

Appendix B-9
Section 4(f)



U.S. Department
of Transportation

1200 New Jersey Avenue, SE
Washington, DC 20590

**Federal Railroad
Administration**

January 8, 2021

Christopher P. Spencer
Planning Commissioner, City of Albany
Department of Development and Planning 200
Henry Johnson Boulevard
Albany, NY 12210

Re: Livingston Avenue Bridge Replacement
Section 4(f) Temporary Occupancy Determination

Dear Mr. Spencer:

The U.S. Department of Transportation's Federal Railroad Administration (FRA) seeks written concurrence from the City of Albany regarding potential effects to the Mohawk-Hudson Bike-Hike Trail that may occur during construction activities for the proposed replacement of the Livingston Avenue rail bridge over the Hudson River. As you know, the New York State Department of Transportation (NYSDOT) is proposing to replace the Livingston Avenue Bridge (the Project), which spans the Hudson River between the Cities of Albany and Rensselaer, providing a critical rail link on New York State's Empire Corridor rail route. The bridge, which CSX Transportation Inc. (CSX) owns and the National Railroad Passenger Corporation (Amtrak) maintains and operates, is nearing the end of its serviceable life. Amtrak uses the bridge for intercity passenger trains traveling on the Empire Corridor route and CSX and Canadian Pacific use the bridge for freight rail service.

NYSDOT is receiving Fiscal Year 2010 funding under FRA's High Speed Intercity Passenger Rail Grant Program for preliminary engineering and environmental review for the Project. FRA and NYSDOT are preparing an Environmental Assessment (EA) in accordance with the National Environmental Policy Act (NEPA) to evaluate the potential environmental impacts of the Project. As part of the Federal environmental review process, FRA must also comply with the provisions of Section 4(f) of the U.S. Department of Transportation Act and related implementing regulations at 23 CFR Part 774, which require evaluation of the potential effects of transportation projects on public parks, recreation areas, wildlife and waterfowl refuges, and historic sites, and coordination with agencies with jurisdiction over those resources. The Project would temporarily affect the Mohawk-Hudson Bike Hike Trail during construction. NYSDOT owns the affected segment of the trail and the City of Albany maintains it. Therefore, NYSDOT and the City of Albany have been identified as the agencies with jurisdiction over the Mohawk-Hudson Bike-Hike Trail.

The Livingston Avenue Bridge's superstructure and substructure are in fair to poor condition, and the mechanical portions of the movable swing span are significantly deteriorated. The swing span frequently malfunctions, resulting in delays to passenger trains, freight trains, and boat traffic, and the bridge does not meet modern seismic codes or current Amtrak, CSX, or American Railway Engineering and Maintenance-of-Way Association design standards related to load, speed, and vertical clearance. The existing bridge contributes to delays in the movement of freight and passengers throughout New York State, and its replacement is essential to implementing future rail plans and improving state-wide

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transport. The purpose of the Project is to improve reliability and reduce passenger and freight train delays along this segment of the Empire Corridor; achieve (at a minimum) a long-term state-of-good-repair for the bridge; eliminate existing bridge and track deficiencies; and maintain or improve navigation near the bridge. This will ensure that the Livingston Avenue Bridge meets modern passenger and freight rail capacity and load (weight) standards, maintains acceptable levels of safety, and supports the long-term utility and vitality of the Empire Corridor.

In the EA, FRA and NYSDOT are evaluating two Build Alternatives for replacement of the bridge: Replacement on an Adjacent North Alignment (Build Alternative 1) and Replacement on an Adjacent South Alignment (Build Alternative 2). Both Build Alternatives would require brief construction-related closures of a segment of the Mohawk-Hudson Bike-Hike Trail, where the trail passes beneath the existing Livingston Avenue Bridge and the right-of-way for the proposed replacement bridge. The Mohawk-Hudson Bike-Hike Trail runs along the Mohawk and Hudson Rivers between Rotterdam and Albany, New York. The trail provides connections and access to other biking and hiking trails in the Albany area and throughout New York State, and extends over more than 35 miles of trail (including both on- and off-road sections). Where the trail passes beneath the Livingston Avenue Bridge, it is a paved off-road trail.

Impacts to the Mohawk-Hudson Bike-Hike Trail from the Project would include the temporary closure of the trail segment that passes beneath the existing Livingston Avenue Bridge and the proposed replacement bridge for brief periods to accommodate overhead work during bridge construction and demolition. In general, pedestrian and cyclist access on the Mohawk-Hudson Hike-Bike Trail would be maintained during construction by erecting a pedestrian canopy through the work area under the railroad bridge. Access would only be interrupted during heavy lift operations or other operations that may present a risk to the public, including when there is active structural lifting overhead, most of which could be done at night. With the pedestrian canopy in place, the trail would only experience a few short closures lasting several hours each time. The exact magnitude of these closures would depend in part on the selected span arrangement and the placement of the new piers. The purpose of this letter is to request your concurrence, as the official with jurisdiction from the City of Albany, that, considering the limited and temporary nature of Project effects on this resource, the proposed temporary closures of the Mohawk-Hudson Bike-Hike Trail would not constitute a “use” of the trail as defined in Section 4(f) of the U.S. Department of Transportation Act and 23 CFR Part 774.17.

Per the Section 4(f) regulations, FRA may not approve the use of land from a publicly owned park, recreation area, or wildlife or waterfowl refuge, or a significant historic site unless a determination is made that: (i) there is no feasible and prudent alternative to the use of the land from the property; and (ii) the action includes all possible planning to minimize harm to the property resulting from such use, or (iii) the Section 4(f) use is *de minimis*. The Section 4(f) regulations identify various exceptions to the requirement for Section 4(f) approval, including temporary occupancies of land that are so minimal as to not constitute a use within the meaning of Section 4(f).

A temporary occupancy results when Section 4(f) property, in whole or in part, is required for project construction-related activities. Under the provisions of 23 CFR § 774.13(d), a temporary occupancy does not constitute a Section 4(f) use if the following conditions are met: (1) The duration is less than the time needed for the project’s construction and there is no change in ownership of land; (2) The scope of work is minor, in that both the nature and magnitude of changes to the 4(f) property are minimal; (3) No permanent, adverse physical impacts are anticipated, and there will be no temporary or permanent

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interference with the protected activities, features, or attributes of the property; (4) The land is fully restored, and returned to a condition at least as good as that which existed prior to the project; and (5) The agreement of the official(s) with jurisdiction over the Section 4(f) property regarding the above conditions is documented.

Under either Build Alternative, the Project would require a temporary occupancy of the Mohawk-Hudson Bike-Hike Trail, a Section 4(f) property, related to construction of the replacement bridge and demolition of the existing bridge. Neither Build Alternative would substantively alter the use or character of the trail. During construction of either alternative, the trail would largely remain open, except for brief periods when overhead work may require temporary closures of a short segment of the trail. As necessary, detours would be clearly marked to divert pedestrians and cyclists around the construction zone to allow unimpeded continuity of the trail. The Project's effects on the Mohawk-Hudson Bike-Hike Trail would be temporary; work affecting the trail would be minor; land ownership changes would not occur; and the trail would be fully restored, and returned to a condition at least as good as that which existed prior to construction. Therefore, FRA and NYSDOT have determined that this temporary occupancy meets the criteria in 23 CFR §774.13(d) and would not constitute a Section 4(f) use of the Mohawk-Hudson Bike-Hike Trail.

If you agree with FRA's determination, please indicate your concurrence on the signature line on the attached page. Should you have any questions or concerns regarding this request or the Project, please contact Brandon Bratcher, FRA Environmental Protection Specialist, at (202) 493-0844 or brandon.bratcher@dot.gov, or Mark Jakubiak, NYSDOT Project Manager, at (518) 485-9331 or mark.jakubiak@dot.ny.gov.

Sincerely,



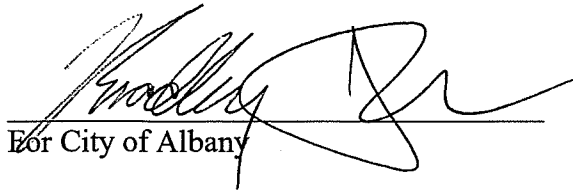
Laura Shick
Supervisory Environmental Protection Specialist
Environmental & Corridor Planning Division
Office of Railroad Policy & Development

Enclosures

cc: Brandon Bratcher, FRA
Mark Jakubiak, NYSDOT

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*Concurrence with FRA's determination that the temporary occupancy of the Mohawk-Hudson
Bike-Hike Trail during construction of the Project is not a Section 4(f) use:*



For City of Albany

Director of Planning
Title

2/10/21
Date