CELRB-TD-RN January 27, 2016

MEMORANDUM FOR THE RECORD
Prepared By: Margaret Crawford

SUBJECT: Time Extension for Regional Permit No. 99-000-1, Minor Channel Work and Temporary Access and Construction as a result of Major Storm Events

1. Purpose of the Project: Proposed re-issuance of the Regional General Permit for minor channel work and temporary access and construction as a result of major storm events in waters of the United States located within the jurisdictional boundaries of the Buffalo District in New York State.

2. Authority: Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

3. Background: The existing regional general permit was issued on July 14, 2010,expired on July 14, 2015, and was extended until January 14, 2016. Since 2014, the USACE Buffalo and New York Districts have been working collaboratively with the New York State Department of Environmental Conservation (NYSDEC) in the development of a State Programmatic General Permit (SPGP) to replace the existing permit for emergency response and storm recovery actions. It was anticipated that the process would be completed by January 2016, however, the development of the SPGP has taken longer than originally anticipated. Replacing this regional permit with an SPGP will reduce paperwork burdens on the general public and governmental agencies and streamline the decision-making process. This processing efficiency will be accomplished without compromising environmental values or the needs and welfare of the general public.

4. Action Required: In order to provide uninterrupted service to the general public while also protecting aquatic resources and other public interest factors, I am extending the existing version of the regional permit to January 14, 2017. This will allow time to complete the SPGP.

5. Findings: I find that this time-extension on behalf of the general public and update to the Endangered Species tables will be minor in nature and will not be contrary to the overall public interest. Accordingly, the conditions of the regional general permit are hereby modified to extend the expiration date to January 14, 2017. All other terms and conditions of the regional general permit remain in full force and effect.

SIGNED

Diane C. Kozlowski Date: 12 Feb 2016
Chief, Regulatory Branch

DEPARTMENT OF THE ARMY PERMIT

Permittee: Daniel B. Snead
Lieutenant Colonel, Corps of Engineers
District Commander
On Behalf of the General Public

Regional Permit No.: 99-000-1

Processing No.:

Effective Period: July 14, 2010 to July 14, 2015, extended until January 14, 2017

Activation Date:

Area of Activation:

Issuing Office: U.S. Army Engineer District, Buffalo
1776 Niagara Street
Buffalo, New York 14207-3199

IMPORTANT: PRIOR TO COMMENCING THE ACTIVITY AUTHORIZED BY THIS PERMIT OR DIRECTING A CONTRACTOR TO PERFORM SUCH ACTIVITY ON YOUR BEHALF, BE SURE THAT ALL PARTIES READ, UNDERSTAND AND COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT.

NONCOMPLIANCE WITH ANY OF THE TERMS OR CONDITIONS OF THIS PERMIT MAY RESULT IN AN ORDER TO REMOVE THE ACTIVITY; CIVIL AND/OR CRIMINAL PENALTIES OR BOTH.

*THIS PERMIT IS ACTIVATED BY THE DISTRICT COMMANDER AS NEEDED IN RESPONSE TO MAJOR STORM EVENTS. THIS PERMIT IS NOT VALID UNLESS ACTIVATED BY THE DISTRICT COMMANDER. SEE THE ATTACHED TERMS AND CONDITIONS OF THIS PERMIT TO DETERMINE IF WRITTEN AFFIRMATION FROM THIS OFFICE IS NECESSARY PRIOR TO COMMENCING WORK. APPLICANTS WILL HAVE ONE YEAR FROM DATE OF ACTIVATION TO COMPLETE WORK. UPON ACTIVATION, A NOTICE WILL BE PLACED ON THE BUFFALO DISTRICT WEB SITE AT: www.lrb.usace.army.mil/regulatory

AUTHORITIES: You have been authorized to undertake the activity described below pursuant to:

Section 404 of the Clean Water Act (33 U.S.C. 1344)
and
Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403)

AUTHORIZED ACTIVITIES: This general permit authorizes the installation of structures and dredging in navigable waters and the discharge of dredged or fill material, including those discharges associated with excavation activities, into waters of the United States to facilitate the remediation of sites that were damaged as a result of a major storm event (please see special conditions and exclusions that apply to these activities below). This permit may be used in conjunction with the Nationwide Permit Program. Note that the New York State Department of Environmental Conservation (NYSDEC) has granted Section 401 Water Quality Certification for this Regional Permit. Furthermore, the New York State Department of State (NYSDOS) concurs with the Corps' Coastal Zone Management consistency determination for this Regional Permit.

The specific activities that this general permit authorizes include:

a. The discharge associated with excavation or dredging of sediments and debris, including storm deposited material, and the temporary or permanent discharge of fill associated with the excavation, from waters of the United States where such an activity would prevent loss of property or where such activity is necessary to reduce flooding and/or erosion. The general permit DOES NOT authorize any channelization, channel widening, deepening, or straightening.

b. The installation of structures in navigable waters and/or discharge of fill material into waters of the United States to facilitate the repair or replacement of collapsed roads or other structures or fills which failed as a result of the storm event (i.e. rip-rap, culverts, abutments, etc.).

c. The temporary discharge of fill material into waters of the United States to facilitate the construction of temporary access roads and/or staging areas at work sites, provided no practicable available upland areas exist.

d. The installation of structures and/or the discharge of fill material into waters of the United States to be used as cofferdams to temporarily dewater a work site.

e. The discharge of dredged or fill material into waters of the United States for the restoration and protection of stream bed and banks damaged as a result of the storm event. Stream restoration activities may include but are not limited to: bank stabilization, pre-storm channel restoration, the installation of current deflectors, the enhancement, restoration or creation of riffle and pool stream structures, the placement of in-stream habitat structures, the modification of the stream bed and/or banks to restore or establish stream meanders, and the installation of structures to improve fish passage and spawning habitats.

Note: Please refer to 33 CFR Part 323.4(a)(1)(iii)(C)(1)(iv) and 323.4(a)(2) for information relating to exemptions for the discharges of dredged or fill material incidental to the emergency removal of material that could otherwise result in damage to or loss of existing crops, etc.

LOCATION OF AUTHORIZED ACTIVITY: Waters of the United States located within New York State under the regulatory jurisdiction of the U.S. Army Corps of Engineers, Buffalo District.

The general public is hereby authorized by the Secretary of the Army to perform the work authorized by this permit provided there is full compliance with the following general and special conditions.

Activities authorized under this general permit do not require further authorization under the provisions contained in Title 33 of the Code of Federal Regulations, Parts 320 through 330, which is the Department of Defense regulation entitled "Corps of Engineers, Department of the Army: Regulatory Programs of the Corps of Engineers; Final Rule", published in the Federal Register on November 13, 1986, provided that they are carried out in accordance with the special conditions listed below and unless the District Engineer determines, on a case by case basis, that the work does not comply with the terms and conditions of this permit.
Also, see General Permit Notification Requirements.

DEFINITIONS: The term "you" and its derivatives, as used in this permit, mean the permittee or any future transferee. The term "this office" refers to the Buffalo District Corps of Engineers Regulatory office having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer. The term "activity" as used in this permit includes all structures and work authorized by this permit.

Navigable waters (as regulated under Section 10 of the Rivers and Harbors Act) - Those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce. A determination of navigability, once made, applies laterally over the entire surface of the waterbody, and is not extinguished by later actions or events which impede or destroy navigable capacity. A list of navigable waters in the Buffalo District can be found on the Buffalo District web site at www.lrb.usace.army.mil/Regulatory/, or by calling (716) 879-4330.

Ordinary High Water Mark - The line on the shore established by the fluctuations of water as indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

Waters of the United States - All waters which are currently used, or were used historically, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to ebb and flow of the tide; all interstate waters, including wetlands; all other waters such as lakes, rivers, streams (including intermittent streams), mudflats, sandflats, sloughs, prairie potholes, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce... (Section 404 – Clean Water Act - see 33 CFR, Part 328.3 for complete definition).

Wetlands - Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas (33. C.F.R. 328.3 (b)). Areas that meet this definition are considered wetlands **regardless of size**. Federal wetland boundaries shall be identified in accordance with the 1987 Federal Wetland Delineation Manual and subsequent Northeast/Northcentral Regional Supplements.

GENERAL CONDITIONS:

1. The work authorized under this regional permit must be completed within one year of the activation date. If you find that you need more time to complete the authorized activity, submit your written request for a time extension to this office at least three months before the respective date(s). If no time extension request has been received, work will be considered complete within one year of the final activation date of the emergency permit. If the work has not been started within the one year time-frame, an alternate form of review will be necessary at that time.

2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, unless you make a good faith transfer to a third party in accordance with General Condition No. 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you may be required to remove the structure(s) and restore the site to its original pre project conditions.

3. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately cease work and notify this office of what you have found. We will initiate the Federal, State and Tribal coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

5. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

6. The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

7. This office reserves the right to use this regional permit in combination with any existing or future nationwide, regional or individual permit or any letter of permission.

GENERAL PERMIT NOTIFICATION REQUIREMENTS:

The special conditions listed in the next section identify which activities do or do not require written verification of the applicability of this general permit from the Buffalo District prior to commencement of the work.

If your activity **DOES NOT** require prior confirmation from the Buffalo District, and you meet all the terms and conditions of this permit, you may proceed with your work. Within 30 days of the completion of the work authorized by this permit, you are required to complete and submit the attached compliance certification form to the Buffalo District office.

For projects that **DO** require notification to the Buffalo District prior to commencement of the work, the following information must be submitted with the New York State Department of Environmental Conservation / U.S. Army Corps of Engineers joint application for permit (available on the Buffalo District web site at: www.lrb.usace.army.mil/Regulatory):

1. Name, address and telephone number of the applicant.

2. Location map identifying project site, and disposal area (if applicable).

3. A brief project description.

4. Project plans depicting proposed work in reference to the ordinary high water mark of the waterway and/or wetland limits. Include the length of proposed roads in feet, the square footage of staging areas, the cubic yardage of sediment to be excavated, the dimensions of the area to be excavated, the type of cofferdam, the dimensions of the area to be de-watered, and any other appropriate project specifications.

Please note 'EMERGENCY' on the joint application for permit, to ensure immediate response. Any questions can be directed to 716-879-4330.

Upon receipt of the required information, and if necessary, a site inspection may be scheduled by the Buffalo District. A Buffalo District Project Manager will have the ability to verify the applicability of the general permit on-site. Written verification of the applicability of this permit or receipt of other Department of the Army authorization must be received prior to initiating work or the discharge of fill material in a Water of the United States.

SPECIAL CONDITIONS:

Conditions Applicable to All Activities:

1. For activities requiring notification, please complete and submit the attached commencement form prior to commencing work authorized by this permit. In addition, within 30 days of the completion of the work authorized by this permit, the permittee is required to complete and submit the attached completion form to the Buffalo District Office.

2. Endangered Species: **Pre-construction notification** and written affirmation from this office of the applicability of this permit is required for activities located within sensitive areas, as identified on the attached list. For activities that are proposed to occur within these sensitive areas, the application must include a discussion of potential T&E habitat within the project site. If there is potential habitat for any federally listed species within the project site:

1) send the results of any habitat surveys
2) include a detailed description of the proposed project, including approximate proposed project construction schedule and project activities (e.g., land clearing, utilities, stormwater management).
3) include a description of the natural characteristics of the property and surrounding area (e.g., forested areas, freshwater wetlands, open waters, and soils). Additionally, please include a description of surrounding land use (residential, agricultural, or commercial).
4) provide a description of the area to be impacted by the proposed project, including trees to be removed.
5) provide a description of conservation measures to avoid or minimize impacts to listed species.

Applicants shall not commence work in these townships, waterways, or locations under this permit until the requirements of the Endangered Species Act have been satisfied and the applicant receives written verification that the work may proceed. Note that as a result of consultation with the USFWS, the District Engineer may add species-specific conditions to the permit.

3. Construction Best Management Practices (BMP's): Unless specifically approved otherwise, the following BMP's must be implemented to the maximum degree practicable, to minimize erosion, migration of sediments, and adverse environmental impacts:

i.) Mulch, hay bales, silt fences, or other means must be properly employed to minimize erosion and migration of sediments during construction. All synthetic erosion control features (e.g., silt fencing, netting, mats), which are intended for temporary use during construction, shall be completely removed and properly disposed of after their initial purpose has been served. Only natural fiber materials, which will degrade after time may be abandoned in place.

ii.) Construction access shall be by means that avoid or minimize impacts to aquatic sites (e.g. upland access, floating barges, mats, etc.).

iii.) All excess excavated material remaining on site must be properly contained and permanently stabilized to prevent erosion.

iv.) Upon project completion, impacted land surfaces must be permanently stabilized to prevent erosion.

v.) Upon project completion, impacted aquatic sites must be restored to their original contours and conditions.

vi.) All return flow from dredge material disposal areas shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions. (See Nationwide Permit #16)

vii.) No in-stream work shall occur during predicted periods of high flow.

viii.) No interruption of water flow shall occur during construction in order to sustain aquatic life downstream.

4. Disturbance of vegetation on stream banks shall be kept to the minimum necessary to perform the permitted work.

5. All stream banks disturbed as a result of any activity authorized by this General permit shall be seeded and mulched immediately upon completion of bank work, unless otherwise protected from erosion.

6. All authorized work shall proceed to completion without interruption between operations.

7. Pressure treated wood used for the construction of in-water structures must not be treated with creosote, but must be treated with some other preservative and treatment process currently approved by the American Wood Preservers Association and must be aged in the open air for at least three months prior to in-water use. Wood with surface deposits shall be washed for at least five (5) minutes under running water prior to use and the washing shall occur greater than 100 feet from a wetland or waterbody. Any wood debris such as sawdust or wash water must not enter any water body, including wetlands.

8. Siltation fencing or haybales shall be installed at the toe of the temporary fill area or excavations to minimize damage to the undisturbed wetland or waterway. The siltation devices shall be inspected periodically to ensure that they are not damaged, repairs shall be completed promptly, and shall remain in place until the site is stabilized by the regrowth of suitable vegetation.

9. Turbidity controls in the form of silt curtains or similar type cloth material shall be installed downstream from the project area and shall remain in place during all excavation and restoration operations. Turbidity controls should not be placed across the entire stream width so as to impede flow or catch debris not related to the work site.

10. All in-water work shall be restricted to dates that will preclude the adverse impacts to indigenous fish or mussel species. It is the applicant's responsibility to obtain these dates from the appropriate NYSDEC regional fisheries manager prior to commencing work in a Water of the United States.

11. The District Commander reserves the right to include any additional special conditions or require an individual permit as may be necessary to safeguard the public interest or protect important public resources on a case by case basis.

Special Conditions Applicable ONLY to Excavation or Dredging Activities (12 - 22):

12. Debris and sediment excavation in waters of the United States shall be limited to the amount that was deposited as a direct result of the discrete storm event.

13. **Notification** is required for the discharge associated with excavation or dredging activities located in sections of streams that were previously disturbed (e.g., previously dredged).

14. The discharge associated with excavation of debris and sediment within 100 feet upstream or downstream from a structure (i.e. bridge, culvert, or facility) may proceed without prior confirmation from this office provided no other the discharge associated with excavation or dredging beyond that linear distance would occur, and that the excavation does not result in upstream or downstream widening, as part of the single and complete project.

15. Projects involving the discharge associated with excavation of debris and sediment beyond 100 feet upstream and downstream of a structure may be authorized by this permit on a case by case basis provided the permittee **notifies** this office and receives written verification prior to commencing the work.

16. The discharge associated with Excavation of storm deposited material (i.e., gravel, silts, etc.) for a maximum length of 200 linear feet or .10 acres at a single location may proceed without prior confirmation from this office provided no other excavation or dredging beyond that range would occur, and that the excavation does not result in upstream or downstream widening, as part of a single and complete project.

17. Projects involving the discharge associated with excavation of storm deposited material in excess of 200 linear feet or .10 acres at a single location may be authorized by this permit on a case by case basis provided the permittee **notifies** this office and receives written verification prior to commencing the work.

18. Gravel may only be removed by "skimming" the surface of the gravel bar to a depth no more than six inches above the water level at the time the work is underway or to pre-storm conditions, whichever is less. The final configuration of the stream channel shall provide for a low flow channel at least six to twelve inches deeper than the toe of the channel banks. Altered channels shall not be wider than the natural channel upstream and downstream of the work site and the bottom elevation shall not be lower than the adjoining upstream and downstream sections.

19. This permit does not authorize the discharge associated with excavation of stream gravel for the purpose of sale.

20. All debris and sediment excavated from waters of the United States and not used as bank stabilization (see Special Condition No. **26** for restrictions on bank stabilization) shall be deposited at a suitable upland location, and be contained from re-entering any waters of the United States, including wetlands. Under no circumstances shall excavated or dredged materials be sidecast or temporarily stored within waters of the United States, including wetlands.

21. This permit does not authorize the discharge associated with excavation or dredging within wetlands.

22. Whenever feasible, bank grading and in-water removal of material shall be carried out by land-based equipment rather than from the streambed or flowing water. Work shall proceed from the downstream end to the upstream end of the project reach.

Special Conditions Applicable ONLY to Repair and Replacement Activities and to the Restoration and Protection of Stream Bed and Banks (23-30):

23. For repair and replacement activities, minor deviations in the structure's configuration or filled area including those due to changes in materials, construction techniques, or current construction codes or safety standards which are necessary to make repair, rehabilitation or replacement are permitted, provided the adverse environmental effects resulting from the work are minimal.

24. Culverts to be repaired or replaced must be installed to maintain low flow conditions, allow for fish passage in fish bearing streams, and shall not restrict normal stream flow. The width of the culvert to be repaired or replaced shall be equal to or wider than the bankfull width of the stream and be able to accommodate expected high flows. The culvert shall be installed to match the grade of the existing streambed with at least 20% of the vertical rise of the entire culvert embedded below the streambed or be a bottomless culvert, when practicable.

25. The stream restoration activities include but are not limited to: bank stabilization, pre-storm channel restoration, the installation of current deflectors; the enhancement, restoration or creation of riffle and pool stream structures; the placement of in-stream habitat structures; and modifications of the stream bed and/or banks to restore or create stream meanders.

26. The restoration and/or enhancement of stream bed and banks shall be conducted in accordance with the following:

a. No material is placed in excess of the minimum needed for erosion protection;
b. **Notification** is required for bank stabilization activities in excess of 500 feet in length prior to the initiation of work or discharges into a Water of the United States; and,
c. **Notification** is required prior to the commencement of activities resulting in more than an average of one cubic yard per running foot of material placed along the bank below the plane of the ordinary high water mark; and,
d. No material is placed in any special aquatic site, including wetlands; and,
e. No material is of the type, or is placed in any location, or in any manner, to impair surface water flow into or out of any wetland area; and,
f. No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas); and,
g. The activity is part of a single and complete project.

27. Fluvial geomorphology restoration techniques and/or bioengineering techniques for stream bank stabilization should be considered in project design when feasible and practicable. Bioengineering methods include: planting native vegetation such as grey dogwood **(Cornus racemosa)**, silky dogwood **(Cornus amomum)**, arrowwood viburnum **(Viburnum dentatum)**, or other appropriate native New York species to improve habitat for fish and wildlife; the installation of coir (coconut fiber) logs, willow wattles, dogwood fascines; and use of erosion control fabric.

28. Channel restoration of up to 200 feet of the stream channel when associated with culvert and bridge repair/replacement is authorized by this permit, provided the work does not result in stream channelization and/or straightening.

29. All modified/restored stream channels shall be designed with a parabolic shaped bottom, or be otherwise designed to concentrate flows during low water periods. **The channel shall not be wider and the bottom elevation shall not be lower than the adjoining natural upstream and downstream sections.**

30. This permit cannot be used to reclaim historic lands lost, over an extended period, to normal erosion processes.

Special Conditions Applicable ONLY to Temporary Access or Dewatering Activities (31 - 43):

31. This general permit authorizes the temporary access to, or dewatering of, those areas where sediment and debris removal are authorized, or where the in-kind and in-place repair or replacement of structures or fills are also authorized.

32. All temporary fills or structures placed in waters of the United States, including wetlands, shall be removed in their entirety immediately upon completion of the work and the affected areas shall be restored to preconstruction contours. All material removed shall be disposed of at an upland site well removed from any waters of the United States, including wetlands, and shall be adequately contained to preclude re-entry into these waters.

33. Mats or geotextile fabric shall be placed under any temporary fill material and shall be removed following construction.

34. All discharges of fill material into wetlands shall be limited to the minimum length and width necessary to construct the access road and the access fill is only authorized if no practicable available upland area exists for access to the waterway. The permittee shall notify the Buffalo District Corps of Engineers prior to starting work on projects involving greater than 1/10th of an acre of disturbance to wetlands and shall not commence the work until notified in writing that the work is authorized.

35. Staging areas shall not be located within wetlands.

36. Mechanized landclearing shall be limited to the minimum necessary to construct the access road.

37. Forested wetlands cleared to facilitate access road construction shall be re-planted with New York native tree species immediately upon completion of the work.

38. Temporary fill material shall be of a size and placed in such a manner so that it does not wash downstream by normal or unexpected high flows.

39. The cofferdam and ancillary features shall be placed in such a manner that minimizes adverse impacts to fish and other aquatic wildlife, water quality, to stream flow and flooding, to navigation, and to access and use of navigable waters by the public.

40. Dewatering must be limited to immediate work areas that are cofferdammed or otherwise isolated from the larger water body. Dewatering must be localized and not drain extensive areas of a

water body or reduce the water level such that vegetation, fish and other aquatic vertebrates are killed or their eggs and nests are exposed to desiccation, freezing or depredation in areas outside of the immediate work site.

41. Cofferdams shall consist of an impermeable core with a non-erodible exterior. If fine grained material (such as clay) is used as a core, a layer of filter fabric or heavy plastic shall be placed securely over the surface of the core.

42. The staging areas in waterways, excluding wetlands (see Special Condition No. 35), shall be constructed within the confines of the cofferdam and shall consist of clean non-erodible material such as broken concrete, stone, timber, steel or other inert materials. The staging area shall not be installed until the cofferdam is in place and the area has been completely dewatered, and shall be removed prior to removal of the cofferdam. The waterway bottom shall be restored to its preconstruction contours. All material shall be disposed at an upland site well removed from any water of the United States, including wetlands and shall be stabilized in a manner that prevents return water and associated sediments from entering the waterway.

43. In navigable and/or perennial waters, the cofferdam shall extend no further than one-half the width of the channel at any one crossing site. Variations may be authorized with **notification**.

EXCLUSIONS:

This permit does not apply to:

1. Activities that have an effect on historic, cultural or archaeological sites identified in the latest published version of the National Register of Historic Places, or sites eligible for inclusion in this register, unless the State Historic Preservation Officer makes a determination that the effect will not be adverse.

2. Any other areas named in Acts of Congress or Presidential Proclamations as National Wilderness Areas, National Recreational Areas, Lakeshores, Parks, Natural Monuments, Monuments and such areas as may be established under Federal Law for similar and related purposes, such as estuaries and marine sanctuaries, except where specifically authorized by this general permit.

3. Activities which may jeopardize the continued existence of species listed as endangered or threatened under the Endangered Species Act (ESA) of 1973, as amended, or result in the likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of the Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended. No activity is authorized under this Regional Permit which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Federal Endangered Species Act, or which will destroy or adversely modify the Critical Habitat of such species. Authorization of an activity by this Regional Permit does not authorize the 'take' of a threatened or endangered species as defined under the ESA. In absence of separate authorization (E.G., an ESA Section 10 Permit, a Biological Opinion with 'incidental take' provisions, etc.) from the U.S. Fish and Wildlife Service, both lethal and non-lethal 'takes' of protected species are in violation of the ESA.

4. Areas where the excavated or dredged material is known to be contaminated with toxic organic compounds or heavy metals.

LIMITS OF THIS AUTHORIZATION:

1. The granting of this permit does not obviate the need to obtain other Federal, State or local authorizations as required by law. Specifically, a permit pursuant to the Environmental Conservation Law Articles 15, 24, or 34 may be required from the New York State Department of Environmental Conservation.

2. Issuance of this permit does not grant you any property rights or exclusive privileges, nor does it authorize any injury to the property rights of others.

3. This permit does not authorize interference with any existing or proposed Federal project, nor does it convey any authority to interfere with the right of the public to free navigation on all navigable waters of the United States.

LIMITS OF FEDERAL LIABILITY: In issuing this permit, the Federal Government does not assume any liability for the following:

1. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.

2. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

3. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

4. Design or construction deficiencies associated with the permitted work.

5. Damages associated with any future modification, suspension, or revocation of this permit.

RELIANCE ON THE APPLICANT'S DATA: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information that you provided.

RE-EVALUATION OF THE DECISION TO GRANT A GENERAL PERMIT: This office may re-evaluate its decision on this permit at any time circumstances warrant. Circumstances that could require a re-evaluation include, but are not limited to, the following:

1. You fail to comply with the terms and conditions of this permit.

2. The information provided by you in support of your application proves to have been false, incomplete, or inaccurate.

3. Significant information surfaces which this office did not consider in reaching the original public interest decision.

Such a re-evaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may, in certain situations (such as those specified in Title 33 of the Code of Federal Regulations Part 209.170) accomplish the corrective measures by contract or otherwise bill you for the cost.

EXTENSIONS: General Condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a re-evaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit. Extension requests must be submitted in accordance with the directions given in General Condition 1.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

_____

Daniel B. Snead, Lieutenant Colonel
Corps of Engineers
District Commander

_____

Date

When the property associated with the work authorized by this permit is sold or transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the liabilities associated with compliance of the terms and conditions, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.

_____

Transferee

_____

Date

Sensitive Areas:

Table 1. Known and potential locations of Federally-Listed Threatened and Endangered Species (current as of June 18, 2015) that may be affected by Regional Permit 99-000-1 within the Jurisdiction of Buffalo District.

County	Townships/Watershed	Species	Avoidance Action[1]
Allegany	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Broome	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Cattaraugus	HUCs 05010001 and 05010002 (Allegheny River, Cassadaga and Conewango Creek basin.)	Clubshell, Rayed bean (Candidate)	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Cayuga	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Town of Victory.	Bog turtle (Threatened)	1
	All Towns, elevation under 900’	Indiana bat (Endangered)	2
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Chautauqua	HUCs 05010001, 05010002, and 05010004 *same as above	Clubshell, Rayed bean	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Chemung	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Chenango	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Cortland	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Erie	All Towns, for projects with proposed tree removal	Northern long-eared bat	2

County	Townships/Watershed	Species	Avoidance Action[1]
Genesee	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Towns of Bergen and Byron.	Bog turtle, Houghton's goldenrod, Eastern massasauga (Candidate)	1
	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Towns of Leroy and Stafford.	Bog turtle	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Herkimer	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Jefferson	All Towns, elevation under 900'	Indiana bat	2
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
	Henderson, Ellisburg	Piping plover critical habitat	1
Lewis	All Towns, elevation under 900'	Indiana bat	2
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Livingston	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Madison	Town of Cazenovia	Chittenango ovate amber snail	1
	All Towns	Hart's tongue fern	1
	All Towns, elevation under 900'	Indiana bat	2
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Monroe	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Towns of Riga and Sweden.	Bog turtle	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2

County	Townships/Watershed	Species	Avoidance Action[1]
Niagara	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Oneida	All Towns within 40 miles of Dewitt and elevation under 900'	Indiana bat	2
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Towns of Camden and Florence.	Bog turtle	1
Onondaga	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Town of Cicero.	Bog turtle	1
	Town of Cicero	Eastern massasauga (Candidate)	1
	All Towns	Hart's-tongue Fern	1
	All Towns, elevation under 900'	Indiana bat	2
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Ontario	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Town of Phelps.	Bog turtle	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Orleans	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Town of Clarendon.	Bog turtle	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Oswego	All Towns, elevation < 1,000 ft	Bog turtle	1
	All Towns, elevation under 900'	Indiana bat	2
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
	Sandy Creek, Richland	Piping plover critical habitat	1
St. Lawrence	All Towns within 40 miles of Glen Park, elevation under 900’	Indiana bat	2

County	Townships/Watershed	Species	Avoidance Action[1]
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Schuyler	Dix	Leedy's roseroot	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Seneca	All Towns	Bog turtle	1
	All Towns within 40 miles of Dewitt, elevation under 900'	Indiana bat	2
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Steuben	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Tioga	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Tompkins	Projects in wetlands in all Towns where project is at elevation < 1,000 ft. In addition, all stream projects in Towns of Danby, Enfield, Ithaca and Newfield	Bog turtle	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Wayne	All Towns, elevation < 1,000 ft	Bog turtle	1
	All Towns within 40 miles of Dewitt, elevation under 900'	Indiana bat	2
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Wyoming	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Yates	Starkey	Leedy's roseroot	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2

[1] Avoidance Action Codes:
1) The Corps will coordinate with the USFWS per the Standard Local Operating Procedures for Endangered Species.
2) The Corps will coordinate with the USFWS per the Standard Local Operating Procedures for Endangered Species for any project that includes tree removal (trees 3 inches in diameter or larger). If

tree removal occurs within urban areas, Pre-construction Notification is NOT required. If no tree removal is proposed, Pre-construction notification is NOT required for these locations.

IMPORTANT – Compliance Certification Form

This form must be completed and mailed to the District Commander **upon completion** of any work authorized by Department of the Army (DA) Regional Permit No. 99-000-1

Date: _____ DA Application No., if known: _____

ATTN: Mr. Harold Keppner
Regulatory Branch
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207

Dear Sir:

You are hereby notified that the work authorized under Department of the Army Regional General Permit No. 99-000-1, was completed on or about _____(Month/Day/Year).

The work undertaken was as follows (please check all that apply):
☐ Discharge associated with excavation or dredging of waters of the United States (WOUS)
☐ Discharge of fill into WOUS associated with repair/rehabilitation of structures
☐ Temporary discharge of fill into WOUS for access and/or staging areas
☐ Installation of cofferdams into WOUS to temporarily dewater work site
☐ Discharge of fill associated with stream restoration and protection of stream bed and banks

Written description (additional description and/or detailed project drawings may be submitted to supplement the compliance certification form):
_____
_____
_____

Applicant Information:
Name:
Mailing Address:
Phone Number:

Site Information (Please attach a location map depicting work site):
Street Address:
Town/Village/City:
County:
Name of waterbody, if applicable:
Latitude / Longitude:

Impact Information:
Total Impacts: _____ linear feet and/or _____ acres
Distance work performed above/below structure (i.e. bridge/road crossing):
Length of project/activity performed in waterbody:
Disposal location of material excavated from riverine system:

Signature and date of applicant _____
I certify that I have complied with the terms and conditions of the Regional Permit 99-000-1.