



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

DEPARTMENT OF THE ARMY PERMIT

Permittee: Adam J. Czekanski
Lieutenant Colonel, Corps of Engineers
District Commander
On Behalf of the General Public

Regional Permit No.: 97-000-1
Processing No.:
Effective Date: January 22, 2018
Expiration Date: January 22, 2023
Affirmation Date:

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.

Non-compliance with any of the terms or conditions of this permit may result in an order to cease the activity; restore the site; civil and/or criminal penalties or both.

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)

AUTHORIZED ACTIVITY: Discharges of dredged or fill material associated with minor channel work, as defined under Special Condition #3, performed in conjunction with County Soil and Water Conservation Districts (SWCD) or the Natural Resources Conservation Service (NRCS) and which have received written affirmation of permit applicability from the U.S. Army Engineer District (USAED), Buffalo or the appropriate NRCS or SWCD official acting under the written authority of the commanding officer of USAED, Buffalo.

LOCATION OF THE AUTHORIZED ACTIVITY: Waters of the United States that are located within the following Counties of New York State: Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Cortland, Erie, Ontario (only within Towns of Bristol, Canadice,

Canandaigua, East Bloomfield, Geneva, Gorham, Hopewell, Naples, Richmond, Seneca, South Bristol, and West Bloomfield) Schuyler, Steuben, Tioga, Tompkins and Wyoming. The general public is hereby authorized by the Secretary of the Army to perform the work authorized by this permit provided the following general and special conditions are fully complied with.

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.

NOTE: 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 with its terms and conditions, have the transferee sign and date on the last page of this permit and forward a copy of the permit to this office to validate the transfer of this authorization.

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 discharges of dredged material, structures and work authorized by this permit.

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.

GENERAL PERMIT NOTIFICATION REQUIREMENTS:

Prior to commencement of work, a Department of the Army permit application must be submitted to the Buffalo District for written affirmation of the applicability of this permit. 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:

1. Name, address and telephone number of the applicant.
2. Location map identifying project site.
3. A brief project description.
4. Project plans depicting proposed work.
5. Location map and description of temporary and permanent disposal sites.

401 WATER QUALITY CERTIFICATION: The New York State Department of Environmental Conservation (NYSDEC) has issued Section 401 Water Quality Certification for this permit except for the following instances:

1. Bank stabilization projects that exceed 300 linear feet per landowner.
2. Bank stabilization projects which entail solely the use of gravel or small cobbles with no other stabilizing structures or material.
3. Projects located in NYSDEC Article 24 designated wetlands.

GENERAL CONDITIONS:

1. The work authorized under this regional permit must be completed prior to the expiration date noted on the first page of this authorization. In the event that the affirmation date is less than twelve months prior to the expiration date, the regional permit will remain valid for a period of twelve months from the affirmation date. In no case shall authorization exceed twelve months beyond the expiration date.
2. If you discover any previously unknown historic or archaeological remains while accomplishing the activity authorized by this permit, you must immediately stop work and notify this office of what you have found. We will initiate the Federal and State 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.
3. 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.
4. This office reserves the right to use this regional permit in combination with any existing or future nationwide, regional or individual standard permit or any letter of permission.
5. All work will be completed in accordance with appropriate best management practices, to include, but not limited to, off site washing of equipment to be used in waters prior to commencement of authorized work, with measures in place to ensure that wash water is not directly released into waters of the US, as well as ensuring that all construction debris is disposed of in such a way as to preclude entry into waters of the US.

SPECIAL CONDITIONS:

1. This permit shall apply only to those activities specified in Special Condition #3 which are conducted by, or for, any person or agency formally registered as a cooperating landowner with the Allegany, Broome, Cattaraugus, Chautauqua, Chemung, Chenango, Cortland, Erie, Ontario ((only within Towns of Bristol, Canadice, Canandaigua, East Bloomfield, Geneva, Gorham, Hopewell, Naples, Richmond, Seneca, South Bristol, and West Bloomfield), Schuyler, Steuben, Tioga, Tompkins and Wyoming County SWCDs or the NRCS and the activity is sanctioned by the respective NRCS or SWCD.
2. 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:
 - a. mulch, straw bales, silt fences, or other means must be properly employed to minimize erosion and migration of sediments during construction. Temporary measures must be removed upon completion.
 - b. Construction access shall be by means that avoid or minimize impacts to aquatic sites (e.g. upland access, floating barges, mats, etc.).

- c. All excess excavated material remaining on-site must be properly contained and permanently stabilized to prevent erosion.
 - d. Upon project completion, impacted land surfaces must be permanently stabilized to prevent erosion.
 - e. The project area must be restored by matching the stream profile and cross section to stable upstream and downstream conditions.
 - f. All return flow shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions.
 - g. No in-stream work shall occur during predicted periods of high flow.
 - h. No interruption of water flow shall occur during construction in order to sustain aquatic life downstream.
3. This permit is limited to:
- a. Removal of material from recently formed gravel bars and depositional areas (within the past 18 months) using mechanized land clearing equipment (e.g. bulldozer, gradall, etc.); or to re-establish natural channel flow following an unusual high flow event; or it is an integral part of a larger overall project with an approved design while maintaining the cross sectional area of a stable reach (i.e., upstream or downstream of the project area).
 - b. Bank stabilization utilizing on-site materials (e.g. cobbles, rock, trees) to reduce erosion for a maximum of 500 linear feet per landowner, where this represents the best management practice for the particular project site as determined by SWCD, NRCS, New York State Department of Environmental Conservation (NYSDEC) or the Buffalo District; or where other Best Management Techniques are demonstrated by the applicant to be economically infeasible.
 - c. Minor realignment of the stream channel when associated with culvert and bridge repair/replacement, not to exceed a total of 200 linear feet.
 - d. Blocking of channel braids within one (1) year of formation to maintain normal channel flow when it is necessary to re-establish natural channel flow following an unusual high flow event or it is an integral part of a larger overall project with an approved design.
 - e. Bank stabilization activities as authorized by Nationwide Permit No. 13, as attached, including the New York State Department of Environmental Conservation Water Quality Certification and Regional Conditions.
 - f. Temporary construction, Access, and Dewatering activities as authorized by NWP 33, as attached, including the New York State Department of Environmental Conservation Water Quality Certification and Regional Conditions.

Special Conditions Applicable to Activities Authorized under Special Condition 3.a.:

4. Removal of material from gravel bars and depositional areas is restricted to areas of streambed with a substrate composed mainly of gravel or cobbles. Gravel bars and depositional areas containing a high composition of silt, clay and/or fine sands, are excluded from this authorization. Removal of stream gravel for the express purpose of subsequent use or sale (i.e. gravel mining) is not authorized by this permit. (Note that removal of gravel bars and depositional areas, especially on the inside of a meander bend where the stream formed point bars, may result in higher velocities, scouring and erosion of the bank. It is recommended that applicants leave gravel bars located on the inside of a meander bend (i.e., point bars), and stabilize the outside meander bend using geomorphic channel design methods to maintain the pattern, profile and dimension of the stream channel, reduce impacts to the downstream reach and the aquatic environment.)
5. For projects which propose the removal of gravel bars or depositional areas from a previously authorized location, the NRCS or SWCD personnel shall identify the source of the problem and if feasible, provide a long term solution to resolve the situation. This information shall be submitted with the permit application.

Special Conditions Applicable to Activities Authorized by Special Condition 3.b.:

6. Bank stabilization projects which entail solely the use of gravel or small cobbles with no other stabilizing structures or material and/or exceed 300 linear feet per landowner must obtain Individual Water Quality certification from the appropriate NYSDEC regional office.
7. Fluvial geomorphology restoration techniques, natural stream design and/or bioengineering techniques for stream bank stabilization should be considered in project design when feasible and practicable. Natural stream design measures include, but are not limited to, the installation of engineered rock riffles, cross vanes, j-hook vanes, bendway wiers, and log revetments that will serve to protect eroded banks, reduce the amount of fill into the aquatic environment, and reduce the amount of cumulative impacts to individual watersheds. In-stream structures should be placed appropriately given the existing stream size, flow and configuration. Bioengineering methods include: planting native vegetation such as silky dogwood (*Cornus amomum*), arrowwood viburnum (*Viburnum dentatum*), alders (*Alnus rugoso*) and willows (*Salix* sp.) or other appropriate species (such as stream-co willow (*Salix purpurea*)) to improve habitat for fish and wildlife; the installation of coir (coconut fiber) logs, willow wattles, dogwood fascines; and use of jute matting or other biodegradable erosion control fabric. A brief explanation of why these techniques cannot be incorporated into the proposed project shall be included with the permit application.
8. Trees shall only be used for bank stabilization when designed as tree revetment structures, properly anchored to the banks.
9. Bank protection involving the use of on-site gravel bars and depositional materials to repair eroding banks shall be achieved by transferring the materials from the gravel bar to the eroding bank with a backhoe or rubber-tired front-end loader. Use of a bulldozer for this purpose shall be avoided unless the new/realigned channel can first be constructed primarily in the dry, starting at the downstream end. (Note that transferring gravel bars to the eroding bank only stores it there until

the next high water event. It is recommended that the material from the stream channel be removed, or used as backfill behind larger rocks located above the Ordinary High Water mark).

Special Conditions Applicable to All Activities:

10. Unless approved in writing by the applicable NYSDEC Regional office, in-stream work is prohibited during the following time periods:

a. in cold water trout fisheries (waters classified under Article 15 of New York's Environmental Conservation Law with a "t" or "ts" designation), beginning October 1 and ending May 31

b. in perennial warm water fisheries, (non- trout waters classified under Article 15 of New York's Environmental Conservation Law as "A, B or C"), beginning March 1 and ending July 15.

Note: To determine which prohibition period is in effect for a particular water, contact the Regional Natural Resources Supervisor in the appropriate NYSDEC regional office.

11. All new stream channels shall be designed with a parabolic shaped bottom, or be otherwise designed to concentrate flows during low water periods. The new stream channel should match the cross sectional area of the stream reach located immediately upstream and downstream of the project site.

12. No in-stream work shall occur during periods of high stream flows.

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

14. All authorized work shall proceed to completion without interruption between operations whenever practicable.

15. Access across the stream shall be confined to a single ford.

16. Whenever feasible, bank grading and gravel bar and depositional area material removal shall be carried out by land-based equipment rather than from the streambed or within flowing water.

17. All erosion, sediment and turbidity controls shall be installed prior to any grading and filling activities. They shall remain in place until construction is complete and the area restored.

18. All stream banks disturbed as a result of any activity authorized by this General permit shall be seeded with a plant mix that does not contain invasive species (e.g., reed canary grass) and mulched immediately upon completion of bank work, unless otherwise protected from erosion.

19. That under no circumstances shall dredged or fill material be sidecast or temporarily stockpiled in waters of the United States, including wetlands.

20. All excess dredged or fill material not used for bank stabilization shall be deposited on upland property well removed from waters of the United States, including wetlands, and shall be properly stabilized to prevent re-entry into these waters. If the dredged material is temporarily stored on upland property, adjacent to the dredge site, it shall be contained by a filter fabric or hay bale fence to prevent erosion.
21. Whenever feasible, all projects involving bank stabilization shall include planting vegetation along riparian buffer areas on each side of the stream for the length of the project. The vegetation to be planted shall consist of native material similar to the vegetation in the vicinity of the project and not shall consist of herbaceous material alone.
22. Before equipment is removed from the work site and the project is considered complete, the cooperators or his/her contractor shall contact the project manager at the NRCS or SWCD and arrange for an on-site inspection. The cooperators or his/her contractor shall perform all modifications and/or corrective measures, as designated by the NRCS or SWCD, necessary to bring the project into compliance with the terms and conditions of this permit.
23. Endangered Species: **Pre-construction notification** and written affirmation from this office of the applicability of this permit is required for activities located within areas identified on Table 1. For activities that are proposed to occur within these areas, the application must include a discussion of potential threatened and endangered species (T&E) habitat within the project site. Refer to the USFWS T&E website at <http://www.fws.gov/northeast/nyfo/es/section7.htm> for information on habitat requirements for listed species. If there is potential habitat for any federally listed species within the project site:
- a. send the results of any habitat surveys (Note that all surveys should be coordinated with the USFWS).
 - b. include a detailed description of the proposed project, including approximate proposed project construction schedule and project activities (e.g., land clearing, utilities, stormwater management).
 - c. 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).
 - d. provide a description of the area to be impacted by the proposed project, including trees to be removed.
 - e. provide a description of conservation measures to avoid or minimize impacts to listed species.
 - f. provide photos of the site
 - g. if tree clearing will take place, provide a map outlining the tree removal area

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.

24. Cultural Resources: **Pre-construction notification (PCN)** and written affirmation from this office of the applicability of this permit is required for activities which may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. In order for the Buffalo District to determine if National Historic Preservation Act Section 106 consultation is required, all PCNs must include a written statement indicating if any properties listed or eligible for listing, in the National Register of Historic Places may be affected by the proposed project. A copy of any completed survey reports shall be provided with the PCN. If a survey has not been performed then the statement shall include a list of resources checked in the determination. Copies of any available correspondence from NYS Office of Parks, Recreation, and Historic Preservation (SHPO) regarding historic properties shall be provided with the PCN. Information regarding cultural resources may be found at: <http://parks.ny.gov/shpo/>. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State Historic Preservation Officer or Tribal Historic Preservation Officer (THPO), as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). Based on the information submitted and these efforts, the district engineer shall determine whether the proposed activity has the potential to cause an effect on the historic properties. Where the applicant has identified historic properties which the activity may have the potential to cause effects and so notified the Corps, the applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed. Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of Section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, explaining the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

25. **Pre-construction notification** and written affirmation from this office of the applicability of this permit is required for all activities located within a component of the National Wild and Scenic Rivers (NWSR) System, or on rivers currently being studied at the direction of Congress as potential additions to the NWSR System, or rivers for which Wild and Scenic Rivers studies have been completed and forwarded to Congress and which Congress is still considering. The portion of the Genesee River located within Letchworth Gorge State Park, beginning at the southern boundary of the park and extending downstream to the Mt. Morris Dam, was designated by Congress as a

permanent Study River in the Genesee River Protection Act of 1989. No activity may occur within a NWSR, including Study Rivers, unless the National Park Service (NPS) has determined in writing that the proposed work will not adversely affect the NWSR designation or study status. In addition, pre-construction notification and written affirmation from this office of the applicability of this permit is required for all activities located within areas listed in the Nationwide Rivers Inventory (list is available at: <http://www.nps.gov/ncrc/programs/rtca/nri/states/ny.html>). Activities located in the above areas will be evaluated on a case by case basis, which will include coordination with the National Park Service.

AGENCY COORDINATION REQUIREMENTS:

1. The New York State Department of Environmental Conservation (NYSDEC) has issued Section 401 Water Quality Certification for this permit except for the following instances:
 - a. Bank stabilization projects that exceed 300 linear feet per landowner.
 - b. Bank stabilization projects which entail solely the use of gravel or small cobbles with no other stabilizing structures or material.
 - c. Projects located in NYSDEC Article 24 designated wetlands.

EXCLUSIONS:

This permit does not apply to:

1. Sites within the permit area that are located within Navigable Waters, as defined under Section 10 of the Rivers and Harbors Act including but not limited to the following: Allegheny Reservoir, Allegheny River from the NY/PA border to the upstream City limit of Olean, Buffalo River from Lake Erie to 7.1 miles upstream, Cattaraugus Creek from the mouth to 3/4 mile upstream, Cayuga Inlet, Cayuga Lake, Erie Canal, Lake Erie, the Genesee River from Lake Ontario to Black Creek at Belfast, Niagara River, Scajaquada Creek from the Niagara River to 130 feet downstream of Niagara Street, and Seneca Lake, New York.
2. Sites within the permit area located within the New York State Coastal Zone Management Area.
3. Areas where the dredged material is known to be contaminated with toxic organic compounds and/or heavy metals.
4. Any other areas named in Acts of Congress or Presidential Proclamations as National Wilderness Areas, National Recreational Areas, Lakeshores, Parks, 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 regional permit.
5. State designated freshwater wetlands, significant fish and wildlife habitats including candidate designations, important agricultural lands and those which will be designated by the State

in the future, historic resources on the State Register of Historic Places, and resources which are a part of the State Nature and Historic Preserve Trust, when these resources lie within the designated New York State Coastal Area.

6. Any freshwater wetland as defined in Title 33 of the Code of Federal Regulations, Parts 320 et. seq., or other special aquatic site as defined in the U.S. Environmental Protection Agency Guidelines for Specification of Disposal Sites for Dredged or Fill Material at Title 40 of the Code of Federal Regulations, Part 230, when the specific site area is a vegetated shallow, pool and riffle complex or mudflat area that the State has specifically designated as an important fish spawning or nursery area or significant fish and wildlife habitat, or is designated as such in the future, or the District Engineer has determined to be an ecologically sensitive area.

7. 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 directly or indirectly 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 (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under this Regional Permit which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. 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 the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the U.S. FWS or the NMFS, The Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

Note: Limitations in items 4 through 7 above do not apply to any authorized activity when the work is for the benefit and uses of the site and is specifically endorsed, in writing, by the responsible Federal and State government officials such as the State Historic Preservation Officer, Refuge Manager, Regional Directors of U.S. Department of the Interior Offices such as the National Park Service and the U.S. Fish and Wildlife Service, etc.

8. Activities performed or proposed, unless the property owner has submitted a written request for authorization describing the activity, and the District Commander or authorized agent has determined that it complies with the terms and conditions of this permit.

9. Excess dredged or fill material will not be disposed in floodplains, unless a case specific review by the NYSDEC and Corps is conducted, and the work is compliant with local floodplain requirements.

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 or 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 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 you provided.

RE-EVALUATION OF THE DECISION TO GRANT A REGIONAL 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 Title 33 of the Code of Federal Regulations

Part 325.7 or enforcement procedures such as those contained in Title 33 of the Code of Federal Regulations Parts 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 and bill you for the cost.

BY AUTHORITY OF THE SECRETARY OF THE ARMY:

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 with its 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

**ACTIVITIES AUTHORIZED BY 2017 NATIONWIDE PERMIT
WITHIN THE STATE OF NEW YORK
Expiration March 18, 2022**

B. Nationwide Permits

13. Bank Stabilization. Bank stabilization activities necessary for erosion control or prevention, such as vegetative stabilization, bioengineering, sills, rip rap, revetment, gabion baskets, stream barbs, and bulkheads, or combinations of bank stabilization techniques, provided the activity meets all of the following criteria:

- (a) No material is placed in excess of the minimum needed for erosion protection;
- (b) The activity is no more than 500 feet in length along the bank, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects (an exception is for bulkheads – the district engineer cannot issue a waiver for a bulkhead that is greater than 1,000 feet in length along the bank);
- (c) The activity will not exceed an average of one cubic yard per running foot, as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (d) The activity does not involve discharges of dredged or fill material into special aquatic sites, unless the district engineer waives this criterion by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects;
- (e) No material is of a type, or is placed in any location, or in any manner, that will impair surface water flow into or out of any waters of the United States;
- (f) No material is placed in a manner that will be eroded by normal or expected high flows (properly anchored native trees and treetops may be used in low energy areas);
- (g) Native plants appropriate for current site conditions, including salinity, must be used for bioengineering or vegetative bank stabilization;
- (h) The activity is not a stream channelization activity; and
- (i) The activity must be properly maintained, which may require repairing it after severe storms or erosion events. This NWP authorizes those maintenance and repair activities if they require authorization.

This NWP also authorizes temporary structures, fills, and work, including the use of temporary mats, necessary to construct the bank stabilization activity. Appropriate measures must be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable, when temporary structures, work, and discharges, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Temporary fills must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. After construction, temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The areas affected by temporary fills must be revegetated, as appropriate.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the bank stabilization activity: (1) involves discharges into special aquatic sites; or (2) is in excess of 500 feet in length; or (3) will involve the discharge of greater than an average of one cubic yard per running foot as measured along the length of the treated bank, below the plane of the ordinary high water mark or the high tide line. (See general condition 32.) (**Authorities:** Sections 10 and 404)

Permit-specific Regional Conditions (Buffalo and New York Districts):

a. Every effort should be made to prevent hardening of the shoreline in New York waterbodies by selection of vegetative stabilization measures and/or rip-rap stone material, in lieu of vertical structures (i.e. wood, concrete, stacked rectangular rock or sheet pile bulkheads/retaining walls). Any woody vegetation utilized as part of the activity must be native species in order to maintain riparian buffers. In addition to notification requirements outlined in the NWP, a preconstruction notification (PCN) will be required for any proposed vertical structures placed below the applicable high water line and shall include written justification as to why other natural methods (i.e. vegetation, bioengineering, etc.) are not practicable, along with any proposed mitigation measures for adverse impacts (i.e. 1:2 to 1:3 sloped toe stone, measures to facilitate movement of wildlife if necessary, etc.).

b. Every effort should be made to prevent additional encroachment into the beds of New York waterbodies. All repair or rehabilitation activities should focus on using the area immediately landward of the existing structure. Bulkhead replacement shall be completed in-place or landward of the existing structure where practicable. When that is not practicable, a PCN shall be required for any encroachment proposed within tidal waters of the U.S. or any extensions, excluding the placement of toe stone protection recommended/required by state/federal resource agencies (i.e. NYSDEC, NYSDOS, USFWS & USEPA), which exceed 18 inches waterward of the existing bulkhead within non-tidal waters. The PCN must include justification for a waterward extension of the bulkhead (e.g. geologic conditions, engineering requirements, etc.).

Section 401 Water Quality Certification:

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket Section 401 Water Quality Certification in New York State provided that the project complies with **all** the General Conditions listed below in Section H. Any party conducting the activities authorized by this NWP that cannot comply with **all** these conditions must apply for and obtain an individual Section 401 Water Quality Certification from the NYSDEC.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41 and 930.43, the New York State Department of State (NYSDOS) concurs with the USACE consistency determination for this NWP with which all general and all Buffalo and New York District regional conditions are complied and with the additional condition(s), as follows:

The NYSDOS concurs with the USACE' consistency determination for NWP 13 where the activities to be authorized would occur within the canals identified by NYSDOS at: https://appext20.dos.ny.gov/coastal_map_public/map.aspx

For activities that do not comply with the above condition, the NYSDOS objects to the USACE' consistency determination and therefore, an individual consistency concurrence determination from NYSDOS is required for this NWP to be valid in the New York coastal area. See Section I below for further information.

33. Temporary Construction, Access, and Dewatering. Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use

of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse environmental effects. Following completion of construction, temporary fill must be entirely removed to an area that has no waters of the United States, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a separate section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if the activity is conducted in navigable waters of the United States (i.e., section 10 waters) (see general condition 32). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Authorities: Sections 10 and 404)

Buffalo District Only Permit-specific Regional Conditions: None

New York District Only Permit-specific Regional Conditions:

a. Within Essential Fish Habitat as discussed in Section G-E.8. below, if any work is proposed within areas supporting anadromous fish migration and spawning, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A PCN is required if a variance of this seasonal work window is requested.

b. Within Essential Fish Habitat, if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.

c. Within Essential Fish Habitat, if any work is proposed within submerged aquatic vegetation (SAV) habitat or within 50 feet of SAV habitat, a PCN is required.

d. Within National Marine Fisheries Service (NMFS) Threatened, Endangered or Candidate (TE&C) habitat as discussed in Section G-E.8. below, any work that would generate turbidity or sedimentation shall be avoided from March 16 to October 31. Justification must be submitted as part of the required PCN if a variance of this seasonal work window is requested.

Section 401 Water Quality Certification:

The New York State Department of Environmental Conservation (NYSDEC) has granted blanket Section 401 Water Quality Certification in New York State provided that the project complies with **all** the Special Conditions listed below and General Conditions listed in Section H. Where the Special Conditions differ from the General Conditions, the Special Conditions shall prevail. Any party conducting the activities authorized by this NWP that cannot comply with **all** these conditions must apply for and obtain an individual Section 401 Water Quality Certification from the NYSDEC.

NYSDEC WQC NWP #33 Special Condition:

- This certification authorizes activities that exist on-site for no more than 180 days from the date of installation.

New York State Department of State Coastal Zone Management Consistency Determination:

Pursuant to 15 CFR Part 930.41, the New York State Department of State (NYSDOS) concurs with the USACE consistency determination for this NWP anywhere in the New York State coastal area with which all general and all Buffalo and New York District regional conditions are complied.

C. Nationwide Permit General Conditions

Note: To qualify for NWP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any regional or case-specific conditions imposed by the division engineer or district engineer. Prospective permittees should contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP. Every person who may wish to obtain permit authorization under one or more NWPs, or who is currently relying on an existing or prior permit authorization under one or more NWPs, has been and is on notice that all of the provisions of 33 CFR 330.1 through 330.6 apply to every NWP authorization. Note especially 33 CFR 330.5 relating to the modification, suspension, or revocation of any NWP authorization.

1. Navigation. (a) No activity may cause more than a minimal adverse effect on navigation.

(b) Any safety lights and signals prescribed by the U.S. Coast Guard, through regulations or otherwise, must be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the United States.

(c) 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.

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. All permanent and temporary crossings of waterbodies shall be suitably culverted, bridged, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species. If a bottomless culvert cannot be used, then the crossing should be designed and constructed to minimize adverse effects to aquatic life movements.

3. Spawning Areas. Activities in spawning areas during spawning seasons must be avoided to the maximum extent practicable. Activities that result in the physical destruction (e.g., through excavation, fill, or downstream smothering by substantial turbidity) of an important spawning area are not authorized.

4. Migratory Bird Breeding Areas. Activities in waters of the United States that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.

5. Shellfish Beds. No activity may occur in areas of concentrated shellfish populations, unless the activity is directly related to a shellfish harvesting activity authorized by NWPs 4 and 48, or is a shellfish seeding or habitat restoration activity authorized by NWP 27.

6. Suitable Material. No activity may use unsuitable material (e.g., trash, debris, car bodies, asphalt, etc.). Material used for construction or discharged must be free from toxic pollutants in toxic amounts (see section 307 of the Clean Water Act).

7. Water Supply Intakes. No activity may occur in the proximity of a public water supply intake, except where the activity is for the repair or improvement of public water supply intake structures or adjacent bank stabilization.

8. Adverse Effects From Impoundments. If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.

9. Management of Water Flows. To the maximum extent practicable, the pre-construction course, condition, capacity, and location of open waters must be maintained for each activity, including stream channelization, storm water management activities, and temporary and permanent road crossings, except as provided below. The activity must be constructed to withstand expected high flows. The activity must not restrict or impede the passage of normal or high flows, unless the primary purpose of the activity is to impound water or manage high flows. The activity may alter the pre-construction course, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).

10. Fills Within 100-Year Floodplains. The activity must comply with applicable FEMA-approved state or local floodplain management requirements.

11. Equipment. Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.

12. Soil Erosion and Sediment Controls. Appropriate soil erosion and sediment controls must be used and maintained in effective operating condition during construction, and all exposed soil and other fills, as well as any work below the ordinary high water mark or high tide line, must be permanently stabilized at the earliest practicable date. Permittees are encouraged to perform work within waters of the United States during periods of low-flow or no-flow, or during low tides.

13. Removal of Temporary Fills. Temporary fills must be removed in their entirety and the affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate.

14. Proper Maintenance. Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety and compliance with applicable NWP general conditions, as well as any activity-specific conditions added by the district engineer to an NWP authorization.

15. Single and Complete Project. The activity must be a single and complete project. The same NWP cannot be used more than once for the same single and complete project.

16. Wild and Scenic Rivers. (a) No NWP activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status.

(b) If a proposed NWP activity will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the permittee must submit a pre-construction notification (see general condition 32). The district engineer will coordinate the PCN with the Federal agency with direct management responsibility for that river. The permittee shall not begin the NWP activity until notified by the district engineer that the Federal agency with direct management responsibility for that river has determined in writing that the proposed NWP activity will not adversely affect the Wild and Scenic River designation or study status.

(c) Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency responsible for the designated Wild and Scenic River or study river (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service). Information on these rivers is also available at: <http://www.rivers.gov/>.

17. Tribal Rights. No NWP activity may cause more than minimal adverse effects on tribal rights (including treaty rights), protected tribal resources, or tribal lands.

18. Endangered Species. (a) No activity is authorized under any NWP which is likely to directly or indirectly 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 (ESA), or which will directly or indirectly destroy or adversely modify the critical habitat of such species. No activity is authorized under any NWP which "may affect" a listed species or critical habitat, unless ESA section 7 consultation addressing the effects of the proposed activity has been completed. Direct effects are the immediate effects on listed species and critical habitat caused by the NWP activity. Indirect effects are those effects on listed species and critical habitat that are caused by the NWP activity and are later in time, but still are reasonably certain to occur.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. If pre-construction notification is required for the proposed activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation has not been submitted, additional ESA section 7 consultation may be necessary for the activity and the respective federal agency would be responsible for fulfilling its obligation under section 7 of the ESA.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, and shall not begin work on the activity until notified by the district engineer that the requirements of the ESA have been satisfied and that the activity is authorized. For activities that might affect Federally-listed endangered or threatened species or designated critical habitat, the pre-construction notification must include the name(s) of the endangered or threatened species that might be affected by the proposed activity or that utilize the designated critical habitat that might be affected by the proposed activity. The district engineer will determine whether the proposed activity "may affect" or will have "no effect" to listed species and designated critical habitat and will notify the non-Federal applicant of the Corps' determination within 45 days of receipt of a complete pre-construction notification. In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the activity, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification that the proposed activity will have "no effect" on listed species or critical habitat, or until ESA section 7 consultation has been completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(d) As a result of formal or informal consultation with the FWS or NMFS the district engineer may add species-specific permit conditions to the NWPs.

(e) Authorization of an activity by an NWP does not authorize the "take" of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with "incidental take" provisions, etc.) from the FWS or the NMFS, the Endangered Species Act prohibits any person subject to the jurisdiction of the United States to take a listed species, where "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. The word "harm" in the definition of "take" means an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering.

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the

associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation for the ESA section 10(a)(1)(B) permit, the district engineer does not need to conduct a separate ESA section 7 consultation for the proposed NWP activity. The district engineer will notify the non-federal applicant within 45 days of receipt of a complete pre-construction notification whether the ESA section 10(a)(1)(B) permit covers the proposed NWP activity or whether additional ESA section 7 consultation is required.

(g) Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS and NMFS or their world wide web pages at <http://www.fws.gov/> or <http://www.fws.gov/ipac> and <http://www.nmfs.noaa.gov/pr/species/esa/> respectively.

19. Migratory Birds and Bald and Golden Eagles. The permittee is responsible for ensuring their action complies with the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act. The permittee is responsible for contacting appropriate local office of the U.S. Fish and Wildlife Service to determine applicable measures to reduce impacts to migratory birds or eagles, including whether “incidental take” permits are necessary and available under the Migratory Bird Treaty Act or Bald and Golden Eagle Protection Act for a particular activity.

20. Historic Properties. (a) In cases where the district engineer determines that the activity may have the potential to cause effects to properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(b) Federal permittees should follow their own procedures for complying with the requirements of section 106 of the National Historic Preservation Act. If pre-construction notification is required for the proposed NWP activity, the Federal permittee must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements. The district engineer will verify that the appropriate documentation has been submitted. If the appropriate documentation is not submitted, then additional consultation under section 106 may be necessary. The respective federal agency is responsible for fulfilling its obligation to comply with section 106.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the NWP activity might have the potential to cause effects to any historic properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties might have the potential to be affected by the proposed NWP activity or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of, or potential for, the presence of historic properties can be sought from the State Historic Preservation Officer, Tribal Historic Preservation Officer, or designated tribal representative, as appropriate, and the National Register of Historic Places (see 33 CFR 330.4(g)). When reviewing pre-construction notifications, district engineers will comply with the current procedures for addressing the requirements of section 106 of the National Historic Preservation Act. The district engineer shall make a reasonable and good faith effort to carry out appropriate identification efforts, which may include background research, consultation, oral history interviews, sample field investigation, and field survey. Based on the information submitted in the PCN and these identification efforts, the district engineer shall determine whether the proposed NWP activity has the potential to cause effects on the historic properties. Section 106 consultation is not required when the district engineer determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). Section 106 consultation is required when the district engineer determines that the activity has the potential to cause effects on historic properties. The district engineer will conduct consultation with consulting parties identified under 36 CFR 800.2(c) when he or she makes any of the following effect determinations for the purposes of section 106 of the NHPA: no historic properties affected, no adverse effect, or adverse effect. Where the non-Federal applicant has identified historic properties on which the activity might have the potential to cause effects and so notified

the Corps, the non-Federal applicant shall not begin the activity until notified by the district engineer either that the activity has no potential to cause effects to historic properties or that NHPA section 106 consultation has been completed.

(d) For non-federal permittees, the district engineer will notify the prospective permittee within 45 days of receipt of a complete pre-construction notification whether NHPA section 106 consultation is required. If NHPA section 106 consultation is required, the district engineer will notify the non-Federal applicant that he or she cannot begin the activity until section 106 consultation is completed. If the non-Federal applicant has not heard back from the Corps within 45 days, the applicant must still wait for notification from the Corps.

(e) Prospective permittees should be aware that section 110k of the NHPA (54 U.S.C. 306113) prevents the Corps from granting a permit or other assistance to an applicant who, with intent to avoid the requirements of section 106 of the NHPA, has intentionally significantly adversely affected a historic property to which the permit would relate, or having legal power to prevent it, allowed such significant adverse effect to occur, unless the Corps, after consultation with the Advisory Council on Historic Preservation (ACHP), determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. If circumstances justify granting the assistance, the Corps is required to notify the ACHP and provide documentation specifying the circumstances, the degree of damage to the integrity of any historic properties affected, and proposed mitigation. This documentation must include any views obtained from the applicant, SHPO/THPO, appropriate Indian tribes if the undertaking occurs on or affects historic properties on tribal lands or affects properties of interest to those tribes, and other parties known to have a legitimate interest in the impacts to the permitted activity on historic properties.

21. Discovery of Previously Unknown Remains and Artifacts. If you discover any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by this permit, you must immediately notify the district engineer of what you have found, and to the maximum extent practicable, avoid construction activities that may affect the remains and artifacts until the required coordination has been completed. The district engineer will initiate the Federal, Tribal, and state coordination required to determine if the items or remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.

22. Designated Critical Resource Waters. Critical resource waters include, NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. The district engineer may designate, after notice and opportunity for public comment, additional waters officially designated by a state as having particular environmental or ecological significance, such as outstanding national resource waters or state natural heritage sites. The district engineer may also designate additional critical resource waters after notice and opportunity for public comment.

(a) Discharges of dredged or fill material into waters of the United States are not authorized by NWPs 7, 12, 14, 16, 17, 21, 29, 31, 35, 39, 40, 42, 43, 44, 49, 50, 51, and 52 for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.

(b) For NWPs 3, 8, 10, 13, 15, 18, 19, 22, 23, 25, 27, 28, 30, 33, 34, 36, 37, 38, and 54, notification is required in accordance with general condition 32, for any activity proposed in the designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities under these NWPs only after it is determined that the impacts to the critical resource waters will be no more than minimal.

23. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal:

(a) The activity must be designed and constructed to avoid and minimize adverse effects, both temporary and permanent, to waters of the United States to the maximum extent practicable at the project site (i.e., on site).

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating for resource losses) will be required to the extent necessary to ensure that the individual and cumulative adverse environmental effects are no more than minimal.

(c) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10-acre and require pre-construction notification, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse environmental effects of the proposed activity are no more than minimal, and provides an activity-specific waiver of this requirement. For wetland losses of 1/10-acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in only minimal adverse environmental effects.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation to ensure that the activity results in no more than minimal adverse environmental effects. Compensatory mitigation for losses of streams should be provided, if practicable, through stream rehabilitation, enhancement, or preservation, since streams are difficult-to-replace resources (see 33 CFR 332.3(e)(3)).

(e) Compensatory mitigation plans for NWP activities in or near streams or other open waters will normally include a requirement for the restoration or enhancement, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, the restoration or maintenance/protection of riparian areas may be the only compensatory mitigation required. Restored riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. If it is not possible to restore or maintain/protect a riparian area on both sides of a stream, or if the waterbody is a lake or coastal waters, then restoring or maintaining/protecting a riparian area along a single bank or shoreline may be sufficient. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of minimization or compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(f) Compensatory mitigation projects provided to offset losses of aquatic resources must comply with the applicable provisions of 33 CFR part 332.

(1) The prospective permittee is responsible for proposing an appropriate compensatory mitigation option if compensatory mitigation is necessary to ensure that the activity results in no more than minimal adverse environmental effects. For the NWPs, the preferred mechanism for providing compensatory mitigation is mitigation bank credits or in-lieu fee program credits (see 33 CFR 332.3(b)(2) and (3)). However, if an appropriate number and type of mitigation bank or in-lieu credits are not available at the time the PCN is submitted to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.

(2) The amount of compensatory mitigation required by the district engineer must be sufficient to ensure that the authorized activity results in no more than minimal individual and cumulative adverse environmental effects (see 33 CFR 330.1(e)(3)). (See also 33 CFR 332.3(f)).

(3) Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, aquatic resource restoration should be the first compensatory mitigation option considered for permittee-responsible mitigation.

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

(5) If mitigation bank or in-lieu fee program credits are the proposed option, the mitigation plan only needs to address the baseline conditions at the impact site and the number of credits to be provided.

(6) Compensatory mitigation requirements (e.g., resource type and amount to be provided as compensatory mitigation, site protection, ecological performance standards, monitoring requirements) may be addressed through conditions added to the NWP authorization, instead of components of a compensatory mitigation plan (see 33 CFR 332.4(c)(1)(ii)).

(g) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWPs. For example, if an NWP has an acreage limit of 1/2-acre, it cannot be used to authorize any NWP activity resulting in the loss of greater than 1/2-acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that an NWP activity already meeting the established acreage limits also satisfies the no more than minimal impact requirement for the NWPs.

(h) Permittees may propose the use of mitigation banks, in-lieu fee programs, or permittee-responsible mitigation. When developing a compensatory mitigation proposal, the permittee must consider appropriate and practicable options consistent with the framework at 33 CFR 332.3(b). For activities resulting in the loss of marine or estuarine resources, permittee-responsible mitigation may be environmentally preferable if there are no mitigation banks or in-lieu fee programs in the area that have marine or estuarine credits available for sale or transfer to the permittee. For permittee-responsible mitigation, the special conditions of the NWP verification must clearly indicate the party or parties responsible for the implementation and performance of the compensatory mitigation project, and, if required, its long-term management.

(i) Where certain functions and services of waters of the United States are permanently adversely affected by a regulated activity, such as discharges of dredged or fill material into waters of the United States that will convert a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained utility line right-of-way, mitigation may be required to reduce the adverse environmental effects of the activity to the no more than minimal level.

24. Safety of Impoundment Structures. To ensure that all impoundment structures are safely designed, the district engineer may require non-Federal applicants to demonstrate that the structures comply with established state dam safety criteria or have been designed by qualified persons. The district engineer may also require documentation that the design has been independently reviewed by similarly qualified persons, and appropriate modifications made to ensure safety.

25. Water Quality. Where States and authorized Tribes, or EPA where applicable, have not previously certified compliance of an NWP with CWA section 401, individual 401 Water Quality Certification must be obtained or waived (see 33 CFR 330.4(c)). The district engineer or State or Tribe may require additional water quality management measures to ensure that the authorized activity does not result in more than minimal degradation of water quality.

26. Coastal Zone Management. In coastal states where an NWP has not previously received a state coastal zone management consistency concurrence, an individual state coastal zone management consistency concurrence must be obtained, or a presumption of concurrence must occur (see 33 CFR 330.4(d)). The district engineer or a State may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

27. Regional and Case-By-Case Conditions. The activity must comply with any regional conditions that may have been added by the Division Engineer (see 33 CFR 330.4(e)) and with any case specific conditions added by the Corps or by the state, Indian Tribe, or U.S. EPA in its section 401 Water Quality Certification, or by the state in its Coastal Zone Management Act consistency determination.

28. Use of Multiple Nationwide Permits. The use of more than one NWP for a single and complete project is prohibited, except when the acreage loss of waters of the United States authorized by the NWPs does not exceed the acreage limit of the NWP with the highest specified acreage limit. For example, if a road crossing over tidal waters is constructed under NWP 14, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the United States for the total project cannot exceed 1/3-acre.

29. Transfer of Nationwide Permit Verifications. If the permittee sells the property associated with a nationwide permit verification, the permittee may transfer the nationwide permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the nationwide permit verification must be attached to the letter, and the letter must contain the following statement and signature:

“When the structures or work authorized by this nationwide permit are still in existence at the time the property is transferred, the terms and conditions of this nationwide permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

(Transferee)

(Date)

30. Compliance Certification. Each permittee who receives an NWP verification letter from the Corps must provide a signed certification documenting completion of the authorized activity and implementation of any required compensatory mitigation. The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer. The Corps will provide the permittee the certification document with the NWP verification letter. The certification document will include:

(a) A statement that the authorized activity was done in accordance with the NWP authorization, including any general, regional, or activity-specific conditions;

(b) A statement that the implementation of any required compensatory mitigation was completed in accordance with the permit conditions. If credits from a mitigation bank or in-lieu fee program are used to satisfy the compensatory mitigation requirements, the certification must include the documentation required by 33 CFR 332.3(l)(3) to confirm that the permittee secured the appropriate number and resource type of credits; and

- (c) The signature of the permittee certifying the completion of the activity and mitigation.

The completed certification document must be submitted to the district engineer within 30 days of completion of the authorized activity or the implementation of any required compensatory mitigation, whichever occurs later.

31. Activities Affecting Structures or Works Built by the United States. If an NWP activity also requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers (USACE) federally authorized Civil Works project (a "USACE project"), the prospective permittee must submit a pre-construction notification. See paragraph (b)(10) of general condition 32. An activity that requires section 408 permission is not authorized by NWP until the appropriate Corps office issues the section 408 permission to alter, occupy, or use the USACE project, and the district engineer issues a written NWP verification.

32. Pre-Construction Notification. (a) Timing. Where required by the terms of the NWP, the prospective permittee must notify the district engineer by submitting a pre-construction notification (PCN) as early as possible. The district engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, if the PCN is determined to be incomplete, notify the prospective permittee within that 30 day period to request the additional information necessary to make the PCN complete. The request must specify the information needed to make the PCN complete. As a general rule, district engineers will request additional information necessary to make the PCN complete only once. However, if the prospective permittee does not provide all of the requested information, then the district engineer will notify the prospective permittee that the PCN is still incomplete and the PCN review process will not commence until all of the requested information has been received by the district engineer. The prospective permittee shall not begin the activity until either:

(1) He or she is notified in writing by the district engineer that the activity may proceed under the NWP with any special conditions imposed by the district or division engineer; or

(2) 45 calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 18 that listed species or critical habitat might be affected or are in the vicinity of the activity, or to notify the Corps pursuant to general condition 20 that the activity might have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that there is "no effect" on listed species or "no potential to cause effects" on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) has been completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee may not begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained. Subsequently, the permittee's right to proceed under the NWP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 330.5(d)(2).

(b) Contents of Pre-Construction Notification: The PCN must be in writing and include the following information:

(1) Name, address and telephone numbers of the prospective permittee;

(2) Location of the proposed activity;

(3) Identify the specific NWP or NWP(s) the prospective permittee wants to use to authorize the proposed activity;

(4) A description of the proposed activity; the activity's purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

(5) The PCN must include a delineation of wetlands, other special aquatic sites, and other waters, such as lakes and ponds, and perennial, intermittent, and ephemeral streams, on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The permittee may ask the Corps to delineate the special aquatic sites and other waters on the project site, but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many wetlands, other special aquatic sites, and other waters. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, as appropriate;

(6) If the proposed activity will result in the loss of greater than 1/10-acre of wetlands and a PCN is required, the prospective permittee must submit a statement describing how the mitigation requirement will be satisfied, or explaining why the adverse environmental effects are no more than minimal and why compensatory mitigation should not be required. As an alternative, the prospective permittee may submit a conceptual or detailed mitigation plan.

(7) For non-Federal permittees, if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat, the PCN must include the name(s) of those endangered or threatened species that might be affected by the proposed activity or utilize the designated critical habitat that might be affected by the proposed activity. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with the Endangered Species Act;

(8) For non-Federal permittees, if the NWP activity might have the potential to cause effects to a historic property listed on, determined to be eligible for listing on, or potentially eligible for listing on, the National Register of Historic Places, the PCN must state which historic property might have the potential to be affected by the proposed activity or include a vicinity map indicating the location of the historic property. For NWP activities that require pre-construction notification, Federal permittees must provide documentation demonstrating compliance with section 106 of the National Historic Preservation Act;

(9) For an activity that will occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, the PCN must identify the Wild and Scenic River or the "study river" (see general condition 16); and

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil

works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

(c) Form of Pre-Construction Notification: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is an NWP PCN and must include all of the applicable information required in paragraphs (b)(1) through (10) of this general condition. A letter containing the required information may also be used. Applicants may provide electronic files of PCNs and supporting materials if the district engineer has established tools and procedures for electronic submittals.

(d) Agency Coordination: (1) The district engineer will consider any comments from Federal and state agencies concerning the proposed activity's compliance with the terms and conditions of the NWPs and the need for mitigation to reduce the activity's adverse environmental effects so that they are no more than minimal.

(2) Agency coordination is required for: (i) all NWP activities that require pre-construction notification and result in the loss of greater than 1/2-acre of waters of the United States; (ii) NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that require pre-construction notification and will result in the loss of greater than 300 linear feet of stream bed; (iii) NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites; and (iv) NWP 54 activities in excess of 500 linear feet, or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

(3) When agency coordination is required, the district engineer will immediately provide (e.g., via e-mail, facsimile transmission, overnight mail, or other expeditious manner) a copy of the complete PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, EPA, and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will have 10 calendar days from the date the material is transmitted to notify the district engineer via telephone, facsimile transmission, or e-mail that they intend to provide substantive, site-specific comments. The comments must explain why the agency believes the adverse environmental effects will be more than minimal. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame concerning the proposed activity's compliance with the terms and conditions of the NWPs, including the need for mitigation to ensure the net adverse environmental effects of the proposed activity are no more than minimal. The district engineer will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

(4) In cases of where the prospective permittee is not a Federal agency, the district engineer will provide a response to NMFS within 30 calendar days of receipt of any Essential Fish Habitat conservation recommendations, as required by section 305(b)(4)(B) of the Magnuson-Stevens Fishery Conservation and Management Act.

(5) Applicants are encouraged to provide the Corps with either electronic files or multiple copies of pre-construction notifications to expedite agency coordination.

D. District Engineer's Decision

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

2. When making minimal adverse environmental effects determinations the district engineer will consider the direct and indirect effects caused by the NWP activity. He or she will also consider the cumulative adverse environmental effects caused by activities authorized by NWP and whether those cumulative adverse environmental effects are no more than minimal. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the NWP activity, the type of resource that will be affected by the NWP activity, the functions provided by the aquatic resources that will be affected by the NWP activity, the degree or magnitude to which the aquatic resources perform those functions, the extent that aquatic resource functions will be lost as a result of the NWP activity (e.g., partial or complete loss), the duration of the adverse effects (temporary or permanent), the importance of the aquatic resource functions to the region (e.g., watershed or ecoregion), and mitigation required by the district engineer. If an appropriate functional or condition assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse environmental effects determination. The district engineer may add case-specific special conditions to the NWP authorization to address site-specific environmental concerns.

3. If the proposed activity requires a PCN and will result in a loss of greater than 1/10-acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for NWP activities with smaller impacts, or for impacts to other types of waters (e.g., streams). The district engineer will consider any proposed compensatory mitigation or other mitigation measures the applicant has included in the proposal in determining whether the net adverse environmental effects of the proposed activity are no more than minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse environmental effects are no more than minimal, after considering mitigation, the district engineer will notify the permittee and include any activity-specific conditions in the NWP verification the district engineer deems necessary. Conditions for compensatory mitigation requirements must comply with the appropriate provisions at 33 CFR 332.3(k). The district engineer must approve the final mitigation plan before the permittee commences work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the proposed compensatory mitigation plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure the NWP activity results in no more than minimal adverse environmental effects. If the net adverse environmental effects of the NWP activity (after consideration of the mitigation proposal) are determined by the district engineer to be no more than minimal, the district engineer will provide a timely written response to the applicant. The response will state that the NWP activity can

proceed under the terms and conditions of the NWP, including any activity-specific conditions added to the NWP authorization by the district engineer.

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or 31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

E. Further Information

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.

2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.

3. NWPs do not grant any property rights or exclusive privileges.

4. NWPs do not authorize any injury to the property or rights of others.

5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

F. Definitions

Best management practices (BMPs): Policies, practices, procedures, or structures implemented to mitigate the adverse environmental effects on surface water quality resulting from development. BMPs are categorized as structural or non-structural.

Compensatory mitigation: The restoration (re-establishment or rehabilitation), establishment (creation), enhancement, and/or in certain circumstances preservation of aquatic resources for the purposes of offsetting unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved.

Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.

Direct effects: Effects that are caused by the activity and occur at the same time and place.

Discharge: The term "discharge" means any discharge of dredged or fill material into waters of the United States.

Ecological reference: A model used to plan and design an aquatic habitat and riparian area restoration, enhancement, or establishment activity under NWP 27. An ecological reference may be based on the structure, functions, and dynamics of an aquatic habitat type or a riparian area type that currently exists in the region where the proposed NWP 27 activity is located. Alternatively, an ecological reference may be based on a conceptual model for the aquatic habitat type or riparian area type to be restored, enhanced, or established as a result of the proposed NWP 27 activity. An ecological reference takes into account the range of variation of the aquatic habitat type or riparian area type in the region.

Enhancement: The manipulation of the physical, chemical, or biological characteristics of an aquatic resource to heighten, intensify, or improve a specific aquatic resource function(s). Enhancement results in the gain of selected aquatic resource function(s), but may also lead to a decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

Ephemeral stream: An ephemeral stream has flowing water only during, and for a short duration after, precipitation events in a typical year. Ephemeral stream beds are located above the water table year-round. Groundwater is not a source of water for the stream. Runoff from rainfall is the primary source of water for stream flow.

Establishment (creation): The manipulation of the physical, chemical, or biological characteristics present to develop an aquatic resource that did not previously exist at an upland site. Establishment results in a gain in aquatic resource area.

High Tide Line: The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

Historic Property: Any prehistoric or historic district, site (including archaeological site), building, structure, or other object included in, or eligible for inclusion in, the National Register of Historic Places maintained by the Secretary of the Interior. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria (36 CFR part 60).

Independent utility: A test to determine what constitutes a single and complete non-linear project in the Corps Regulatory Program. A project is considered to have independent utility if it would be constructed absent the construction of other projects in the project area. Portions of a multi-phase project that depend upon other phases of the project do not have independent utility. Phases of a project that would be constructed even if the other phases were not built can be considered as separate single and complete projects with independent utility.

Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.

Intermittent stream: An intermittent stream has flowing water during certain times of the year, when groundwater provides water for stream flow. During dry periods, intermittent streams may not have flowing water. Runoff from rainfall is a supplemental source of water for stream flow.

Loss of waters of the United States: Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse

effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the acres or linear feet of stream bed that are filled or excavated as a result of the regulated activity. Waters of the United States temporarily filled, flooded, excavated, or drained, but restored to pre-construction contours and elevations after construction, are not included in the measurement of loss of waters of the United States. Impacts resulting from activities that do not require Department of the Army authorization, such as activities eligible for exemptions under section 404(f) of the Clean Water Act, are not considered when calculating the loss of waters of the United States.

Navigable waters: Waters subject to section 10 of the Rivers and Harbors Act of 1899. These waters are defined at 33 CFR part 329.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

Open water: For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of flowing or standing water is either non-emergent, sparse, or absent. Vegetated shallows are considered to be open waters. Examples of “open waters” include rivers, streams, lakes, and ponds.

Ordinary High Water Mark: An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas.

Perennial stream: A perennial stream has flowing water year-round during a typical year. The water table is located above the stream bed for most of the year. Groundwater is the primary source of water for stream flow. Runoff from rainfall is a supplemental source of water for stream flow.

Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

Pre-construction notification: A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by nationwide permit. The request may be a permit application, letter, or similar document that includes information about the proposed work and its anticipated environmental effects. Pre-construction notification may be required by the terms and conditions of a nationwide permit, or by regional conditions. A pre-construction notification may be voluntarily submitted in cases where pre-construction notification is not required and the project proponent wants confirmation that the activity is authorized by nationwide permit.

Preservation: The removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms. Preservation does not result in a gain of aquatic resource area or functions.

Protected tribal resources: Those natural resources and properties of traditional or customary religious or cultural importance, either on or off Indian lands, retained by, or reserved by or for, Indian tribes through treaties, statutes, judicial decisions, or executive orders, including tribal trust resources.

Re-establishment: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former aquatic resource. Re-establishment results in rebuilding a former aquatic resource and results in a gain in aquatic resource area and functions.

Rehabilitation: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural/historic functions to a degraded aquatic resource. Rehabilitation results in a gain in aquatic resource function, but does not result in a gain in aquatic resource area.

Restoration: The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural/historic functions to a former or degraded aquatic resource. For the purpose of tracking net gains in aquatic resource area, restoration is divided into two categories: re-establishment and rehabilitation.

Riffle and pool complex: Riffle and pool complexes are special aquatic sites under the 404(b)(1) Guidelines. Riffle and pool complexes sometimes characterize steep gradient sections of streams. Such stream sections are recognizable by their hydraulic characteristics. The rapid movement of water over a coarse substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands next to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects riverine, lacustrine, estuarine, and marine waters with their adjacent wetlands, non-wetland waters, or uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 23.)

Shellfish seeding: The placement of shellfish seed and/or suitable substrate to increase shellfish production. Shellfish seed consists of immature individual shellfish or individual shellfish attached to shells or shell fragments (i.e., spat on shell). Suitable substrate may consist of shellfish shells, shell fragments, or other appropriate materials placed into waters for shellfish habitat.

Single and complete linear project: A linear project is a project constructed for the purpose of getting people, goods, or services from a point of origin to a terminal point, which often involves multiple crossings of one or more waterbodies at separate and distant locations. The term “single and complete project” is defined as that portion of the total linear project proposed or accomplished by one owner/developer or partnership or other association of owners/developers that includes all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single or multiple waterbodies several times at separate and distant locations, each crossing is considered a single and complete project for purposes of NWP authorization. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

Single and complete non-linear project: For non-linear projects, the term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete non-linear project must have independent utility (see definition of “independent utility”). Single and complete non-linear projects may not be “piecemealed” to avoid the limits in an NWP authorization.

Stormwater management: Stormwater management is the mechanism for controlling stormwater runoff for the purposes of reducing downstream erosion, water quality degradation, and flooding and mitigating the adverse effects of changes in land use on the aquatic environment.

Stormwater management facilities: Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water

for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

Stream bed: The substrate of the stream channel between the ordinary high water marks. The substrate may be bedrock or inorganic particles that range in size from clay to boulders. Wetlands contiguous to the stream bed, but outside of the ordinary high water marks, are not considered part of the stream bed.

Stream channelization: The manipulation of a stream's course, condition, capacity, or location that causes more than minimal interruption of normal stream processes. A channelized stream remains a water of the United States.

Structure: An object that is arranged in a definite pattern of organization. Examples of structures include, without limitation, any pier, boat dock, boat ramp, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, artificial island, artificial reef, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other manmade obstacle or obstruction.

Tidal wetland: A tidal wetland is a jurisdictional wetland that is inundated by tidal waters. Tidal waters rise and fall in a predictable and measurable rhythm or cycle due to the gravitational pulls of the moon and sun. Tidal waters end where the rise and fall of the water surface can no longer be practically measured in a predictable rhythm due to masking by other waters, wind, or other effects. Tidal wetlands are located channelward of the high tide line.

Tribal lands: Any lands title to which is either: 1) held in trust by the United States for the benefit of any Indian tribe or individual; or 2) held by any Indian tribe or individual subject to restrictions by the United States against alienation.

Tribal rights: Those rights legally accruing to a tribe or tribes by virtue of inherent sovereign authority, unextinguished aboriginal title, treaty, statute, judicial decisions, executive order or agreement, and that give rise to legally enforceable remedies.

Vegetated shallows: Vegetated shallows are special aquatic sites under the 404(b)(1) Guidelines. They are areas that are permanently inundated and under normal circumstances have rooted aquatic vegetation, such as seagrasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of the NWP's, a waterbody is a jurisdictional water of the United States. If a wetland is adjacent to a waterbody determined to be a water of the United States, that waterbody and any adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.

G. Buffalo and New York District General Regional Conditions
These conditions apply to ALL Nationwide Permits.

G-A. Construction Best Management Practices (BMP's): Unless specifically approved otherwise through issuance of a variance by the District Engineer, the following BMP's must be implemented to the maximum degree practicable, to minimize erosion, migration of sediments, and adverse environmental impacts. Note that at a minimum, all erosion and sediment control and stormwater management practices must be designed, installed and maintained throughout the entire construction project in accordance with the latest version of the "*New York Standards and Specifications for Erosion and Sediment Control*" and the "*New York State Stormwater Management Design Manual*". These documents are available at: <http://www.dec.ny.gov/chemical/29066.html> and <http://www.dec.ny.gov/chemical/29072.html>, respectively. Prior to the discharge of any dredged or fill material into waters of the United States, including wetlands, authorized by NWP, the permittee must install and maintain erosion and sedimentation controls in and/or adjacent to wetlands or other waters of the United States.

1. 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 over time, may be abandoned in place.
2. Materials resulting from trench excavation for utility line installation or ditch reshaping activities which are temporarily sidecast or stockpiled into waters of the United States must be backfilled or removed to an upland area within 30 days of the date of deposition. Note: upland options shall be utilized prior to temporary placement within waters of the U.S., unless it can be demonstrated that it would not be practicable or if the impacts of complying with this upland option requirement would result in more adverse impacts to the aquatic environment.
3. For trenching activities in wetlands the applicant shall install impermeable trench dams or trench breakers at the wetland boundaries and every 100 feet within wetland areas to prevent inadvertent drainage of wetlands or other waters of the United States.
4. Dry stream crossing methods (e.g., diversion, dam and pump, flume, bore) shall be utilized for culvert or other pipe, or utility installations to reduce downstream impacts from turbidity and sedimentation. This may require piping or pumping the stream flow around the work area and the use of cofferdams.
5. No in-stream work shall occur during periods of high flow, except for work that occurs in dewatered areas behind temporary diversions, cofferdams or causeways.
6. Construction access and staging areas shall be by means that avoid or minimize impacts to aquatic sites (e.g. use of upland areas for access & staging, floating barges, mats, etc.). Discharges of fill material associated with the construction of temporary access roads, staging areas and work pads in wetlands shall be placed on filter fabric. All temporary fills shall be removed upon completion of the work and the disturbed area restored to pre-construction contours, elevations and wetland conditions, including cover type. All vegetation utilized in the restoration activity shall consist of native species.
7. All return flow from dredged 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 NWP #16)
8. For activities involving the placement of concrete into waters of the U.S., the permittee must employ watertight forms. The forms shall be dewatered prior to the placement of the concrete. The use of tremie concrete is allowed, provided that it complies with New York State water quality standards.
9. New stormwater management facilities shall be located outside of waters of the U.S. A variance of this requirement may be requested with the submission of a PCN. The PCN must include justification which demonstrates that avoidance and minimization efforts have been met.
10. To the maximum extent practicable, the placement of fill in wetlands must be designed to maintain pre-construction surface water flows/conditions between remaining on or off-site waters and to prevent draining of the wetland or permanent hydrologic alteration. This may require the use of culverts and/or other measures. Furthermore, the activity must not restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters). The activity may alter the pre-construction flows/conditions if it can be shown that it benefits the aquatic environment (i.e. wetland restoration and/or enhancement).

G-B. CULVERTS

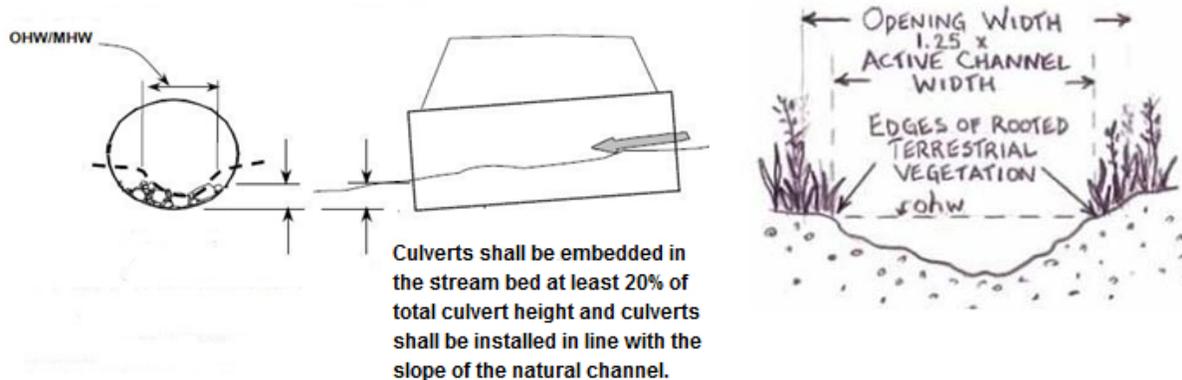
1. **ALL NEW OR REPLACEMENT CULVERTS** in streams shall be constructed/installed in accordance with the following, in order to ensure compliance with NWP General Condition #2 – Aquatic Life Movement and #9 Management of Water Flows:

- a. Size: Bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional dimensions within one culvert. Bank-full width is generally considered to be the top width at the stage where a stream begins to overtop its banks and spread into the floodplain. Either a bottomless culvert or bridge must be used where practicable. If the stream cannot be spanned, the culvert width shall be minimum of 1.25 times width of the stream channel at the ordinary high water, or a 2 year design storm.
- b. Depth: To maintain low flow and aquatic life movement within culverts with a bottom, the culvert invert must be embedded. Specifically, the culvert must be installed with its bottom buried below the grade of the stream bed, as measured at the average low point, to a depth of a minimum of 20 percent of the culvert vertical rise (height) throughout the length of the culvert. (Note: When not practicable to do so due to small culvert size, it is acceptable to allow natural deposition to cover the interior of the culvert bed following placement of the culvert invert to the 20% depth.)
- c. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width or depth of the stream channel.
- d. The culvert bed slope shall remain consistent with the slope of the adjacent stream channel.
- e. Stone aprons and scour protection placed in streams shall not extend higher than the stream bed in order to create a uniform grade and shall be filled with native stream bed material and supplemented with similarly sized material, if needed, to fill interstitial spaces to maintain water flow on the surface of the stream bed.

Note 1: Use of the requirements alone will not satisfy the need for proper engineering and design. In particular, appropriate engineering is required to ensure structures are sized and designed to provide adequate capacity (to pass various flood flows) and stability (bed, bed forms, footings and abutments, both upstream and downstream). It is the permittee's responsibility to ensure the structure is appropriately designed.

Note 2: This condition does not apply to temporary culverts used for construction access that are in place for less than one construction season. However, compliance with General Conditions #2 and #9 still applies.

The diameter of the culvert shall accommodate bankfull flows by sizing the culvert 1.25 times the stream width at ordinary high water/mean high water (OHW/MHW) mark; or a 2-year design storm.



Preconstruction Notification (PCN) Requirements:

A PCN is required for projects that do not meet all of the above requirements. In addition to the PCN requirements of General Condition #32, the PCN must include the following information:

- i. A statement indicating which of the above requirements will not be met by the proposed project;
- ii. Information as to why the use of such structures or measures would not be practicable;
- iii. A brief description of the stream discussing:
 - Site specific information (i.e. stream bed slope, type and size of stream bed material, stream type, existing natural or manmade barriers, etc.) assessed to determine appropriate culvert design and to ensure management of water flows and aquatic life movement.
 - Evaluation of the replacement for its impacts on: downstream flooding, upstream and downstream habitat (in-stream habitat, wetlands), potential for erosion and headcutting, and stream stability.
 - Flow/storm event the proposed culvert is designed to pass (2 year, 50 year, etc.)
- iv. Cross sections of the stream used to calculate the stream bed low point and ordinary high water width, consisting of:
 - Stream channel cross sections shall be taken at proximal locations to the crossing location to determine the average of the lowest points in elevation of the streambed and the average width at ordinary high water.
 - For new crossing locations, the average values from at least three measurements (project location and straight sections of the stream upstream and downstream) shall be used.
 - For replacement of an existing structure, the average values from at least two cross sections (straight sections of the stream upstream and downstream from the existing structure representative of the natural channel) shall be used.
 - This average low point shall be used to ensure low flow is maintained through the culvert and from which all embedment depths are measured.

- If the above cross section method was not practicable to use, an alternative method may be utilized. The PCN shall include justification for the method used including the data used and an explanation as to how it provides an equivalent measure.
- v. An evaluation of the effects the crossing would have on aquatic life movement and/or water flows; and
 - vi. Mitigation measures that will be employed to minimize these effects. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures

A variance of the requirement(s) will be issued by the Corps if it can be demonstrated that the proposal would meet General Conditions #2 & #9 and would result in the least environmentally

damaging practicable alternative (e.g. compliance with any of the requirement(s) would result in detrimental impacts to the aquatic system).

2. ALL CULVERT REHABILITATION PROJECTS in streams, not including culvert replacement projects, shall be constructed in accordance with the following, in order to ensure compliance with NWP General Condition #2 – Aquatic Life Movement and #9 Management of Water Flows:

- a. An evaluation of the existing culvert shall be conducted prior to the proposed culvert rehabilitation to determine if the existing culvert is in compliance with NWP GC #2 and #9. Specifically, the culvert shall be evaluated regarding its effect upon aquatic life movements and low/ high water flow. If the above requirements in General Regional Condition B. 1 (a)-(e) are met then the culvert is considered in compliance with NWP General Conditions #2 & #9. (Potential evaluation methods to consider include: North Atlantic Aquatic Connectivity Collaborative (NAACC), US Forest Service Aquatic Organism Passage FishXing, etc.)
- b. A PCN is not required for projects that utilize cured-in-place pipe lining or other repair activities that do not raise the existing invert elevation such that it causes an impediment to the passage of either aquatic life movement or water flow unless there is an existing impediment.
- c. A PCN is required for any culvert rehabilitation project that includes a culvert which is not in compliance with GC #2 and/or #9 (i.e. impedes aquatic life movement or water flow) and which will not be corrected by the proposed repair.
- d. A PCN is required for culvert rehabilitation projects which will involve pipe slip lining or other activities, including concrete invert paving and concrete lining that raise the existing invert elevation such that it causes an impediment to the passage of low flow or aquatic life movement. Slip lining is defined as the insertion of a smaller diameter pipe into an existing pipe by pulling pushing, or spiral winding.

Preconstruction Notification (PCN) Requirements:

In addition to the PCN requirements of General Condition #32, the PCN must include the following information:

- i. A summary of the evaluation required in Item a. above including a discussion of the impediment(s) to aquatic life movement and/or water flow.
- ii. Information as to how the proposal will mitigate for the impediment. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures.

G-C. No regulated activity authorized by a Nationwide Permit can cause the loss of areas classified as a bog

or fen in the State of New York, as determined by the Buffalo or the New York District Corps of Engineers, due to the scarcity of this habitat in New York State and the difficulty with in-kind mitigation. The Districts will utilize the following document in the classification:

Reschke, C. 1990. *Ecological Communities of New York State*. New York Natural Heritage Program. New York State Department of Environmental Conservation. Latham, N.Y. 96p. This document is available at the following location: <http://www.dec.ny.gov/animals/29389.html>

G-D. National Wild and Scenic Rivers (NWSR): The Upper Delaware River has been designated as a National Wild and Scenic River from the confluence of the East and West Branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York. Also, the portion of the Genesee River located within Letchworth Gorge State Park, beginning at the southern boundary of the park and extending downstream to the Mt. Morris Dam, was designated by Congress as a permanent Study River in the Genesee River Protection Act of 1989. In accordance with General Condition #16, no activity may occur within a NWSR, including Study Rivers, unless the National Park Service (NPS) has determined in writing that the proposed work will not adversely affect the NWSR designation or study status. Therefore, a PCN is required for any NWP which would impact the designated portions of the Genesee River or the Upper Delaware River, unless NPS has previously indicated the project will not adversely affect the waterway. (Note: the applicant may not commence work under any NWP until the NPS determines in writing that the project will not adversely affect the NWSR even if 45-days have passed since receipt of the PCN package.) Information regarding NWSR may be found at: <https://www.rivers.gov/new-york.php>

G-E. For all proposals requiring a pre-construction notification (PCN), in addition to the requirements in General Condition 32, the applicant shall also include: (Note: the application will not be considered complete until all of the applicable information is received).

1. New York State/USACE Joint Application Form: The application form shall be completed and signed and shall clearly indicate that the submission is a PCN.
(<http://www.lrb.usace.army.mil/Missions/Regulatory/Application-Forms/>)

2. Drawings: The PCN must include legible, black and white project drawings on 8.5" x 11" paper. Full size drawings may be submitted in addition to the 8.5" x 11" plans to aid in the application review. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are a Vicinity Map (i.e. a location map such as a USGS topographical map), a Plan View and a Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross section). The Vicinity Map shall provide the location of the entire project site. In addition, each illustration should be identified with a figure or attachment number. The location map shall include the Latitude and Longitude or UTM coordinates of the project. For linear projects, the PCN shall include a map of the entire project including a delineation of all waters of the U.S. within the corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, etc.)

3. Color photographs: The photos should be sufficient to accurately portray the project site, keyed to a location map and not taken when snow cover is present.

4. Avoidance and Minimization: The PCN must include a written narrative explaining how avoidance and minimization of temporary impacts and permanent losses of waters of the U.S. were achieved on the project site (i.e. site redesign, reduction in scope, alternate methods, etc.). It should include a description of the proposed construction practices that would be implemented to perform the proposed work and a description of the reasonably foreseeable direct and indirect effects to waters of the U.S. from the proposed construction practices.

5. Mitigation (See General Conditions 23 & 32(b)(6)): The PCN must include at least a conceptual compensatory mitigation plan for all projects resulting in the loss of greater than 1/10th of an acre of

waters of the United States; or for which a waiver of the 300 linear foot limit on intermittent and ephemeral streams is being requested. Mitigation conceptual plans submitted with the PCN must include the following information at a minimum: proposed compensation type (bank or in-lieu fee credit, restoration, creation, preservation, etc.), location and brief discussion on factors considered for site selection (i.e. soils, water source, potential for invasive species, etc.), amount proposed per resource type and a discussion of how the proposal will compensate for aquatic resource functions and services lost as a result of the project.

Note 1: All mitigation projects must comply with the Federal Regulations on compensatory mitigation (33 CFR 332) entitled “Compensatory Mitigation for Losses of Aquatic Resources: Final Rule”, dated April 10, 2008, which is available at:

<http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/MitandMon/FinalMitigaitonRuleApril2008.pdf>

and any applicable District Guidelines.

Note 2: Although a conceptual mitigation plan may be sufficient for the purposes of a PCN submission, a detailed mitigation plan must be approved by the Corps before any jurisdictional work may occur on the project site.

Note 3: If more than 0.10 acres of designated EFH habitat (as discussed in Section G-E.8. below) would be impacted such that habitat would be lost, compensatory mitigation at a minimum ratio of 1:1 is required. A ratio of more than 1:1 may be required depending upon the ecological value of the habitat to be lost or degraded and the form of compensatory mitigation proposed to be provided.

6. Nationwide Rivers Inventory: The PCN shall indicate if a river segment listed within the National Park Service Nationwide Rivers Inventory (NRI) is located within the proposed project area. For project areas containing a listed NRI segment, the PCN shall also include a statement as to how adverse effects to the river have been avoided or mitigated. The list is available at:

<http://www.nps.gov/ncrc/programs/rta/nri/states/ny.html>.

7. Historic or Cultural Resources: In accordance with General Condition 20, a PCN is required for any non-federal activity which may have the potential to cause effects to any historic properties* listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places (NR). Please refer to General Condition 20 for submission requirements. In addition, all PCNs must include:

- A written statement indicating if any such properties may be affected by the proposed project.
- A copy of any completed archaeology or building/structure survey reports. If a survey has not been performed, the statement shall include a list of resources checked in the determination.
- Copies of any available correspondence from the New York State Office of Parks, Recreation, and Historic Preservation State Historic Preservation Officer (SHPO) regarding historic properties.
- Copies of any available correspondence from federally recognized Indian Nations regarding historic properties that may be affected by the project.
- Projects with ground disturbance may have the potential to cause effects to buried historic properties, regardless of occurring outside SHPO designated archaeological sensitive areas. Therefore, the PCN shall indicate if the ground disturbance will occur in any areas of previously undisturbed soil. For areas with prior disturbance, the PCN shall include a brief narrative describing the disturbance and its limit (i.e. type of disturbance, size of area with current undisturbed soil, size of area with existing disturbed soils, when the disturbance occurred, an estimate on how deep the soil disturbance extends, etc.) as well as photos of the existing ground disturbance.
- Above ground buildings/structures that are over 50 years old and potentially

affected by the project will need to be assessed to determine if they are eligible for the NR. The PCN shall: identify any structures present in the project area, which have not already been subject to SHPO review, include photos of the structures, and describe how the project would/would not affect them.

* - see NWP definition section for further clarification

NOTE 1: Information regarding historic properties may be found at: <https://cris.parks.ny.gov>. In addition, assistance regarding the determination of the presence of historic or cultural resources at or near the project site should be directed to SHPO.

NOTE 2: as stated in General Condition 20, if any listed, eligible or potentially eligible properties are present, the applicant shall not begin the activity until notified by the district engineer in writing either that the activity has no potential to cause effects or that consultation under Section 106 of the NHPA has been completed.

8. Endangered Species and Essential Fish Habitat: In accordance with General Condition 18, non-federal applicants must submit a PCN if any listed species or designated critical habitat might be affected or is in the vicinity of the activity, or if the activity is located in designated critical habitat. Please refer to General Condition 18 for submission requirements. In addition, all PCNs must include:

- a written statement and documentation concerning any Essential Fish Habitat (EFH) and any federally listed or proposed Threatened, Endangered, or Candidate (TE&C) species or designated and/or proposed critical habitat that might be affected or located in the vicinity of the project.
- a copy of any correspondence from the U.S. Fish and Wildlife Service (USFWS) and/or National Oceanic and Atmospheric Administration Fisheries Service (NOAA-Fisheries), regarding the potential presence of TE&C species on the project site. USFWS TE&C website: <http://www.fws.gov/northeast/nyfo/es/section7.htm>. Information on NOAA-Fisheries (NMFS) species (both TE&C and EFH) can be found at: <https://www.greateratlantic.fisheries.noaa.gov/>
- an official TE&C species list printed within 90 days of the PCN submission from the USFWS Website.
- For projects where TE&C species are listed, a discussion of potential TE&C species habitat within the project site (See USFWS T&E website for species habitat information).
- If there is potential habitat for any TE&C species within the project site the following, as applicable, shall be submitted:
 - a. The results of any habitat surveys and presence/absence surveys. Note: all surveys should be coordinated with the USFWS and/or NOAA-Fisheries (NMFS) prior to initiation.
 - b. A detailed description of the proposed project, including secondary impacts and approximate proposed project construction schedule of project activities (e.g. land clearing, utilities, stormwater management).
 - c. A description of the natural characteristics of the property and surrounding area (e.g. forested areas, freshwater wetlands, open waters, and soils) and a description of surrounding land use (residential, agricultural, or commercial).
 - d. A description of the area to be impacted by the proposed project, including the species, typical sizes (d.b.h.) and number or acres of trees to be removed.
 - e. The location of the above referenced property and extent of any project related activities or discharges clearly indicated on a copy of a USGS 7.5 minute topographic quadrangle (quad) with the name of the quad(s) and latitude/longitude clearly labeled.
 - f. A description of conservation measures to avoid, minimize and/or mitigate impacts to listed species.

NOTE 1: There are no known TE&C species or EFH species under the jurisdiction of the NOAA-Fisheries (NMFS) within the Buffalo District. Therefore, all Buffalo District requests for information

regarding the presence of TE&C species should be directed to the USFWS. In addition, no EFH review is necessary within the following New York District counties: Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Otsego, Schenectady, Schoharie and Warren.

NOTE 2: Please refer to the following website for further guidance and information relating to regulatory permits & TE&C species in New York:

<http://www.lrb.usace.army.mil/Missions/Regulatory/Endangered-Species/Endangered-Species-New-York/>

NOTE 3: General Condition #18 is emphasized, ...”In cases where the non-Federal applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, and has so notified the Corps, the applicant shall not begin work until the Corps has provided notification the proposed work will have “no effect” on listed species or critical habitat, or until Section 7 consultation has been completed.”

9. 100 Year Floodplain: For permanent fills within waters of the United States within the 100 year floodplain, documentation of compliance with FEMA-approved state or local floodplain management requirements.

10. Submission of Multiple Copies of PCN:

- a) One (1) additional copy of the application drawings shall be provided to USACE for coordination with National Oceanic and Atmospheric Administration (NOAA) for utility lines to be constructed or installed in navigable waters of the U.S. proposed under NWP #12, (See Note 1 of NWP #12)
- b) One (1) additional copy of the PCN package shall be provided to USACE for coordination with Department of Defense Siting Clearinghouse (See NWP #12, 39, 51 & 52 Notes) for:
 - i. overhead utility lines proposed under NWP #12 and
 - ii. any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission lines proposed under NWP #39, 51 or 52
- c) Two (2) additional copies of the PCN package shall be provided to USACE when the project is located within the New York City Watershed, for coordination with the New York City Department of Environmental Protection.
- d) Five (5) additional copies of the PCN package shall be submitted to USACE for agency coordination in accordance with General Condition # 32(d)(2) for:
 - i. All NWP activities that result in the loss of greater than 1/2-acre of waters of the United States,
 - ii. NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that will result in the loss of greater than 300 linear feet of intermittent & ephemeral stream bed,
 - iii. NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites;
 - iv. NWP 54 activities in excess of 500 linear feet or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

G-F. CRITICAL RESOURCE WATERS

In accordance with NWP General Condition (GC) #22, certain activities in Critical Resource Waters cannot be authorized under the NWP program or would require a PCN (see GC #22 for a list of the NWP activities that are either excluded or require a PCN).

Critical Resource Waters in New York State include the following:

1. **East-of-Hudson portion of the New York City Water Supply:** This area includes portions of Dutchess, Putnam and Westchester Counties as delineated on Enclosure 2.

2. **Hudson River National Estuarine Research Reserves (NERR):** The Hudson River NERR consists of four components: Piermont Marsh, Iona Island, Tivoli Bay, and Stockport Flats.

H. NYSDEC General Water Quality Certification (WQC) Conditions applicable to all NWPs for which WQC has been provided are as follows:

1. Non-contamination of Waters

- All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, resins, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate, inadvertent returns of drilling muds (frac-outs) or any other environmentally deleterious materials associated with the project.

2. Installation and Replacement of Culverts

To be covered under this blanket Water Quality Certification, all of the following criteria must be met:

- Culvert pipes shall be designed to safely pass a 2% annual chance storm event.
- This certification does not authorize the installation of any culverts that are not embedded beneath the existing grade of the stream channel.
- Width of the structure must be a minimum of 1.25 times (1.25X) width of the Mean (Ordinary) High Water Channel.
- The culvert bed slope shall remain consistent with the slope of the adjacent stream channel. For slopes greater than 3%, an open bottom culvert must be used.
- This certification does not authorize work on culverts that provide sole access to “Critical Facilities”: An individual WQC must be obtained for work on these culverts.
- This certification does not authorize culvert rehabilitation projects that involve slip lining, or similar treatments.
- This certification does authorize the rehabilitation of culverts utilizing Cure in Place Pipe Lining (CIPP) or concrete spray lining for culverts which currently meet Nationwide Permit General Condition # 2 - Aquatic Life Movements.

3. Discharge and Disturbance Limits of the Blanket WQC

- For Nationwide Permits # 5, 7, 12, 13, 14, 15, 18, 19, 23, 25, 29, 31, 32, 34, 36, 37, 39, 40, 42, 45, 46, 48, 51, utility line replacement projects under Nationwide Permit #3 and non-maintenance activities under Nationwide Permit #43.
- The following discharge limits apply:
 - a) Temporary or permanent discharges of dredged or fill material into wetlands and other waters of the U.S. must not exceed ¼ acre;
 - b) Temporary or permanent impacts (i.e., loss) to stream beds must not exceed 300 linear feet.
 - c) The discharge area limit under paragraph (a) plus the equivalent stream impact area limit under paragraph (b) must not exceed ¼ acre total.
- For Nationwide Permits # 3, 4, 6, 20, 22, 27, 30, 33, 41 and maintenance activities under Nationwide Permit # 43, this certification authorizes discharges and disturbances up to the limit of the respective Nationwide Permit or regional conditions, whichever is most restrictive.
- If a project requiring coverage under two or more Nationwide Permits results in a temporary or permanent discharge or disturbance, the most restrictive threshold applies to the project.

4. Bulkheads

- This certification does not authorize the construction of new bulkheads or vertical walls.

- This certification does not authorize the waterward extension of existing bulkheads.
- New toe-stone protection may not extend more than 36 inches waterward from the existing bulkhead face.

5. Maintenance of Water Levels

- This certification does not authorize any activity that results in a permanent water level alteration in waterbodies, such as draining or impounding, with the exception of activities authorized by Nationwide Permit #27.

6. Dewatering

- Authorized dewatering is limited to immediate work areas that are within coffer dams or otherwise isolated from the larger waterbody or waters of the United States.
- Dewatering must be localized and must not drain extensive areas of a waterbody or reduce the water level such that fish and other aquatic organisms are killed, or their eggs and nests are exposed to desiccation, freezing or depredation in areas outside of the immediate work site.
- Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a waterbody.
- All dewatering structures must be permanently removed and disturbed areas must be graded and stabilized immediately following completion of work. Return flows from the dewatering structure shall be as visibly clear as the receiving waterbody.

7. Endangered or Threatened Species

- This certification does not authorize projects likely to result in the take or taking of any species listed as endangered or threatened species listed in 6 NYCRR Part 182.5 (a), (b) or projects likely to destroy or adversely modify the habitat of such species. Applicants must either verify that the activity is outside of the occupied habitat of such species or, if located within the habitat of such species, obtain a determination from the NYS Department of Conservation Regional Office that the proposed activity will not be likely to result in the take or taking of any species listed as endangered or threatened species listed in 6 NYCRR Part 182. Information on New York State endangered or threatened species may be obtained from the NYS Department of Environmental regional offices, the New York Natural Heritage Program in Albany, New York or on the DEC website at <http://www.dec.ny.gov/animals/29338.html>

If it is determined that the project is likely to result in the take of (or modify the habitat of such species) a New York listed endangered or threatened species, then this blanket water quality certification is not applicable, and the applicant will need an individual water quality certification from the department.

8. Rare Mollusks

- This Certification may not be issued for and does not authorize disturbances or discharges to waters of the state listed as supporting mollusks S-1 or S-2 on the New York State Natural Heritage database. <http://www.dec.ny.gov/animals/29338.html>

9. Prohibition Period for In-water Work

In-water work is prohibited during the following time period:

- in cold water trout fisheries (waterbodies classified under Article 15 of New York State Environmental Conservation Law with a "t" or "ts" designation), beginning October 1 and ending May 31.

To determine if the prohibition period is in effect for a particular water, contact the Regional Natural Resources Supervisor in the appropriate New York State Department of Environmental Conservation regional office. Water Classification values can be determined on the DEC's Environmental Resource Mapper available

on the Departments Website @ <http://www.dec.ny.gov/gis/erm/> Work windows may be extended by the Regional Natural Resources Supervisor or their designee.

10. Significant Coastal Fish and Wildlife Habitat

- This certification does not authorize any discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602; Title 19 Chapter 13, Waterfront Revitalization and Coastal Resources.

<https://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html>

11. Coastal Erosion Hazard Areas

- This certification does not authorize projects in Coastal Erosion Hazard Areas, as identified in New York State Environmental Conservation Law Article 34, and its implementing regulations, 6 NYCRR Part 505.

<http://www.dec.ny.gov/lands/86541.html>

12. State-owned Underwater Lands

Prior to undertaking any Nationwide Permit activity that will involve or occupy state-owned lands now or formerly under the waters of New York State, the party proposing the activity must first obtain all necessary approvals from:

New York State Office of General Services
Division of Real Estate Development
Corning Tower Building, 26th Floor
Empire State Plaza
Albany, NY 12242
Tel. (518) 474-2195

13. Tidal Wetlands

- This certification does not authorize any activities in tidal wetlands as defined in Article 25 of New York State Environmental Conservation Law, with the exception of activities authorized by Nationwide Permits # 4, 20 and 48. <http://www.dec.ny.gov/lands/4940.html>

14. Wild, Scenic and Recreational Rivers

- This certification does not authorize activities in any Wild, Scenic or Recreational River pursuant to 6 NYCRR Part 666 or state designated Wild, Scenic or Recreational River corridors.

<http://www.dec.ny.gov/permits/6033.html>

15. Floodplains

- Authorized projects subject to this certification must first be in compliance with State and Local Floodplain Regulations prior to commencement of construction.

16. Public Service Commission

- This certification does not authorize activities regulated pursuant to Article VII or Article 10 of the New York State Public Service Law. For such projects, Section 401 Water Quality Certification is obtained from the New York State Public Service Commission.

17. Utility Projects

- This certification does not authorize maintenance or other activities associated with hydroelectric power generation projects.
- This certification does not authorize the construction of substation facilities or permanent access roads in wetlands.
- Excess materials resulting from trench excavation must be permanently removed from the waters of the United States and contained so that they do not re-enter any waters of the United States.

18. Preventing the Spread of Terrestrial and Aquatic Invasive Species

- To prevent the unintentional introduction or spread of invasive species, the permittee must ensure that all construction equipment be cleaned of mud, seeds, vegetation and other debris before entering any approved construction areas within waters of the U.S. When using construction equipment projects authorized under this Certification shall take reasonable precautions to prevent the spread of aquatic invasive species as required under the provisions in ECL § 9-1710.

L. New York State Department of State (NYSDOS) Coastal Zone Management Consistency Determination Additional Information (applicable to all NWP's located within or affecting the NYS Coastal Zone):

Where NYSDOS has objected to the USACE consistency determination or where the project will not comply with the NYSDOS NWP specific condition(s), as outlined in the specific NWP listing in Section B above, the applicant must submit a request for an individual consistency determination to NYSDOS. See Section K for NYSDOS contact information.

Further Information:

- Unless NYSDOS issues consistency concurrence or USACE has determined that NYSDOS concurrence is presumed, NWP's are not valid within the Coastal Zone.
- All consistency concurrence determination requests must be submitted directly to NYSDOS with a copy provided to USACE with any required Preconstruction Notification submissions.
- Limits of the coastal zone and details regarding NYSDOS submission requirements, including application forms can be obtained at: <https://www.dos.ny.gov/opd/programs/consistency/index.html>

J. INFORMATION ON NATIONWIDE PERMIT VERIFICATION

Verification of the applicability of these Nationwide Permits is valid until March 18, 2022 unless the Nationwide Permit is modified, suspended revoked, or the activity complies with any subsequent permit modification.

It is the applicant's responsibility to remain informed of changes to the Nationwide Permit program. A public notice announcing any changes will be issued when they occur and will be available for viewing at our website: <http://www.lrb.usace.army.mil/Missions/Regulatory.aspx>.

Please note in accordance with 33 CFR part 330.6(b), that if you commence or are under contract to commence an activity in reliance of the permit prior to the date this Nationwide permit expires, is suspended or revoked, or is modified such that the activity no longer complies with the terms and conditions, you have twelve months from the date of permit modification, expiration, or revocation to complete the activity under the present terms and conditions of the permit, unless the permit has been subject to the provisions of discretionary authority.

Possession of this permit does not obviate you of the need to contact all appropriate state and/or local governmental officials to insure that the project complies with their requirements.

Table 1. Locations of Federally-Listed Threatened and Endangered Species and Candidate Species that may be affected by Regional Permits 97-000-1 in waters of the U.S. within the State of New York and subject to regulation by the U.S. Army Engineer District, Buffalo, under Section 404 of the Clean Water Act 1977 (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899.

County	Townships/Watershed	Species/Status/and or Critical Habitat	Avoidance Action Code ₁
Allegany	All Towns, for projects with proposed tree removal	Northern long-eared bat (Threatened)	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 mussel (Endangered)	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	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 (Allegheny River, Cassadaga and Conewango Creek basin.)	Clubshell, Rayed bean mussel	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
Genesee	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle, Houghton's goldenrod (Threatened), Eastern massasauga rattlesnake (Candidate)	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2

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County	Townships/Watershed	Species/Status/and or Critical Habitat	Avoidance Action Code ₁
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
	Town of Ellisburg, within 500 meters or 1,640 feet of the Lake Ontario Ordinary High Water line	Piping plover (Endangered) Great Lakes 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	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.	Bog turtle	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Niagara	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Oneida	All Towns within 40 miles of the Town 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.	Bog turtle	1

Table 1. Locations of Federally-Listed Threatened and Endangered Species and Candidate Species that may be affected by Regional Permit 97-000-1 in waters of the U.S. within the State of New York and subject to regulation by the U.S. Army Engineer District, Buffalo, under Section 404 of the Clean Water Act 1977 (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899.

County	Townships/Watershed	Species/Status/and or Critical Habitat	Avoidance Action Code 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
	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.	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.	Bog turtle	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Oswego	Projects in wetlands in all Towns where project is at 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 and Richland, within 500 meters or 1,640 feet of the Lake Ontario Ordinary High Water line	Piping plover Great Lakes critical habitat	1
St. Lawrence	All Towns within 40 miles of Watertown, and elevation under 900'	Indiana bat	2
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Schuyler	Dix, along west side of Seneca Lake	Leedy's roseroot (Threatened)	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2

Table 1. Locations of Federally-Listed Threatened and Endangered Species and Candidate Species that may be affected by Regional Permit 97-000-1 in waters of the U.S. within the State of New York and subject to regulation by the U.S. Army Engineer District, Buffalo, under Section 404 of the Clean Water Act 1977 (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act of 1899.

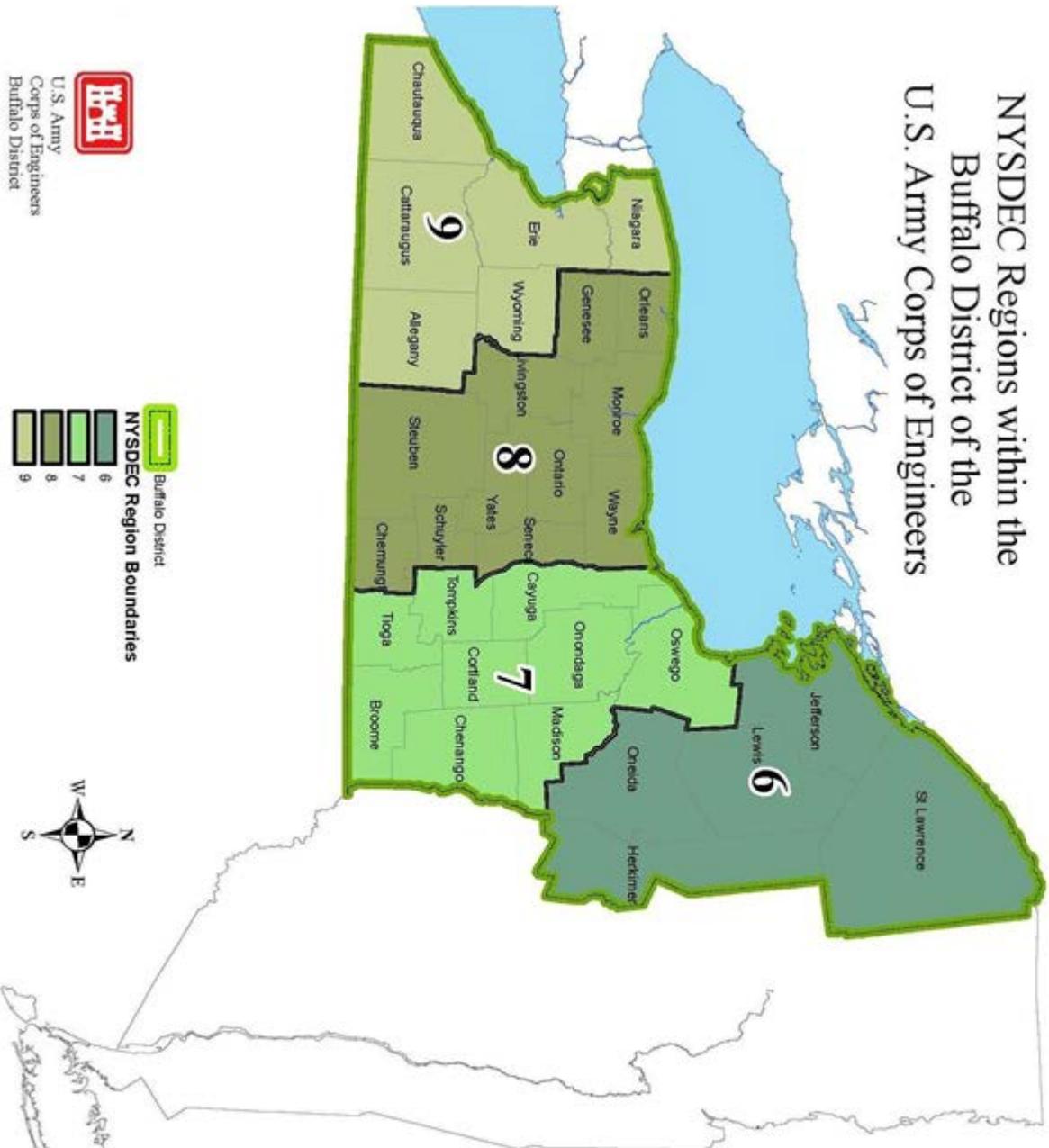
County	Townships/Watershed	Species/Status/and or Critical Habitat	Avoidance Action Code ₁
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Seneca	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle	1
	All Towns within 40 miles of Town of Dewitt and elevation under 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.	Bog turtle	1
	All Towns, for projects with proposed tree removal	Northern long-eared bat	2
Wayne	Projects in wetlands in all Towns where project is at elevation < 1,000 ft.	Bog turtle	1
	All Towns within 40 miles of Town 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, along west side of Seneca Lake	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 (refer to USFWS 2016 Rangewide Indiana Bat Summer Survey Guidelines), Pre-construction Notification is NOT required. If no tree removal is proposed, Pre-construction notification is NOT required for these locations.

NYSDEC Regions within the Buffalo District of the U.S. Army Corps of Engineers



Buffalo District

Regulatory Branch, District Office
1776 Niagara Street
Buffalo, New York 14207
(716) 879-4330

Regulatory Branch, Auburn Field Office
7413 County House Road
Auburn, New York 13021
(315) 255-8090

NYSDEC Contact Info

NYSDEC Region 6 - Watertown
Dallas State Office Building
317 Washington Street
Watertown, NY 13601-3787
Phone: (315) 785-2245
Fax: (315) 785-2242

NYSDEC Region 6 - Ulica
State Office Building
207 Genesee Street
Ulica, NY 13501-2885
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Fax: (315) 793-2748

NYSDEC Region 7 - Syracuse
615 Erie Boulevard West
Syracuse, NY 13204
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NYSDEC Region 7 - Cortland
1265 Fisher Avenue
Cortland, NY 13045-1090
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Fax: (607) 753-8532

NYSDEC Region 8 - Avon
6274 East Avon-Lima Road
Avon, NY 14414-9519
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U.S. Army
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Buffalo District



