



Public Notice

Applicant:
U.S. Army Corps of
Engineers, Buffalo and New
York Districts

Published: February 15, 2019
Expires: March 17, 2019

U.S. Army Corps of Engineers
Buffalo and New York Districts

Transportation Regional General Permit (TRGP-1)
Section: NY 404 and 10

All written comments should reference TRGP-1 and be addressed to:

New York District U.S. Army Corps of Engineers
Regulatory Branch (Attn: Christine Delorier)
Upstate Regulatory Field Office
1 Buffington Street, Bldg. 10, 3rd Fl. North
Watervliet, New York 12189-4000

Buffalo District U.S. Army Corps of Engineers
Regulatory Branch (Attn: Joseph Rowley)
1776 Niagara Street
Buffalo, New York 14207

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.

**Application for Permit under Authority of
Section 10 of the Rivers and Harbors Act of 1899 and
Section 404 of the Clean Water Act (33 U.S.C. 1344).**

The District Commanders, U.S. Army Corps of Engineers (USACE) Districts, Buffalo and New York, are considering, in cooperation with the Federal Highway Administration (FHWA), establishing Regional General Permit (RGP) TRGP-1 pursuant to Section 10 of the Rivers and Harbors Act of 1899 (RHA) (33 USC 403) and Section 404 of the Clean Water Act (CWA) (33 USC 1344) for work related to transportation projects proposed by the New York State Department of Transportation (NYSDOT), the New York State Thruway Authority (NYSTA), and the New York State Canal Corporation (NYSCC) that are located within the State of New York and subject to regulation by the USACE Districts, Buffalo and New York. This action is being taken in accordance with Title 33 of the Code of Federal Regulations (33 CFR) Parts 320 through 332 as published in the November 13, 1986 Federal Register, Volume 51, No. 219.

The USACE is directed by Congress under Section 10 of the RHA to regulate all work or structures in or affecting the course, condition, or capacity of navigable waters of the United States (WOTUS); and under Section 404 of the CWA, to regulate the discharge of dredged and fill material into all WOTUS. The intent of Section 404 is to protect the nation's waters from the indiscriminate discharge of material capable of causing pollution and to restore and maintain their chemical, physical and biological integrity.

This Transportation RGP was developed through a partnership between the USACE and the FHWA to conduct environmental processes in a coordinated, consistent, predictable, and timely manner. This document eliminates duplication in several areas where the USACE can adopt the FHWA's determinations through their respective National Environmental Policy Act (NEPA) responsibilities. This RGP has been developed with the intent of the FHWA's Every Day Counts initiative, along with the goals of Executive Order 13807: One Federal Decision.

The USACE 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.

This RGP is proposed for use only in non-tidal WOTUS. No single and complete project authorized by this RGP would involve the loss of more than 500 linear feet of streams (ephemeral, intermittent or perennial) or 2.0 acres of any WOTUS, including wetlands. This RGP does not authorize channelization, channel widening, deepening, or straightening of a channel that would result in instability of the watercourse. Also, this RGP does not authorize permanent impacts to any WOTUS for the construction of borrow or disposal sites.

The following activities would be authorized under this RGP:

- 1) Maintenance Activities
- 2) Linear Transportation Projects
- 3) Non-Linear Transportation Projects
- 4) Streambed and Bank Stabilization Activities
- 5) Temporary Construction, Access, Dewatering
- 6) Emergency Activities

If this RGP is issued, the attached terms and conditions would apply.

Complete details of the above proposed RGP is described in the attached text.

Comments or questions pertaining to the work described in this notice should reference TRGP-1 and be directed to the attention of Christine Delorier, who can be contacted at the above address, by calling (518) 266-6354, or by e-mail at: Christine.Delorier@usace.army.mil, or to the attention of Joseph Rowley, who can be contacted at the above address, by calling (716)879-4279, or by e-mail at: joseph.m.rowley@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

The following authorization(s) are required for this RGP:

Water Quality Certification: Water Quality Certification (or waiver thereof) by the New York State Department of Environmental Conservation (NYSDEC) is required for the proposed RGP. The USACE has submitted its Water Quality Certification request to NYSDEC.

Coastal Zone Consistency: The USACE has certified that the proposed activity complies with New York's approved Coastal Zone Management Program and that activities authorized by the Regional Permits will be conducted in a manner consistent with that program. The USACE has submitted its consistency determination to the New York State Department of State.

National Historic Preservation Act: Due to the scope of the proposed RGP, the identification of and a determination of effect to properties listed in the National Register of Historic Places or those identified as being eligible for inclusion in the register has not been made pursuant to Section 106 of the National Historic Preservation Act and its implementing regulations. An effects determination for identified historic properties will be made on a project by project basis during the review process. The determination and necessary consultation will be completed by the FHWA for projects funded by that agency. The USACE is proposing to establish alternative consultation procedures which would allow NYSDOT, NYSTA or NYSCC to consult directly with the New York State Historic Preservation Office (NYSHPO) for projects that have No Effect or No Adverse Effect upon cultural resources for projects not funded by FHWA. For all remaining projects, including projects that require tribal consultation, USACE will make the effects determination and perform the required consultation. Specific procedures are described in Section D(2)(n) of the attached RGP.

The USACE will develop a Programmatic Agreement (PA) with the NYSHPO and the Advisory Council on Historic Preservation to address the alternative consultation procedures. This notice serves to commence the PA development process and solicit comments and identify potential interested parties.

Endangered Species Act: In addition, due to the scope of the proposed RGP, a determination of effect upon species proposed or designated by the U.S. Department of the Interior as threatened or endangered has not been made pursuant to Section 7 of the Endangered Species Act (ESA). An effects determination for endangered species will be made on a project by project basis during the review process. The determination and necessary consultation with the U.S. Fish and Wildlife Service (USFWS) will be completed by the FHWA for projects funded by that agency. The USACE is proposing to delegate consultation responsibilities to NYSDOT, NYSTA or NYSCC for projects not funded by FHWA that may affect, but are not likely to adversely affect, species protected under the ESA. For all remaining projects the USACE will make the necessary effects determination and consult with the USFWS. Specific procedures are described in Section D(2)(m) of the attached RGP.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-332. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

ALL COMMENTS REGARDING THE PERMIT APPLICATION MUST BE PREPARED IN WRITING AND MAILED TO REACH THIS OFFICE BEFORE THE EXPIRATION DATE OF THIS NOTICE, otherwise, it will be presumed that there are no objections to the activity.

Comments submitted in response to this notice will be fully considered during the public interest review for this action. All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record or portions thereof may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross-examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision whether to issue the RGP 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 benefits 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 these are conservation, economics, aesthetics, general environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain 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 issuance of a regional general permit. 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 environmental effects, and the other public interest factors listed above. Comments are used in the 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.

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.

// SIGNED//

Diane C. Kozlowski
Chief, Regulatory Branch
USACE Buffalo District

//SIGNED//

Stephan A. Ryba
Chief, Regulatory Branch
USACE New York District

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.

DEPARTMENT OF THE ARMY PERMIT

Permittee:

Thomas D. Asbery
Colonel, Corps of Engineers
District Commander, New York District

and

Jason A. Toth
Lieutenant Colonel, Corps of Engineers
District Commander, Buffalo District

On Behalf of New York State Department of Transportation (NYSDOT),
New York State Thruway Authority (NYSTA) and the New York State
Canal Corporation (NYSCC)

Regional Permit No.:

Effective Date:

Expiration Date:

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

and

U.S. Army Engineer District, New York
26 Federal Plaza, Room 1937
New York, NY 10278-0090

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 ARE PREPARED TO COMPLY WITH THE TERMS AND CONDITIONS OF THIS PERMIT.

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

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

Section 404 of the Clean Water Act (33 U.S.C. 1344)

and

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

Authorized Activities: State transportation related work and structures located in, or that affect, navigable waters of the United States as prescribed in US Army Corps of Engineers (Corps) regulations implementing Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403), and the discharge of dredged or fill material into waters of the United States (WOTUS), including but not limited to wetlands, as prescribed in Corps regulations implementing Section 404 of the Clean Water Act (33 U.S.C.1344), would be eligible for consideration under this Regional General Permit (RGP) within the geographic limits of the State of New York.

This RGP is authorized for activities proposed by the New York State Department of Transportation (NYSDOT), New York State Thruway Authority (NYSTA) and the New York State Canal Corporation (NYSCC). Authorized activities include: maintenance of existing linear transportation projects, construction of new linear transportation projects, construction and maintenance of non-linear features that support linear transportation projects, temporary structures, fills and work necessary to construct or maintain linear and non-linear transportation projects, bank stabilization activities necessary to protect transportation activities, maintenance of Canal facilities, including locks, dams, and associated structures and fills and emergency activities. This permit does not include maintenance dredging of the NYS Barge Canal.

This RGP is for use only in non-tidal WOTUS. The discharge must not cause the loss of greater than 2 acres of waters of the United States. The discharge must not cause the loss of more than 500 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 500 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the RGP activity cannot exceed 2 acres. This RGP does not authorize channelization, channel widening, deepening, or straightening of a channel that would result in instability of the watercourse. Finally, this RGP does not authorize permanent impacts to any WOTUS for the construction of borrow or disposal sites.

Note regarding Federal Lead Agency (NEPA): With respect to NEPA responsibilities, if the project is receiving Federal-Aid from the Federal Highway Administration (FHWA), FHWA will be the NEPA-lead agency with the ultimate responsibility for several areas including, but not limited to: compliance with the protection of the National System of Wild and Scenic

Rivers, Section 7 of the Endangered Species Act (ESA), and Section 106 of the National Historic Preservation Act (NHPA).

In addition to the activities requiring a Request for Authorization (RFA) as outlined below in Section B, a RFA will be submitted for any non-FHWA funded project that is likely to adversely affect a threatened or endangered species, a component of the National Wild and Scenic River System, a river officially designated by Congress as a “study river”, or historic property in order to ensure compliance with ESA, the Wild and Scenic Rivers Act and/or NHPA. Please see Section D(2)(m) & (n) for specific details.

In reviewing a RFA for a proposed activity, the district engineer will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the RGP, as well as the cumulative effects caused by all of the crossings authorized by the RGP. The overall project, for purposes of this RGP, includes all regulated activities that are reasonably related and necessary to accomplish the project purpose. Linear projects may be composed of more than one “single and complete project”, but require disclosure of all impacts to aquatic resources necessary to accomplish the overall project’s purpose in order to assess cumulative effects.

A. Categories of Authorizations:

- 1) Maintenance Activities
- 2) Linear Transportation Projects
- 3) Non-Linear Transportation Projects
- 4) Streambed and Bank Stabilization Activities
- 5) Temporary Construction, Access, Dewatering
- 6) Emergency Activities

1) Maintenance Activities:

- a) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3, provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification.
- b) The repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, such as hurricanes or tornadoes, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays.
- c) The removal of previously authorized structures or fills.

- d) The removal of accumulated sediments and debris in the vicinity of existing structures (e.g., bridges, culverted road crossings, water intake structures, etc.). The removal of sediment is limited to the minimum necessary to restore the waterway in the vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend farther than 500 feet in any direction from the structure.
- e) The placement of new or additional riprap scour protection to protect the structure, provided the minimum necessary is placed in waters of the United States for this purpose.

REQUIREMENTS:

Minor deviations in the structure's configuration or filled area, including those due to changes in materials, construction techniques, requirements of other regulatory agencies, or current construction codes or safety standards that are necessary to make the repair, rehabilitation, or replacement are authorized.

The discharge must not cause the loss of more than 500 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 500 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the RGP activity cannot exceed 2 acres.

Any stream channel modification is limited to the minimum necessary for the repair, rehabilitation, or replacement of the structure or fill.

All dredged or excavated materials must be deposited and retained in an area that has no waters of the United States unless otherwise specifically approved by the district engineer under separate authorization.

Examples of Authorized Activities Include:

- Repair, Replacement, Rehabilitation of Existing Culverts and Bridges
- Repair, Replacement, Rehabilitation of Existing or Additional Scour Protection
- Sediment Removal
- Repair, Replacement, Rehabilitation of Other Existing Structures and Fills (i.e. road shoulder, embankment, bank stabilization, etc.)

Request for Authorization (RFA) Shall Be Submitted for:

- i. Bridge and culvert replacement activities not meeting General Conditions 12 or 13;
- ii. Permanent loss of jurisdictional wetlands that exceeds 1/10 acre;
- iii. Maintenance activities of existing vertical walls that extend waterward more than 18 inches from the existing wall. This 18 inch limit does not include the placement of riprap scour protection in front of a repaired or existing wall;
- iv. Maintenance activities that involve the placement of new vertical structures below the

- ordinary high water (OHW) of WOTUS, including wetlands;
- v. Culvert extensions that exceed 50% of the total length of an existing culvert;
 - vi. Sediment removal exceeding 100 linear feet upstream or downstream of existing culvert or bridge;
 - vii. Any single stone or concrete apron or the placement of stone across a stream exceeding 25 feet in length;
 - viii. Stone fill placed below OHW for scour/toe protection exceeding 1 cubic yard per running foot extending above the existing grade of the streambed;
 - ix. Replacement of pipe and box culverts that require more than 100 feet of stream relocation on either side of the culvert;
 - x. Replacement bridges that are proposed to be placed more than 150 feet from the existing location, and/or there is more than 100 feet of stream relocation on either side of the bridge;
 - xi. Replacement bridges that include the installation of abutments and/or piers below OHW where none previously existed (i.e. replacing a clear span with a pier-supported structure).
 - xii. Relocation of more than 100 feet of intermittent or perennial streams not associated with bridge or culvert replacement/rehabilitation/repair
 - xiii. Relocation of utility lines in, above, or below navigable waters of the US

2) Linear Transportation Activities:

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads and highways) in waters of the U.S.

REQUIREMENTS:

The discharge must not cause the loss of more than 500 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 500 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the RGP activity cannot exceed 2 acres.

Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project; such modifications must be in the immediate vicinity of the project.

Examples of Authorized Activities Include:

- New roadway alignments
- Roadway realignments
- Construction of roadway embankments and bridge abutments

- Installation of additional traffic lanes to existing roadways
- Traffic lane/shoulder widening
- Intersection improvements
- New bridges or culverts
- Multi use paths and sidewalks
- Roadway and railway grade separations
- The replacement of structures and fills that are not currently in service

Request for Authorization Shall Be Submitted for:

- Linear transportation projects not meeting General Conditions 12 or 13 regarding culverts.
- The combined loss of WOTUS exceeds 1/10 acre or 300 linear feet of stream bed
- The total perennial stream loss is greater than 100 linear feet

3) Non-Linear Transportation Activities:

Non-linear features commonly associated with transportation projects.

REQUIREMENTS:

The discharges associated with non-linear transportation projects must not cause the loss of greater than 1/2 acre of non-tidal WOTUS, including the loss of no more than 500 linear feet of stream bed.

Examples of Authorized Activities:

- Storage Buildings
- Vehicle Maintenance Buildings
- Administrative Buildings
- Parking Lots

Request for Authorization Shall Be Submitted for:

- Non-linear transportation projects not meeting General Conditions 12 or 13 regarding culverts
- The combined loss of WOTUS exceeds 1/10 acre or 300 linear feet of stream bed
- The activity is in a Section 10 waterway
- The total perennial stream loss is greater than 100 linear feet

4) Streambed and Bank Stabilization Activities:

Activities necessary for bank erosion prevention and stream bed grade control.

REQUIREMENTS:

The discharge must not cause the loss of more than 500 linear feet of stream bed, unless for intermittent and ephemeral stream beds the district engineer waives the 500 linear foot limit by making a written determination concluding that the discharge will result in no more than minimal adverse environmental effects. The loss of stream bed plus any other losses of jurisdictional wetlands and waters caused by the RGP activity cannot exceed 2 acres.

The placement of stone protection must be the minimum necessary to protect the structure or to ensure the safety of the structure.

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.

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.

No material is placed in a manner that will be eroded by normal or expected high flows.

Examples of Authorized Activities:

- Rip-rap stone
- Bioengineering
- Live Plantings
- Grade control structure/fill (i.e. rock sill, cross vane, etc.)
- Directional control structures/fill (i.e. vane, j-hook, etc.)
- Fish habitat structures (boulders, LUNKERS, etc.)

Request for Authorization Shall Be Submitted for:

- i. Any in-stream structure or fills that extend across more than 50% of the existing channel width at the project location.
- ii. Material placed in excess of the minimum needed for erosion protection.
- iii. The activity is more than 500 feet in length as measured along each bank at the OHW.
- iv. The discharge of fill material will exceed an average of one cubic yard per running foot extending above the existing grade of the streambed.
- v. The activity involves the discharge of fill material into the following special aquatic sites: wetlands, vegetated shallows, mudflats.
- vi. The construction of new vertical structures/fills where one currently does not exist.

5) Temporary Construction, Access and Dewatering Activities:

Temporary structures, work, and discharges necessary for construction activities, including

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access, dewatering of construction sites, and return water from upland contained dredged material disposal sites, entailing no more than 2 acres of temporary impacts to WOTUS, including wetlands.

REQUIREMENTS:

Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding.

The use of dredged/excavated stream bed material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources.

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.

Temporary fills must consist of suitable materials, and be placed in a manner, that will not be eroded by expected high flows.

Examples:

- Cofferdam (jersey barrier, sheet piling, bladder, sand bags, etc.)
- Water diversion
- Access road or Causeway
- Construction pad
- Temporary mats
- Silt fence and turbidity curtain
- Return water from temporary or permanent dredged material disposal sites

Request for Authorization Shall Be Submitted for:

- i. Any temporary culvert in place for more than one construction season and does not meet General Conditions #12 or #13. Note: culverts in place for less than one construction season must still comply with General Conditions #3 – Aquatic Life Movement and #10 Management of Water Flows.
- ii. Any temporary causeway that extends further than ½ the width of the stream channel at any one crossing site.
- iii. Any temporary construction, access or dewatering activity within forested wetlands.
- v. Any causeway/cofferdam scheduled to be in place for greater than 6 months or one construction season.

6) Emergency Activities:

An emergency situation regarding the damage or imminent damage of a roadway, culvert, or bridge, or associated feature.

Every effort will be taken by Corps to expedite the review of emergency activities associated with this RGP. The RFA must be clearly marked as an emergency and shall include a copy of the emergency declaration.

- a) This RGP authorizes activities as outlined under Categories 1-5 listed when associated with a “declared” emergency within both non-tidal and tidal WOTUS. These activities may include:
- i. Installation of structures and dredging in navigable waters and the discharge of dredged or fill material, including discharges associated with excavation activities, into WOTUS, to facilitate the remediation of sites that are damaged.
 - ii. Installation of structures or placement of fill material used to facilitate the repair or replacement of roads, culverts, bridges, abutments, piers, embankments, including all features of the roadway that are either damaged or will imminently be damaged without immediate action.
 - iii. Temporary access roads and staging areas at work sites, and temporary dewatering facilities including cofferdams necessary to facilitate the emergency work.
 - iv. Discharge of dredged or fill material into WOTUS for the restoration and protection of stream bed and banks, including bank stabilization, minor realignment, the installation of current deflectors, the enhancement, restoration or creation of riffle and pool structures, the placement of in-stream habitat structures, the modification of the stream bed and banks to restore or establish stream meanders, and the installation of structures to improve aquatic life passage.
- b) **Request for Authorization Shall Be Submitted for:**
- i. The authorization request requirements as described under authorized activities 1-5 stated above must be followed.

B. NYSDOT/NYSTA/NYSCC RGP - GENERAL CONDITIONS:

NOTE: To qualify for RGP authorization, the prospective permittee must comply with the following general conditions, as applicable, in addition to any case-specific special conditions imposed by the division engineer or district engineer.

1. **Federal Projects:** An RFA shall be submitted for any proposed activity located within, or potentially affecting, a US Army Corps of Engineers Civil Works project. These projects may also require a separate approval from the Corps under 33CFR Section 408. Use of this Regional General Permit is not valid until any necessary Section 408 permission is granted.
2. **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.
3. **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. Culverts placed in streams must be installed to maintain low flow conditions and as outlined in General Condition Numbers 12 and 13 Culvert Installation Requirements.
4. **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.
5. **Shellfish Beds.** No activity may occur in areas of concentrated shellfish populations.
6. **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.

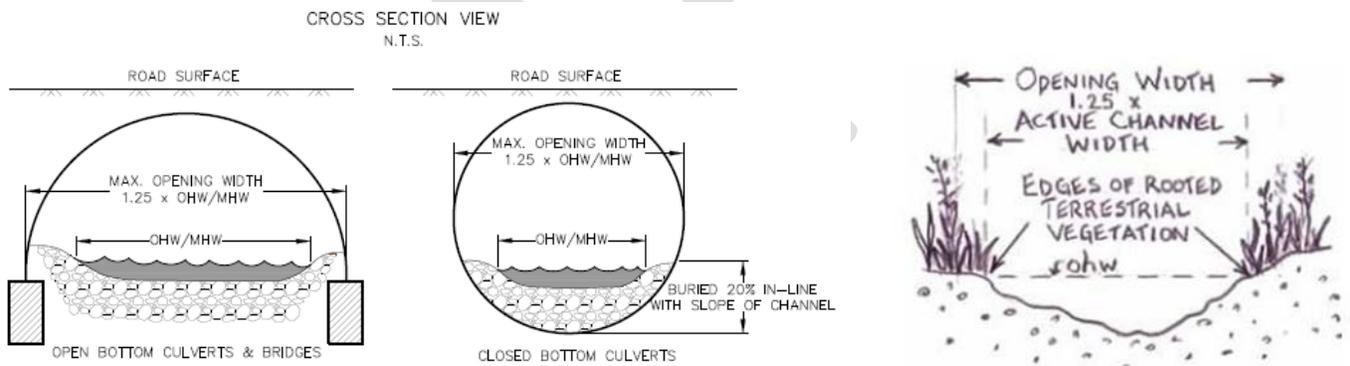
7. **Adverse Effects From Impoundments.** If the activity creates an impoundment of water, adverse effects to the aquatic system due to accelerating the passage of water, and/or restricting its flow must be minimized to the maximum extent practicable.
8. **Fills Within 100-Year Floodplains.** The activity must comply with applicable FEMA-approved state or local floodplain management requirements.
9. **Equipment.** Heavy equipment working in wetlands or mudflats must be placed on mats, or other measures must be taken to minimize soil disturbance to the maximum extent practicable.
10. **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 and 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 watercourse, condition, capacity, and location of open waters if it benefits the aquatic environment (e.g., stream restoration or relocation activities).
11. **Suitable Material.** No activity may involve unsuitable material, which includes, but is not limited to chemical or hazardous waste, 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 (CWA)). If there is a question as to whether the material is unsuitable, the Corps Buffalo or New York District, as applicable should be contacted and must authorize prior to the commencement of the activity.
12. **New and Replacement Culverts:** All new or replacement culverts in streams shall be constructed/installed in accordance with the following:
 - 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 shall have a minimum diameter or width of 1.25 times the width of the stream at OHW level, or the width needed to convey the 2-year design storm without increasing water surface elevation.
 - 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.

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 #3 and #10 (i.e. cannot impede aquatic life movement or water flow) still applies.



- Note: culverts shall have a minimum diameter or width of 1.25 the width of the stream at OHW/MHW level, or the width needed to convey the 2-year design storm without increasing water surface elevation.

RFA Requirements:

A RFA shall be submitted for projects that do not meet all of the above requirements. The RFA 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 stream bed 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 RFA 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.
- 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.
- vii. Limited Downstream Structure Hydraulic Capacity: Where a culvert is to be replaced and the downstream culvert or bridge has less hydraulic capacity than the replacement structure would have, when appropriately sized to the measured bank-full width, a hydraulic study must be conducted and submitted to the Corps with the RFA as well as the engineer's recommendation.

A variance of the requirement(s) will be issued by the Corps if it can be demonstrated that the proposal would meet General Conditions #3 & #10 (i.e. does not impede aquatic life movement or water flow) 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).

13. 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 RGP General Condition #3 – Aquatic Life Movement and #10 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 RGP GC #3 and #10. 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 12 (a)-(e) are met then the culvert is considered in compliance with RGP General Conditions #3 & # 10. (Potential evaluation methods to consider include: North Atlantic Aquatic Connectivity Collaborative (NAACC), US Forest Service Aquatic Organism Passage FishXing, etc.)

- b. A RFA is not necessary 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 RFA shall be submitted for any culvert rehabilitation project that includes a culvert which is not in compliance with GC #3 and/or #10 (i.e. impedes aquatic life movement or water flow) and which will not be corrected by the proposed repair.
- d. A RFA shall be submitted 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.

RFA Stipulations:

The RFA shall 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.
14. **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 WOTUS during periods of low-flow or no-flow.
15. **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.
16. **Proper Maintenance & Abandonment:** Permittee must maintain the structure/fill authorized by this permit in good condition and in conformance with the terms and conditions of this permit to ensure public safety and compliance with applicable RGP general conditions, as well as any activity-specific conditions added by the district engineer to an RGP authorization. Permittees are not relieved of this requirement unless the permit is transfer to a third party in compliance with General Condition 46 below. Should a Permittee wish to cease maintenance of, or abandon the authorized activity, without transferring the permit, the Permittee must apply for

a modification from this office, which may require restoration of the area to the original condition.

17. **Disposal:** If the authorized project results in material requiring off-site disposal, the applicant must either ensure that the disposal location is not within a water of the US or provide the contractor with the Contractor Notification Information Sheet included as Appendix A to ensure that the contractor is aware of the potential Corps permitting requirements if the material is placed in waters of the US, including wetlands.

18. **General Construction Best Management Practices (BMP's):** Unless specifically approved otherwise through issuance of a waiver 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 to meet or exceed the criteria contained in 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.
 - a. 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.
 - b. 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.
 - c. 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.
 - d. 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.
 - e. 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.
 - f. Construction access shall be by means that avoid or minimize impacts to aquatic sites (e.g. upland access, floating barges, mats, etc.). Discharges of fill material associated with the construction of temporary access roads 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.
- g. All return flow from dredge material disposal areas shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions.
 - h. 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.
 - i. New stormwater management facilities shall be located outside of waters of the U.S. A waiver of this requirement may be requested with the submission of a RFA. The RFA must include justification which demonstrates that avoidance and minimization efforts have been met.
 - j. 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. 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).
 - k. To the maximum extent practicable, 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.
19. **Single and Complete Project.** The activity must be a single and complete project. (See definitions.) The same RGP cannot be used more than once for the same single and complete project.
20. **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, 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 responsible for the designated Wild and Scenic River or study river (e.g., National Park Service (NPS), U.S. Forest Service, Bureau of Land Management, U.S. Fish and Wildlife Service).

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. (Note: the applicant may not commence work under this RGP 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 RFA package.)

21. **Endangered Species.** No activity is authorized under this RGP 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 RGP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.
 - a. In cases where the applicant has identified listed species or critical habitat that might be affected or is in the vicinity of the project, the applicant shall not begin work until Section 7 consultation has been completed as identified under “D. Application Procedures” (m) in this document.
 - b. Authorization of an activity by this RGP 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.
22. **Migratory Birds and Bald and Golden Eagles.** The permittee is responsible for obtaining any “take” permits required under the U.S. Fish and Wildlife Service’s regulations governing compliance with the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act. The permittee should contact the appropriate local office of the U.S. Fish and Wildlife Service to determine if such “take” permits are required for a particular activity.
23. **Migratory Bird Breeding Areas:** Activities in the WOTUS that serve as breeding areas for migratory birds must be avoided to the maximum extent practicable.
24. **Historic Properties.** In cases where the lead federal agency determines that the activity may affect 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 as outlined under “D. Application Procedures” (2)(n) in this document.
25. **Discovery of Previously Unknown Remains and Artifacts.** If any previously unknown historic, cultural or archeological remains and artifacts are discovered 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 consultation has been completed. Further,

should human remains be encountered during any phase of the proposed project, such person or persons encountering the human remains must immediately cease work and must not disturb or remove the remains, must protect the exposed portions of the remains from inclement weather and vandalism, and immediately notify the permittee. Within 24 hours of notification, the permittee must notify the Corps Project Manager and the New York State Office of Parks, Recreation, and Historic Preservation, Peebles Island State Park, P.O. Box 189, Waterford, New York 12188-0189. 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.

26. **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.
27. **Designated Critical Resource Waters.** Discharges of dredged or fill material into waters of the United States are not authorized under this permit for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters without written approval. Notification is required for any activity proposed in designated critical resource waters including wetlands adjacent to those waters. The district engineer may authorize activities only after it is determined that the impacts to the critical resource waters will be no more than minimal. Critical resource waters include NOAA-managed marine sanctuaries and marine monuments, and National Estuarine Research Reserves. Critical Resource Waters in New York State include the following:
- a. 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
 - b. Hudson River National Estuarine Research Reserves (NERR): The Hudson River NERR consists of four components: Piermont Marsh, Iona Island, Tivoli Bay, and Stockport Flats

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.

28. **Bogs and Fens:** No regulated activity authorized by this 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>

29. **National Lands:** Activities authorized by this permit shall not impinge upon the value of any National Wildlife Refuge, National Forest, or any other area administered by the USFWS or NPS. This category includes existing mitigation and wetland mitigation banking sites.

30. **Mitigation.**

- a. Authorized activities 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 adverse effects to the aquatic environment are 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 an RFA, unless the district engineer determines in writing that either some other form of mitigation would be more environmentally appropriate or the adverse effects of the proposed activity are minimal, and provide a project-specific waiver of this requirement.
- d. For losses of streams or other open waters that require RFA, 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 RGP 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.
- g. 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 RGPs, 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 RFA is submitted

- to the district engineer, the district engineer may approve the use of permittee-responsible mitigation.
- h. 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)).
 - i. 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, the specific program sponsor and the number of credits to be provided.
 - j. A final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) – (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines in writing 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)).
 - k. The permittee must commence approved mitigation prior to or concurrently with the authorized activity.
31. **Water Quality.** Where NYSDEC has not previously certified compliance of an RGP 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.
32. **Coastal Zone Management.** Where an RGP has not previously received a state coastal zone management consistency concurrence from NYSDOS, 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.
33. **Reporting Requirements.**
- a. RGPs authorized not requiring Requests for Authorization (non-RFA): The applicant shall submit, in spreadsheet form, a quarterly summary report for non-RFA activities utilizing this RGP. The applicant shall utilize the template format included as Appendix B of this permit. . A copy of the report shall be submitted to each Corps District.
 - b. RFA: Each permittee who receives a RGP verification letter from the Corps will receive commencement and completion forms with the RGP verification letter. The permittee must complete and return the forms to the appropriate Corps District office either prior to commencement of authorized work or immediately upon completion of authorized work, as appropriate. Note: The success of any required permittee- responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer.
34. **Minimal Effects:** Projects authorized by this permit shall have minimal individual and cumulative adverse environmental impacts as determined by the Corps.

35. **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 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.
36. **Environmental Values:** The Permittee 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, wildlife, and natural environmental values, and discourage the establishment or spread of plant species identified as non-native invasive species by any federal or state agency.
37. **Inspections:** The Permittee 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.
38. **Modification, Suspension, and Revocation:** This permit may 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.
39. **Restoration:** The Permittee, upon receipt of a notice of revocation of authorization under this permit, may be required to restore the wetland or waterway to its former condition as directed by the Corps. Non-compliance with this notice would result in the pursuit of further enforcement action by the Corps.
40. **Previously Authorized Activities:** This permit does not affect any prior determinations made by the Corps.
41. **Combining Permits:** This office reserves the right to use this regional permit in combination with any existing or future nationwide, regional or individual permit or any letter of permission.
42. **Limits of this Authorization:**
- a. This permit does not obviate the need to obtain other Federal, state, or local authorizations required by law.
 - b. This permit does not grant or convey any property rights either in real estate or material or exclusive privileges.
 - c. This permit does not authorize any injury to the property or rights of others.
 - d. This permit does not authorize interference with any existing or proposed Federal project.

43. **Reevaluation of Permit Decision:** This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:
- a. You fail to comply with the terms and conditions of this permit.
 - b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate.
 - c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.
 - d. Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33CFR 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 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.
44. **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 provided by the applicant.
45. **Permit Expiration:** 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.

C. DEFINITIONS:

1. **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.
2. **Bottomless Culvert:** A culvert structure without a bottom, where the stream channel is exposed.
3. **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.
4. **Culvert:** A conduit such as a drain or pipe that passes under a road, or railroad, footpath, etc.

or through an embankment. Culverts provide a conveyance through which water can flow. Shapes may include round, elliptical, flat-bottomed, pear-shaped, and box which can be 3 or 4 sided. Material maybe concrete, metal, plastic, PVC, or stone and can be any width or length. **Note: this definition supersedes any bridge designation made by NYSDOT based on culvert size.**

5. Cured-In-Place Pipe Lining: A culvert rehabilitation process in which a felt tube is saturated with resin and inverted or pulled into a deteriorated pipe. See NYSDOT Standard Specifications Sec. 602-Rehabilitation of Culvert and Storm Drain Pipe.
6. Currently serviceable: Useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.
7. Direct effects: Effects that are caused by the activity and occur at the same time and place.
8. Discharge: The term “discharge” means any discharge of dredged or fill material.
9. 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.
10. 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.
11. 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.
12. 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.
13. 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).

14. 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
15. Indirect effects: Effects that are caused by the activity and are later in time or farther removed in distance, but are still reasonably foreseeable.
16. 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.
17. Invert Paving: A culvert rehabilitation process in which the invert of a deteriorated pipe is reinforced with steel mesh or studs and paved with concrete. See NYSDOT Standard Specifications Sec. 602-Rehabilitation of Culvert and Storm Drain Pipe.
18. 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 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. 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 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.
19. Non-tidal wetland: A non-tidal wetland is a wetland 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).

20. Open water: For purposes of the RGP, 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 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.
21. 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)).
22. 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.
23. Pipe-in-Pipe Slip Lining: A culvert rehabilitation process in which a new pipe is inserted into a deteriorated pipe and grout is injected into the annular space. See NYSDOT Standard Specifications Sec. 602-Rehabilitation of Culvert and Storm Drain Pipe.
24. Practicable: Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.
25. 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.
26. 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.
27. 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.
28. Request for Authorization (RFA): A request submitted by the project proponent to the Corps for confirmation that a particular activity is authorized by this Regional General Permit. The request shall be submitted in accordance with procedures outlined Section D below.
29. 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.

30. 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.
31. Riparian areas: Riparian areas are lands adjacent 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.
32. 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 RGP 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. The overall project, for purposes of this RGP, includes all regulated activities that are reasonably related and necessary to accomplish the project purpose. Linear projects may be composed of more than one “single and complete project”, but require disclosure of all impacts to aquatic resources necessary to accomplish the overall project’s purpose. In addition, the cumulative impacts of all crossings of waters and/or wetlands must be known in order to assess the cumulative impacts of the project.
33. 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 RGP authorization.
34. Special Aquatic Site: Wetlands, mudflats, vegetated shallows, coral reefs, riffle and pool complexes as defined at 40 CFR 230.40 through 230.45. These are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife

protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region.

35. Spray Lining: A culvert rehabilitation process in which concrete is sprayed onto the interior surface of a deteriorated pipe. This process is also known as shotcreting. See NYSDOT Standard Specifications Sec. 602-Rehabilitation of Culvert and Storm Drain Pipe.
36. 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.
37. 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.
38. 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.
39. 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.
40. 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.
41. Tidal wetland: A tidal wetland is a wetland (i.e., water of the United States) that is inundated by tidal waters. The definitions of a wetland and tidal waters can be found at 33 CFR 328.3(b) and 33 CFR 328.3(f), respectively. 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, which is defined at 33 CFR 328.3(d).
42. USEPA Guidelines at Section 404(b)(1) 40 CFR Part 230.10: These Guidelines are a set of regulations written by the USEPA and administered by the Corps in the Corps regulatory permit

program. The Corps uses the Guidelines in the evaluation of proposed impacts of a project on jurisdictional WOTUS.

43. Waterbody: For purposes of the RGP, a waterbody is a jurisdictional water of the United States. If a jurisdictional wetland is adjacent – meaning bordering, contiguous, or neighboring – to a waterbody determined to be a water of the United States under 33 CFR 328.3(a)(1)-(6), that waterbody and its 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.

44. Waters of the United States (WOTUS): See 33 CFR PART 328—DEFINITION OF WATERS OF THE UNITED STATES

D. Application Procedures and Processing of Requests for Authorization

Note: The listed timeframes are in calendar days.

Note: Activities that have been determined by NYSDOT, NYSTA or NYSCC (hereinafter referred to as “the applicant”) to be in the “Non-Reporting” category may proceed with no written authorization or other verification from the Corps.

1. Non- Request for Authorization (RFA) - Reporting of Non-RFAs

The permittee shall submit to the Corps, on a quarterly basis, usage of this RGP, where no RFA was submitted. Usage reporting will utilize the “Reporting Spreadsheet” attached as Appendix B, with a copy sent to both the Buffalo and New York Districts.

The applicant will include and mark as new any activities authorized via non-RFA on the next reporting spreadsheet occurring within 30 days of either:

- Commencement of construction (for activities occurring using NYSDOT or NYSTA in-house staff or
- Contract award.

After completion of the work authorized by this permit, the applicant shall include the completion date on the next reporting spreadsheet.

2. RFAs - Submittal of a Complete Application

The applicant shall submit an application package to the Corps and use the Request for Authorization (RFA) Template (Appendix C) . The application package should be delivered to the Corps using a method that tracks the delivery of the package.

For projects in which the applicant proposes the loss of waters of the U.S. exceeding 1 acre, the application must contain additional copies of the RFA for dissemination to the state and federal resource and Regulatory agencies: New York State Department of Environmental Conservation

(NYSDEC), U.S. Fish and Wildlife Service (USFWS), U.S. Environmental Protection Agency (USEPA) and Adirondack Park Agency (APA) and New York City Department of Environmental Protection (NYCDEP), as appropriate.

In addition, the Corps may request additional copies of the application package when the Corps is the lead federal agency, to assist with coordination with other agencies.

For emergency applications, the applicant will include “Emergency” in the RFA Cover Letter to ensure an immediate response from the Corps. Verbal notification to the respective Corps point of contact should precede submission of an emergency application. For activities falling under Activity #6 – Emergency, the applicant will also provide evidence of emergency declaration if made by said agency.

Information To Be Submitted for RFA Package: The application must include, but is not limited to, the following information, as applicable:

- a. RFA Template (To be developed by NYSDOT, NYSTA and NYSCC).
- b. Location Map – preferably depicted on a USGS 7.5 minute topographical map. The map shall include a north arrow, property/project boundary (not a star or arrow pointing to an unspecified area of land) and adjacent roads and highways to enable orientation/direction.
- c. Project Drawings
 - Provide all plan view (as if viewed from overhead) maps and drawings on 8 ½ x 11-inch black-and-white topographic base map (color aerial maps are convenient for in-house review, but are not acceptable for the permanent recordkeeping). All information must be clearly labeled in legibly reproducible 8 ½ x 11-inch drawings. Reducing larger drawings to 8-1/2 by 11 is typically not acceptable. The temporary and permanent impacts to waters and wetlands should be clearly defined on an overview drawing with blow-ups of the impact areas with dimensions of impact clearly legible.
 - Plan sheets shall indicate the vertical datum (e.g. IGLD 1985, NGVD 1929, etc.) equivalent for the project’s vertical datum (Ordinary High Water (OHW), mean low water (MLW) or other tidal datum for tidal projects within the vertical units.
 - Provide typical cross-section views of all WOTUS and stream fill areas on 8 ½ x 11-inch black-and-white maps; include size and description of project area. Include maps or drawings showing the area and the lineal extent of the project, and a description of pre- construction conditions and photographs coordinated to a photo key.
- d. Project Description - a detailed project description; project purpose and need for the project; direct and indirect effects the project could potentially cause to the aquatic resource, dimensions of all permanent and temporary fills, excavations, and impacts occurring in WOTUS to include length, width, and depth (below the Ordinary High Water mark). Disposal sites located within the right-of-way (ROW) must be identified. If

known, location of disposal sites outside the project limits shall also be included.

- e. Identify any past permitted activities on the project site, including a description and permit number.
- f. A Waters of the U.S. delineation report, including the following:
 - Surveyed delineation map/drawing of wetlands, ephemeral, intermittent, perennial streams, natural or man-made drainages, swales, and other water conveyances and the location and dimensions of any culverts, drop-in culverts, etc. observed/documentated during the delineation activity. The delineation should also address special aquatic sites including submerged aquatic vegetation. Delineations must be prepared in accordance with the current method required by the Corps under Section 404 of the CWA. This methodology currently includes guidelines contained in the 1987 Delineation Manual, the most recent version of the applicable Regional Supplement to the Corps of Engineers Wetland Delineation Manual (North Central/Northeast Supplement or Eastern Mountains and Piedmont Supplement).
 - An interpretation/discussion of information noted on the delineation data sheet describing each wetland. (Wetland A is a 1.6 acre palustrine emergent wetland with...etc.)
 - Complete Wetland Delineation Form for each data point taken. Data points should be representative of the delineation between the upland/wetland boundary along which the survey flags are placed and surveyed.
 - Color photographs of each identified ephemeral, intermittent, perennial stream, ditch, conveyance, etc. and each wetland (including those that may be considered isolated and/or non-jurisdictional) taken during the growing season. Description of vegetative cover types on the site.
 - Soil Survey Maps including citation (source of information and date of publication). Include a brief description of each soil series identified on the site and include a statement indicating if the soil is listed in the National List of Hydric Soils and/or the local classification of the soil.
 - NYSDEC Freshwater Wetlands Maps. If a state regulated wetland is present, identify the wetland by the NYSDEC identification number and also give it a unique name (example: Wetland A).
 - National Wetland Inventory (NWI) Maps. Note that the NWI maps are not regarded/accepted as definitive regulatory maps. These maps are viewed as a resource tool and do not accurately depict the size, presence, or absence of wetlands on any particular parcel.
 - Identify potential habitat for aquatic, amphibian, and mammal species, or direct observation of fauna.
- g. A Waters of the U.S. delineation survey map, including the following:
 - Title block, including drawing date, scale, revision dates, north arrow, existing topographic contours (if available), benchmarks, and the stamp of a licensed surveyor or

- a narrative describing how the GPS data were obtained
 - Boundary lines and acreage of the project area, with sizes of each water of the U.S. clearly marked.
 - Wetland delineation flags shown as connected points (or shown as extending off-site at parcel boundaries if wetland continues offsite), identified on the drawing with the corresponding number and/or letter that is written on the flag in the field. The flag numbers and any text must occur in large enough scale to be legible on an 8 ½ x 11-inch drawing.
 - Appropriate hatching, shading, and/or standard symbols to identify the extent of WOTUS including all drainages (ephemeral, intermittent, perennial streams, ditches, swales, and conveyances) and all wetlands. All identified features shall be labeled clearly.
- h. Jurisdictional Determination (JD): Provide statement indicating that “No Jurisdictional Determination is requested” unless it is intended to contest jurisdiction, which requires an approved JD. Contact Corps District to discuss process and informational requirements for all approved JD requests. (See Regulatory Guidance Letter (RGL) 16-01 & 08-02 for further information regarding JD options, which are available on Corps website.)
- i. A drawing/map depicting all proposed aquatic impacts shall be presented as a separate document including the following:
- Flagged, and legibly labeled surveyed boundary/reach of each wetland and stream.
 - Unique hatching depicting each impact to each aquatic resource with the acreage/linear feet labeled.
- j. All information pertaining to proposed impacts shall be summarized in a table that depicts the following in a separate column for each item listed below. This table should also appear on the Proposed Impacts Map.
- Wetland/Stream Name (e.g. Wetland A; Stream 1)
 - Wetland type (emergent, scrub/shrub, forested)
 - Stream type (ephemeral/headwater, intermittent, perennial)
 - Stream order
 - Total wetland acreage of each wetland
 - Proposed acreage of wetland impact for each wetland
 - Stream lineal feet and width for each stream
 - Proposed lineal feet of impact for each stream
 - Wetland - jurisdictional/non-jurisdictional
- k. The RFA shall include a narrative describing avoidance and minimization efforts. Note: All permits authorized/issued by the Corps must reflect the least environmentally damaging practicable alternative as described in the USEPA 404(b)(1) Guidelines. Include, as appropriate, any plan maps that show the “evolution” of the proposed plan to the current alternative and discuss how the proposed project represents the least environmentally damaging practicable alternative (Note: such “evolution” plans are primarily necessary for

larger projects where multiple designs/configurations were contemplated, and not required for routine maintenance activities).

- i. Any application requesting DA authorization to fill more than 1/10 acre of jurisdictional WOTUS must include a compensatory mitigation plan proposal that satisfies the requirements outlined in 33 CFR 332, “Compensatory Mitigation for Losses of Aquatic Resources; Final Rule”, dated April 10, 2008 (33 CFR 325 & 332). Available at: <http://www.usace.army.mil/Missions/CivilWorks/RegulatoryProgramandPermits/mitiginfo.aspx>
- ii. The RFA shall include at least a conceptual compensatory mitigation plan and 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: Although a conceptual mitigation plan may be sufficient for the purposes of a RFA submission, a detailed mitigation plan must be approved by the Corps before any jurisdictional work may occur on the project site.
- iii. For wetland losses of 1/10-acre or less and an RFA is submitted, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment.
- iv. For losses of streams or other open waters and an RFA is submitted, the district engineer may require compensatory mitigation, such as stream rehabilitation, enhancement, or preservation, to ensure that the activity results in minimal adverse effects on the aquatic environment.
- v. Where certain functions and services of waters of the United States are adversely affected, such as the conversion of a forested or scrub-shrub wetland to an herbaceous wetland (e.g., associated with temporary access or staging areas), mitigation may be required to reduce the adverse effects of the project to the minimal level.

m. Endangered Species:

When FHWA is the Federal Lead Agency for NEPA: The applicant will coordinate with FHWA and the U.S. Fish and Wildlife Service in accordance with approved NYSDOT/NYSTA/NYSCC procedures. For projects where an RFA is submitted, the applicant must provide the Corps with FHWA’s determination, as part of the RFA, in order to demonstrate compliance with Section 7 of the ESA.

For projects not receiving FHWA funding: The applicant must evaluate the proposed work to determine if there is potential to cause effects to listed species or critical habitat. For projects where no listed species or designated critical habitat might be affected or is in the vicinity of the project, no additional coordination is required with respect to endangered species. If the project would otherwise result in submission of an RFA, the applicant shall include the determination as

part of the RFA in order to demonstrate compliance with Section 7 of the ESA.

For projects where the evaluation indicates that the project may affect, but is not likely to adversely affect (NLTAA) a listed species or designated critical habitat, the applicant shall coordinate directly with USFWS or NOAA-Fisheries as appropriate. For USFWS consultation, the applicant must follow procedures outlined in the approved SLOPES agreement (Appendix D). No work may proceed on the project until concurrence is received from USFWS regarding the NLTAA determination. If the project would otherwise result in submission of an RFA, the applicant shall include the determination and the USFWS concurrence as part of the RFA in order to demonstrate compliance with Section 7 of the ESA.

Northern Long-eared bat:

- i. For projects that require removal of trees exceeding 3 inches dbh and are located in a “prohibited area” (either within 0.25 miles of a known hibernaculum or 150 feet of a known roost tree for the Northern long-eared bat), the applicant shall submit an RFA to the Corps. No work may commence on the project until the Corps completes Section 7 consultation and provides affirmation of the applicability of this permit in writing.
- ii. For projects involving tree clearing outside a prohibited area, but occurring during normal hibernation periods (November 1 – March 31), the applicant may use SLOPES coordination procedures for NLTAA as outlined above.
- iii. For projects involving tree clearing outside a prohibited area, but occurring outside of normal hibernation periods, the applicant will use the 4(d) Rule procedures outlined in the approved SLOPES agreement (Appendix D)

For any project that is likely to result in an adverse effect to a listed species or designated critical habitat, the applicant shall submit an RFA to the district engineer, 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. The RFA shall include:

- i. a written statement and documentation concerning 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.
- ii. a copy of any correspondence from the U.S. Fish and Wildlife Service (USFWS) 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> .
- iii. an official TE&C species list printed within 90 days of the RFA submission from the USFWS Website.
- iv. 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).
- v. If there is potential habitat for any TE&C species within the project site the following, as applicable, shall be submitted:
 1. The results of any habitat surveys and presence/absence surveys. Note: all surveys should be coordinated with the USFWS prior to initiation.
 2. 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).

3. A description of the natural characteristics of the property and surrounding area (e.g. forested areas, freshwater wetlands, open waters, and soils). Additionally, please include a description of surrounding land use (residential, agricultural, or commercial).
4. A description of the area to be impacted by the proposed project, including the species and number or acres of trees to be removed.
5. 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.
6. A description of conservation measures to avoid or minimize impacts to listed species.

n. Historic Properties (Section 106 of the National Historic Preservation Act):

The following Standard Operating Procedure will be used with respect to Section 106 consultation requirements:

- i. All Adverse Effect determinations or Tribal consultations require 106 consultation by the Corps or FHWA
- ii. No Potential to Cause Effect, No Historic Properties Affected (No Effect), No Adverse Effect determinations may be completed by the Corps, FHWA, NYSDOT, NYSTA or NYSCC.
- iii. If Effects determination is made by NYSDOT, NYSTA or NYSCC, the following procedures must be followed.

Definitions:

1. No Potential to Cause Effect – The project is a type of activity that does not have the potential to cause effects on historic properties, assuming such historic properties were present.
2. No Historic Properties Affected (No Effect) – It has been determined that there are no cultural resources present or that there are resources present but that the project will have no effect on the resources with respect to characteristics qualifying the resources for eligibility for the National Register.
3. No Adverse Effect – It has been determined that there are cultural resources present, but that the project will not result in an adverse effect on the resources with respect to characteristics qualifying the resources for eligibility for the National Register.
4. Adverse Effect – It has been determined that the proposed project may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for

- inclusion in the National Register in a manner that would diminish the integrity of the property's location, design, setting, materials, workmanship, feeling, or association.
5. CRIS – New York State Cultural Resource Information System online database/resource.
 6. Determination – Statement in the administrative record of anticipated effects resulting from a proposed activity (No Potential to Cause Effect, No Effect, No Adverse Effect or Adverse Effect)
 7. Rationale – Supporting text/documentation used to make the Determination.

Procedures:

A. FHWA Funded Projects:

1. When FHWA is the Federal Lead Agency for NEPA: The applicant will coordinate with the State Historic Preservation Office (NYSHPO) in accordance with their approved Section 106 National Historic Preservation Act (NHPA) procedures and the FHWA will make its final determination. In order to proceed under this RGP, the applicant must provide the Corps with FHWA's determination, as part of any necessary RFA, to demonstrate compliance with those requirements¹.

B. Non-Federally Funded Projects:

1. For each project considered under this Regional General Permit, the applicant (NYSDOT, NYSTA or NYSCC) shall perform an initial evaluation with respect to the potential for the proposed work to effect resources, listed on, eligible for listing on or potentially eligible for listing on the National Register of Historic Places, based upon the respective agency guidelines².
2. For projects that have No Potential to Cause Effect to historic properties/cultural resources, the determination shall be documented, including rationale, by the determining agency and kept with records for the appropriate project. If the project results in submission of an RFA to the Corps, the determination and rationale shall be submitted as part of the permit application. The rationale shall include a description/map of the permit area/APE.
 - a. Examples of "No Potential to Cause Effect":
 - i. Minor work with no virgin soil disturbance/excavation with no change to overall landscape character or viewshed
 - ii. Minor work with no virgin soil disturbance and no listed/potentially eligible properties in the vicinity
 - iii. No National Register of Historic Places listed or eligible properties or districts in or adjacent to the APE.
3. For projects that have No Effect or No Adverse Effect, the applicant will consult with NYSHPO via the CRIS system, to include a determination/concurrence from NYSHPO. Record of the determination and consultation will be kept with administrative file for

¹ Pursuant to 36CFR 800.2(a)(2) - **Lead Federal agency**. If more than one Federal agency is involved in an undertaking, some or all the agencies may designate a lead Federal agency, which shall identify the appropriate official to serve as the agency official who shall act on their behalf, fulfilling their collective responsibilities under section 106.

² The Corps remains the responsible entity for all recommendations completed by the applicant. [36CFR §800.2(a)(3)]

the project. If the project results in submission of a RFA, the determination, rationale and NYSHPO concurrence/determination shall be submitted as part of the permit application. The rationale shall include a description/map of the permit area /APE.

4. For projects where the applicant's preliminary determination indicates that the work may have an Adverse Effect to cultural resources, the applicant shall submit an RFA to the Corps and the Corps will be responsible for completion of the Section 106 consultation. The RFA shall include all data used to make the preliminary determination, including any applicable correspondence with NYSHPO or other entities regarding potential effects to cultural resources.

C. General Provisions:

1. RFA vs. Non-RFA: All determinations for projects that when an RFA is not submitted will be completed by FHWA, NYSDOT, NYSTA or NYSCC. For projects when an RFA is submitted, determinations (with the exception of Adverse Effect) may be completed by FHWA, NYSDOT, NYSTA or NYSCC.
 2. Indian Nations – In the event that the applicant, Corps, FHWA or NYSHPO determine that consultation with one or more Indian Nations may be appropriate, or other evidence indicates that such consultation may be appropriate, the applicant shall submit a RFA to the Corps and Section 106 consultation reverts to the Corps (or FHWA for Federally funded projects).
 3. In cases where NYSDOT, NYSTA, or NYSCC and NYSHPO do not agree with respect to an effects determination, Section 106 consultation reverts to the Corps (or FHWA for federally funded projects) and an RFA shall be submitted.
- o. Nationwide Rivers Inventory: The application shall indicate if a river segment listed within the National Park Service (NPS) Nationwide Rivers Inventory (NRI) is located within the proposed project area. For project areas containing a listed NRI segment, the application 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/rtca/nri/states/ny.html>

When FHWA is the Federal Lead Agency for NEPA: The applicant will provide documentation of any correspondence between the FHWA and the NPS for activities proposed within a NRI.

- p. Wild and Scenic Rivers. A RFA shall be submitted for this RGP which would impact the designated portions of the Genesee River or the Upper Delaware River. (Note: the applicant may not commence work under any permit 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 RFA package.) Information regarding NWSR may be found at: <http://www.rivers.gov/wildriverslist.html>

When FHWA is the Federal Lead Agency for NEPA: The applicant will provide documentation of any correspondence between the FHWA and the NPS for activities proposed within a NWSR.

3. Complete Application Determination

The Corps shall have 30 days from the date that the RFA package is received by the Corps District office to determine whether the RFA is complete, and request additional information from the applicant as necessary. If the Corps does not respond to the applicant in writing or via electronic mail message within 30 days, then the applicant shall assume that the submitted RFA is complete for processing.

4. Corps Review of RFAs

- i. The Corps review of the RFA package will be based on whether or not the project meets the terms and conditions of the RGP.
- ii. The Corps will consult with the Federal and state resources agencies for project in which the loss of waters of the U.S. exceeds 1 acre. The Corps will provide a copy of the complete RFA package to the U.S. EPA-Region 2, the NY Field Office of the USFWS, and the appropriate Regional Office of the NYS DEC. These review agencies shall have the opportunity to provide to the Corps any project-specific comments or concerns within 20 days from the receipt of a complete RFA from the Corps.
- iii. The Corps will consider agency comments in its determination whether the project, as proposed, will qualify for the authorization under the RGP.
- iv. The Corps will provide the agency comments to the applicant, offering the applicant the opportunity to address concerns or modify the project. If the Corps determines that concerns are adequately addressed, then the Corps is not required to re-consult with the agencies.

5. Corps Decision on RFAs

- i. The Corps shall notify the applicant in writing whether:
 - The project is authorized under this RGP without special conditions;
 - The project is authorized under this RGP with special conditions;
 - The project as proposed is not eligible for the RGP and will require coverage under a Nationwide Permit.
 - The project as proposed is not eligible (i.e., exceeds RGP thresholds, and/or results in more than minimal impact) for the RGP and will require coverage under an Individual Permit.
- ii. If the Corps determines that an Individual Permit is required, the written notification to the applicant shall include an identification of which term(s) and/or condition(s) are not met in the RFA and clearly describe why the project does not meet such term(s) and/or condition(s). The applicant will review the reasons for the “not eligible” decision and then decide to:
 - Revise the project and resubmit the RFA, or
 - Request that the Corps review the application under an Individual Permit. In this case, the applicant will provide additional information needs for the Corps to evaluate the project under an Individual Permit (adjacent property owners,

alternatives analysis etc.).

- iii. For projects involving impacts less than 1/2 acre to waters of the U.S. or 300 linear feet of stream and that do not include Corps-led consultation under Section 7 of the ESA or Section 106 of the NHPA, the 45-day review period has lapsed with no written or electronic (e-mail) notification from the Corps, the applicant will assume that the RFA is complete, and that the project may proceed as proposed.
- iv. In reviewing the RFA for the proposed activity, the district engineer will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. For a linear project, this determination will include an evaluation of the individual crossings to determine whether they individually satisfy the terms and conditions of the RGP as well as the cumulative effects caused by all of the crossings authorized by any previous permits in addition to the current proposal. When making minimal effects determinations the district engineer will consider the direct and indirect effects caused by the activity. The district engineer will also consider site specific factors, such as the environmental setting in the vicinity of the activity, the type of resource that will be affected by the activity, the functions provided by the aquatic resources that will be affected by the 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 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 assessment method is available and practicable to use, that assessment method may be used by the district engineer to assist in the minimal adverse effects determination. The district engineer may add case-specific special conditions to the authorization to address site-specific environmental concerns.

6. Modifications to Existing Permits

Modifications to existing Authorizations under this RGP that do not exceed the thresholds listed in the RGP when added to the impacts of the originally authorized project, shall be reviewed under this RGP. The complete application process will also be the same as listed in Section D (2) above.

7. Project Initiation

The applicant shall ensure that the activity is not commenced unless and until:

- i. The applicant has received verification from the Corps that the project is authorized under the RGP as proposed;
- ii. The applicant has received verification from the Corps that the project is authorized under the RGP with the inclusion of certain special conditions as determined by the Corps; or
- iii. The project related impacts are less than 1/2 acre to waters of the U.S. or 300 linear feet of stream, and the 45-day review period has lapsed with no written or electronic notification

from the Corps. Note, however, no activity is authorized under this RGP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed. In addition, in cases where the activity may affect 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.

- iv. The applicant has received verification from the Corps that the project is authorized under the Nationwide Permit Program (33 CFR 330), or that the Corps has issued an Individual Permit for the project.

8. RFA Commencement and Completion Reporting Requirements

Each permittee who receives a RGP verification letter from the Corps will receive commencement and completion forms with the RGP verification letter. The permittee must complete and return the forms to the appropriate Corps District office either prior to commencement of authorized work or immediately upon completion of authorized work, as appropriate. Note: The success of any required permittee-responsible mitigation, including the achievement of ecological performance standards, will be addressed separately by the district engineer.

Regional Permit TRGP-1

Appendix A

Contractor Notification Information
Sheet

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Regional Permit TRGP-1 – Appendix A
Contractor Notification Form

This form must be provided to third party contractors in the event that a project generates excess fill material to be taken off-site.

IMPORTANT NOTICE TO CONTRACTORS:

Pursuant to Section 404 of the Clean Water Act it is unlawful to discharge dredged or fill material into waters of the US, including wetlands, without Department of the Army authorization. Care must be taken to ensure that any excess material removed from this project site is not placed in waters of the US, including wetlands. Should material be placed in an area within DA jurisdiction without proper authorization, you may incur a violation of Federal law. If that happens, your project may be stopped, a full or partial restoration of the jurisdictional area may be required, and/or you may be subject to civil or criminal penalties.

Please note that there are no definitive maps showing all waters of the US, including wetlands, as these are dynamic systems that change over time. There are on-line resources that will help determine the likelihood that a given parcel contains waters, including, but not limited to the following:

- **USGS Topographical Map**
- **County Web Soil Survey**
- **National Wetland Inventory Maps**
- **Aerial Photographs: Various Internet Resources**

If any of the above resources indicates that wetlands may be present on or near the proposed disposal location, wetlands should be identified and delineated by a qualified biologist in accordance with the 1987 Corps of Engineers Wetlands Delineation Manual and the appropriate supplement.

The delineation manual and supplements are available on-line at:

<http://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/techbio/>

Questions may be directed to the US Army Corps of Engineers at the following addresses:

Buffalo District:
US Army Corps of Engineers
Regulatory Branch
1776 Niagara Street
Buffalo, New York 14207
716-879-4330

New York District:
US Army Corps of Engineers
Regulatory Branch
26 Federal Plaza
New York, New York 10278-0090
917-790-8411

Regional Permit TRGP-1

Appendix B

Reporting Spreadsheet (Non-RFA)

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Appendix C

RFA Template

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Appendix D

ESA SLOPES Agreement
(Available Upon Request)

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