

Warren County Board of Supervisors

RESOLUTION NO. 274 OF 2021

RESOLUTION INTRODUCED BY SUPERVISORS CONOVER, HOGAN, DICKINSON, THOMAS, BRUNO, GERAGHTY AND MERLINO

RESOLUTION AUTHORIZING THE SUPERINTENDENT OF PUBLIC WORKS TO PROCEED WITH EMINENT DOMAIN PROCEDURES FOR THE CR7 OVER HALFWAY CREEK BRIDGE REPLACEMENT PROJECT

WHEREAS, Warren County is responsible for the maintenance of County Route 7 (“CR7”) and the bridge (BIN 3360320) that carries CR7 over Halfway Brook in the Town of Queensbury, and

WHEREAS, CR7 is classified as an Urban Minor Arterial and is a critical component of the regional transportation network, and

WHEREAS, it is important to maintain the functional operation of the structure of the bridge (“Bridge”) that carries CR7 over Halfway Brook, and

WHEREAS, the existing Bridge was initially constructed in 1975 and consists of three (3) corrugated metal pipes with individual spans of seven (7) feet, eight (8) feet and seven (7) feet to form an overall structure length of thirty (30) feet, and

WHEREAS, the exiting Bridge structure has not undergone structural restoration since its completion in 1975, and

WHEREAS, the Bridge received a yellow flag for section loss and perforations in the lower portion of the pipe along the mudline in the span 3 barrel, and a condition rating of 4 from the August 15, 2019 inspection, and

WHEREAS, hydrologic analyses of the Bridge crossing have been conducted, and the results of those analyses have raised serious concerns about the sufficiency of the hydraulic opening of the Bridge, and

WHEREAS, in the course of determining how to best address the structural defects and hydraulic issues with the Bridge, Warren County considered three (3) alternatives and three (3) sub-alternatives

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associated with the Bridge replacement alternative, and

WHEREAS, after considering all alternatives and sub-alternatives, Warren County selected as its preferred alternative replacing the existing three (3) culvert pipes with a new structure consisting of a 40 foot span, 3-sided pre-cast concrete rigid frame, with the bridge roadway section consisting of five (5) 11-foot travel lanes, two (2) 5-foot shoulders and two (2) 5-foot sidewalks (“Project”), and

WHEREAS, in addition to the bridge replacement alternative, Warren County has selected as its preferred sub-alternative closing CR7 (Bay Road) and the detour of traffic around the site for the duration of construction, and

WHEREAS, the purpose of the Project is to improve the hydraulic opening and structural condition of the existing Bridge, with the main objectives being to: restore the bridge condition rating to 5 or greater for at least 75 years using cost effective techniques to minimize the life cycle cost of maintenance and repair; and improve the hydraulic opening, reduce scour vulnerability, and reduce the likelihood that the bridge and adjoining roadway will flood during major storms, and

WHEREAS, it is anticipated that it will be necessary for the County to acquire real property interests in and to five (5) separate tax map parcels in order to accomplish the Project, and

WHEREAS, in the event the County is unable to acquire by purchase the real property interests that are necessary to accomplish the Project, it will be necessary for the County to acquire such real property interests by resorting to proceedings pursuant to Article 4 of the New York Eminent Domain Procedure Law (“EDPL”), and

WHEREAS, EDPL Article 2 requires, as a condition precedent to acquiring title by means of an EDPL Article 4 proceeding, that the County conduct a public hearing to inform the public and to review the public use to be served by the proposed project and the impact on the environment and residents of the locality where the proposed Project will be constructed unless such Project is exempt from the EDPL Article 2 hearing requirements in accordance with EDPL §206, and

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WHEREAS, EDPL §206(A) provides that the County is exempt from compliance with the provisions of EDPL Article 2 when pursuant to other state, federal, or local law or regulation it considers and submits factors similar to those enumerated in Article 2, subdivision B of section 204, to a state, federal, or local government agency, board, or commission before proceeding with the acquisition and obtains a license, a permit, a certificate of public convenience or necessity, or other similar approval from such agency, board, or commission, and

WHEREAS, the factors for consideration that are set forth in EDPL §204(B) are as follows:

- (1) the public use, benefit or purpose to be served by the proposed public project;
- (2) the approximate location for the proposed public project and the reasons for the selection of that location;
- (3) the general effect of the proposed project on the environment and residents of the locality;
- (4) such other factors as the County considers relevant, and

WHEREAS, the Project is a locally administered Federal Aid Transportation Project sponsored by the County, and

WHEREAS, the Project is being progressed by the Superintendent of Public Works, with oversight from the New York State Department of Transportation (“NYSDOT”), in accordance with the requirements of the NYSDOT “Procedures for Locally Administered Federal Aid Projects” manual and other applicable NYSDOT regulations and policies, and

WHEREAS, in order to progress to the Project through the scoping and initial design phases to the final design and acquisition phases, it has been necessary for the County to obtain NYSDOT and Federal Highway Administration (“FHWA”) approval that the County has satisfied the requirements of FHWA and NYSDOT, as set forth in the NYSDOT “Procedures for Locally Administered Federal Aid Projects” manual and other applicable statutes, regulations and policies, and

WHEREAS, the County, in conjunction with its consultant, completed a Final Design Report for the

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Project in October, 2020 and submitted same to FHWA and NYSDOT Region 1 for its review and approval, and

WHEREAS, FHWA and NYSDOT Region 1 have completed their review of the Final Design Report and FHWA has issued Final Design Authorization and Authorization to Proceed with right-of-way acquisition, and

WHEREAS, in accordance with the provisions of 23 C.F.R. 771.118(c), the County was required to undertake and complete an environmental review under the National Environmental Policy Act of 1969 (“NEPA”), and

WHEREAS, in satisfaction of its duties to conduct an environmental review under NEPA, the County prepared a Federal Environmental Approval Sheet, following which the County determined that the Project is properly classified as a Class II action (Categorical Exclusion), which determination was approved by NYSDOT Region 1, and

WHEREAS, in addition to its environmental investigatory responsibilities under NEPA, the County was required to conduct an environmental review of the Project pursuant to the New York State Environmental Quality Review Act (“SEQRA”), and

WHEREAS, the County has completed its review under SEQRA and has determined that the Project is properly classified as a SEQRA Type II action in accordance with 6 N.Y.C.R.R. 617.5(b)(2) upon its finding that the Project involves the replacement, rehabilitation or reconstruction of a structure or facility, in kind, on the same site, including upgrading of buildings to meet building or fire codes, unless such action meets or exceeds any of the thresholds in section 617.4, and

WHEREAS, the County has also undertaken an examination of the potential effects of the Project on endangered species, historic and cultural resources and social and economic features within the Project are, all of which were detailed in the Final Design Report that was reviewed and approved by FHWA and NYSDOT in the course of approving the design of the Project authorizing right-of-way acquisitions, and

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WHEREAS, in the course of completing the Project, it is anticipated that it will be necessary for the County to obtain the following additional permits/approvals: USACE Section 404 Nationwide Permit #3; NYYSEDEC Section 401 Water Quality Certification; and NYSDEC Use and Protection of Waters Permit, and

WHEREAS, EDPL §206(c) provides that the County is exempt from compliance with the hearing and determination and findings requirements of EDPL Article 2 when, “pursuant to other law or regulation it undergoes or conducts or offers to conduct prior to an acquisition one or more public hearings upon notice to the public and owners of property to be acquired, and provided further that factors similar to those enumerated in subdivision (B) of section 204 herein may be considered at such public hearings,” and

WHEREAS, as a Federally funded project, the Project is subject to the provisions of 23 USCA §128, which requires, among other things, that prior to the acquisition, a public hearing be held, or the opportunity for such be afforded, at which public hearing there is considered factors similar to those enumerated in subdivision (B) of Eminent Domain Procedure Law §204, and

WHEREAS, in accordance with the requirements of 23 USCA §128 and other applicable federal and state statutes and regulations, the County, on prior notice to the public and potentially affected landowners, conducted a public informational meeting on September 9, 2020, to present information regarding the Project, including the use, benefit and purpose of the Project, the approximate location of the Project, the alternatives considered and the reasons for selecting the location, and the general effect of the Project on the environment and residents of the locality, and to obtain comments from individuals, groups, officials, and local agencies, and

WHEREAS, EDPL §206(d) provides that the County is exempt from compliance with the hearing and determination and findings requirements of EDPL Article 2 “when in the opinion of the condemnor an acquisition is *de minimis* in nature so that the public interest will not be prejudiced by the construction of the project or because of an emergency situation the public interest will be endangered by any delay caused

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by the public hearing requirement in this article,” and

WHEREAS, it is anticipated that the Project will require the County to acquire for a fee, permanent easement and temporary easement interests in small portions of five (5) tax parcels, none of which will be significantly adversely impacted by such acquisitions or the Project, and

WHEREAS, in light of the foregoing, the County is of the opinion that it is exempt from the hearing requirements of EDPL Article 2 with respect to the Project, now, therefore, be it

RESOLVED, that the Warren County Board of Supervisors has considered all relevant information pertaining to the proposed CR7 (Bay Road) over Halfway Brook Bridge Replacement Project and has determined the Project development process implemented by the County qualifies the Project to be exempt from the hearing requirements of EDPL Article 2, pursuant to EDPL Section 206(a), (c) and (d), and it is further

RESOLVED, that the Warren County Board of Supervisors hereby authorizes the Superintendent of Public Works to take such steps and perform such acts as are necessary for the County to acquire the real property interests that may be necessary to accomplish the Project, including acquisition of real property interests in accordance with the provisions of Article 4 of the New York State Eminent Domain Procedure Law.