (October 1 through March 31) and comply with all other conservation measures in the BO. Based on the BO, 2.139 are anticipated to result in adverse effects. The FHWA used the mitigation ratio of 1.5 from Table 3¹ of the BO to calculate the compensatory mitigation required to offset these adverse impacts for a total of 3.21 acres of trees that is suitable for the Indiana bat.

Based on the mitigation identified above and the information provided in Table 2 of Exhibit E in The Conservation Fund's (TCF) In Lieu Fee (ILF) Instrument², the FHWA will contribute \$19,308.15 to TCF prior to the start of construction in order to comply with the mitigation requirements of the program of transportation projects reviewed in the BO. These calculations are based on the November 2020-2021 Land Use Values in Table 2 of Exhibit E in TCF's ILF Instrument, which are applicable even if the project construction should occur in a different calendar year. At the time of payment, the FHWA or designated non-federal representative shall notify the Service of compliance with the compensatory mitigation requirements as described above.

The purchase of species conservation credits and/or in-lieu fee contributions shall occur prior to construction of a transportation project covered under this programmatic consultation. Exceptions to this program stipulation include emergency projects that do not require a letting prior to construction. In these cases, purchase of credits and/or in-lieu fee contributions shall occur within three months of completion of the project. This timeframe allows for measuring the acres of habitat affected by the emergency project and for financial processing.

The Service will add the acreage of Project-related tree removal to the annual total acreage attributed to the BO as a surrogate measure of Indiana bat incidental take and exempted from the prohibitions of Section 9 of the ESA. Such exemption is effective as long as your agency implements the reasonable and prudent measure (RPM) and accompanying terms and conditions of the BO's ITS.

¹ https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT_ILF_ratios_transportation_agencies.pdf

² https://www.fws.gov/midwest/endangered/section7/fhwa/pdf/IBAT_ExhibitE_Table2_FeeSchedule_LandValues.pdf

The sole RPM of the BO's ITS requires the Federal Transportation Agencies to ensure that State/Local transportation agencies, who choose to include eligible projects under the programmatic action, incorporate all applicable conservation measures in the project proposals submitted to the Service for ESA Section 7 compliance using the BO. The implementing terms and conditions for this RPM require the Federal Transportation Agencies to offer training to appropriate personnel about using the BO, and promptly report sick, injured, or dead bats (regardless of species) or any other federally listed species located in project action areas.

Northern Long-eared Bat

The Service anticipates that tree removal associated with the Project will cause incidental take of NLEBs. However, the Project is consistent with the BO, and such projects will not cause take of NLEB that is prohibited under the ESA section 4(d) rule for this species (50 CFR §17.40(o)). Therefore, the incidental take of NLEBs resulting from the Project does not require exemption from the Service.

Reporting Dead or Injured Bats

The FHWA, its State/Local cooperators, and any contractors must take care when handling dead or injured Indiana bats, or any other federally listed species that are found at the Project site to preserve biological material in the best possible condition and to protect the handler from exposure to diseases, such as rabies. Project personnel are responsible for ensuring that any evidence about determining the cause of death or injury is not unnecessarily disturbed. Reporting the discovery of dead or injured listed species is required in all cases to enable the Service to determine whether the level of incidental take exempted by this BO is exceeded, and to ensure that the terms and conditions are appropriate and effective. Parties finding a dead, injured, or sick specimen of any endangered or threatened species must promptly notify this Service office.

Reinitiation Notice

This letter concludes consultation for the Project, which qualifies for inclusion in the BO issued to the Federal Transportation Agencies.

To maintain this inclusion, a reinitiation of this Project-level consultation is required where the FHWA's discretionary involvement or control over the Project has been retained (or is authorized by law) and if:

1. The amount or extent of incidental take of Indiana bat is exceeded;
2. new information reveals that the Project may affect listed species or critical habitat in a manner or to an extent not considered in the BO;
3. the Project is subsequently modified in a manner that causes an effect to listed species or designated critical habitat not considered in the BO; or
4. a new species is listed or critical habitat designated that the Project may affect.

Per condition #1 above, the anticipated incidental take is exceeded when:

- The Project removes trees of more than 2.139 acres of habitat suitable for the Indiana bat (>100 feet from the road); or

- tree removal occurs outside the October 1 to March 31 window.

In instances where the amount or extent of incidental take is exceeded, the FHWA is required to immediately request a reinitiation of this Project-level consultation.

We appreciate your continued efforts to conserve the Indiana bat and NLEB. If you have any questions regarding our response or if you need additional information, please contact Sandra Doran at 607-753-9334. Future correspondence with us on this project should reference project file 19F3453.

Sincerely,

IAN DREW

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DREW
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For
David A. Stilwell
Field Supervisor

cc:

NYSDOT, Watertown, NY (B. Poore)
NYSDEC, Albany, NY (C. Herzog)
NYSDEC, Watertown, NY (A. Ross)
FHWA, Albany, NY (M. Toni)
USACE, Buffalo, NY (S. Metiever)



U.S. Department
of Transportation
**Federal Highway
Administration**

New York Division

September 24, 2021

Leo W. O'Brien Federal Building
11A Clinton Avenue, Suite 719
Albany, NY 12207
518-431-4127
Fax: 518-431-4121
NewYork.FHWA@dot.gov

In Reply Refer To:
HPD-NY

Mr. Bradley Poore
Acting Environmental Unit Supervisor
New York State Department of Transportation - Region Seven
317 Washington Street
Watertown, NY 13601

Subject: PIN 7780.09 - Endangered Species Act (ESA) Determination
NYS Rte. 12E over the Black River (BIN 3338900)
Village of Brownville, Jefferson County

Dear Mr. Poore:

We have reviewed the documentation prepared by the New York State Department of Transportation (NYSDOT) and submitted on August 18, 2021 regarding consultation under Section 7 of the Endangered Species Act for the subject project. Based on our review of the proposed work, the Federal Highway Administration (FHWA) concurred with NYSDOT's determination that the project activities "*May Affect, but Not Likely to Adversely Affect*" the Indiana Bat.

Concurrence was sought from the United States Fish and Wildlife Service (USFWS) on August 19, 2021 in accordance with the 7-Step Process. USFWS completed the formal consultation process and determined via letter on September 23, 2021 that the project, as proposed by NYSDOT is "*Likely to Adversely Affect*" the Indiana and Northern Long-eared bat species. After review of the letter from the USFWS, this determination was made based on the proposed tree clearing of 2.139 of the total 3.402 acres of trees being greater than 100 feet of the existing roadway of habitat suitable for the Indiana and Northern Long-eared bat species. The proposed tree clearing and affected bat species are covered under the USFWS *Programmatic Biological Opinion for Transportation Projects in the Range of the Indiana Bat and Northern Long-Eared Bat*.

Therefore, FHWA has approved mitigation for tree removal for the project according to the Biological Opinion. Mitigation for this project will be completed through a mutually-agreed upon in-lieu-fee (ILF) program. Approximately 2.139 acres of trees will be cleared, therefore 3.21 acres will be conserved using a compensatory mitigation ratio of 1.5, resulting in a fee of \$19,308.15 that will be paid prior to the completion of construction. The tree clearing will occur between October 1 and March 31.

Section 7 consultation is complete. If at any time during construction the presence of these federally-listed species, or their habitat, is discovered or suspected, construction activities must be halted. Activities cannot resume until FHWA and USFWS are consulted.

If you have any questions, please feel free to contact me at (518) 431-8874.

Sincerely,

TIMOTHY
SHANE
ODONOGHUE

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TIMOTHY SHANE
ODONOGHUE

Date: 2021.09.24
12:17:17 -04'00'

Timothy S. O'Donoghue, P.E.
Area Engineer

cc: E. Reape, P.E. Regional Design Engineer, NYSDOT Region 7
D. Hart Project, Development Supervisor, NYSDOT Region 7
S. Bartscherer, Environmental Specialist, NYSDOT Region 7
K. Collier, Structural Engineer, NYSDOT Region 7
C. Ippoliti, Endangered Species Coordinator, NYSDOT Main Office
D. Stilwell, USFWS, Region 5
S. Doran, USFWS, Region 5
I. Drew, USFWS, Region 5
C. Herzog, NYSDEC, Albany, NY
A. Ross, NYSDEC, Watertown, NY
S. Metiever, USACE, Buffalo, NY
M. Toni, Acting Project Delivery and Engineering Team Leader, FHWA
R. Davies, Acting Director of Engineering, FHWA

**United States Department of Agriculture –
Natural Resources Conservation Services –
Farmland Classification**