

FINDING OF NO SIGNIFICANT IMPACT
Final Restoration Plan and Environmental Assessment
for the Akwesasne Water Access Projects

I. Purpose of Finding of No Significant Impact (FONSI): The Council on Environmental Quality (CEQ) Regulations direct agencies to prepare a Finding of No Significant Impact (FONSI) when an action not otherwise excluded will not have a significant impact on the human environment. 40 CFR §§ 1500.4(b) & 1500.5(b). To evaluate whether a significant impact on the human environment is likely, the CEQ regulations direct agencies to analyze the potentially affected environment and the degree of the effects of the proposed action. 40 CFR § 1501.3(b). In doing so, agencies should consider the geographic extent of the affected area (i.e., national, regional or local), the resources located in the affected area (40 CFR § 1501.3(b)(1)), and whether the project is considered minor or small-scale (NAO 216-6A CM, Appendix A-2). In considering the degree of effect on these resources, agencies should examine both short- and long-term effects (40 CFR § 1501.3(b)(2)(i); NAO 216-6A CM Appendix A-2 - A-3), and the magnitude of the effect (e.g., negligible, minor, moderate, major). CEQ identifies specific criteria for consideration. 40 CFR § 1501.3(b)(ii)-(iv). Each criterion is discussed below with respect to the proposed action and considered individually as well as in combination with the others.

In preparing this FONSI, we reviewed the *Final Restoration Plan and Environmental Assessment for the Akwesasne Water Access Projects* (RP/EA), which tiers from and uses criteria established in the 2013 Restoration, Compensation and Determination Plan (RCDP) for the St. Lawrence Environment. The RP/EA is a joint initiative brought forth by the Saint Lawrence Environment Trustee Council consisting of the Saint Regis Mohawk Tribe (SRMT)—the lead administrative Trustee for the case—and Co-Trustees New York State Department of Environmental Conservation (NYSDEC), National Oceanic and Atmospheric Administration (NOAA), and the U.S. Fish and Wildlife Service (U.S. FWS). The SLETC has proposed three public access projects along the St. Regis and Raquette Rivers termed “The Akwesasne Water Access Projects”. These projects will partially compensate the public for ecological and recreational fishing losses resulting from the contamination by restoring streambank habitat and public access to rivers. The projects will also provide economic, cultural, educational, and recreational benefits to the people of Akwesasne and the regional community.

The proposed Akwesasne Water Access Projects include: The Skén:nen Park West Project, the Skén:nen Park East Project, and the Raquette River Public Access Project. In addition to water access for viewing and fishing, the projects will include streambank stabilization, native vegetation plantings, river platform installation for recreational fishing and wildlife viewing, all-persons pedestrian walkways and trails, a boat launch, parking, informational/educational signage and kiosks, and stormwater management and erosion control features.

Public participation is also an important part of the Trustees’ NRDA restoration planning process and is called for under the CERCLA NRDA regulations (e.g., 43 C.F.R. § 11.81(d)(2)). Under NEPA, Federal agencies are also required to comprehensively analyze the impacts of their proposed actions and make information related to their analyses publicly available.

The Draft RP/EA was posted on the Saint Regis Mohawk Tribe website for public review and comment for 30 days. The Trustees also made the Draft RP/EA available to the public on the NOAA Damage Assessment, Remediation, and Restoration Program (DARRP) website and via the DARRP “Coastal Recovery” news and email delivery service, for 30 days to afford the public an opportunity to review and comment on the proposed action and alternatives. The Trustees have fully considered comments received during the public comment period in developing and adopting the Final RP/EA, which identifies the final selection of restoration actions. A summary of the comments received, and the Trustees’ responses thereto, is included in the Final RP/EA (Appendix A).

The Trustees received one formal document (email) submitted during the public comment period. The email included multiple comments, focused on the proposed Skén:nen Park East project, and comments are presented below, along with the responses provided by the Trustees.

Comment: Concern for lack of advanced neighbor notification

The publication of the Draft Restoration Plan and Environmental Assessment (RP/EA) presents time for comments to be provided by the public, including owners of properties bordering or near the proposed park sites. The Trustees are responsible to respond to comments, herein, that relate to potential impacts. The Trustees will contact the Saint Regis Mohawk Tribe (SRMT) Office of Economic Development (OED) to follow-up with the property owner to ensure project design concerns can be discussed and addressed by the OED in the final project design.

Comment: Concern for private property privacy from the park project

The Trustees, through the SRMT, will coordinate with the OED to meet with the property owner to discuss potential alternatives for physical screening (e.g., shrub plantings, fencing) for potential visual or sound impacts to the bordering property. The SRMT/OED will contact the property owner to discuss potential screening measures to offset potential impacts to the bordering property.

Comment: Adequacy of public parking, potential noise impacts, and litter

The SRMT Parks and Recreation Department would be responsible for site management including routine upkeep of the grounds and municipal waste collection, and ensuring special events (e.g., river celebration) include traffic management and parking. The design of the parking lots are to accommodate anticipated traffic volumes for the park. “No Parking” signs will be installed and notice provided to prohibit parking on private property or on roadway in front of nearby private residences. The site management practices are expected to minimize impacts to nearby residences and residents. The SRMT does not intend the Skén:nen Park East and West Projects to be used for music events. Such events would occur at the amphitheater located on Margaret Terrance Memorial Way in Akwesasne.

Comment: Defined hours of park use

The Akwesasne Water Access Projects will be managed the Parks and Recreations Department of SRMT. Hours of use of the park by the public will be limited from dawn to dusk, throughout the year.

Comment: Concern for encroachment of structures to bordering private property

The proposed projects are planned for construction on property owned by the Saint Regis Mohawk Tribe. The design relies on delineated property and survey data. During construction, all property boundaries shall be maintained to prevent encroachment. Temporary stormwater management and best management practices are required and will be implemented to prevent soils and other potential debris from being carried to bordering and nearby properties, or released as unmanaged stormwater to the St. Regis River.

Comment: Concern for project that includes a buried propane tank

The Raquette River boat launch and Skén:nen Park West Projects do not include structures that require heating or storage structures including propane tanks. The Sken:nen Park East Project conceptual plans include improvement to the powerhouse. The heating and energy storage needs for this location have not been designed. Any development at this location would require conformance with SRMT Building Codes and requirements for safe fuel storage, including potential propane tanks.

Comment: Concern for increased land damage from ice jams

Ice jams are naturally occurring events in cold regions of the U.S., including Akwesasne. Factors that influence the development of ice floes leading to a jam include: significant ice thickness, substantial ice coverage in above and below the location, a sudden increase in flow rates and river channel characteristics. The construction of the Akwesasne Water Access Projects are not expected to result in changes to the factors that produces ice jams, nor are the projects expected change how ice floes move within the river and along its banks. The design for Sken:nen Park East and West Projects are expected to avoid impacts to jurisdictional waters by situating all project works above the ordinary high water level and ice floes, thereby, avoiding changes to the river profile in the area of the former hydro dam and powerhouse. These provisions would ensure there will be no impact to the occurrence or frequency of ice jams in the project area or to nearby properties.

Comment: Concern for impacts to wildlife on islands around the project areas

The Akwesasne Water Access projects are designed to improve services the public by providing managed access to the water and improve viewing opportunities for all, including those with restricted physical mobility. The projects also include the management of invasive species of plants along the shorelines, including invasive, non-native Japanese knotweed. By removing and managing for invasive plant species and installing native riverbank plant species, the project is expected to result in net improvement to river shoreline in the project areas and restore habitat

for wildlife. No SRMT intervention is planned for downstream islands, which are outside the park project area.

The Final RP/EA evaluates the potentially affected area, the scale and geographic extent of the proposed action, and the degree of effects on affected resources (including the duration of impact, and whether the impacts were adverse and/or beneficial and their magnitude). The preferred alternative selected consists of a prioritized list of projects, and the Final RP/EA is hereby incorporated by reference. 40 CFR § 1501.6(b).

II. Approach to Analysis: The Preferred Alternative consists of a prioritized suite of projects that would, if implemented, provide benefits to natural resources injured by the release of hazardous substances into the St. Lawrence Environment (SLE), and provide natural resource services similar to what would have been provided had those releases not occurred. Collectively, these projects are expected to increase habitat quality and quantity, promote habitat connectivity, create new public use opportunities, and benefit natural resources within the St. Lawrence River watershed, consistent with the RCDP. The Final RP/EA is an integrated document to efficiently address the Trustees' dual requirements to comply with both the National Environmental Policy Act (NEPA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

- A. The scale of the Akwesasne Water Access suite of projects will be locally substantial but would not contribute to a significant impact at a regional or greater level.
- B. The suite of projects in the Final RP/EA as the Preferred Alternative will not cause a significant effect to any specific resource. If an impact is determined to be negligible, minor or moderate, it is not considered to meaningfully contribute to a significant impact.
- C. The suite of projects in the Final RP/EA selected as the Preferred Alternative and the potential impacts from them are consistent with the RCDP. If the collective effects of the Preferred Alternative were added to possible effects of other related future projects, their cumulative impacts would still only be local and the magnitude would not be significant at a regional or greater scale.

III. Geographic Extent and Scale of the Proposed Action: The Preferred Alternative consists of a prioritized suite of projects that would, if implemented, provide benefits to natural resources injured by the release of hazardous substances into the SLE and provide natural resource services similar to what would have been provided had those releases not occurred. The restoration projects include the St. Regis River - Skén:nen Park East and West Park Projects and the Raquette River Public Access Project (collectively, the Akwesasne Water Access Projects) to help compensate the public for ecological and recreational fishing losses resulting from hazardous substance releases to the St. Lawrence River environment. The projects will restore streambank habitat and provide public access to the St. Regis and Raquette rivers, providing ecological, economic, cultural, educational and recreational benefits to the Akwesasne community, nearby Massena, and other users in the region. The Akwesasne Water Access Projects include:

1. Raquette River Public Access: boat launch with floating docks, nearshore fishing structures, and parking
2. St. Regis River - Skén:nen Park West: waterfront park offering riverbank enhancement and public access to the St. Regis River, nearshore fishing structure and viewing platform, cultural and environmental educational exhibits, and parking
3. St. Regis River - Skén:nen Park East: waterfront park on the opposite bank of Sken:nen Park West, offering public access to the St. Regis River, nearshore fishing structure and viewing platform, bank stabilization, cultural and environmental educational exhibits, and parking

Collectively, these projects are expected to promote habitat connectivity, create new public use opportunities, and benefit natural resources within the St. Lawrence River watershed, consistent with the RCDP.

IV. Degree of Effect: The RP/EA analyzes potential environmental impacts associated with the proposed projects that constitute the Preferred Alternative for restoration in the St. Lawrence River watershed.

As summarized in the RP/EA, the Preferred Alternative is unlikely to have significant adverse impacts on the environment. This alternative would meet the mandates under Natural Resource Damage Assessment (NRDA) statutes and regulations to restore natural resources and services injured by releases of hazardous substances and is consistent with the goals and objectives outlined in the RCDP. The Preferred Alternative would have direct beneficial effects and only minor, short-term adverse impacts. The No-Action Alternative would not have direct beneficial effects or adverse impacts but would allow the degraded conditions of habitats in the St. Lawrence River watershed to continue, which would not be consistent with the RCDP.

- A. The proposed action cannot reasonably be expected to threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment. All relevant permits will be obtained prior to initiating remedial activities, and the contractor conducting the activities will be expected to follow all regulatory requirements.
- B. There are no substantial adverse public health or safety impacts expected from the proposed action. Short-term public health and safety impacts associated with construction at the project sites will be minimized through the implementation of various best management practices (BMPs). Where soil and sediment in riparian corridors will be disturbed, proper engineering controls will be implemented to minimize sedimentation and related water quality impacts to streams. These negative effects are expected to be short-lived and will be outweighed by the long-term benefits of the projects.
- C. The degree to which the proposed actions is expected to affect a sensitive biological resource, including:
 - a. Federally-listed endangered, threatened, and candidate species in the vicinity of the St. Lawrence River have been identified and no critical habitat is

present in the area impacted by the Akwesasne River Access Projects. The projects in the preferred alternative would have no effect on NOAA-listed species, and are expected to either have no effect on threatened or endangered species or are not likely to adversely affect USFWS-listed species based on the type and locations of activities and the feasibility of timing any impacts to habitat when the species are not present (e.g., if necessary for access, cutting potential roost trees for Indiana bat in the winter and only where alternative trees will remain available). Because the status and location of listed species can change over time, during project design the USFWS will work with project sponsors to determine whether their actions may affect any of the species identified. If no species are affected, no further consultation will be required. If they may be affected, consultation with the USFWS will be required at that time. The projects in the preferred alternative are not expected to jeopardize the sustainability of any species.

- b. The proposed action will have no effect on marine mammals, their critical habitat, or other non-target species, as none are present within the project area.
 - c. The proposed action will have no substantial impacts on essential fish habitat as defined under the Magnuson-Stevens Fishery Conservation and Management Act, as none exists in the Great Lakes.
 - d. The proposed action is not expected to adversely affect bird species protected under the Migratory Bird Treaty Act.
 - e. There are no national marine sanctuaries or monuments in the project area.
 - f. The proposed action is not expected to adversely affect vulnerable coastal ecosystems, including but not limited to, deep coral ecosystems. There are no coral ecosystems in the Great Lakes.
 - g. The proposed action is not expected to have a substantial impact on biodiversity and/or ecosystem function within the project area. Fish may avoid the project area during construction activities due to the increase in turbidity in the water column, as well as increased noise due to the operation of construction equipment. These impacts are expected to be only temporary and minor.
- D. The proposed action will not adversely affect any historic or cultural resources listed in or eligible for listing in the National Register of Historic Places, and will not cause loss or destruction of significant scientific, cultural, or historical resources, as none exist in the area. The Trustees have communicated with the SRMT and Tribal Historic Preservation Offices (THPOs). For projects starting with a feasibility study or engineering and design work, the review of potential impacts and consultation, if warranted, would occur during those phases. If an eligible historic property or cultural resource is within the area of the proposed restoration project, then further analysis

will be made to determine whether the project could have an adverse effect on this historic property or cultural resource. If the project could have an adverse effect on either of these, then the agency proposing the restoration project would consult with the State Historic Preservation Office (SHPO) and/or THPOs/Tribes to alter the project to avoid or minimize the adverse effect.

- E. The proposed action will not have a disproportionately high and adverse effect on the health or the environment of minority or low-income communities, compared to the impacts on other communities (EO 12898). No long-term impacts on population demographics would be expected under the Preferred Alternative, and short-term, minor to moderate, beneficial impacts on the local economy would be expected from the purchase of goods and materials by the contractors completing the restoration activities. The proposed Akwesasne Water Access Projects would allow for increased use of the river for recreational purposes. Therefore, long-term, minor, beneficial impacts would be expected from increased recreational opportunities and associated impacts on the local economy from the purchase of goods and materials.

The Trustees used publicly available data from EPA's EJScreen to help evaluate areas that may be of concern for environmental justice. Consistent with the Restoration Project Evaluation Criteria, the Trustees rated projects higher that would likely benefit populations impacted by environmental justice concerns. The projects in the Preferred Alternative are expected to provide long-term, beneficial impacts on the communities and environmental justice populations that live and work in the St. Lawrence River watershed without causing disproportionate adverse impacts. Long-term, minor, beneficial impacts would be expected because of improved access to fishery resources, reduced dam maintenance costs, and increased local economic activity from recreational opportunities and tourism. Providing natural areas with public access within walking and biking distance of neighborhoods with environmental justice populations would result in long-term beneficial impacts to those neighborhoods.

- F. The proposed action is not reasonably expected to result in the introduction, continued existence, or spread of noxious weeds or nonnative invasive species known to occur in the area or actions that may promote the introduction, growth, or expansion of the range of the species. The contractors selected will be responsible for ensuring all equipment is clean and clear of non-indigenous species prior to mobilizing to the site.
- G. The proposed action is not expected to have a substantial impact to any other physical or biological resources within the project area or over which there is substantial uncertainty or scientific disagreement.

V. Other Actions Including Connected Actions:

The suite of projects in the Preferred Alternative may be related to other future actions within the St. Lawrence River environment.

Actions under the Final RP/EA and others would cumulatively create long-term benefits. Benefits would include reduced water temperatures, increased invertebrate prey sources, improved shallow-water habitats, stronger food web interactions, decreased predation on juvenile fish, reductions in contaminant exposure, and increased quality, quantity, and connectedness of aquatic and riparian habitats. It is expected that although these projects and others in the watershed may have the potential to cumulatively provide net positive effects, the cumulative benefits would not be significant at a larger (regional) level.

Any future Federal actions in the area may have to undergo a similar NEPA evaluation and review process, and would consider the Trustees' restoration activities when addressing cumulative effects.

VI. Mitigation and monitoring:

Endangered Species Act (ESA) compliance requirements will be completed for all projects prior to construction, as many of the projects in the proposed alternative are currently at the design phase. Any resulting conservation recommendations and BMPs will be included in the permit conditions. Potential impacts to soil, water and biological resources will be minimized or mitigated through BMPs, permit conditions, and consultation requirements if/as required by other statutes (e.g., Clean Water Act). To prevent disturbed soils from washing into the St. Lawrence River, silt barrier fencing will be deployed as required by permits.

Depending on the seasonal timeframe and duration of implementation, restoration activities could disturb critical nesting and other reproductive activities of wildlife. To reduce these potential impacts, the Trustees would use mitigation efforts such as fencing around the construction site, reducing the total duration of the project by planning concurrent construction activities, restricting certain types of activities (e.g., tree removal) in some areas to specific seasonal windows, and establishing a road management plan for easy access to the site. Lastly, all projects would use wildlife-safe materials for erosion control and site restoration throughout the project area. Erosion control products containing plastic mesh netting or other similar materials with fixed mesh sizes that could entangle snakes and other wildlife would not be allowed. Several products for soil erosion and control exist that do not contain plastic netting, including net-less erosion control blankets (for example, made of excelsior), loose mulch, hydraulic mulch, soil binders, unreinforced silt fences, and straw bales. Others are made from natural fibers (such as jute) and loosely woven together in a manner that allows wildlife to wiggle free.

DETERMINATION

The CEQ NEPA regulations, 40 CFR § 1501.6, direct an agency to prepare a FONSI when the agency, based on the EA for the proposed action, determines not to prepare an EIS because the action will not have significant effects. In view of the information presented in this document and the analysis contained in the supporting Final RP/EA prepared by the St. Lawrence Environment Trustee Council, it is hereby determined that the suite of projects identified by the Trustees as the Preferred Alternative in the Akwesasne Water Access Projects Final RP/EA will not significantly impact the quality of the human environment. The *Final Restoration Plan and Environmental Assessment for the Akwesasne Water Access Projects* is hereby incorporated by reference. In addition, all beneficial and adverse impacts of the proposed action as well as mitigation measures have been evaluated to reach the conclusion of no significant impacts. Accordingly, preparation of an EIS for this action is not necessary.

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