



DEPARTMENT OF THE ARMY  
NEW YORK DISTRICT, CORPS OF ENGINEERS  
JACOB K. JAVITS FEDERAL BUILDING  
NEW YORK, N.Y. 10278-0090

REPLY TO  
ATTENTION OF:

Regulatory Branch-Eastern Permits Section

MAY 22 2008

SUBJECT: Permit Application Number NAN-2008-623-EJE  
by City of New York Department of Sanitation

City of New York Department of Sanitation  
Attention: Harry Szarpanski  
44 Beaver Street, 12<sup>th</sup> Floor  
New York, NY 10004

Dear Mr. Szarpanski:

On April 30, 2008, the New York District Corps of Engineers received a request for Department of the Army authorization for the discharge of fill material into and/or the placement of structures in and over navigable waters of the United States for the demolition and removal of the existing Marine Transfer Station; bulkhead maintenance; fender maintenance; construction of one (1) 21-inch and one (1) 18-inch new stormwater outfall within the refurbished bulkhead; and the dredging of approximately 6,651 cubic yards (CY) of material from a maintained access channel to achieve a depth of 20.5 feet below mean low water (MLW), including a 2-foot overdredge depth. The site is located in the Gowanus Canal, in the Borough of Brooklyn, Kings County, New York.

Based on the information submitted to this office, and accomplishment of notification in accordance with the applicable federal requirements, our review of the project indicates that an individual permit is not required. It appears that the activities within the jurisdiction of this office could be accomplished under Department of the Army Nationwide General Permit Numbers 3, 7, and 35. The nationwide permits are prescribed as an Issuance of Nationwide Permits in the Federal Register dated March 12, 2007 (FR Vol. 72, No. 47). The work may be performed without further authorization from this office provided the activity complies with the permit conditions listed in Section B, Nos. 3, 7, and 35, Section C, any applicable New York District regional conditions, and any applicable regional conditions added by the State of New York, copies enclosed.

Special Conditions

- 1) 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

MAY 22 2008

remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

- 2) Dredged material shall be disposed of at a State-approved upland location so as not to re-enter any waterway or wetlands.

This determination covers only the work described in the submitted material. Any major changes in the project may require additional authorizations from the New York District.

Care should be taken so that construction materials, including debris, do not enter any waterway to become drift or pollution hazards. You are to contact the appropriate state and local government officials to ensure that the subject work is performed in compliance with their requirements.

Attached to this verification that your project is authorized by a NWP is an approved jurisdictional determination. If you are not in agreement with that approved JD, you can make an administrative appeal under 33 CFR 331.

This verification is valid for a period of two years from the date of this letter, unless the nationwide permit is modified, reissued, or revoked. This verification will remain valid for two years from the date of this letter if the activity complies with the terms of any subsequent modifications of the nationwide permit authorization. If the nationwide permits are suspended, revoked, or modified in such a way that the activity would no longer comply with the terms and conditions of a nationwide permit, and the proposed activity has commenced, or is under contract to commence, the permittee shall have 12 months from the date of such action to complete the activity. All of the existing NWPs are scheduled to be modified, reissued, or revoked March 18, 2012. It is incumbent upon you to remain informed of changes to the NWPs. We will issue a public notice when the NWPs are reissued.

Within 30 days of the completion of the activity authorized by this permit and any mitigation required by this permit, you are to sign and submit the attached compliance certification form to this office.

If any questions should arise concerning this matter, please contact Stacey M. Jensen, of my staff, at (917) 790-8420.

Sincerely,

A handwritten signature in dark ink, appearing to read "George Nieves", followed by the date "22 May 2008" written in a smaller, slanted script.

*FOR* George Nieves  
Chief, Eastern Permits Section

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: City of New York Department of Sanitation	File Number: NAN-2008-623-EJE	Date: <b>MAY 22 2008</b>
Attached is:		See Section Below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the New York District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the New York District Engineer. Your objections must be received by the New York District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the New York District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the New York District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the New York District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the Division Engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the Division Engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal

Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the New York District Engineer.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

## **SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

### **POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:

Richard L. Tomer  
U.S. Army Corps of Engineers, New York District  
Jacob K. Javits Federal Building  
New York, NY 10278-0090  
(917) 790-8510

If you only have questions regarding the appeal process you may also contact:

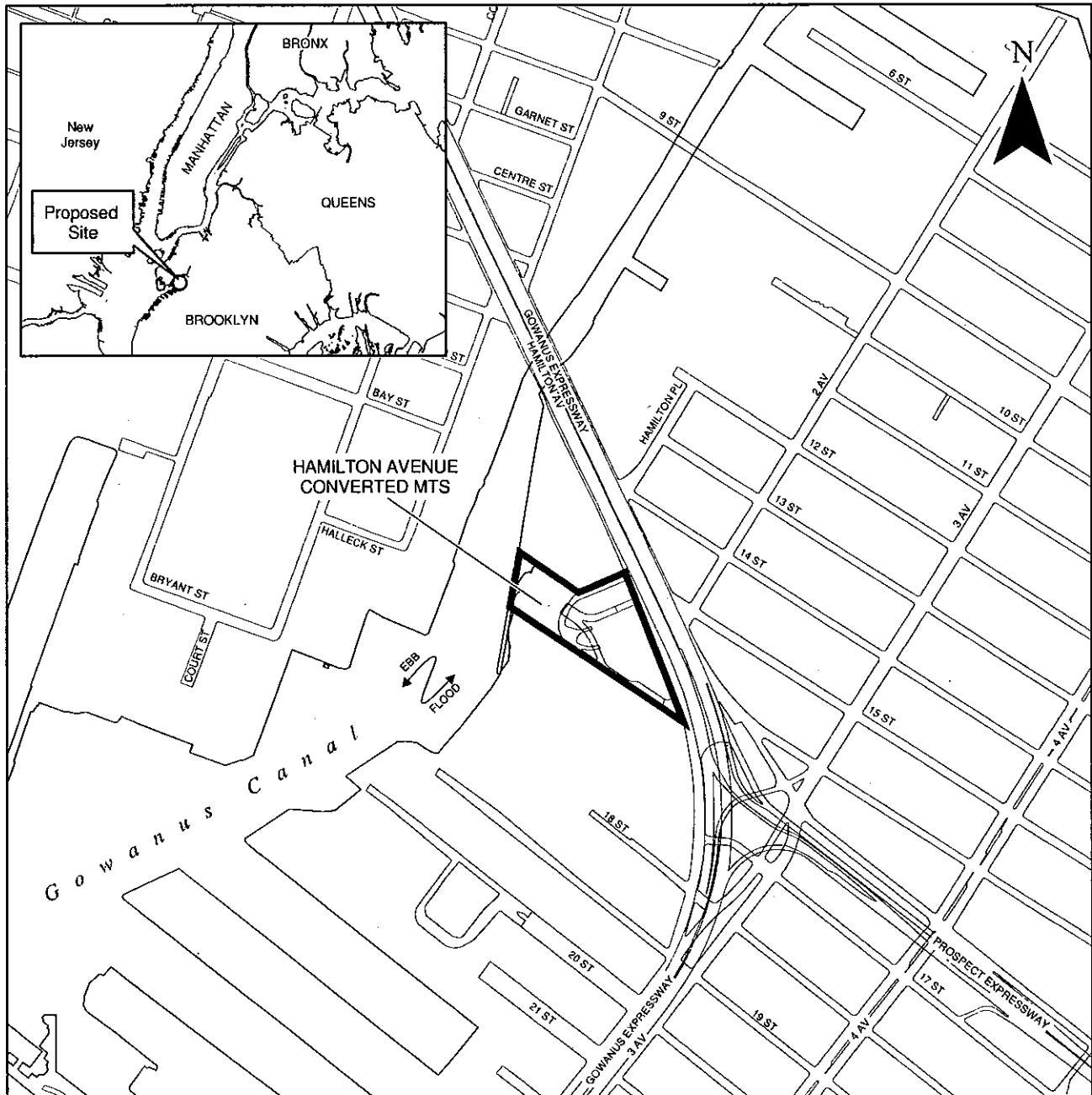
James W. Haggerty, Regulatory Appeals Review Officer  
North Atlantic Division, U.S. Army Engineer Division  
Fort Hamilton Military Community  
General Lee Avenue, Building 301  
Brooklyn, NY 11252-6700  
(718) 765-7150  
E-mail: James.W.Haggerty@nad02.usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Date:

Telephone number:

Signature of appellant or agent.



**PURPOSE:** TO CONSTRUCT A  
CONTAINERIZED SOLID WASTE  
MARINE TRANSFER STATION  
WITHIN GOWANUS CANAL

**ADJACENT PROPERTY OWNERS:**

1. NEW YORK CITY DEPARTMENT  
OF GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF  
CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

### VICINITY MAP HAMILTON AVENUE CONVERTED MTS

500 0 500  
Feet

**CONSTRUCTION OF THE  
HAMILTON AVENUE CONVERTED MTS**

**IN: GOWANUS CANAL**

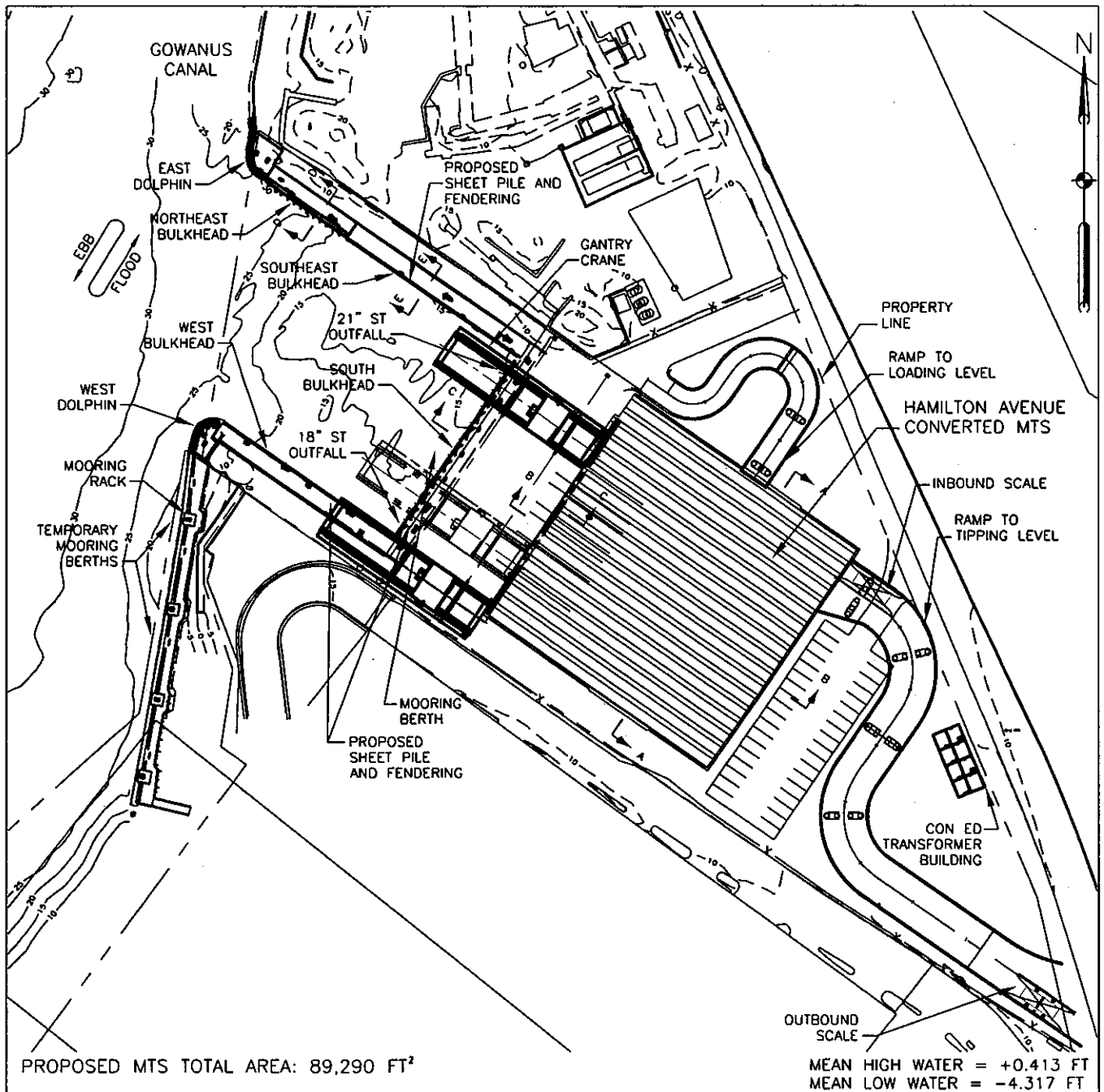
**AT: BROOKLYN**

**COUNTY OF: KINGS**

**STATE OF: NEW YORK**

**APPLICATION BY: CITY OF NEW YORK  
DEPARTMENT OF SANITATION**

**SHEET 1 OF 12 DATE: 4/2008**



PURPOSE: TO CONSTRUCT A  
CONTAINERIZED SOLID WASTE  
MARINE TRANSFER STATION  
WITHIN GOWANUS CANAL

DATUM: BROOKLYN BOROUGH DATUM

ADJACENT PROPERTY OWNERS:

1. NEW YORK CITY DEPARTMENT OF  
GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF  
CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

## PLAN VIEW



SCALE: 1"=120'

CONSTRUCTION OF THE  
HAMILTON AVENUE CONVERTED MTS

IN: GOWANUS CANAL

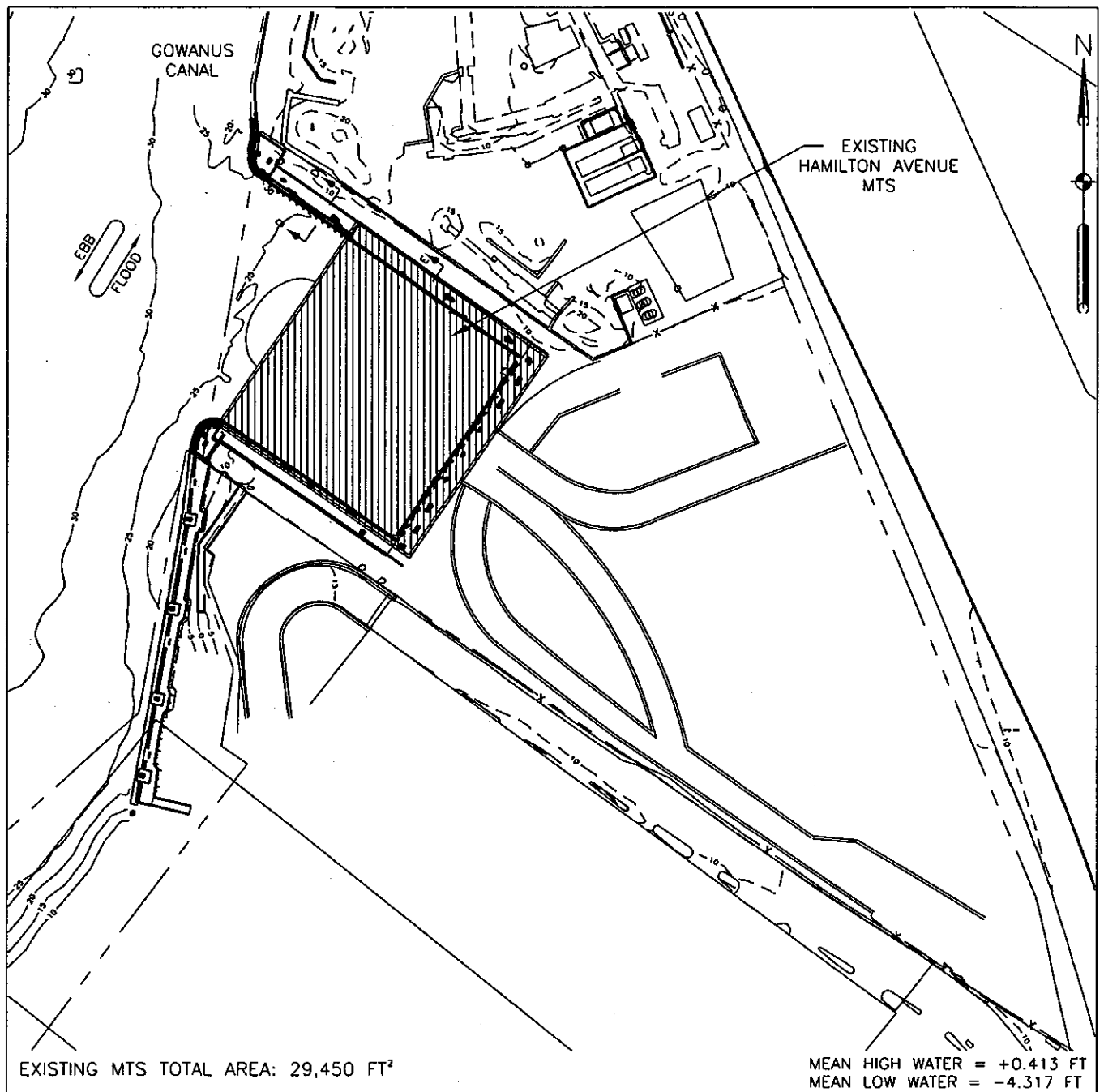
AT: BROOKLYN

COUNTY OF: KINGS

STATE OF: NEW YORK

APPLICATION BY: CITY OF NEW  
YORK DEPARTMENT OF SANITATION

SHEET 2 OF 12 DATE: 4/2008



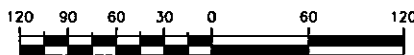
PURPOSE: TO CONSTRUCT A  
CONTAINERIZED SOLID WASTE  
MARINE TRANSFER STATION  
WITHIN GOWANUS CANAL

DATUM: BROOKLYN BOROUGH DATUM

ADJACENT PROPERTY OWNERS:

1. NEW YORK CITY DEPARTMENT OF  
GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF  
CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

## PLAN VIEW



SCALE: 1"=120'

CONSTRUCTION OF THE  
HAMILTON AVENUE CONVERTED MTS

IN: GOWANUS CANAL

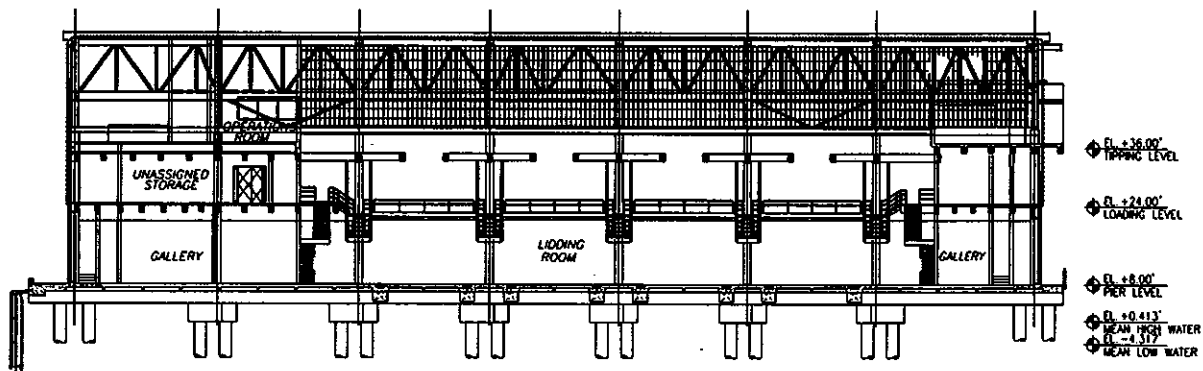
AT: BROOKLYN

COUNTY OF: KINGS

STATE OF: NEW YORK

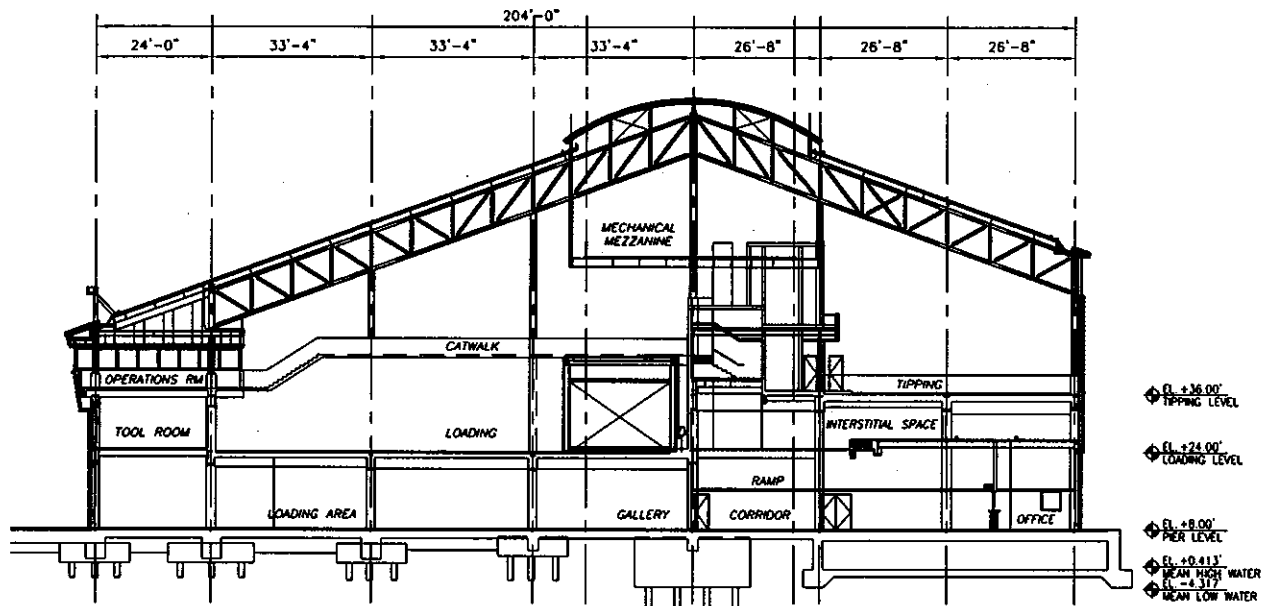
APPLICATION BY: CITY OF NEW  
YORK DEPARTMENT OF SANITATION

SHEET 3 OF 12 DATE: 4/2008



**BUILDING SECTION A-A**

SCALE: 1"=40'



**BUILDING SECTION B-B**

SCALE: 1"=40'

PURPOSE: TO CONSTRUCT A  
CONTAINERIZED SOLID WASTE  
MARINE TRANSFER STATION  
WITHIN GOWANUS CANAL

DATUM: BROOKLYN BOROUGH DATUM

ADJACENT PROPERTY OWNERS:

1. NEW YORK CITY  
DEPARTMENT OF GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF  
CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

## BUILDING SECTIONS



SCALE: 1"=40'

CONSTRUCTION OF THE  
HAMILTON AVENUE CONVERTED MTS

IN: GOWANUS CANAL

AT: BROOKLYN

COUNTY OF: KINGS

STATE OF: NEW YORK

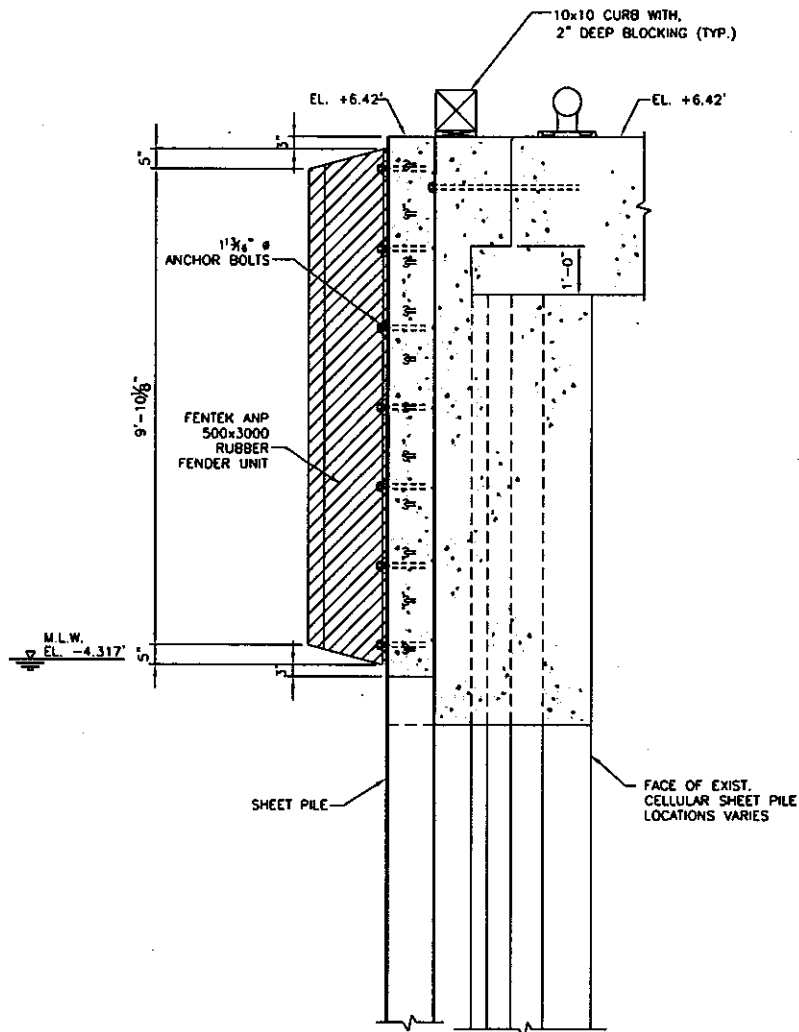
APPLICATION BY: CITY OF NEW  
YORK DEPARTMENT OF SANITATION

SHEET 4 OF 12 DATE: 4/2008





SHEET 5 OF 12      DATE: 4/2008



### FENDERING SECTION D-D

SCALE: 1/4"=1'-0"

PURPOSE: TO CONSTRUCT A  
CONTAINERIZED SOLID WASTE  
MARINE TRANSFER STATION  
WITHIN GOWANUS CANAL

DATUM: BROOKLYN BOROUGH DATUM

ADJACENT PROPERTY OWNERS:

1. NEW YORK CITY  
DEPARTMENT OF GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF  
CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

### NORTHEAST BULKHEAD FENDERING SECTION D-D

CONSTRUCTION OF THE  
HAMILTON AVENUE CONVERTED MTS

IN: GOWANUS CANAL

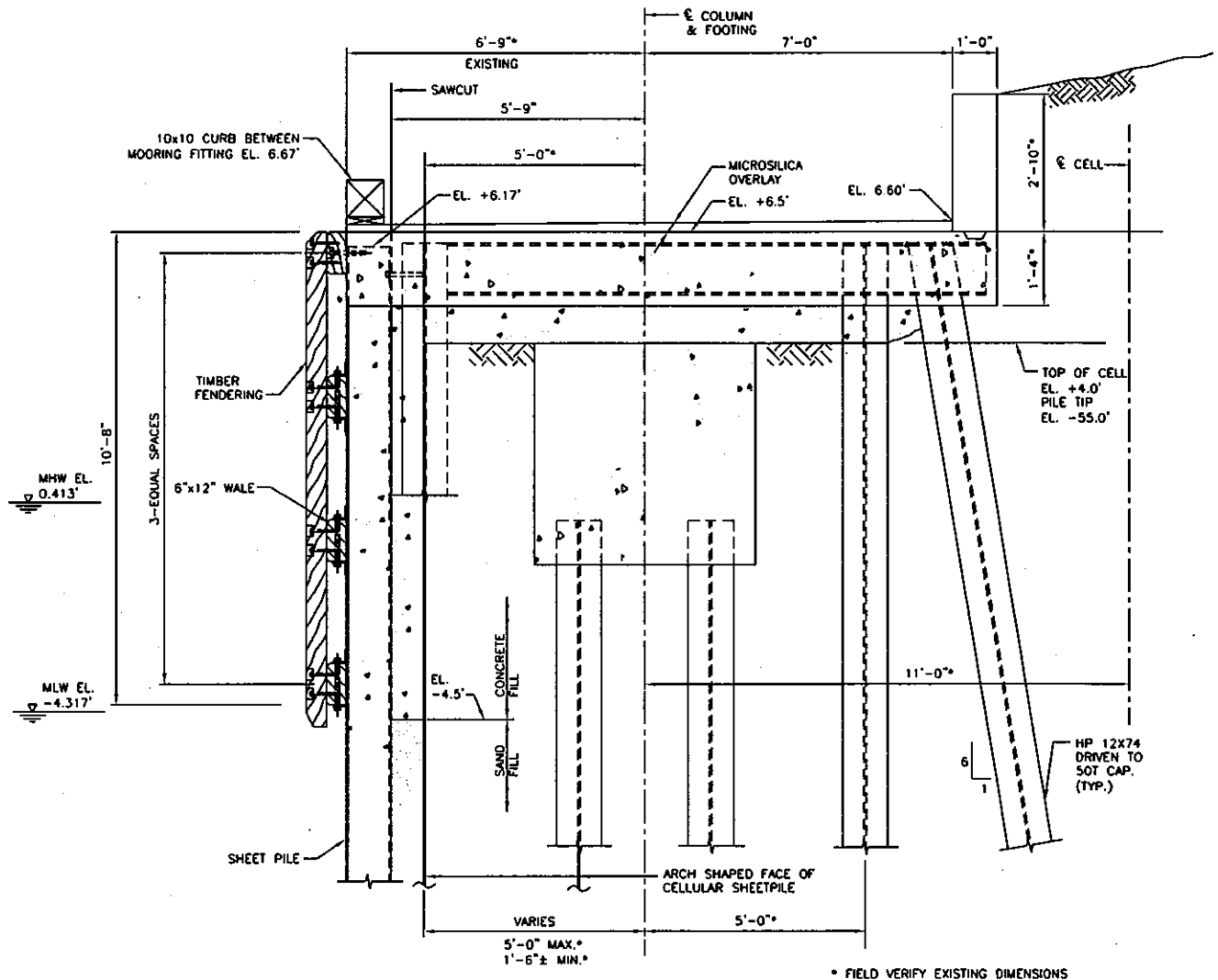
AT: BROOKLYN

COUNTY OF: KINGS

STATE OF: NEW YORK

APPLICATION BY: CITY OF NEW  
YORK DEPARTMENT OF SANITATION

SHEET 6 OF 12 DATE: 4/2008



### FENDERING SECTION E-E

SCALE: 1/4"=1'-0"

PURPOSE: TO CONSTRUCT A  
CONTAINERIZED SOLID WASTE  
MARINE TRANSFER STATION  
WITHIN GOWANUS CANAL

DATUM: BROOKLYN BOROUGH DATUM

ADJACENT PROPERTY OWNERS:

1. NEW YORK CITY  
DEPARTMENT OF GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF  
CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

### SOUTHEAST AND WEST BULKHEAD FENDERING SECTION E-E

CONSTRUCTION OF THE  
HAMILTON AVENUE CONVERTED MTS

IN: GOWANUS CANAL

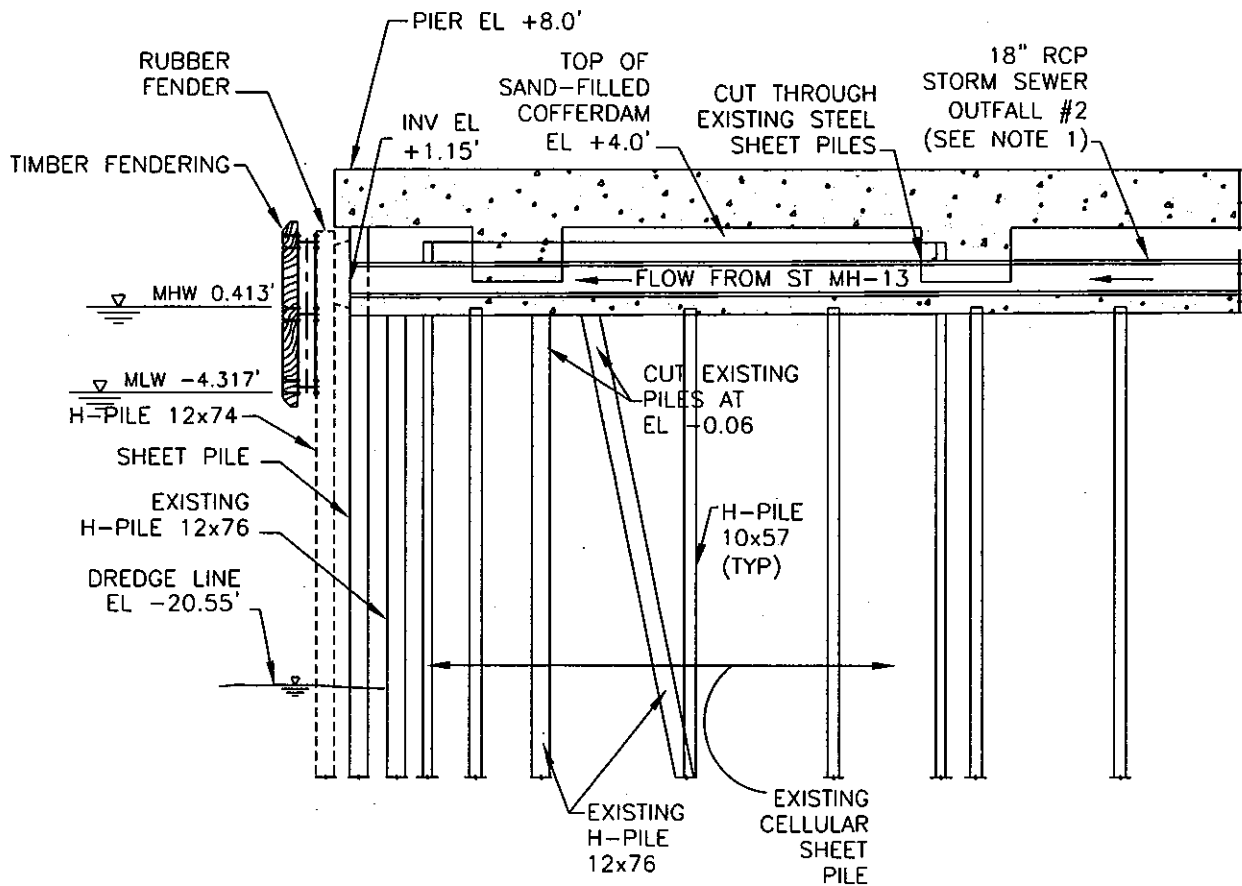
AT: BROOKLYN

COUNTY OF: KINGS

STATE OF: NEW YORK

APPLICATION BY: CITY OF NEW  
YORK DEPARTMENT OF SANITATION

SHEET 7 OF 12 DATE: 4/2008



NOTE:

- 1.) SECTION IS TYPICAL FOR TWO LOCATIONS EXCEPT THAT OUTFALL #1 HAS A 21" DIAMETER

PURPOSE: TO CONSTRUCT A CONTAINERIZED SOLID WASTE MARINE TRANSFER STATION WITHIN GOWANUS CANAL

DATUM: BROOKLYN BOROUGH DATUM

ADJACENT PROPERTY OWNERS:

1. NEW YORK CITY DEPARTMENT OF GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

TYPICAL OUTFALL AND SOUTH BULKHEAD CROSS-SECTION



SCALE: 3/32"=1'-0"

CONSTRUCTION OF THE HAMILTON AVENUE CONVERTED MTS IN: GOWANUS CANAL

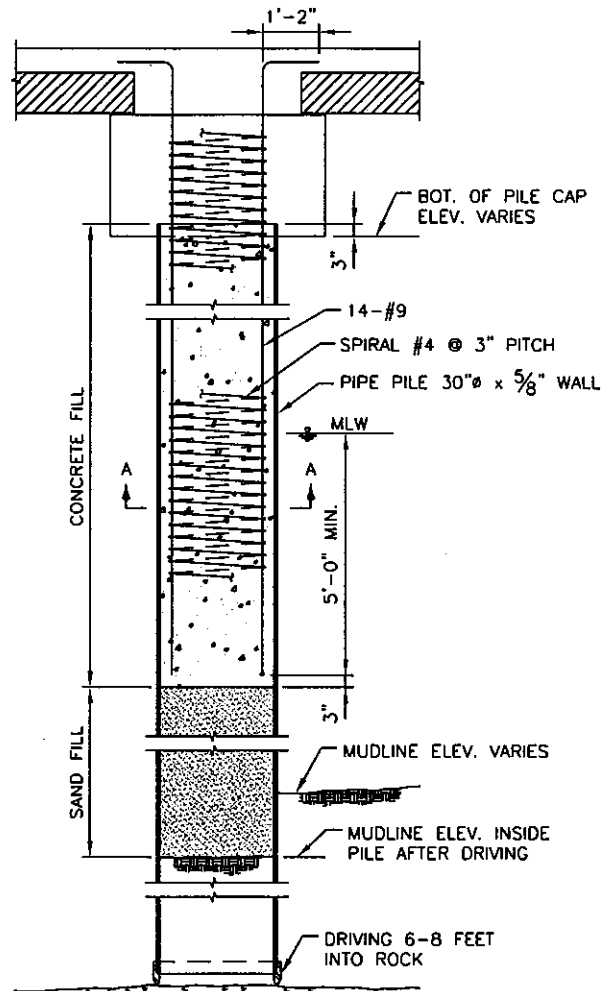
AT: BROOKLYN

COUNTY OF: KINGS

STATE OF: NEW YORK

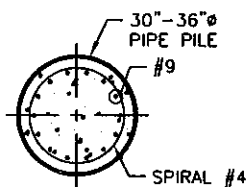
APPLICATION BY: CITY OF NEW YORK DEPARTMENT OF SANITATION

SHEET 8 OF 12 DATE: 4/2008



**PILE DETAIL**

SCALE: 1/4"=1'-0"



**SECTION A-A**

SCALE: 1/4"=1'-0"

PURPOSE: TO CONSTRUCT A  
CONTAINERIZED SOLID WASTE  
MARINE TRANSFER STATION  
WITHIN GOWANUS CANAL

DATUM: BROOKLYN BOROUGH DATUM

ADJACENT PROPERTY OWNERS:

1. NEW YORK CITY  
DEPARTMENT OF GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF  
CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

## TYPICAL PILE DETAIL

SCALE AS SHOWN

CONSTRUCTION OF THE  
HAMILTON AVENUE CONVERTED MTS  
IN: GOWANUS CANAL

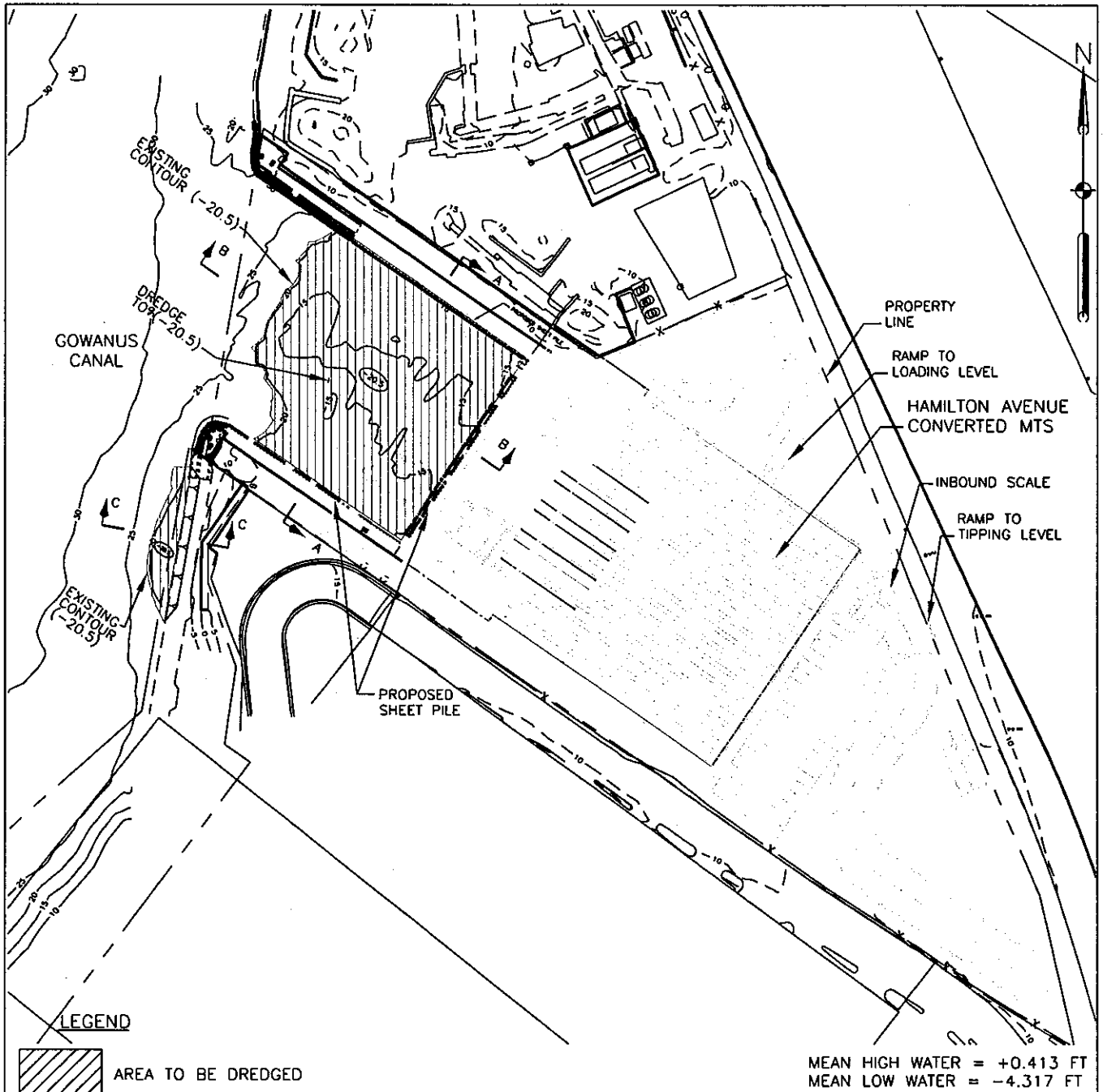
AT: BROOKLYN

COUNTY OF: KINGS

STATE OF: NEW YORK

APPLICATION BY: CITY OF NEW  
YORK DEPARTMENT OF SANITATION

SHEET 9 OF 12 DATE: 4/2008



PURPOSE: TO CONSTRUCT A  
CONTAINERIZED SOLID WASTE  
MARINE TRANSFER STATION  
WITHIN GOWANUS CANAL

DATUM: BROOKLYN BOROUGH DATUM

ADJACENT PROPERTY OWNERS:

1. NEW YORK CITY  
DEPARTMENT OF GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF  
CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

## DREDGE PLAN



SCALE: 1"=120'

CONSTRUCTION OF THE  
HAMILTON AVENUE CONVERTED MTS

IN: GOWANUS CANAL

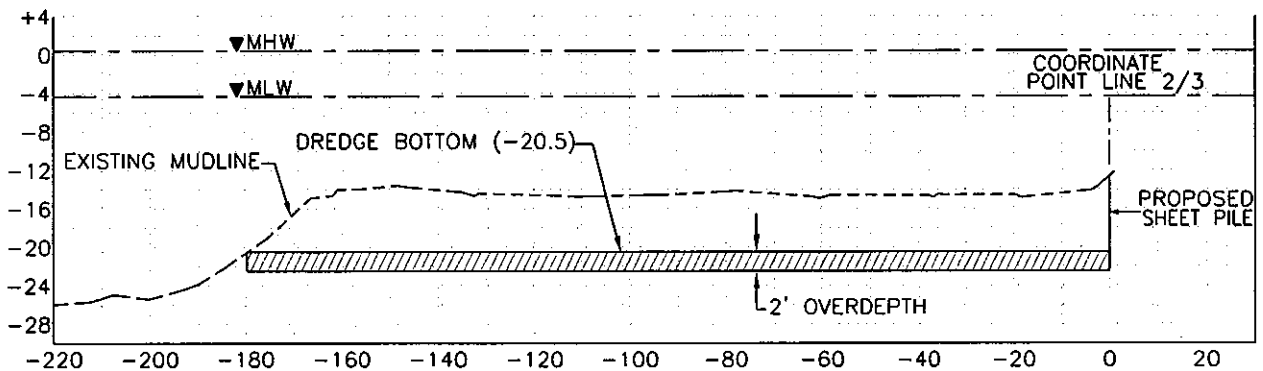
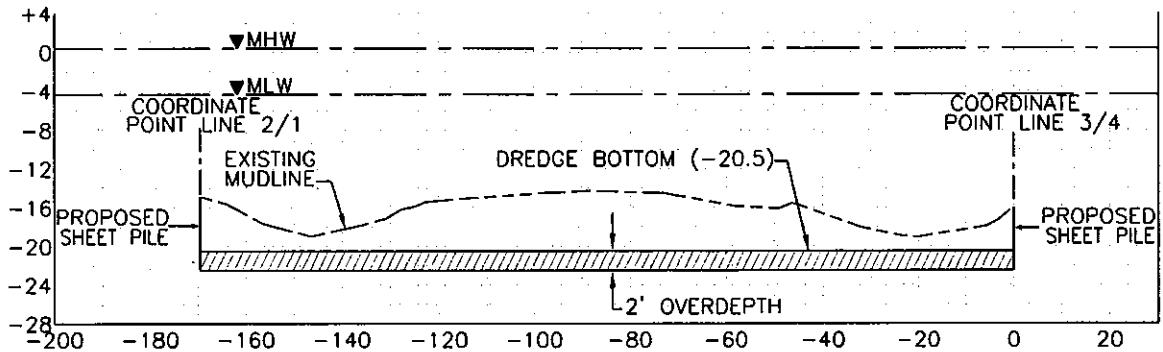
AT: BROOKLYN

COUNTY OF: KINGS

STATE OF: NEW YORK

APPLICATION BY: CITY OF NEW  
YORK DEPARTMENT OF SANITATION

SHEET 10 OF 12 DATE: 4/2008



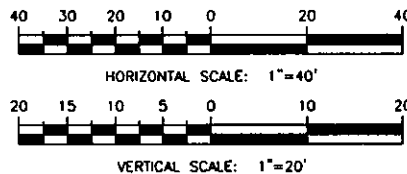
PURPOSE: TO CONSTRUCT A  
CONTAINERIZED SOLID WASTE  
MARINE TRANSFER STATION  
WITHIN GOWANUS CANAL

DATUM: BROOKLYN BOROUGH DATUM

ADJACENT PROPERTY OWNERS:

1. NEW YORK CITY  
DEPARTMENT OF GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF  
CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

## CROSS-SECTIONS



CONSTRUCTION OF THE  
HAMILTON AVENUE CONVERTED MTS  
IN: GOWANUS CANAL

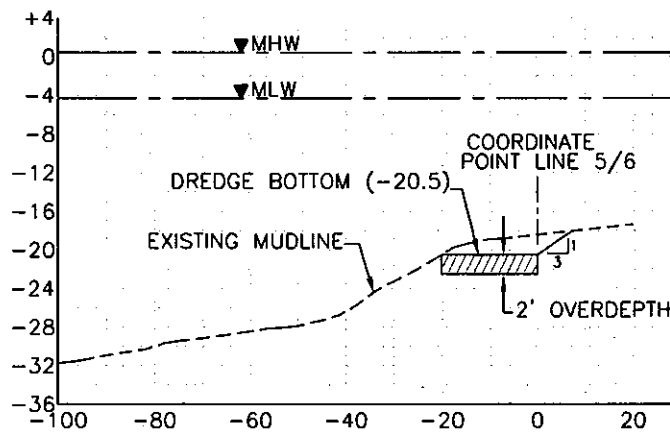
AT: BROOKLYN

COUNTY OF: KINGS

STATE OF: NEW YORK

APPLICATION BY: CITY OF NEW  
YORK DEPARTMENT OF SANITATION

SHEET 11 OF 12 DATE: 4/2008



### SECTION C-C

HORIZONTAL SCALE: 1"=40'  
VERTICAL SCALE: 1"=20'

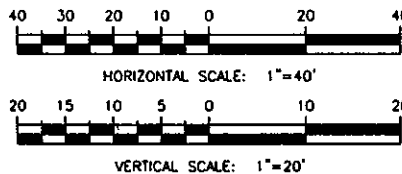
PURPOSE: TO CONSTRUCT A  
CONTAINERIZED SOLID WASTE  
MARINE TRANSFER STATION  
WITHIN GOWANUS CANAL

DATUM: BROOKLYN BOROUGH DATUM

ADJACENT PROPERTY OWNERS:

1. NEW YORK CITY  
DEPARTMENT OF GENERAL SERVICES
2. NEW YORK CITY DEPARTMENT OF  
CITY-WIDE ADMINISTRATIVE SERVICES
3. SUNSET INDUSTRIAL PARK, LLC
4. HOME DEPOT USA, INC.
5. EDWARD COHN

### CROSS-SECTIONS



CONSTRUCTION OF THE  
HAMILTON AVENUE CONVERTED MTS

IN: GOWANUS CANAL

AT: BROOKLYN

COUNTY OF: KINGS

STATE OF: NEW YORK

APPLICATION BY: CITY OF NEW  
YORK DEPARTMENT OF SANITATION

SHEET 12 OF 12 DATE: 4/2008





DEPARTMENT OF THE ARMY  
NEW YORK DISTRICT, CORPS OF ENGINEERS  
JACOB K. JAVITS FEDERAL BUILDING  
NEW YORK, N.Y. 10278-0090

REPLY TO  
ATTENTION OF:  
CENAN-OP-RH

NATIONWIDE PERMIT COMPLIANCE CERTIFICATION AND REPORT FORM

Permittee: City of New York Department of Sanitation  
Permit No. NAN-2008-623-EJE

Date Permit Issued: MAY 22 2008

Location: Gowanus Canal, Borough of Brooklyn, Kings County, New York

Within 30 days of the completion of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the address at the bottom of this form.

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit, and required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

\_\_\_\_\_  
Fold this form into thirds, with the bottom third facing outward. Tape it together and mail to the address below or FAX to (212) 264-4260.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Place Stamp  
Here

Department of the Army  
New York District Corps of Engineers  
Jacob K. Javits Federal Building  
ATTN: CENAN-OP-RH  
New York, New York 10278-0090

**DRAFT**  
**ENCLOSURE 1**  
**NATIONWIDE PERMIT REGIONAL CONDITIONS AND**  
**DESIGNATED CRITICAL RESOURCE WATERS IN THE NEW**  
**YORK DISTRICT**  
**(NEW YORK STATE)**  
**TO SUPPLEMENT THE MARCH 12, 2007, FEDERAL REGISTER**  
**RESISSUANCE OF NATIONWIDE PERMITS (72 FR 11092)**

**I. Nationwide Permit Specific Regional Conditions:**

(Note: See Sections II and III for additional regional conditions the may apply)

***Nationwide Permit 1 - Aids to Navigation***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** A water quality certificate is not required for this NWP.
3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

***Nationwide Permit 2 - Structures in Artificial Canals***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** A water quality certificate is not required for this NWP.
3. **Coastal Zone Consistency Determination:** The activities authorized under this NWP are consistent with the New York States Coastal Management Program.

***Nationwide Permit 3 - Maintenance***

**1. Permit-specific Regional Conditions:**

a. For activities involving the removal of accumulated sediments and debris in the vicinity of existing structures to restore the waterway to previously existing depths, the applicant must provide evidence of such depths. If this information is not available, the applicant must provide evidence of the existing depths immediately outside the proposed work area.

b. Every effort should be made to prevent additional encroachment into the beds of New York waterbodies. All repair or rehabilitation activities should focus on using the area immediately behind the existing structure,. Bulkhead replacement shall be completed in-place or landward of the existing structure. Any proposed repair, rehabilitation, or reconstruction of existing bulkheads that extend waterward more than 18 inches from the existing bulkhead will require notification to the District Engineer in accordance with Nationwide Permit General Condition Number 27 ("Notification"). Notification must include justification for a waterward extension exceeding 18 inches, such as geologic conditions, engineering requirements, etc.

2. **Water Quality Certification:** The New York State Department of Environmental Conservation (NYSDEC) has certified that activities authorized by this NWP and undertaken in accordance with the special conditions listed below will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards:

## DRAFT

- a. This certification does not authorize maintenance activities associated with hydropower projects.
- b. This certification does not authorize any activity that results in an alteration to waters of the United States such as draining or altering water levels.
- c. Authorized dewatering is limited to immediate work areas that are coffer-dammed or otherwise isolated from the larger water body or waters of the United States. Dewatering must be localized and not drain extensive areas of a water body or reduce the water level such that fish and other aquatic vertebrates are killed or their eggs and nests are exposed to dessication, freezing or depredation in areas outside of the immediate work site.
- d. Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a watercourse.
- e. Impoundment drawdowns (for maintenance activities) shall occur prior to October 15<sup>th</sup> (before November 1<sup>st</sup> for Long Island waters) or after March 1<sup>st</sup>. If a drawdown is necessary during this period, then both the air and water temperature must be 50° F or higher, and the cloud cover must be less than 50 percent during the drawing down of water.
- f. This certification does not authorize replacement of existing bulkheads or vertical retaining walls that extends waterward from the present footprint of the structure.

3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

### ***Nationwide Permit 4 - Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:**
3. **Coastal Zone Consistency Determination:** The activities authorized under this NWP are consistent with the New York State Coastal Management Program.

### ***Nationwide Permit 5 - Scientific Measurement Devices***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:**
3. **Coastal Zone Consistency Determination:** The activities authorized under this NWP are consistent with the New York State Coastal Management Program.

### ***Nationwide Permit 6 - Survey Activities***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:**
3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4)

## **DRAFT**

Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

### ***Nationwide Permit 7 - Outfall Structures and Associated Intake Structures***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** The New York State Department of Environmental Conservation (NYSDEC) has certified that activities authorized by this NWP and undertaken in accordance with the special conditions listed below will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards:
  - a. This certification does not apply to outfalls proposed for construction in any Special Aquatic Site as defined and identified in federal regulation at 40 CFR Chapter 1, Part 230, Section 230.3(q-1) and Subpart E.
  - b. All work associated with the construction and installation of intake structures shall require an individual water quality certification.
3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

### ***Nationwide Permit 8 - Oil and Gas Structures on the Outer Continental Shelf***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** A water quality certificate is not required for this NWP.
3. **Coastal Zone Consistency Determination:** An individual consistency determination is required for this NWP anywhere in the New York coastal area. For activities within New York State Coastal Zone see Section II, F(a), below.

### ***Nationwide Permit 9 - Structures in Fleeting and Anchorage Areas***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** A water quality certificate is not required for this NWP.
3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

### ***Nationwide Permit 10 - Mooring Buoys***

1. **Permit-specific Regional Conditions:**
  - a. Mooring buoys must be tagged with the name and the address of the owner. The placement of buoys must not hinder navigation, create unsafe conditions to the public, or hinder safe access to and from a person's property. Buoys must be placed so that each moored vessel will avoid contact or interference with any other moored vessel or structure.

## DRAFT

- a. This certification does not authorize enforcement actions resulting in discharges greater than 1/10 acre in size or more than 200 linear feet of stream disturbance.
3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

### *Nationwide Permit 33 - Temporary Construction, Access and Dewatering*

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** The New York State Department of Environmental Conservation (NYSDEC) has certified that activities authorized by this NWP and undertaken in accordance with the special conditions listed below will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards:
  - a. This certification does not apply to hydro power projects.
  - b. Dewatering must be limited to immediate work areas that are coffer-dammed or otherwise isolated from the larger water body or waters of the United States. Dewatering must be localized and not drain extensive areas of a water body or reduce the water level such that vegetation, fish and other aquatic vertebrates are killed or their eggs and nests are exposed to dessication, freezing or depredation in areas outside of the immediate work site.
  - c. Impoundment drawdowns shall occur prior to October 15<sup>th</sup> (before November 1<sup>st</sup> for Long Island waters) or after March 1<sup>st</sup>. If a drawdown is necessary during this period, then both the air and water temperature must be 50° F or higher and the cloud cover must be less than 50 percent during the drawing down of water.
  - d. Cofferdams or diversions shall not be constructed in a manner that causes or exacerbates erosion of the bed or banks of a watercourse.
3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

### *Nationwide Permit 34 - Cranberry Production Activities*

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** An individual water quality certificate is required for this NWP.
3. **Coastal Zone Consistency Determination:** The activities authorized under this NWP are consistent with the New York State Coastal Management Program.

### *Nationwide Permit 35 - Maintenance Dredging of Existing Basins*

1. **Permit-specific Regional Conditions:**

## **DRAFT**

- a. All NWP 35 activities require a PCN.
- b. All PCN submittals must include:
  1. documentation that the dredging depths were previously authorized or details on what establishes the controlling depths;
  2. an assessment of impacts that the proposed work will have on endangered species and essential fish habitat including the direct, indirect and cumulative impacts of the proposed dredging.
2. **Water Quality Certification:** A water quality certificate is not required for this NWP.
3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

### ***Nationwide Permit 36 - Boat Ramps***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** No WQC special conditions.
3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

### ***Nationwide Permit 37 - Emergency Watershed Protection and Rehabilitation***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** No WQC special conditions.
3. **Coastal Zone Consistency Determination:** The activities authorized under this NWP are consistent with the New York State Coastal Management Program.

### ***Nationwide Permit 38 - Cleanup of Hazardous and Toxic Waste***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** An individual water quality certificate is required for this NWP.
3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

### ***Nationwide Permit 39 - Commercial, and Institutional Developments***

1. **Permit-specific Regional Conditions:**
  - a. The waiver process to exceed 300 linear feet of stream impact as described in 72 FR 11092 is not

## DRAFT

the special conditions listed below will comply with the applicable provisions of the Clean Water Act and applicable New York State water quality standards:

- a. This certification does not authorize the expansion of aquaculture activities into new areas of a project.
3. **Coastal Zone Consistency Determination:** This NWP is consistent with the New York State Coastal Management Program where the activities would occur outside the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans. However, the New York State Department of State objects to the Corps consistency determination where the activities authorized by this NWP would occur within the above referenced CMP special management areas, and therefore in those cases, see Section II, F, below.

### ***Nationwide Permit 49 – Coal Remining Activities***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** An individual water quality certificate is required for this NWP.
3. **Coastal Zone Consistency Determination:** The activities authorized under this NWP are consistent with the New York State Coastal Management Program.

### ***Nationwide Permit 50 – Underground Coal Mining Activities***

1. **Permit-specific Regional Conditions:** None
2. **Water Quality Certification:** An individual water quality certificate is required for this NWP.
3. **Coastal Zone Consistency Determination:** The activities authorized under this NWP are consistent with the New York State Coastal Management Program.

## **II. General Regional Conditions:**

**These conditions apply to ALL Nationwide Permits.**

**A. Construction Best Management Practices (BMP's):** Unless specifically approved otherwise, the following BMP's must be implemented to minimize erosion, migration of sediments, and adverse environmental impacts. Note that at a minimum, all erosion and sediment control practices must be designed, installed and maintained in accordance with the latest version of the "*New York Standards and Specifications for Erosion and Sediment Control*". This document is available at: <http://www.dec.state.ny.us/website/dow/toolbox/escstandards/>.

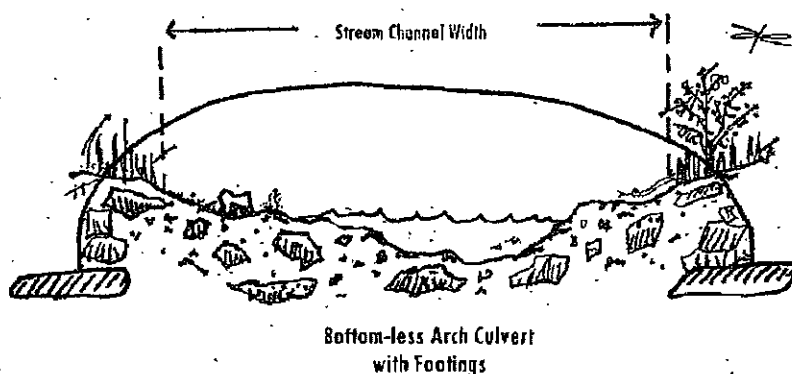
1. All synthetic erosion control features (e.g., silt fencing, netting, mats), which are intended for temporary use during construction, shall be completely removed and properly disposed of after their initial purpose has been served. Only natural fiber materials, which will degrade over time, may be used as permanent measures, or if used temporarily, may be abandoned in place.
2. Materials 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.
3. 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.
4. 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.
5. No in-stream work shall occur during periods of high flow.

## DRAFT

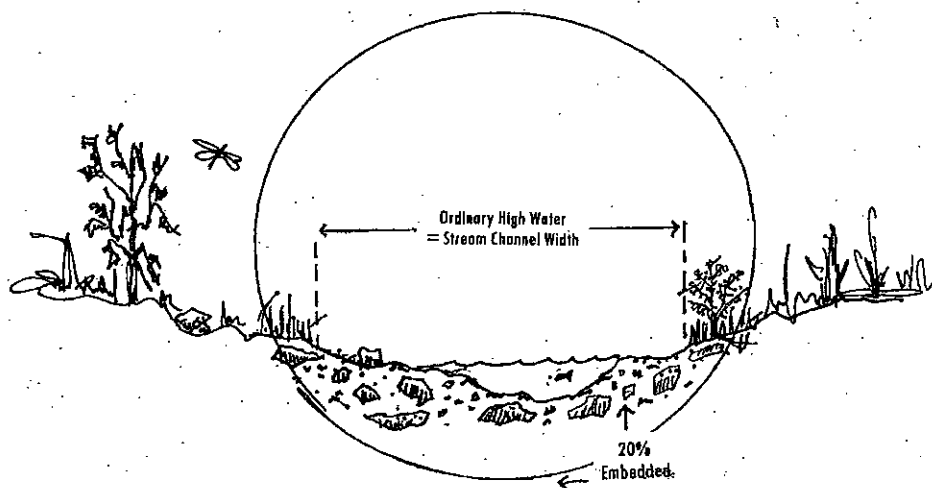
### 6. ALL culverts shall be constructed/installed in accordance with the following:

For projects that involve the installation of a new or replacement culverts for the crossing of fish-bearing streams, then a bottomless culvert or bridge that completely spans the stream's bankfull elevation is required. Fish-bearing streams include all state-designated trout streams (i.e., streams that have the following New York State Department of Environmental Conservation classifications: AA(t), A(t), B(t) or C(t)), or other fish-bearing stream. Local NYSDEC fisheries biologists can provide assistance in determining if a particular stream supports fisheries.

The requirement for a bottomless culvert or bridge can be waived if engineering or other evaluations indicate that a bottomless structure is not feasible for such a crossing, in which case a closed culvert may be used with provisions for embedment as specified below. Information documenting the evaluation shall be included in the permit application. This information must document why the use of a bridge, arch-span or other bottomless culvert, would not be a practicable alternative. At a minimum, an engineering evaluation which shows that a bottomless structure is not feasible for such a crossing, as well as a cost comparison of construction techniques and associated maintenance for these alternatives must be provided.



Unless clearly demonstrated that it would not be practicable, closed culverts will be buried/embedded to a minimum depth of 1 foot for box culverts, and 2 feet or 20 percent of the vertical rise for round, or elliptical culverts, to allow natural substrate to colonize the structure's bottom, encourage fish movement and maintain the existing channel slope. If clearly demonstrated that the culvert cannot be embedded (e.g., bedrock or underground utilities, etc.), then measures shall be employed to ensure/enhance passage of aquatic organisms (e.g., baffles, etc.). Culvert slope should not exceed 4 percent.





## DRAFT

Bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional area (or stream channel width at a minimum of 1.25 times the ordinary high water; or a 2 year design storm) within the culvert. An average of three measurements (project location and straight sections of the stream upstream and downstream) should be utilized to determine appropriate opening width.

Measures will be included in all culvert construction that will promote the safe passage of fish and other aquatic organisms. The dimension, pattern, and profile of the stream above and below a pipe or culvert should not be permanently modified by widening the stream channel or by reducing the depth of the stream in connection with the construction activity.

If adverse impacts (i.e., increased erosion, changes in normal water depths, etc.) to any waters of the United States due to poor construction practices are discovered, the permittee shall take necessary measures to correct this deficiency.

**B.** No regulated activity authorized by a Nationwide Permit can cause the loss of areas classified as a bog or fen in the State of New York, as determined by the Buffalo or the New York District Corps of Engineers, due to the scarcity of this habitat in New York State and the difficulty with in-kind mitigation. The Districts will utilize the following document in the determination:

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.state.ny.us/website/dfwmr/heritage/EcolComm.htm>

**C. National Wild and Scenic Rivers (NWSR):** The Upper Delaware River has been designated as a National Wild and Scenic River from the confluence of the East and West Branches below Hancock, New York, to the existing railroad bridge immediately downstream of Cherry Island in the vicinity of Sparrow Bush, New York. In accordance with General Condition #15, no activity may occur within a NWSR, including Study Rivers, unless the National Park Service (NPS) has determined in writing that the proposed work will not adversely affect the NWSR designation or study status. Information regarding NWSR may be found at: <http://www.rivers.gov/wildriverslist.html>

**D. For all proposals requiring a pre-construction notification (PCN), in addition to the requirements in General Condition 27(b), the applicant shall also include:**

1. A completed New York State/USACE Joint Application Form which clearly indicates that the submission is a PCN.
2. A location map, including latitude and longitude or UTM Coordinates, of the project location and project drawings on 8<sup>1/2</sup> by 11 inch paper and if necessary full size engineering drawings to accurately depict activities within waters of the United States.
3. For permanent fills within waters of the United States within the 100 year floodplain, documentation of compliance with FEMA-approved state or local floodplain management requirements.
4. Color photographs, sufficient to accurately portray the project site, keyed to a location map.
5. A compensatory mitigation plan prepared in accordance with the "Public Notice Announcing the Compensatory Mitigation Guidelines and Mitigation Checklist for Review of Mitigation Plans for the U.S. Army Corps of Engineers, New York District," dated January 10, 2005, for all projects that involve the loss of greater than 1/10<sup>th</sup> of an acre of waters of the United States; or are located within perennial streams; or requested a waiver of the 300 linear foot limit on intermittent and ephemeral streams. In accordance with 33 CFR Part 320.4(r)(1) consideration of mitigation will occur throughout the permit application review process and includes avoiding, minimizing, rectifying, reducing, or compensating for resource losses. Mitigation guidelines and checklist can be found at [www.nan.usace.army.mil/business/buslinks/regulat/pnotices/mitfinal.pdf](http://www.nan.usace.army.mil/business/buslinks/regulat/pnotices/mitfinal.pdf).

## DRAFT

6. Documentation that the applicant has already contacted the NOAA Fisheries Service (NFS) and the U.S. Fish and Wildlife Service (USFWS) concerning any Essential Fish Habitat (EFH), and any federally listed Threatened and Endangered Species that may be affected by the proposed activity. The information provided to USFWS and NFS should include the information described in 1 through 5 above and any other information specifically requested by the federal agencies to conduct their evaluation for threatened and endangered species and essential fish habitat. This documentation should include but is not limited to results of habitat surveys and assessments; a description of the area to be impacted including secondary impacts and the types and numbers of trees to be removed, sand placement, etc; a description of conservation measures which will avoid or minimize impacts to listed species.

The web addresses for the USFWS may be found at: <http://www.fws.gov/northeast/nyfo/es/esdesc.htm>, and the NMFS at: <http://www.nero.noaa.gov/nero/>

7. Provide documentation regarding any potential adverse effects to historic or cultural resources that may be listed or eligible for listing on the National Register of Historic Places. Information regarding the National Register of Historic Places may be found at: <http://nysparks.state.ny.us/shpo/register/index.htm>.

8. A written statement that clearly describes the following: (1) what measures have been taken to avoid and/or minimize any adverse impacts to wetlands or other waters of the United States, and (2) what measures have been developed to compensate for any impacts to wetlands or other waters of the United States.

### E. Water Quality Certification Conditions:

**Endangered or Threatened Species:** An individual water quality certification is required if any activity is likely to jeopardize the existence of an endangered species or threatened species listed in 6 NYCRR Part 182, or likely to destroy or adversely modify the habitat of such species. Information on New York State endangered or threatened species may be obtained from the NYS Department of Environmental Natural Heritage Program at 625 Broadway, Albany, NY 12233-4757.

**Natural Heritage Sites:** An individual water quality certification is required for any activity in any location that supports a rare species or significant natural community as identified and tracked by the New York Natural Heritage Program. Information about where such locations are known to exist may be found at DEC regional offices, the New York Natural Heritage Program in Albany, New York or, after September 1, 2007, on the DEC website at [www.dec.state.ny.us](http://www.dec.state.ny.us).

**Wild, Scenic and Recreational Rivers:** An individual water quality certification is required if the activity is located in any Wild, Scenic or Recreational River segments.

### F. Coastal Zone Management Conditions:

Activities authorized under NWP's 1, 3 (except in canals that are more than 50% bulkheaded), 6, 7, 9, 11, 12, 14, 16, 18, 19, 22, 23, 25, 27, 28, 29, 30, 31, 32, 33, 35, 36, 38, 39, 40, 41, 42, 43, 44, 45 (except in canals that are more than 50% bulkheaded), 46, and 48, where the activities would occur within the following CMP special management areas: 1) The Long Island Sound Regional Coastal Management Program; 2) Local Waterfront Revitalization Programs; 3) Significant Coastal Fish and Wildlife Habitats; and 4) Harbor Management Plans, the following applies:

- a. Within thirty (30) days of receipt by NYSDOS of an applicant's submission, which should include a complete joint New York State Department of Environmental Conservation and U.S. Army Corps of Engineers Permit Application, completed Federal Consistency Assessment Form, and all information and data necessary to assess the effects of the proposed activity on and its consistency with the CMP, including location maps and photographs of the site where the activity is proposed, NYSDOS will inform the applicant and the Corps whether:
  1. Necessary Data and information is missing from the applicant's submission. If so, the NYSDOS will notify the applicant and the Corps of the missing necessary data and information, and state that the NYSDOS review will not commence until the date the necessary data and information is

## **DRAFT**

- provided;
2. The activity meet the General Concurrence criteria set forth in the CMP and therefore, further review of the proposed activity by the NYSDOS, and the NYSDOS concurrence with an individual consistency certification for the proposed activity, are not required; or
  3. NYSDOS review of the proposed activity and NYSDOS concurrence with the applicant's consistency certification is necessary. If NYSDOS indicates review of this activity and a consistency certification for it is necessary, the activity shall not be authorized by NWP or other form of Corps authorization unless NYSDOS concurs with an applicant's consistency certification, in accordance with 15 CFR Part 930, Subpart D, or unless NYSDOS indicates the activity meets CMP General Concurrence criteria.

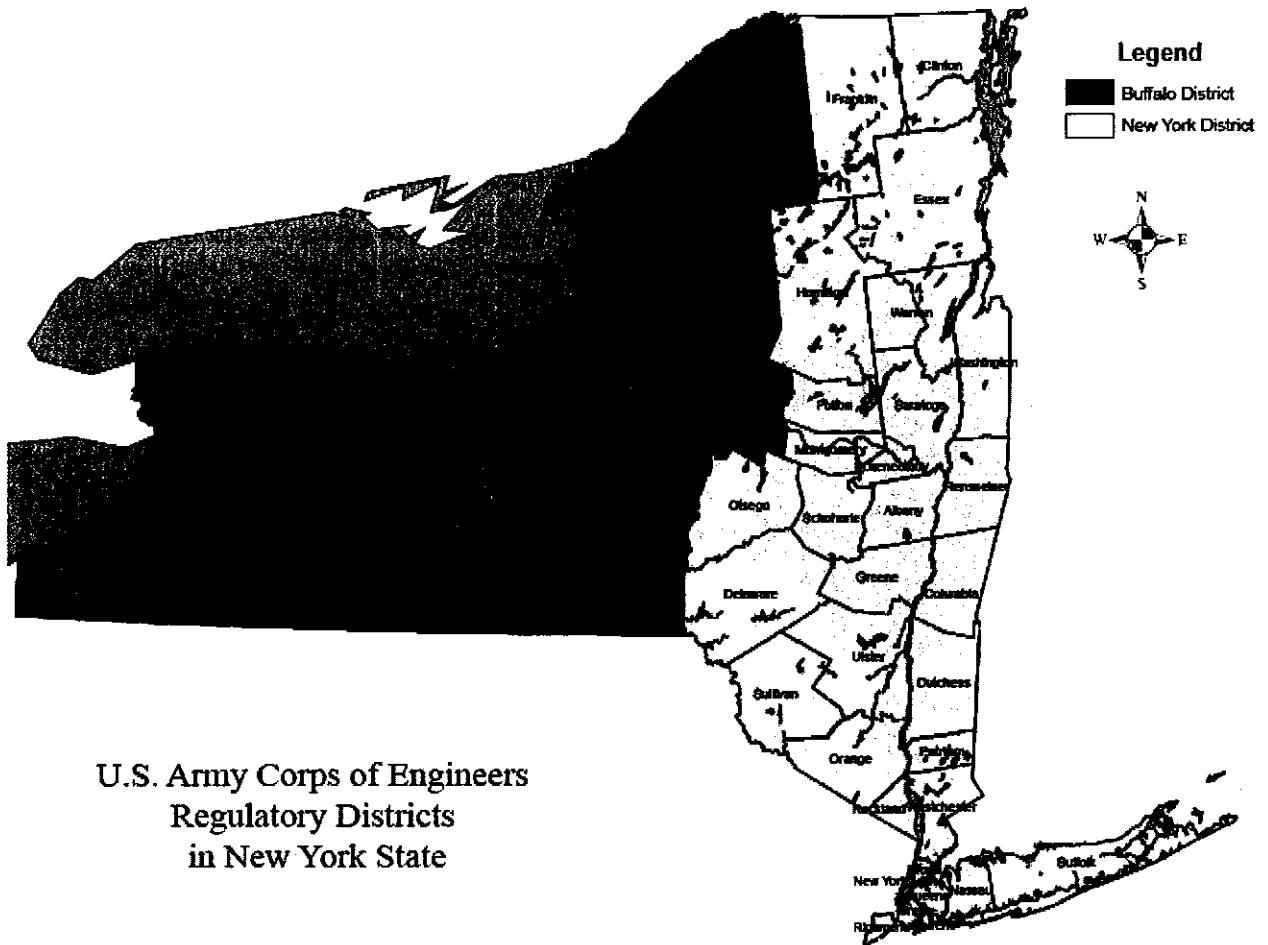
### **III. CRITICAL RESOURCE WATERS**

In accordance with NWP General Condition (GC) #19, certain activities in Critical Resource Waters cannot be authorized under the NWP program or would require a PCN (see GC #19 in the 72 FR 11092 for a list of these NWPs).

Critical Resource Waters in New York State include the following:

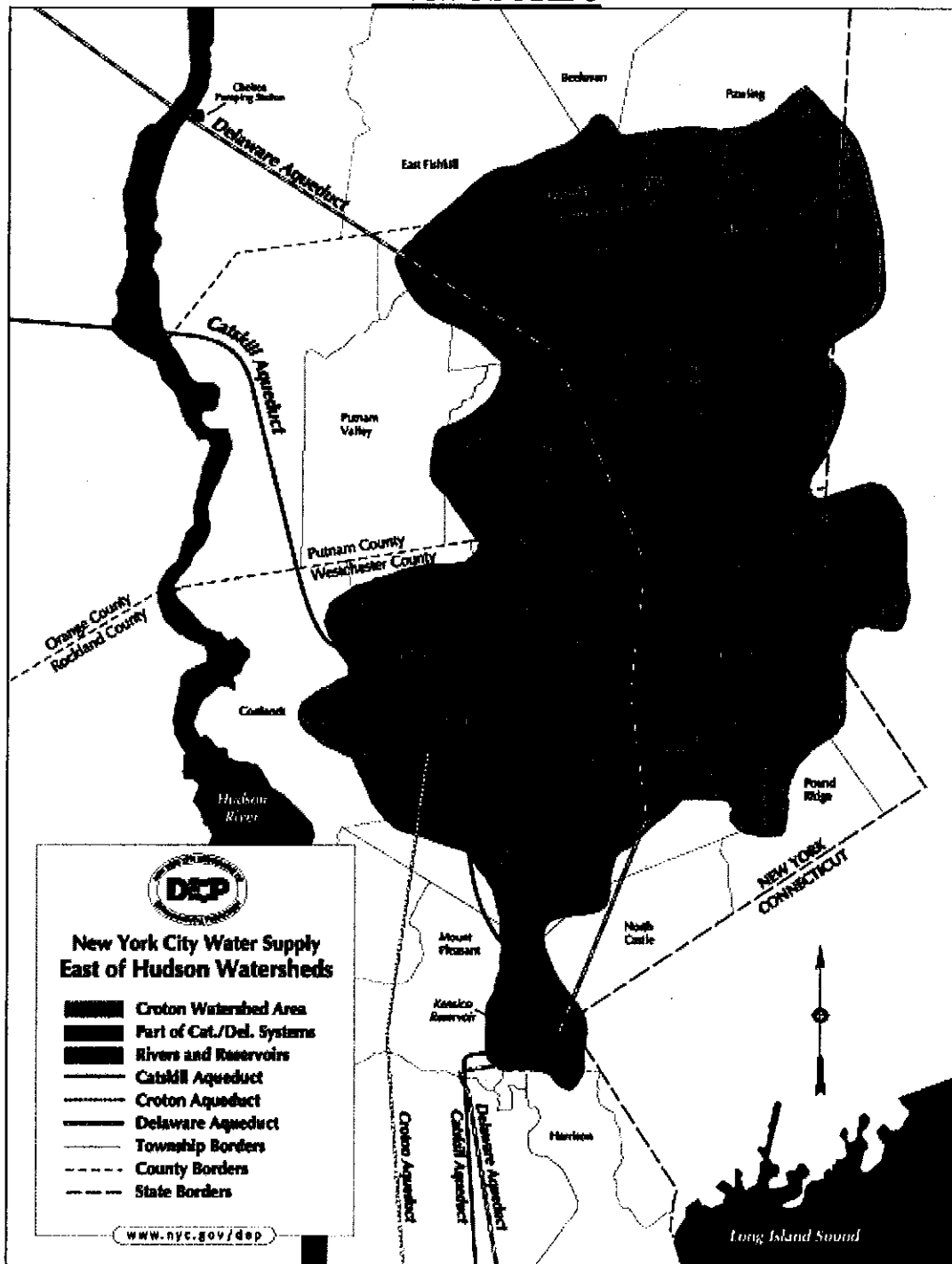
1. The New York District has designated the East-of-Hudson portion of the New York City water supply watershed as Critical Resource Waters. This area includes portions of Dutchess, Putnam and Westchester Counties as delineated on the attached map.
3. The Hudson River National Estuarine Research Reserves (NERR): is located within the New York District. The Hudson River NERR consists of four components: Piermont Marsh, Iona Island, Tivoli Bay, and Stockport Flats.

**DRAFT**  
**ENCLOSURE 2**



U.S. Army Corps of Engineers  
Regulatory Districts  
in New York State

**DRAFT  
ENCLOSURE 3**



March 12, 2007  
Federal Register

Re-Issuance of Nationwide Permits

Nationwide Permits, Conditions,  
Further Information and Definitions

## **2007 Nationwide Permits, Conditions, Further Information, and Definitions (with corrections)**

### **A. Index of Nationwide Permits, Conditions, Further Information, and Definitions**

#### *Nationwide Permits*

1. Aids to Navigation
2. Structures in Artificial Canals
3. Maintenance
4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities
5. Scientific Measurement Devices
6. Survey Activities
7. Outfall Structures and Associated Intake Structures
8. Oil and Gas Structures on the Outer Continental Shelf
9. Structures in Fleeting and Anchorage Areas
10. Mooring Buoys
11. Temporary Recreational Structures
12. Utility Line Activities
13. Bank Stabilization
14. Linear Transportation Projects
15. U.S. Coast Guard Approved Bridges
16. Return Water From Upland Contained Disposal Areas
17. Hydropower Projects
18. Minor Discharges
19. Minor Dredging
20. Oil Spill Cleanup
21. Surface Coal Mining Operations
22. Removal of Vessels
23. Approved Categorical Exclusions
24. Indian Tribe or State Administered Section 404 Programs
25. Structural Discharges
26. [Reserved]
27. Aquatic Habitat Restoration, Establishment, and Enhancement Activities
28. Modifications of Existing Marinas
29. Residential Developments
30. Moist Soil Management for Wildlife
31. Maintenance of Existing Flood Control Facilities
32. Completed Enforcement Actions
33. Temporary Construction, Access, and Dewatering
34. Cranberry Production Activities
35. Maintenance Dredging of Existing Basins
36. Boat Ramps
37. Emergency Watershed Protection and Rehabilitation
38. Cleanup of Hazardous and Toxic Waste

## *Definitions*

Best management practices (BMPs)  
Compensatory mitigation  
Currently serviceable  
Discharge  
Enhancement  
Ephemeral stream  
Establishment (creation)  
Historic property  
Independent utility  
Intermittent stream  
Loss of waters of the United States  
Non-tidal wetland  
Open water  
Ordinary high water mark  
Perennial stream  
Practicable  
Pre-construction notification  
Preservation  
Re-establishment  
Rehabilitation  
Restoration  
Riffle and pool complex  
Riparian areas  
Shellfish seeding  
Single and complete project  
Stormwater management  
Stormwater management facilities  
Stream bed  
Stream channelization  
Structure  
Tidal wetland  
Vegetated shallows  
Waterbody



(d) This NWP does not authorize maintenance dredging for the primary purpose of navigation or beach restoration. This NWP does not authorize new stream channelization or stream relocation projects.

Notification: For activities authorized by paragraph (b) of this NWP, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). Where maintenance dredging is proposed, the pre-construction notification must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals. (Sections 10 and 404)

Note: This NWP authorizes the repair, rehabilitation, or replacement of any previously authorized structure or fill that does not qualify for the Clean Water Act Section 404(f) exemption for maintenance.

4. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices and Activities.

Fish and wildlife harvesting devices and activities such as pound nets, crab traps, crab dredging, eel pots, lobster traps, duck blinds, and clam and oyster digging, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This NWP does not authorize artificial reefs or impoundments and semi-impoundments of waters of the United States for the culture or holding of motile species such as lobster, or the use of covered oyster trays or clam racks. (Sections 10 and 404)

5. Scientific Measurement Devices. Devices, whose purpose is to measure and record scientific data, such as staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar structures. Small weirs and flumes constructed primarily to record water quantity and velocity are also authorized provided the discharge is limited to 25 cubic yards. (Sections 10 and 404)

6. Survey Activities. Survey activities, such as core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching, soil surveys, sampling, and historic resources surveys. For the purposes of this NWP, the term "exploratory trenching" means mechanical land clearing of the upper soil profile to expose bedrock or substrate, for the purpose of mapping or sampling the exposed material. The area in which the exploratory trench is dug must be restored to its pre-construction elevation upon completion of the work. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. This NWP authorizes the construction of temporary pads, provided the discharge does not exceed 25 cubic yards. Discharges and structures associated with the recovery of historic resources are not authorized by this NWP. Drilling and the discharge of excavated material from test wells for oil and gas exploration are not authorized by this NWP; the plugging of such wells is authorized. Fill placed for roads and other similar activities is not authorized by this NWP. The NWP does not authorize any permanent structures. The discharge of drilling mud and cuttings may require a permit under Section 402 of the Clean Water Act. (Sections 10 and 404)

7. Outfall Structures and Associated Intake Structures. Activities related to the construction or modification of outfall structures and associated intake structures, where the effluent from the outfall is authorized, conditionally authorized, or specifically exempted by, or that are otherwise in compliance with regulations issued under the National Pollutant Discharge

manner that it is dispersed by currents or other forces. The district engineer may extend the period of temporary side casting for no more than a total of 180 days, where appropriate. In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench. The trench cannot be constructed or backfilled in such a manner as to drain waters of the United States (e.g., backfilling with extensive gravel layers, creating a french drain effect). Any exposed slopes and stream banks must be stabilized immediately upon completion of the utility line crossing of each waterbody.

Utility line substations: This NWP authorizes the construction, maintenance, or expansion of substation facilities associated with a power line or utility line in non-tidal waters of the United States, provided the activity, in combination with all other activities included in one single and complete project, does not result in the loss of greater than 1/2 acre of waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters of the United States to construct, maintain, or expand substation facilities.

Foundations for overhead utility line towers, poles, and anchors: This NWP authorizes the construction or maintenance of foundations for overhead utility line towers, poles, and anchors in all waters of the United States, provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible.

Access roads: This NWP authorizes the construction of access roads for the construction and maintenance of utility lines, including overhead power lines and utility line substations, in non-tidal waters of the United States, provided the total discharge from a single and complete project does not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters for access roads. Access roads must be the minimum width necessary (see Note 2, below). Access roads must be constructed so that the length of the road minimizes any adverse effects on waters of the United States and must be as near as possible to pre-construction contours and elevations (e.g., at grade corduroy roads or geotextile/gravel roads). Access roads constructed above pre-construction contours and elevations in waters of the United States must be properly bridged or culverted to maintain surface flows.

This NWP may authorize utility lines in or affecting navigable waters of the United States even if there is no associated discharge of dredged or fill material (See 33 CFR Part 322). Overhead utility lines constructed over section 10 waters and utility lines that are routed in or under section 10 waters without a discharge of dredged or fill material require a section 10 permit.

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

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if any of the following criteria are met: (1) the activity involves mechanized land clearing in a forested wetland for the utility line right-of-way; (2) a section 10 permit is required; (3) the utility line in waters of the United States, excluding

of the United States. For linear transportation projects in tidal waters, the discharge cannot cause the loss of greater than 1/3-acre of waters of the United States. 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.

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

This NWP cannot be used to authorize non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, train stations, or aircraft hangars.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the loss of waters of the United States exceeds 1/10 acre; or (2) there is a discharge in a special aquatic site, including wetlands. (See general condition 27.) (Sections 10 and 404)

**Note:** Some discharges for the construction of farm roads or forest roads, or temporary roads for moving mining equipment, may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

15. U.S. Coast Guard Approved Bridges. Discharges of dredged or fill material incidental to the construction of bridges across navigable waters of the United States, including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills, provided such discharges have been authorized by the U.S. Coast Guard as part of the bridge permit. Causeways and approach fills are not included in this NWP and will require a separate section 404 permit. (Section 404)

16. Return Water From Upland Contained Disposal Areas. Return water from an upland contained dredged material disposal area. The return water from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(d), even though the disposal itself occurs on the upland and does not require a section 404 permit. This NWP satisfies the technical requirement for a section 404 permit for the return water where the quality of the return water is controlled by the state through the section 401 certification procedures. The dredging activity may require a section 404 permit (33 CFR 323.2(d)), and will require a section 10 permit if located in navigable waters of the United States. (Section 404)

17. Hydropower Projects. Discharges of dredged or fill material associated with hydropower projects having: (a) Less than 5000 kW of total generating capacity at existing reservoirs, where the project, including the fill, is licensed by the Federal Energy Regulatory Commission (FERC) under the Federal Power Act of 1920, as amended; or (b) a licensing exemption granted by the FERC pursuant to Section 408 of the Energy Security Act of 1980 (16 U.S.C. 2705 and 2708) and Section 30 of the Federal Power Act, as amended.

man-made obstructions to navigation. This NWP does not authorize maintenance dredging, shoal removal, or riverbank snagging.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) The vessel is listed or eligible for listing in the National Register of Historic Places; or (2) the activity is conducted in a special aquatic site, including coral reefs and wetlands. (See general condition 27.) If condition 1 above is triggered, the permittee cannot commence the activity until informed by the district engineer that compliance with the "Historic Properties" general condition is completed. (Sections 10 and 404)

**Note 1:** If a removed vessel is disposed of in waters of the United States, a permit from the U.S. EPA may be required (see 40 CFR 229.3). If a Department of the Army permit is required for vessel disposal in waters of the United States, separate authorization will be required.

**Note 2:** Compliance with general condition 17, Endangered Species, and general condition 18, Historic Properties, is required for all NWPs. The concern with historic properties is emphasized in the notification requirements for this NWP because of the likelihood that submerged vessels may be historic properties.

**23. Approved Categorical Exclusions.** Activities undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(a) That agency or department has determined, pursuant to the Council on Environmental Quality's implementing regulations for the National Environmental Policy Act (40 CFR part 1500 et seq.), that the activity is categorically excluded from environmental documentation, because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment; and

(b) The Office of the Chief of Engineers (Attn: CECW-CO) has concurred with that agency's or department's determination that the activity is categorically excluded and approved the activity for authorization under NWP 23.

The Office of the Chief of Engineers may require additional conditions, including pre-construction notification, for authorization of an agency's categorical exclusions under this NWP.

**Notification:** Certain categorical exclusions approved for authorization under this NWP require the permittee to submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The activities that require pre-construction notification are listed in the appropriate Regulatory Guidance Letters. (Sections 10 and 404)

**Note:** The agency or department may submit an application for an activity believed to be categorically excluded to the Office of the Chief of Engineers (Attn: CECW-CO). Prior to approval for authorization under this NWP of any agency's activity, the Office of the Chief of Engineers will solicit public comment. As of the date of issuance of this NWP, agencies with approved categorical exclusions are the: Bureau of Reclamation, Federal Highway Administration, and U.S. Coast Guard. Activities approved for authorization under this NWP as of the date of this notice are found in Corps Regulatory Guidance Letter 05-07, which is available at:

<http://www.usace.army.mil/inet/functions/cw/cecwo/reg/rglsindx.htm>. Any future approved categorical exclusions will be announced in Regulatory Guidance Letters and posted on this same web site.

including tidal wetlands, to other aquatic uses, such as the conversion of tidal wetlands into open water impoundments.

**Reversion.** For enhancement, restoration, and establishment activities conducted: (1) In accordance with the terms and conditions of a binding wetland enhancement, restoration, or establishment agreement between the landowner and the U.S. Fish and Wildlife Service (FWS), the Natural Resources Conservation Service (NRCS), the Farm Service Agency (FSA), the National Marine Fisheries Service (NMFS), the National Ocean Service (NOS), or their designated state cooperating agencies; (2) as voluntary wetland restoration, enhancement, and establishment actions documented by the NRCS or USDA Technical Service Provider pursuant to NRCS Field Office Technical Guide standards; or (3) on reclaimed surface coal mine lands, in accordance with a Surface Mining Control and Reclamation Act permit issued by the OSM or the applicable state agency, this NWP also authorizes any future discharge of dredged or fill material associated with the reversion of the area to its documented prior condition and use (i.e., prior to the restoration, enhancement, or establishment activities). The reversion must occur within five years after expiration of a limited term wetland restoration or establishment agreement or permit, and is authorized in these circumstances even if the discharge occurs after this NWP expires. The five-year reversion limit does not apply to agreements without time limits reached between the landowner and the FWS, NRCS, FSA, NMFS, NOS, or an appropriate state cooperating agency. This NWP also authorizes discharges of dredged or fill material in waters of the United States for the reversion of wetlands that were restored, enhanced, or established on prior-converted cropland that has not been abandoned or on uplands, in accordance with a binding agreement between the landowner and NRCS, FSA, FWS, or their designated state cooperating agencies (even though the restoration, enhancement, or establishment activity did not require a section 404 permit). The prior condition will be documented in the original agreement or permit, and the determination of return to prior conditions will be made by the Federal agency or appropriate state agency executing the agreement or permit. Before conducting any reversion activity the permittee or the appropriate Federal or state agency must notify the district engineer and include the documentation of the prior condition. Once an area has reverted to its prior physical condition, it will be subject to whatever the Corps Regulatory requirements are applicable to that type of land at the time. The requirement that the activity result in a net increase in aquatic resource functions and services does not apply to reversion activities meeting the above conditions. Except for the activities described above, this NWP does not authorize any future discharge of dredged or fill material associated with the reversion of the area to its prior condition. In such cases a separate permit would be required for any reversion.

**Reporting:** For those activities that do not require pre-construction notification, the permittee must submit to the district engineer a copy of: (1) The binding wetland enhancement, restoration, or establishment agreement, or a project description, including project plans and location map; (2) the NRCS or USDA Technical Service Provider documentation for the voluntary wetland restoration, enhancement, or establishment action; or (3) the SMCRA permit issued by OSM or the applicable state agency. These documents must be submitted to the district engineer at least 30 days prior to commencing activities in waters of the United States authorized by this NWP.

**Notification.** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27), except for the following activities:

erosion and sedimentation. This NWP does not authorize the construction of new dikes, roads, water control structures, or similar features associated with the management areas. The activity must not result in a net loss of aquatic resource functions and services. This NWP does not authorize the conversion of wetlands to uplands, impoundments, or other open water bodies. (Section 404)

Note: The repair, maintenance, or replacement of existing water control structures or the repair or maintenance of dikes may be authorized by NWP 3. Some such activities may qualify for an exemption under Section 404(f) of the Clean Water Act (see 33 CFR 323.4).

**31. Maintenance of Existing Flood Control Facilities.** Discharges of dredged or fill material resulting from activities associated with the maintenance of existing flood control facilities, including debris basins, retention/detention basins, levees, and channels that: (i) were previously authorized by the Corps by individual permit, general permit, by 33 CFR 330.3, or did not require a permit at the time they were constructed, or (ii) were constructed by the Corps and transferred to a non-Federal sponsor for operation and maintenance. Activities authorized by this NWP are limited to those resulting from maintenance activities that are conducted within the "maintenance baseline," as described in the definition below. Discharges of dredged or fill materials associated with maintenance activities in flood control facilities in any watercourse that have previously been determined to be within the maintenance baseline are authorized under this NWP. This NWP does not authorize the removal of sediment and associated vegetation from natural water courses except when these activities have been included in the maintenance baseline. All dredged material must be placed in an upland site or an authorized disposal site in waters of the United States, and proper siltation controls must be used.

Maintenance Baseline: The maintenance baseline is a description of the physical characteristics (e.g., depth, width, length, location, configuration, or design flood capacity, etc.) of a flood control project within which maintenance activities are normally authorized by NWP 31, subject to any case-specific conditions required by the district engineer. The district engineer will approve the maintenance baseline based on the approved or constructed capacity of the flood control facility, whichever is smaller, including any areas where there are no constructed channels, but which are part of the facility. The prospective permittee will provide documentation of the physical characteristics of the flood control facility (which will normally consist of as-built or approved drawings) and documentation of the approved and constructed design capacities of the flood control facility. If no evidence of the constructed capacity exists, the approved capacity will be used. The documentation will also include best management practices to ensure that the impacts to the aquatic environment are minimal, especially in maintenance areas where there are no constructed channels. (The Corps may request maintenance records in areas where there has not been recent maintenance.) Revocation or modification of the final determination of the maintenance baseline can only be done in accordance with 33 CFR 330.5. Except in emergencies as described below, this NWP cannot be used until the district engineer approves the maintenance baseline and determines the need for mitigation and any regional or activity-specific conditions. Once determined, the maintenance baseline will remain valid for any subsequent reissuance of this NWP. This NWP does not authorize maintenance of a flood control facility that has been abandoned. A flood control facility will be considered abandoned if it has operated at a significantly reduced capacity without needed maintenance being accomplished in a timely manner.

(ii) The terms of a final Federal court decision, consent decree, or settlement agreement resulting from an enforcement action brought by the United States under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act of 1899; or

(iii) The terms of a final court decision, consent decree, settlement agreement, or non-judicial settlement agreement resulting from a natural resource damage claim brought by a trustee or trustees for natural resources (as defined by the National Contingency Plan at 40 CFR subpart G) under Section 311 of the Clean Water Act, Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, Section 312 of the National Marine Sanctuaries Act, Section 1002 of the Oil Pollution Act of 1990, or the Park System Resource Protection Act at 16 U.S.C. 19jj, to the extent that a Corps permit is required.

Compliance is a condition of the NWP itself. Any authorization under this NWP is automatically revoked if the permittee does not comply with the terms of this NWP or the terms of the court decision, consent decree, or judicial/non-judicial settlement agreement. This NWP does not apply to any activities occurring after the date of the decision, decree, or agreement that are not for the purpose of mitigation, restoration, or environmental benefit. Before reaching any settlement agreement, the Corps will ensure compliance with the provisions of 33 CFR part 326 and 33 CFR 330.6(d)(2) and (e). (Sections 10 and 404)

33. Temporary Construction, Access, and Dewatering. Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps of Engineers or the U.S. Coast Guard. This NWP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Fill must consist of materials, and be placed in a manner, that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a section 10 permit if located in navigable waters of the United States. (See 33 CFR part 322.)

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). The pre-construction notification must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. (Sections 10 and 404)

34. Cranberry Production Activities. Discharges of dredged or fill material for dikes, berms, pumps, water control structures or leveling of cranberry beds associated with expansion, enhancement, or modification activities at existing cranberry production operations. The cumulative total acreage of disturbance per cranberry production operation, including but not limited to, filling, flooding, ditching, or clearing, must not exceed 10 acres of waters of the United States, including wetlands. The activity must not result in a net loss of wetland acreage. This NWP does not authorize any discharge of dredged or fill material related to other cranberry

In general, the prospective permittee should wait until the district engineer issues an NWP verification before proceeding with the watershed protection and rehabilitation activity. However, in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur, the emergency watershed protection and rehabilitation activity may proceed immediately and the district engineer will consider the information in the pre-construction notification any comments received as a result of agency coordination to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity (see general condition 27). (Sections 10 and 404)

**38. Cleanup of Hazardous and Toxic Waste.** Specific activities required to effect the containment, stabilization, or removal of hazardous or toxic waste materials that are performed, ordered, or sponsored by a government agency with established legal or regulatory authority. Court ordered remedial action plans or related settlements are also authorized by this NWP. This NWP does not authorize the establishment of new disposal sites or the expansion of existing sites used for the disposal of hazardous or toxic waste.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

**Note:** Activities undertaken entirely on a Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) site by authority of CERCLA as approved or required by EPA, are not required to obtain permits under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act.

**39. Commercial and Institutional Developments.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction or expansion of commercial and institutional building foundations and building pads and attendant features that are necessary for the use and maintenance of the structures. Attendant features may include, but are not limited to, roads, parking lots, garages, yards, utility lines, storm water management facilities, and recreation facilities such as playgrounds and playing fields. Examples of commercial developments include retail stores, industrial facilities, restaurants, business parks, and shopping centers. Examples of institutional developments include schools, fire stations, government office buildings, judicial buildings, public works buildings, libraries, hospitals, and places of worship. The construction of new golf courses, new ski areas, or oil and gas wells is not authorized by this NWP.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Sections 10 and 404)

**40. Agricultural Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include the installation, placement, or construction of drainage



but it does not authorize the construction of hotels, restaurants, racetracks, stadiums, arenas, or similar facilities.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) (Section 404)

**43. Stormwater Management Facilities.** Discharges of dredged or fill material into non-tidal waters of the United States for the construction and maintenance of stormwater management facilities, including the excavation of stormwater ponds/facilities, detention basins, and retention basins; the installation and maintenance of water control structures, outfall structures and emergency spillways; and the maintenance dredging of existing stormwater management ponds/facilities and detention and retention basins.

The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States, including the loss of no more than 300 linear feet of stream bed, unless for intermittent and ephemeral stream beds this 300 linear foot limit is waived in writing by the district engineer. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters. This NWP does not authorize discharges of dredged or fill material for the construction of new stormwater management facilities in perennial streams.

Notification: For the construction of new stormwater management facilities, or the expansion of existing stormwater management facilities, the permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) Maintenance activities do not require pre-construction notification if they are limited to restoring the original design capacities of the stormwater management facility. (Section 404)

**44. Mining Activities.** Discharges of dredged or fill material into non-tidal waters of the United States for mining activities, except for coal mining activities. The discharge must not cause the loss of greater than 1/2-acre of non-tidal waters of the United States. This NWP does not authorize discharges into non-tidal wetlands adjacent to tidal waters.

Notification: The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity. (See general condition 27.) If reclamation is required by other statutes, then a copy of the reclamation plan must be submitted with the pre-construction notification. (Sections 10 and 404)

**45. Repair of Uplands Damaged by Discrete Events.** This NWP authorizes discharges of dredged or fill material, including dredging or excavation, into all waters of the United States for activities associated with the restoration of upland areas damaged by storms, floods, or other discrete events. This NWP authorizes bank stabilization to protect the restored uplands. The restoration of the damaged areas, including any bank stabilization, must not exceed the contours, or ordinary high water mark, that existed before the damage occurred. The district engineer retains the right to determine the extent of the pre-existing conditions and the extent of any restoration work authorized by this NWP. The work must commence, or be under contract to

affected areas returned to pre-construction elevations. The affected areas must be revegetated, as appropriate;

(d) In wetlands, the top 6 to 12 inches of the trench should normally be backfilled with topsoil from the trench so that there is no change in preconstruction contours;

(e) To the maximum extent practicable, the restoration of open waters must be to the pre-construction course, condition, capacity, and location of the waterbody;

(f) Any exposed slopes and stream banks must be stabilized immediately upon completion of the project;

(g) Additional maintenance activities done in conjunction with the time-sensitive inspection or repair must not result in additional losses of waters of the United States; and,

(h) The permittee is a participant in the Pipeline Repair and Environmental Guidance System (PREGS).

Reporting: The permittee must submit a post construction report to the PHP within seven days after completing the work. The report must be submitted electronically to PHP via PREGS. The report must contain the following information: project sites located in waters of the United States, temporary access routes, stream dewatering sites, temporary fills and temporary structures identified on a map of the pipeline corridor; photographs of the pre- and post-construction work areas located in waters of the United States; and a list of best management practices employed for each pipeline segment shown on the map. (Section 10 and 404)

Note: Division engineers may modify this NWP by adding regional conditions to protect the aquatic environment, as long as those regional conditions do not require pre-construction notification or other actions that would delay time sensitive inspections and repairs. Examples of appropriate regional conditions include best management practices.

48. Existing Commercial Shellfish Aquaculture Activities. This NWP authorizes the installation of buoys, floats, racks, trays, nets, lines, tubes, containers, and other structures necessary for the continued operation of the existing commercial aquaculture activity. This NWP also authorizes discharges of dredged or fill material necessary for shellfish seeding, rearing, cultivating, transplanting, and harvesting activities. Rafts and other floating structures must be securely anchored and clearly marked.

This NWP does not authorize new operations or the expansion of the project area for an existing commercial shellfish aquaculture activity. This NWP does not authorize the cultivation of new species (i.e., species not previously cultivated in the waterbody). This NWP does not authorize attendant features such as docks, piers, boat ramps, stockpiles, staging areas, or the deposition of shell material back into waters of the United States as waste.

Reporting: For those activities that do not require pre-construction notification, the permittee must submit a report to the district engineer that includes the following information: (1) the size of the project area for the commercial shellfish aquaculture activity (in acres); (2) the location of the activity; (3) a brief description of the culture method and harvesting method(s); (4) the name(s) of the cultivated species; and (5) whether canopy predator nets are being used. This is a subset of the information that would be required for pre-construction notification. This report may be provided by letter or using an optional reporting form provided by the Corps. Only one report needs to be submitted during the period this NWP is valid, as long as there are no changes to the operation that require pre-construction notification. The report must be submitted to the district engineer within 90 days of the effective date of this NWP.

contact the appropriate Corps district office to determine if regional conditions have been imposed on an NWP. Prospective permittees should also contact the appropriate Corps district office to determine the status of Clean Water Act Section 401 water quality certification and/or Coastal Zone Management Act consistency for an NWP.

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

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

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

2. Aquatic Life Movements. No activity may substantially disrupt the necessary life cycle movements of those species of aquatic life indigenous to the waterbody, including those species that normally migrate through the area, unless the activity's primary purpose is to impound water. Culverts placed in streams must be installed to maintain low flow conditions.

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

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

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

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

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

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

under any NWP which “may affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(b) Federal agencies should follow their own procedures for complying with the requirements of the ESA. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

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

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

(e) Authorization of an activity by a NWP does not authorize the “take” of a threatened or endangered species as defined under the ESA. In the absence of separate authorization (e.g., an ESA Section 10 Permit, a Biological Opinion with “incidental take” provisions, etc.) from the U.S. FWS or the NMFS, both lethal and non-lethal “takes” of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the U.S. FWS and NMFS or their world wide Web pages at <http://www.fws.gov/> and <http://www.noaa.gov/fisheries.html> respectively.

**18. Historic Properties.** (a) In cases where the district engineer 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.

(b) Federal permittees should follow their own procedures for complying with the requirements of Section 106 of the National Historic Preservation Act. Federal permittees must provide the district engineer with the appropriate documentation to demonstrate compliance with those requirements.

(c) Non-federal permittees must submit a pre-construction notification to the district engineer if the authorized activity may have the potential to cause effects to any historic properties listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unidentified properties. For such activities, the pre-construction notification must state which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties. Assistance regarding information on the location of or potential for the presence of historic resources can be sought from the State

20. Mitigation. The district engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

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

(b) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) 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 pre-construction notification, unless the district engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require pre-construction notification, the district engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(d) For losses of streams or other open waters that require pre-construction notification, the district engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(e) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the NWP. For example, if an NWP has an acreage limit of 1/2 acre, it cannot be used to authorize any project resulting in the loss of greater than 1/2 acre of waters of the United States, even if compensatory mitigation is provided that replaces or restores some of the lost waters. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirement associated with the NWP.

(f) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. 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. 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 compensatory mitigation, the district engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

(g) Permittees may propose the use of mitigation banks, in-lieu fee arrangements or separate activity-specific compensatory mitigation. In all cases, the mitigation provisions will specify the party responsible for accomplishing and/or complying with the mitigation plan.

the transfer of this nationwide permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.”

---

(Transferee)

---

(Date)

26. Compliance Certification. Each permittee who received an NWP verification from the Corps must submit a signed certification regarding the completed work and any required mitigation. The certification form must be forwarded by the Corps with the NWP verification letter and will include:

- (a) A statement that the authorized work was done in accordance with the NWP authorization, including any general or specific conditions;
- (b) A statement that any required mitigation was completed in accordance with the permit conditions; and
- (c) The signature of the permittee certifying the completion of the work and mitigation.

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

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

(2) Forty-five calendar days have passed from the district engineer's receipt of the complete PCN and the prospective permittee has not received written notice from the district or division engineer. However, if the permittee was required to notify the Corps pursuant to general condition 17 that listed species or critical habitat might be affected or in the vicinity of the project, or to notify the Corps pursuant to general condition 18 that the activity may have the potential to cause effects to historic properties, the permittee cannot begin the activity until receiving written notification from the Corps that is “no effect” on listed species or “no potential to cause effects” on historic properties, or that any consultation required under Section 7 of the Endangered Species Act (see 33 CFR 330.4(f)) and/or Section 106 of the National Historic Preservation Act (see 33 CFR 330.4(g)) is completed. Also, work cannot begin under NWPs 21, 49, or 50 until the permittee has received written approval from the Corps. If the proposed activity requires a written waiver to exceed specified limits of an NWP, the permittee cannot begin the activity until the district engineer issues the waiver. If the district or division engineer notifies the permittee in writing that an individual permit is required within 45 calendar days of receipt of a complete PCN, the permittee cannot begin the activity until an individual permit has been obtained.

(2) For all NWP 48 activities requiring pre-construction notification and for other NWP activities requiring pre-construction notification to the district engineer that result in the loss of greater than 1/2-acre of waters of the United States, the district engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (U.S. FWS, state natural resource or water quality agency, EPA, State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Office (THPO), and, if appropriate, the NMFS). With the exception of NWP 37, these agencies will then have 10 calendar days from the date the material is transmitted to telephone or fax the district engineer notice that they intend to provide substantive, site-specific comments. If so contacted by an agency, the district engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The district engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency, except as provided below. The district engineer will indicate in the administrative record associated with each pre-construction notification that the resource agencies' concerns were considered. For NWP 37, the emergency watershed protection and rehabilitation activity may proceed immediately in cases where there is an unacceptable hazard to life or a significant loss of property or economic hardship will occur. The district engineer will consider any comments received to decide whether the NWP 37 authorization should be modified, suspended, or revoked in accordance with the procedures at 33 CFR 330.5.

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

(4) Applicants are encouraged to provide the Corps multiple copies of pre-construction notifications to expedite agency coordination.

(5) For NWP 48 activities that require reporting, the district engineer will provide a copy of each report within 10 calendar days of receipt to the appropriate regional office of the NMFS.

(e) District Engineer's Decision: In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The district engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may be either conceptual or detailed. If the district engineer determines that the activity complies with the terms and conditions of the NWP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the district engineer will notify the permittee and include any conditions the district engineer deems necessary. The district engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the district engineer will expeditiously review the proposed compensatory mitigation plan. The district engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment

decline in other aquatic resource function(s). Enhancement does not result in a gain in aquatic resource area.

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

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

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

**Independent utility:** A test to determine what constitutes a single and complete 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.

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

**Loss of waters of the United States:** Waters of the United States that are permanently adversely affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent adverse effects include permanent discharges of dredged or fill material that change an aquatic area to dry land, increase the bottom elevation of a waterbody, or change the use of a waterbody. The acreage of loss of waters of the United States is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for an NWP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the 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.

**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).

**Open water:** For purposes of the NWPs, an open water is any area that in a year with normal patterns of precipitation has water flowing or standing above ground to the extent that an ordinary high water mark can be determined. Aquatic vegetation within the area of standing or



which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

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

**Single and complete project:** The term “single and complete project” is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a “single and complete project” is 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 waterbody several times at separate and distant locations, each crossing is considered a single and complete project. 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.

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

**Stormwater management facilities:** Stormwater management facilities are those facilities, including but not limited to, stormwater retention and detention ponds and best management practices, which retain water for a period of time to control runoff and/or improve the quality (i.e., by reducing the concentration of nutrients, sediments, hazardous substances and other pollutants) of stormwater runoff.

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

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

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

**Tidal wetland:** A tidal wetland is a 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).

APPROVED JURISDICTIONAL DETERMINATION FORM  
U.S. Army Corps of Engineers

## SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): 15-May-2008

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: New York District, NAN-2008-00623-EJE-JD1

## C. PROJECT LOCATION AND BACKGROUND INFORMATION:

State : NY - New York  
County/parish/borough: Kings  
City: Brooklyn  
Lat: 40.6694  
Long: -73.9989  
Universal Transverse Mercator: [ ]  
Name of nearest waterbody: Gowanus Canal  
Name of nearest Traditional Navigable Water (TNW): Gowanus Canal  
Name of watershed or Hydrologic Unit Code (HUC): Lower Hudson

☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.☐ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc.) are associated with the action and are recorded on a different JD form.

## D. REVIEW PERFORMED FOR SITE EVALUATION:

☒ Office Determination Date: 15-May-2008☐ Field Determination Date(s): [ ]

## SECTION II: SUMMARY OF FINDINGS

## A. RHA SECTION 10 DETERMINATION OF JURISDICTION

There are "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area.

☒ Waters subject to the ebb and flow of the tide.☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

Explain:

## B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There [ ] "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area.

## 1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area:<sup>1</sup>

Water Name	Water Type(s) Present
2008-623; Hamilton MTS Expansion; Gowanus Canal	TNWs, including territorial seas

## b. Identify (estimate) size of waters of the U.S. in the review area:

Area: (m<sup>2</sup>)

Linear: (m)

## c. Limits (boundaries) of jurisdiction:

based on: [ ]

OHWM Elevation: (if known)

**2. Non-regulated waters/wetlands:**<sup>3</sup>

Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional. Explain:

**SECTION III: CWA ANALYSIS**

**A. TNWs AND WETLANDS ADJACENT TO TNWs**

**1. TNW**

TNW Name	Summarize rationale supporting determination:
2008-623; Hamilton MTS Expansion; Gowanus Canal	-

**2. Wetland Adjacent to TNW**

Not Applicable.

**B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):**

**1. Characteristics of non-TNWs that flow directly or indirectly into TNW**

**(i) General Area Conditions:**

Watershed size: [ ]  
Drainage area: [ ]  
Average annual rainfall: inches  
Average annual snowfall: inches

**(ii) Physical Characteristics**

**(a) Relationship with TNW:**

- ☐ Tributary flows directly into TNW.  
☐ Tributary flows through [ ] tributaries before entering TNW.  
:Number of tributaries

Project waters are [ ] river miles from TNW.  
Project waters are [ ] river miles from RPW.  
Project Waters are [ ] aerial (straight) miles from TNW.  
Project waters are [ ] aerial(straight) miles from RPW.

- ☐ Project waters cross or serve as state boundaries.

Explain:

Identify flow route to TNW:<sup>5</sup>

**Tributary Stream Order, if known:**

Not Applicable.

**(b) General Tributary Characteristics:**

**Tributary Is:**  
Not Applicable.

**Tributary properties with respect to top of bank (estimate):**

Not Applicable.

**Primary tributary substrate composition:**

Not Applicable.

**Tributary (conditions, stability, presence, geometry, gradient):**

Not Applicable.

Not Applicable.

**E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS.<sup>10</sup>**  
Not Applicable.

Identify water body and summarize rationale supporting determination:  
Not Applicable.

Provide estimates for jurisdictional waters in the review area:  
Not Applicable.

**F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS**

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements:
- ☐ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce:
- ☐ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR):
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (Explain):
- ☐ Other (Explain):

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment:  
Not Applicable.

Provide acreage estimates for non-jurisdictional waters in the review area, that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction.  
Not Applicable.

**SECTION IV: DATA SOURCES.**

**A. SUPPORTING DATA. Data reviewed for JD**

(listed items shall be included in case file and, where checked and requested, appropriately reference below):

Data Reviewed	Source Label	Source Description
-Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant	-	-
-U.S. Geological Survey map(s).	-	-

**B. ADDITIONAL COMMENTS TO SUPPORT JD:**

Not Applicable.

<sup>1</sup>-Boxes checked below shall be supported by completing the appropriate sections in Section III below.

<sup>2</sup>-For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least 2 seasonally (e.g., typically 3 months).

<sup>3</sup>-Supporting documentation is presented in Section III.F.

<sup>4</sup>-Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

<sup>5</sup>-Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

<sup>6</sup>-A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow

above and below the break.

<sup>7</sup>-Ibid.

<sup>8</sup>-See Footnote #3.

<sup>9</sup> -To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

<sup>10</sup>-Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.