



PUBLIC NOTICE

US Army Corps
of Engineers
New York District, CENAN-OP-R
Upstate Regulatory Field Office
1 Buffington Street, Bldg. 10, 3rd Floor
Watervliet, New York 12189-4000

In replying refer to:

Public Notice Number: NAN-2005-01288
Issue Date: January 27, 2010
Expiration Date: February 26, 2010

To Whom It May Concern:

This public notice announces a proposal by the New York District, Corps of Engineers to issue a Regional General Permit pursuant to Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344). This general permit would authorize work and structures located in, or that affect, navigable waters of the United States, and the discharge of dredged or fill material into waters of the United States, including discharges associated with maintenance projects, bridge and culvert repair, road realignment, improvement and construction, and range construction, improvements and modifications located within the boundaries of the Fort Drum Military Reservation (Garrison), as well as associated with compensatory mitigation plans implemented on lands within and in the vicinity of Fort Drum. This proposed Regional General Permit would not supersede any individual permits or other general permits issued by the Corps of Engineers, including any Nationwide Permits.

The Corps of Engineers is authorized to issue general permits when such issuance is found not to be contrary to the general public interest. Title 33 of the Code of Federal Regulations (CFR), Part 323.2(h), provides definitions of general permits and authority to issue them on a regional basis for categories of activities when: 1) those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts; or 2) the general permit would result in avoiding unnecessary duplication of regulatory control exercised by another Federal, State, or local agency, provided that it has been determined that the environmental consequences of the action are individually and cumulatively minimal.

Attached to this public notice is a copy of the proposed general permit, which includes several requirements to ensure that the activities authorized would cause only minimal individual and cumulative environmental impacts. Please note that no single and complete project authorized by this general permit will involve the loss of more than 500 linear feet of streams or more than 2.5 acres of any waters of the United States, including wetlands. Please also note that there are several general and activity specific restrictions to the proposed authorization. For example, all impacted land surfaces shall be stabilized to prevent erosion; new and replaced culverts must be installed to maintain low flow conditions and normal stream flows, as well as allow for fish passage in fish bearing streams; consultation with the appropriate federal and state resource agencies would be required for all activities that propose to impact more than 1.0 acre of waters of the United States or 300 linear feet of intermittent streams, or are located in perennial streams; and compensatory mitigation would be required for all activities that would impact more than 1/10 acres of waters of the United States. The proposed regional general permit, if issued, would be valid for a duration of five years, at which time it would be extended, modified or revoked following an evaluation of its performance.

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, floodplain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership and, in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state, and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general

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environmental effects, and the other public interest factors listed above. Comments are used in preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

ALL COMMENTS REGARDING THE PERMIT APPLICATION MUST BE PREPARED IN WRITING AND MAILED TO THE ATTENTION OF MR. JOHN CONNELL AT THE ABOVE ADDRESS, OR SENT VIA ELECTRONIC MAIL TO john.r.connell@usace.army.mil TO REACH THIS OFFICE BY THE EXPIRATION DATE OF THIS NOTICE, otherwise, it will be presumed that there are no objections to the activity.

Any person may request, in writing, before this public notice expires, that a public hearing be held to collect information necessary to consider this application. Requests for public hearings shall state, with particularity, the reasons why a public hearing should be held. It should be noted that information submitted by mail is considered just as carefully in the permit decision process and bears the same weight as that furnished at a public hearing.

The Indiana bat (*Myotis sodalis*), a Federally-listed endangered species is known to occur within and in the vicinity of Fort Drum. Pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), the U.S. Army Garrison, Fort Drum evaluated potential effects to the Indiana bat caused by its activities; and by letter dated June 3, 2009, the U.S. Fish and Wildlife Service issued a biological opinion (BO) regarding potential effects to this species. The BO outlines reasonable and prudent measures that the Garrison will implement in order to minimize the potential effects caused by its activities to the Indiana bat. The Garrison will continue to consult, as necessary, with the appropriate Federal agency to determine the presence of and potential impacts to listed species in the project area or their critical habitat.

Our preliminary determination is that the activities for which authorization is sought herein may effect resources that are eligible for, or included in, the National Register of Historic Places. To assure that the requirements of the Section 106 of the National Historic Preservation Act are met, the Garrison will continue to consult with the New York State Historic Preservation Office, and other interested parties as appropriate, such as Native American Tribes, on a case-by-case basis to resolve any effects to historic properties.

It should be noted that sections of waterways which are designated in the National Rivers Inventory as Wild and Scenic Rivers, namely the Black and Indian Rivers, may be effected by the activities for which authorization is sought herein. It is the preliminary determination of this office that the proposed activities that could be authorized by this general permit would not likely have an adverse impact on the values for which these waterways are designated. The Garrison will continue to consult with the National Park Service of the U.S. Department of the Interior, as necessary, to resolve any effects to these waterways.

It is requested that you communicate the foregoing information concerning the activity to any persons known by you to be interested and who did not receive a copy of this notice. If you have any questions concerning this application, you may contact our Upstate Regulatory Field Office at (518) 266-6357 and ask for John Connell.

For more information on New York District Corps of Engineers programs, visit our website at <http://www.nan.usace.army.mil>



Richard L. Tomer
Chief, Regulatory Branch

Enclosures

1. Location Map
2. Proposed Regional General Permit

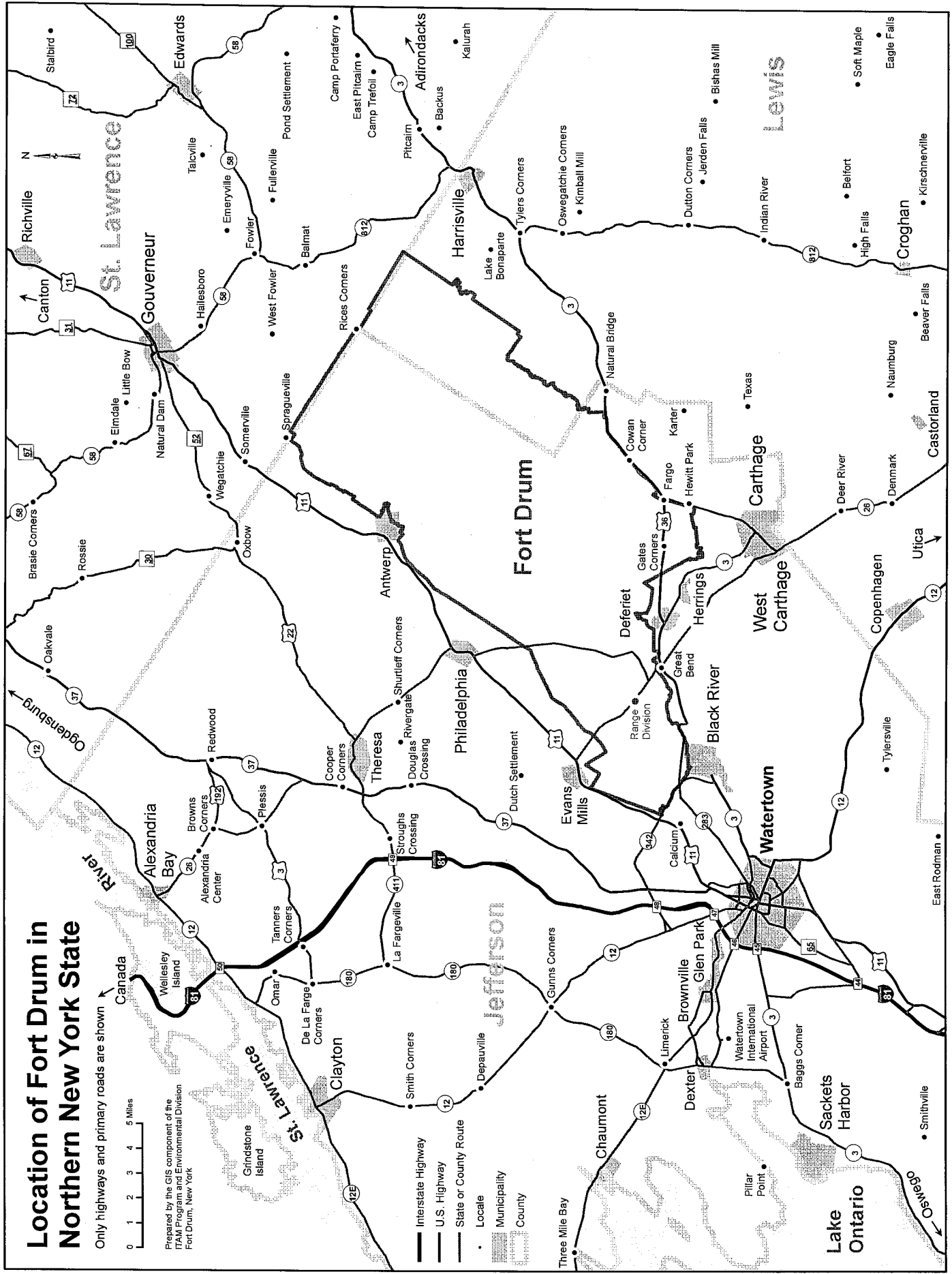
Location of Fort Drum in Northern New York State

Only highways and primary roads are shown

0 1 2 3 4 5 Miles

Prepared by the GIS component of the ITAM Program and Environmental Division Fort Drum, New York

- Interstate Highway
- U.S. Highway
- State or County Route
- Locale
- Municipality
- County



**DEPARTMENT OF THE ARMY
REGIONAL GENERAL PERMIT**

**Fort Drum, Lands Located Within the Exterior
Boundary of Fort Drum Military Reservation**

A) ACTIVITIES COVERED: Work and structures located in, or that affect, navigable waters of the United States as prescribed in Corps regulations implementing Section 10 of the Rivers and Harbors Act of 1899, and the discharge of dredged or fill material into waters of the United States (WOUS), including but not limited to wetlands, as prescribed in Corps regulations implementing Section 404 of the Clean Water Act, would be eligible for consideration under this RGP.

This Permit would apply to activities proposed by the U.S. Army Garrison, Fort Drum (Garrison), to facilitate maintenance projects; bridge and culvert repair, road realignment, improvement and construction; and range construction, improvements and modifications. No single and complete project authorized by this general permit would involve the loss of more than 500 linear feet of streams (intermittent or perennial) or 2.5 acres of any WOUS, including wetlands.

B) DEFINITIONS

1. **Army Compatible Use Buffer (ACUB):** Buffer areas established around Fort Drum to limit effects of encroachment and maximize land inside the installation that can be used to support the installation's mission. ACUBs may incorporate requirements for conservation of endangered species and Off-Post Compensatory Mitigation for losses of WOUS due to Fort Drum projects on-post.
2. **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 nonstructural.
3. **Compensatory Mitigation:** The restoration, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for unavoidable adverse impacts which remain after all appropriate and practicable avoidance and minimization has been achieved. Compensatory Mitigation under this RGP may also include, but is not limited to, the use of a mitigation bank or in-lieu fee to compensate for unavoidable adverse impacts.
4. **Currently Serviceable:** Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.
5. **Discharge:** The term "discharge" means any discharge of dredged or fill material and any activity that causes or results in such a discharge.
6. **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 lead to a decline in other aquatic resource function(s).

7. **Ephemeral Streams:** 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.
8. **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.
9. **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).
10. **Independent Utility:** A test to determine what constitutes a single and complete 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.
11. **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.
12. **Loss of Waters of the United States:** WOUS that are permanently adversely affected by 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 WOUS is the threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for a RGP; 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 linear feet of stream bed that is filled or excavated. WOUS temporarily filled, flooded, excavated, or drained, but restored to preconstruction contours and elevations after construction; are not included in the measurement of loss of WOUS. Impacts resulting from activities eligible for exemptions under Section 404 (f) of the Clean Water Act are not considered when calculating the loss of WOUS.
13. **Non-tidal WOUS:** A non-tidal WOUS is a WOUS that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e. spring high tide line).

14. **Open Water:** 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 standing or flowing 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.
15. **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 (see 33 CFR 328.3(e) and Regulatory Guidance Letter No. 05-05, dated December 7, 2005).
16. **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.
17. **Practicable:** Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.
18. **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 gain of aquatic resource area or functions.
19. **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.
20. **Rehabilitation:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning 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.
21. **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 purposes of tracking net gains in aquatic resource area, restoration is divided into two categories: Re-establishment and rehabilitation.
22. **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, or 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 finer substrate characterize pools.
23. **Riparian Areas:** Riparian areas are lands adjacent to *open waters*. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and

subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of services and help improve or maintain local water quality.

24. **Single and Complete Project:** 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 project must have independent utility (see definition).
 25. **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.
 26. **Stormwater Management Facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and BMPs, 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.
 27. **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.
 28. **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 WOUS.
 29. **Structure:** An object that is arranged in a definite pattern of organization. Examples include, without limitation, any pier, boat dock, boat ramp, wharf, Dolphin, weir, boom, breakwater, 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.
 30. **Vegetated Shallows:** Vegetated Shallows are special aquatic sites under 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.
 31. **Waterbody:** A waterbody is any area that in a normal year has water flowing or standing above ground to the extent that evidence of an ordinary high water mark is established. Wetlands contiguous to the waterbody are considered part of the waterbody.
- C) STATE AND LOCAL APPROVALS:** This Regional General Permit (RGP) would not supersede any state or local governmental authorities, and any such approvals must be obtained in order for this RGP authorization to be valid. Authorization under this RGP requires an individual Water Quality Certification (WQC), blanket WQC, or waiver from the New York State Department of Environmental Conservation (NYSDEC) under Section 401 of the Federal Clean Water Act (33 U.S.C. Sec. 1341) for all activities involving a discharge of dredged or fill material into WOUS. State Pollutant Discharge Elimination Systems permits

may also be required as administered by NYSDEC for the National Pollutant Discharge Elimination System program under Section 402 of the Clean Water Act (40 CFR 123).

D) CATEGORIES OF AUTHORIZATIONS: The RGP authorizations would consist of two types, to be known as Category 1 and Category 2 projects, as described below, and subject to the general conditions and requirements contained in this document and any additional special conditions added by the New York District Corps of Engineers, Regulatory Branch (Corps).

1. CATEGORY 1

- a) Category 1 (Cat 1) projects require notification to the Corps at least 45 days prior to the commencement of construction on the project.
- b) Cat 1 projects include activities that cause the loss of no more than 1.0 acres of WOUS and no more than 300 linear feet of intermittent streams, and do not involve the loss of perennial streams.
- c) Cat 1 projects exclude stream channelization or relocation.
- d) Cat 1 projects that involve any proposed crossings in fish-bearing streams must be designed and installed in accordance with the "Stream Crossing Methods" outlined in Appendix B.

2. CATEGORY 2

- a) Category 2 (Cat 2) projects require notification to the Corps at least 60 days prior to the commencement of construction on the project.
- b) Cat 2 projects include activities that cause the loss of no more than 2.5 acres of WOUS and no more than 500 linear feet of intermittent or perennial streams.
- c) Cat 2 projects that involve any proposed crossings in fish-bearing streams must be designed and installed in accordance with "Stream Crossing Methods" in Appendix B.

E) PROCESSING OF REQUESTS FOR AUTHORIZATION:

- 1. **Corps Review:** The Corps shall have 30 days to determine whether a request for authorization (RFA) is complete and request additional information from the Garrison as necessary. If the Corps does not respond to the Garrison in writing or via electronic mail message to the Garrison Wetlands Program Manager within 30 days from the receipt of the RFA, then the Garrison shall assume that the submitted RFA is complete for processing. The Corps shall notify the Garrison of its decision of the potential applicability of this RGP for Cat 1 and Cat 2 projects as early as possible, and the Garrison shall ensure that the project is not initiated until:
 - a) Notified by the Corps that the project is authorized under the RGP as proposed;
 - b) Notified by the Corps in writing that the project is authorized under the RGP with the inclusion of certain special conditions as determined by the Corps; or

- c) The Corps issues an individual Department of the Army permit (IP) for the project or the Garrison receives written verification from the Corps that the project is authorized under the Nationwide Permit Program (33 CFR Part 330).

2. **Cat 2 Agency Consultation:** The Corps will review activities proposed under Cat 2 and consult with the federal and state resources agencies to determine whether the expected environmental effects of the project are more than minimal:

- a) Once the Corps determines the RFA to be complete, they shall provide, via facsimile transmission, electronic mail or overnight mail, a copy of the complete request for authorization under Cat 2 to the U.S. Environmental Protection Agency - Region 2, the New York Field Office of the Fish and Wildlife Service of the U.S. Department of the Interior, and the Region 6 office of the New York State Department of Environmental Conservation for review and comment. These review agencies will have the opportunity to provide to the Corps any project-specific comments and/or concerns within 20 days from the receipt of the complete RFA from the Corps;
- b) The Corps will consider agency comments in its determination whether the project as proposed would qualify under this RGP; and
- c) Following the receipt of agency comments on a pending Cat 2 request, the Garrison will have the opportunity to modify the proposed project as recommended by the agencies. If the modifications, as determined by the Corps, adequately address the agencies' comments, then the Corps will not be required to consult with the agencies on the modified request and the Corps will conclude its review of the proposed Cat 2 application in an expeditious manner.

3. **Corps Decision:** The Corps reserves the authority to require an IP or Cat 2 agency consultation for any activity proposed under this RGP, if they determine that the project may result in more than minimal adverse effects to the environment, or because of concerns for the aquatic environment or for any other factor of the public interest. If the Corps determines an IP or Cat 2 agency consultation is required, they will notify the Garrison within 45 days from the receipt of a complete Cat 1 request that an IP or Cat 2 consultation is required, outline the concern(s) or reason(s) why the adverse effects may be more than minimal, and may suggest modifications to the project to minimize potential adverse environmental effects. If so notified, the Garrison may submit a request for an IP, modify the project as indicated in the Corps determination and submit a revised request, or request authorization under the Cat 2 provisions of this RGP by resubmitting four copies of the previously submitted information, with a modified Joint Application for Permit indicating the Garrison is requesting review under Cat 2. If the Corps determines an IP is required, they will notify the Garrison within 60 days from the receipt of a complete Cat 2 RFA that an IP is required, outline the concern(s) or reason(s) why the adverse effects may be more than minimal, and may suggest modifications to the project to minimize potential adverse environmental effects. If so notified, the Garrison may submit a request for an IP, or modify the project as indicated in the Corps determination and submit a revised RFA.

F) **GENERAL CONDITIONS** - The following conditions apply to all projects authorized under this RGP, including all Cat 1 and Cat 2 activities:

- 1. **Navigation:** No activity may cause more than a minimal adverse effect on navigation.

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. Culverts placed in streams must be installed to maintain low flow conditions.
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 WOUS that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
5. **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).
6. **Water Supply Intakes:** No activity may occur in the proximity of a public water supply intake, except where the activity is for repair or improvement of public water supply intake structures or adjacent bank stabilization.
7. **Adverse effects from impoundments:** If the activity creates an impoundment of water, adverse effects to the aquatic system due to the acceleration of the passage of water, and/or the restricting its flow shall be minimized to the maximum extent practicable. This includes structures and work in navigable WOUS, or discharges of dredged or fill material.
8. **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 and storm water management activities, 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 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).
9. **Floodplains:** The activity must comply with any applicable FEMA-approved state or local floodplain management requirements.
10. **Equipment:** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance.
11. **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. To the maximum extent practicable, activities within WOUS authorized under this RGP will be performed during periods of low-flow or no-flow.

12. **Removal of Temporary Fills:** Temporary fills must be removed in their entirety and the affected areas returned to their pre-construction elevations. The affected areas must be revegetated, as appropriate.
13. **Proper Maintenance:** Any structure or fill authorized shall be properly maintained, including maintenance to ensure public safety.
14. **Wild and Scenic Rivers:** No 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 (e.g., National Park Service, U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service) has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation, or study status. Information on Wild and Scenic Rivers may be obtained from the appropriate Federal land management agency in the area.
15. **Tribal Rights:** No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.
16. **Endangered Species:** No activity is authorized under this RGP which is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act of 1966 (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized under this RGP which "may effect" a listed species or critical habitat, unless any required consultation under the ESA has been completed by the Garrison for the proposed activity. In order to proceed under this RGP, the Garrison must provide the Corps with the appropriate documentation to demonstrate compliance with those requirements, as outlined above.
17. **Historic Properties:** the Garrison will follow their established procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. In order to proceed under this RGP, the Garrison must provide the Corps with the sufficient documentation to demonstrate compliance with those requirements, including copies of Section 106 compliance letters from consulting agencies, and allow the Corps to concur that the Garrison has appropriately addressed any potential effects to historic properties.
18. **Designated Critical Resource Waters:** Critical resource waters include, NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites. Discharges of dredged or fill material into WOUS are not authorized by this RGP for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters.
19. **Mitigation:** the Corps will consider the factors discussed below when determining the acceptability of appropriate and practicable mitigation necessary to offset adverse effects on the aquatic environment that are more than minimal. The project must be designed and constructed to avoid and minimize adverse effects to WOUS to the maximum extent practicable at the project site (i.e., on site). Mitigation in all its forms (avoiding, minimizing, rectifying, reducing or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

- a) The amount of required compensatory mitigation must be, to the extent practicable, sufficient to replace lost aquatic resource functions. In cases where appropriate functional or condition assessment methods or other suitable metrics are available, these methods should be used where practicable to determine how much compensatory mitigation is required. If a functional or condition assessment or other suitable metric is not used, a minimum one-to-one acreage or linear foot compensation ratio must be used.
- b) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre under this RGP, unless, through consultation with the appropriate Federal and state resource agencies as appropriate, the Corps determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. If compensatory mitigation utilizing a wetlands mitigation bank or in-lieu fee arrangement is not available and practicable, wetland restoration should be the first compensatory mitigation option considered since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced.
- c) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits in this RGP. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal effects requirement associated with this RGP.
- d) For losses of streams (intermittent or perennial) or other open waters, the Corps may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.
- e) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment and maintenance of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns, however it will normally be no less than 25 to 50 feet on each side of the stream bed. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the Corps, through consultation with the appropriate Federal and state resource agencies, may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.
- f) The Garrison may propose the use of mitigation banks, in-lieu fee arrangements or permittee-sponsored compensatory mitigation. In all cases, the mitigation plans will identify the party(ies) responsible for implementing the mitigation plans and/or monitoring the site(s).
- g) Where certain functions and services of WOUS are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to a herbaceous wetland in a permanently maintained line of sight within a firing range or a utility line right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

20. **Request for Authorization:** At least 45 days prior to the commencement of construction of any Cat 1 project, or at least 60 days prior to the commencement of construction of any Cat 2 project, the Garrison would provide to the Corps a request for authorization (RFA) under this RGP. This RFA must include, at a minimum, the following:

- a) A signed Joint Application for Permit form, clearly indicating whether the Garrison is

- requesting authorization under Cat 1 or Cat 2;
- b) Location map of the work (including UTM coordinates of the center of the site);
- c) Project designs showing the location and extent of any proposed impacts to WOUS for the project;
- d) Table of impacts including the vegetative type (Cowardin classification) and acreage of the loss of WOUS (e.g., 1/12-acre of PEM wetlands), and linear feet of loss of any streams by type (e.g. 100 linear feet of intermittent stream);
- e) Delineation map of the project site;
- f) A signed request for a preliminary jurisdictional determination (JD), with the supporting documentation outlined in the Corps Preliminary JD Form (Appendix C), OR a wetland delineation report including the supporting information required for an approved JD as outlined in the "JD Checklist" (Appendix D) and "Data Required for USACE Review of Jurisdictional Determinations" (Appendix E);
- g) A signed letter from the Garrison, or the Garrison's Cultural Resources Program Manager, indicating whether the project will have any effects on sites listed or eligible for listing in the National Register of Historic Places, and indicating whether any required consultation under Section 106 of the National Historic Preservation Act has been completed. In addition, the Garrison must provide sufficient documentation to demonstrate compliance with those requirements, and allow the Corps to concur that the Garrison has appropriately addressed any potential effects to historic properties;
- h) A signed letter from the Garrison, or the Garrison's Fish and Wildlife Program Manager, indicating whether the project will have any impacts on Federally-listed species or their critical habitat, and indicating whether any required consultation under Section 7 of the Endangered Species Act has been completed, including supporting information documenting compliance with the Biological Opinion document dated June 1, 2009, which was issued by the U.S. Fish and Wildlife Service by letter to the Garrison dated June 3, 2009, concerning potential effects on the Indiana bat (*Myotis sodalis*); and
- i) A description of the design and construction methods utilized to avoid and minimize adverse effects to WOUS to the maximum extent practicable at the project site, and a proposed compensatory mitigation plan or justification indicating why compensatory mitigation should not be required. When the proposed mitigation involves the debiting of credits from the existing Fort Drum Wetlands Mitigation Bank, the Garrison will additionally provide to the Interagency Review Team (IRT) a copy of Appendix F of the Fort Drum Banking Instrument (BI), updated for the subject project and approved by the chair of the IRT as required under the terms of the BI.

21. **Case-by-case conditions:** The activity must comply with all of the applicable terms and conditions of this RGP, any project-specific special conditions that are added by the Corps, as well as any conditions required by the NYSDEC in its Section 401 Water Quality Certification (Appendix A).

G) GENERAL REQUIREMENTS:

1. **Other Permits:** Authorization under this general permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
2. **Minimal Effects:** Projects authorized by this general permit shall have minimal individual and cumulative adverse environmental impacts as determined by the Corps.

3. **Discretionary Authority:** Notwithstanding compliance with the terms and conditions of this permit, the Corps retains discretionary authority to require an application for an individual permit for any project based on concerns for the aquatic environment or for any other factor of the public interest. This authority is invoked on a case-by-case basis whenever the Corps determines that the potential consequences of the proposed activity warrant individual review based on the concerns stated above. This authority may be invoked for projects with cumulative environmental impacts that are more than minimal, or if there is a special resource or concern associated with a particular project, that is not already covered by the remaining conditions of the RGP, that warrants greater review. Whenever the Corps notifies the Garrison that an individual permit may be required, authorization under this general permit is void, and no work may be conducted until the individual Corps' permit is obtained, or the Corps notifies the Garrison that further review has demonstrated that the work may proceed under this general permit.
4. **National Lands:** Activities authorized by this general permit shall not impinge upon the value of any National Wildlife Refuge, National Forest, or any other area administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, or National Park Service. This category includes existing mitigation and wetland mitigation banking sites.
5. **Federal Liability:** In issuing this permit, the Corps does not assume any liability for the following: (a) damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes; (b) 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; (c) damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this general permit; (d) design or construction deficiencies associated with the permitted work; (e) damage claims associated with any future modification, suspension, or revocation of this permit.
6. **Environmental Values:** The Garrison shall make every reasonable effort to carry out the construction or operation of the work authorized herein in a manner so as to maintain as much as is practicable, and to minimize any adverse impacts on, existing fish, and wildlife, and natural environmental values and to discourage the establishment or spread of plant species identified as non-native invasive species by any federal or state agency.
7. **Inspections:** The Garrison shall permit the Corps or authorized representative(s) to make periodic inspections at any time deemed necessary in order to ensure that the work is being performed in accordance with the terms and conditions of this permit. The Corps may also require post-construction engineering drawings for completed work, and post-dredging survey drawings for any dredging work.
8. **Property Rights:** This permit does not convey any property rights, either in real estate or material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of federal, state, or local laws or regulations.
9. **Modification, Suspension, and Revocation:** This permit may either be modified, suspended, or revoked in whole or in part pursuant to the policies and procedures of 33 CFR 325.7; and any such action shall not be the basis for any claim for damages against the United States.

10. **Restoration:** The Garrison, upon receipt of a notice of revocation of authorization under this permit, shall restore the wetland or waterway to its former conditions, as directed by the Corps. If the Garrison fails to comply with such a directive, the Corps or its designee may restore the wetland or waterway to its former condition, by contract or otherwise, and recover the cost from the Garrison.
11. **Special Conditions:** The Corps may impose special conditions on a project authorized pursuant to this RGP that are determined necessary to minimize adverse environmental effects or based on any other factor of the public interest. These may be based on concerns from the NYSDEC or Federal resource agencies. Failure to comply with all conditions of this RGP, including any project-specific special conditions added by the Corps, will constitute a permit violation and may subject the Garrison to criminal, civil, or administrative penalties or restoration.
12. **False or Incomplete Information:** If the Corps makes a determination regarding the eligibility of a project under this permit, and subsequently discovers that it has relied on false, incomplete, or inaccurate information provided by the Garrison, the permit shall not be valid, and the U.S. government may institute appropriate legal proceedings.
13. **Abandonment:** If the Garrison decides to abandon the activity authorized under this general permit, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Corps.
14. **Enforcement cases:** This general permit does not apply to any existing or proposed activity in the Corps jurisdiction associated with a Corps of Engineers or EPA enforcement action, until such time as the enforcement action is resolved or the Corps determines that the activity may proceed independently without compromising the enforcement action.
15. **Previously Authorized Activities:** This RGP does not affect any prior determinations made by the Corps.

SIGNATURE

DISTRICT ENGINEER

DATE

APPENDIX A

SECTION 401 WATER QUALITY CERTIFICATION (NYSDEC)

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APPENDIX B

STREAM CROSSING METHODS

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APPENDIX C

PRELIMINARY JD FORM

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APPENDIX D

JD CHECKLIST

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APPENDIX E

Data Required for USACE Review of Jurisdictional Determinations

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APPENDIX F

Public Notice Announcing the Compensatory Mitigation Guidelines and Mitigation Checklist For Review of Mitigation Plans For the U.S. Army Corps of Engineers, New York District

Available on the New York District website at:

<http://www.nan.usace.army.mil/business/buslinks/regulat/pnotices/mitfinal.pdf>

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