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FAX: 860-434-4306

January 30, 2023

306070

*Submitted via e-filing*

Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423-0001

ENTERED  
Office of Proceedings  
January 30, 2023  
Part of  
Public Record

Re: STB Docket No. AB 733 (Sub-No. 1X), *Housatonic Railroad Company, Inc. - - Discontinuance of Service - Dutchess and Putnam Counties, NY*

Dear Ms. Brown:

I am attaching for e-filing Housatonic Railroad Company's Verified Notice of Exemption 49 C.F.R. § 1152.50 in the above-captioned proceeding. In addition, please note that the filing fee of \$4,600 has been paid.

Please do not hesitate to contact me with any questions.

Sincerely,

Edward J. Rodriguez  
Counsel for Housatonic Railroad Company

Cc: Susan Sarch, Esq.  
Charles A. Spitulnik, Esq.

FILED  
January 30, 2023  
SURFACE  
TRANSPORTATION BOARD

FEE RECEIVED  
January 30, 2023  
SURFACE  
TRANSPORTATION BOARD

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Docket No. AB 733 (Sub No. 1X)**

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**HOUSATONIC RAILROAD COMPANY, INC.—DISCONTINUANCE OF SERVICE -  
DUTCHESS AND PUTNAM COUNTIES, NEW YORK**

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**VERIFIED NOTICE OF EXEMPTION**

**49 C.F.R. § 1152.50**

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Communications with respect to this document should be addressed to:

HOUSATONIC RAILROAD COMPANY, INC.

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Old Lyme, Connecticut 06371  
(860) 434-4303  
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*Counsel for Housatonic Railroad Company*

January 30, 2023

**BEFORE THE  
SURFACE TRANSPORTATION BOARD  
Docket No. AB 733 (Sub No. 1X)**

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**HOUSATONIC RAILROAD COMPANY, INC.—DISCONTINUANCE OF SERVICE  
DUTCHESS AND PUTNAM COUNTIES, NEW YORK**

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**VERIFIED NOTICE OF EXEMPTION  
49 C.F.R. § 1152.50**

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Pursuant to 49 U.S.C. § 10502(a) and 49 U.S.C §1152.50, *et. seq.* Housatonic Railroad Company, Inc., (“HRRC”), a Class III rail carrier, hereby provides verified notice of its class exemption from the application and prior approval requirements of 49 U.S.C. §10903, for discontinuance of its common carrier rail service and operations over the rail line known as the “Beacon Line” between milepost 0.0 at Beacon, New York and milepost 71.2<sup>1</sup> at the Connecticut/New York state line, a distance of 41.1 miles, in Dutchess and Putnam Counties, New York (the “Line” or the “Beacon Line”). The Line has had no freight traffic for more than eight years.

**THE RAIL LINE - HISTORY**

In 1992, the Maybrook Railroad Company (“MRC”) acquired the Line from Consolidated Rail Corporation (“Conrail”). Danbury Terminal Railroad Company (“DTRR”) acquired authority to operate over the Line that same year. *See Danbury Terminal R.R. Co. and Maybrook Properties, Inc.—Acquisition and Operation Exemption—Consolidated Rail Corp.*, ICC Finance Docket No. 32180 (Sub-No. 1) (Service Date Dec. 29, 1992). On January 9, 1995, MRC conveyed by two quitclaim deeds and an assignment assumption agreement, the Line to

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<sup>1</sup> The connecting branches that form the Line also retain their original milepost designations used by the former New York Central and New York, New Haven & Hartford, which are milepost 12.8 and milepost 42.9.

the Metro-North Commuter Railroad Company (“Metro-North” or “MNCR”). In the quitclaim deeds, MRC reserved to DTRR the right to conduct common carrier freight service on the Line. A trackage Rights Agreement among MRC, Metro-North, and DTRR, was entered into to govern the operation of DTRR.

On January 12, 1995, the Interstate Commerce Commission (“ICC”) granted an earlier filed petition by Metro-North to acquire the Line (referred to as the “Maybrook Line” in that proceeding), and to exempt Metro-North from the provisions of 49 U.S.C. Subtitle IV. *Metro North Commuter R.R. Co.—Acquisition Exemption—The Maybrook Line*, ICC Finance Docket No. 32639 (Sub-No. 1) (Service Date Jan. 13, 1995) (“1995 Decision”). In the 1995 Decision, the ICC exempted Metro-North from acquiring a residual common carrier obligation and permitted Metro-North to abandon the Line subject only to DTRR seeking authority to discontinue freight service. *See 1995 Decision*, slip op. at 3-4.

In 1996, DTRR and HRRC, which were previously affiliates, merged, and HRRC assumed DTRR’s operating rights. *Housatonic R.R. Co.—Corporate Family Transaction Exemption—Danbury Terminal R.R. Co.*, STB Docket No. 33310 (Service Date Dec. 27, 1996). HRRC is owned by the Housatonic Transportation Company. *See Housatonic R.R. Co., Maybrook R.R. Co. and Housatonic Transp. Co.—Intra-Corporate Family Transaction Exemption*, STB Docket No. FD 35723 (Service Date Mar. 22, 2013); *Housatonic R.R. Co. and Housatonic Track Co.—Intra-Corporate Family Transaction Exemption*, STB Docket No. FD 35857 (Service Date Dec. 23, 2014).

On February 8, 2020, as a precursor to filing an adverse discontinuance proceeding before this Board, Metro-North filed a petition for Partial Waiver of Discontinuance Regulations and for an Exemption under 49 C.F.R. § 1152.50(e)(5) and 49 U.S.C. § 10502(a) This Board granted that



Petition for Waivers, in part, on April 20, 2021. *See Metro-North Commuter R.R. Co.- Adverse Discontinuance of Trackage Rights- Housatonic R.R. Co.*, Docket No. AB 1311 (STB served April 20, 2021). Metro-North subsequently filed a Petition for Adverse Abandonment, and HRRC opposed the Petition.

The Parties have now settled the issues raised in that Adverse Abandonment proceeding and have executed a Settlement Agreement, in which, among other items, HRRC has agreed to discontinue its common carrier rights and operations and to support Metro-North's request for interim trail use on the Beacon Line and to transfer its reactivation right related to the proposed trail use to Metro-North. MNCR and HRRC will be filing a joint motion for withdrawal of the Adverse Abandonment proceeding in Docket AB-No. 1311 upon publication by the Board of the Federal Register Notice contemplated by the first sentence of 49 CFR §1152.50 (d)(3).

Metro-North plans to file the Notice required by the ICC's 1995 decision that it is abandoning the Line, along with a Notice of Interim Trail Use, and a Verified Petition for Exemption from 49 U.S.C. § 10901 to acquire the reactivation right associated with the Line following implementation of the proposed railbanking.

In accordance with 49 C.F.R. § 1152.50, HRRC submits the following information:

**1. Certification: 49 C.F.R. § 1152.50(b), and 49 C.F.R. § 1152.50(d)(2)**

HRRC certifies that the Line satisfies the criteria for discontinuance under the exemption provisions at 49 C.F.R. Part 1152, Subpart F. During the past two years, HRRC has operated no local or overhead traffic over the Line; overhead traffic, if there were any, could be rerouted over other lines; and no formal complaint has been filed by a user of rail service on the Line or a state or local government entity acting on behalf of such user regarding cessation of service over the

Line is either pending before the Surface Transportation Board or any U.S. District Court or has been decided in favor of the complainant within the two-year period. See Exhibit A.

**2. Pre-filing of notice to specified governmental agencies: 49 CFR § 1152.50 (d)(1)**

HRRC certifies that at least 10 days before filing of this Notice, letters of Notification of Housatonic Railroad Company's intent to file a Notice of Exemption under 49 CFR § 1152.50 were sent to the governmental agencies designated under 49 CFR § 1152.50 (d)(1). See Exhibit B.

**3. Proposed Consummation Date: 49 C.F.R. § 1152.50(d)(2)**

The proposed discontinuance will be consummated no earlier than March 21, 2023.

**4. Additional Information Required: 49 C.F.R. §§ 1152.22(a)(1)-(4), (7)-(8) and (e)(4) Exact Name of Applicant (49 C.F.R. § 1152.22(a)(1)):**

The Applicant's exact name is: Housatonic Railroad Company, Inc.

**Common Carrier Status (49 C.F.R. § 1152.22(a)(2)):**

HRRC is a common carrier subject to 49 U.S.C. Subtitle IV, chapter 105

**Relief Sought (49 C.F.R. § 1152.22(a)(3)):**

Pursuant to the class exemption for the abandonment and discontinuance of service codified at 49 C.F.R. §1152.50, HRRC seeks to discontinue common carrier service and operations over the Line between milepost 0.0 and milepost 71.2 in Dutchess and Putnam Counties, New York. All of the track is located in Dutchess and Putnam Counties, New York. There are no stations on the Line. Information concerning the filing or intention of Metro-North to file a Notice of Interim Trail Use is provided to the Board as information and is not a part of this Notice. HRRC requests that the Board proceed to publish its Notice of Housatonic

Railroad's filing of a Notice of Discontinuance independently of the consideration of Metro-North's Notice of Interim Trail Use.

**Map (49 C.F.R. § 1152.22(a)(4)):**

A map of the Beacon Line showing its exact location in relation to other rail lines in the area, highways, water routes and population centers is included as **Exhibit C**.

**Applicant's Representative (49 C.F.R. § 1152.22(a)(7)):**

Edward J. Rodriguez  
General Counsel  
Housatonic Railroad Company, Inc.  
4 Huntley Road  
P.O. Box 687  
Old Lyme, Connecticut 06371  
(860) 434-4303  
e.rodiguez@hrrc.com

**List of Zip Codes that the Beacon Line traverses (49 C.F.R. § 1152.22(8)):**

The Line traverses the following United State Postal Service Zip Codes: 12508, 12524, 12533, 12582, 12570, 12531, 12563, 10509, and 12564.

**Statement of Suitability for Other Public Purposes (49 C.F.R. § 1152.22(e)(4)):**

The right-of-way of the Line may be suitable for other public purposes including other forms of mass transportation, conservation, energy production or transmission, or recreation.

This Notice does not involve an abandonment.

**5. Labor Protection (49 C.F.R. § 1152.50(d)(2)):**

The applicable labor protection conditions for this discontinuance proceeding are set forth in *Oregon Short Line Railroad and the Union Pacific Railroad Company—Abandonment Portion Goshen Branch Between Firth and Ammon, in Bingham and Bonneville Counties, Idaho,*



360 I.C.C. 91 (1979). The discontinuance of common carrier service on the Line will not affect any railroad employees as there is currently no common carrier service on the Line.

**6. Federally Granted Rights of Way: 49 C.F.R. § 1152.50(d)(1)**

Based on information in HRRC's possession, the Line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available to those requesting it.

**7. Environmental and Historic Notice: 49 C.F.R. § 1152.50(d)(1) and 49 CFR §1105.11**

At least twenty (20) days prior to the filing of this Notice, HRRC provided all agencies required under the applicable regulations with a copy of a previously submitted Environmental and Historic Report, and OEA's September 9, 2022 Final Environmental Assessment. The text of the letters and a list of the persons to whom it was sent is attached hereto as **Exhibit D**. The Board's Office of Environmental Analysis ("OEA") reviewed Metro-North's Environmental and Historic report submitted in Docket No. AB 1311 that addressed discontinuance of service on the Line and subsequently provided a copy of its draft Environmental Assessment ("DEA") to all parties of record and upon all agencies who commented during the DEA's preparation. *Draft Environmental Assessment, Metro-North Commuter Railroad—Adverse Discontinuance of Trackage Rights—Housatonic Railroad Company*, STB No. AB 1311 (Service date August 5, 2022). These agencies included the New York State Department of Environmental Conservation's Division of Fish and Wildlife, New York State's Division of Environmental Permits, the New York Department of State Coastal Zone Management Program, the U.S. Fish and Wildlife Services, New York Ecological Services, Field Office, the U.S. Army Corps of Engineers, New York District, for their review and comment. *Id.* at 3-5. OEA did not receive



any comments on the DEA and issued a Final Environmental Assessment on September 9, 2022, in which it stated that the discontinuance of HRRC's trackage rights in the Line would not significantly affect the quality of the human environment and imposed no conditions on the requested discontinuance. *Final Environmental Assessment, Metro-North Commuter Railroad–Adverse Discontinuance of Trackage Rights–Housatonic Railroad Company*, STB No. AB 1311 (Service date Sept. 9, 2022).

8. **Newspaper Publication**

HRRC hereby certifies that a notice of the proposed discontinuance was published in a newspaper of general circulation in Putnam County, New York and Dutchess County, New York. A copy of the notices is attached as **Exhibit E**.

Respectfully submitted,  
HOUSATONIC RAILROAD COMPANY, INC.



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Edward J. Rodriguez  
4 Huntley Road  
P.O. Box 687  
Old Lyme, Connecticut 06371  
(860) 434-4303  
e.rodiguez@hrrc.com  
*Counsel for Housatonic Railroad Company, Inc.*

January 30, 2023

**EXHIBIT A**

to the Notice of Exemption  
filed on January 30, 2023

**Verification and Certification that the Rail Line Meets the Criteria  
of 40 C.F.R. § 1152.50(b)**

Exhibit A

**VERIFICATION AND CERTIFICATION THAT THE RAIL LINE MEETS THE  
CRITERIA OF 40 C.F.R. § 1152.50(b)**


I, John R. Hanlon, Jr., do attest and affirm as follows:

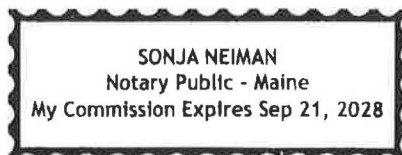
1. That I am the President of the Housatonic Railroad Company, Inc.
2. I have carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that I have knowledge of the facts and matters relied upon in the application; and that all representations set forth therein are true and correct to the best of my knowledge, information, and belief.
3. That there has been no local or overhead freight traffic over the Line for at least the last two years. Overhead traffic, if there were any, could be rerouted over other lines.
4. There have been no formal complaints filed with the Surface Transportation Board or any U.S. District Court by a user of rail service on the Line, or a state or local government entity acting on behalf of such user, regarding cessation of service over the Line. No U.S. District Courts have ruled in favor of a complainant within the past two years.
5. I am authorized by the Housatonic Railroad Company to verify and file with the Surface Transportation Board the foregoing Notice of Exemption in STB AB 733 (Sub No. 1X).

  
\_\_\_\_\_  
John R. Hanlon, Jr.

State of Maine, County of Knox ss.

Subscribed and sworn to before me, a Notary Public in and for the State and County above named, this 11 day of January, 2022.

  
\_\_\_\_\_  
My Commission expires: September 21, 2028



**EXHIBIT B**

to the Notice of Exemption  
filed on January 30, 2023

**Notice Required Per  
49 C.F.R. 1152.50(d) – (10-Day Letter)**



**Notice Letter Required Per 49 C.F.R. 1152.50(d)**

New York State Department of Public Service  
3 Empire State Plaza  
Albany, NY 12223-1350

Military Surface Deployment and Distribution Command  
Transportation Engineering Agency – Railroads for National Defense Program  
1 Soldier Way, Bldg 1900W  
Scott AFB, IL 62225

National Park Service  
Land Resources Division  
1849 C Street, NW  
Main Interior Building  
Washington, DC 20240

National Park Service  
Conservation and Outdoor Recreation  
Division Office  
1849 C Street NW  
Washington, D.C. 20240 U.S. Department of Agriculture, Chief of the Forest Service

Laurel McClean  
U.S. Dept. of Agriculture  
Chief of Forest Service  
1400 Independence Ave., SW  
Washington, D.C. 20250-0003  
[Laurel.mcclean@usda.gov](mailto:Laurel.mcclean@usda.gov)

**[ADDRESS]**

January 10, 2023

RE: Proposed Discontinuance of Beacon Line in Putnam and Dutchess Counties, New York,  
STB Docket No. 733 (Sub No. 1X)

To Whom it May Concern:

This letter provides notice, pursuant to 49 C.F.R. 1152.50(d), that the Housatonic Railroad Company (“Housatonic RR”) plans to seek authorization from the Surface Transportation Board (“STB” or “Board”) to discontinue service over the line of railroad known as the “Beacon Line” between milepost 0.0 at Beacon, New York and milepost 71.2 at the Connecticut/New York state line, a distance of 41.1 miles, in Dutchess and Putnam Counties,

New York. Housatonic RR expects to file a Notice of Exemption with the STB on or about January 12, 2023, in STB Docket No. AB 733 (Sub No. 1X), consistent with the Board's exemption procedures.

The Housatonic RR operates the Beacon Line under a Trackage Rights Agreement with Metro-North Commuter Railroad ("Metro-North"). The Line traverses the following United States zip codes: 12508, 12524, 12533, 12582, 12570, 12531, 12563, 10509, and 12564. A map of the Line is enclosed. Based on the information in our possession, the Line does not contain federally granted rights-of-way. Any documentation in the railroad's possession will be made available promptly to those requesting it. 49 C.F.R. 1152.20(d).

Once Housatonic RR has consummated this discontinuance, Metro-North, owner of the Line, intends to initiate trail use on the corridor. You have previously been provided with a copy of an Environmental and Historic Report related to this Line that was prepared in conjunction with an Adverse Discontinuance proceeding in STB Docket No. AB-No 1311, and a copy of that Report is attached hereto. The STB's Office of Environmental Analysis issued a Final Environmental Assessment on September 9, 2022, in which it stated that the discontinuance of HRRC's trackage rights in the Line would not significantly affect the quality of the human environment and imposed no conditions on the requested discontinuance. *Final Environmental Assessment, Metro-North Commuter Railroad—Adverse Discontinuance of Trackage Rights—Housatonic Railroad Company*, STB No. AB 1311 (Service date Sept. 9, 2022). A copy of OEA's Final Environmental Assessment is attached.

Sincerely,

Edward J. Rodriguez  
*Counsel for Housatonic Railroad Company*

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Docket No. AB 1311**

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**METRO-NORTH COMMUTER RAILROAD COMPANY—ADVERSE  
DISCONTINUANCE OF TRACKAGE RIGHTS—HOUSATONIC RAILROAD  
COMPANY**

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**ENVIRONMENTAL AND HISTORIC REPORT  
OF METRO-NORTH COMMUTER RAILROAD COMPANY**

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*Counsel for Metro-North Commuter Railroad Company*

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Docket No. AB 1311**

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**METRO-NORTH COMMUTER RAILROAD COMPANY—ADVERSE  
DISCONTINUANCE OF TRACKAGE RIGHTS—HOUSATONIC RAILROAD  
COMPANY**

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**ENVIRONMENTAL AND HISTORIC REPORT OF  
METRO-NORTH COMMUTER RAILROAD**

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Metro-North Commuter Railroad Company (“Metro-North”) expects to file a Petition for Adverse Discontinuance with the Surface Transportation Board (“STB” or “Board”) on or about March 29, 2021 to discontinue Housatonic Railroad Company’s (“HRRC”) trackage rights over a 41.1-mile line of railroad known as the Beacon Line (“Beacon Line” or “the Line”) between milepost 0.0 and milepost 71.2, from Beacon, New York to Brewster, New York, in Dutchess and Putnam Counties, New York. HRRC’s trackage rights were established in an agreement between HRRC’s predecessor<sup>1</sup> railroad and Metro-North, which acquired the Line in 1995. When Metro-North acquired the Line, the Interstate Commerce Commission exempted Metro-North from most of the provisions of 49 U.S.C. Subtitle IV and permitted Metro-North to abandon the Line subject only to the serving carrier’s discontinuance of freight service. *Metro-North Commuter Railroad Company – Acquisition Exemption – The Maybrook Line*, ICC Finance Docket No. 32639, slip op.

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<sup>1</sup> The Trackage Rights Agreement granted exclusive operating rights to the Danbury Terminal Railroad Company (“DTRC”). In 1996, DTRC and HRRC merged and the HRRC assumed DTRC’s operating rights. *Housatonic R.R. Co.—Corporate Family Transaction Exemption—Danbury Terminal R.R. Co.*, STB Docket No. 33310 (Service Date Dec. 27, 1996).



at 3-4 (Service Date Jan 13, 1995). Accordingly, Metro-North is not required to seek authority from STB in order to abandon the Beacon Line.

However, pursuant to STB precedent, an abandoning carrier has been required to file an Environmental and Historic Report, which would be required as one step of the abandonment process, under similar circumstances.<sup>2</sup> Accordingly, Metro-North files this Environmental and Historic Report in connection with and in support of Metro-North's Petition for Adverse Discontinuance Proceeding.

Metro-North constructed a 23-mile trail along a portion of the Beacon Line in connection with New York State's Empire Trail Initiative, known as the Maybrook Trail, which connects the Putnam Trailway/Maybrook Bikeway, in the Village of Brewster in Putnam County, with the Dutchess Rail Trail in the Hamlet of Hopewell Junction in Dutchess County. As of the filing of this Environmental and Historic Report, Metro-North has no plans to remove the existing portions of the corridor.

In conjunction with the Maybrook Trail construction, Metro-North has obtained a Section 401 Water Quality Certification from the New York State Department of Environmental Conservation ("NYSDEC") for the construction activities associated with the Maybrook Trail portion of the Beacon Line. A copy of the permit is attached as **Exhibit A**. The Army Corps of Engineers, Western Section, also issued a Nationwide General Permit 18 **Exhibit B**, for the discharge of fill material into waters of the United States for activities associated with the construction of the trail. The Beacon Line was originally double-tracked. One track had already

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<sup>2</sup> See e.g. *Longhorn Ry. Co.—Discontinuance Exemption—In Burnet, TX*, 1997 STB LEXIS 2958, \*2-\*3 (Service Date Apr. 1, 1997) ("Although [the City of] Austin does not need to obtain abandonment authority because it was exempted from the provisions of 49 U.S.C. Subtitle IV in 1987, we are required to undertake an appropriate analysis of the potential environmental impacts of abandonment. Therefore, Austin must submit any environmental and historic data which may be required of it and comply with any conditions that might be imposed before consummating abandonment and salvage of the line segment.")

been removed prior to Metro-North's acquisition of the Beacon Line. Once the associated permits were granted, Metro-North began construction of the Maybrook Trail in the portion of the right-of-way where the track had been removed. The single track remains intact.

There are no stations on the Line. The Subject Line traverses through United States Postal Service Zip Codes: 12508, 12524, 12533, 12582, 12570, 12531, 12564, 12563, and 10509. A map of the Subject Line<sup>3</sup> is attached as **Exhibit C**.

### **ENVIRONMENTAL REPORT**

#### **49 C.F.R. 1105.7(e) Requirements:**

- (1) Proposed action and alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.**

The Beacon Line has not had any local or overhead traffic for more than the last two years. Metro-North has no plans to salvage the existing track at this time.

- (2) Transportation System. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.**

Discontinuance of service over the Beacon Line will have no effect on regional or local transportation system or patterns. There has been no freight rail traffic or passenger rail traffic on the Line for years; therefore, no freight or passenger traffic will be diverted to other modes as a result of the proposed abandonment.

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<sup>3</sup> Metro-North has requested waivers from some of the filing requirements associated with discontinuance proceedings, including the submission of a map of the line. *Petition for Partial Waiver of Discontinuance Regulations and for Exemption*, STB Docket No. AB 1311, 4-5 (filed Feb. 8, 2021). The map included as **Exhibit C** was prepared using the Federal Railroad Administration's Safety Map (available at <https://fragis.fra.dot.gov/gisfrsafety/>).

**(3) Land Use.**

- (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.**

The proposed action is consistent with existing land use patterns for the surrounding areas.

- (ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.**

The proposed abandonment will not affect prime agricultural land.

- (iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9.**

The Beacon Line is not located on land or water within a designated coastal zone.

- (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10905 and explain why.**

The right-of-way is suitable for, and is developed as, a public recreational trail connecting with the existing Putnam Trailway/Maybrook Bikeway, in the Village of Brewster in Putnam County, with the Dutchess Rail Trail in the Hamlet of Hopewell Junction in Dutchess County. The rest of the Line, from Beacon, New York to Hopewell Junction, New York is suitable for public recreational trail use.

**(4) Energy.**

- (i) Describe the effect of the proposed action on transportation of energy resources.**

The proposed abandonment and discontinuance will have no effect on the transportation of energy resources. No freight traffic has moved over the Beacon Line in years.

**(ii) Describe the effect of the proposed action on recyclable commodities.**

The proposed abandonment and discontinuance will have no effect on recyclable commodities.

**(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.**

The abandonment and discontinuance will not have any impact on energy consumed in the transportation of freight as no freight has moved over the Beacon Line in years.

**(iv) If the proposed action will cause diversions from rail to motor carriage of more than:**

**(A) 1,000 rail carloads a year; or**

**(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in § 1105.7(e)(4)(iii) need not be supplied if the more detailed information in § 1105.7(e)(4)(iv) is required.**

Not applicable. The proposed discontinuance will not cause any diversions of rail carloads per year over any part of the affected line meeting or exceeding the thresholds set forth in (iv)(A) or (B).

**(5) Air.**

**(i) If the proposed action will result in either:**

**(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or**

**(B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or**

**(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10502) to**



**construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.**

Not applicable. The proposed discontinuance will not result in any increase in rail or truck traffic meeting or exceeding the specific thresholds for increased rail or truck traffic set forth in (i)(A), (B), or (C) above. There has been no traffic on the Beacon Line in years.

**(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either:**

**(A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,**

**(B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or**

**(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10502), or a case involving the reinstitution of service over a previously abandoned line, only the three train a day threshold in this item shall apply.**

Not applicable. The proposed discontinuance will not result in any increase in rail or truck traffic meeting or exceeding the specific thresholds for increased rail or truck traffic or rail yard activity set forth in (ii) (A), (B), or (C) above.

**(iii) If Transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.**

Not applicable. The proposed discontinuance will not affect the transportation of ozone depleting materials.

**(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:**

**(i) An incremental increase in noise levels of three decibels Ldn or more; or**

- (ii) **An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.**

Not applicable. The proposed discontinuance will not create any noise-related impacts of this nature.

**(7) Safety.**

- (i) **Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).**

The proposed discontinuance will have no adverse impacts on health or public safety as the impacts of the discontinuance have already been experienced with cessation of service many years ago.

- (ii) **If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spill; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.**
- (iii) **If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.**

Not applicable. The proposed discontinuance will not result in the transportation of hazardous materials. There are no known hazardous waste sites in the right-of-way nor have there been any known hazardous materials spills on the right-of-way.

**(8) Biological resources.**

- (i) **Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.**

Pursuant to the Permit issued by NYSDEC, “Incidental Take Avoidance Measures,” and “No Interference with Fish and Wildlife,” measures were required and followed by Metro-North to preserve the habitats of the Blanding’s Turtle, Bog Turtle, Indiana Bat and Northern Long-Eared Bats, and Pied-Billed Grebe during the construction of the Maybrook Trail. **Exhibit A**, page 1.

**(ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.**

No National parks, State parks or forests or refuges will be affected by the proposed discontinuance.

**(9) Water.**

**(i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.**

The proposed discontinuance is consistent with all applicable water quality standards. As discussed *supra*, Metro-North has obtained a Section 401 Water Quality Certification, attached as Exhibit A, from NYSDEC for the work associated with the construction of the Maybrook Trail. The Expiration date is 12/31/2025. **Exhibit A**, page 1. The construction complies with “all applicable New York State water quality standards.” **Exhibit A**, page 5.

**(ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.**

The proposed abandonment does not require permits under section 404 of the Clean Water Act.

**(iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)**

The proposed action does not require a permit under section 402 of the Clean Water Act.

- (10) Proposed Mitigation. Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.**

Not applicable.

- (11) Additional Information for Rail Constructions. The following additional information should be included for rail construction proposals (including connecting track construction):**

- (i) Describe the proposed route(s) by State, county and subdivision, including a plan view, at a scale not to exceed 1:24,000 (7 ½ minute U.S.G.S. quadrangle map), clearly showing the relationship to the existing transportation network (including the location of all highway and road crossings) and the right-of-way according to ownership and land use requirements.**
- (ii) Describe any alternative routes considered, and a no-build alternative (or why this would not be applicable), and explain why they were not selected.**

Not applicable.

- (iii) Describe the construction plans, including the effect on the human environment, labor force requirements, the location of borrow pits, if any, and earthwork estimates.**

Not applicable.

- (iv) Describe in detail the rail operations to be conducted upon the line, including estimates of freight (carloads and tonnage) to be transported, the anticipated daily and annual number of train movements, number of cars per train, types of cars, motive power requirements, proposed speeds, labor force and proposed maintenance of way practices.**

Not applicable.

- (v) Describe the effects, including indirect or down-line impacts, of the new or diverted traffic over the line if the thresholds governing energy, noise and air impacts in §§ 1105.7(e)(4), (5), or (6) are met.**

Not applicable.

- (vi) Describe the effects, including impacts on essential public services (e.g., fire, police, ambulance, neighborhood schools), public roads, and adjoining properties, in communities to be traversed by the line.**

Not applicable.

**(vii) Discuss societal impacts, including expected change in employment during and after construction.**

Not applicable. There is no planned rail construction following the discontinuance of service along the Line. No traffic has moved over the Beacon Line for over two years. Accordingly, no traffic will need to be diverted and the discontinuance of trackage rights will have no effect on the local or regional transportation system.

**Historic Report, 49 C.F.R. 1105.8(d)**

- (1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action**

In 2018, Hartgen Archeological Associates, Inc. conducted a Phase I Archeological Investigation for Maybrook Trail in the Towns of East Fishkill, Beekman, Pawling, Patterson, and Southeast Dutchess and Putnam Counties, New York. The Hartgen Report, attached as **Exhibit D**, contains several Maps and Photographs of the Maybrook trail portions of line, produced in conjunction with the Hartgen Report. **Exhibit D**, Map 1 through Map 4e.

- (2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area**

The right of way along the Beacon Rail Line is over ten feet in width and traverses wooded areas and roads through a suburban region.

- (3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;**

The Hartgen Report contains several photographs of the line, produced in conjunction with the Report. **Exhibit D**, Photos 1 – 17.

- (4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;**

The Hartgen Report contains a review of the three Map-documented structures within the Maybrook Trail portion of the line. **Exhibit D**, Section 5.1, p. 5.

- (5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;**

As set forth in the Hartgen Report, “The New York and Harlem Railroad was opened in sections between the 1830s and 1860s and connected Lower Manhattan with Harlem and areas beyond. It passed in the vicinity of Trailheads 1, 2, and 5 and passed immediately west of the Trailhead 4. Sections of this historic line are today part of the Metro-North system. In the 1860s, Trailhead 3 was located near a proposed section of the Boston, Hartford and Erie line. This line opened in the 1870s, connecting southern New York with New England. Sections of this historic line have also been assimilated into the Metro-North system.” Hartgen Report, **Exhibit D** at 6.

**(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;**

The Hartgen Report provides the most comprehensive analysis of the structures on the rail line. **Exhibit D**, p. 7.

**(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);**

The Hartgen report found “No significant archeological deposits or sites were identified by the Phase I archeological field reconnaissance of proposed trailheads. No further archeological work is recommended.” **Exhibit D**, p.10.

**(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.**

The Hartgen Report, Appendix 1, provides the records of the Shovel Test performed on the soil. See **Exhibit D**, Appendix 1.

**(9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified nonrailroad**



**owned properties or groups of properties immediately adjacent to the railroad right-of-way: photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the location and type of the site (i.e., prehistoric or native American).**

On July 19, 2018, Philip A. Perazio, Historic Preservation Program Analyst – Archeology Unit, submitted a letter to Joseph Kelley advising that the Maybrook Trail project, impacting that particular portion of the line, would have “No Effect on historic properties listed or eligible on the National Register of Historic Places.” See **Exhibit E**.

Respectfully Submitted,



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Charles A. Spitulnik  
Katherine Bourdon  
1634 I (Eye) Street NW  
Suite 300  
Washington, DC 20006  
(202) 955-5600  
cspitulnik@kaplankirsch.com  
kbourdon@kaplankirsch.com

# EXHIBIT A

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Division of Environmental Permits, Region 3  
21 South Putt Corners Road, New Paltz, NY 12561-1620  
P: (845) 256-3054 | F: (845) 255-4659  
www.dec.ny.gov



**Department of  
Environmental  
Conservation**

June 21, 2019

Metro-North Commuter Railroad  
Attn: Mr. Richard Bottali  
525 North Broadway  
White Plains, NY 10603

Re: Maybrook Trailway (Beacon Rail Trail)  
DEC Permit #: 3-9903-00113/00002 (WQ)  
Towns of Southeast & Patterson, Putnam County  
Towns of Pawling, Beekman & East Fishkill, Dutchess County

**Issuance of Water Quality Certification & Requirements for  
Article 11, Title 5 Incidental Take Permit Avoidance**

Dear Permittee:

The New York State Department of Environmental Conservation (Department) has reviewed the application, which was submitted by Nicholas Canonico, NOVA Consulting & Engineering, on behalf of Metro-North Commuter Railroad, for a Section 401 Water Quality Certification (WQC). The project involves the construction of a shared-use bicycling and pedestrian path which runs approximately 23 miles, adjacent to the existing Metro-North Railroad Beacon Line, from Brewster in Putnam County to Hopewell Junction in Dutchess County. The Department has issued the WQC, enclosed.

The proposed work is located in close proximity to known occurrences of the following state-listed species: bog turtle (endangered) Blanding's turtles (threatened), Indiana bat (endangered), northern long-eared bat (threatened), and pied-billed grebe (threatened). Due to the nature and location of this project, the Department requested additional information and review of impacts pursuant to 6NYCRR Part 182, Endangered and Threatened Species of Fish and Wildlife, for these species.

Based upon the information provided, take-avoidance measures during construction activities were required. The Department reviewed the offered take-avoidance and minimization measures to protect against the incidental taking of these species. The take-avoidance and minimization measures are outlined on plan sheet titled "General Notes – 2," sheet GN-2, dated May 2019.

Please note that the following measures are **required** for compliance with Article 11, Title 5 of the Environmental Conservation Law:



Re: DEC Permit #: 3-9903-00113/00002  
Maybrook Trailway (Beacon Rail Trail)  
Towns of Southeast & Patterson, Putnam County  
Towns of Pawling, Beekman & East Fishkill, Dutchess County

**Incidental Take Avoidance Measures – Section 11-0535**

1. Blanding's Turtle Time Restriction: All work within mile 1 of Share 1 shall take place between October 16 and April 14 to protect the state-listed threatened Blanding's turtles.
2. Tree Removal Time Restriction: Tree removal shall occur between November 1 and March 31 only for the protection of state listed species, Indiana bat and northern long-eared bats.
3. Pied-billed Grebe Time Restriction: No work shall take place between April 15 and August 1 near pied-billed grebe habitat.

Based on the above-referenced information and as long as the above-referenced take-avoidance and minimization measures are implemented as proposed, the Department has determined that the proposed activity is not likely to result in the incidental taking of these species, and an Article 11, Title 5 Incidental Take Permit is not required for this project.

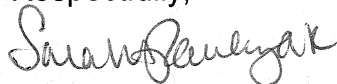
**No Interference with Fish and Wildlife – Section 11-0505**

4. Beaver Dam Removal Not Authorized: Removal or modification of existing beaver dams located within project limits is not authorized by this permit.

If beaver dam removal becomes necessary, please contact the Bureau of Wildlife, at [wildlife.r3@dec.ny.gov](mailto:wildlife.r3@dec.ny.gov), regarding the permitting process.

If there are any questions, please feel free to contact me at 845-256-3050 or by email at [sarah.pawliczak@dec.ny.gov](mailto:sarah.pawliczak@dec.ny.gov).

Respectfully,



Sarah Pawliczak

Division of Environmental Permits

cc: Brian Drumm, NYSDEC Bureau of Ecosystem Health  
Lisa Masi, NYSDEC Bureau of Wildlife  
Joyce Giudice, NYSDEC Office of General Counsel  
Brian Orzel, USACE  
Maria Tupper-Goebel, NYCDEP  
Noelle Rayman-Metcalf, USFWS  
Alison Zachritz, Nova Consulting and Engineering  
Nicholas Canonico, Nova Consulting and Engineering  
Daniel Briar, WSP USA, Inc.  
Karen Timko, Metro North Commuter Railroad Company  
Town of Southeast Town Clerk  
Town of Patterson Town Clerk  
Town of Pawling Town Clerk  
Town of Beekman Town Clerk  
Town of East Fishkill Town Clerk



**PERMIT**  
**Under the Environmental Conservation Law (ECL)**

**Permittee and Facility Information**

**Permit Issued To:**  
METRO-NORTH COMMUTER RAILROAD  
COMPANY  
525 N BROADWAY FL 2  
  
WHITE PLAINS, NY 10603-3701  
(914) 461-0592

**Facility:**  
EMPIRE STATE TRAIL - MAYBROOK  
TRAILWAY  
RTE 82 IN HOPEWELL JUNCTION TO  
PROSPECT HILL RD IN BREWSTER  
HOPEWELL JUNCTION, NY 12533

**Facility Location:** in SEVERAL COUNTIES in THIS REGION

**Facility Principal Reference Point:** NYTM-E: 611.687 NYTM-N: 4601.566  
Latitude: 41°33'28.7" Longitude: 73°39'38.4"

**Authorized Activity:** This project involves approximately 1,360 square feet (sq. ft.) of disturbance to DEC-regulated freshwater wetlands PQ-10 (class 2), PQ-29 (class 2), DP-22 (class 1) and BR-6 (class 1) and within regulated wetlands and waters of the U.S. Disturbance within regulated areas includes tree felling, installation of erosion and sediment controls, excavation, filling and grading, construction of a new 8-ft. to 10-ft.-wide paved path with 1-ft. to 2-ft.-wide shoulders, removal of debris from existing culverts, and repairs to existing culverts and bridges. The work is associated with the construction of an approximately 23-mile shared-use bicycle and pedestrian path adjacent to the existing, inactive Metro-North Railroad Beacon Line, extending from Route 82 in Hopewell Junction, Dutchess County to Prospect Hill Road in Brewster, Putnam County. This permit includes conditions required for the avoidance of a Part 182 Incidental Taking permit.

**Permit Authorizations**

**Water Quality Certification - Under Section 401 - Clean Water Act**

Permit ID 3-9903-00113/00002

New Permit

Effective Date: 6/21/2019

Expiration Date: 12/31/2025



**NYSDEC Approval**

**By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.**

Permit Administrator: REBECCA S CRIST, Deputy Regional Permit Administrator  
Address: NYSDEC Region 3 Headquarters  
21 S Putt Corners Rd  
New Paltz, NY 12561

Authorized Signature: \_\_\_\_\_

Date 06/21/2019

**Distribution List**

- Brian Drumm, NYSDEC Bureau of Ecosystem Health
- Lisa Masi, NYSDEC Bureau of Wildlife
- Joyce Giudice, NYSDEC Office of General Counsel
- Brian Orzel, USACE
- Maria Tupper-Goebel, NYCDEP
- Noelle Rayman-Metcalf, USFWS
- Alison Zachritz, NOVA Consulting and Engineering
- Nicholas Canonico, NOVA Consulting and Engineering
- Laurie Stubenrauch, NOVA Consulting and Engineering
- Karen Timko, Metro-North Commuter Railroad
- Daniel Briar, WSP USA Inc.
- Town of Southeast Town Clerk
- Town of Patterson Town Clerk
- Town of Pawling Town Clerk
- Town of Beekman Town Clerk
- Town of East Fishkill Town Clerk

**Permit Components**

- NATURAL RESOURCE PERMIT CONDITIONS
- WATER QUALITY CERTIFICATION SPECIFIC CONDITION
- GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS
- NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS



**NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following  
Permits: WATER QUALITY CERTIFICATION**

**1. Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by WSP USA Inc. and consist of the plans as referenced in Natural Resource Permit Condition #2.

**2. Approved Plans** The approved plans consist of the following items:

1. "Empire State Trail - Maybrook Trailway Section," sheets 1 through 314, received by this office on 06/19/19, dated July 2018. The following sheets were last revised May 2019:
  - "Drawing Index - 1," sheet G-1;
  - "Drawing Index - 2," sheet G-2;
  - "Erosion and Sediment Control Details - 2," sheet ED-02;
  - "General Plan - 13," sheet GP-13;
  - "General Plan - 20," sheet GP-20;
  - "General Plan - 21," sheet GP-21;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 13," sheet ESC-13;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 20" sheet ESC-20;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 21," sheet ESC-21;
  - "General Plan - 41," sheet GP-41;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 41," sheet ESC-41;
  - "General Plan - 78," sheet GP-78;
  - "General Plan - 82," sheet GP-82;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 78," sheet ESC-78;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 82," sheet ESC-82;
  - "General Plan - 83," sheet GP-83;
  - "General Plan - 102," sheet GP-102;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 83," sheet ESC-83; and
  - "Drainage, Grading, Erosion and Sediment Control Plan - 102," sheet ESC-102.

**3. Post Sign and Permit** The enclosed permit and permit sign must be conspicuously posted in a publicly accessible location at the project site. They must be visible, legible and protected from the elements at all times.

**4. Notify DEC 48 Hrs Prior to Work** The permittee or a representative must contact by telephone Brian Drumm, NYSDEC Bureau of Ecosystem Health, at 845-256-3091 or by email at [brian.drumm@dec.ny.gov](mailto:brian.drumm@dec.ny.gov) and Lisa Masi, NYSDEC Bureau of Wildlife, at 845-256-2257 or by email at [lisa.masi@dec.ny.gov](mailto:lisa.masi@dec.ny.gov) at least 48 hours prior to the commencement of the project authorized herein.

**5. Approval of Site Specific Culverts and Crossings** Prior to commencement of activities, the permittee shall submit site-specific plans for all work associated with the culverts and crossings within regulated areas to Brian Drumm, NYSDEC Bureau of Ecosystem Health. Work shall not commence until the permittee receives written approval from DEC staff of the site-specific plans.



- 6. Education and Encounter Plan** All measures in the Education and Encounter (E&E) Plan, as approved by the Department, shall be implemented to avoid impacts to bog turtles. The retained monitor shall deliver the E&E plan to personnel and train personnel to identify bog turtles that may be present in the project area, prior to commencement of any ground disturbance on-site.
- 7. Qualified Monitor On-Site** A qualified turtle monitor shall be on-site for all work within bog turtle areas. The monitor shall be licensed by New York State to handle turtles.
- 8. Bog Turtle Encounters** If any bog turtles are encountered during the project, all work shall stop immediately. The person in charge of the site shall contact the monitor, the USFWS and the NYSDEC Bureau of Wildlife to report the incident and for further instruction. The Bureau of Wildlife can be reached by phone at 845-256-3098 or by email at [wildlife.r3@dec.ny.gov](mailto:wildlife.r3@dec.ny.gov). The location, project name and explanation of the incident must be provided.
- 9. Limits of Disturbance Boundary** The limits of disturbance shall be marked with flags prior to the commencement of any activities within the project area in order to prevent the inadvertent intrusion of equipment or grading into protected areas. The markers shall be maintained until project completion.
- 10. Install Controls as Shown on Plans** Prior to commencement of the activities authorized herein, the permittee shall install securely anchored silt fencing and/or continuous staked straw bales as shown on the plans or drawings referenced in this permit. These erosion control devices shall be maintained until all disturbed land is fully vegetated to prevent any silt or sediment from entering the freshwater wetland or its adjacent area. Silt fencing, hay bales and any accumulated silt or sediment shall be completely removed for disposal at an appropriate upland site.
- 11. No Equipment in Wetland or Streams** Heavy equipment, including bulldozers, backhoes, payloaders, etc., shall not be operated in any regulated wetlands or waters.
- 12. Clean Fill Only** All fill shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, flyash, broken concrete, demolition debris, garbage, household refuse, tires, woody materials including tree or landscape debris, and metal objects. The introduction of materials toxic to aquatic life is expressly prohibited.
- 13. Seed, Mulch Disturbed Areas** All areas of soil disturbance resulting from this project shall be seeded with an appropriate perennial grass, and mulched with straw immediately upon completion of the project, within two days of final grading, or by the expiration of the permit, whichever is first. Mulch shall be maintained until suitable vegetative cover is established to the department's satisfaction.
- 14. Disposal of Material** Any demolition debris, excess construction materials, and/or excess excavated materials shall be immediately and completely disposed of on an approved upland site more than 100 feet from any regulated waterbody or wetland. These materials shall be suitably stabilized so as not to re-enter any water body, wetland, or wetland adjacent area; and must be disposed of in accordance with all local, state, and federal statutes, regulations, or ordinances.
- 15. Water Clarity** Stream reaches downstream of construction areas shall always remain as clear (non-turbid) as the reaches upstream of the construction areas.





**16. Invasive Species (Non-native Vegetation)** To prevent the unintentional introduction or spread of invasive species, the permittee must ensure that all construction equipment be cleaned of mud, seeds, vegetation and other debris before entering any approved construction areas within the state regulated freshwater wetland or its 100 foot adjacent area.

**17. Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

**18. State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

**19. State May Order Removal or Alteration of Work** If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

**20. State May Require Site Restoration** If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

### WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

**1. Water Quality Certification** The authorized project, as conditioned pursuant to the Certificate, complies with Section 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended and as implemented by the limitations, standards, and criteria of state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a). The authorized project, as conditioned, will also comply with applicable New York State water quality standards, including but not limited to effluent limitations, best usages and thermal discharge criteria, as applicable, as set forth in 6 NYCRR Parts 701, 702, 703, and 704.



**GENERAL CONDITIONS - Apply to ALL Authorized Permits:**

**1. Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

**2. Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

**3. Applications For Permit Renewals, Modifications or Transfers** The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator  
NYSDEC Region 3 Headquarters  
21 S Putt Corners Rd  
New Paltz, NY12561

**4. Submission of Renewal Application** The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification.

**5. Permit Modifications, Suspensions and Revocations by the Department** The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;



- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

**6. Permit Transfer** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

## NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

### **Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

### **Item B: Permittee's Contractors to Comply with Permit**

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

### **Item C: Permittee Responsible for Obtaining Other Required Permits**

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

### **Item D: No Right to Trespass or Interfere with Riparian Rights**

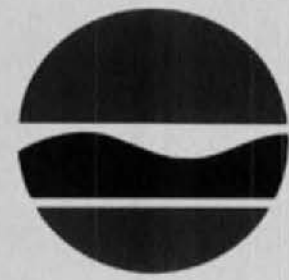
This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

**Item E: SEQR Unlisted Action, No Significant Impact** Under the State Environmental Quality Review Act (SEQR), the project associated with this permit is classified as an Unlisted Action with Metropolitan Transportation Authority designated as the lead agency. It has been determined that the project will not have a significant effect on the environment.

New York State  
Department of Environmental Conservation



# NOTICE



The Department of Environmental Conservation (DEC) has issued permit(s) pursuant to the Environmental Conservation Law for work being conducted at this site. For further information regarding the nature and extent of work approved and any Department condition on it, contact the DEC at 845-256-3054. Please refer to the permit number shown when contacting the DEC.

Permittee Metro North Commuter Railroad Company Permit No. 3-9903-0013/00002  
Effective Date: 06/21/19 Expiration Date: 12/31/25

Applicable if checked. No instream work allowed between October 1 & April 30

**NOTE: This notice is NOT a permit.**

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3  
21 South Putt Corners Road, New Paltz, NY 12561-1620  
P: (845) 256-3054 | F: (845) 255-4659  
www.dec.ny.gov



Department of  
Environmental  
Conservation

## **IMPORTANT NOTICE TO ALL PERMITTEES**

The permit you requested is enclosed. Please read it carefully and note the conditions that are included in it. The permit is valid for only that activity expressly authorized therein; work beyond the scope of the permit may be considered a violation of law and be subject to appropriate enforcement action. Granting of this permit does not relieve the permittee of the responsibility of obtaining any other permission, consent or approval from any other federal, state, or local government which may be required.

Please note the expiration date of the permit. Applications for permit renewal should be made well in advance of the expiration date (minimum of 30 days) and submitted to the Regional Permit Administrator at the above address. For SPDES, Solid Waste and Hazardous Waste Permits, renewals must be made at least 180 days prior to the expiration date.

The DEC permit number & program ID number noted on page 1 under "Permit Authorization" of the permit are important and should be retained for your records. These numbers should be referenced on all correspondence related to the permit, and on any future applications for permits associated with this facility/project area.

If a permit notice sign is enclosed, you must post it at the work site with appropriate weather protection, as well as a copy of the permit per General Condition 1.

If the permit is associated with a project that will entail construction of new water pollution control facilities or modifications to existing facilities, plan approval for the system design will be required from the appropriate Department's regional Division of Water or delegated local Health Department, as specified in the State Pollutant Discharge Elimination System (SPDES) permit.

If you have any questions on the extent of work authorized or your obligations under the permit, please contact the staff person indicated below or the Division of Environmental Permits at the above address.

Sarah Pawliczak  
Division of Environmental Permits, Region 3  
Telephone (845) 256-3050

- Applicable only if checked. Please note all work authorized under this permit is prohibited during trout spawning season commencing October 1 and ending April 30.
- Applicable only if checked for STORMWATER SPDES INFORMATION: We have determined that your project requires coverage under the General Stormwater SPDES Permit. You must file a Notice of Intent to obtain coverage under the General Permit. This form can be downloaded at: <http://www.dec.ny.gov/chemical/43133.html>
- Applicable only if checked - MS4 Areas: This site is within an MS4 area (Municipal Separate Storm Sewer System), therefore the SWPPP must be reviewed and accepted by the municipality. The MS-4 Acceptance Form must be submitted in addition to the Notice of Intent.

Send the completed form(s) to: NYS DEC, Stormwater Permitting, Division of Water, 625 Broadway, Albany, New York 12233-3505; in addition, DEC requests that you provide one electronic copy of the approved SWPPP directly to NYS DEC, 100 Hillside Avenue - Suite 1W, White Plains, NY 10603-2860.



Department of  
Environmental  
Conservation

# **EXHIBIT B**



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

MAR - 7 2019

Regulatory Branch

SUBJECT: Permit Application Number NAN-2018-00153-WNE  
by Metro North Railroad

Richard Bottali  
Metro North Railroad  
525 North Broadway  
White Plains, New York 10603

Dear Mr. Bottali:

On October 9, 2018, the New York District of the U.S. Army Corps of Engineers received a request for Department of the Army authorization for the discharge of fill material into waters of the United States for activities associated with the construction of a 23-mile pedestrian and bike trail to be known as the Empire State Trail Maybrook Trailway Section. The project site is located in the Hudson River watershed, in the Towns of Beekman, East Fishkill and Pawling, Dutchess County, and Towns of Patterson and Southeast, Putnam County, New York.

The submitted information indicates that the total impacts to waters of the United States would involve the permanent discharge of fill material into a maximum of 0.03 acres of wetlands and streams, including approximately 3.33 cubic yards of fill below ordinary high water. In addition, approximately 187 square feet of waters would be temporarily impacted for construction access. Upon completion of the work, all temporarily impacted areas would be returned to pre-construction contours. The work would be accomplished as shown on the following drawings:

- "Empire State Trail – Maybrook Trailway Section Hopewell Junction to Brewster", Drawing Numbers KP-1 through KP-5, prepared by WSP USA Inc., dated July, 2018;
- "Empire State Trail – Maybrook Trailway Section Hopewell Junction to Brewster", Drawing Numbers ESC-01 through ESC-102, prepared by WSP USA Inc., dated July, 2018;
- "Empire State Trail – Maybrook Trailway Section Hopewell Junction to Brewster", Drawing Numbers BP-01 through BP-06, BP-09 through BP-16, BP-25 through BP-32, BP-45, BP-46, and BP-57 through BP-62, prepared by WSP USA Inc., dated July, 2018; and
- The enclosed drawings, marked in red to show impacts to waters of the United States, entitled "Empire State Trail – Maybrook Trailway Section Hopewell Junction to Brewster", Drawing Numbers GP-09, GP-13, GP-47, GP-52, GP-61, GP-62, GP-64, GP-88, GP-93, GP-94, and GP-97, prepared by WSP USA Inc., dated July, 2018.

MAR - 7 2019

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 Number 18. The nationwide permits are prescribed as a Reissuance of Nationwide Permits in the Federal Register dated January 6, 2017 (82 FR 1860). The work may be performed without further authorization from this office provided the activity complies with the permit conditions listed in Section B, No. 18, Section C, any applicable New York District regional conditions, the following special conditions, and any applicable regional conditions added by the State of New York, copies enclosed.

#### Special Conditions

(A) In order to protect the Federally-listed endangered Indiana bat (*Myotis sodalis*) and the Federally-listed threatened northern long-eared bat (*Myotis septentrionalis*), the clearing of potential roosting trees shall occur only between November 1 and March 31. Orange construction fencing shall be used to separate areas to be graded from areas not to be disturbed. No artificial dyes, coloring, insecticide, or algacide such as copper sulfate shall be used in stormwater control structures. All outdoor lights shall be angled downward. Pesticides, fertilizers and road salt, as well as other potentially harmful products, shall not be used for long-term maintenance of the trail.

(B) In order to protect the Federally-listed threatened bog turtle (*Clemmys muhlenbergii*), the permittee shall ensure that:

- A New York State Department of Environmental Conservation (NYSDEC)-permitted and qualified surveyor/monitor shall, prior to any construction work at any time of year, flag the construction areas containing suitable bog turtle habitat, so the areas can be avoided to the maximum extent possible;
- The NYSDEC-permitted monitoring biologist perform visual surveys and/or hand probe to determine if bog turtles are present within mucky areas or hibernaculum or are seeking refuge under vegetation within the work area, as specified in the enclosed Maybrook-Beacon Rail Trail Wetland Impacts Table dated January 25, 2019;
- A double row of silt fence be placed along the trail, adjacent to areas of suitable bog turtle habitat to prevent turtles from entering the work space. The silt fence shall be checked daily for any breaches and for presence of turtles. Bog turtles found shall only be handled by a NYSDEC-permitted, qualified bog turtle surveyor/monitor. Any breaches shall be repaired and silt fence shall be removed upon completion of construction;
- If bog turtles are encountered, the permittee shall contact the NYSDEC and the U.S. Fish and Wildlife Service's (USFWS) New York Field Office immediately, and halt work until impacts to bog turtles can be further evaluated;
- No staging of equipment, or heavy equipment use occurs within areas containing suitable bog turtle habitat; and
- The enclosed Maybrook-Beacon Rail Trail Long-Term Trail Maintenance Plan, dated March 7, 2019, be implemented to avoid impacts to bog turtles during long-term maintenance of the trail, post-construction.



MAR - 7 2019

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.

Please note that this nationwide permit (NWP) verification is based on a preliminary jurisdictional determination (JD). A preliminary JD is not appealable. If you wish, prior to commencement of the authorized work you may request an approved JD, which may be appealed, by contacting the New York District, U.S. Army Corps of Engineers for further instruction. To assist you in this decision and address any questions you may have on the differences between preliminary and approved jurisdictional determinations, please review U.S. Army Corps of Engineers Regulatory Guidance Letter No. 16-01, which can be found at: [http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl\\_6-01\\_app1-2.pdf](http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl_6-01_app1-2.pdf)

This verification is valid until March 18, 2022, unless the nationwide permit is modified, reissued, or revoked. This verification will remain valid until March 18, 2022, 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.

**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.**

In order for us to better serve you, please complete our Customer Service Survey located at <http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>.

If any questions should arise concerning this matter, please contact Brian A. Orzel, of my staff, at (917) 790-8413.

Sincerely,



Rosita Miranda  
Chief, Western Section

Enclosures

**Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for  
Nationwide Permit 18 – (Minor Discharges)  
within the New York District Regulatory Boundary in the State of New York  
Expiration March 18, 2022**

**NOTE:** This document is derived from the New York District Public Notice dated March 21, 2017, which listed all the Nationwide Permits (NWP) and their regional conditions for all of New York State. That document can be obtained from the New York District web site, located at: <http://www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/>

**This document focuses specifically on NWP 18 (Minor Discharges) and the regional conditions applicable to the counties within the New York District Corps of Engineers.**

**Table of Contents:**

- A. Nationwide Permits Index**
- B. Nationwide Permit 18 – Minor Discharges**
  - **Specific NWP terms and notification requirements**
  - **New York District Specific NWP Regional Conditions**
  - **NYSDEC Specific NWP Water Quality Certification**
  - **NYSDOS Specific NWP Coastal Zone Consistency Determination**
- C. Nationwide Permit General Conditions 1-32**
- D. District Engineer’s Decision**
- E. Further Information**
- F. Definitions**
- G. New York District Regional General Conditions A-F (applicable to all NWPs)**
- H. NYSDEC General Water Quality Conditions (applicable to all NWPs for which Water Quality Certification has been provided)**
- I. NYSDOS Coastal Zone Management Consistency Additional Information (applicable to all projects located within the NYS Coastal Zone)**
- J. Information on Nationwide Permit Verification**
- K. Agency Contact Information**

**ENCLOSURE 1: New York State Regulatory District Boundary Map**

**ENCLOSURE 2: NYC Water Supply – East of Hudson Watershed**

**Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for  
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**A. Nationwide Permits Index:**

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. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
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
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines

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**B. Nationwide Permits**

**18. Minor Discharges.** Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge will not cause the loss of more than 1/10-acre of waters of the United States; and
- (c) The discharge is not placed for the purpose of a stream diversion.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

**Permit-specific Regional Conditions:**

- a. Within Essential Fish Habitat as discussed in Section G-E.8. below, if any work is proposed within areas supporting anadromous fish migration and spawning, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A PCN is required if a variance of this seasonal work window is requested.
- b. Within Essential Fish Habitat, if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.
- c. Within Essential Fish Habitat, if any work is proposed within submerged aquatic vegetation (SAV) habitat or within 50 feet of SAV habitat, a PCN is required.
- d. Within National Marine Fisheries Service (NMFS) Threatened, Endangered or Candidate (TE&C) habitat as discussed in Section G-E.8. below, any work that would generate turbidity or sedimentation shall be avoided from March 16 to October 31. A PCN is required if a variance of this seasonal work window is requested.

**Section 401 Water Quality Certification:**

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

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

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

**Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for  
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**C. Nationwide Permit General Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is

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not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

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

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

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

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

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

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

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

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

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

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

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

(2) Location of the proposed activity;

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

(4) A description of the proposed activity; the activity’s purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be

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used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

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

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

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

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

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

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

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

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

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

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

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

**D. District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine

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whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

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

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

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or



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31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

**E. Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

**F. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. All synthetic erosion control features (e.g., silt fencing, netting, mats), which are intended for temporary use during construction, shall be completely removed and properly disposed of after their initial purpose has been served. Only natural fiber materials, which will degrade over time, may be abandoned in place.
2. Materials resulting from trench excavation for utility line installation or ditch reshaping activities which are temporarily sidecast or stockpiled into waters of the United States must be backfilled or removed to an upland area within 30 days of the date of deposition. Note: upland options shall be utilized prior to temporary placement within waters of the U.S., unless it can be demonstrated that it would not be practicable or if the impacts of complying with this upland option requirement would result in more adverse impacts to the aquatic environment.
3. For trenching activities in wetlands the applicant shall install impermeable trench dams or trench breakers at the wetland boundaries and every 100 feet within wetland areas to prevent inadvertent drainage of wetlands or other waters of the United States.

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4. Dry stream crossing methods (e.g., diversion, dam and pump, flume, bore) shall be utilized for culvert or other pipe, or utility installations to reduce downstream impacts from turbidity and sedimentation. This may require piping or pumping the stream flow around the work area and the use of cofferdams.
5. No in-stream work shall occur during periods of high flow, except for work that occurs in dewatered areas behind temporary diversions, cofferdams or causeways.
6. Construction access and staging areas shall be by means that avoid or minimize impacts to aquatic sites (e.g. use of upland areas for access & staging, floating barges, mats, etc.). Discharges of fill material associated with the construction of temporary access roads, staging areas and work pads in wetlands shall be placed on filter fabric. All temporary fills shall be removed upon completion of the work and the disturbed area restored to pre-construction contours, elevations and wetland conditions, including cover type. All vegetation utilized in the restoration activity shall consist of native species.
7. All return flow from dredged material disposal areas shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions. (See NWP #16)
8. For activities involving the placement of concrete into waters of the U.S., the permittee must employ watertight forms. The forms shall be dewatered prior to the placement of the concrete. The use of tremie concrete is allowed, provided that it complies with New York State water quality standards.
9. New stormwater management facilities shall be located outside of waters of the U.S. A variance of this requirement may be requested with the submission of a PCN. The PCN must include justification which demonstrates that avoidance and minimization efforts have been met.
10. To the maximum extent practicable, the placement of fill in wetlands must be designed to maintain pre-construction surface water flows/conditions between remaining on or off-site waters and to prevent draining of the wetland or permanent hydrologic alteration. This may require the use of culverts and/or other measures. Furthermore, the activity must not restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters). The activity may alter the pre-construction flows/conditions if it can be shown that it benefits the aquatic environment (i.e. wetland restoration and/or enhancement).

**G-B. CULVERTS**

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

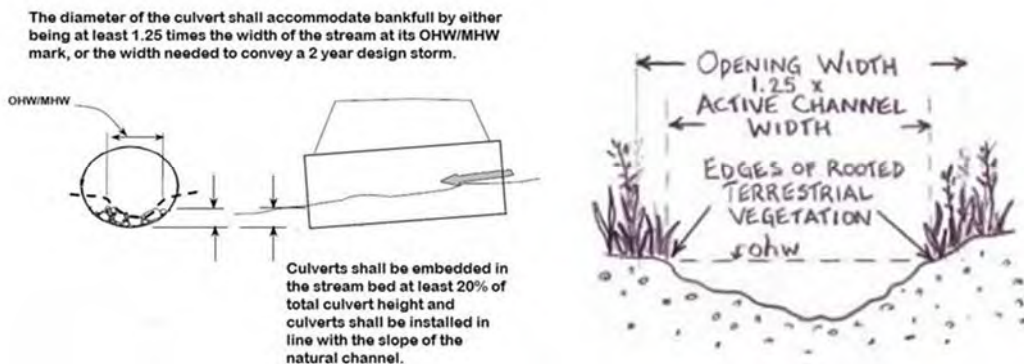
- a. Size: Bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional dimensions within one culvert. Bank-full width is generally considered to be the top width at the stage where a stream begins to overtop its banks and spread into the floodplain. Either a bottomless culvert or bridge must be used where practicable. If the stream cannot be spanned, the culvert width shall be minimum of 1.25 times width of the stream channel at the ordinary high water, or a 2 year design storm.
- b. Depth: To maintain low flow and aquatic life movement within culverts with a bottom, the culvert invert must be embedded. Specifically, the culvert must be installed with its bottom buried below the grade of the stream bed, as measured at the average low point, to a depth of a minimum of 20 percent of the culvert vertical rise (height) throughout the length of the culvert. (Note: When not practicable to do so due to small culvert size, it is acceptable to allow natural deposition to cover the interior of the culvert bed following placement of the culvert invert to the 20% depth.)

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- c. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width or depth of the stream channel.
- d. The culvert bed slope shall remain consistent with the slope of the adjacent stream channel.
- e. Stone aprons and scour protection placed in streams shall not extend higher than the stream bed in order to create a uniform grade and shall be filled with native stream bed material and supplemented with similarly sized material, if needed, to fill interstitial spaces to maintain water flow on the surface of the stream bed.

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

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



**Preconstruction Notification (PCN) Requirements:**

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

- i. A statement indicating which of the above requirements will not be met by the proposed project;
- ii. Information as to why the use of such structures or measures would not be practicable;
- iii. A brief description of the stream discussing:
  - Site specific information (i.e. stream bed slope, type and size of stream bed material, stream type, existing natural or manmade barriers, etc.) assessed to determine appropriate culvert design and to ensure management of water flows and aquatic life movement.
  - Evaluation of the replacement for its impacts on: downstream flooding, upstream and downstream habitat (in-stream habitat, wetlands), potential for erosion and headcutting, and stream stability.
  - Flow/storm event the proposed culvert is designed to pass (2 year, 50 year, etc.)
- iv. Cross sections of the stream used to calculate the stream bed low point and ordinary high water width, consisting of:

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- Stream channel cross sections shall be taken at proximal locations to the crossing location to determine the average of the lowest points in elevation of the stream bed and the average width at ordinary high water.
  - For new crossing locations, the average values from at least three measurements (project location and straight sections of the stream upstream and downstream) shall be used.
  - For replacement of an existing structure, the average values from at least two cross sections (straight sections of the stream upstream and downstream from the existing structure representative of the natural channel) shall be used.
- This average low point shall be used to ensure low flow is maintained through the culvert and from which all embedment depths are measured.
- If the above cross section method was not practicable to use, an alternative method may be utilized. The PCN shall include justification for the method used including the data used and an explanation as to how it provides an equivalent measure.
- v. An evaluation of the effects the crossing would have on aquatic life movement and/or water flows; and
- vi. Mitigation measures that will be employed to minimize these effects. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures

A variance of the requirement(s) will be issued by the Corps if it can be demonstrated that the proposal would meet General Conditions #2 & #9 and would result in the least environmentally damaging practicable alternative (e.g. compliance with any of the requirement(s) would result in detrimental impacts to the aquatic system).

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

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



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**Preconstruction Notification (PCN) Requirements:**

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

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

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

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

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

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

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

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

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corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, etc.)

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

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

**5. Mitigation** (See General Conditions 23 & 32(b)(6)): The PCN must include at least a conceptual compensatory mitigation plan for all projects resulting in the loss of greater than 1/10<sup>th</sup> of an acre of waters of the United States; or for which a waiver of the 300 linear foot limit on intermittent and ephemeral streams is being requested. Mitigation conceptual plans submitted with the PCN must include the following information at a minimum: proposed compensation type (bank or in-lieu fee credit, restoration, creation, preservation, etc.), location and brief discussion on factors considered for site selection (i.e. soils, water source, potential for invasive species, etc.), amount proposed per resource type and a discussion of how the proposal will compensate for aquatic resource functions and services lost as a result of the project.

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

<http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/MitandMon/FinalMitigationRuleApril2008.pdf> and any applicable District Guidelines.

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

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

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

<http://www.nps.gov/nrc/programs/rca/nri/states/ny.html>.

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

- A written statement indicating if any such properties may be affected by the proposed project.
- A copy of any completed archaeology or building/structure survey reports. If a survey has not been performed, the statement shall include a list of resources checked in the determination.

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- Copies of any available correspondence from the New York State Office of Parks, Recreation, and Historic Preservation State Historic Preservation Officer (SHPO) regarding historic properties.
- Copies of any available correspondence from federally recognized Indian Nations regarding historic properties that may be affected by the project.
- Projects with ground disturbance may have the potential to cause effects to buried historic properties, regardless of occurring outside SHPO designated archaeological sensitive areas. Therefore, the PCN shall indicate if the ground disturbance will occur in any areas of previously undisturbed soil. For areas with prior disturbance, the PCN shall include a brief narrative describing the disturbance and its limit (i.e. type of disturbance, size of area with current undisturbed soil, size of area with existing disturbed soils, when the disturbance occurred, an estimate on how deep the soil disturbance extends, etc.) as well as photos of the existing ground disturbance.
- Above ground buildings/structures that are over 50 years old and potentially affected by the project will need to be assessed to determine if they are eligible for the NR. The PCN shall: identify any structures present in the project area, which have not already been subject to SHPO review, include photos of the structures, and describe how the project would/would not affect them.

\* - see NWP definition section for further clarification

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

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

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

- a written statement and documentation concerning any Essential Fish Habitat (EFH) and any federally listed or proposed Threatened, Endangered, or Candidate (TE&C) species or designated and/or proposed critical habitat that might be affected or located in the vicinity of the project.
- a copy of any correspondence from the U.S. Fish and Wildlife Service (USFWS) and/or National Oceanic and Atmospheric Administration Fisheries Service (NOAA-Fisheries), regarding the potential presence of TE&C species on the project site. USFWS TE&C website: <http://www.fws.gov/northeast/nyfo/es/section7.htm>. Information on NOAA-Fisheries (NMFS) species (both TE&C and EFH) can be found at: <https://www.greateratlantic.fisheries.noaa.gov/>
- an official TE&C species list printed within 90 days of the PCN submission from the USFWS Website.
- For projects where TE&C species are listed, a discussion of potential TE&C species habitat within the project site (See USFWS T&E website for species habitat information).
- If there is potential habitat for any TE&C species within the project site the following, as applicable, shall be submitted:
  - a. The results of any habitat surveys and presence/absence surveys. Note: all surveys should be coordinated with the USFWS and/or NOAA-Fisheries (NMFS) prior to initiation.

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- b. A detailed description of the proposed project, including secondary impacts and approximate proposed project construction schedule of project activities (e.g. land clearing, utilities, stormwater management).
- c. A description of the natural characteristics of the property and surrounding area (e.g. forested areas, freshwater wetlands, open waters, and soils) and a description of surrounding land use (residential, agricultural, or commercial).
- d. A description of the area to be impacted by the proposed project, including the species, typical sizes (d.b.h.) and number or acres of trees to be removed.
- e. The location of the above referenced property and extent of any project related activities or discharges clearly indicated on a copy of a USGS 7.5 minute topographic quadrangle (quad) with the name of the quad(s) and latitude/longitude clearly labeled.
- f. A description of conservation measures to avoid, minimize and/or mitigate impacts to listed species.

NOTE 1: There are no known TE&C species or EFH species under the jurisdiction of the NOAA-Fisheries (NMFS) within the Buffalo District. Therefore, all Buffalo District requests for information regarding the presence of TE&C species should be directed to the USFWS. In addition, no EFH review is necessary within the following New York District counties: Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Otsego, Schenectady, Schoharie and Warren.

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

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

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

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

**10. Submission of Multiple Copies of PCN:**

- a) One (1) additional copy of the application drawings shall be provided to USACE for coordination with National Oceanic and Atmospheric Administration (NOAA) for utility lines to be constructed or installed in navigable waters of the U.S. proposed under NWP #12, (See Note 1 of NWP #12)
- b) One (1) additional copy of the PCN package shall be provided to USACE for coordination with Department of Defense Siting Clearinghouse (See NWP #12, 39, 51 & 52 Notes) for:
  - i. overhead utility lines proposed under NWP #12 and
  - ii. any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission lines proposed under NWP #39, 51 or 52
- c) Two (2) additional copies of the PCN package shall be provided to USACE when the project is located within the New York City Watershed, for coordination with the New York City Department of Environmental Protection.
- d) Five (5) additional copies of the PCN package shall be submitted to USACE for agency coordination in accordance with General Condition # 31(d)(2) for:
  - i. All NWP activities that result in the loss of greater than 1/2-acre of waters of the United States,

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- ii. NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that will result in the loss of greater than 300 linear feet of intermittent & ephemeral stream bed,
- iii. NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites;
- iv. NWP 54 activities in excess of 500 linear feet or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

**G-F. CRITICAL RESOURCE WATERS**

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

Critical Resource Waters in New York State include the following:

- 1. **East-of-Hudson portion of the New York City Water Supply:** This area includes portions of Dutchess, Putnam and Westchester Counties as delineated on Enclosure 2.
- 2. **Hudson River National Estuarine Research Reserves (NERR):** The Hudson River NERR consists of four components: Piermont Marsh, Iona Island, Tivoli Bay, and Stockport Flats.

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

1. Non-contamination of Waters

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

2. Installation and Replacement of Culverts

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

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

3. Discharge and Disturbance Limits of the Blanket WQC

- For Nationwide Permits # 5, 7,12, 13, 14, 15, 18, 19, 23, 25, 29, 31, 32, 34, 36, 37, 39, 40, 42, 45, 46, 48, 51, utility line replacement projects under Nationwide Permit #3 and non-maintenance activities under Nationwide Permit #43.
- The following discharge limits apply:

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- a) Temporary or permanent discharges of dredged or fill material into wetlands and other waters of the U.S. must not exceed ¼ acre;
- b) Temporary or permanent impacts (i.e., loss) to stream beds must not exceed 300 linear feet.
- c) The discharge area limit under paragraph (a) plus the equivalent stream impact area limit under paragraph (b) must not exceed ¼ acre total.

•For Nationwide Permits # 3, 4, 6, 20, 22, 27, 30, 33, 41 and maintenance activities under Nationwide Permit # 43, this certification authorizes discharges and disturbances up to the limit of the respective Nationwide Permit or regional conditions, whichever is most restrictive.

•If a project requiring coverage under two or more Nationwide Permits results in a temporary or permanent discharge or disturbance, the most restrictive threshold applies to the project.

4. Bulkheads

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

5. Maintenance of Water Levels

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

6. Dewatering

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

7. Endangered or Threatened Species

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

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



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8. Rare Mollusks

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

9. Prohibition Period for In-water Work

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

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

To determine if the prohibition period is in effect for a particular water, contact the Regional Natural Resources Supervisor in the appropriate New York State Department of Environmental Conservation regional office. Water Classification values can be determined on the DEC's Environmental Resource Mapper available on the Departments Website @ <http://www.dec.ny.gov/gis/erm/> Work windows may be extended by the Regional Natural Resources Supervisor or their designee.

10. Significant Coastal Fish and Wildlife Habitat

- This certification does not authorize any discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602; Title 19 Chapter 13, Waterfront Revitalization and Coastal Resources. <https://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html>

11. Coastal Erosion Hazard Areas

- This certification does not authorize projects in Coastal Erosion Hazard Areas, as identified in New York State Environmental Conservation Law Article 34, and its implementing regulations, 6 NYCRR Part 505.  
<http://www.dec.ny.gov/lands/86541.html>

12. State-owned Underwater Lands

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

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

13. Tidal Wetlands

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

14. Wild, Scenic and Recreational Rivers

- This certification does not authorize activities in any Wild, Scenic or Recreational River pursuant to 6 NYCRR Part 666 or state designated Wild, Scenic or Recreational River corridors.  
<http://www.dec.ny.gov/permits/6033.html>

15. Floodplains

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

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16. Public Service Commission

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

17. Utility Projects

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

18. Preventing the Spread of Terrestrial and Aquatic Invasive Species

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

**I. New York State Department of State (NYSDOS) Coastal Zone Management Consistency Determination  
Additional Information (applicable to all NWPs located within or affecting the NYS Coastal Zone):**

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

Further Information:

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



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**J. INFORMATION ON NATIONWIDE PERMIT VERIFICATION**

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

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

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

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

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**K. AGENCY CONTACT INFORMATION**

**NYS Department of Environmental Conservation**

[www.dec.ny.gov](http://www.dec.ny.gov)

**NYS DEC REGION 1**

Regional Permit Administrator  
SUNY @ Stony Brook  
50 Circle Road  
Stony Brook, NY 11790-3409  
(631) 444-0365

**NYS DEC REGION 2**

Regional Permit Administrator  
1 Hunter's Point Plaza  
47-40 21st Street  
Long Island City, NY 11101-5407  
(718) 482-4997

**NYS DEC REGION 3**

Regional Permit Administrator  
21 South Putt Corners Road  
New Paltz, NY 12561-1620  
(845) 256-3054

**NYS DEC REGION 4**

Regional Permit Administrator  
1130 North Westcott Road  
Schenectady, NY 12306-2014  
(518) 357-2069

**NYS DEC REGION 4 Sub-Office**

Deputy Regional Permit Administrator  
65561 State Hwy 10  
Stamford, NY 12167-9503  
(607) 652-7741

**NYS DEC REGION 5**

Regional Permit Administrator  
PO Box 296  
1115 Route 86  
Ray Brook, NY 12977-0296  
(518)897-1234

**NYS DEC REGION 5 Sub-Office**

Deputy Regional Permit Administrator  
PO Box 220  
232 Golf Course Rd  
Warrensburg, NY 12885-0220  
(518) 623-1281

**NYS DEC REGION 6**

Regional Permit Administrator  
317 Washington Street  
Watertown, NY 13601-3787  
(315) 785-2245

**NYS DEC REGION 6 Sub-Office**

Deputy Regional Permit Administrator  
207 Genesee Street  
Utica, NY 13501-2885  
(315) 793-2555

**NYS DEC REGION 7**

Regional Permit Administrator  
615 Erie Blvd. West  
Syracuse, NY 13204-2400  
(315)426-7438

**NYS DEC REGION 7 Sub-Office**

Deputy Regional Permit Administrator  
1285 Fisher Avenue  
Cortland, NY 13045-1090  
(607) 753-3095

**NYS DEC REGION 8**

Regional Permit Administrator  
6274 E. Avon - Lima Road  
Avon, NY 14414-9519  
(585) 226-2466

**NYS DEC REGION 9**

Regional Permit Administrator  
270 Michigan Avenue  
Buffalo, NY 14203-2915  
(716) 851-7165

**NYS DEC REGION 9 Sub-Office**

Deputy Regional Permit Administrator  
182 East Union Street  
Allegany, NY 14706-1328  
(716) 372-0645

**NYS Department of State**

Division of Coastal Resources  
Consistency Review Unit  
One Commerce Plaza  
99 Washington Avenue, Suite 1010  
Albany, NY 12231-00001  
(518) 474-6000  
<https://www.dos.ny.gov/opd/programs/consistency/index.html>

**US Army Corps of Engineers**

<http://www.nan.usace.army.mil>

(For DEC Regions 1, 2 and 3)

**US Army Corps of Engineers NY District**

ATTN: Regulatory Branch  
26 Federal Plaza, Room 1937  
New York, NY 10278-0090  
Email: [CENAN.PublicNotice@usace.army.mil](mailto:CENAN.PublicNotice@usace.army.mil)  
For DEC Regions 1, 2, Westchester County  
and Rockland County (917) 790-8511  
For the other counties of DEC Region 3 -  
(917) 790-8411

(For DEC Regions 4, 5)

**Department of the Army**

**ATTN: CENAN-OP-R  
NY District, Corps of Engineers**

1 Buffington Street  
Building 10, 3<sup>rd</sup> Floor  
Watervliet, NY 12189-4000  
(518) 266-6350 - Permits team  
(518) 266-6360 - Compliance Team

Email: [cenan.rfo@usace.army.mil](mailto:cenan.rfo@usace.army.mil)

(For DEC Regions 6, 7, 8, 9)

**US Army Corps of Engineers**

**Buffalo District**  
ATTN: Regulatory Branch

1776 Niagara Street  
Buffalo, NY 14207-3199  
(716) 879-4330

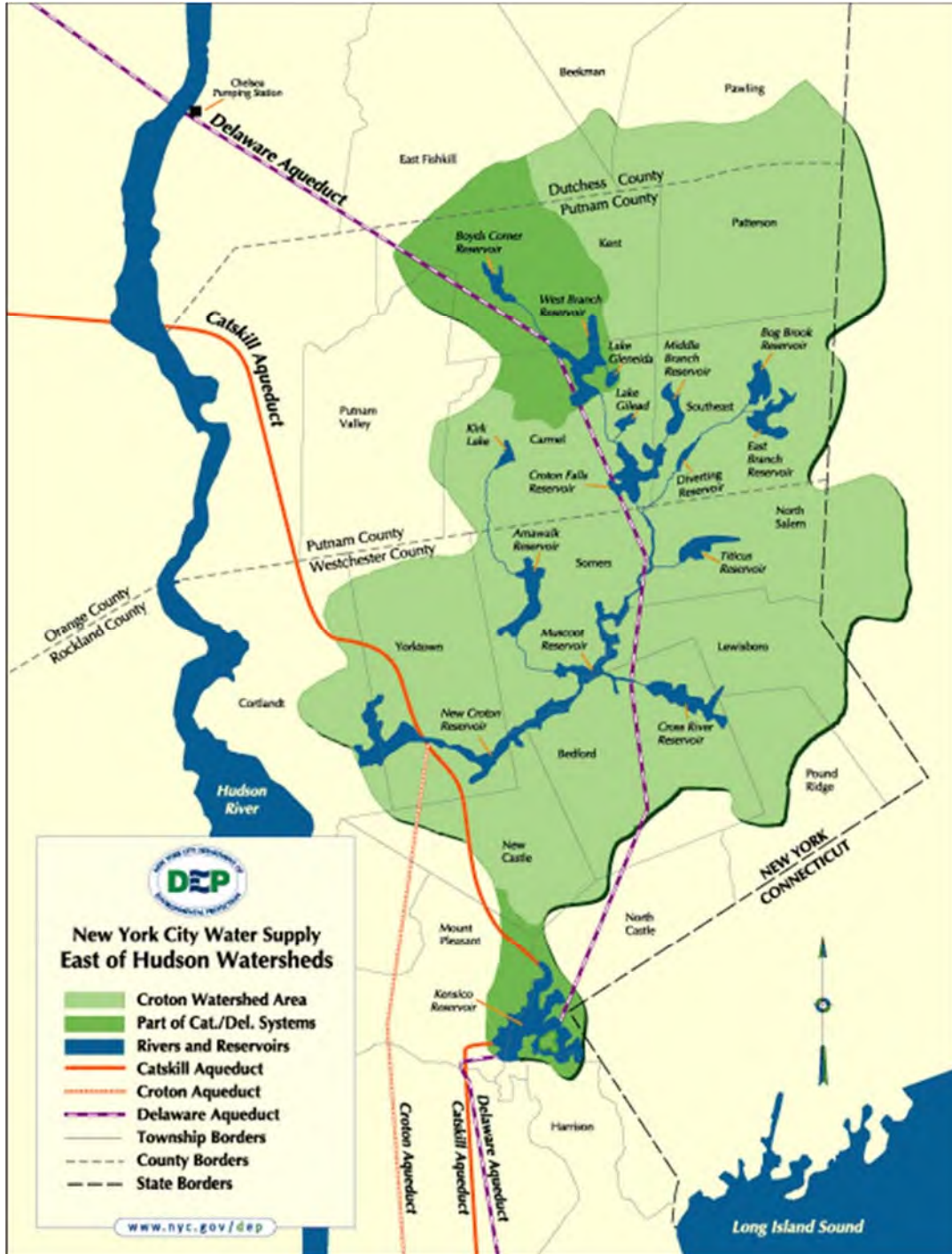
Email: [LRB.Regulatory@usace.army.mil](mailto:LRB.Regulatory@usace.army.mil)  
[www.lrb.usace.army.mil](http://www.lrb.usace.army.mil)

**Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for  
 Nationwide Permit 18 – (Minor Discharges)  
 within the New York District Regulatory Boundary in the State of New York  
 Expiration March 18, 2022**



**Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for  
 Nationwide Permit 18 – (Minor Discharges)  
 within the New York District Regulatory Boundary in the State of New York  
 Expiration March 18, 2022**

**ENCLOSURE 2**





DEPARTMENT OF THE ARMY  
 U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT  
 JACOB K. JAVITS FEDERAL BUILDING  
 26 FEDERAL PLAZA  
 NEW YORK NY 10278-0090

CENAN-OP-RW

**NATIONWIDE PERMIT COMPLIANCE CERTIFICATION AND REPORT FORM**

Permittee: Metro North Railroad

Permit No.: NAN-2018-00153

Date Permit Issued: March 7, 2019

Location: Towns of Beekman, East Fishkill and Pawling, Dutchess County, and Towns of Patterson and Southeast, Putnam 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  
 26 Federal Plaza, Room 1937  
 ATTN: CENAN-OP-RW  
 New York, New York 10278-0090



**Appendix 2 - PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PJD:** March 7, 2019

**B. NAME AND ADDRESS OF PERSON REQUESTING PJD:** Metro North RR, 525 N Broadway, White Plains, NY 10603

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** NY District, Metro North Railroad, NAN-2018-00153-WNE

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:**

**(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)**

State: New York County/parish/borough: Dutchess, Putnam City: Beekman, East Fishkill, Pawling, Patterson, Southeast

Center coordinates of site (lat/long in degree decimal format):

Lat.: 41.5098 Long.: -73.7061

Universal Transverse Mercator:

Name of nearest waterbody: Multiple

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: March 1, 2019

Field Determination. Date(s): April 18, 2018

**TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.**

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
Wetland UL 107	41.5676	-73.7750	0.46 Acres	Wetland	Section 404
Wetland UL 29	41.5682	-73.7562	1.38 Acres	Wetland	Section 404
Wetland PQ10	41.5858	-73.6587	1.61 Acres	Wetland	Section 404
Wetland PQ29	41.5340	-73.6517	4.13 Acres	Wetland	Section 404
Wetland DP22	41.4518	-73.6099	7.58 Acres	Wetland	Section 404
Wetland BR6	41.4465	-73.6143	3.44 Acres	Wetland	Section 404

- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "*may be*" waters of the U.S. and/or that there "*may be*" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

**SUPPORTING DATA. Data reviewed for PJD (check all that apply)**

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:  
Map: \_\_\_\_\_
- Data sheets prepared/submitted by or on behalf of the PJD requestor.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report. Rationale: \_\_\_\_\_
- Data sheets prepared by the Corps: \_\_\_\_\_
- Corps navigable waters' study: \_\_\_\_\_
- U.S. Geological Survey Hydrologic Atlas: \_\_\_\_\_
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Brewster, Pawling, Poughquag, Hopewell Junction, NY
- Natural Resources Conservation Service Soil Survey. Citation: Dutchess, Putnam Counties, NY
- National wetlands inventory map(s). Cite name: Brewster, Pawling, Poughquag, Hopewell Junction, NY
- State/local wetland inventory map(s): Brewster, Pawling, Poughquag, Hopewell Junction, NY
- FEMA/FIRM maps: \_\_\_\_\_
- 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): \_\_\_\_\_  
or  Other (Name & Date): \_\_\_\_\_
- Previous determination(s). File no. and date of response letter: \_\_\_\_\_
- Other information (please specify): \_\_\_\_\_

**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

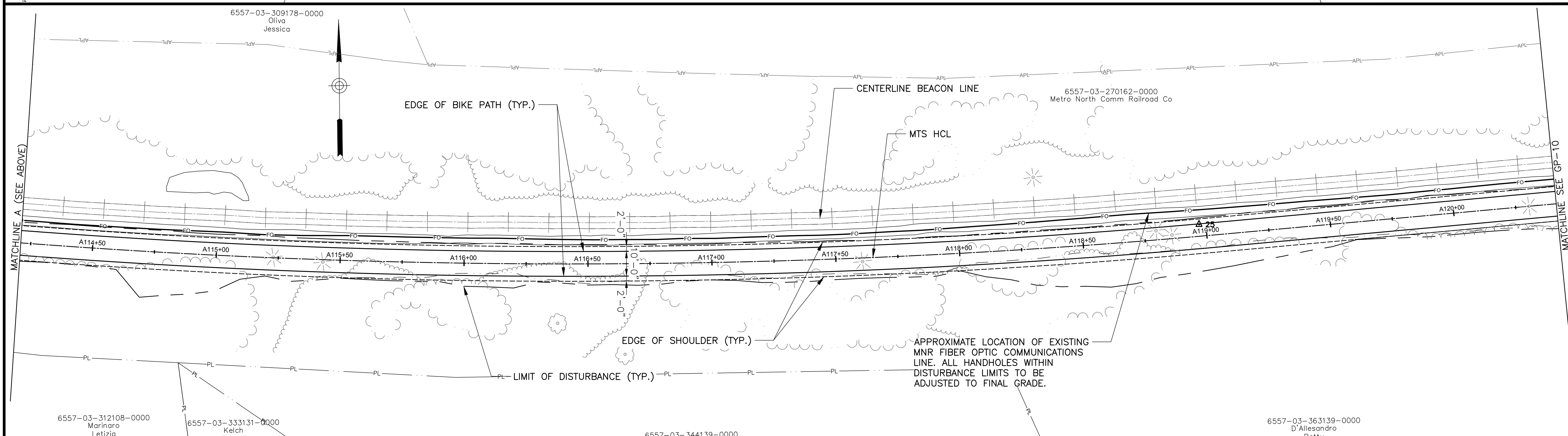
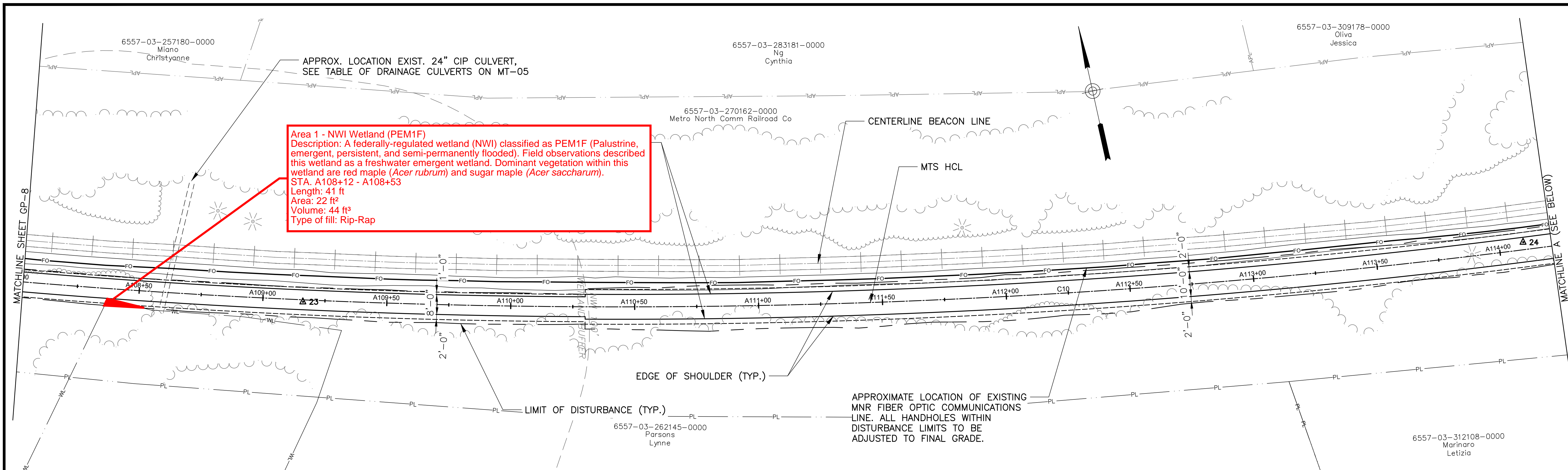
 3/7/2019

Signature and date of  
Regulatory staff member  
completing PJD

\_\_\_\_\_  
Signature and date of  
person requesting PJD  
(REQUIRED, unless obtaining  
the signature is impracticable)<sup>1</sup>

<sup>1</sup> Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.





**PRELIMINARY PLANS - NOT FOR CONSTRUCTION**

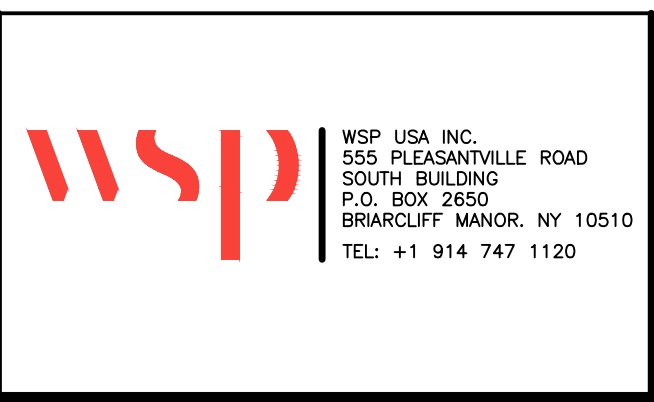


REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE

IT IS A VIOLATION OF THE PROFESSIONAL LICENSE LAW FOR ANY PERSON TO ALTER THIS DOCUMENT IN ANY WAY UNLESS THAT PERSON IS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL. THE LICENSED PROFESSIONAL SHALL AFFIX TO THIS DOCUMENT THE SEAL AND THE NOTATION "ALTERED BY", FOLLOWED BY THE AUTHORIZED SIGNATURE AND THE DATE OF THE ALTERATION.

PE:

DESIGNED BY: KB  
 DRAWN BY: MS  
 CHECKED BY: DG  
 APPROVED BY: JK



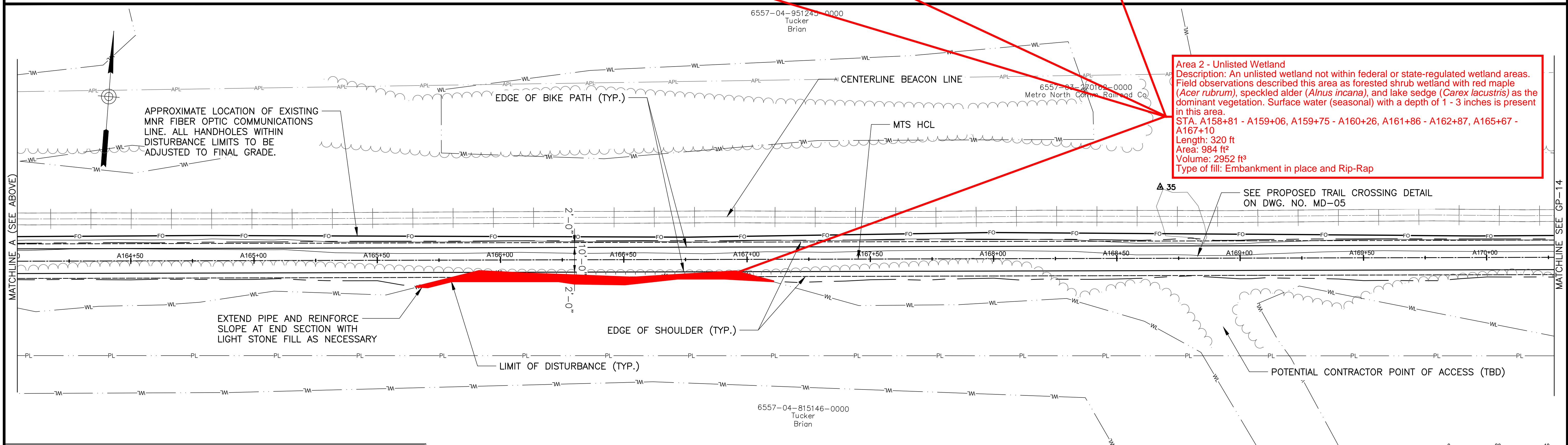
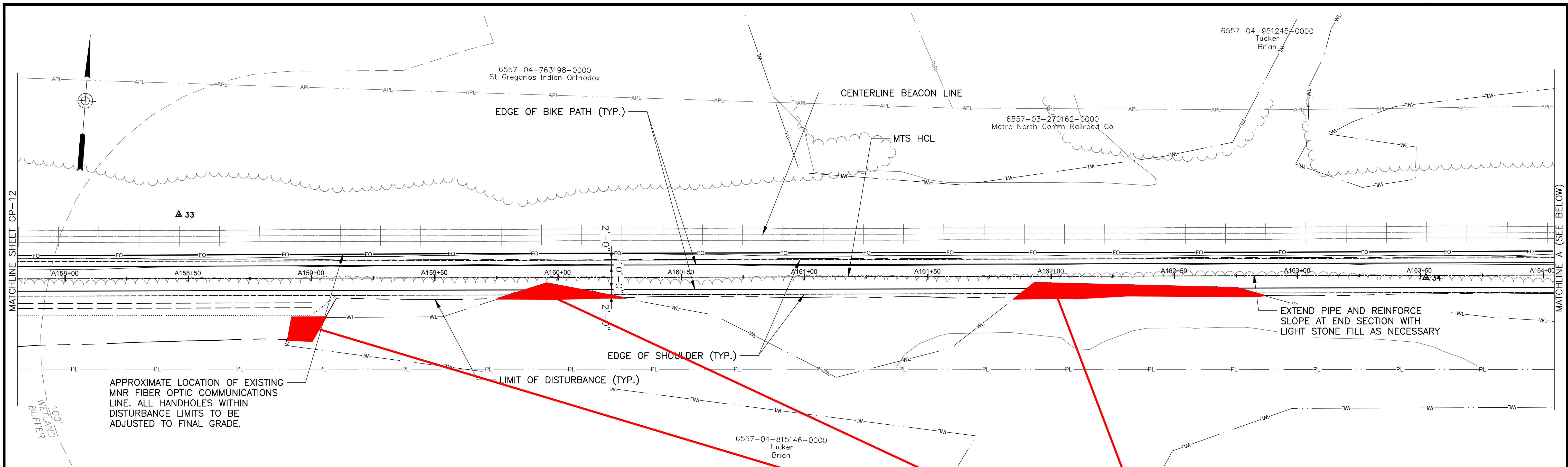
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 SCALE: 1"=20'  
 DATE: JULY 2018  
 DRAWING NUMBER: GP-09  
 SHEET OF 314

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 Printed: Aug 01, 2018, 9:56am



Drawing Path Name: L:\Pro\191670A - MNR Beacon Line Rail Trail\3\_CADD\AutoCAD\Contract DWGs\89399\_cph\_gen\_General Plans.dwg  
 Printed: Aug 01, 2018, 9:59am



**Area 2 - Unlisted Wetland**  
 Description: An unlisted wetland not within federal or state-regulated wetland areas. Field observations described this area as forested shrub wetland with red maple (*Acer rubrum*), speckled alder (*Alnus incana*), and lake sedge (*Carex lacustris*) as the dominant vegetation. Surface water (seasonal) with a depth of 1 - 3 inches is present in this area.  
 STA. A158+81 - A159+06, A159+75 - A160+26, A161+86 - A162+87, A165+67 - A167+10  
 Length: 320 ft  
 Area: 984 ft<sup>2</sup>  
 Volume: 2952 ft<sup>3</sup>  
 Type of fill: Embankment in place and Rip-Rap

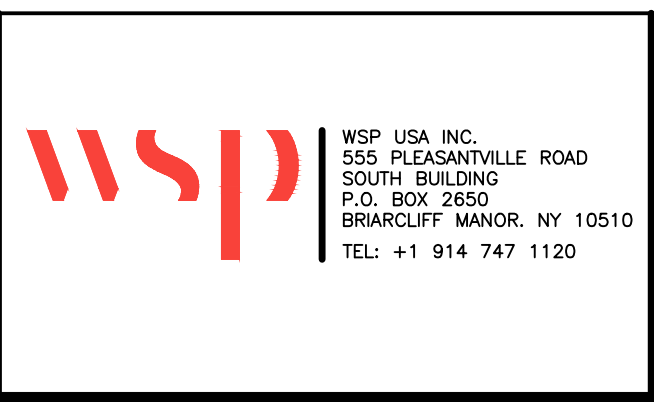
**PRELIMINARY PLANS - NOT FOR CONSTRUCTION**

REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE

IT IS A VIOLATION OF THE PROFESSIONAL LICENSE LAW FOR ANY PERSON TO ALTER THIS DOCUMENT IN ANY WAY UNLESS THAT PERSON IS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL. THE LICENSED PROFESSIONAL SHALL AFFIX TO THIS DOCUMENT THE SEAL AND THE NOTATION "ALTERED BY", FOLLOWED BY THE AUTHORIZED SIGNATURE AND THE DATE OF THE ALTERATION.

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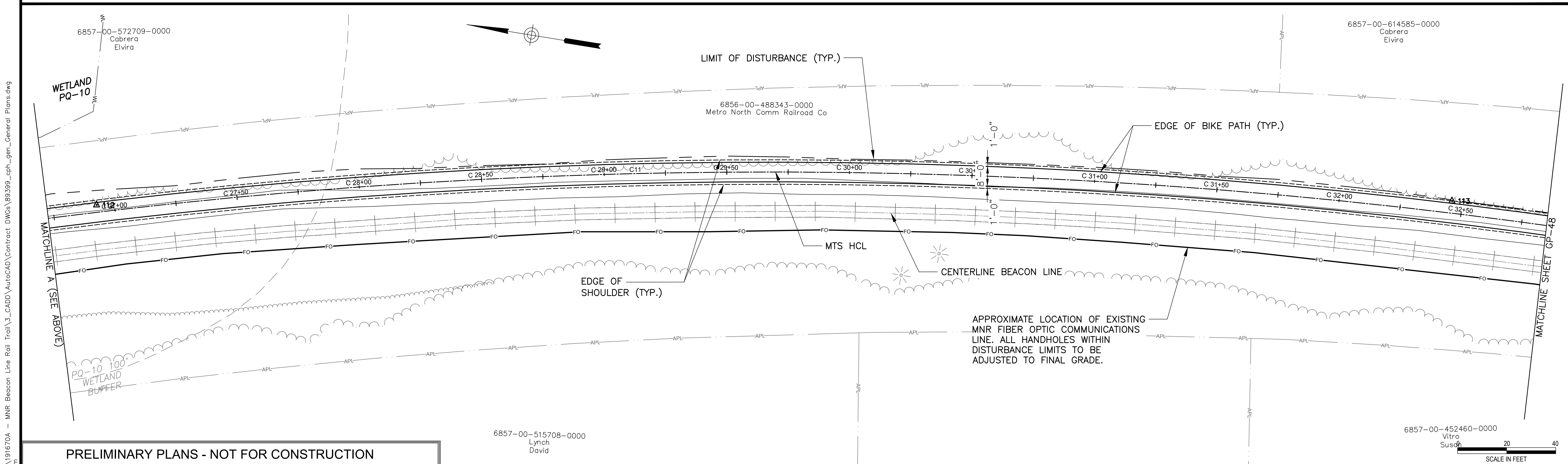
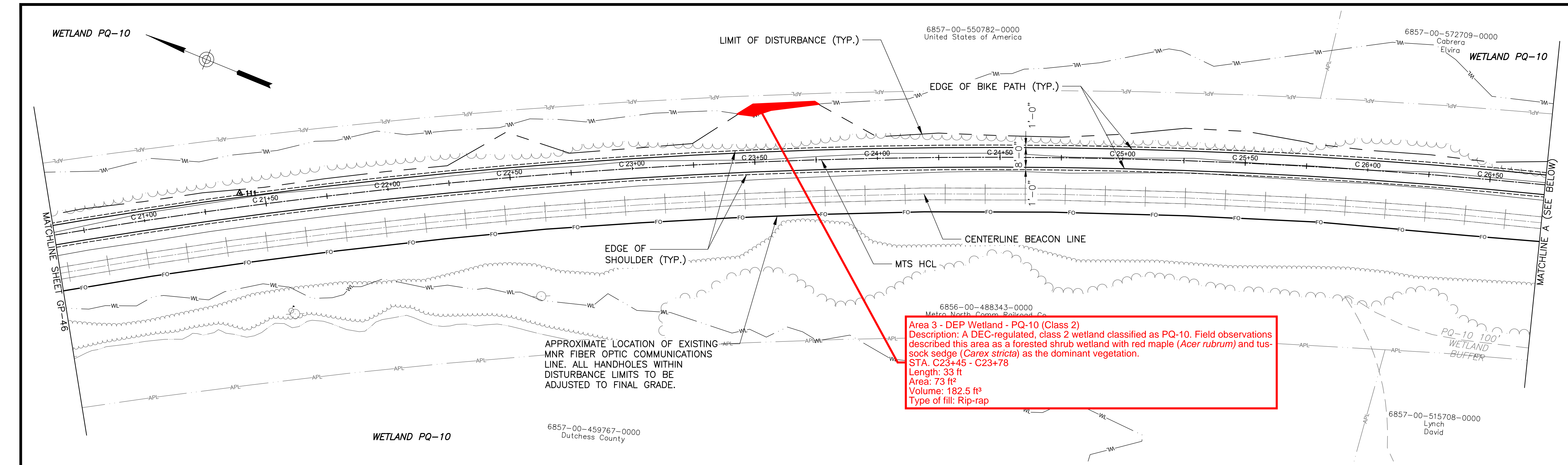
DESIGNED BY: KB  
 DRAWN BY: MS  
 CHECKED BY: DG  
 APPROVED BY: JK



PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 13

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20'  
 DATE: JULY 2018  
 DRAWING NUMBER: GP-13  
 SHEET OF 314





PRELIMINARY PLANS - NOT FOR CONSTRUCTION

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PE:

DESIGNED BY: KB  
DRAWN BY: MS  
CHECKED BY: DG  
APPROVED BY: JK

**wsp** WSP USA INC.  
555 PLEASANTVILLE ROAD  
SOUTH BUILDING  
P.O. BOX 2650  
BRIARCLIFF MANOR, NY 10510  
TEL: +1 914 747 1120

**MTA** Metro-North Railroad  
420 Lexington Avenue  
New York, N.Y. 10170

PROJECT:  
EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION  
HOPEWELL JUNCTION TO BREWSTER

DRAWING TITLE:  
GENERAL PLAN - 47

P.O.: 1000442201-DESIGN-BUILD  
MAYBROOK TRAILWAY

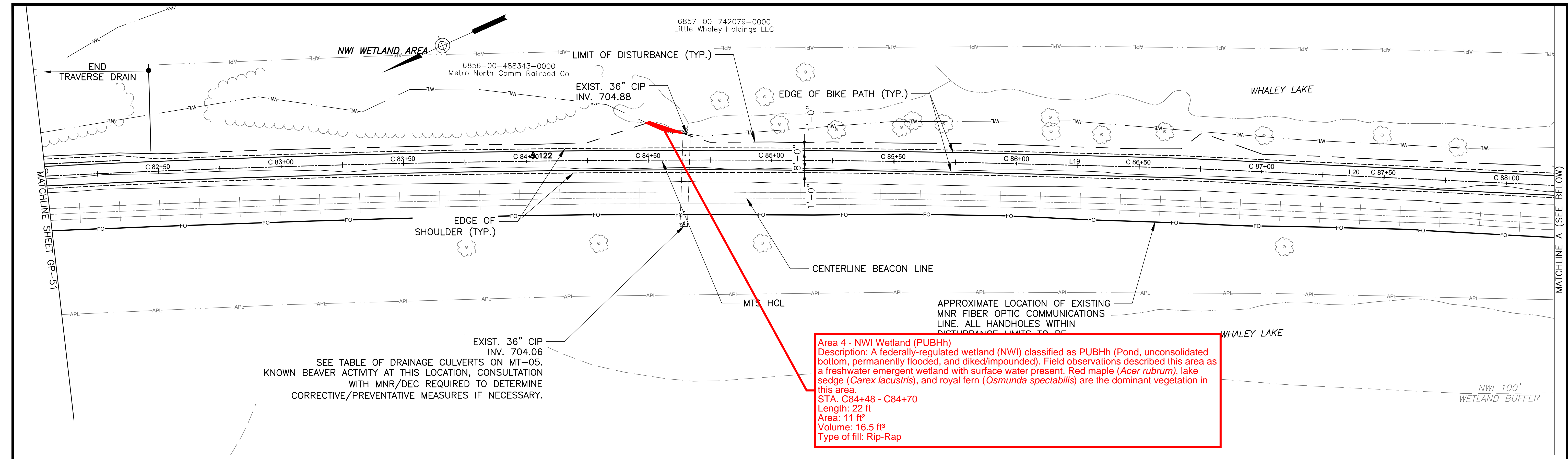
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DATE: JULY 2018

DRAWING NUMBER:  
GP-47

SHEET  
OF 314

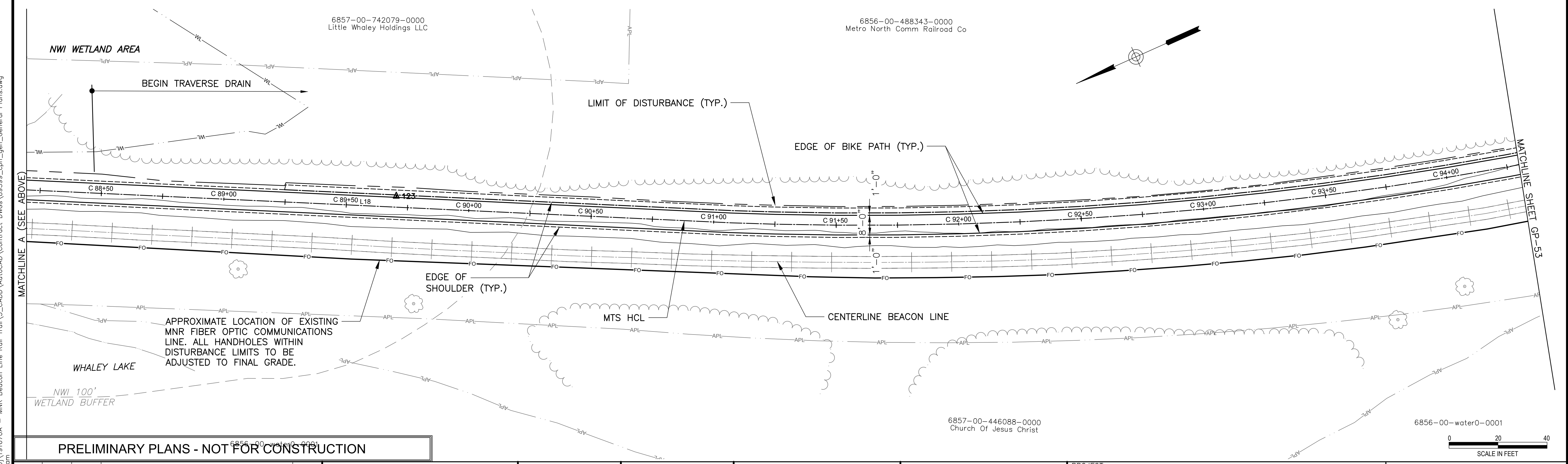
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Printed: Jul 20, 2018, 9:44am





**Area 4 - NWI Wetland (PUBHh)**  
 Description: A federally-regulated wetland (NWI) classified as PUBHh (Pond, unconsolidated bottom, permanently flooded, and diked/impounded). Field observations described this area as a freshwater emergent wetland with surface water present. Red maple (*Acer rubrum*), lake sedge (*Carex lacustris*), and royal fern (*Osmunda spectabilis*) are the dominant vegetation in this area.  
 STA. C84+48 - C84+70  
 Length: 22 ft  
 Area: 11 ft<sup>2</sup>  
 Volume: 16.5 ft<sup>3</sup>  
 Type of fill: Rip-Rap

EXIST. 36" CIP INV. 704.06  
 SEE TABLE OF DRAINAGE CULVERTS ON MT-05.  
 KNOWN BEAVER ACTIVITY AT THIS LOCATION, CONSULTATION WITH MNR/DEC REQUIRED TO DETERMINE CORRECTIVE/PREVENTATIVE MEASURES IF NECESSARY.



APPROXIMATE LOCATION OF EXISTING MNR FIBER OPTIC COMMUNICATIONS LINE. ALL HANDHOLES WITHIN DISTURBANCE LIMITS TO BE ADJUSTED TO FINAL GRADE.

**PRELIMINARY PLANS - NOT FOR CONSTRUCTION**

REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE

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DESIGNED BY: KB  
 DRAWN BY: MS  
 CHECKED BY: DG  
 APPROVED BY: JK

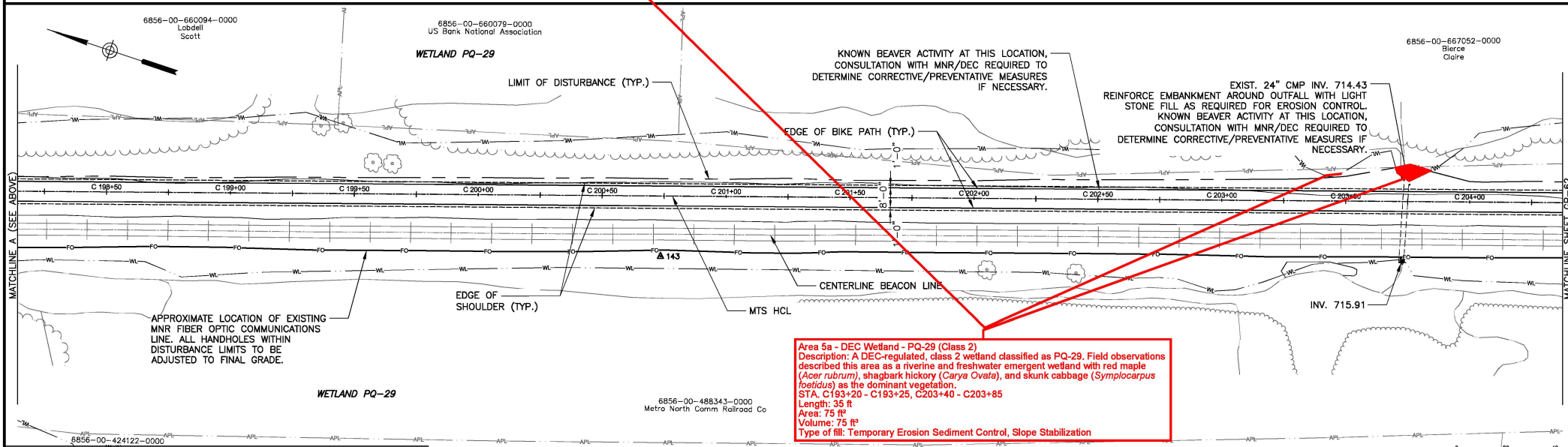
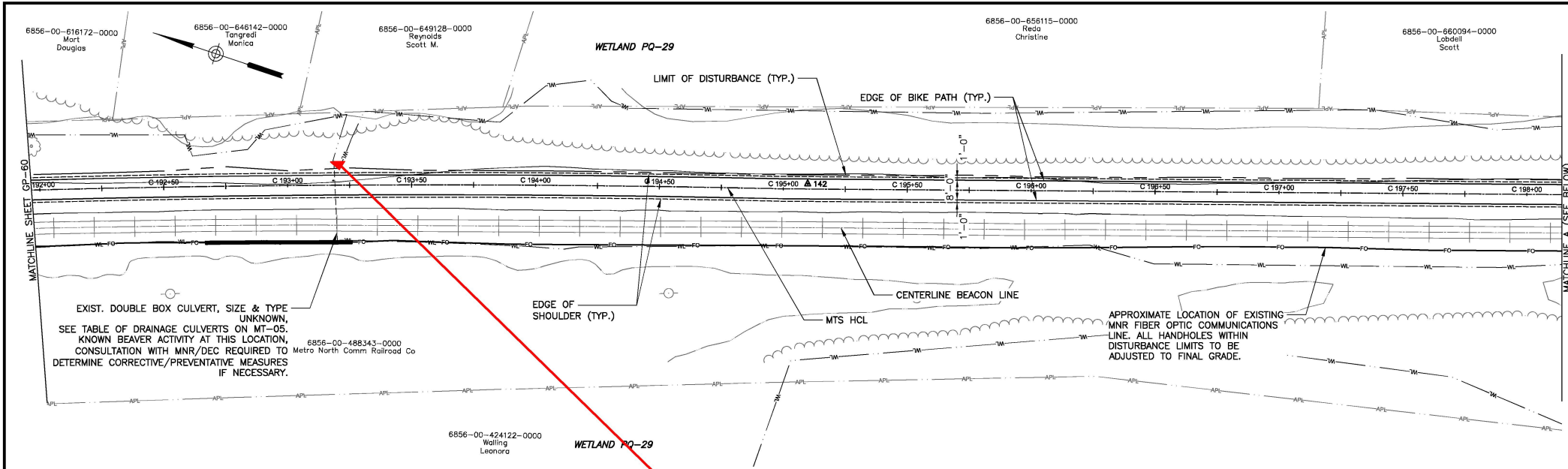
**wsp**  
 WSP USA INC.  
 555 PLEASANTVILLE ROAD  
 SOUTH BUILDING  
 P.O. BOX 2650  
 BRIARCLIFF MANOR, NY 10510  
 TEL: +1 914 747 1120

**MTA** Metro-North Railroad  
 420 Lexington Avenue  
 New York, N.Y. 10170

PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 52

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 DATE: JULY 2018  
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 SHEET OF 314

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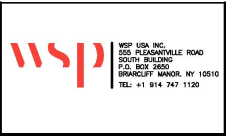
**Area 5a - DEC Wetland - PQ-29 (Class 2)**  
 Description: A DEC-regulated, class 2 wetland classified as PQ-29. Field observations described this area as a riverine and freshwater emergent wetland with red maple (*Acer rubrum*), shagbark hickory (*Carya Ovata*), and skunk cabbage (*Symplocarpus foetidus*) as the dominant vegetation.  
 STA. C193+20 - C193+25, C203+40 - C203+85  
 Length: 35 ft  
 Area: 75 ft<sup>2</sup>  
 Volume: 75 ft<sup>3</sup>  
 Type of fill: Temporary Erosion Sediment Control, Slope Stabilization

**PRELIMINARY PLANS - NOT FOR CONSTRUCTION**

REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE

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DESIGNED BY: KB  
 DRAWN BY: MS  
 CHECKED BY: DG  
 APPROVED BY: JK



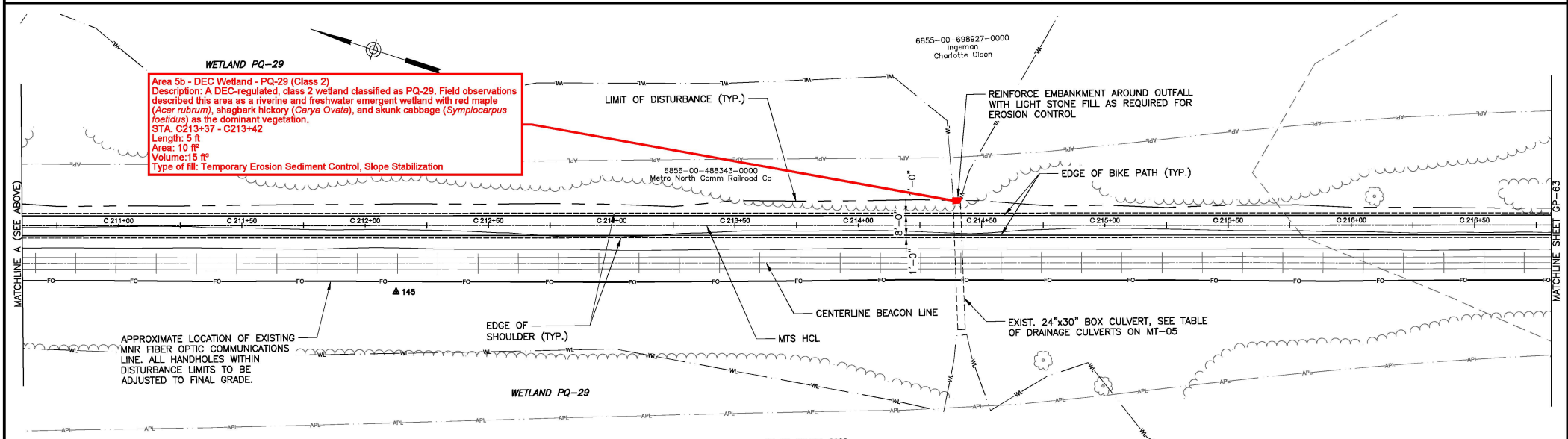
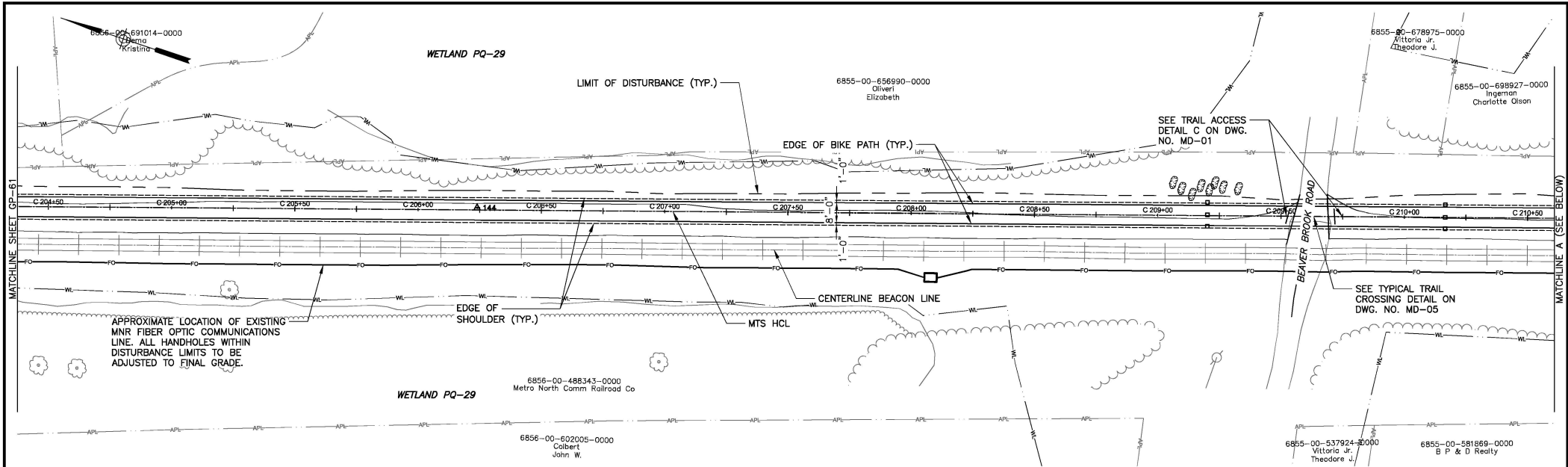
**MTA Metro-North Railroad**  
 420 Lexington Avenue  
 New York, N.Y. 10170

PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 61

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20' DATE: JULY 2018  
 DRAWING NUMBER: GP-61  
 SHEET 168 OF 314

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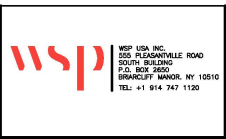


PRELIMINARY PLANS - NOT FOR CONSTRUCTION

REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE

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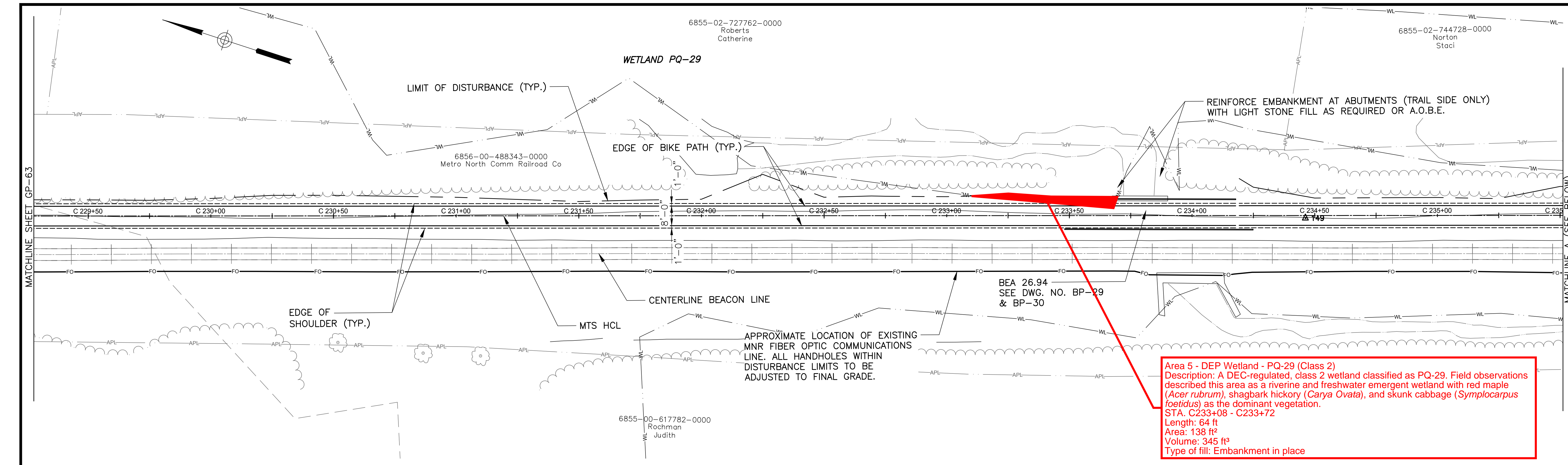
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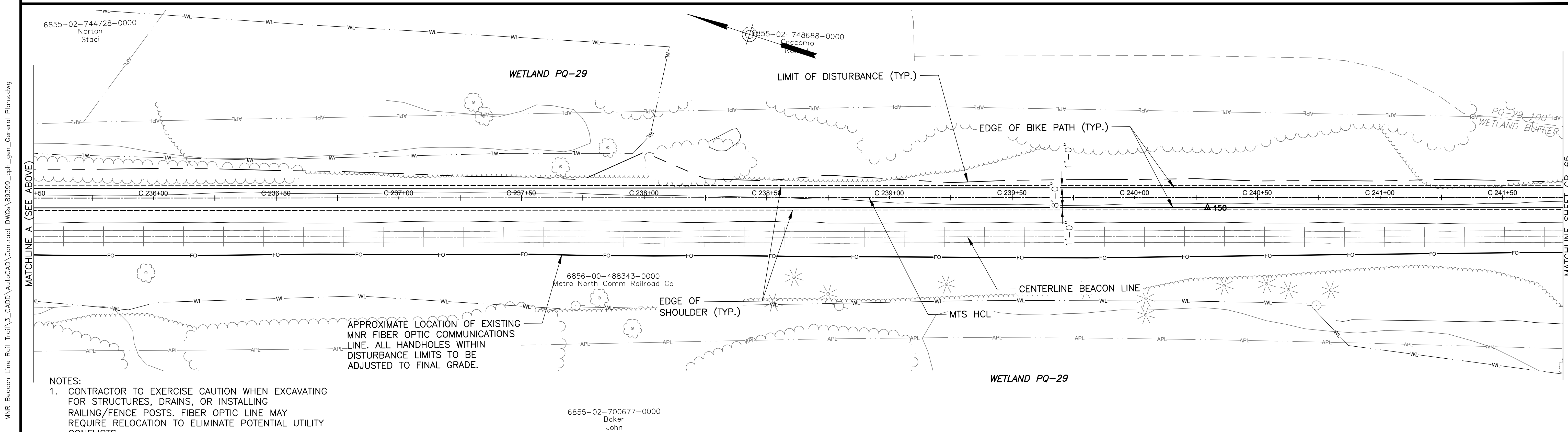
EMPIRE STATE TRAIL - MAYBROOK TRAILWAY SECTION  
 HOPEWELL JUNCTION TO BREWSTER

SCALE: 1"=20'  
 DATE: JULY 2018  
 DRAWING NUMBER: GP-62  
 SHEET 169 OF 314

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20'  
 DATE: JULY 2018  
 DRAWING NUMBER: GP-62  
 SHEET 169 OF 314



**Area 5 - DEP Wetland - PQ-29 (Class 2)**  
 Description: A DEC-regulated, class 2 wetland classified as PQ-29. Field observations described this area as a riverine and freshwater emergent wetland with red maple (*Acer rubrum*), shagbark hickory (*Carya Ovata*), and skunk cabbage (*Symplocarpus foetidus*) as the dominant vegetation.  
 STA. C233+08 - C233+72  
 Length: 64 ft  
 Area: 138 ft<sup>2</sup>  
 Volume: 345 ft<sup>3</sup>  
 Type of fill: Embankment in place



**NOTES:**  
 1. CONTRACTOR TO EXERCISE CAUTION WHEN EXCAVATING FOR STRUCTURES, DRAINS, OR INSTALLING RAILING/FENCE POSTS. FIBER OPTIC LINE MAY REQUIRE RELOCATION TO ELIMINATE POTENTIAL UTILITY CONFLICTS.

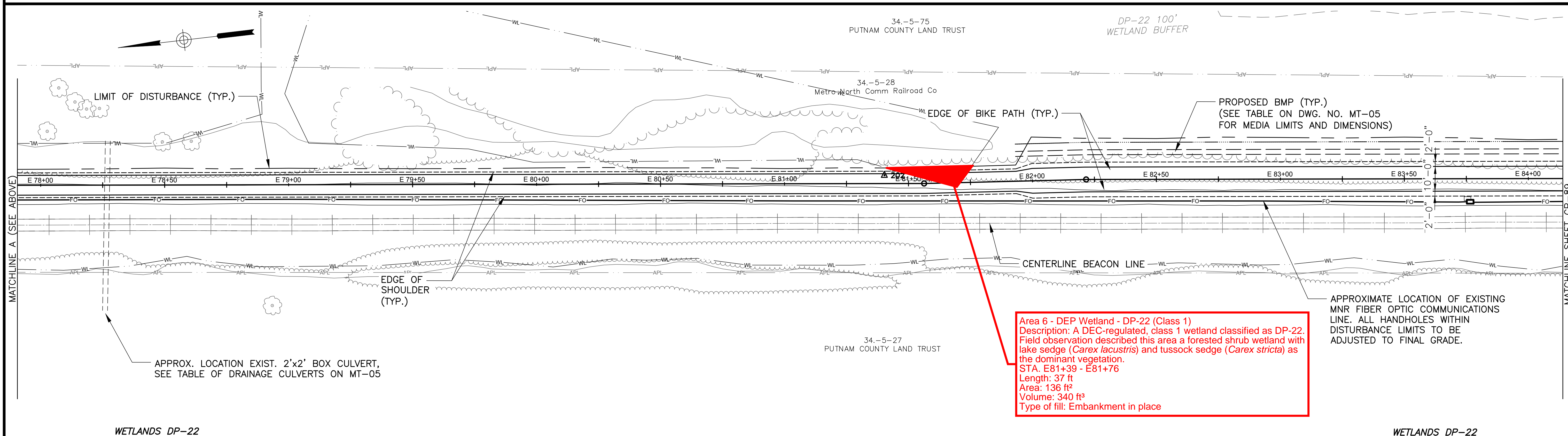
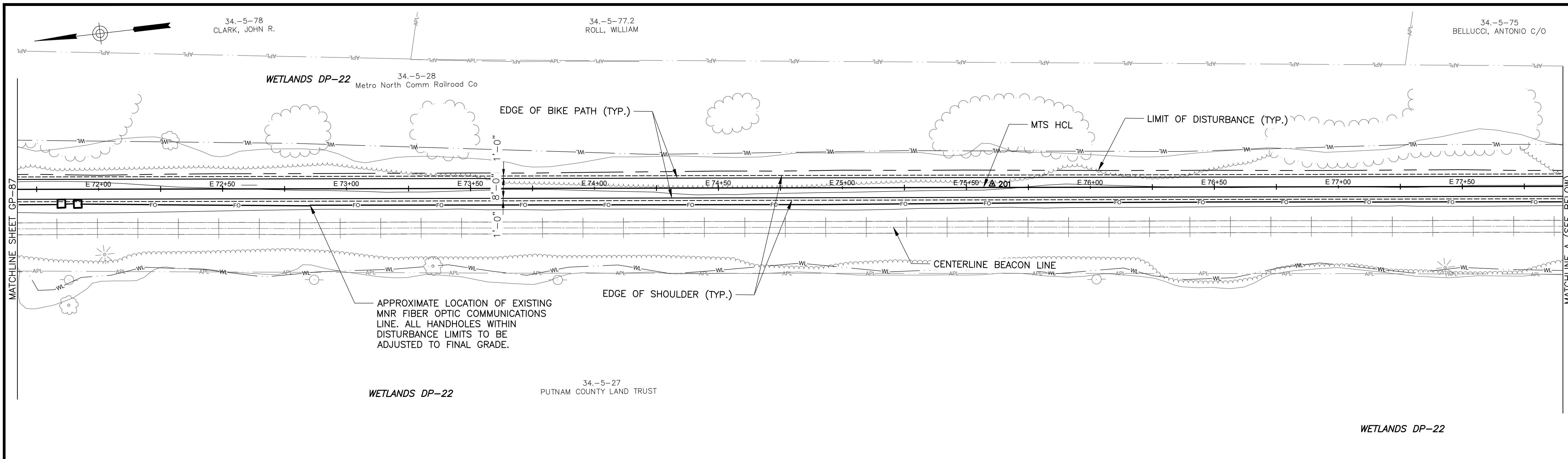
**PRELIMINARY PLANS - NOT FOR CONSTRUCTION**



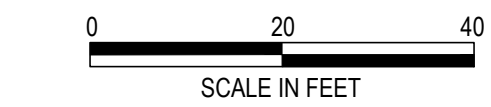
REV. NO. DRAWN BY CHK. BY. DATE DESCRIPTION	IT IS A VIOLATION OF THE PROFESSIONAL LICENSE LAW FOR ANY PERSON TO ALTER THIS DOCUMENT IN ANY WAY UNLESS THAT PERSON IS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL. THE LICENSED PROFESSIONAL SHALL AFFIX TO THIS DOCUMENT THE SEAL AND THE NOTATION "ALTERED BY", FOLLOWED BY THE AUTHORIZED SIGNATURE AND THE DATE OF THE ALTERATION.	PE:	DESIGNED BY: KB DRAWN BY: MS CHECKED BY: DG APPROVED BY: JK	WSP USA INC. 555 PLEASANTVILLE ROAD SOUTH BUILDING P.O. BOX 2650 BRIARCLIFF MANOR, NY 10510 TEL: +1 914 747 1120	Metro-North Railroad 420 Lexington Avenue New York, N.Y. 10170	PROJECT: <b>EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER</b>	P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY
	DRAWING TITLE: <b>GENERAL PLAN - 64</b>		SCALE: 1"=20' DATE: JULY 2018	DRAWING NUMBER: <b>GP-64</b>	SHEET OF 314		

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PRELIMINARY PLANS - NOT FOR CONSTRUCTION



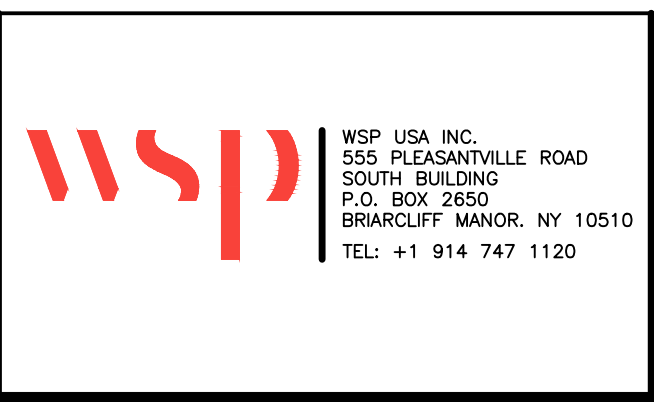
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 Printed: Jul 20, 2018, 10:37am

REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE

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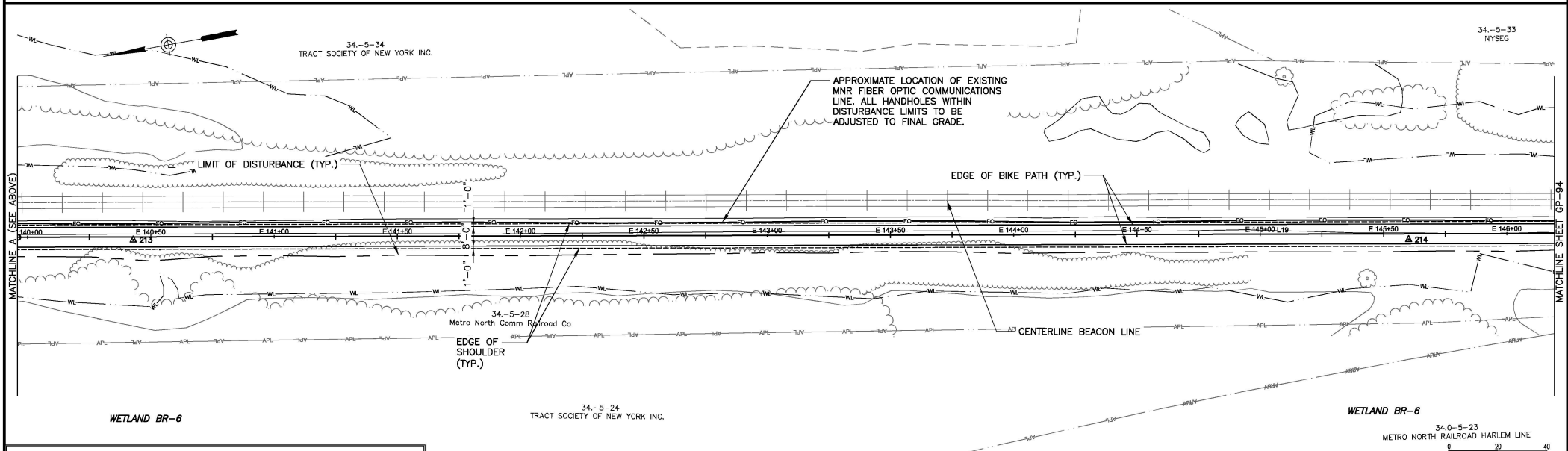
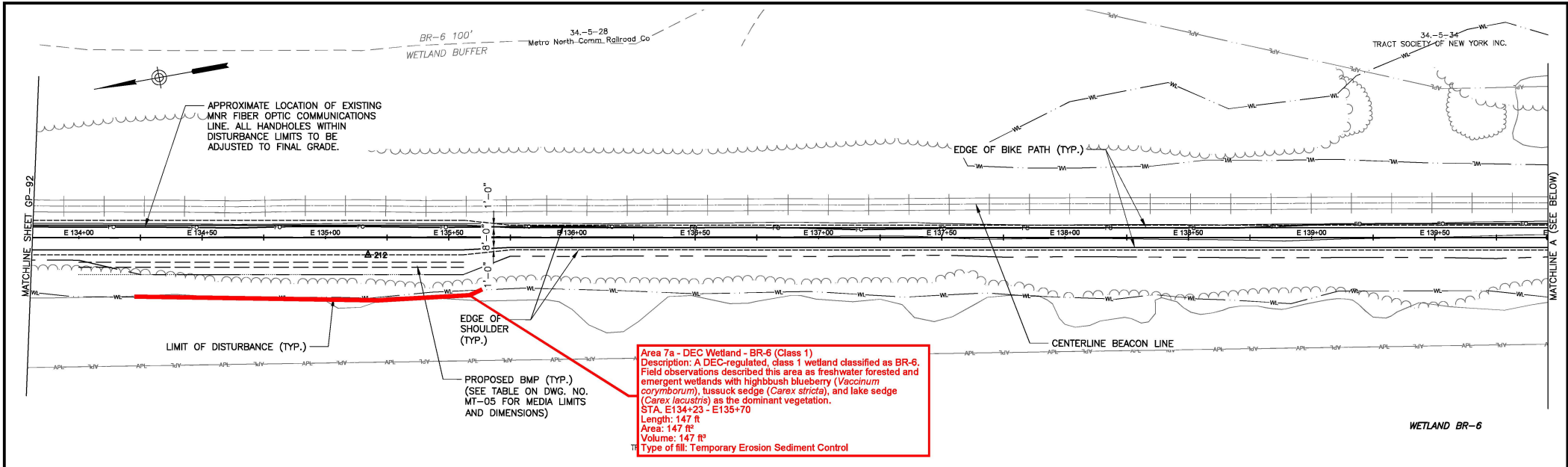
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 DRAWN BY: MS  
 CHECKED BY: DB  
 APPROVED BY: JK



PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 88

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20'  
 DATE: JULY 2018  
 DRAWING NUMBER: GP-88  
 SHEET OF 314



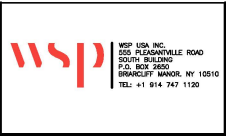


PRELIMINARY PLANS - NOT FOR CONSTRUCTION

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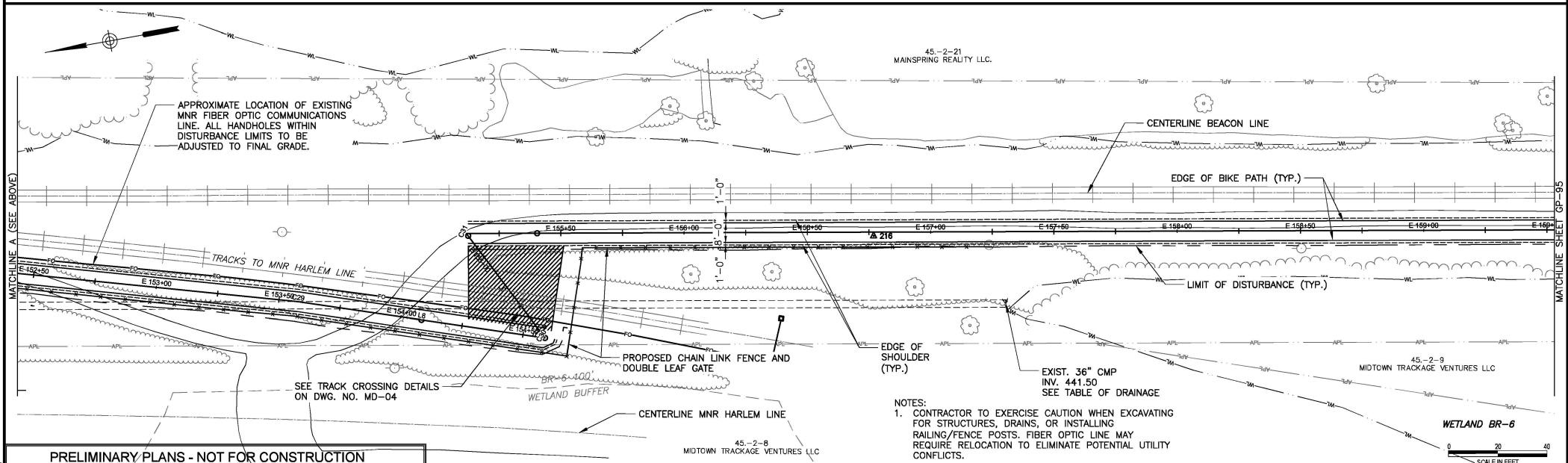
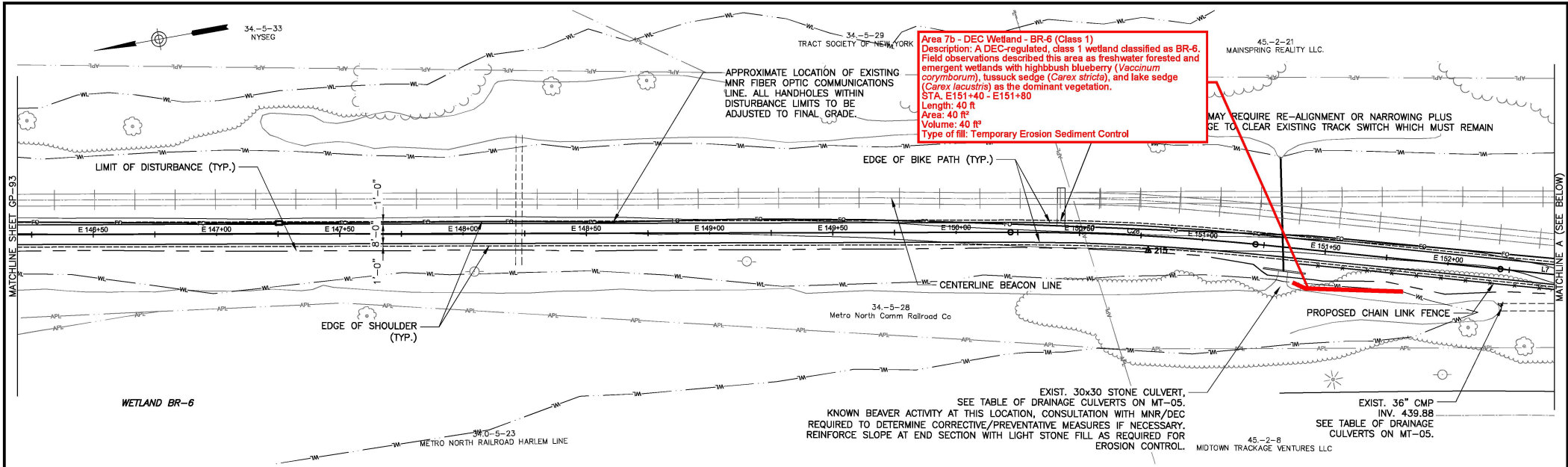
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PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 93

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20' DATE: JULY 2018  
 DRAWING NUMBER: GP-93  
 SHEET 273 OF 314

Drawing Path: \\metro-north-rail\proj\191670A - MNR Beacon Line Rail Trail\3\_CADD\AutoCAD\Contract\_DWG\B0392\_cpl\_gm\_General Plans.dwg  
 Date: 7/11/18 10:53 AM



PRELIMINARY PLANS - NOT FOR CONSTRUCTION

Drawing Path: \\proj\191670A - MNR Beacon Line Rail Trail\3\_CADD\AutoCAD\Contract DWG\B2392\_cpl\_gm\_General Plans.dwg  
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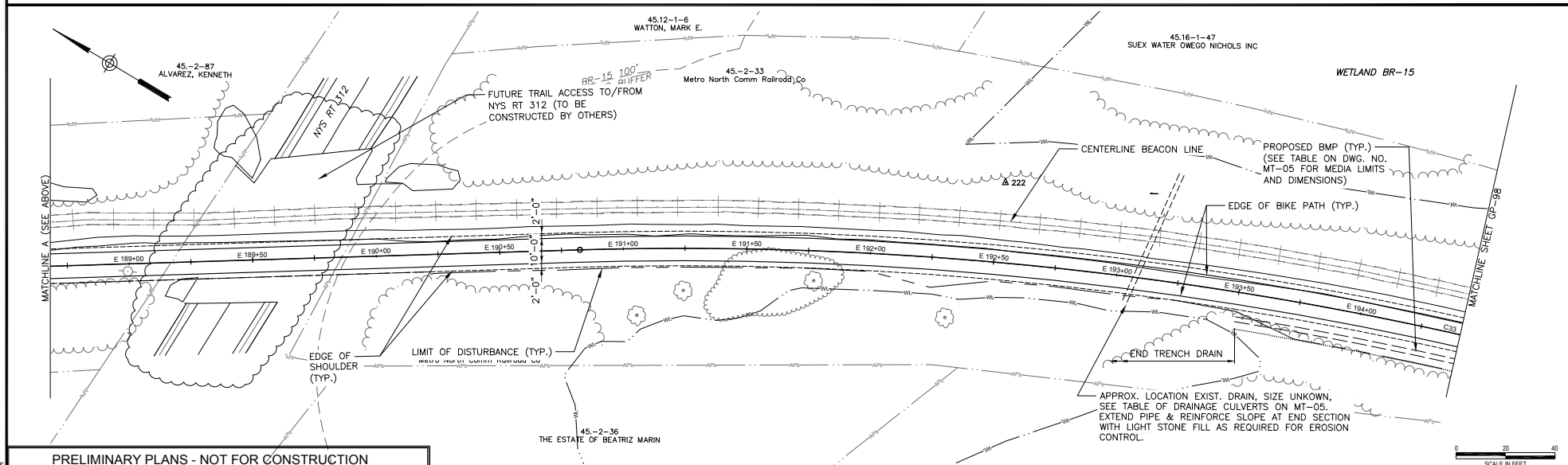
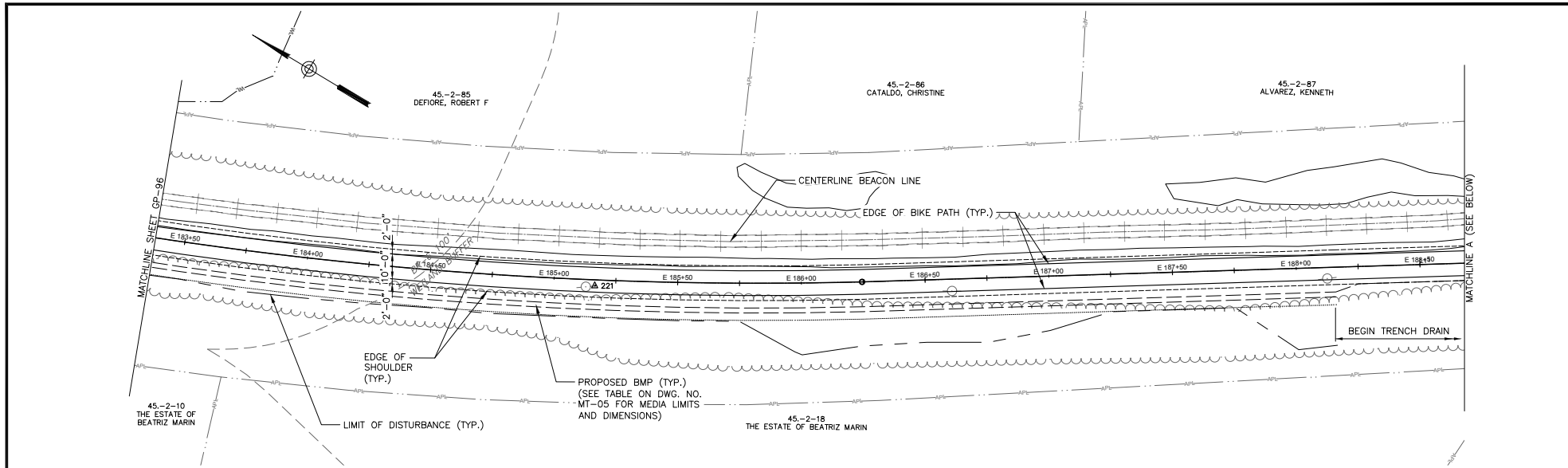
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PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 94

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20' DATE: JULY 2018  
 DRAWING NUMBER: GP-94  
 SHEET 274 OF 314

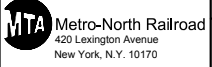


**PRELIMINARY PLANS - NOT FOR CONSTRUCTION**

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PROJECT: EMPIRE STATE TRAIL - MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 97

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20'  
 DATE: JULY 2018  
 DRAWING NUMBER: GP-97  
 SHEET OF 314

Drawing Path Name: L:\Projects\181876720 - MNR Beacon Line Roll Trail\3\_CADD\AutoCAD\Contract DWG\181876720\_gp\_General Plans.dwg  
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Maybrook-Beacon Rail Trail Wetland Impacts Table

01/25/2019

Wetland impacts anticipated in areas identified as having potential suitable bog turtle habitat.

GP or Map #	Amt. of <b>TEMP.</b> wetland impact in acres <u>and</u> sq. ft.	Reason for impact (e.g., silt fence installation, boardwalk installation, other)	Nova Consulting evaluation of habitat (e.g., vegetation type, soil and hydrology info) <b>present at the impact area, and thought about how bog turtles may be impacted at this particular spot</b>	Amt. of <b>PERM.</b> wetland impact in acres <u>and</u> sq. ft.	Reason for impact (e.g., embankment grading for boardwalk approach, embankment fill/grading area, installation of culvert pipe, other)	Nova Consulting evaluation of habitat (e.g., vegetation type, soil and hydrology info) <b>present at the impact area, and thought about how bog turtles may be impacted at this particular spot</b>	Photo reference # (photo depicting area of impact)	Conservation measures at each impact area (e.g., use NYSDEC-permitted monitoring biologist to conduct visual survey, probe, etc.)
GP-09	0.0011Ac (50sf)	Silt Fence Installation	NWI-classified as Palustrine, emergent, persistent, and semi-permanently flooded with dominant vegetation of red maple ( <i>Acer rubrum</i> ), silky dogwood ( <i>Cornus amonum</i> ), and duckweed ( <i>Lemna minor</i> ). USGS soil type is HsB- Hoosic gravelly loam and field observations described the soil as ~20" of mucky sand, with underlying ballast at the 20" depth mark. Not likely bog turtle habitat.	0.0005 Ac (22sf)	Embankment stabilization at existing pipe outfall.	NWI-classified as Palustrine, emergent, persistent, and semi-permanently flooded with dominant vegetation of red maple ( <i>Acer rubrum</i> ) and sugar maple ( <i>Acer saccharum</i> ). USGS soil type is HsB- Hoosic gravelly loam and field observations described the soil as ~20" of mucky sand, with underlying ballast at the 20" depth mark. No impacts to bog turtles as habitat is not suitable	Figure 1	NYSDEC permitted monitoring biologist will perform a visual survey for turtles before and during construction activities; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.
GP-13	0.0114Ac (500sf)	Silt Fence Installation	Unlisted wetland composed of forested shrub wetland with	0.0225Ac (984sf)	Embankment Fill/Grading.	Unlisted wetland composed of forested	No photo available	NYSDEC permitted monitoring biologist

NAN-2018-00153

MAR - 7 2019

			seasonally standing water and a gravelly loam substrate. Impact area has a USGS soil type of HsA – Hoosic gravelly loam. Not likely to be bog turtle habitat.			shrub wetland with seasonally standing water and a gravelly loam substrate. Impact area has a USGS soil type of HsA – Hoosic gravelly loam. No impacts to bog turtles as habitat is not suitable.		will perform a visual survey for turtles before and during construction activities; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.
GP-46	0.0011Ac (50sf)	Silt Fence Installation	DEC-regulated, class 2 wetland classified as PQ-10. Field observations describe this area as forested shrub wetland with semi-permanently flooded emergent areas. Red maple ( <i>Acer rubrum</i> ) and tussock sedge ( <i>Carex stricta</i> ) are the dominant vegetation. USGS soil type is Pc-Natchaug muck and field observations described the soil as ~16" of mucky loam/clay, with underlying mineral soils over ballast below the 16" depth. Not likely to be bog turtle habitat	0.0052Ac (228sf)	Embankment Fill/Grading for Washout Repair of Railroad	DEC-regulated, class 2 wetland classified as PQ-10. Field observations describe this area as forested shrub wetland with semi-permanently flooded emergent areas. Red maple ( <i>Acer rubrum</i> ) and tussock sedge ( <i>Carex stricta</i> ) are the dominant vegetation. USGS soil type is Pc- Natchaug muck and field observations described the soil as ~16" of mucky loam/clay, with underlying mineral soils over ballast below the 16" depth mark. No impacts to bog turtles as habitat is not suitable.		NYSDEC permitted monitoring biologist will perform a visual survey for turtles before and during construction activities; hand probe, where possible; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.
GP-47	0.0011Ac (100sf)	Silt Fence Installation	DEC-regulated, class 2 wetland classified as PQ-10. Field observations describe this area as forested shrub	0.0016Ac (73sf)	Embankment Fill/Grading.	DEC-regulated, class 2 wetland classified as PQ-10. Field observations	Figure 2	NYSDEC permitted monitoring biologist will perform a visual



			<p>wetland with semi-permanently flooded emergent areas. Red maple (<i>Acer rubrum</i>) and tussock sedge (<i>Carex stricta</i>) are the dominant vegetation. USGS soil type is Pc-Natchaug muck and field observations described the soil as ~16" of mucky loam/clay, with underlying mineral soils over ballast below the 16" depth. Not likely to be bog turtle habitat</p>			<p>describe this area as forested shrub wetland with semi-permanently flooded emergent areas. Red maple (<i>Acer rubrum</i>) and tussock sedge (<i>Carex stricta</i>) are the dominant vegetation. USGS soil type is Pc- Natchaug muck and field observations described the soil as ~16" of mucky loam/clay, with underlying mineral soils over ballast below the 16" depth mark. No impacts to bog turtles as habitat is not suitable.</p>		<p>survey for turtles before and during construction activities; hand probe, where possible; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.</p>
GP-52	0.0011Ac (50sf)	Silt Fence Installation	<p>NWI-classified as riverine and pond. Field observations described emergent vegetation type surrounding the pond with dominant species including red maple (<i>Acer rubrum</i>), lake sedge (<i>Carex lacustris</i>), and royal fern (<i>Osmunda spectabilis</i>). USGS soil type is a rocky Charlton-Chatfield complex and field observations described the soil as ~6" of organic silty loam, with underlying mix of mineral soils and ballast at the 6" depth mark. Not likely bog turtle habitat.</p>	0.0002Ac (11sf)	Embankment stabilization at existing pipe outfall.	<p>NWI-classified as riverine and pond. Field observations described emergent vegetation type surrounding the pond with dominant species including red maple (<i>Acer rubrum</i>), lake sedge (<i>Carex lacustris</i>), and royal fern (<i>Osmunda spectabilis</i>). USGS soil type is a rocky Charlton-Chatfield complex and field observations described the soil as ~6" of organic silty loam, with underlying mix of mineral soils and ballast at the 6"</p>	Figure 3	<p>NYSDEC permitted monitoring biologist will perform a visual survey for turtles before and during construction activities; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.</p>

						depth mark. No impacts to bog turtles as habitat is not suitable.		
GP-61,62,64	0.0046Ac (200sf)	Silt Fence Installation	DEC-regulated, class 2 wetland classified as PQ-29 which is characterized as riverine and freshwater emergent wetlands. Field observations recorded vegetation dominated by red maple ( <i>Acer rubrum</i> ), shagbark hickory ( <i>Carya Ovata</i> ), ad skunk cabbage ( <i>Symplocarpus foetidus</i> ). USGS soil type is HeB- Haven loam and field observations described the soil as saturated mucky sand with standing water. The impact area is riverine in landscape with standing water and rocky substrate, and sparse vegetation, with skunk cabbage ( <i>Symplocarpus foetidus</i> ) as the dominant vegetation. Not likely bog turtle habitat.	0.0051Ac (223sf)	Embankment Fill/Grading.	DEC-regulated, class 2 wetland classified as PQ-29 which is characterized as riverine and freshwater emergent wetlands dominated by red maple ( <i>Acer rubrum</i> ), shagbark hickory ( <i>Carya Ovata</i> ), ad skunk cabbage ( <i>Symplocarpus foetidus</i> ). USGS soil type is HeB- Haven loam and field observations described the soil as saturated mucky sand with standing water. The impact area is riverine in landscape with standing water and rocky substrate, and sparse vegetation, with skunk cabbage ( <i>Symplocarpus foetidus</i> ) as the dominant vegetation. No impacts to bog turtles as habitat is not suitable.	No photo available	NYSDEC permitted monitoring biologist will perform a visual survey for turtles before and during construction activities; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.
GP-88	0.0022Ac (100sf)	Silt Fence Installation	A DEC-regulated class-1 wetland classified as DP-22 and characterized as a forested shrub wetland with lake sedge ( <i>Carex lacustris</i> ) and tussocks sedge ( <i>Carex stricta</i> ) as dominant vegetation. USGS soil type is ChB-	0.0031Ac (136sf)	Embankment Fill/Grading.	A DEC-regulated class-1 wetland classified as DP-22 and characterized as a forested shrub wetland with lake sedge ( <i>Carex lacustris</i> ) and tussocks	Figure 5 (shows adjacent habitat)	NYSDEC permitted monitoring biologist will perform a visual survey for turtles before and during construction

			<p>Charlton loam and field observations described the soil as saturated mucky sand. Not likely bog turtle habitat in disturbance area but is adjacent to an area of suitable habitat. The impact area is separated from the suitable adjacent bog turtle habitat by a small (about 5- 10 feet in width) access path. The impact area consists of a small, saturated, elongated depression formed by the raised ballasted rail area and natural hill form located on either side. Standing water was present within the impact area at the time of field observations with &gt; 12 inches of muck and a mix of mineral soils and ballast underneath. Silt fences may result in restricted movement or entrapment.</p>			<p>sedge (<i>Carex stricta</i>) as dominant vegetation. USGS soil type is ChB- Charlton loam and field observations described the soil as saturated mucky sand. The impact area is separated from the suitable adjacent bog turtle habitat by a small (about 5- 10 feet in width) access path. The impact area consists of a small, saturated, elongated depression formed by the raised ballasted rail area and natural hill form located on either side. Standing water was present within the impact area at the time of field observations with &gt; 12 inches of muck and a mix of mineral soils and ballast underneath. Not likely bog turtle habitat but is adjacent to an area of suitable habitat.</p>	<p>activities; hand probe, where possible; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.</p>
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**Maybrook-Beacon Rail Trail  
Long-Term Trail Maintenance Plan**

**March 7, 2019**

The trail crosses many areas potentially containing sensitive species. The following shall be done within the trail footprint for pre- and post-construction activities, as well as for long-term maintenance of the trail to avoid significant adverse effect to threatened or endangered species and their habitat:

1. Introduction of invasive species shall be minimized due to the disturbance from construction, maintenance and use of the trail within the habitats via the following measures.
  - a) Equipment shall be washed prior to use on the trail if previously used at another location.
  - b) Any invasive species found along the trail will be removed (clipped, hand-pulled, etc.) from trailside locations.
2. Pesticides, fertilizers, and road salt, along with other potentially harmful products will not be used for long-term maintenance of the trail.
3. Construction and maintenance personnel shall be trained by a Monitoring Biologist, permitted by the New York State Department of Environmental Conservation to handle threatened or endangered species, to readily identify the various threatened or endangered species that exist within the work corridor. Personnel shall implement the following procedures for potential encounters with threatened or endangered species:
  - a) If any federal- or state-listed threatened or endangered species are encountered (*i.e.*, sick, injured) during trail maintenance, the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service, New York Field Office shall be contacted within 24 hours.
  - b) If any maintenance has an adverse impact (*i.e.*, injury due to road collision) on a federal- or state-listed threatened or endangered species, then the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service, New York Field Office shall be contacted immediately.
  - c) See attached Education and Encounter Plan
4. Necessary maintenance activity (*e.g.* - replacing a broken or deteriorated fence post, cold patching a pothole in the trail pavement, etc.) will be conducted to avoid harming any threatened or endangered species.
  - a) Personnel shall visually inspect for any threatened or endangered species within the work area prior to conducting any work. The protocol (see Education and Encounter Plan) shall be followed upon encountering threatened or endangered species.
  - b) Maintenance equipment, stockpiles, and equipment shall not be staged within wetland areas, upland of wetlands, or in sensitive species habitat (identified by the Permitted Biologist). All equipment should be staged on the trail.
  - c) Mowing will be limited to trailheads only.
  - d) Mowing shall only be completed during winter hibernation period (October 1<sup>st</sup> through March 31<sup>st</sup>) at trailheads within 300 feet of a wetland (Share #3 ad #5 Trailheads).
  - e) Mowing deck will be kept at least six inches above ground level.
  - f) Trail maintenance personnel will use ATV's or light duty pickup trucks for transportation and will keep vehicles on the path at all times. No off-road activities are permitted.

- g) Hand equipment will be used to weed-whack, clean out drainage ditches and pipes of debris, perform pavement repairs, and/or place additional stone along steep embankments as needed for stabilization.
    - i) Existing trailside ditch rehabilitation/cleaning will be minimal, and will only be done to preserve the integrity of trail in order to avoid ditch silting and/or debris build up resulting in trail flooding, washout or loss of railroad embankment.
      - (1) Ditch work would take place throughout the year during periods of dry weather, and prioritized in the spring, summer, and fall months when the earth is not frozen.
      - (2) Ditches will primarily be stone lined, except for where there are larger grassed swales. Minimal muck is present at the proposed ditch sites.
    - ii) Bog turtles have been known to use ditches at various times of the year (including hibernation); therefore, ditches will not be constructed adjacent to suitable bog turtle habitat. If any ditch work is planned adjacent to suitable habitat any time of year, then a Monitoring Biologist will need to inspect the ditches (perform visual and/or hand probe survey) to determine if bog turtles are present.
  - h) All fence posts shall be replaced in-kind. No new fence posts shall be installed in the wetland or suitable habitat.
    - i) Installation of permanent fencing may be installed to discourage trail users from wandering off the trail and into critical and suitable habitat areas. The fencing shall be installed along critical and suitable habitat areas extending 25 feet beyond the habitat limits and 2 feet from the edge of the trail.
      - (1) Fencing would run parallel to ditches and should never cross a ditch or swale.
    - ii) If installation occurs during the turtle active season (between April 1 and September 31), then a Monitoring Biologist will be on site to make sure there are no bog or Blanding's turtles in the work area;
  - i) Tree removal should only be conducted between November 1<sup>st</sup> and March 31<sup>st</sup>, unless if required for emergency hazard tree removal.
5. Signs will be installed as needed to convey important information to trail users:
- a) No signs shall be posted that directs trail users to location of habitats or the exact type of threatened or endangered species that may exist.
  - b) Signs shall direct trail users to not touch, trap or feed any wildlife within the trail corridor, and to not wonder off the trail, explaining the importance of protecting natural environment along the path.
  - c) Signs should prohibit the capture and possession of any wildlife species.
  - d) Signs should restrict pet activities, directing trail users to keep pets on a leash and on the trail.

## MEASURES TO TAKE DURING AN ENCOUNTER

- All personnel working at the site will be trained by a DEC-Permitted, qualified Monitoring Biologist to be able to identify bog turtles and Blanding's turtles and what procedures to follow upon encounter of a turtle.
- It is illegal to take, import, transport, possess, or sell an animal listed as threatened without a license.
- If a turtle is seen within or near the work area, stop all work immediately and notify the Biologist. If the turtle does not move along on its own or is found within the enclosed work area, the Monitoring Biologist will safely move the turtle to a wetland in the direction the turtle was traveling in.
- If the turtle was found within the enclosed work area, work cannot commence until fencing is inspected by, and signed off on, by the Monitoring Biologist.
- The Project Engineer will provide educational materials for all contractors and residents to inform of the potential for Bog turtle or Blanding's Turtle encounters and what to do if a turtle is encountered to ensure the animals are not collected or persecuted.
- The USFWS and the NYSDEC shall be notified within 24 hours of encounter to report location, project name, and explanation of the incident.

In case of a sighting, please notify the following within 24 hours of encounter:



### Bog Turtle Encounter:

Contact Noelle Rayman  
USFWS New York Field Office  
(607)-753-9334 or email [noelle\\_rayman@fws.gov](mailto:noelle_rayman@fws.gov)  
**AND**  
NYSDEC Wildlife Office  
(845)-256-3098 or email [Wildlife.R3@dec.ny.gov](mailto:Wildlife.R3@dec.ny.gov)  
**AND** Michael Nowicki (203-910-4716)



### Blanding's Turtle Encounter:

NYSDEC Wildlife Office  
(845)-256-3098 or email [Wildlife.R3@dec.ny.gov](mailto:Wildlife.R3@dec.ny.gov)  
**AND** Michael Nowicki (203-910-4716)

**PLEASE: Provide the Location, Project Name, and an Explanation of the incident. THANK YOU!**



MAYBROOK TRAILWAY  
DUTCHESS &  
PUTNAM COUNTY

## MAYBROOK TRAILWAY

# Education and Encounter Plan



Bog Turtle



Blanding's Turtle

This pamphlet is to be distributed to all construction workers at the project site by the Project Engineer **after initial training by a DEC-Permitted, Qualified Monitoring Biologist**. Its purpose is to educate the workers on the identification and encounter procedures for endangered and threatened species in the project area.

*Metro- North Railroad*



**Bog Turtles:** Bog Turtles are New York's smallest turtles, with an maximum shell length of 4.5 inches. A bright yellow or orange blotch (like the one in the picture above) on each side of its head and neck are a distinctive feature of this species.



**Blanding's Turtles:** Blanding's Turtles are a medium sized turtle that can be distinguished by its bright yellow chin and throat (see picture) The average shell length is 7 to 9 inches.

## BOG TURTLE FACTS

Federally Endangered, NYS Threatened

- The Bog turtle is New York's smallest turtle, reaching a maximum length of 4.5 inches. A bright yellow or orange blotch on each side of its head and neck are a distinctive feature of this species. The body color is dark with an orange-red wash on the inside of the legs of some individuals. The carapace "upper shell" is domed and somewhat rectangular, often with prominent rings on the shell plates.
- This is a semi-aquatic species, preferring habitat with cool, shallow, slow-moving water, deep soft muck soils, and tussock-forming herbaceous vegetation. Bog turtles have also been known to travel over land.
- In New York bog turtles often hibernate communally with other bog turtles and with spotted turtles. Generally both the air and water temperature must exceed 50 degrees F for the turtle to become active. Mating occurs primarily in the spring but may also occur in the fall and may be focused in or near their winter shelter.
- Although generally very secretive, the bog turtle can be seen basking in the open, especially in the early spring just after emerging from hibernation. It is an opportunistic feeder, eating what it can get, although it prefers invertebrates such as slugs, worms, and insects. Seeds, plant leaves, and carrion are also included in its diet.

## BLANDING'S TURTLE FACTS

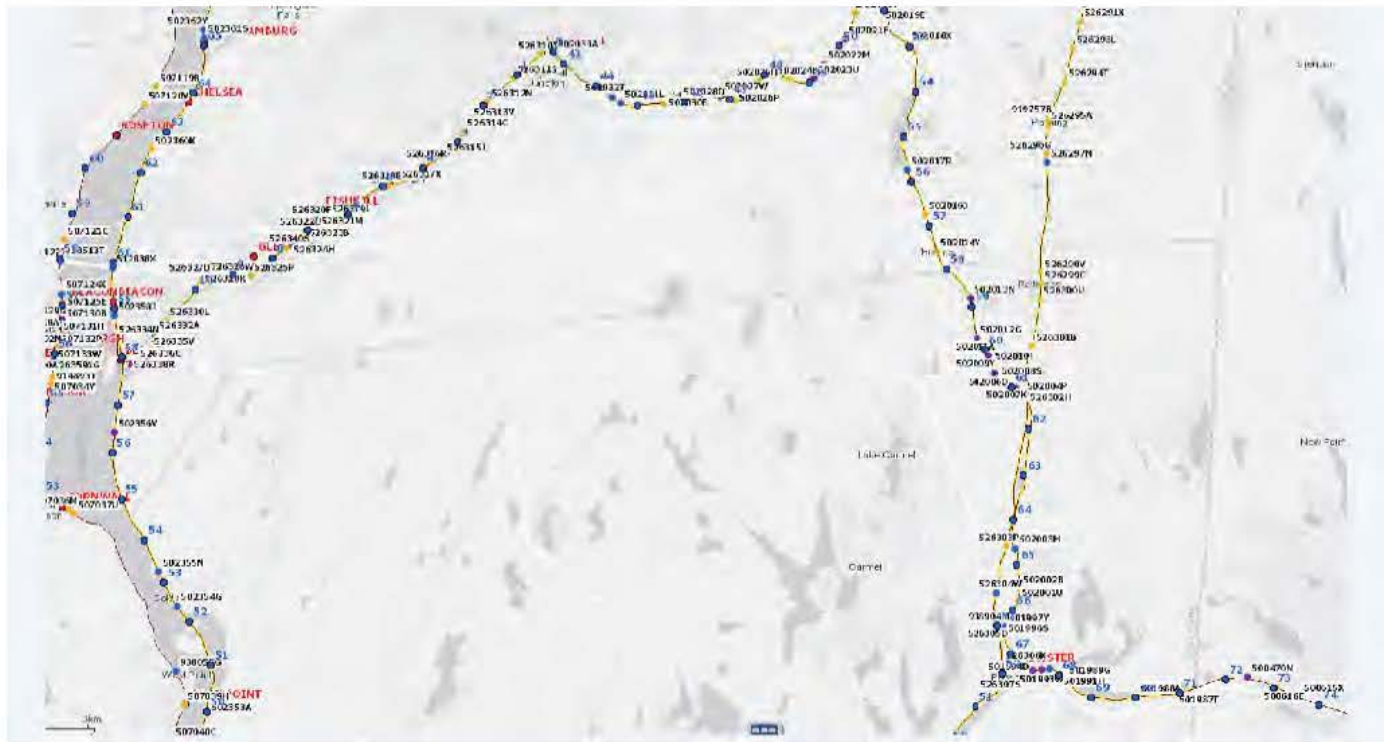
NYS Threatened

- The Blanding's turtle is a medium sized turtle with an average shell length of approximately seven to nine inches and a maximum length of 10 inches. A distinguishing feature of this turtle is the bright yellow chin and throat.
- Mating probably occurs in April and early May with nesting beginning in early June and lasting throughout the month.
- The Blanding's turtle overwinters under or near water, in mud or under vegetation or debris. During the nesting season, a female Blanding's turtle may be found more than a kilometer from where it hibernated.
- Blanding's turtles take 18-22 years to reach sexual maturity and may live to be 70 years old.
- Blanding's turtles move through and/or utilize several habitat types. Aquatic/wetland habitats are used for hibernation, mating, feeding, shelter, estivating, and basking, while terrestrial habitats are used for nesting and seasonal migrations, as well as estivating, and basking. Although there is variation throughout the geographic distribution of the Blanding's turtle, terrestrial habitats can often be well over ½ mile from core wetland habitats, and an individual turtle's home.

# EXHIBIT C



# FRA Rail Map Displaying the Beacon Line in New York



# EXHIBIT D



## PHASE I ARCHEOLOGICAL INVESTIGATION

### Metro-North Beacon Rail Trail

Towns of East Fishkill, Beekman, Pawling, Patterson, and Southeast  
Dutchess and Putnam Counties, New York

HAA # 5176-31  
OPRHP 17PR08729

**Submitted to:**

Daniel Brier, P.E., Project Manager  
WSP USA  
555 Pleasantville Rd., South Building Suite 201  
Briarcliff Manor, New York 10510  
p. 914.747.1120  
e. Daniel.Briar@wsp.com

**Prepared by:**

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JULY 2018

## MANAGEMENT SUMMARY

SHPO Project Review Number: 17PR08729

Involved State and Federal Agencies: *US Army Corps of Engineers (Corps)*

Phase of Survey: *LA/IB*

## LOCATION INFORMATION

Municipalities: *Towns of East Fishkill, Beekman, Pawling, Patterson, and Southeast*

Counties: *Dutchess and Putnam*

## SURVEY AREA

Total Trail Length: *22.82 miles*

### Trailhead #1

Length and Width: *124 x 63 m (407 x 206 ft)*

Acreeage: *0.97 acre (0.39 ha)*

### Trailhead #2

Length and Width: *82 x 30 m (270 x 100 ft)*

Acreeage: *0.61 acre (0.25 ha)*

### Trailhead #3

Length and Width: *51 x 98 m (168 x 322 ft)*

Acreeage: *1.24 acre (0.50 ha)*

### Trailhead #4

Length and Width: *92 x 125 m (303 x 410 ft)*

Acreeage: *2.84 acres (1.15 ha)*

### Trailhead #5

Length and Width: *79 x 41 m (260 x 135 ft)*

Acreeage: *0.81 acre (0.33 ha)*

## ARCHEOLOGICAL SURVEY OVERVIEW

Number and Interval of Shovel Tests: *50 tests at 15 meters (50 ft)*

Number and Size of Units: *n/a*

Width of Plowed Strips: *n/a*

Surface Survey Transect Interval: *n/a*

## RESULTS OF ARCHEOLOGICAL SURVEY

Number and Name of Precontact Sites Identified: *none*

Number and Name of Historic Sites Identified: *1 Bullet Hole Rd Depot/Rail yard Site*

Number and Name of Sites Recommended for Phase II or Avoidance: *none*

## RECOMMENDATIONS

No significant archeological deposits or sites were identified by the Phase I archeological field reconnaissance of proposed trailheads. No further archeological work is recommended.

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Date of Report: *June 2018*

## **ABSTRACT**

The proposed Beacon Line Rail Trail Project is a shared-use bicycling and pedestrian path that will be constructed within a 23-mile section of the Metro-North Railroad (MNR) Beacon Line Corridor from Brewster, NY to Hopewell Junction, New York. OPRHP did not recommend archeology for the trail itself, however did recommend a Phase I investigation for five (5) trailheads that will be located outside of the disturbed/filled railroad bed.

The Phase I investigation of the trailheads included a sensitivity assessment and the excavation of 50 shovel tests. No significant archeological deposits were discovered.

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## **PHASE I CULTURAL RESOURCES SURVEY**

### **1 Introduction**

Hartgen Archeological Associates, Inc. (Hartgen) conducted a Phase I archeological investigation for the proposed Metro-North Beacon Rail Trail (Project) located in the Towns of East Fishkill, Beekman, Pawling, Patterson, and Southeast, Dutchess and Putnam Counties, New York. The Project requires approvals the US Army Corps of Engineers (Corps).

This investigation was conducted to comply with Section 106 of the National Historic Preservation Act and will be reviewed by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP). The investigation was conducted according to the New York Archaeological Council's *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections* (1994), which are endorsed by OPRHP. This report has been prepared according to OPRHP's *State Historic Preservation Office (SHPO) Phase I Archeological Report Format Requirements* (2005).

### **2 Project Information**

#### **2.1 Project Location**

The proposed Beacon Line Rail Trail will be a shared-use bicycling and pedestrian path running along a 23-mile section of the Metro-North Railroad (MNR) Beacon Line Corridor from Brewster, NY to Hopewell Junction, New York. On this route the Project will pass through the Towns of East Fishkill, Beekman, and Pawling in Dutchess County, and the Towns of Patterson and Southeast in Putnam County.

This archeological study was undertaken of five (5) trailhead locations that are proposed along the route outside of the existing railroad bed at S Green Haven Rd. in Beekman (Trailhead #1), on Bard Road in Beekman (Trailhead #2), near the intersection of Camp Rd. and Rt. 292 in Pawling (Trailhead #3), near the intersection of Bullet Hole Rd. and Rt. 164 in Patterson (Trailhead #4), and near the trail's intersection with Pumphouse Rd. in the Town of Southeast (Trailhead #5)(Map 1).

#### **2.2 Description of the Project**

The Beacon Line Rail Trail project will become a key component of the Empire State Trail system by connecting a gap between the Putnam Trailway and the Maybrook Trailway, and to the north, the Dutchess Rail Trail.

The proposed Project will follow a section of the Beacon Line that is not currently active. Construction will include a 10 foot (3 m) paved path with 2 foot (0.6 m) wide shoulders, within the existing Beacon Line right-of-way. Each trailhead location will include a parking area, informational signage and a footpath to the trail (Map 2a-e).

The OPRHP issued a letter of No Effect on historic properties for the proposed trail that will be located within the existing the railroad bed (correspondence dated 10 January 2018). However, OPRHP recommended Phase I archeological investigation for the five (5) proposed trailheads that will be located outside of the existing railroad bed (correspondence dated 7 March 2018).

### 2.3 Description of the Area of Potential Effects (APE)

The area of potential effects (APE) includes all portions of the property that will be directly altered by the proposed undertaking. As described above, this Phase I archeological investigation focused on that five (5) trailheads that have been proposed along the Project. Each of the individual APEs measure as follows:

#### Trailhead #1

Length and Width: 124 x 63 m (407 x 206 ft)  
Acreage: 0.97 acre (0.39 ha)

#### Trailhead #2

Length and Width: 82 x 30 m (270 x 100 ft)  
Acreage: 0.61 acre (0.25 ha)

#### Trailhead #3

Length and Width: 51 x 98 m (168 x 322 ft)  
Acreage: 1.24 acre (0.50 ha)

#### Trailhead #4

Length and Width: 92 x 125 m (303 x 410 ft)  
Acreage: 2.84 acres (1.15 ha)

#### Trailhead #5

Length and Width: 79 x 41 m (260 x 135 ft)  
Acreage: 0.81 acre (0.33 ha)

## 3 Environmental Background

The environment of an area is significant for determining the sensitivity of the Project for archeological resources. Precontact and historic groups often favored level, well-drained areas near wetlands and waterways. Therefore, topography, proximity to wetlands, and soils are examined to determine if there are landforms in the Project that are more likely to contain archeological resources. In addition, bedrock formations may contain chert or other resources that may have been quarried by precontact groups. Soil conditions can provide a clue to past climatic conditions, as well as changes in local hydrology.

### 3.1 Present Land Use and Current Conditions

All of the proposed trailheads are located immediately adjacent to the areas where the railroad crosses main roads. Each area is bounded on two sides by the railroad itself and an adjacent road. The sides that border the railroad are cut and/or filled. Trailhead 1 and Trailhead 4 contain concrete foundations and platforms of former axillary structures of the railroad; Trailhead 4 is heavily disturbed. All of the proposed areas are currently wooded.

### 3.2 Soils

Soil surveys provide a general characterization of the types and depth of soils that are found in an area. This information is an important factor in determining the appropriate methodology if and when a field study is recommended.

Table 1. Soils in Project

Symbol	Name	Depth	Textures	Slope	Drainage	Landform
<b>Trailhead #1: S Green Haven Rd., Beekman, NY</b>						
Fr	Fredon silt loam	0-23 cm (0-9 in) 23-79 cm (9-31 in) 79-178 cm (31-70 in)	Silt loam Very fine sandy loam Stratified very gravelly sand to loamy fine sand	0-3%	Somewhat poorly drained	Depressions

Symbol	Name	Depth	Textures	Slope	Drainage	Landform
HsB	Hoosic gravelly loam, undulating	0-23 cm (0-9 in) 23-61 cm (9-24 in) 61-178 cm (24-70 in)	Gravelly loam Very gravelly sandy loam Extremely gravelly loamy sand	1-6%	Somewhat excessively drained	Deltas, outwash plains, terraces
SkB	Stockbridge silt loam	0-15 cm (0-6 in) 15-58 cm (6-23 in) 58-203 cm (23-80 in)	Silt loam Silt loam Silt loam	3-8%	Well drained	Till plains, drumlinoid ridges, hills
<b>Trailhead #2: Bard Rd., Beekman, NY</b>						
HoD	Hollis-Chatfield-Rock outcrop complex, hilly	0-8 cm (0-3 in) 8-38 cm (3-15 in) 38-48 cm (15-19 in)	Loam Loam Unweathered bedrock	15-30%	Somewhat excessively drained	Ridges, hills
<b>Trailhead #3: Rt. 292, Pawling, NY</b>						
ChC	Charlton fine sandy loam	0-18 cm (0-7 in) 18-56 cm (7-22 in) 56-165 cm (22-65 in)	Fine sandy loam Gravelly fine sandy loam Gravelly fine sandy loam	8-15%	Well drained	Ridges, hills, ground moraines
ChD	Charlton fine sandy loam	0-18 cm (0-7 in) 18-56 cm (7-22 in) 56-165 cm (22-65 in)	Fine sandy loam Gravelly fine sandy loam Gravelly fine sandy loam	15-25%	Well drained	Ridges, hills, ground moraines
<b>Trailhead #4: Bullet Hole Rd. and Rt. 164, Patterson, NY</b>						
CrC	Charlton-Chatfield complex, very rocky	0-5 cm (0-2 in) 5-10 cm (2-4 in) 10-69 cm (4-27 in) 69-165 cm (27-65 in)	Moderately decomposed plant material Fine sandy loam Gravelly fine sandy loam Gravelly fine sandy loam	0-15%	Well drained	Ridges, hills
<b>Trailhead #5: Pumphouse Rd., Southeast, NY</b>						
LcB	Leicester loam, stony	cm (0-8 in) cm (8-26 in) cm (26-60)	Loam Sandy loam Sandy loam	3-8%	Somewhat poorly drained	Hills, till plains, ridges

### 3.3 Bedrock Geology

The bedrock geology for each trailhead is as follows.

Trailhead #1: The bedrock underlying Trailhead #1 is of the metamorphic Wappinger Group (OCw), and is known to bear Rochdale chert, from the Rochdale Limestone formation, in Dutchess County.

Trailhead #2: The bedrock underlying Trailhead #2 is Poughquag Quartzite (Cpg). Quartzites in the area were used by Native Americans for making stone tools, as evidenced by Site 07903.000113.

Trailhead #3: The bedrock underlying Trailhead #3 consists of Biotite-quartz-plagioclase paragneiss (bqpc), found in southeastern New York. This formation is not chert bearing.

Trailhead #4: The bedrock underlying Trailhead #4 is Stockbridge Marble (OCst), and is not chert bearing.

Trailhead #5: The bedrock underlying Trailhead #5 is Amphibolite, pyroxenic amphibolite (am), categorized as “Metamorphic rocks of uncertain origin, Adirondacks.” This formation is not known to be chert bearing in Putnam County.

### 3.4 Physiography and Hydrology

Steeply sloped areas are considered largely unsuitable for human occupation. As such, the standards for archeological fieldwork in New York State generally exclude areas with a slope in excess of 12% from archeological testing (NYAC 1994). Exceptions to this rule include steep areas with bedrock outcrops, overhangs, and large boulders that may have been used by precontact people as quarries or rock-shelters. Such



areas may still warrant a systematic field examination. According to the soil maps for these areas, Trailheads #2 and #3 may contain areas of excessive slope.

All five trailheads are located less than 0.25 mile from water sources.

Trailhead #1 is located 0.16 mile southwest of a small lake or pond and 125 feet northeast of an unnamed tributary of Frog Hollow Brook and another associated small lake or pond.

Trailhead #2 is located 485 feet southwest of Whaley Lake Stream, and is also within a mile of several other small ponds and streams.

Trailhead #3 is located 120 feet east of a small pond, 500 feet west of another small pond, and also nearby several drainages of the Beaver Brook and their associated ponds.

Trailhead #4 is located within the Muddy Brook swamp, immediately west of the Muddy Brook, and approximately 0.25 mile west of Turtle Pond.

Trailhead #5 is located adjacent to Lake Tonetta, approximately 300 feet west of the lake, and 35 feet south of the Tonetta Brook, which continues to the northwest of the Trailhead #5 APE.

## 4 Documentary Research

Hartgen conducted research using the New York State Cultural Resource Information System (CRIS), which is maintained by the New York SHPO and the Division for Historic Preservation DHP within OPRHP. CRIS contains a comprehensive inventory of archeological sites, State and National Register (NR) properties, properties determined eligible for the NR (NRE), and previous cultural resource surveys.

### 4.1 Archeological Sites

An examination of CRIS identified 48 reported archeological sites within one mile (1.6 km) of the total Project. Twelve of these were within one mile of the five trailheads (**Error! Reference source not found.**). Previously reported archeological sites provide an overview of both the types of sites that may be present in the Project and relation of sites throughout the surrounding region. The presence of few reported sites, however, may result from a lack of previous systematic survey and does not necessarily indicate a decreased archeological sensitivity within the Project.

Native American sites are prevalent throughout the Beacon and Fishkill area. The section of the Hudson River, close to the base of the Shawangunk Mountains, was plentiful with resources. The river was a travel route and food source and the mountains contained rockshelters and lithic sources (quartzite and chert) for making stone tools.

Table 2. Archeological sites within one mile (1.6 km) of each trailhead

OPRHP Site No.	NYSM Site No.	Site Identifier	Description	Proximity to Project
<b>Trailhead # 1</b>				
02702.000017	11045	Green Haven Disciplinary Barracks Dump Site	Historic dump site c. 1942-47, formerly owned by the U.S. Department of the Army. Determined not NR eligible	3,475 feet west, Beekman
02702.000018	11046	Green Haven Winter Site	Late 19 <sup>th</sup> Century historic site with possible foundations	2,950 feet west, Beekman
02702.000019	11047	The Green Haven Correctional Facility I Site	Precontact site containing 1-2 chert flakes, and chert and quartz pieces. Determined not NR eligible	2,380 feet northwest, Beekman
02702.000032	-	Option 2 Midden	Historic midden possibly associated with Green Haven Disciplinary Barracks	4,600 feet northwest, Beekman
-	3143	ACP Dutch 11	Described as a "cache of flint"	3,980 feet northwest, Beekman

OPRHP Site No.	NYSM Site No.	Site Identifier	Description	Proximity to Project
-	7765	Green Haven Prison	General location of a precontact site identified during a different survey, on the Greenhaven Prison grounds	350 feet northeast, Beekman
<b>Trailhead # 2 (two sites just over one mile from Trailhead 3)</b>				
-	10404	Site 1	Historic barn site	5,895 feet southeast, Pawling
-	3142	ACP Dutch 10	Described as "recent relics"	5,590 feet northwest, Beekman
<b>No sites within a mile of Trailhead # 3</b>				
<b>Trailhead # 4</b>				
-	5949	Muddy Brook Rockshelter, Brewster	Precontact rockshelter	2,800 feet northeast, Patterson
07903.000113	-	Cornwall Hill Estates Archeological Site	Prehistoric quartz/quartzite quarry site with two associated lithic reduction/camp areas on top of bedrock outcrop. Recovered artifacts include three broken projectile points, quartz hatchet, bifaces, core, adze-like tool, scrapers and serrated knives, burins, and hammerstones	4,010 feet northeast, Patterson
<b>Trailhead # 5</b>				
07906.000012	-	Brewster Heights Site (Loci A-C)	Precontact late Archaic, Sylvan Lake camp site	4,980 feet southwest, Southeast
07906.000055	-	Sherwood House / Highland Prehistoric Site	Early to mid-19 <sup>th</sup> c. farmhouse with assorted ceramics and kaolin pipe bowl fragments; Precontact lithic workshop containing chert and quartz flakes	4,075 feet northwest, Southeast

#### 4.2 Historic Properties

An examination of CRIS identified one NR property, no NRE properties, no properties previously determined to be ineligible, and no properties of undetermined status within the Project (Table 3). However, the Taconic State Parkway (02NR05036) is located over 3.5 miles west of Trailhead #1, and does not impact the historic archeological sensitivity of any of the five trailheads.

Table 3. Inventoried properties within the Project

USN	Property Name	Status	Description	Location and Proximity to Project
02NR05036	Taconic State Parkway	NR	Kensico Dam Plaza to I-90	Intersects Project in East Fishkill

#### 4.3 Previous Surveys

A review of CRIS identified five previous surveys within the immediate vicinity of the Project (Table 4).

Table 4 Relevant previous surveys within or adjacent to the Project

Project/Phase	Summary	Citation
Martin Road Subdivision, Stage 1	This survey was completed on Martin Rd. in East Fishkill, Hopewell Junction, near the northwestern section of the trail. No archeological sites were identified. This project was not located in the vicinity of any of the 5 trailheads.	(Jay R. Cohen 2000)

<b>Project/Phase</b>	<b>Summary</b>	<b>Citation</b>
Proposed Greenhaven Correctional Facility Utility Line, Phase I	Linear project running north from the Green Haven Correctional Facility (GCF) to the GCF farm, across Rt. 216. No precontact or historic archeological sites were identified, and no further work was recommended.	(Historical Archaeological Zoological Explorations 2012)
MTA Police Canine Training Facility, Phase IA/IB	A single button, c. early-19 <sup>th</sup> century, was recovered from a farm field. No other archeological resources were recovered, and no further archeological investigations were recommended.	(Historical Perspectives 2012)
Farm to Market Road Subdivision, Phase IB	The survey identified two prehistoric sites (Farm to Market prehistoric site and Field and Forest prehistoric site) and two historic sites (C. Snow site and J.T. Barnes site). The southern boundary of this project was located approximately 1.25 miles northeast of Trailhead #5.	(CITY/SCAPE: Cultural Resource Consultants 2014)
Hopewell Precision Site, Stage IB	One historic site (91 Clove Branch Rd Site) was identified, containing late 18 <sup>th</sup> -20 <sup>th</sup> c. domestic artifacts. No precontact sites were identified. The southernmost point of this project was located approximately 0.5 mile north of the northernmost portion of the current Project. This project was not located in the vicinity of any of the 5 trailheads.	(CITY/SCAPE: Cultural Resource Consultants 2014)

The southernmost point of the linear Proposed Greenhaven Correctional Facility Utility Line project was located approximately 800 feet northwest of Trailhead #1 (H.A.Z.Ex. 2012). No significant cultural materials were recovered during this survey, and no further work was recommended.

The MTA Police Canine Training Facility project (Historical Perspectives 2012) was located approximately 4,050 feet southwest of Trailhead #1. No significant precontact or historic archeological artifacts or features were noted, and no further work was recommended.

None of the other surveys were in the vicinity of the five trailheads.

## **5 Historical Map Review**

Historic maps documenting 240 years of history and change throughout the area were reviewed for this Project. The 1779 Sauthier map shows early land patents and that development shortly after the Revolution was scattered and sparse across the local landscape. By the mid-1800s, many of the exiting road systems and municipal boundaries had been established. Farms were scattered throughout the landscape and various mechanic shops and stores were located near the town centers.

Many of the railroad systems that became an integral part of New York's infrastructure were also established by mid-1800s. The New York and Harlem Railroad was opened in sections between the 1830s and 1860s and connected Lower Manhattan with Harlem and areas beyond. It passed in the vicinity of Trailheads 1, 2, and 5 and passed immediately west of the Trailhead 4. Sections of this historic line are today part of the Metro-North system.

In the 1860s, Trailhead 3 was located near a proposed section of the Boston, Hartford and Erie line. This line opened in the 1870s, connecting southern New York with New England. Sections of this historic line have also been assimilated into the Metro-North system (Maps 4a-d).

There are no map-documented structures (MDS) in the APEs for Trailheads 1, 2, 3 or 5. Trailhead 4 however, encompasses an area that was the location of a depot/rail yard along the New York and Harlem Railroad. The historic line itself crosses through the west side of the APE and is abandoned. Today, an active section of the Metro-North line passes on the immediate east side of the APE (Map 4d).

## 5.1 Map-Documented and Existing Structures

Map-documented structures—those structures that are depicted on one or more maps—are distinguished using the abbreviation “MDS” after the structure number.

There are three (3) mapped documented structures within the Trailhead 4 APE, as shown in Table 5.

Table 5. Summary of map-documented and existing structures within the Project/APE

Structure #	Trailhead #	(O'Connor 1854)	(Beers 1867)	(USGS 1981b)	Extant (2018)
1	4	X “Penny & Co.”	X “Depot”		
2	4		X “Depot”		
3	4		X “Depot”		

## 6 Archeological Sensitivity Assessment

The New York Archaeological Council provides the following description of archeological sensitivity:

Archaeologically sensitive areas contain one or more variables that make them likely locations for evidence of past human activities. Sensitive areas can include places near known prehistoric sites that share the same valley or that occupy a similar landform (e.g., terrace above a river), areas where historic maps or photographs show that a building once stood but is now gone as well as the areas within the former yards around such structures, an environmental setting similar to settings that tend to contain cultural resources, and locations where Native Americans and published sources note sacred places, such as cemeteries or spots of spiritual importance (NYAC 1994:9).

### 6.1 Precontact Archeological Sensitivity

The precontact sensitivity of an area is based on proximity to previously documented precontact archeological sites, known precontact resources (e.g. chert outcrops), and physiographic characteristics such as topography and drainage. Generally, areas in the vicinity of streams and wetlands are considered to have elevated sensitivity for sites associated with Native American use or occupation because they presented potential food and water sources as well as transportation corridors. All five of the proposed trailheads are located within ¼ mile of water sources, indicating an elevated precontact archeological sensitivity.

Three precontact sites are located within a mile of Trailhead 1. This APE has a high precontact archeological sensitivity.

There are no precontact sites located within a mile of Trailhead 2 or Trailhead 3. These APEs have a moderate precontact sensitivity.

Two precontact sites are located within one mile of Trailhead 4. However the APE is located on artificial land that has been extensively disturbed. Sensitivity is considered low.

There are two precontact archeological sites within one mile of Trailhead 5. This APE has a high precontact archeological sensitivity.

### 6.2 Historic Archeological Sensitivity

The historic sensitivity of an area is based primarily on proximity to previously documented historic archeological sites, map-documented structures, or other documented historical activities (e.g. battlefields).

Trailhead 1 did not contain any MDSs, and is located on the outskirts of Green Haven. However, it was also located in the vicinity of the mapped Flagler house seen on the 1858 and 1867 maps (across the street from the APE) and three historic sites are located within a mile of this APE. The historic archeological sensitivity for Trailhead 1 is low to moderate.

Historically, Trailhead 2 was also located along an established road but with little development in the vicinity. A historic barn site is located slightly over one mile from this APE. Trailhead 2 has a low historic archeological sensitivity.

Trailhead 3 did not contain any historic MDSs, but was located near an intersection of Reynoldsville containing several homes and a school. There are no historic archeological sites within one mile of this APE. Trailhead 3 has a low to moderate historic sensitivity.

Trailhead 4 has a high historic archeological sensitivity due to the map-documented structures within the APE.

Trailhead 5 was historically located in an undeveloped area adjacent to Tonetta Lake, although an 1854 map depicts a pathway to the APE and an 1867 map depicts a Gate House at the mouth of the river at Toneetta Lake. The historic archeological sensitivity for this APE is low to moderate.

## **7 Archeological Potential**

Archeological potential is the likelihood of locating intact archeological remains within an area. The consideration of archeological potential takes into account subsequent uses of an area and the impact those uses would likely have on archeological remains.

According to the soil maps for these areas, Trailheads #2 and #3 contain areas of excessive slope and therefore have a lower archeological potential. Trailhead 2 (which contains part of a parking lot and driveway) and Trailhead 4 (which experienced several episodes of historic development) have a moderate archeological potential. The remaining three trailheads appear to have remained undeveloped and, therefore, maintain a high archeological potential.

## 8 Archeological Survey

Each trailhead proposed for testing is located in a wooded and in an upland setting. The most effective means for determining the presence or absence of archeological sites at each location was through the hand-excavation of shovel tests. In all, 50 tests were excavated.

### 8.1 Methodology

#### 8.1.1 Shovel Testing

Shovel tests were excavated at a standard interval of 15 meters (50 ft). Each shovel test was 40 centimeters (16 in) in diameter. All excavated soil was passed through 0.25-inch hardware mesh and examined for both precontact (Native American) and historic artifacts. The stratigraphy of each test was recorded including the depth, Munsell color, soil description, and artifact content (Munsell Color 2000). The location of each shovel test was plotted on the project map. Test excavation was photographed.

#### 8.1.2 Artifacts and Laboratory

As general procedure, all precontact (Native American) cultural material identified during the fieldwork are collected. Significant historic artifacts such as glass, ceramics, food remains, hardware, and miscellaneous items are collected. Coal, ash, cinder, brick, and modern materials are noted. Any artifacts collected are placed in paper or plastic bags labeled by provenience and inventoried in a bag list. Bags are numbered in the field and transported to the Hartgen laboratory in the Town of North Greenbush, Rensselaer County, New York, for processing.

Shovel test records and other provenience information were entered into a Microsoft *Access* database (Appendix 1). Artifacts were cleaned and cataloged. Cataloging entailed entering artifact provenience information, counts, weights, and descriptive information into the database (Appendix 2).

### 8.2 Results

The Phase IB archeological field reconnaissance was conducted on June 25, 2018. The field crew consisted of Adam Gersten, Eli Smith and Joe Rynasko. The weather was clear and cool and the artifact visibility was excellent.

Trailhead #1 borders the north side of the Metro-North Railroad at it intersects with South Greenhaven Road. It includes  $\pm 0.97$  acres (0.39 ha) of land that will encompass a wooded corridor along the railroad and a small portion of an adjacent open field. An unnamed tributary of Frog Hollow Brook meanders along the west side of the field. The south and east sides of the APE are defined by a deep, artificial cut of the railroad and a drainage ditch along the road. The south corner of the APE is covered by a large concrete platform (abandoned railroad loading dock).

Archeological testing (Tests 1-15) recorded disturbed cut and fill soils along the railroad and the loading dock, while the rest recorded typical plowzone-subsoil horizons. The soils were rocky. Tests 1, 3, 8 and 10 recovered modern bottle glass and other 20<sup>th</sup>-century refuse. These are not considered significant archeological deposits (Photos 1-4 and Map 2a).

Trailhead #2 borders the northeast side of the railroad, encompassing  $\pm 0.61$  acres (0.25 ha) of wooded land on both sides of Bard Road. Bedrock is shallow and the terrain very steep. Tests 16-21 were excavated across the flattest part of the APE parallel with the railroad. Soils included a thin, humic forestmat over silt subsoil. Bedrock was encountered at various depths in each test. Test 16 recovered modern refuse (Photos 5-7 and Map 2b).

Trailhead #3 is located on a steep hill above the east side of the railroad. The east side of the APE borders the Route 292 road berm and the northeast part is covered by a gravel parking area. Tests 22-26 excavated outside of the sloped and disturbed areas did not identify any cultural materials (Photos 8-10 and Map 2c).

Trailhead #4 will encompass about 2.84 acres (1.15 ha) of artificial land between Route 146, Bullet Hole Road and the Metro-North Railroad. The APE sits in the Muddy Brook swamp at the base of uplands to the north and west. A small area was filled to create land for the railroad bed itself and a depot. Concrete foundations of the depot are present in the APE and the old Harlem railroad bed crosses through the west side of the APE. This bed is raised  $\pm 50$  feet (15 m) above existing grade. The Metro-North Railroad is also built on filled/artificial land that defines the east side of the APE. Tests 27-40 excavated within the APE all encountered artificial coal ash fill. Test 29 recovered modern bottle glass. No significant archeological deposits were encountered (Photos 11-15 and Map 2d).

Although two concrete fountains were identified in the APE that are likely from the former depot/rail yard, testing did not find corresponding artifact deposits; all of the tests encountered deep levels of coal ash/gravel fill. Additionally, the concrete foundations that are present within the APE likely date from the 20<sup>th</sup> century and are indicative that earlier 1800s structures were either replaced or modified. This site has poor archeological integrity based on the condition of the foundations and the absence of corresponding artifacts deposits in the surrounding shovel tests.

#### Archeological Site 1

Table 6. Summary of Archeological Site 1

<b>Characteristic</b>	<b>Site information</b>
Site Name	Bullet Hole Depot Site
Description	This site was the location of a depot/rail yard of the former New York and Harlem Railroad. Archeology identified two (2) concrete foundations and deep levels of coal ash fill. No corresponding artifact deposits were recovered.
Date	Mid-1800 to mid-1900s
Function	Railroad depot/rail yard
Size	$\pm 1.5$ acres (0.6 ha)
Location	NAD 83, UTM Zone 18T, 6160009 Easting, 4592900 Northing

Trailhead #5 is situated in a low-lying, wooded area between the Metro-North Railroad and Pumphouse Road. The railroad bed is raised about 15 to 20 feet above grade. Tests 41-50 encountered rocky soils and typical plowzone-subsoil horizons. No cultural materials were recovered (Photos 16 and 17 and Map 2e).

## 9 Recommendations

No significant archeological deposits or sites were identified by the Phase I archeological field reconnaissance of proposed trailheads. No further archeological work is recommended.

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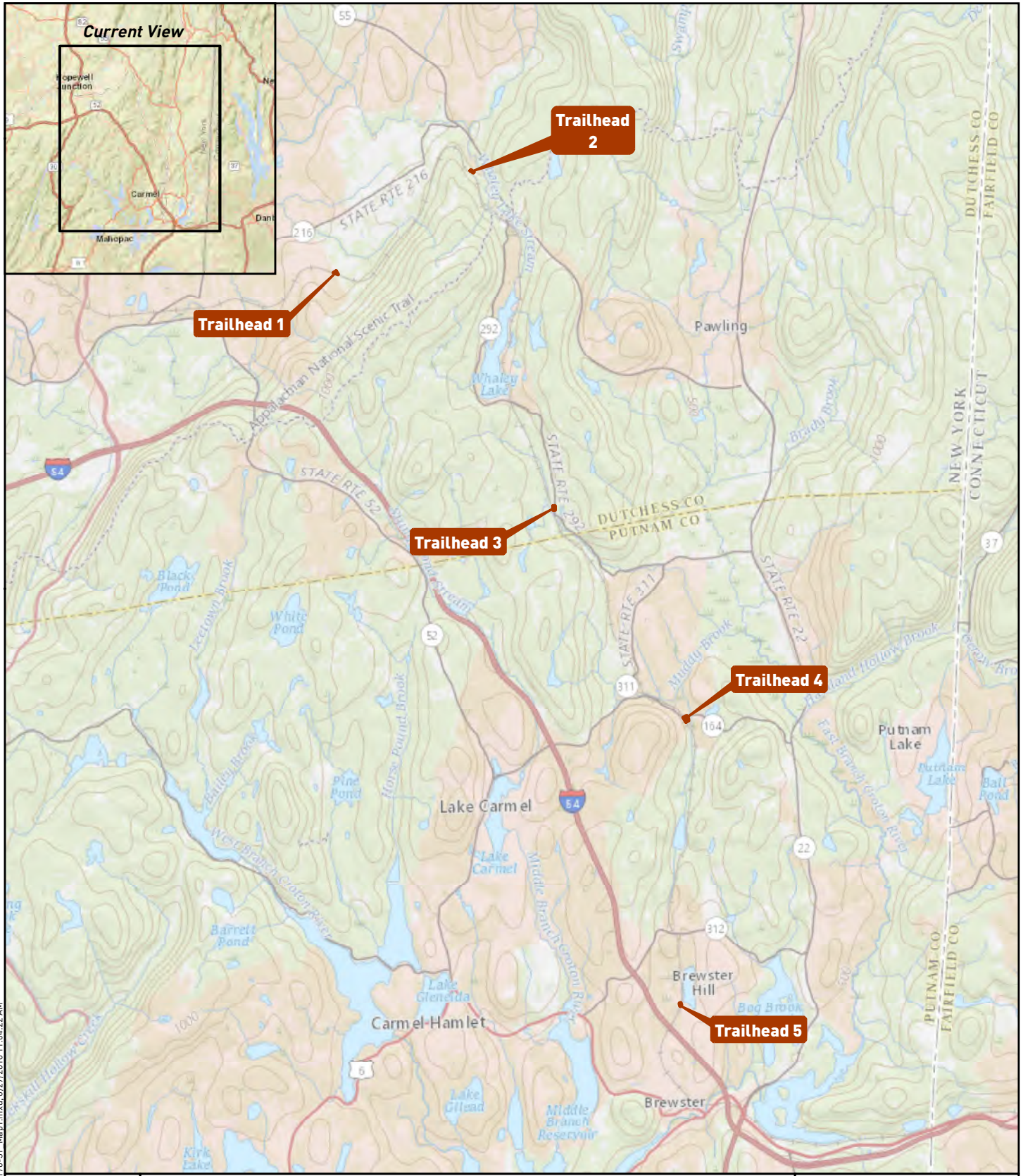


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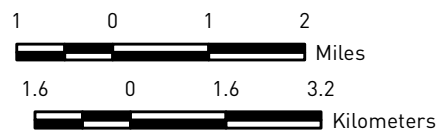
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## **Maps**



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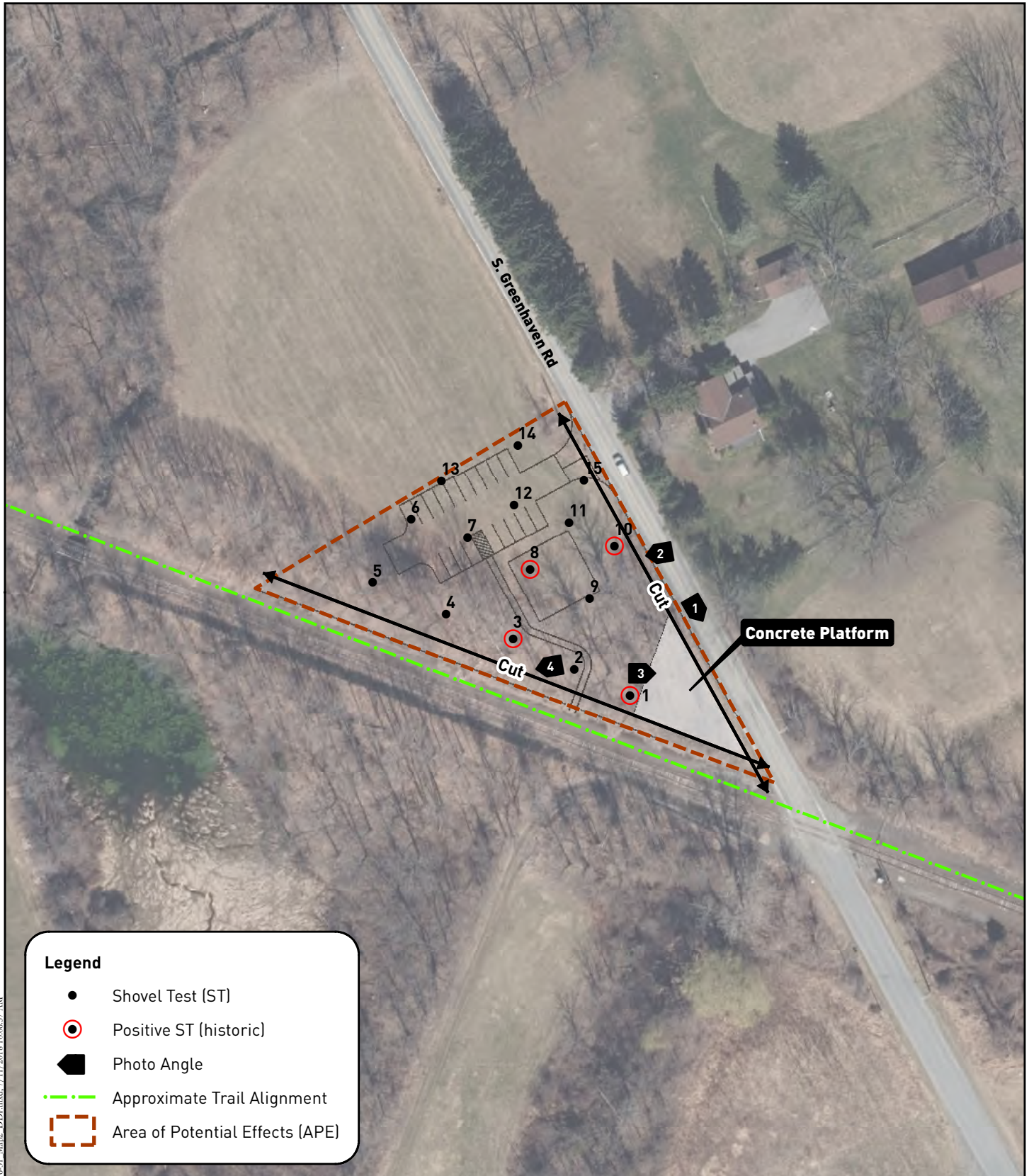
Note: Contour interval is 100 feet.

Project Location

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The National Map, USGS Topo Layer

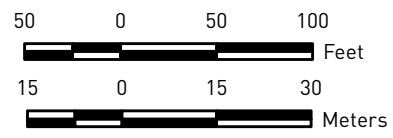






**Legend**

- Shovel Test (ST)
- ⊙ Positive ST (historic)
- ▣ Photo Angle
- .-.- Approximate Trail Alignment
- - - Area of Potential Effects (APE)



Environmental Systems Research Institute, Inc.,  
 World Imagery Accessed 7/11/2018

Project Map

**HARTGEN**  
 archeological associates inc

**Map 2a - Trailhead 1**

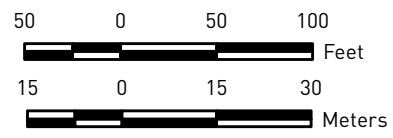
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**Legend**

- Shovel Test (ST)
- ⊙ Positive ST (historic)
- ⬛ Photo Angle
- Approximate Trail Alignment
- ⬜ Area of Potential Effects (APE)



Project Map

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Environmental Systems Research Institute, Inc.,  
 World Imagery Accessed 7/11/2018

**Map 2b - Trailhead 2**

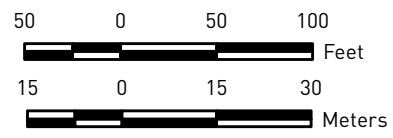
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**Legend**

- Shovel Test (ST)
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- - - - - Approximate Trail Alignment
- ▭ Area of Potential Effects (APE)



Environmental Systems Research Institute, Inc.,  
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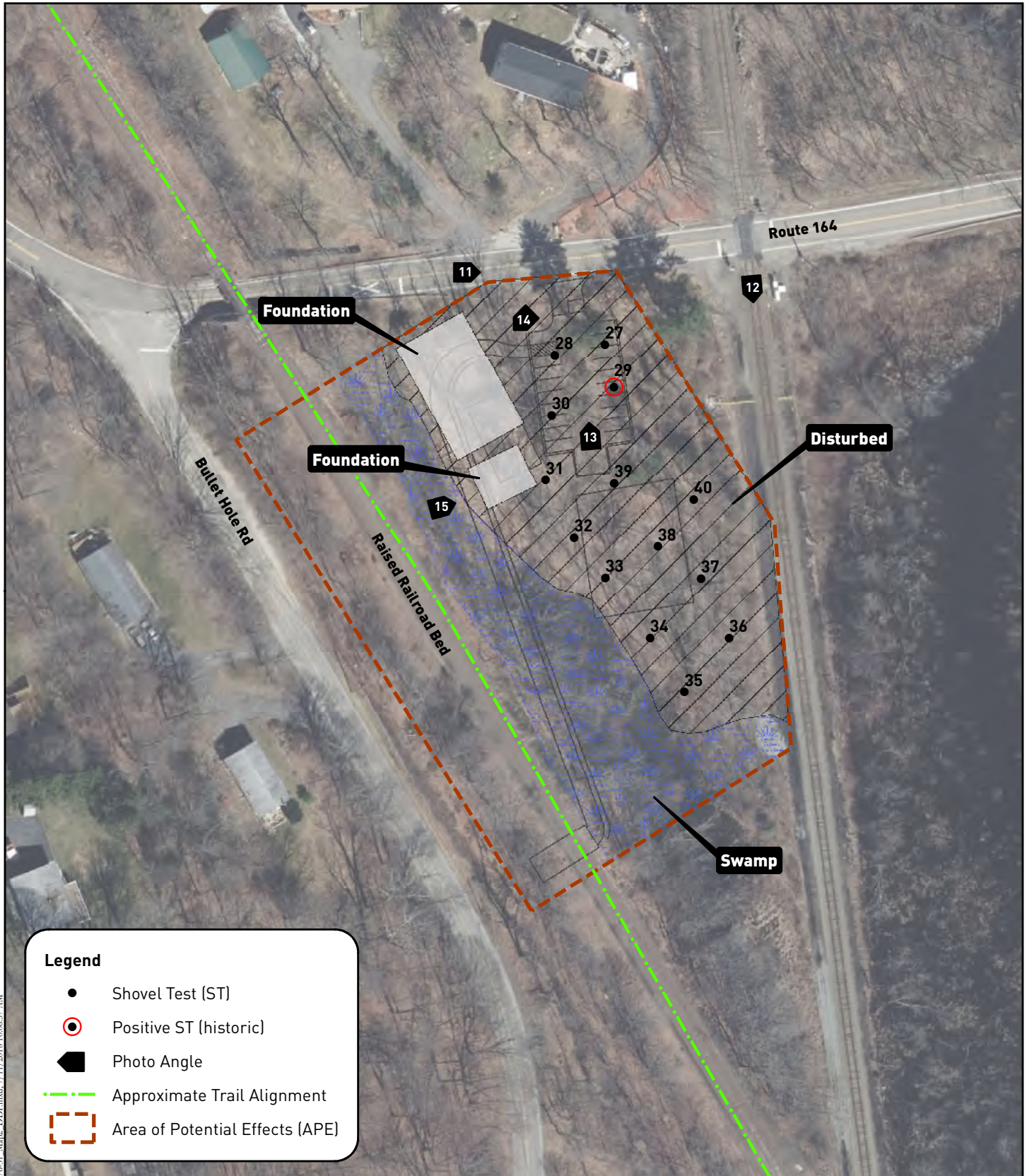
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**Map 2c - Trailhead 3**

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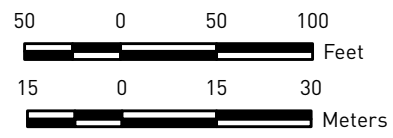




**Legend**

- Shovel Test (ST)
- ⊙ Positive ST (historic)
- ▶ Photo Angle
- Approximate Trail Alignment
- ⊞ Area of Potential Effects (APE)

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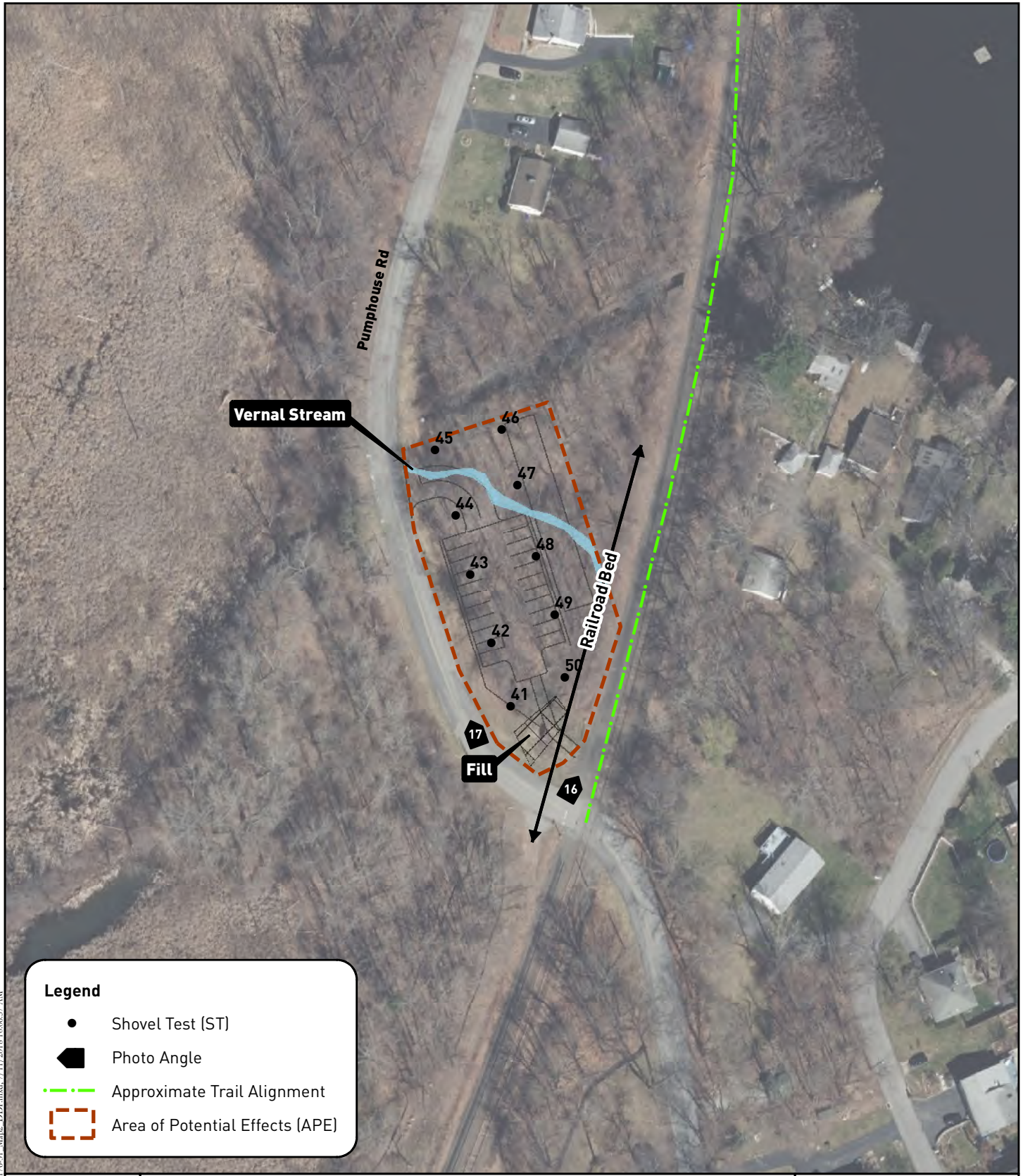
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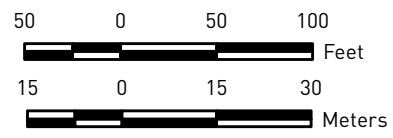
**Map 2d - Trailhead 4**





**Legend**

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- - - - Area of Potential Effects (APE)



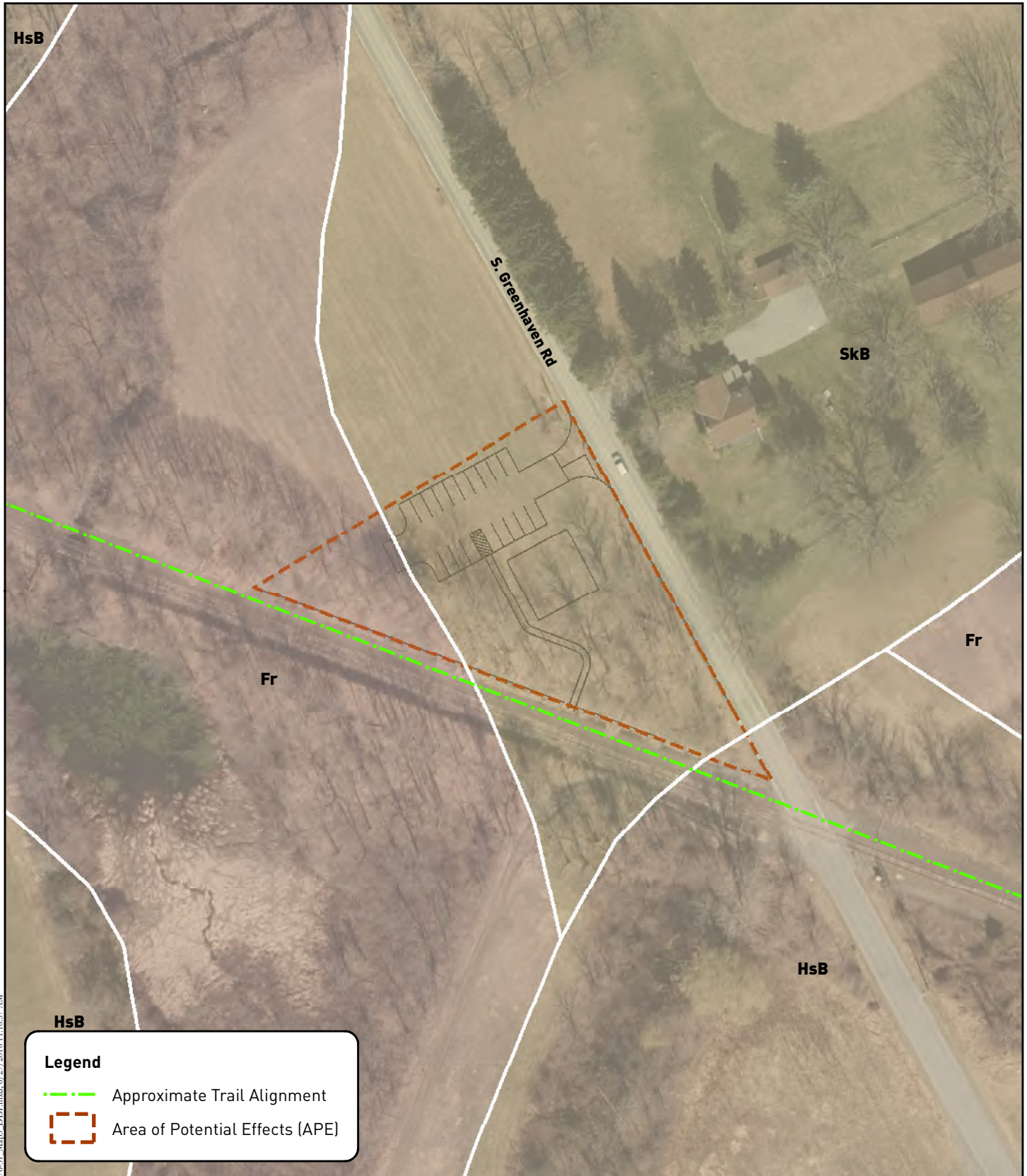
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Project Map

**Map 2e - Trailhead 5**

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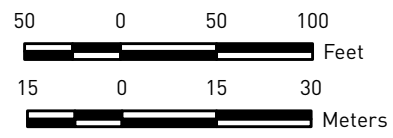


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**HsB**

**Legend**

- Approximate Trail Alignment
- Area of Potential Effects (APE)



Soil Map

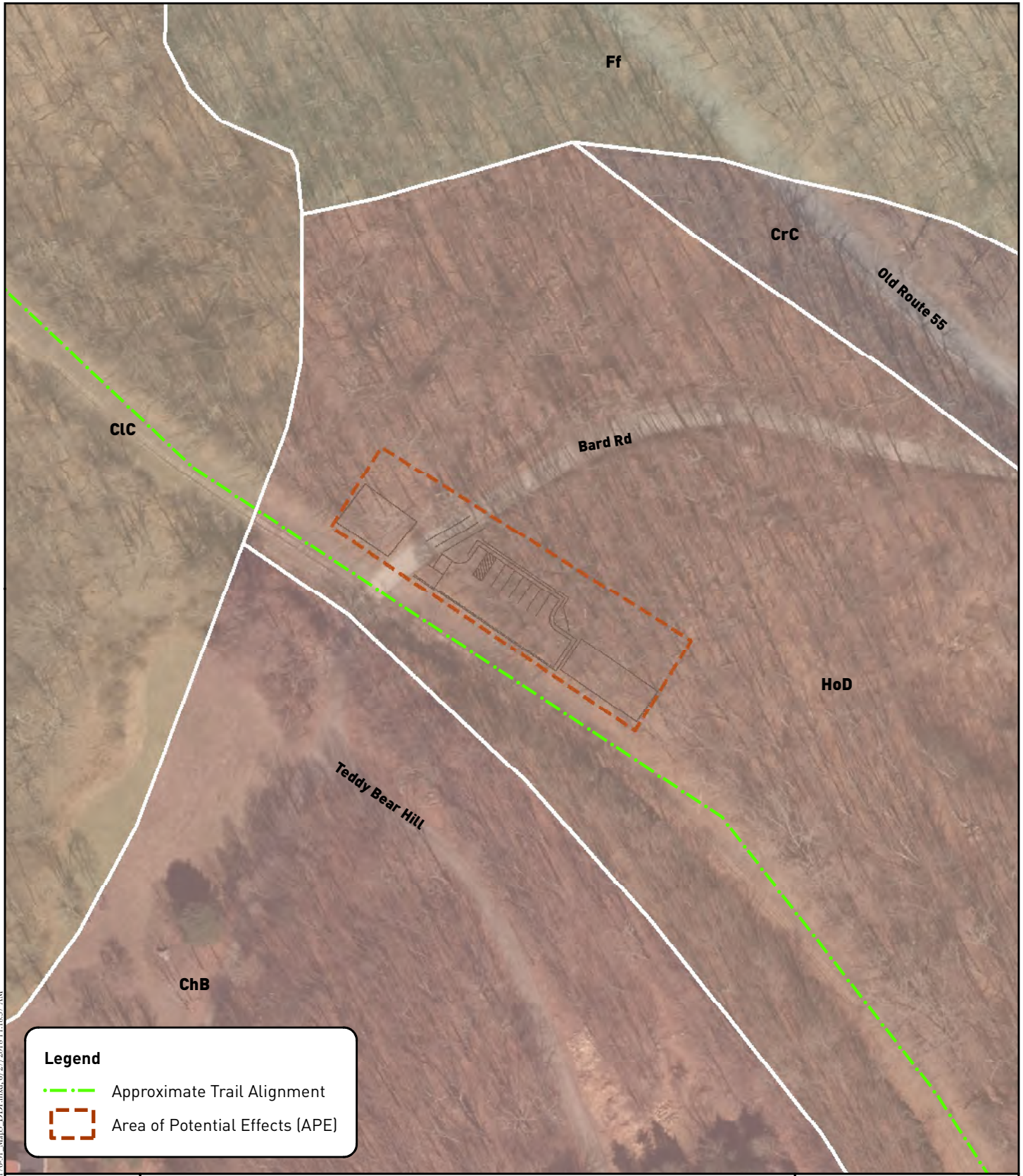
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archeological associates inc



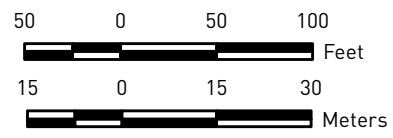
**Map 3a - Trailhead 1**





**Legend**

- Approximate Trail Alignment
- Area of Potential Effects (APE)



Soil Map

Environmental Systems Research Institute, Inc.,  
World Imagery Accessed 6/27/2018; U.S. Department  
of Agriculture, Natural Resources Conservation  
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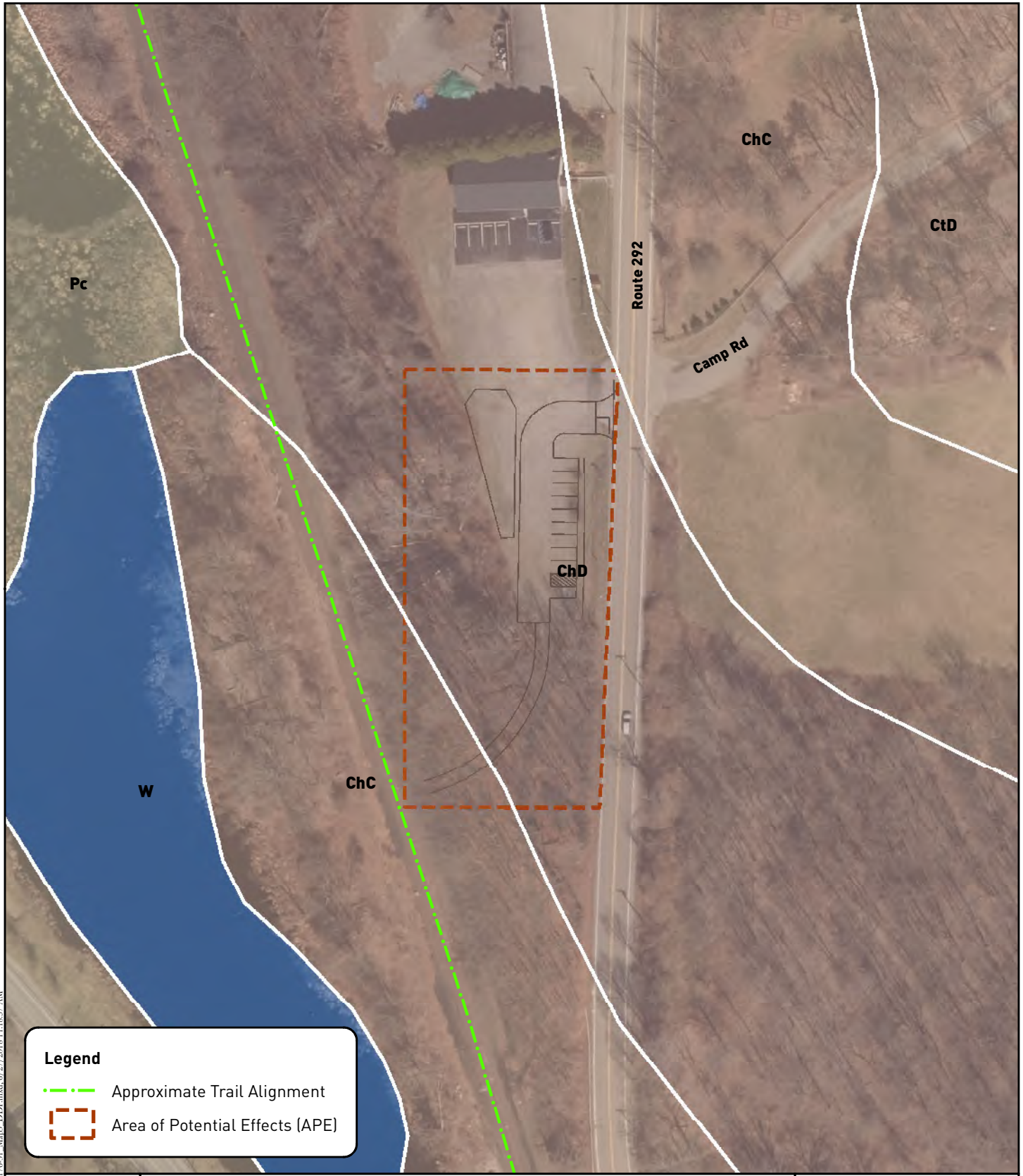
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**Map 3b - Trailhead 2**

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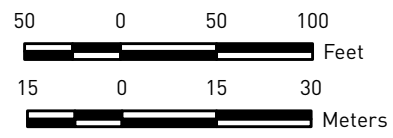




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**Legend**

- Approximate Trail Alignment
- Area of Potential Effects (APE)



Soil Map

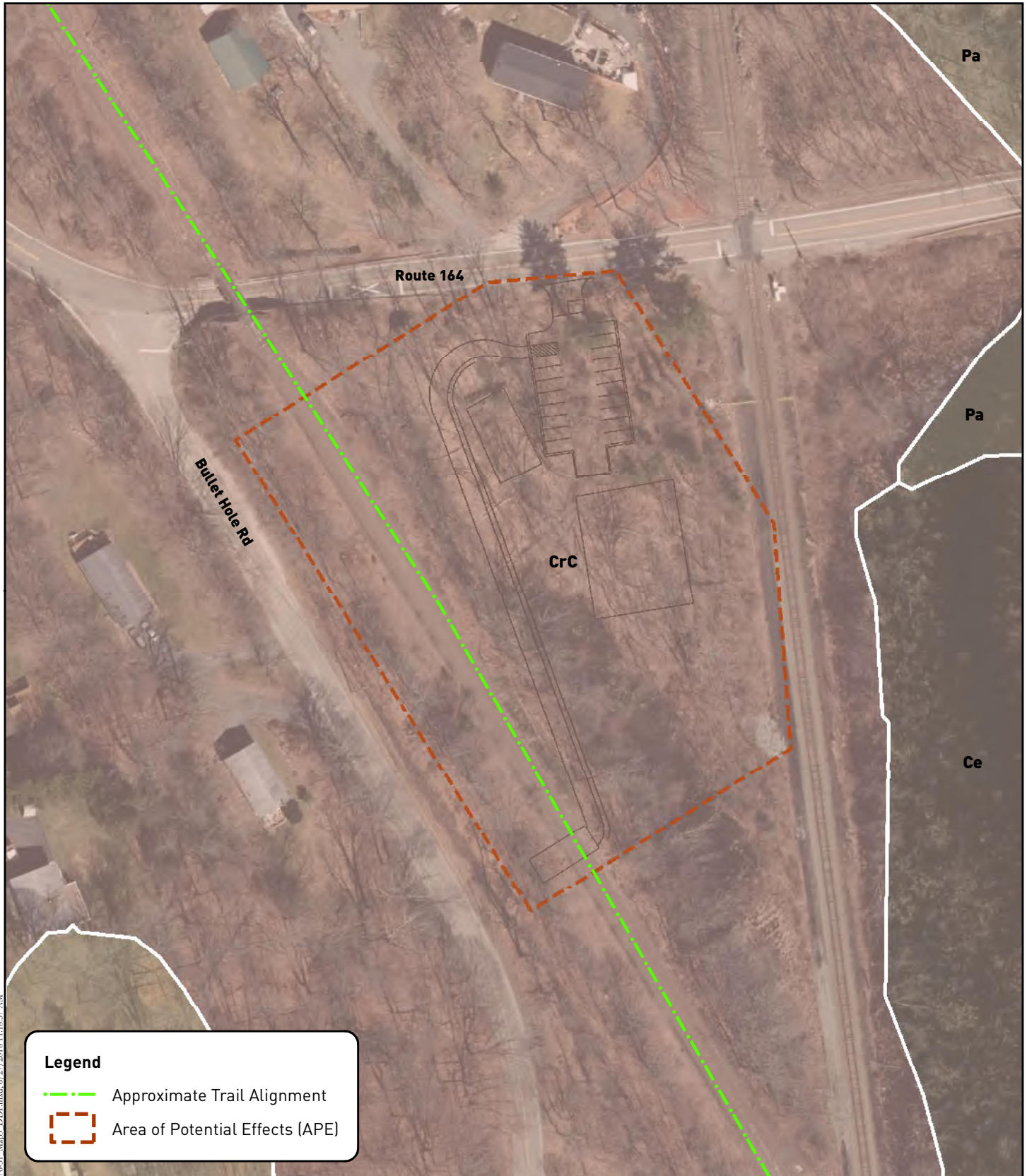
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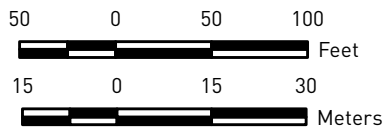
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Map 3c - Trailhead 3





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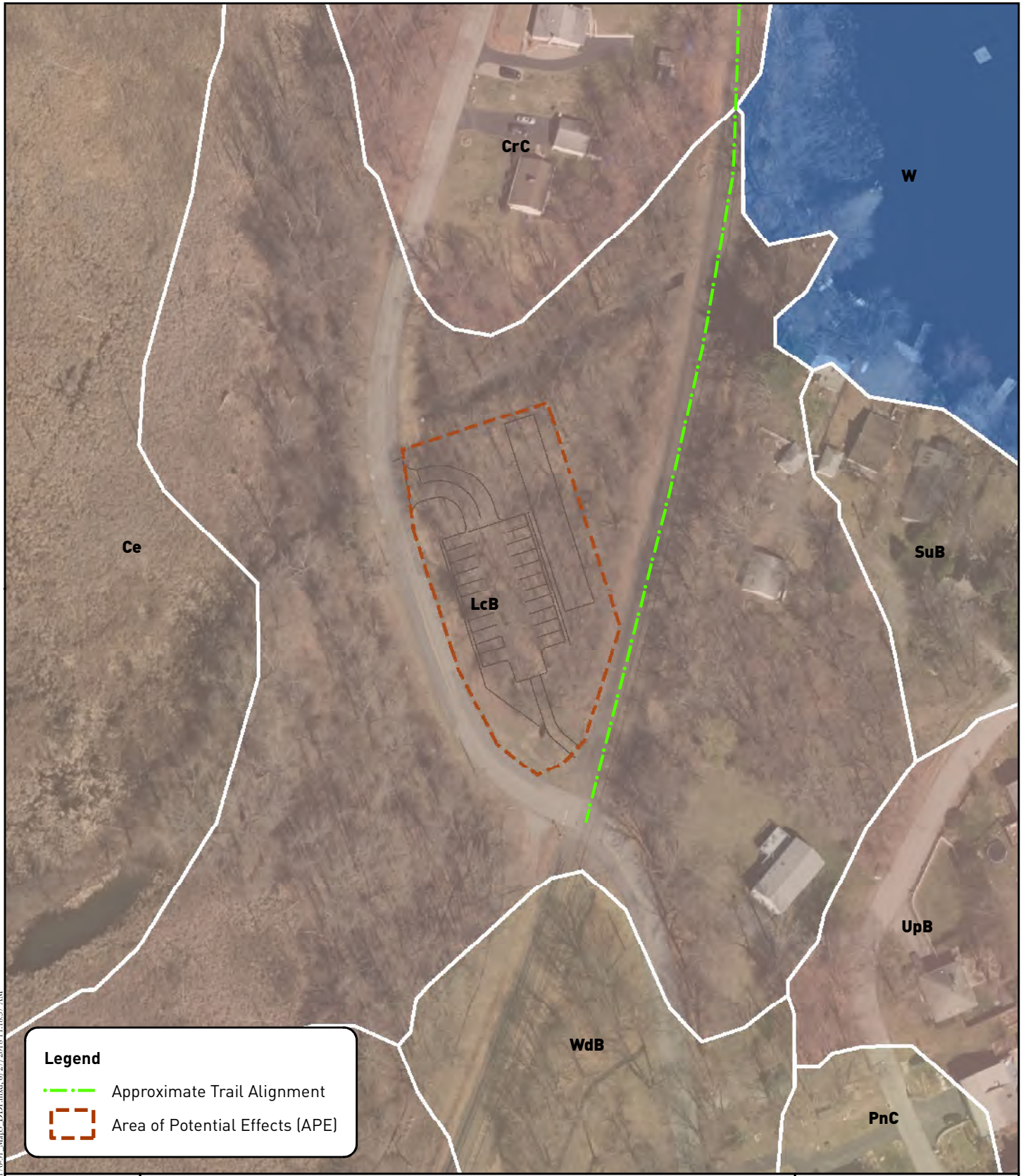
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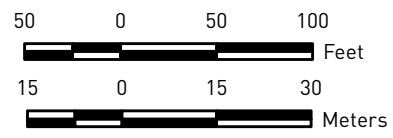
**Map 3d - Trailhead 4**





**Legend**

- Approximate Trail Alignment
- Area of Potential Effects (APE)



Soil Map

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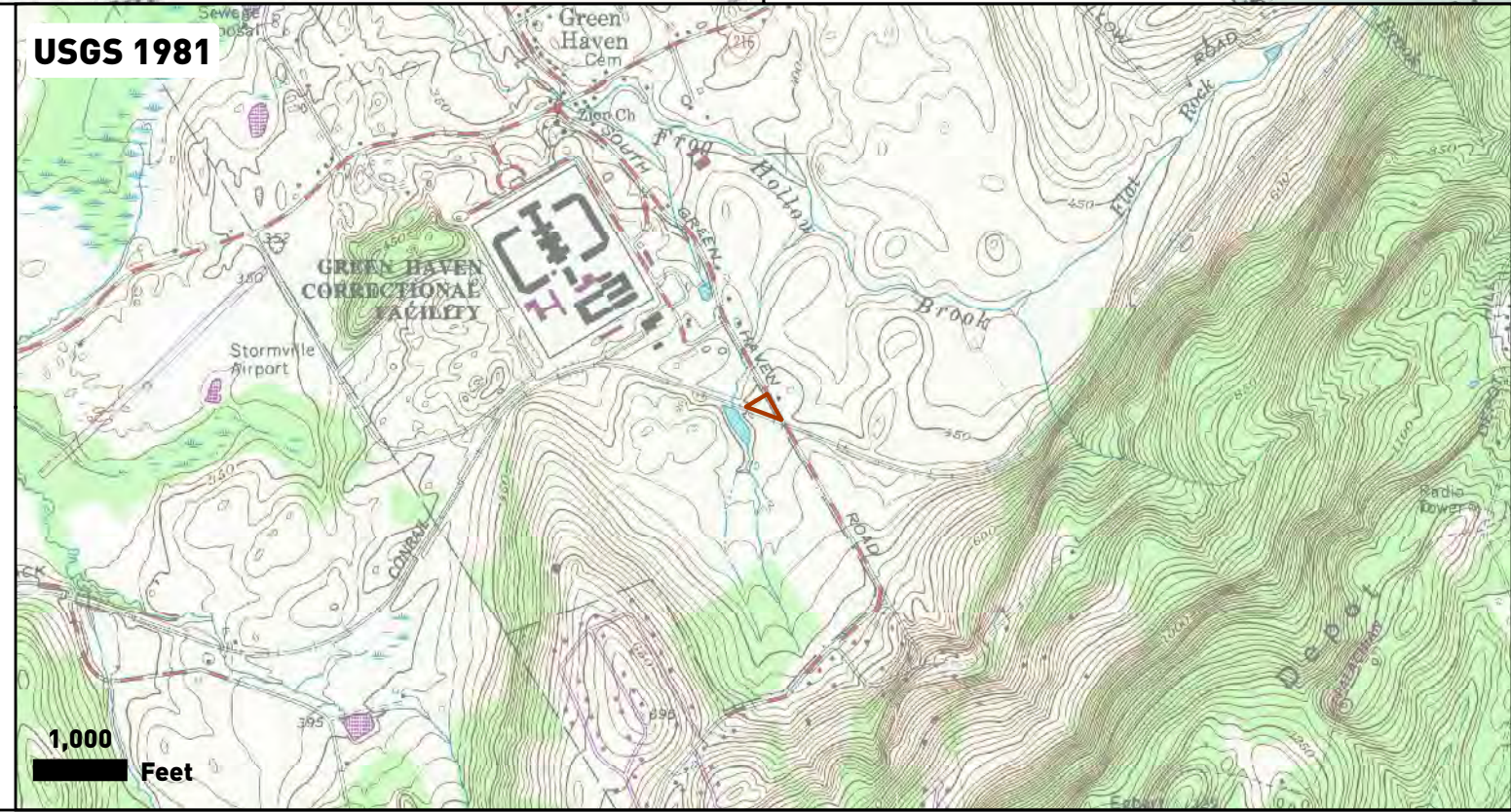
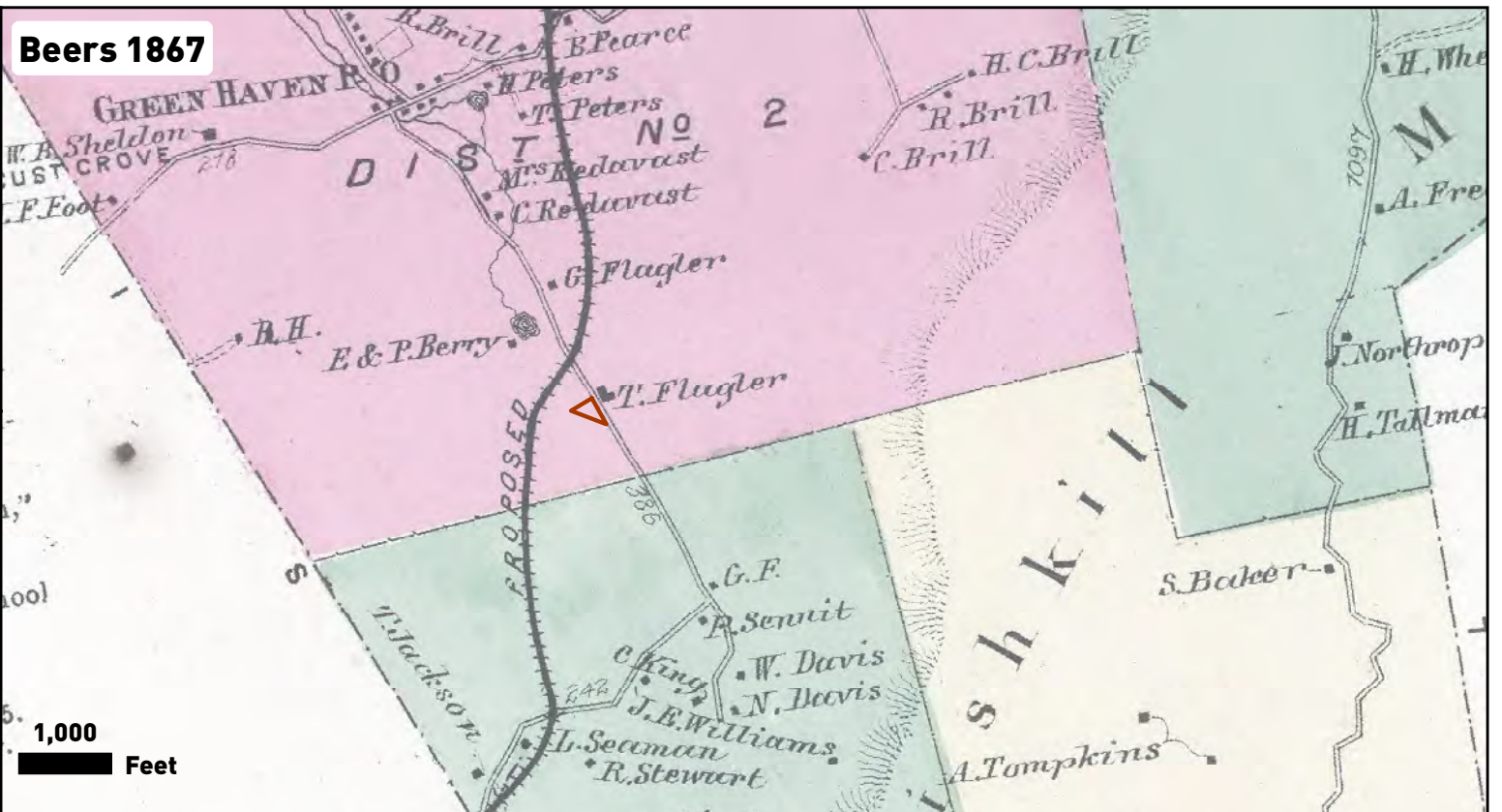
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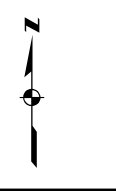
**Map 3e - Trailhead 5**

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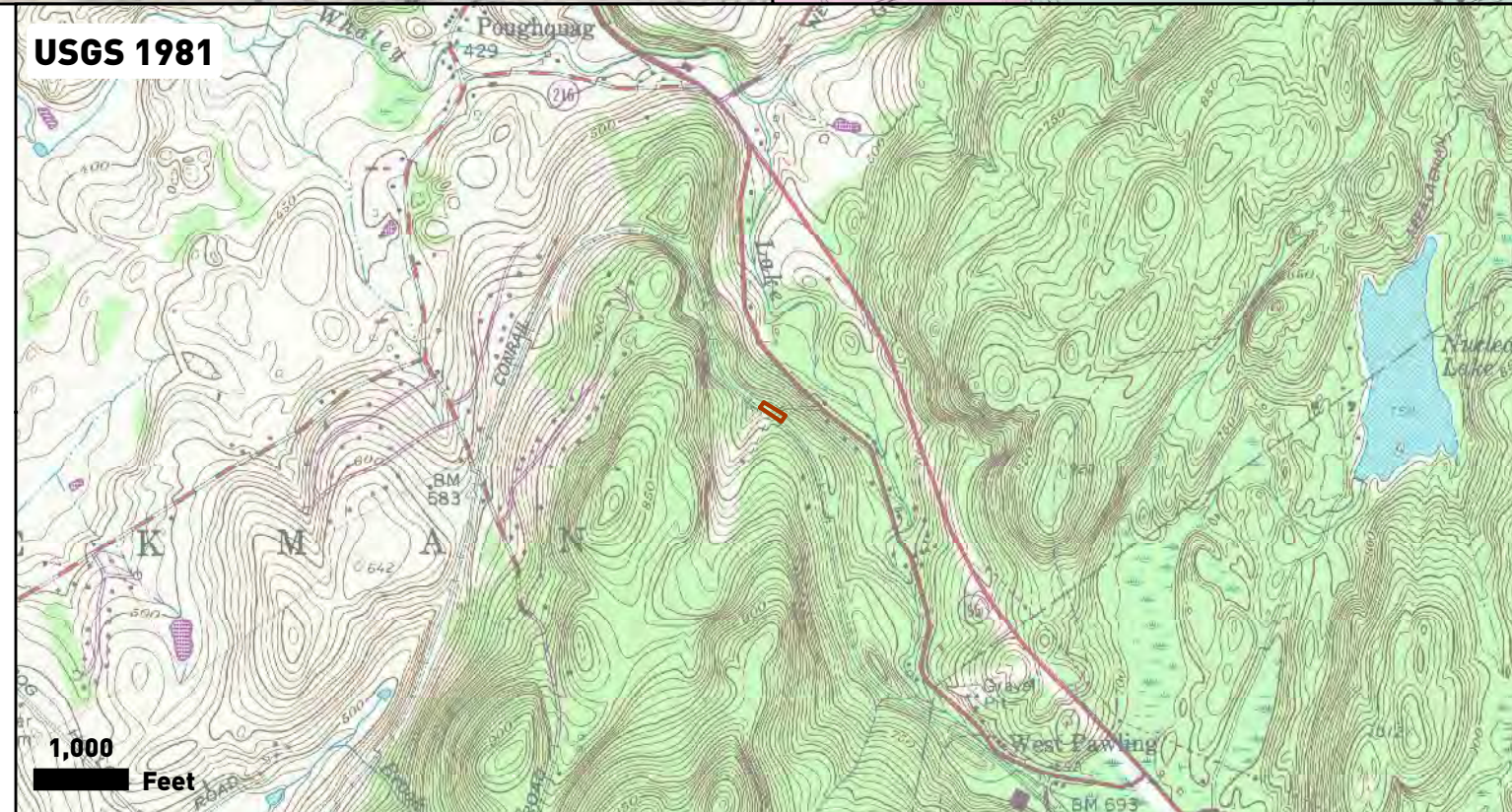
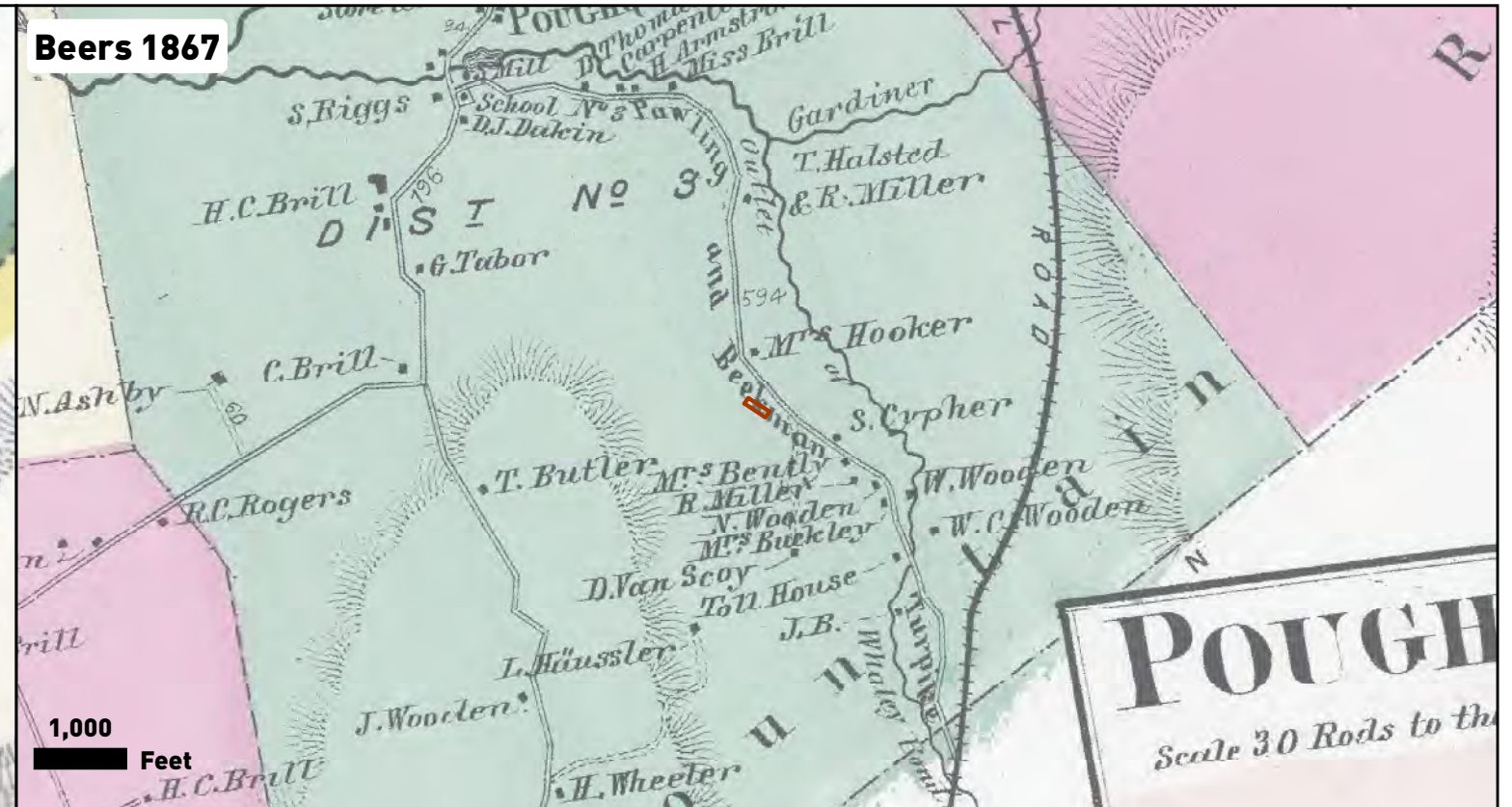


**Legend**

Area of Potential Effects (APE)







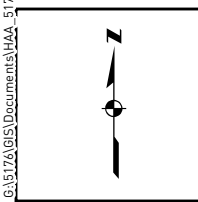
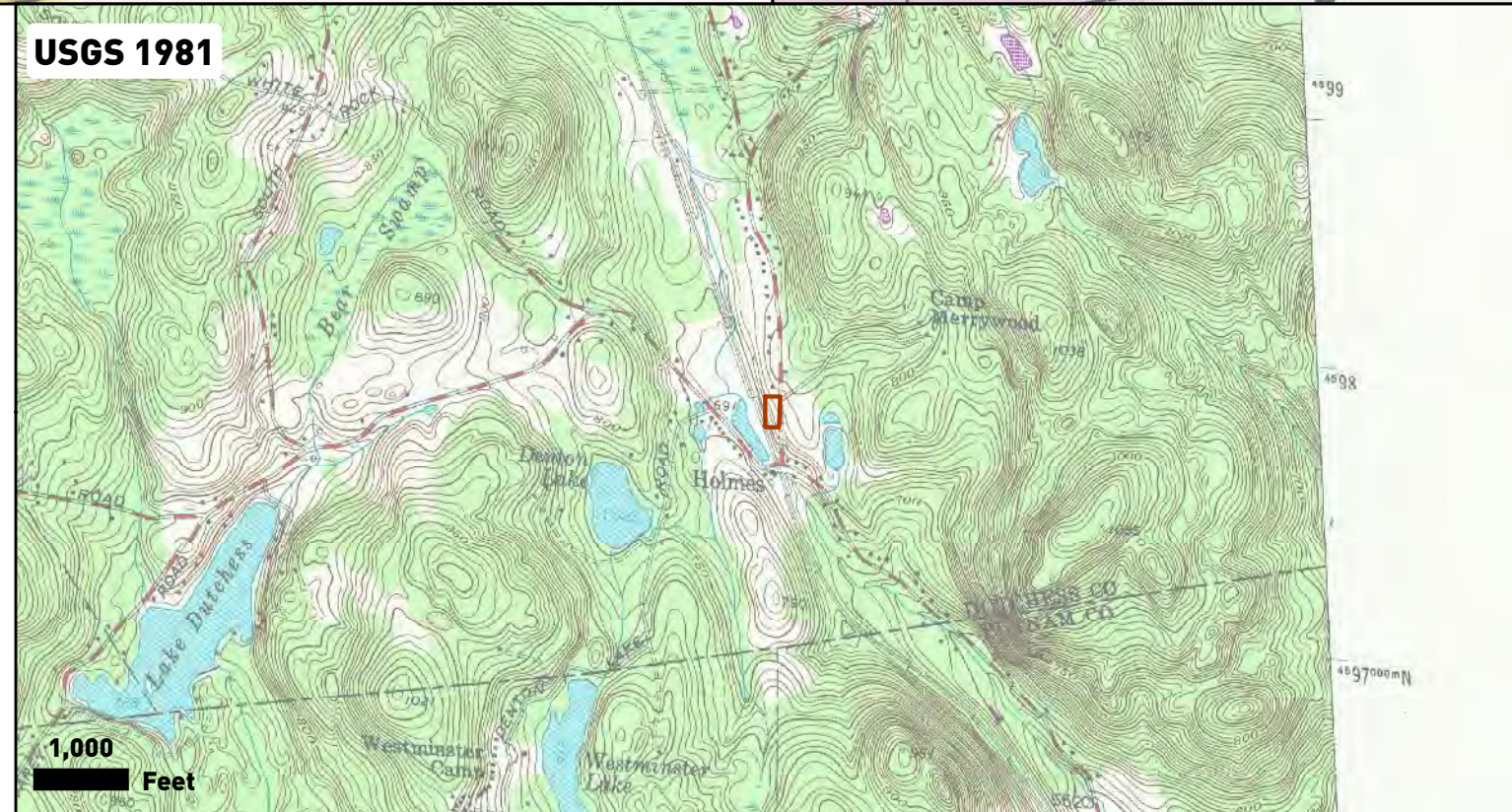
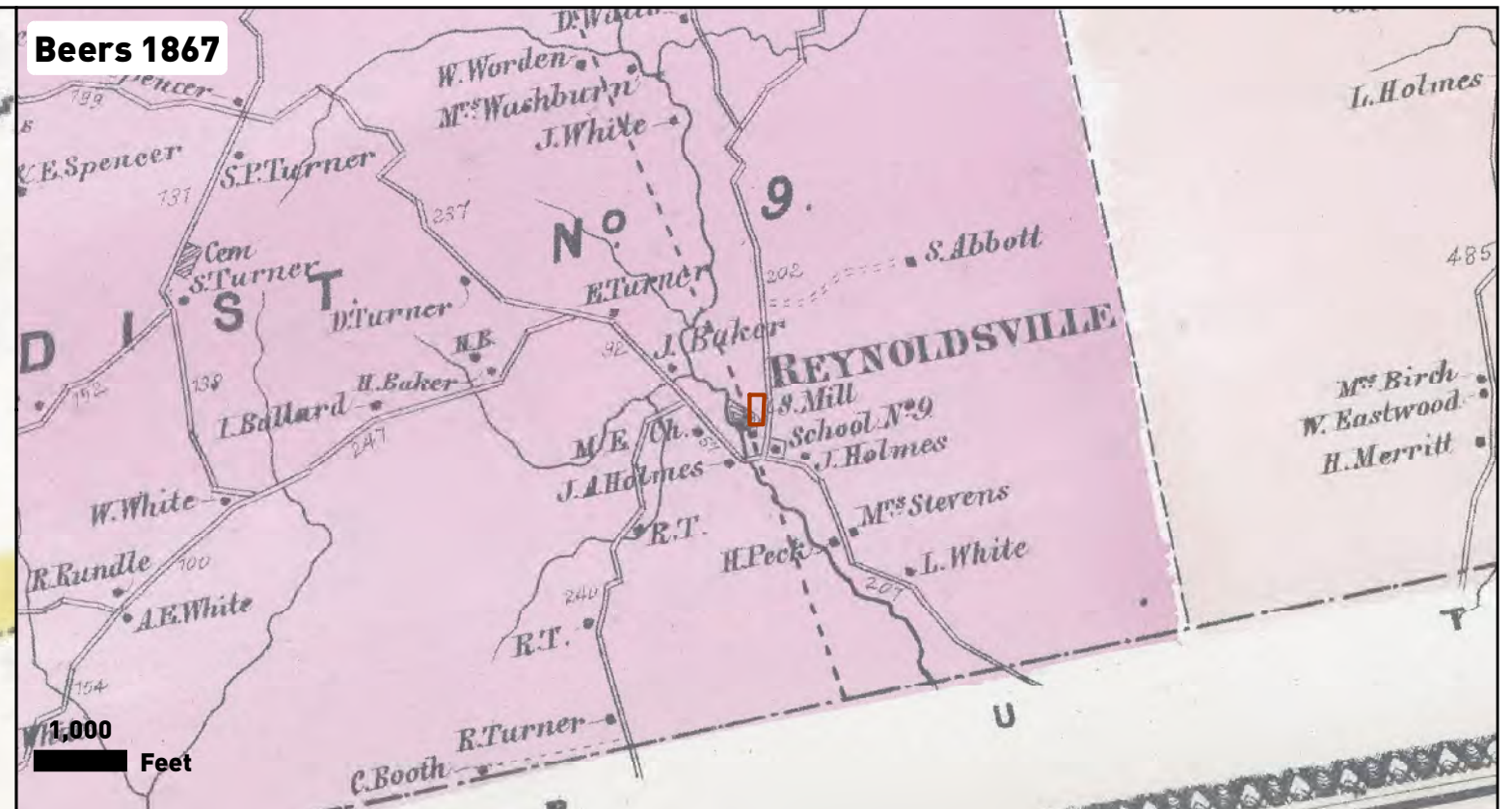
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**Legend**  
 Area of Potential Effects (APE)







**Legend**

Area of Potential Effects (APE)

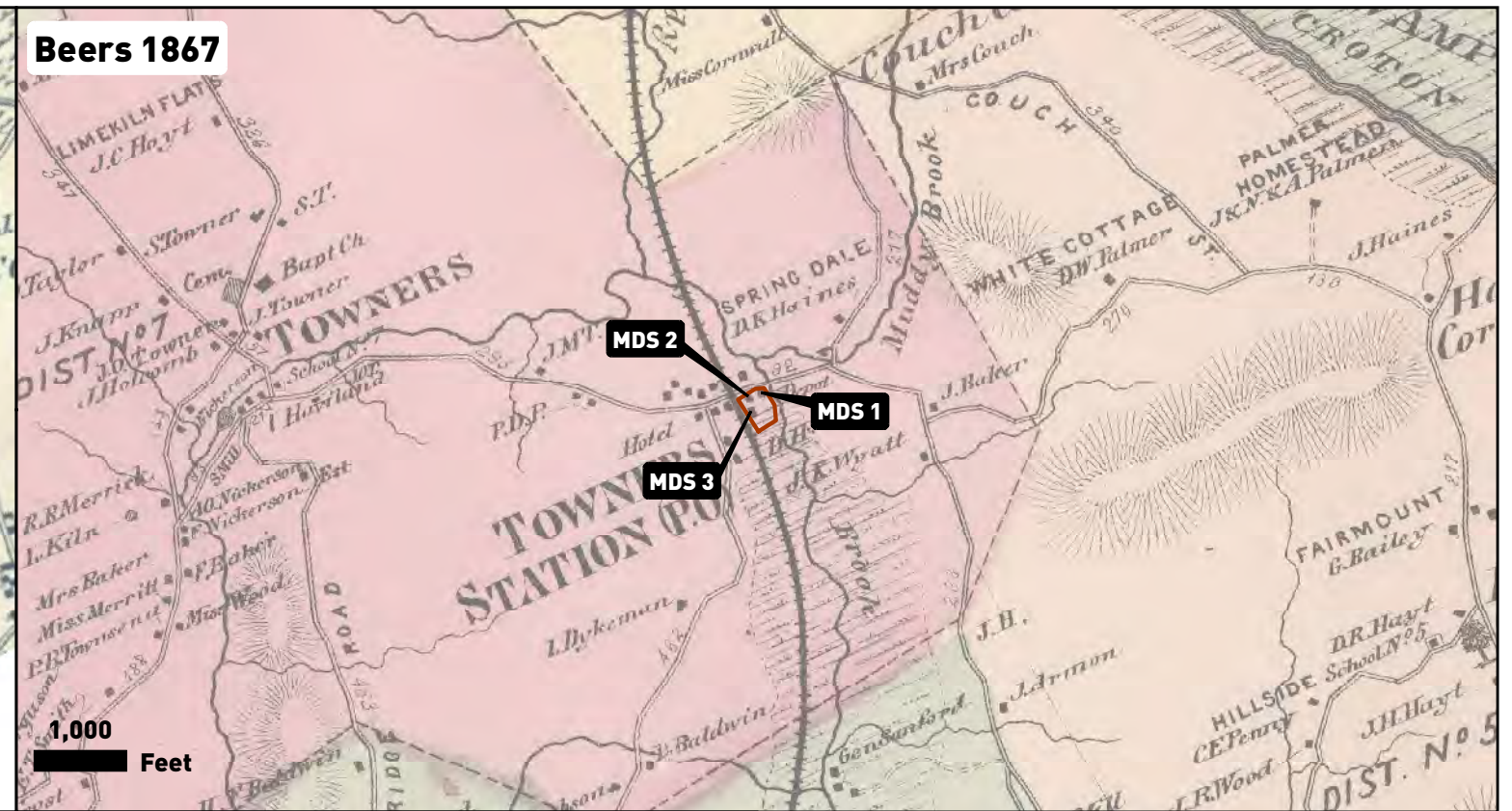
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Historical Maps 1858-1981

**Map 4c - Trailhead 3**

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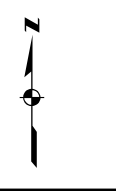
**Legend**

Area of Potential Effects (APE)





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**Legend**

Area of Potential Effects (APE)





## **Photographs**



Photo 1. View facing southeast along South Greenhaven Road as it cross the Metro-North railroad.



Photo 2. View facing west across the part of the field located within the Trailhead 1 APE.





Photo 3. View of part of the concrete platform/loading dock that covers the southeast part of the Trailhead 1 APE.



Photo 4. View facing





Photo 5. View of the railroad bed as it cuts through bedrock as it extends southeast passed Trailhead 2 on the left.



Photo 6. View as Bard Road extends east through Trailhead 2 on the right and left.





Photo 7. View facing east of the flattest terrain within the Trailhead 2 APE, where STs 20 and 21 were excavated.



Photo 8. View facing north along the railroad bed with Trailhead 3 in the wooded area on the right.





Photo 9. View facing southeast along the footpath that crosses through the Trailhead 3 APE. Note the slope of the terrain.



Photo 10. View facing north across the existing parking area located in the Trailhead 3 APE.





Photo 11. View facing east along Route 164 as it crosses the Metro-North rail line. The Trailhead 4 APE is on the right.



Photo 12. View of the Metro-North rail line as it extends south passed the Trailhead 4 APE on the right.





Photo 13. View facing west showing the extent of the dense vegetation that covered the Trailhead 4 APE.



Photo 14. View of the east wall of a large concrete foundation, likely of the old depot building that was located within Trailhead 4.





Photo 15. View of the west wall of a concrete foundation that for a smaller building within the depot.



Photo 16. View of the existing railroad as it extends north passed the Trailhead 5 APE on the left.





Photo 17. View facing northwest along Pumphouse Road with the Trailhead 5 APE in the right.

## **Appendix 1: Shovel Test Records**

# 517631: Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Shovel Test Records

	<u>Ending Depth (cm)</u>	<u>Level</u>	<u>Soil Type</u>	<u>Soil Inclusions</u>		<u>Munsell Color</u>	<u>Termination Reason</u>
1	34	1	sand	gravel	10yr 2/1	black	
	57	2	silt		10yr 7/2	light gray	impasse (rocks)
2	20	1	sand	roots	10yr 3/1	very dark gray	
	60	2	sand	roots	10yr 5/4	yellowish brown	subsoil
3	36	1	silt sand		10yr 4/1	dark gray	
	58	2	silt		10yr 5/4	yellowish brown	
	78	3	silt	cobbles, mortar	10yr 5/2	grayish brown	impasse (rocks)
4	26	1	sand	roots	10yr 3/1	very dark gray	
	55	2	sand	roots	10yr 5/4	yellowish brown	subsoil
5	28	1	sand loam		10yr 3/2	very dark grayish brown	
	49	2	sand loam	gravel	10yr 4/6	dark yellowish brown	subsoil
6	25	1	sand loam		10yr 3/2	very dark grayish brown	
	36	2	sand loam	cobbles	10yr 6/8	brownish yellow	subsoil
7	45	1	silt sand	gravel	10yr 3/3	dark brown	
	50	2	sand	gravel, cobbles	10yr 4/6	dark yellowish brown	impasse (rocks)
8	52	1	silt loam		10yr 3/2	very dark grayish brown	
	73	2	silt		10yr 4/6	dark yellowish brown	subsoil
9	10	1	silt	gravel	10yr 2/1	black	
	37	2	silt		10yr 3/2	very dark grayish brown	impasse (rocks)
10	27	1	silt		10yr 4/2	dark grayish brown	
	47	2	loam		10yr 6/3	pale brown	subsoil
11	30	1	silt loam		10yr 3/2	very dark grayish brown	
	57	2	silt		10yr 5/3	brown	subsoil



# 517631: Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Shovel Test Records

	<u>Ending Depth (cm)</u>	<u>Level</u>	<u>Soil Type</u>	<u>Soil Inclusions</u>		<u>Munsell Color</u>	<u>Termination Reason</u>
12	29	1	silt	gravel		10yr 6/2	light brownish gray
	55	2	other (Rock)	gravel, exfoliating bedrock		5y 6/1	gray subsoil
13	32	1	sand loam			10yr 3/2	very dark grayish brown
	44	2	silt loam	cobbles		10yr 4/6	dark yellowish brown subsoil
						10yr 6/3	pale brown
14	20	1	sand clay	gravel		10yr 3/1	very dark gray
	55	2	silt sand	gravel		10yr 4/6	dark yellowish brown subsoil
15	20	1	silt			10yr 4/2	dark grayish brown
	50	2	sand			10yr 6/4	light yellowish brown subsoil
16	33	1	silt	gravel		10yr 2/1	black
	35	2	silt sand	exfoliating bedrock		10yr 4/6	dark yellowish brown impasse (rocks)
17	20	1	sand			10yr 8/1	white
	38	2	silt			10yr 4/2	dark grayish brown impasse (rocks)
18	20	1	sand	gravel, roots		10yr 2/1	black
	35	2	sand	gravel		2.5y 6/8	olive yellow impasse (rocks)
19	17	1	sand			10yr 2/1	black
	38	2	silt			10yr 6/8	brownish yellow subsoil
20	24	1	silt loam			10yr 2/1	black
	43	2	silt loam			10yr 5/4	yellowish brown subsoil
21	10	1	sand	gravel		10yr 2/1	black bedrock
22	20	1	silt			10yr 4/3	brown
	42	2	silt sand			10yr 6/4	light yellowish brown subsoil
23	23	1	silt			10yr 3/2	very dark grayish brown
	41	2	silt			10yr 5/4	yellowish brown subsoil

# 517631: Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Shovel Test Records

	<u>Ending Depth (cm)</u>	<u>Level</u>	<u>Soil Type</u>	<u>Soil Inclusions</u>		<u>Munsell Color</u>	<u>Termination Reason</u>
24	21	1	sand	gravel, roots		10yr 3/2 very dark grayish brown	impasse (rocks)
25	25	1	silt loam			10yr 3/2 very dark grayish brown	
	43	2	sand loam	cobbles		10yr 4/3 brown	subsoil
26	28	1	silt sand			10yr 3/2 very dark grayish brown	
	52	2	silt			10yr 4/4 dark yellowish brown	subsoil
27	22	1	silt sand			10yr 3/2 very dark grayish brown	
	29	2	other (Rock)			10yr 2/1 black	impasse (rocks)
28	24	1	sand loam	gravel, roots		10yr 3/2 very dark grayish brown	
	32	2	sand	gravel, roots		10yr 5/4 yellowish brown	impasse (rocks)
29	32	1	silt	gravel		10yr 2/2 very dark brown	impasse (compact soil)
30	30	1	sand loam other (Tiny stones)	cobbles, roots		10yr 3/2 very dark grayish brown	impasse (rocks)
31	37	1	loam other (Rocks and slag)			10yr 2/1 black	
	52	2	silt			2.5y 5/2 grayish brown	subsoil
32	30	1	other (fill)	gravel, crushed stone, coal ash		10yr 2/1 black	impasse (rocks)
33	37	1	sand	gravel, crushed stone, coal ash		10yr 2/1 black	water
34	37	1	sand	gravel, crushed stone, roots, coal ash		10yr 2/1 black	impasse (roots)
35	35	1	sand	gravel, crushed stone, roots, coal ash		10yr 2/1 black	water

# 517631: Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Shovel Test Records

	<u>Ending Depth (cm)</u>	<u>Level</u>	<u>Soil Type</u>	<u>Soil Inclusions</u>		<u>Munsell Color</u>	<u>Termination Reason</u>
36	25	1	sand	gravel, cobbles, coal ash	10yr 2/1	black	
	45	2	sand		10yr 4/1	dark gray	subsoil
37	25	1	sand	gravel, cobbles, coal ash	10yr 2/1	black	
	38	2	sand		10yr 4/1	dark gray	subsoil
38	17	1	sand loam	gravel, cobbles, coal ash	10yr 3/1	very dark gray	impasse (rocks)
39	60	1	other	gravel, coal ash	10yr 3/1	very dark gray	impasse (compact soil)
40	50	1	silt	gravel, coal ash	10yr 2/1	black	disturbance
					10yr 5/1	gray	
41	48	1	silt		10yr 2/1	black	disturbance
					10yr 5/1	gray	
42	26	1	sand loam	roots	10yr 2/1	black	
	50	2	silt sand		10yr 5/6	yellowish brown	subsoil
43	21	1	silt loam		10yr 3/2	very dark grayish brown	
	40	2	silt		10yr 5/6	yellowish brown	subsoil
44	27	1	silt sand	roots	10yr 2/2	very dark brown	impasse (roots)
45	30	1	sand	gravel, crushed stone, roots	10yr 3/2	very dark grayish brown	impasse (roots)
46	35	1	silt loam		10yr 2/1	black	
	47	2	silt		10yr 4/1	dark gray	impasse (roots)
47	26	1	sand loam	crushed stone	10yr 2/1	black	
	51	2	loam clay		2.5yr 6/1	reddish gray	subsoil
48	25	1	silt loam		10yr 3/1	very dark gray	
	46	2	silt		2.5y 5/4	light olive brown	subsoil
49	15	1	sand loam	gravel, roots	10yr 3/1	very dark gray	bedrock

# 517631: Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Shovel Test Records

	<u>Ending Depth (cm)</u>	<u>Level</u>	<u>Soil Type</u>	<u>Soil Inclusions</u>		<u>Munsell Color</u>	<u>Termination Reason</u>
50	38	1	silt loam		10yr 4/2	dark grayish brown	
	54	2	silt loam	cobbles	10yr 5/4	yellowish brown	subsoil



## **Appendix 2: Artifact Inventory**

# Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Artifact Inventory, HAA# 5176-31

<u>Provenience</u>	<u>Level</u>	<u>Feature</u>	<u>Bag</u>	<u>Item</u>	<u>Count</u>	<u>Artifact Description</u>	<u>Material</u>	<u>Weight (g)</u>
STP 1	1	1	1	1	1	buff/pink bodied stoneware	stoneware	8.3
				1.1	1	buff/pink bodied stoneware, stoneware, salt-glazed		8.3
STP 1	1	1	1	2	22	bottle	glass	994.2
				2.1	3	bottle, gin, glass, embossed, pale aqua, Gordon Dry Gin, finish, base, and body fragments		427.6
				2.2	2	bottle, beer, glass, embossed, Liebmann Breweries Inc., base and body fragments, TPQ 1964		181.8
				2.3	14	bottle, beer, glass, embossed, pale green, Liebmann Breweries Inc., some fragments mend, base, finish, and body fragments, TPQ 1964		304.8
				2.4	3	bottle, base, glass, colorless, fragments mend		80.0
STP 1	1	1	1	3	2	vessel	glass	214.4
				3.1	2	vessel, mug/tankard, glass, paneled, colorless, fragments mend, base and body fragments		214.4
STP 1	1	1	1	4	23	nail	iron alloy	54.0
STP 1	1	1	1	5	3	cap	iron alloy	5.4
STP 1	1	1	1	6	1	washer	iron alloy	5.3
STP 1	1	1	1	7	1	ring/ring shaped	iron alloy	244.6
STP 1	1	1	1	8	1	unidentified	lead alloy	0.1
STP 3	2	2	1	1	6	whiteware	refined earthenware	18.0
				1.1	2	whiteware, hollowware, body, refined earthenware, decal, polychrome, apple and flower decal		7.0
				1.2	1	whiteware, hollowware, base, refined earthenware, gilt		5.8
				1.3	3	whiteware, body, refined earthenware, undecorated		5.2
STP 3	2	2	2	2	2	lamp chimney	glass	1.8
STP 3	2	2	2	3	1	nail	iron alloy	17.8
STP 3	2	2	2	4	3	scrap metal	iron alloy	14.3
STP 8	1	3	3	1	4	bottle	glass	17.2
STP 8	1	3	3	2	2	vessel	glass	2.8
STP 8	1	3	3	3	2	window	glass	2.7
STP 8	1	3	3	4	2	nail	iron alloy	22.5

# Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Artifact Inventory, HAA# 5176-31

<u>Provenience</u>	<u>Level</u>	<u>Feature</u>	<u>Bag</u>	<u>Item</u>	<u>Count</u>	<u>Artifact Description</u>	<u>Material</u>	<u>Weight (g)</u>
STP 10	2		4	1	1	vessel	glass	3.1
STP 16	1		5	1	2	bottle	glass	12.4
				1.1	1	<i>bottle, glass, embossed, manganese solarized, "...183...SAN..."</i>		6.7
				1.2	1	<i>bottle, glass, embossed, manganese solarized, "...MO..."</i>		5.7
STP 16	1		5	2	2	vessel	glass	15.1
STP 16	1		5	3	2	leather	leather	3.4
				3.1	2	<i>leather, leather, perforated</i>		3.4
STP 16	1		5	4	1	tack	iron alloy	5.0
STP 16	1		5	5	1	unidentified hardware	iron alloy	37.0
STP 29	1		6	1	7	bottle	glass	32.7
				1.1	2	<i>bottle, glass, brown, machine made</i>		11.0
				1.2	5	<i>bottle, glass, green</i>		21.7
STP 29	1		6	2	4	cap	iron alloy	10.2
				2.1	4	<i>cap, bottle, beverage, iron alloy</i>		10.2
STP 29	1		6	3	1	jar lid	iron alloy	9.0

# **EXHIBIT E**





# Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO  
Governor

ROSE HARVEY  
Commissioner

July 19, 2018

Mr. Joseph Kelley  
WSP  
555 Pleasantville Road  
South Building  
Briarcliff Manor, NY 10510

Re: USACE  
Metro-North Beacon Rail Trail  
Dutchess and Putnam Counties, NY  
17PR08729

Dear Mr. Kelley:

Thank you for requesting the comments of the New York State Historic Preservation Office (SHPO). We have reviewed the submitted materials in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources.

SHPO has reviewed *Phase I Archeological Investigation, Metro-North Beacon Rail Trail, Towns of East Fishkill, Beekman, Pawling, Patterson, and Southeast, Dutchess and Putnam Counties, New York* (Hartgen Archeological Associates, July 2018).

Based on the information provided, SHPO recommends that the planned project will have **No Effect** on historic properties listed or eligible for listing on the National Register of Historic Places. This recommendation pertains only to the Area of Potential Effects (APE) examined during the above-referenced investigation. Should the project design be changed SHPO recommends further consultation with this office.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Philip A. Perazio, Historic Preservation Program Analyst - Archaeology Unit  
Phone: 518-268-2175  
e-mail: [philip.perazio@parks.ny.gov](mailto:philip.perazio@parks.ny.gov)

via e-mail only

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## Division for Historic Preservation

P.O. Box 189, Waterford, New York 12188-0189 • (518) 237-8643 • [www.nysparks.com](http://www.nysparks.com)

**SURFACE TRANSPORTATION BOARD  
WASHINGTON, DC 20423**

**DRAFT ENVIRONMENTAL ASSESSMENT**

**Docket No. AB 1311**

**Metro-North Commuter Railroad–Adverse Discontinuance  
of Trackage Rights–Housatonic Railroad Company**

**BACKGROUND**

In this proceeding, Metro-North Commuter Railroad (Metro-North) filed an application with the Surface Transportation Board (Board) under 49 U.S.C. § 10903 and 49 C.F.R. § 1152.22 seeking adverse discontinuance of the trackage rights of Housatonic Railroad Company (Housatonic) over a 41.1 mile line of railroad known as the Beacon Line in Dutchess and Putnam Counties, New York (the Beacon Line).<sup>1</sup> The history of the Beacon Line can be found in Metro-North's Application, filed on April 30, 2021, and is available on the Board's web site at <https://www.stb.gov>.

The Beacon Line originates at milepost 0.0 in Beacon, N.Y., and travels northeast toward Beekman, N.Y., and then southeast toward Brewster, N.Y., and terminates at milepost 71.2 at the New York/Connecticut state line. Based on available information, Metro-North states that the Beacon Line does not contain any federally granted rights-of-way. There are no stations on the Beacon Line and affected United States ZIP Codes include: 12508, 12524, 12533, 12582, 12570, 12531, 12564, 12563, and 10509.<sup>2</sup> A map depicting the Beacon Line in relationship to the area served is appended to this Draft Environmental Assessment (Draft EA).

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<sup>1</sup> Metro-North acquired the Beacon Line in 1995 in a decision by the Board's predecessor agency, the Interstate Commerce Commission (ICC). See Metro N. Commuter R.R.—Acquis. Exemption—Maybrook Line, FD 32639 et al. (ICC served Jan. 13, 1995). Because Metro-North was interested in offering only commuter passenger rail service on the Beacon Line, the ICC's decision also exempted Metro-North from most of the provisions of the Interstate Commerce Act (Subtitle IV of U.S.C. Title 49). This exemption allows Metro-North to abandon the Beacon Line without Board approval. According to Metro-North, the only Board approval needed would be discontinuance of the trackage rights now held by Housatonic. Therefore, Metro-North is not required to seek authorization from the Board to abandon, salvage, or dispose of the Beacon Line.

<sup>2</sup> Metro-North initially filed for adverse discontinuance of the Beacon Line on April 30, 2021. However, after discovering that it provided incorrect Zip Code information, Metro-North

If adverse discontinuance authority is granted in this proceeding, Housatonic would no longer have Board authority to provide rail service via trackage rights over the Beacon Line. Metro-North, as the owner of the Beacon Line, has been exempted from the requirement to obtain Board approval before abandoning the Beacon Line, as explained above. Therefore, should the Board approve the proposed adverse discontinuance, the Beacon Line would no longer be subject to environmental review by the Board in the event of salvage or disposition of the rail right-of-way.

In rail line abandonments, the Board's Office of Environmental Analysis (OEA) assesses the environmental impacts of abandonment-related salvage of the rail line and diversion of train traffic to other modes that exceed the thresholds set forth in the Board's environmental rules. Under the Board's environmental rules at 49 C.F.R. § 1105.6 (b)(3), discontinuances of service may require the preparation of an environmental assessment. However, when the owner of the rail assets—the tracks, ties, and other appurtenances—is a carrier who would need to seek abandonment authority at a later time from the Board, typically no environmental review at this early stage is deemed necessary. In cases where the owner of the rail line proposed for adverse discontinuance does not need the Board's approval to abandon a rail line (as is the case here), there would be no subsequent abandonment filing with the Board and, therefore, no further opportunity for environmental review by the Board. Accordingly, OEA has prepared this Draft EA to address the potential environmental impacts of planned activities related to the proposed adverse discontinuance.

## **DESCRIPTION OF THE BEACON LINE**

According to Metro-North, there has been no passenger or freight service over any portion of the Beacon Line since at least 2014. Metro-North states that there is no longer a need for passenger service or freight service in the area. Metro-North notes that the Beacon Line was originally constructed as a double-tracked system but was reduced to single-track sometime before Metro-North acquired the Beacon Line. After acquiring the Beacon Line and securing the necessary permits, Metro-North constructed a 23-mile trail known as the Maybrook Trailway in a portion of right-of-way between the Village of Brewster in Putnam County and the Hamlet of Hopewell in Dutchess County.

Metro-North indicates that, despite the absence of train traffic on the Beacon Line, it continues to maintain the right-of-way for grade crossing conditions by removing overhanging branches and trees in danger of falling on the tracks and inspecting the condition of bridges to ensure that they are safe for pedestrian use in accordance with Federal Railroad Administration standards. Metro-North contends that the cost to resume rail service on the Beacon Line, at roughly \$75 million for rehabilitation of track, signals, communications, and structures, would be prohibitive. Therefore, Metro-North now seeks adverse discontinuance of Housatonic's trackage

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requested that the Board hold this proceeding in abeyance to allow time for it to file the correct Zip Code information and provide the appropriate notice to the parties. Metro-North's updated notice, filed with the Board on June 7, 2021, provides the corrected information.

rights over the Beacon Line.

## **ENVIRONMENTAL REVIEW**

Metro-North submitted an Environmental and Historic report (E&H Report) that concludes the quality of the human environment would not be affected significantly as a result of the proposed adverse discontinuance of trackage rights or any post-discontinuance activities. Metro-North served the E&H Report on appropriate federal, state, and local agencies as required by the Board's environmental rules [49 C.F.R. § 1105.7(b)].<sup>3</sup> OEA has reviewed and investigated the record in this proceeding.

### ***Diversion of Traffic***

As previously noted, there has been no local or overhead traffic over the Beacon Line for several years. Accordingly, the proposed adverse discontinuance would not adversely impact the development, use and transportation of energy resources or recyclable commodities; transportation of ozone-depleting materials; or require the diversion of rail traffic to truck traffic that could result in significant impacts to air quality or the local transportation network.

### ***Salvage Activities***

Impacts from salvage of a rail line typically include the removal of tracks and ties and may include the removal of ballast, dismantling of any bridges or other structures in the rail right-of-way, and regrading of the right-of-way. In this proceeding, however, Metro-North does not have plans to salvage the Beacon Line if the Board authorizes the proposed adverse discontinuance.

The U.S. Army Corps of Engineers, New York District (Corps) previously reviewed the development of the Maybrook Trailway under Section 404 of the Clean Water Act (33 U.S.C. § 1344), but has not provided comments regarding the potential impact that the proposed adverse discontinuance could have on jurisdictional water resources under Section 404. Because Metro-North has indicated that it has no plans to salvage the Beacon Line at this time, OEA has determined that there would be no impact on any water resources, including water resources under the Corps' jurisdiction. OEA is providing a copy of this Draft EA to the Corps for review.

The U.S. Fish and Wildlife Service, New York Ecological Services Field Office (USFWS) has not provided comments regarding the potential impact that salvage may have on protected wildlife, including federally listed threatened and endangered species in the area of the proposed discontinuance. To determine if any protected species occur at this location, OEA

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<sup>3</sup> The E&H Report is available for viewing on the Board's website at <https://www.stb.gov> by clicking "Search STB Records;" selecting "Filings" in the "Search for" dropdown menu; entering "AB" "1311" "0" sequentially in the "Docket Number" boxes, and then selecting "Search." The E&H Report was filed with the Application on April 30, 2021.



conducted a search of the USFWS Information for Planning and Consultation (IPaC) system.<sup>4</sup> The data base indicated that two mammals (the endangered Indiana Bat and the threatened Northern Long-eared Bat); one reptile (the threatened Bog turtle); and one insect (the candidate Monarch butterfly) may be present near the proposed adverse discontinuance. No critical habitat was identified for these species. Because Metro-North has indicated that it has no plans to salvage the Beacon Line at this time, OEA has determined that the proposed adverse discontinuance would have no effect on any of the listed species. OEA is providing a copy of this Draft EA to USFWS for review.

Metro-North provided the E&H Report to the New York State Department of Environmental Conservation (NYSDEC), but NYSDEC has not yet provided comments regarding the potential impact that the proposed discontinuance may have on water resources that are regulated by its various programmatic offices, including whether there would be a need for Metro-North to obtain a general stormwater permit, a water quality certification, or a state coastal zone management consistency determination.<sup>5</sup> Because Metro-North has indicated that it has no plans to salvage the Beacon Line at this time, OEA believes that the proposed adverse discontinuance would not result in impacts to water resources that would warrant a general stormwater permit, a water quality certification, or a state coastal zone management consistency determination. OEA is providing a copy of this Draft EA to NYSDECs' Division of Fish and Wildlife and Division of Environmental Permits as well as the New York Department of State Coastal Zone Management Program (CMP) for review.

In response to Metro-North's request for comment on its E&H Report, the U.S. Environmental Protection Agency, Region 2 Office (USEPA) stated that USEPA previously reviewed the activities associated with the development of the Maybrook Trailway and that USEPA has no comments on the proposed adverse discontinuance. OEA is providing a copy of this Draft EA to USEPA for review.

Because Metro-North does not intend to salvage the Beacon Line, the proposed adverse discontinuance would not result in any noise impacts or air emissions that could affect air quality related to salvage activities.

Based on all information available to date, OEA does not believe that the proposed adverse discontinuance would cause significant environmental impacts. In addition to the parties on the Board's service list for this proceeding, OEA is providing a copy of this Draft EA to the

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<sup>4</sup> U.S. Fish and Wildlife Service, Information, Planning, and Consultation (IPaC) System, <http://ecos.fws.gov/ipac> (last visited June 7, 2022).

<sup>5</sup> The statutory boundary describing applicability of the federally approved state coastal program under the federal Coastal Zone Management Act includes Long Island, New York City, the Hudson River and Great Lakes areas. The state's defined coastal area also includes all major inland waters per the following dataset: <http://gis.ny.gov/gisdata/inventories/results.cfm?SWIS=13&sectorIDs=&themeIDs=13> (last visited June 7, 2022). Based on this information, OEA could not determine if the proposed adverse discontinuance is within any coastal boundaries of major inland waters.

following agencies for review and comment: USFWS; the Corps; USEPA; NYSDEC's Division of Fish and Wildlife; NYSEC's Division of Environmental Permits; and CMP.

## **HISTORIC REVIEW**

Metro-North submitted its E&H Report as required by the Board's environmental rules [49 C.F.R. § 1105.8(a)] and served the report on New York Parks, Recreation and Historic Preservation (State Historic Preservation Office or SHPO), pursuant to 49 C.F.R. § 1105.8(c).<sup>6</sup> The SHPO previously reviewed the development of the Maybrook Trailway and concluded that the trail development would have no effect on cultural resources. However, the SHPO has not yet commented on the proposed adverse discontinuance. Because Metro-North does not intend to salvage the Beacon Line or make any changes to the existing rail corridor related to the proposed adverse discontinuance, OEA finds that the proposed adverse discontinuance would have no potential to affect cultural resources. Therefore, Pursuant to the Section 106 regulations of the National Historic Preservation Act at 36 C.F.R. § 800, OEA has determined that no known historic properties listed in or eligible for inclusion in the National Register of Historic Places would be affected as a result of the proposed adverse discontinuance. The documentation for this finding, as specified at 36 C.F.R. § 800.11(d), consists of Metro-North's E&H Report, all relevant correspondence, and this Draft EA, which have been provided to the SHPO and made available to the public through posting on the Board's website at <https://www.stb.gov>.

Pursuant to 36 C.F.R. § 800.2, OEA conducted a search of the U.S. Department of Housing and Urban Development Tribal Directory Assessment Tool to identify federally recognized tribes that may have ancestral connections to the project area.<sup>7</sup> The database indicates that there are four federally recognized tribes that may have knowledge regarding properties of traditional religious and cultural significance within the right-of-way of the Beacon Line. The tribes include the Delaware Nation, Oklahoma; the Delaware Tribe of Indians; the Stockbridge Muncie Community, Wisconsin; and the Mohegan Tribe of Indians, Connecticut. OEA is sending a copy of this Draft EA to these tribes for review and comment.

## **CONDITIONS**

OEA is not recommending that the Board impose any environmental conditions in this proceeding.

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<sup>6</sup> Applicants seeking authority from the Board to abandon railroad lines (in this case, adversely discontinue trackage rights) may act on behalf of the Board when complying with the Section 106 regulations of the National Historic Preservation Act. Applicants are authorized to initiate the Section 106 review process and carry out some of its steps, but the Board retains overall responsibility for the Section 106 review. See 36 C.F.R. 800.2(c)(4); 49 C.F.R. Part 1105; Delegation Letter (Dec. 9, 2009). The Delegation Letter can be found on the Board's website at <https://www.stb.gov/resources/environmental/historic-preservation-overview/>.

<sup>7</sup> U.S. Department of Housing and Urban Development, Tribal Directory Assessment Tool, <https://egis.hud.gov/tadat/> (last visited June 7, 2022).

## **CONCLUSIONS**

Based on the information provided from all sources to date, OEA concludes that, as currently proposed, adverse discontinuance of the Beacon Line will not significantly affect the quality of the human environment. Therefore, the environmental impact statement process is unnecessary.

Alternatives to the proposed adverse discontinuance would include denial (and therefore no change) and possibly resumption of trackage rights operations. In any of these cases, the existing quality of the human environment and energy consumption should not be affected.

## **PUBLIC ASSISTANCE**

The Board's Office of Public Assistance, Governmental Affairs, and Compliance responds to questions regarding interim trail use, public use, and other reuse alternatives. You may contact this office directly at (202) 245-0238, or mail inquiries to Surface Transportation Board, Office of Public Assistance, Governmental Affairs, and Compliance, Washington, DC 20423.

## **COMMENTS**

OEA encourages interested parties to submit their comments on the Draft EA electronically through the Board's website at <https://www.stb.gov>. From the Board's home page, select "File an Environmental Comment" below the "Need Assistance?" button. Log-in accounts are not needed to file environmental comments electronically, and brief comments can be typed in the comment field, and lengthier comments can be attached as Word, Adobe Acrobat, or other file formats.

Alternatively, comments submitted by mail should be addressed to: Diana Wood, Surface Transportation Board, 395 E Street SW, Washington, DC 20423-0001, Attention: Environmental Filing, Docket No. AB 1311. If you have any questions, please contact Diana Wood by email at [Diana.Wood@stb.gov](mailto:Diana.Wood@stb.gov) or by phone at 202-245-0302.

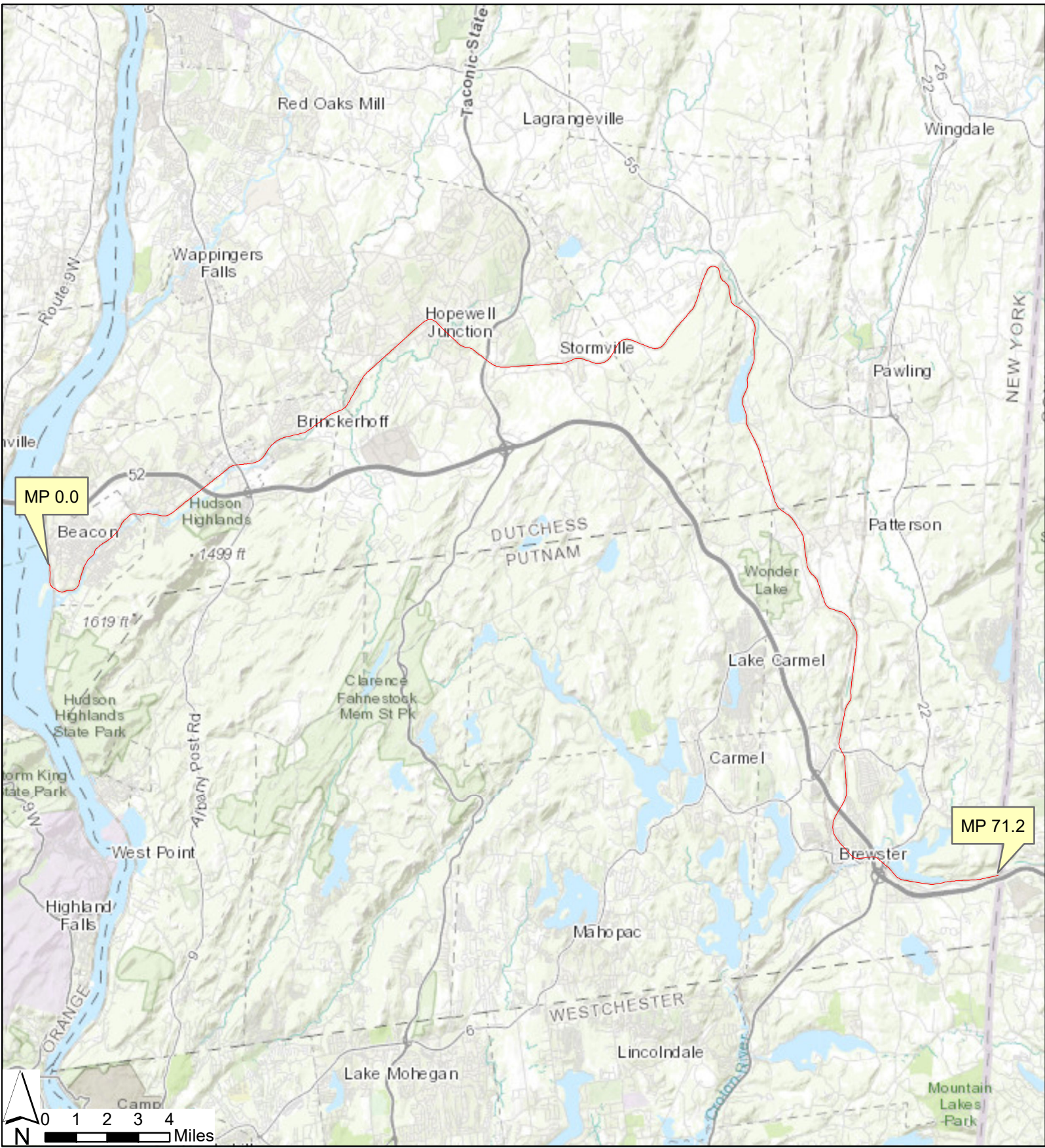
Date made available to the public: August 5, 2022

**Comment due date: September 5, 2022**

By the Board, Danielle Gosselin, Director, Office of Environmental Analysis.

Attachment





**Docket No. AB 1311**  
 Metro-North Commuter Railroad Company  
 Adverse Discontinuance of Trackage Rights  
 Housatonic Railroad Company  
 Dutchess and Putnam Counties, New York

Note: Maps produced by the STB's Office of Environmental Analysis are based on information provided by the applicant and are for reference purposes only.

**Legend**

— AB-1311



New York



50759  
OEA

SERVICE DATE – SEPTEMBER 9, 2022

**SURFACE TRANSPORTATION BOARD**  
WASHINGTON, DC 20423

**FINAL ENVIRONMENTAL ASSESSMENT**

**Docket No. AB 1311**

**Metro-North Commuter Railroad–Adverse Discontinuance  
of Trackage Rights–Housatonic Railroad Company**

**ABANDONMENT TYPE**

The time for comments on the Draft Environmental Assessment (Draft EA) has expired in this:

Notice of Exemption  Petition for Exemption  Regulated Abandonment

**NO NEW COMMENTS WERE RECEIVED**

**NEW COMMENTS WERE RECEIVED**

In this proceeding, Metro-North Commuter Railroad filed an application with the Surface Transportation Board (Board) under 49 U.S.C. § 10903 and 49 C.F.R. § 1152.22 seeking adverse discontinuance of the trackage rights of Housatonic Railroad Company (Housatonic) over a 41.1-mile line of railroad known as the Beacon Line in Dutchess and Putnam Counties, New York (the Beacon Line). The Beacon Line originates at milepost 0.0 in Beacon, N.Y., and travels northeast toward Beekman, N.Y., and then southeast toward Brewster, N.Y., and terminates at milepost 71.2 at the New York/Connecticut state line. The Office of Environmental Analysis (OEA) served a Draft EA for this proceeding on August 5, 2022 for public review and comment. In the Draft EA, OEA recommended no environmental conditions and concluded that the proposed action would not significantly impact the quality of the human environment.

**Conclusions**

The Draft EA comment period has ended, and no conditions are recommended by OEA. Accordingly, OEA believes that the proposed action will not significantly affect the quality of the human environment.

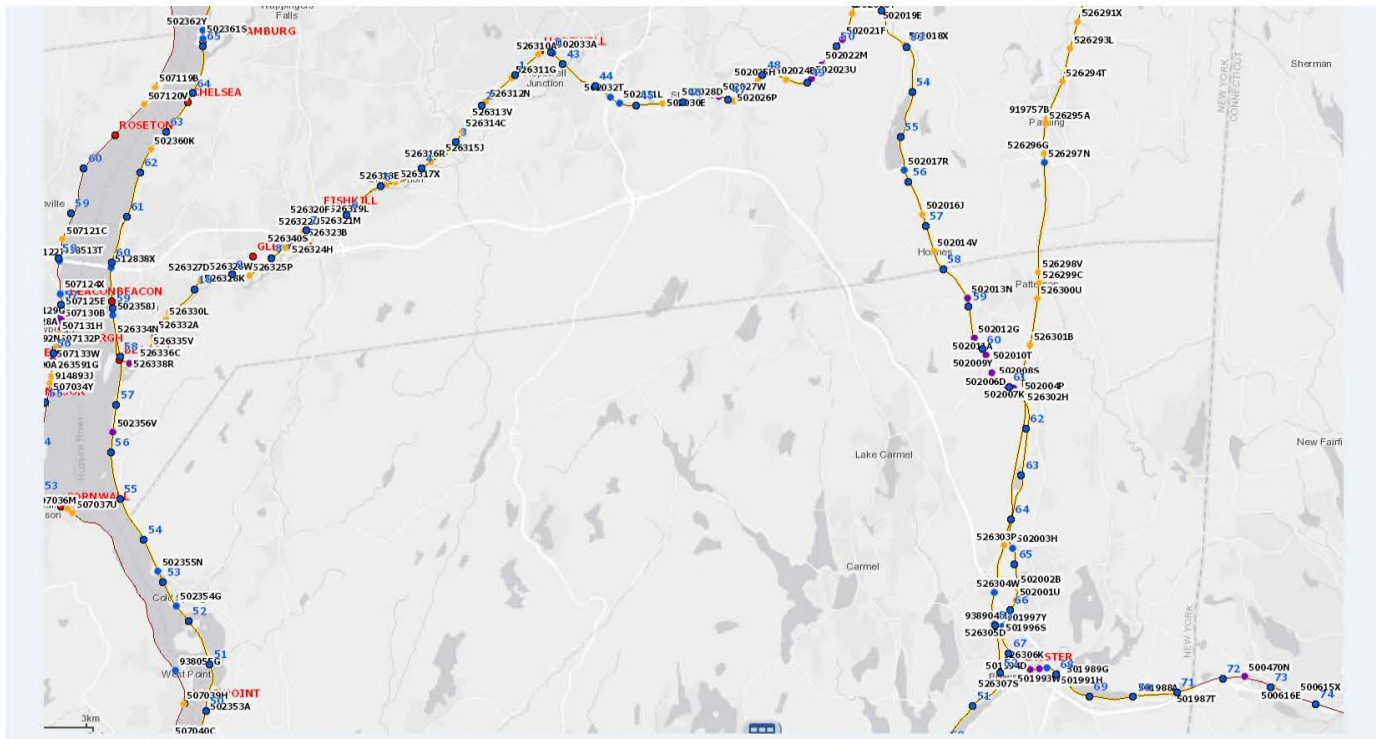
By the Board, Danielle Gosselin, Director, Office of Environmental Analysis.

**EXHIBIT C**

to the Notice of Exemption  
file on January 30, 2023

**Beacon Line Map**

# FRA Rail Map Displaying the Beacon Line in New York



**EXHIBIT D**

to the Notice of Exemption  
filed on January 30, 2023

**Notice Required Per  
49 C.F.R. 1152.50(d) – (20-Day Letter)**



**20 Day Notification Letter for Comments on the Environmental and Historic Report**

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New York State Office of Park, Recreation, and Historic Preservation  
Historic Preservation Office  
Peebles Island Resource Center  
P.O. Box 189  
Waterford, NY 12188-0189

U.S. Army Corps of Engineers  
New York District  
Jacob K. Javitz Federal Building  
26 Federal Plaza, Room 17-302  
New York, New York 10278-0090

U.S. Fish and Wildlife Service  
New York Ecological Services Field Office  
3817 Luker Road  
Cortland, NY 13045-9385

New York State Department of Environmental Conservation  
Office of Natural Resources  
Division of Fish and Wildlife  
625 Broadway  
Albany, New York 12233-0001

New York State Department of Environmental Conservation  
Division of Environmental Permits  
625 Broadway  
Albany, New York 12233-0001

New York Department of State  
State Coastal Management Program  
One Commerce Plaza  
99 Washington Ave  
Albany, NY 12231-0001

Delaware Nation  
P.O. Box 825  
Anadarko, OK 73005

Stockbridge-Munsee Community  
N8705 MohHeConNuck Rd.  
Bowler WI 54416

Mohegan Tribe

Mohegan Community & Government Center  
13 Crow Hill Road  
Uncasville, CT 06382  
New York State Department of Public Service  
Empire State Plaza  
Agency Building 3  
Albany, NY 12223-1350

Military Surface Deployment and Distribution Command  
Transportation Engineering Agency – Railroads for National Defense Program  
1 Soldier Way, Bldg 1900W  
Scott AFB, IL 62225

National Park Service  
Conservation and Outdoor Recreation  
Division Office  
1849 C Street NW  
Washington, D.C. 20240

National Park Service  
Land Resources Division  
1849 C Street, NW  
Main Interior Building  
Washington, DC 20240

U.S. Dept. of Agriculture  
Chief of Forest Service  
1400 Independence Ave., SW  
Washington, D.C. 20250-0003

[ADDRESS]

January 10, 2023

RE: Proposed Discontinuance of Beacon Line in Putnam and Dutchess Counties, New York,  
STB Docket No. AB 733 (Sub No. 1X)

To Whom it May Concern:

On January 30, 2023, Housatonic Railroad Company (“Housatonic RR”) plans to file with the Surface Transportation Board a Notice of Exemption seeking authority to discontinue service over the line of railroad known as the “Beacon Line” between milepost 0.0 at Beacon, New York and milepost 71.2 at the Connecticut/New York state line, a distance of 41.1 miles, in Dutchess and Putnam Counties, New York. Attached is an Environmental and Historic Report describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

I am providing this report so that you may review the information that will form the basis for the STB's independent environmental analysis of this proceeding. If any of the information is misleading or incorrect, if you believe that pertinent information is missing, or if you have any questions about the Board's environmental review process, please contact the Office of Environmental Analysis (OEA), Surface Transportation Board, Washington, DC, telephone (202) 245-0245 and refer to the above Docket No. Because the applicable statutes and regulations impose stringent deadlines for processing this action, your written comments to OEA (with a copy to my address below) would be appreciated within 3 weeks.

Your comments will be considered by the Board in evaluating the environmental and/or historic preservation impacts of the contemplated action. If there are any questions concerning this proposal, please contact me directly.

Sincerely,

Edward J. Rodriguez  
*General Counsel for Housatonic Railroad Company*  
4 Huntley Road  
P.O. Box 687  
Old Lyme, Connecticut 06371  
(860) 434-4303  
e.rodriguez@hrrc.com

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Docket No. AB 1311**

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**METRO-NORTH COMMUTER RAILROAD COMPANY—ADVERSE  
DISCONTINUANCE OF TRACKAGE RIGHTS—HOUSATONIC RAILROAD  
COMPANY**

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**ENVIRONMENTAL AND HISTORIC REPORT  
OF METRO-NORTH COMMUTER RAILROAD COMPANY**

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*Counsel for Metro-North Commuter Railroad Company*



**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**Docket No. AB 1311**

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**METRO-NORTH COMMUTER RAILROAD COMPANY—ADVERSE  
DISCONTINUANCE OF TRACKAGE RIGHTS—HOUSATONIC RAILROAD  
COMPANY**

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**ENVIRONMENTAL AND HISTORIC REPORT OF  
METRO-NORTH COMMUTER RAILROAD**

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Metro-North Commuter Railroad Company (“Metro-North”) expects to file a Petition for Adverse Discontinuance with the Surface Transportation Board (“STB” or “Board”) on or about March 29, 2021 to discontinue Housatonic Railroad Company’s (“HRRC”) trackage rights over a 41.1-mile line of railroad known as the Beacon Line (“Beacon Line” or “the Line”) between milepost 0.0 and milepost 71.2, from Beacon, New York to Brewster, New York, in Dutchess and Putnam Counties, New York. HRRC’s trackage rights were established in an agreement between HRRC’s predecessor<sup>1</sup> railroad and Metro-North, which acquired the Line in 1995. When Metro-North acquired the Line, the Interstate Commerce Commission exempted Metro-North from most of the provisions of 49 U.S.C. Subtitle IV and permitted Metro-North to abandon the Line subject only to the serving carrier’s discontinuance of freight service. *Metro-North Commuter Railroad Company – Acquisition Exemption – The Maybrook Line*, ICC Finance Docket No. 32639, slip op.

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<sup>1</sup> The Trackage Rights Agreement granted exclusive operating rights to the Danbury Terminal Railroad Company (“DTRC”). In 1996, DTRC and HRRC merged and the HRRC assumed DTRC’s operating rights. *Housatonic R.R. Co.—Corporate Family Transaction Exemption—Danbury Terminal R.R. Co.*, STB Docket No. 33310 (Service Date Dec. 27, 1996).

at 3-4 (Service Date Jan 13, 1995). Accordingly, Metro-North is not required to seek authority from STB in order to abandon the Beacon Line.

However, pursuant to STB precedent, an abandoning carrier has been required to file an Environmental and Historic Report, which would be required as one step of the abandonment process, under similar circumstances.<sup>2</sup> Accordingly, Metro-North files this Environmental and Historic Report in connection with and in support of Metro-North's Petition for Adverse Discontinuance Proceeding.

Metro-North constructed a 23-mile trail along a portion of the Beacon Line in connection with New York State's Empire Trail Initiative, known as the Maybrook Trail, which connects the Putnam Trailway/Maybrook Bikeway, in the Village of Brewster in Putnam County, with the Dutchess Rail Trail in the Hamlet of Hopewell Junction in Dutchess County. As of the filing of this Environmental and Historic Report, Metro-North has no plans to remove the existing portions of the corridor.

In conjunction with the Maybrook Trail construction, Metro-North has obtained a Section 401 Water Quality Certification from the New York State Department of Environmental Conservation ("NYSDEC") for the construction activities associated with the Maybrook Trail portion of the Beacon Line. A copy of the permit is attached as **Exhibit A**. The Army Corps of Engineers, Western Section, also issued a Nationwide General Permit 18 **Exhibit B**, for the discharge of fill material into waters of the United States for activities associated with the construction of the trail. The Beacon Line was originally double-tracked. One track had already

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<sup>2</sup> See e.g. *Longhorn Ry. Co.—Discontinuance Exemption—In Burnet, TX*, 1997 STB LEXIS 2958, \*2-\*3 (Service Date Apr. 1, 1997) ("Although [the City of] Austin does not need to obtain abandonment authority because it was exempted from the provisions of 49 U.S.C. Subtitle IV in 1987, we are required to undertake an appropriate analysis of the potential environmental impacts of abandonment. Therefore, Austin must submit any environmental and historic data which may be required of it and comply with any conditions that might be imposed before consummating abandonment and salvage of the line segment.")

been removed prior to Metro-North's acquisition of the Beacon Line. Once the associated permits were granted, Metro-North began construction of the Maybrook Trail in the portion of the right-of-way where the track had been removed. The single track remains intact.

There are no stations on the Line. The Subject Line traverses through United States Postal Service Zip Codes: 12508, 12524, 12533, 12582, 12570, 12531, 12564, 12563, and 10509. A map of the Subject Line<sup>3</sup> is attached as **Exhibit C**.

### **ENVIRONMENTAL REPORT**

#### **49 C.F.R. 1105.7(e) Requirements:**

- (1) Proposed action and alternatives. Describe the proposed action, including commodities transported, the planned disposition (if any) of any rail line and other structures that may be involved, and any possible changes in current operations or maintenance practices. Also describe any reasonable alternatives to the proposed action. Include a readable, detailed map and drawings clearly delineating the project.**

The Beacon Line has not had any local or overhead traffic for more than the last two years. Metro-North has no plans to salvage the existing track at this time.

- (2) Transportation System. Describe the effects of the proposed action on regional or local transportation systems and patterns. Estimate the amount of traffic (passenger or freight) that will be diverted to other transportation systems or modes as a result of the proposed action.**

Discontinuance of service over the Beacon Line will have no effect on regional or local transportation system or patterns. There has been no freight rail traffic or passenger rail traffic on the Line for years; therefore, no freight or passenger traffic will be diverted to other modes as a result of the proposed abandonment.

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<sup>3</sup> Metro-North has requested waivers from some of the filing requirements associated with discontinuance proceedings, including the submission of a map of the line. *Petition for Partial Waiver of Discontinuance Regulations and for Exemption*, STB Docket No. AB 1311, 4-5 (filed Feb. 8, 2021). The map included as **Exhibit C** was prepared using the Federal Railroad Administration's Safety Map (available at <https://fragis.fra.dot.gov/gisfrasafety/>).

**(3) Land Use.**

- (i) Based on consultation with local and/or regional planning agencies and/or a review of the official planning documents prepared by such agencies, state whether the proposed action is consistent with existing land use plans. Describe any inconsistencies.**

The proposed action is consistent with existing land use patterns for the surrounding areas.

- (ii) Based on consultation with the U.S. Soil Conservation Service, state the effect of the proposed action on any prime agricultural land.**

The proposed abandonment will not affect prime agricultural land.

- (iii) If the action affects land or water uses within a designated coastal zone, include the coastal zone information required by § 1105.9.**

The Beacon Line is not located on land or water within a designated coastal zone.

- (iv) If the proposed action is an abandonment, state whether or not the right-of-way is suitable for alternative public use under 49 U.S.C. § 10905 and explain why.**

The right-of-way is suitable for, and is developed as, a public recreational trail connecting with the existing Putnam Trailway/Maybrook Bikeway, in the Village of Brewster in Putnam County, with the Dutchess Rail Trail in the Hamlet of Hopewell Junction in Dutchess County. The rest of the Line, from Beacon, New York to Hopewell Junction, New York is suitable for public recreational trail use.

**(4) Energy.**

- (i) Describe the effect of the proposed action on transportation of energy resources.**

The proposed abandonment and discontinuance will have no effect on the transportation of energy resources. No freight traffic has moved over the Beacon Line in years.



**(ii) Describe the effect of the proposed action on recyclable commodities.**

The proposed abandonment and discontinuance will have no effect on recyclable commodities.

**(iii) State whether the proposed action will result in an increase or decrease in overall energy efficiency and explain why.**

The abandonment and discontinuance will not have any impact on energy consumed in the transportation of freight as no freight has moved over the Beacon Line in years.

**(iv) If the proposed action will cause diversions from rail to motor carriage of more than:**

**(A) 1,000 rail carloads a year; or**

**(B) An average of 50 rail carloads per mile per year for any part of the affected line, quantify the resulting net change in energy consumption and show the data and methodology used to arrive at the figure given. To minimize the production of repetitive data, the information on overall energy efficiency in § 1105.7(e)(4)(iii) need not be supplied if the more detailed information in § 1105.7(e)(4)(iv) is required.**

Not applicable. The proposed discontinuance will not cause any diversions of rail carloads per year over any part of the affected line meeting or exceeding the thresholds set forth in (iv)(A) or (B).

**(5) Air.**

**(i) If the proposed action will result in either:**

**(A) An increase in rail traffic of at least 100 percent (measured in gross ton miles annually) or an increase of at least eight trains a day on any segment of rail line affected by the proposal, or**

**(B) An increase in rail yard activity of at least 100 percent (measured by carload activity), or**

**(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on any affected road segment, quantify the anticipated effect on air emissions. For a proposal under 49 U.S.C. 10901 (or 10502) to**

**construct a new line or reinstitute service over a previously abandoned line, only the eight train a day provision in subsection (5)(i)(A) will apply.**

Not applicable. The proposed discontinuance will not result in any increase in rail or truck traffic meeting or exceeding the specific thresholds for increased rail or truck traffic set forth in (i)(A), (B), or (C) above. There has been no traffic on the Beacon Line in years.

**(ii) If the proposed action affects a Class I or nonattainment area under the Clean Air Act, and will result in either:**

**(A) An increase in rail traffic of at least 50 percent (measured in gross ton miles annually) or an increase of at least three trains a day on any segment of rail line,**

**(B) An increase in rail yard activity of at least 20 percent (measured by carload activity), or**

**(C) An average increase in truck traffic of more than 10 percent of the average daily traffic or 50 vehicles a day on a given road segment, then state whether any expected increased emissions are within the parameters established by the State Implementation Plan. However, for a rail construction under 49 U.S.C. 10901 (or 49 U.S.C. 10502), or a case involving the reinstatement of service over a previously abandoned line, only the three train a day threshold in this item shall apply.**

Not applicable. The proposed discontinuance will not result in any increase in rail or truck traffic meeting or exceeding the specific thresholds for increased rail or truck traffic or rail yard activity set forth in (ii) (A), (B), or (C) above.

**(iii) If Transportation of ozone depleting materials (such as nitrogen oxide and freon) is contemplated, identify: the materials and quantity; the frequency of service; safety practices (including speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and spills; contingency plans to deal with accidental spills; and the likelihood of an accidental release of ozone depleting materials in the event of a collision or derailment.**

Not applicable. The proposed discontinuance will not affect the transportation of ozone depleting materials.

**(6) Noise. If any of the thresholds identified in item (5)(i) of this section are surpassed, state whether the proposed action will cause:**

**(i) An incremental increase in noise levels of three decibels Ldn or more; or**

- (ii) An increase to a noise level of 65 decibels Ldn or greater. If so, identify sensitive receptors (e.g. schools, libraries, hospitals, residences, retirement communities, and nursing homes) in the project area, and quantify the noise increase for these receptors if the thresholds are surpassed.**

Not applicable. The proposed discontinuance will not create any noise-related impacts of this nature.

**(7) Safety.**

- (i) Describe any effects of the proposed action on public health and safety (including vehicle delay time at railroad grade crossings).**

The proposed discontinuance will have no adverse impacts on health or public safety as the impacts of the discontinuance have already been experienced with cessation of service many years ago.

- (ii) If hazardous materials are expected to be transported, identify: the materials and quantity; the frequency of service; whether chemicals are being transported that, if mixed, could react to form more hazardous compounds; safety practices (including any speed restrictions); the applicant's safety record (to the extent available) on derailments, accidents and hazardous spill; the contingency plans to deal with accidental spills; and the likelihood of an accidental release of hazardous materials.**
- (iii) If there are any known hazardous waste sites or sites where there have been known hazardous materials spills on the right-of-way, identify the location of those sites and the types of hazardous materials involved.**

Not applicable. The proposed discontinuance will not result in the transportation of hazardous materials. There are no known hazardous waste sites in the right-of-way nor have there been any known hazardous materials spills on the right-of-way.

**(8) Biological resources.**

- (i) Based on consultation with the U.S. Fish and Wildlife Service, state whether the proposed action is likely to adversely affect endangered or threatened species or areas designated as a critical habitat, and if so, describe the effects.**

Pursuant to the Permit issued by NYSDEC, “Incidental Take Avoidance Measures,” and “No Interference with Fish and Wildlife,” measures were required and followed by Metro-North to preserve the habitats of the Blanding’s Turtle, Bog Turtle, Indiana Bat and Northern Long-Eared Bats, and Pied-Billed Grebe during the construction of the Maybrook Trail. **Exhibit A**, page 1.

- (ii) State whether wildlife sanctuaries or refuges, National or State parks or forests will be affected, and describe any effects.**

No National parks, State parks or forests or refuges will be affected by the proposed discontinuance.

**(9) Water.**

- (i) Based on consultation with State water quality officials, state whether the proposed action is consistent with applicable Federal, State or local water quality standards. Describe any inconsistencies.**

The proposed discontinuance is consistent with all applicable water quality standards. As discussed *supra*, Metro-North has obtained a Section 401 Water Quality Certification, attached as Exhibit A, from NYSDEC for the work associated with the construction of the Maybrook Trail. The Expiration date is 12/31/2025. **Exhibit A**, page 1. The construction complies with “all applicable New York State water quality standards.” **Exhibit A**, page 5.

- (ii) Based on consultation with the U.S. Army Corps of Engineers, state whether permits under section 404 of the Clean Water Act (33 U.S.C. 1344) are required for the proposed action and whether any designated wetlands or 100-year flood plains will be affected. Describe the effects.**

The proposed abandonment does not require permits under section 404 of the Clean Water Act.

- (iii) State whether permits under section 402 of the Clean Water Act (33 U.S.C. § 1342) are required for the proposed action. (Applicants should contact the U.S. Environmental Protection Agency or the state environmental protection or equivalent agency if they are unsure whether such permits are required.)**

The proposed action does not require a permit under section 402 of the Clean Water Act.



- (10) Proposed Mitigation. Describe any actions that are proposed to mitigate adverse environmental impacts, indicating why the proposed mitigation is appropriate.**

Not applicable.

- (11) Additional Information for Rail Constructions. The following additional information should be included for rail construction proposals (including connecting track construction):**

- (i) Describe the proposed route(s) by State, county and subdivision, including a plan view, at a scale not to exceed 1:24,000 (7 ½ minute U.S.G.S. quadrangle map), clearly showing the relationship to the existing transportation network (including the location of all highway and road crossings) and the right-of-way according to ownership and land use requirements.**
- (ii) Describe any alternative routes considered, and a no-build alternative (or why this would not be applicable), and explain why they were not selected.**

Not applicable.

- (iii) Describe the construction plans, including the effect on the human environment, labor force requirements, the location of borrow pits, if any, and earthwork estimates.**

Not applicable.

- (iv) Describe in detail the rail operations to be conducted upon the line, including estimates of freight (carloads and tonnage) to be transported, the anticipated daily and annual number of train movements, number of cars per train, types of cars, motive power requirements, proposed speeds, labor force and proposed maintenance of way practices.**

Not applicable.

- (v) Describe the effects, including indirect or down-line impacts, of the new or diverted traffic over the line if the thresholds governing energy, noise and air impacts in §§ 1105.7(e)(4), (5), or (6) are met.**

Not applicable.

- (vi) Describe the effects, including impacts on essential public services (e.g., fire, police, ambulance, neighborhood schools), public roads, and adjoining properties, in communities to be traversed by the line.**

Not applicable.

**(vii) Discuss societal impacts, including expected change in employment during and after construction.**

Not applicable. There is no planned rail construction following the discontinuance of service along the Line. No traffic has moved over the Beacon Line for over two years. Accordingly, no traffic will need to be diverted and the discontinuance of trackage rights will have no effect on the local or regional transportation system.

**Historic Report, 49 C.F.R. 1105.8(d)**

- (1) A U.S.G.S. topographic map (or an alternate map drawn to scale and sufficiently detailed to show buildings and other structures in the vicinity of the proposed action) showing the location of the proposed action, and the locations and approximate dimensions of railroad structures that are 50 years old or older and are part of the proposed action**

In 2018, Hartgen Archeological Associates, Inc. conducted a Phase I Archeological Investigation for Maybrook Trail in the Towns of East Fishkill, Beekman, Pawling, Patterson, and Southeast Dutchess and Putnam Counties, New York. The Hartgen Report, attached as **Exhibit D**, contains several Maps and Photographs of the Maybrook trail portions of line, produced in conjunction with the Hartgen Report. **Exhibit D**, Map 1 through Map 4e.

- (2) A written description of the right-of-way (including approximate widths, to the extent known), and the topography and urban and/or rural characteristics of the surrounding area**

The right of way along the Beacon Rail Line is over ten feet in width and traverses wooded areas and roads through a suburban region.

- (3) Good quality photographs (actual photographic prints, not photocopies) of railroad structures on the property that are 50 years old or older and of the immediately surrounding area;**

The Hartgen Report contains several photographs of the line, produced in conjunction with the Report. **Exhibit D**, Photos 1 – 17.

- (4) The date(s) of construction of the structure(s), and the date(s) and extent of any major alterations, to the extent such information is known;**

The Hartgen Report contains a review of the three Map-documented structures within the Maybrook Trail portion of the line. **Exhibit D**, Section 5.1, p. 5.

- (5) A brief narrative history of carrier operations in the area, and an explanation of what, if any, changes are contemplated as a result of the proposed action;**

As set forth in the Hartgen Report, “The New York and Harlem Railroad was opened in sections between the 1830s and 1860s and connected Lower Manhattan with Harlem and areas beyond. It passed in the vicinity of Trailheads 1, 2, and 5 and passed immediately west of the Trailhead 4. Sections of this historic line are today part of the Metro-North system. In the 1860s, Trailhead 3 was located near a proposed section of the Boston, Hartford and Erie line. This line opened in the 1870s, connecting southern New York with New England. Sections of this historic line have also been assimilated into the Metro-North system.” Hartgen Report, **Exhibit D** at 6.

**(6) A brief summary of documents in the carrier's possession, such as engineering drawings, that might be useful in documenting a structure that is found to be historic;**

The Hartgen Report provides the most comprehensive analysis of the structures on the rail line. **Exhibit D**, p. 7.

**(7) An opinion (based on readily available information in the railroad's possession) as to whether the site and/or structures meet the criteria for listing on the National Register of Historic Places (36 CFR 60.4), and whether there is a likelihood of archeological resources or any other previously unknown historic properties in the project area, and the basis for these opinions (including any consultations with the State Historic Preservation Office, local historical societies or universities);**

The Hartgen report found “No significant archeological deposits or sites were identified by the Phase I archeological field reconnaissance of proposed trailheads. No further archeological work is recommended.” **Exhibit D**, p.10.

**(8) A description (based on readily available information in the railroad's possession) of any known prior subsurface ground disturbance or fill, environmental conditions (naturally occurring or manmade) that might affect the archeological recovery of resources (such as swampy conditions or the presence of toxic wastes), and the surrounding terrain.**

The Hartgen Report, Appendix 1, provides the records of the Shovel Test performed on the soil. See **Exhibit D**, Appendix 1.

**(9) Within 30 days of receipt of the historic report, the State Historic Preservation Officer may request the following additional information regarding specified nonrailroad**



**owned properties or groups of properties immediately adjacent to the railroad right-of-way: photographs of specified properties that can be readily seen from the railroad right-of-way (or other public rights-of-way adjacent to the property) and a written description of any previously discovered archeological sites, identifying the location and type of the site (i.e., prehistoric or native American).**

On July 19, 2018, Philip A. Perazio, Historic Preservation Program Analyst – Archeology Unit, submitted a letter to Joseph Kelley advising that the Maybrook Trail project, impacting that particular portion of the line, would have “No Effect on historic properties listed or eligible on the National Register of Historic Places.” See **Exhibit E**.

Respectfully Submitted,



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Charles A. Spitulnik  
Katherine Bourdon  
1634 I (Eye) Street NW  
Suite 300  
Washington, DC 20006  
(202) 955-5600  
cspitulnik@kaplankirsch.com  
kbourdon@kaplankirsch.com

# **EXHIBIT A**

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

Division of Environmental Permits, Region 3  
21 South Putt Corners Road, New Paltz, NY 12561-1620  
P: (845) 256-3054 | F: (845) 255-4659  
www.dec.ny.gov



**Department of  
Environmental  
Conservation**

June 21, 2019

Metro-North Commuter Railroad  
Attn: Mr. Richard Bottali  
525 North Broadway  
White Plains, NY 10603

Re: Maybrook Trailway (Beacon Rail Trail)  
DEC Permit #: 3-9903-00113/00002 (WQ)  
Towns of Southeast & Patterson, Putnam County  
Towns of Pawling, Beekman & East Fishkill, Dutchess County

**Issuance of Water Quality Certification & Requirements for  
Article 11, Title 5 Incidental Take Permit Avoidance**

Dear Permittee:

The New York State Department of Environmental Conservation (Department) has reviewed the application, which was submitted by Nicholas Canonico, NOVA Consulting & Engineering, on behalf of Metro-North Commuter Railroad, for a Section 401 Water Quality Certification (WQC). The project involves the construction of a shared-use bicycling and pedestrian path which runs approximately 23 miles, adjacent to the existing Metro-North Railroad Beacon Line, from Brewster in Putnam County to Hopewell Junction in Dutchess County. The Department has issued the WQC, enclosed.

The proposed work is located in close proximity to known occurrences of the following state-listed species: bog turtle (endangered) Blanding's turtles (threatened), Indiana bat (endangered), northern long-eared bat (threatened), and pied-billed grebe (threatened). Due to the nature and location of this project, the Department requested additional information and review of impacts pursuant to 6NYCRR Part 182, Endangered and Threatened Species of Fish and Wildlife, for these species.

Based upon the information provided, take-avoidance measures during construction activities were required. The Department reviewed the offered take-avoidance and minimization measures to protect against the incidental taking of these species. The take-avoidance and minimization measures are outlined on plan sheet titled "General Notes – 2," sheet GN-2, dated May 2019.

Please note that the following measures are **required** for compliance with Article 11, Title 5 of the Environmental Conservation Law:



Re: DEC Permit #: 3-9903-00113/00002  
Maybrook Trailway (Beacon Rail Trail)  
Towns of Southeast & Patterson, Putnam County  
Towns of Pawling, Beekman & East Fishkill, Dutchess County

**Incidental Take Avoidance Measures – Section 11-0535**

1. Blanding's Turtle Time Restriction: All work within mile 1 of Share 1 shall take place between October 16 and April 14 to protect the state-listed threatened Blanding's turtles.
2. Tree Removal Time Restriction: Tree removal shall occur between November 1 and March 31 only for the protection of state listed species, Indiana bat and northern long-eared bats.
3. Pied-billed Grebe Time Restriction: No work shall take place between April 15 and August 1 near pied-billed grebe habitat.

Based on the above-referenced information and as long as the above-referenced take-avoidance and minimization measures are implemented as proposed, the Department has determined that the proposed activity is not likely to result in the incidental taking of these species, and an Article 11, Title 5 Incidental Take Permit is not required for this project.

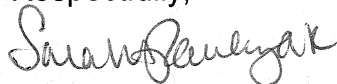
**No Interference with Fish and Wildlife – Section 11-0505**

4. Beaver Dam Removal Not Authorized: Removal or modification of existing beaver dams located within project limits is not authorized by this permit.

If beaver dam removal becomes necessary, please contact the Bureau of Wildlife, at [wildlife.r3@dec.ny.gov](mailto:wildlife.r3@dec.ny.gov), regarding the permitting process.

If there are any questions, please feel free to contact me at 845-256-3050 or by email at [sarah.pawliczak@dec.ny.gov](mailto:sarah.pawliczak@dec.ny.gov).

Respectfully,



Sarah Pawliczak

Division of Environmental Permits

cc: Brian Drumm, NYSDEC Bureau of Ecosystem Health  
Lisa Masi, NYSDEC Bureau of Wildlife  
Joyce Giudice, NYSDEC Office of General Counsel  
Brian Orzel, USACE  
Maria Tupper-Goebel, NYCDEP  
Noelle Rayman-Metcalf, USFWS  
Alison Zachritz, Nova Consulting and Engineering  
Nicholas Canonico, Nova Consulting and Engineering  
Daniel Briar, WSP USA, Inc.  
Karen Timko, Metro North Commuter Railroad Company  
Town of Southeast Town Clerk  
Town of Patterson Town Clerk  
Town of Pawling Town Clerk  
Town of Beekman Town Clerk  
Town of East Fishkill Town Clerk





**PERMIT**  
**Under the Environmental Conservation Law (ECL)**

**Permittee and Facility Information**

**Permit Issued To:**  
METRO-NORTH COMMUTER RAILROAD  
COMPANY  
525 N BROADWAY FL 2  
  
WHITE PLAINS, NY 10603-3701  
(914) 461-0592

**Facility:**  
EMPIRE STATE TRAIL - MAYBROOK  
TRAILWAY  
RTE 82 IN HOPEWELL JUNCTION TO  
PROSPECT HILL RD IN BREWSTER  
HOPEWELL JUNCTION, NY 12533

**Facility Location:** in SEVERAL COUNTIES in THIS REGION

**Facility Principal Reference Point:** NYTM-E: 611.687 NYTM-N: 4601.566  
Latitude: 41°33'28.7" Longitude: 73°39'38.4"

**Authorized Activity:** This project involves approximately 1,360 square feet (sq. ft.) of disturbance to DEC-regulated freshwater wetlands PQ-10 (class 2), PQ-29 (class 2), DP-22 (class 1) and BR-6 (class 1) and within regulated wetlands and waters of the U.S. Disturbance within regulated areas includes tree felling, installation of erosion and sediment controls, excavation, filling and grading, construction of a new 8-ft. to 10-ft.-wide paved path with 1-ft. to 2-ft.-wide shoulders, removal of debris from existing culverts, and repairs to existing culverts and bridges. The work is associated with the construction of an approximately 23-mile shared-use bicycle and pedestrian path adjacent to the existing, inactive Metro-North Railroad Beacon Line, extending from Route 82 in Hopewell Junction, Dutchess County to Prospect Hill Road in Brewster, Putnam County. This permit includes conditions required for the avoidance of a Part 182 Incidental Taking permit.

**Permit Authorizations**

**Water Quality Certification - Under Section 401 - Clean Water Act**

Permit ID 3-9903-00113/00002

New Permit

Effective Date: 6/21/2019

Expiration Date: 12/31/2025



**NYSDEC Approval**

**By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.**

Permit Administrator: REBECCA S CRIST, Deputy Regional Permit Administrator  
Address: NYSDEC Region 3 Headquarters  
21 S Putt Corners Rd  
New Paltz, NY 12561

Authorized Signature: 

Date 06/21/2019

**Distribution List**

- Brian Drumm, NYSDEC Bureau of Ecosystem Health
- Lisa Masi, NYSDEC Bureau of Wildlife
- Joyce Giudice, NYSDEC Office of General Counsel
- Brian Orzel, USACE
- Maria Tupper-Goebel, NYCDEP
- Noelle Rayman-Metcalf, USFWS
- Alison Zachritz, NOVA Consulting and Engineering
- Nicholas Canonico, NOVA Consulting and Engineering
- Laurie Stubenrauch, NOVA Consulting and Engineering
- Karen Timko, Metro-North Commuter Railroad
- Daniel Briar, WSP USA Inc.
- Town of Southeast Town Clerk
- Town of Patterson Town Clerk
- Town of Pawling Town Clerk
- Town of Beekman Town Clerk
- Town of East Fishkill Town Clerk

**Permit Components**

- NATURAL RESOURCE PERMIT CONDITIONS
- WATER QUALITY CERTIFICATION SPECIFIC CONDITION
- GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS
- NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS



**NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following  
Permits: WATER QUALITY CERTIFICATION**

**1. Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by WSP USA Inc. and consist of the plans as referenced in Natural Resource Permit Condition #2.

**2. Approved Plans** The approved plans consist of the following items:

1. "Empire State Trail - Maybrook Trailway Section," sheets 1 through 314, received by this office on 06/19/19, dated July 2018. The following sheets were last revised May 2019:
  - "Drawing Index - 1," sheet G-1;
  - "Drawing Index - 2," sheet G-2;
  - "Erosion and Sediment Control Details - 2," sheet ED-02;
  - "General Plan - 13," sheet GP-13;
  - "General Plan - 20," sheet GP-20;
  - "General Plan - 21," sheet GP-21;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 13," sheet ESC-13;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 20" sheet ESC-20;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 21," sheet ESC-21;
  - "General Plan - 41," sheet GP-41;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 41," sheet ESC-41;
  - "General Plan - 78," sheet GP-78;
  - "General Plan - 82," sheet GP-82;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 78," sheet ESC-78;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 82," sheet ESC-82;
  - "General Plan - 83," sheet GP-83;
  - "General Plan - 102," sheet GP-102;
  - "Drainage, Grading, Erosion and Sediment Control Plan - 83," sheet ESC-83; and
  - "Drainage, Grading, Erosion and Sediment Control Plan - 102," sheet ESC-102.

**3. Post Sign and Permit** The enclosed permit and permit sign must be conspicuously posted in a publicly accessible location at the project site. They must be visible, legible and protected from the elements at all times.

**4. Notify DEC 48 Hrs Prior to Work** The permittee or a representative must contact by telephone Brian Drumm, NYSDEC Bureau of Ecosystem Health, at 845-256-3091 or by email at [brian.drumm@dec.ny.gov](mailto:brian.drumm@dec.ny.gov) and Lisa Masi, NYSDEC Bureau of Wildlife, at 845-256-2257 or by email at [lisa.masi@dec.ny.gov](mailto:lisa.masi@dec.ny.gov) at least 48 hours prior to the commencement of the project authorized herein.

**5. Approval of Site Specific Culverts and Crossings** Prior to commencement of activities, the permittee shall submit site-specific plans for all work associated with the culverts and crossings within regulated areas to Brian Drumm, NYSDEC Bureau of Ecosystem Health. Work shall not commence until the permittee receives written approval from DEC staff of the site-specific plans.



- 6. Education and Encounter Plan** All measures in the Education and Encounter (E&E) Plan, as approved by the Department, shall be implemented to avoid impacts to bog turtles. The retained monitor shall deliver the E&E plan to personnel and train personnel to identify bog turtles that may be present in the project area, prior to commencement of any ground disturbance on-site.
- 7. Qualified Monitor On-Site** A qualified turtle monitor shall be on-site for all work within bog turtle areas. The monitor shall be licensed by New York State to handle turtles.
- 8. Bog Turtle Encounters** If any bog turtles are encountered during the project, all work shall stop immediately. The person in charge of the site shall contact the monitor, the USFWS and the NYSDEC Bureau of Wildlife to report the incident and for further instruction. The Bureau of Wildlife can be reached by phone at 845-256-3098 or by email at [wildlife.r3@dec.ny.gov](mailto:wildlife.r3@dec.ny.gov). The location, project name and explanation of the incident must be provided.
- 9. Limits of Disturbance Boundary** The limits of disturbance shall be marked with flags prior to the commencement of any activities within the project area in order to prevent the inadvertent intrusion of equipment or grading into protected areas. The markers shall be maintained until project completion.
- 10. Install Controls as Shown on Plans** Prior to commencement of the activities authorized herein, the permittee shall install securely anchored silt fencing and/or continuous staked straw bales as shown on the plans or drawings referenced in this permit. These erosion control devices shall be maintained until all disturbed land is fully vegetated to prevent any silt or sediment from entering the freshwater wetland or its adjacent area. Silt fencing, hay bales and any accumulated silt or sediment shall be completely removed for disposal at an appropriate upland site.
- 11. No Equipment in Wetland or Streams** Heavy equipment, including bulldozers, backhoes, payloaders, etc., shall not be operated in any regulated wetlands or waters.
- 12. Clean Fill Only** All fill shall consist of clean soil, sand and/or gravel that is free of the following substances: asphalt, slag, flyash, broken concrete, demolition debris, garbage, household refuse, tires, woody materials including tree or landscape debris, and metal objects. The introduction of materials toxic to aquatic life is expressly prohibited.
- 13. Seed, Mulch Disturbed Areas** All areas of soil disturbance resulting from this project shall be seeded with an appropriate perennial grass, and mulched with straw immediately upon completion of the project, within two days of final grading, or by the expiration of the permit, whichever is first. Mulch shall be maintained until suitable vegetative cover is established to the department's satisfaction.
- 14. Disposal of Material** Any demolition debris, excess construction materials, and/or excess excavated materials shall be immediately and completely disposed of on an approved upland site more than 100 feet from any regulated waterbody or wetland. These materials shall be suitably stabilized so as not to re-enter any water body, wetland, or wetland adjacent area; and must be disposed of in accordance with all local, state, and federal statutes, regulations, or ordinances.
- 15. Water Clarity** Stream reaches downstream of construction areas shall always remain as clear (non-turbid) as the reaches upstream of the construction areas.



**16. Invasive Species (Non-native Vegetation)** To prevent the unintentional introduction or spread of invasive species, the permittee must ensure that all construction equipment be cleaned of mud, seeds, vegetation and other debris before entering any approved construction areas within the state regulated freshwater wetland or its 100 foot adjacent area.

**17. Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

**18. State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

**19. State May Order Removal or Alteration of Work** If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

**20. State May Require Site Restoration** If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

### WATER QUALITY CERTIFICATION SPECIFIC CONDITIONS

**1. Water Quality Certification** The authorized project, as conditioned pursuant to the Certificate, complies with Section 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended and as implemented by the limitations, standards, and criteria of state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a). The authorized project, as conditioned, will also comply with applicable New York State water quality standards, including but not limited to effluent limitations, best usages and thermal discharge criteria, as applicable, as set forth in 6 NYCRR Parts 701, 702, 703, and 704.





**GENERAL CONDITIONS - Apply to ALL Authorized Permits:**

**1. Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

**2. Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

**3. Applications For Permit Renewals, Modifications or Transfers** The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Regional Permit Administrator  
NYSDEC Region 3 Headquarters  
21 S Putt Corners Rd  
New Paltz, NY12561

**4. Submission of Renewal Application** The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Water Quality Certification.

**5. Permit Modifications, Suspensions and Revocations by the Department** The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;
- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;



- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

**6. Permit Transfer** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

## NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

### **Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

### **Item B: Permittee's Contractors to Comply with Permit**

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

### **Item C: Permittee Responsible for Obtaining Other Required Permits**

The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

### **Item D: No Right to Trespass or Interfere with Riparian Rights**

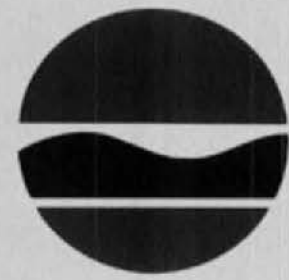
This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a party to the permit.

**Item E: SEQR Unlisted Action, No Significant Impact** Under the State Environmental Quality Review Act (SEQR), the project associated with this permit is classified as an Unlisted Action with Metropolitan Transportation Authority designated as the lead agency. It has been determined that the project will not have a significant effect on the environment.

New York State  
Department of Environmental Conservation



**NOTICE**



The Department of Environmental Conservation (DEC) has issued permit(s) pursuant to the Environmental Conservation Law for work being conducted at this site. For further information regarding the nature and extent of work approved and any Department condition on it, contact the DEC at 845-256-3054. Please refer to the permit number shown when contacting the DEC.

Permittee Metro North Commuter Railroad Company Permit No. 3-9903-0013/00002  
Effective Date: 06/21/19 Expiration Date: 12/31/25

Applicable if checked. No instream work allowed between October 1 & April 30

**NOTE: This notice is NOT a permit.**

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3  
21 South Putt Corners Road, New Paltz, NY 12561-1620  
P: (845) 256-3054 | F: (845) 255-4659  
www.dec.ny.gov



Department of  
Environmental  
Conservation

## **IMPORTANT NOTICE TO ALL PERMITTEES**

The permit you requested is enclosed. Please read it carefully and note the conditions that are included in it. The permit is valid for only that activity expressly authorized therein; work beyond the scope of the permit may be considered a violation of law and be subject to appropriate enforcement action. Granting of this permit does not relieve the permittee of the responsibility of obtaining any other permission, consent or approval from any other federal, state, or local government which may be required.

Please note the expiration date of the permit. Applications for permit renewal should be made well in advance of the expiration date (minimum of 30 days) and submitted to the Regional Permit Administrator at the above address. For SPDES, Solid Waste and Hazardous Waste Permits, renewals must be made at least 180 days prior to the expiration date.

The DEC permit number & program ID number noted on page 1 under "Permit Authorization" of the permit are important and should be retained for your records. These numbers should be referenced on all correspondence related to the permit, and on any future applications for permits associated with this facility/project area.

If a permit notice sign is enclosed, you must post it at the work site with appropriate weather protection, as well as a copy of the permit per General Condition 1.

If the permit is associated with a project that will entail construction of new water pollution control facilities or modifications to existing facilities, plan approval for the system design will be required from the appropriate Department's regional Division of Water or delegated local Health Department, as specified in the State Pollutant Discharge Elimination System (SPDES) permit.

If you have any questions on the extent of work authorized or your obligations under the permit, please contact the staff person indicated below or the Division of Environmental Permits at the above address.

Sarah Pawliczak  
Division of Environmental Permits, Region 3  
Telephone (845) 256-3050

- Applicable only if checked. Please note all work authorized under this permit is prohibited during trout spawning season commencing October 1 and ending April 30.
- Applicable only if checked for STORMWATER SPDES INFORMATION: We have determined that your project requires coverage under the General Stormwater SPDES Permit. You must file a Notice of Intent to obtain coverage under the General Permit. This form can be downloaded at: <http://www.dec.ny.gov/chemical/43133.html>
- Applicable only if checked - MS4 Areas: This site is within an MS4 area (Municipal Separate Storm Sewer System), therefore the SWPPP must be reviewed and accepted by the municipality. The MS-4 Acceptance Form must be submitted in addition to the Notice of Intent.

Send the completed form(s) to: NYS DEC, Stormwater Permitting, Division of Water, 625 Broadway, Albany, New York 12233-3505; in addition, DEC requests that you provide one electronic copy of the approved SWPPP directly to NYS DEC, 100 Hillside Avenue - Suite 1W, White Plains, NY 10603-2860.



Department of  
Environmental  
Conservation

# **EXHIBIT B**





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

MAR - 7 2019

Regulatory Branch

SUBJECT: Permit Application Number NAN-2018-00153-WNE  
by Metro North Railroad

Richard Bottali  
Metro North Railroad  
525 North Broadway  
White Plains, New York 10603

Dear Mr. Bottali:

On October 9, 2018, the New York District of the U.S. Army Corps of Engineers received a request for Department of the Army authorization for the discharge of fill material into waters of the United States for activities associated with the construction of a 23-mile pedestrian and bike trail to be known as the Empire State Trail Maybrook Trailway Section. The project site is located in the Hudson River watershed, in the Towns of Beekman, East Fishkill and Pawling, Dutchess County, and Towns of Patterson and Southeast, Putnam County, New York.

The submitted information indicates that the total impacts to waters of the United States would involve the permanent discharge of fill material into a maximum of 0.03 acres of wetlands and streams, including approximately 3.33 cubic yards of fill below ordinary high water. In addition, approximately 187 square feet of waters would be temporarily impacted for construction access. Upon completion of the work, all temporarily impacted areas would be returned to pre-construction contours. The work would be accomplished as shown on the following drawings:

- "Empire State Trail – Maybrook Trailway Section Hopewell Junction to Brewster", Drawing Numbers KP-1 through KP-5, prepared by WSP USA Inc., dated July, 2018;
- "Empire State Trail – Maybrook Trailway Section Hopewell Junction to Brewster", Drawing Numbers ESC-01 through ESC-102, prepared by WSP USA Inc., dated July, 2018;
- "Empire State Trail – Maybrook Trailway Section Hopewell Junction to Brewster", Drawing Numbers BP-01 through BP-06, BP-09 through BP-16, BP-25 through BP-32, BP-45, BP-46, and BP-57 through BP-62, prepared by WSP USA Inc., dated July, 2018; and
- The enclosed drawings, marked in red to show impacts to waters of the United States, entitled "Empire State Trail – Maybrook Trailway Section Hopewell Junction to Brewster", Drawing Numbers GP-09, GP-13, GP-47, GP-52, GP-61, GP-62, GP-64, GP-88, GP-93, GP-94, and GP-97, prepared by WSP USA Inc., dated July, 2018.

MAR - 7 2019

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 Number 18. The nationwide permits are prescribed as a Reissuance of Nationwide Permits in the Federal Register dated January 6, 2017 (82 FR 1860). The work may be performed without further authorization from this office provided the activity complies with the permit conditions listed in Section B, No. 18, Section C, any applicable New York District regional conditions, the following special conditions, and any applicable regional conditions added by the State of New York, copies enclosed.

#### Special Conditions

(A) In order to protect the Federally-listed endangered Indiana bat (*Myotis sodalis*) and the Federally-listed threatened northern long-eared bat (*Myotis septentrionalis*), the clearing of potential roosting trees shall occur only between November 1 and March 31. Orange construction fencing shall be used to separate areas to be graded from areas not to be disturbed. No artificial dyes, coloring, insecticide, or algacide such as copper sulfate shall be used in stormwater control structures. All outdoor lights shall be angled downward. Pesticides, fertilizers and road salt, as well as other potentially harmful products, shall not be used for long-term maintenance of the trail.

(B) In order to protect the Federally-listed threatened bog turtle (*Clemmys muhlenbergii*), the permittee shall ensure that:

- A New York State Department of Environmental Conservation (NYSDEC)-permitted and qualified surveyor/monitor shall, prior to any construction work at any time of year, flag the construction areas containing suitable bog turtle habitat, so the areas can be avoided to the maximum extent possible;
- The NYSDEC-permitted monitoring biologist perform visual surveys and/or hand probe to determine if bog turtles are present within mucky areas or hibernaculum or are seeking refuge under vegetation within the work area, as specified in the enclosed Maybrook-Beacon Rail Trail Wetland Impacts Table dated January 25, 2019;
- A double row of silt fence be placed along the trail, adjacent to areas of suitable bog turtle habitat to prevent turtles from entering the work space. The silt fence shall be checked daily for any breaches and for presence of turtles. Bog turtles found shall only be handled by a NYSDEC-permitted, qualified bog turtle surveyor/monitor. Any breaches shall be repaired and silt fence shall be removed upon completion of construction;
- If bog turtles are encountered, the permittee shall contact the NYSDEC and the U.S. Fish and Wildlife Service's (USFWS) New York Field Office immediately, and halt work until impacts to bog turtles can be further evaluated;
- No staging of equipment, or heavy equipment use occurs within areas containing suitable bog turtle habitat; and
- The enclosed Maybrook-Beacon Rail Trail Long-Term Trail Maintenance Plan, dated March 7, 2019, be implemented to avoid impacts to bog turtles during long-term maintenance of the trail, post-construction.

MAR - 7 2019

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.

Please note that this nationwide permit (NWP) verification is based on a preliminary jurisdictional determination (JD). A preliminary JD is not appealable. If you wish, prior to commencement of the authorized work you may request an approved JD, which may be appealed, by contacting the New York District, U.S. Army Corps of Engineers for further instruction. To assist you in this decision and address any questions you may have on the differences between preliminary and approved jurisdictional determinations, please review U.S. Army Corps of Engineers Regulatory Guidance Letter No. 16-01, which can be found at: [http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl\\_6-01\\_app1-2.pdf](http://www.usace.army.mil/Portals/2/docs/civilworks/RGLS/rgl_6-01_app1-2.pdf)

This verification is valid until March 18, 2022, unless the nationwide permit is modified, reissued, or revoked. This verification will remain valid until March 18, 2022, 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.

**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.**

In order for us to better serve you, please complete our Customer Service Survey located at <http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>.

If any questions should arise concerning this matter, please contact Brian A. Orzel, of my staff, at (917) 790-8413.

Sincerely,



Rosita Miranda  
Chief, Western Section

Enclosures

**Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for  
Nationwide Permit 18 – (Minor Discharges)  
within the New York District Regulatory Boundary in the State of New York  
Expiration March 18, 2022**

**NOTE:** This document is derived from the New York District Public Notice dated March 21, 2017, which listed all the Nationwide Permits (NWP) and their regional conditions for all of New York State. That document can be obtained from the New York District web site, located at: <http://www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/>

**This document focuses specifically on NWP 18 (Minor Discharges) and the regional conditions applicable to the counties within the New York District Corps of Engineers.**

**Table of Contents:**

- A. Nationwide Permits Index**
- B. Nationwide Permit 18 – Minor Discharges**
  - **Specific NWP terms and notification requirements**
  - **New York District Specific NWP Regional Conditions**
  - **NYSDEC Specific NWP Water Quality Certification**
  - **NYSDOS Specific NWP Coastal Zone Consistency Determination**
- C. Nationwide Permit General Conditions 1-32**
- D. District Engineer’s Decision**
- E. Further Information**
- F. Definitions**
- G. New York District Regional General Conditions A-F (applicable to all NWPs)**
- H. NYSDEC General Water Quality Conditions (applicable to all NWPs for which Water Quality Certification has been provided)**
- I. NYSDOS Coastal Zone Management Consistency Additional Information (applicable to all projects located within the NYS Coastal Zone)**
- J. Information on Nationwide Permit Verification**
- K. Agency Contact Information**

**ENCLOSURE 1: New York State Regulatory District Boundary Map**

**ENCLOSURE 2: NYC Water Supply – East of Hudson Watershed**

**Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for  
Nationwide Permit 18 – (Minor Discharges)  
within the New York District Regulatory Boundary in the State of New York  
Expiration March 18, 2022**

**A. Nationwide Permits Index:**

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. Response Operations for Oil or Hazardous Substances
21. Surface Coal Mining Activities
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
39. Commercial and Institutional Developments
40. Agricultural Activities
41. Reshaping Existing Drainage Ditches
42. Recreational Facilities
43. Stormwater Management Facilities
44. Mining Activities
45. Repair of Uplands Damaged by Discrete Events
46. Discharges in Ditches
47. [Reserved]
48. Commercial Shellfish Aquaculture Activities
49. Coal Remining Activities
50. Underground Coal Mining Activities
51. Land-Based Renewable Energy Generation Facilities
52. Water-Based Renewable Energy Generation Pilot Projects
53. Removal of Low-Head Dams
54. Living Shorelines



**Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for  
Nationwide Permit 18 – (Minor Discharges)  
within the New York District Regulatory Boundary in the State of New York  
Expiration March 18, 2022**

**B. Nationwide Permits**

**18. Minor Discharges.** Minor discharges of dredged or fill material into all waters of the United States, provided the activity meets all of the following criteria:

- (a) The quantity of discharged material and the volume of area excavated do not exceed 25 cubic yards below the plane of the ordinary high water mark or the high tide line;
- (b) The discharge will not cause the loss of more than 1/10-acre of waters of the United States; and
- (c) The discharge is not placed for the purpose of a stream diversion.

**Notification:** The permittee must submit a pre-construction notification to the district engineer prior to commencing the activity if: (1) the discharge or the volume of area excavated exceeds 10 cubic yards below the plane of the ordinary high water mark or the high tide line, or (2) the discharge is in a special aquatic site, including wetlands. (See general condition 32.) (Authorities: Sections 10 and 404)

**Permit-specific Regional Conditions:**

- a. Within Essential Fish Habitat as discussed in Section G-E.8. below, if any work is proposed within areas supporting anadromous fish migration and spawning, sediment removal and pile and sheet pile/cofferdam installation and removal shall be avoided from March 1 to June 30 of any year. Work within cofferdams can proceed any time during the year provided that the cofferdams are installed or removed outside of the seasonal work restriction. A PCN is required if a variance of this seasonal work window is requested.
- b. Within Essential Fish Habitat, if any work is proposed within areas identified as EFH for winter flounder eggs and larvae, in-water work shall be avoided from January 15 to May 31 of any year. A PCN is required if a variance of this seasonal work window is requested.
- c. Within Essential Fish Habitat, if any work is proposed within submerged aquatic vegetation (SAV) habitat or within 50 feet of SAV habitat, a PCN is required.
- d. Within National Marine Fisheries Service (NMFS) Threatened, Endangered or Candidate (TE&C) habitat as discussed in Section G-E.8. below, any work that would generate turbidity or sedimentation shall be avoided from March 16 to October 31. A PCN is required if a variance of this seasonal work window is requested.

**Section 401 Water Quality Certification:**

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

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

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

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**C. Nationwide Permit General Conditions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) If the non-federal permittee has a valid ESA section 10(a)(1)(B) incidental take permit with an approved Habitat Conservation Plan for a project or a group of projects that includes the proposed NWP activity, the non-federal applicant should provide a copy of that ESA section 10(a)(1)(B) permit with the PCN required by paragraph (c) of this general condition. The district engineer will coordinate with the agency that issued the ESA section 10(a)(1)(B) permit to determine whether the proposed NWP activity and the associated incidental take were considered in the internal ESA section 7 consultation conducted for the ESA section 10(a)(1)(B) permit. If that coordination results in concurrence from the agency that the proposed NWP activity and the associated incidental

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) If permittee-responsible mitigation is the proposed option, the prospective permittee is responsible for submitting a mitigation plan. A conceptual or detailed mitigation plan may be used by the district engineer to make the decision on the NWP verification request, but a final mitigation plan that addresses the applicable requirements of 33 CFR 332.4(c)(2) through (14) must be approved by the district engineer before the permittee begins work in waters of the United States, unless the district engineer determines that prior approval of the final mitigation plan is

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not practicable or not necessary to ensure timely completion of the required compensatory mitigation (see 33 CFR 332.3(k)(3)).

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

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

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

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

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

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

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

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

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

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

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

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

\_\_\_\_\_  
(Transferee)

\_\_\_\_\_  
(Date)

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

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

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

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

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

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

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

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

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

(2) Location of the proposed activity;

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

(4) A description of the proposed activity; the activity’s purpose; direct and indirect adverse environmental effects the activity would cause, including the anticipated amount of loss of wetlands, other special aquatic sites, and other waters expected to result from the NWP activity, in acres, linear feet, or other appropriate unit of measure; a description of any proposed mitigation measures intended to reduce the adverse environmental effects caused by the proposed activity; and any other NWP(s), regional general permit(s), or individual permit(s) used or intended to be



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used to authorize any part of the proposed project or any related activity, including other separate and distant crossings for linear projects that require Department of the Army authorization but do not require pre-construction notification. The description of the proposed activity and any proposed mitigation measures should be sufficiently detailed to allow the district engineer to determine that the adverse environmental effects of the activity will be no more than minimal and to determine the need for compensatory mitigation or other mitigation measures. For single and complete linear projects, the PCN must include the quantity of anticipated losses of wetlands, other special aquatic sites, and other waters for each single and complete crossing of those wetlands, other special aquatic sites, and other waters. Sketches should be provided when necessary to show that the activity complies with the terms of the NWP. (Sketches usually clarify the activity and when provided results in a quicker decision. Sketches should contain sufficient detail to provide an illustrative description of the proposed activity (e.g., a conceptual plan), but do not need to be detailed engineering plans);

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

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

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

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

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

(10) For an activity that requires permission from the Corps pursuant to 33 U.S.C. 408 because it will alter or temporarily or permanently occupy or use a U.S. Army Corps of Engineers federally authorized civil works project, the pre-construction notification must include a statement confirming that the project proponent has submitted a written request for section 408 permission from the Corps office having jurisdiction over that USACE project.

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

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

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

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

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

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

**D. District Engineer's Decision**

1. In reviewing the PCN for the proposed activity, the district engineer will determine whether the activity authorized by the NWP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If a project proponent requests authorization by a specific NWP, the district engineer should issue the NWP verification for that activity if it meets the terms and conditions of that NWP, unless he or she determines, after considering mitigation, that the proposed activity will result in more than minimal individual and cumulative adverse effects on the aquatic environment and other aspects of the public interest and exercises discretionary authority to require an individual permit for the proposed activity. For a linear project, this determination will include an evaluation of the individual crossings of waters of the United States to determine

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whether they individually satisfy the terms and conditions of the NWP(s), as well as the cumulative effects caused by all of the crossings authorized by NWP. If an applicant requests a waiver of the 300 linear foot limit on impacts to streams or of an otherwise applicable limit, as provided for in NWPs 13, 21, 29, 36, 39, 40, 42, 43, 44, 50, 51, 52, or 54, the district engineer will only grant the waiver upon a written determination that the NWP activity will result in only minimal individual and cumulative adverse environmental effects. For those NWPs that have a waivable 300 linear foot limit for losses of intermittent and ephemeral stream bed and a 1/2-acre limit (i.e., NWPs 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52), the loss of intermittent and ephemeral stream bed, plus any other losses of jurisdictional waters and wetlands, cannot exceed 1/2-acre.

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

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

4. If the district engineer determines that the adverse environmental effects of the proposed activity are more than minimal, then the district engineer will notify the applicant either: (a) that the activity does not qualify for authorization under the NWP and instruct the applicant on the procedures to seek authorization under an individual permit; (b) that the activity is authorized under the NWP subject to the applicant's submission of a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal; or (c) that the activity is authorized under the NWP with specific modifications or conditions. Where the district engineer determines that mitigation is required to ensure no more than minimal adverse environmental effects, the activity will be authorized within the 45-day PCN period (unless additional time is required to comply with general conditions 18, 20, and/or

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31, or to evaluate PCNs for activities authorized by NWPs 21, 49, and 50), with activity-specific conditions that state the mitigation requirements. The authorization will include the necessary conceptual or detailed mitigation plan or a requirement that the applicant submit a mitigation plan that would reduce the adverse environmental effects so that they are no more than minimal. When compensatory mitigation is required, no work in waters of the United States may occur until the district engineer has approved a specific mitigation plan or has determined that prior approval of a final mitigation plan is not practicable or not necessary to ensure timely completion of the required compensatory mitigation.

**E. Further Information**

1. District Engineers have authority to determine if an activity complies with the terms and conditions of an NWP.
2. NWPs do not obviate the need to obtain other federal, state, or local permits, approvals, or authorizations required by law.
3. NWPs do not grant any property rights or exclusive privileges.
4. NWPs do not authorize any injury to the property or rights of others.
5. NWPs do not authorize interference with any existing or proposed Federal project (see general condition 31).

**F. Definitions**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. All synthetic erosion control features (e.g., silt fencing, netting, mats), which are intended for temporary use during construction, shall be completely removed and properly disposed of after their initial purpose has been served. Only natural fiber materials, which will degrade over time, may be abandoned in place.
2. Materials resulting from trench excavation for utility line installation or ditch reshaping activities which are temporarily sidecast or stockpiled into waters of the United States must be backfilled or removed to an upland area within 30 days of the date of deposition. Note: upland options shall be utilized prior to temporary placement within waters of the U.S., unless it can be demonstrated that it would not be practicable or if the impacts of complying with this upland option requirement would result in more adverse impacts to the aquatic environment.
3. For trenching activities in wetlands the applicant shall install impermeable trench dams or trench breakers at the wetland boundaries and every 100 feet within wetland areas to prevent inadvertent drainage of wetlands or other waters of the United States.

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4. Dry stream crossing methods (e.g., diversion, dam and pump, flume, bore) shall be utilized for culvert or other pipe, or utility installations to reduce downstream impacts from turbidity and sedimentation. This may require piping or pumping the stream flow around the work area and the use of cofferdams.
5. No in-stream work shall occur during periods of high flow, except for work that occurs in dewatered areas behind temporary diversions, cofferdams or causeways.
6. Construction access and staging areas shall be by means that avoid or minimize impacts to aquatic sites (e.g. use of upland areas for access & staging, floating barges, mats, etc.). Discharges of fill material associated with the construction of temporary access roads, staging areas and work pads in wetlands shall be placed on filter fabric. All temporary fills shall be removed upon completion of the work and the disturbed area restored to pre-construction contours, elevations and wetland conditions, including cover type. All vegetation utilized in the restoration activity shall consist of native species.
7. All return flow from dredged material disposal areas shall not result in an increase in turbidity in the receiving water body that will cause a substantial visible contrast to natural conditions. (See NWP #16)
8. For activities involving the placement of concrete into waters of the U.S., the permittee must employ watertight forms. The forms shall be dewatered prior to the placement of the concrete. The use of tremie concrete is allowed, provided that it complies with New York State water quality standards.
9. New stormwater management facilities shall be located outside of waters of the U.S. A variance of this requirement may be requested with the submission of a PCN. The PCN must include justification which demonstrates that avoidance and minimization efforts have been met.
10. To the maximum extent practicable, the placement of fill in wetlands must be designed to maintain pre-construction surface water flows/conditions between remaining on or off-site waters and to prevent draining of the wetland or permanent hydrologic alteration. This may require the use of culverts and/or other measures. Furthermore, the activity must not restrict or impede the passage of normal or expected high flows (unless the primary purpose of the fill is to impound waters). The activity may alter the pre-construction flows/conditions if it can be shown that it benefits the aquatic environment (i.e. wetland restoration and/or enhancement).

**G-B. CULVERTS**

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

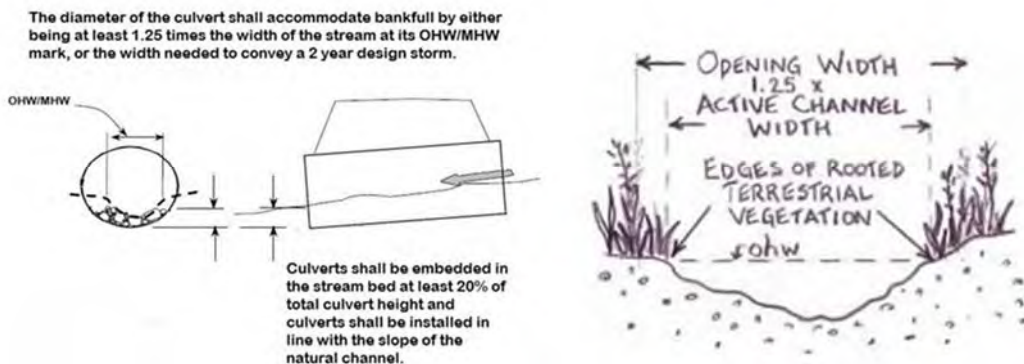
- a. Size: Bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional dimensions within one culvert. Bank-full width is generally considered to be the top width at the stage where a stream begins to overtop its banks and spread into the floodplain. Either a bottomless culvert or bridge must be used where practicable. If the stream cannot be spanned, the culvert width shall be minimum of 1.25 times width of the stream channel at the ordinary high water, or a 2 year design storm.
- b. Depth: To maintain low flow and aquatic life movement within culverts with a bottom, the culvert invert must be embedded. Specifically, the culvert must be installed with its bottom buried below the grade of the stream bed, as measured at the average low point, to a depth of a minimum of 20 percent of the culvert vertical rise (height) throughout the length of the culvert. (Note: When not practicable to do so due to small culvert size, it is acceptable to allow natural deposition to cover the interior of the culvert bed following placement of the culvert invert to the 20% depth.)

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- c. The dimension, pattern, and profile of the stream above and below the stream crossing shall not be permanently modified by changing the width or depth of the stream channel.
- d. The culvert bed slope shall remain consistent with the slope of the adjacent stream channel.
- e. Stone aprons and scour protection placed in streams shall not extend higher than the stream bed in order to create a uniform grade and shall be filled with native stream bed material and supplemented with similarly sized material, if needed, to fill interstitial spaces to maintain water flow on the surface of the stream bed.

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

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



**Preconstruction Notification (PCN) Requirements:**

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

- i. A statement indicating which of the above requirements will not be met by the proposed project;
- ii. Information as to why the use of such structures or measures would not be practicable;
- iii. A brief description of the stream discussing:
  - Site specific information (i.e. stream bed slope, type and size of stream bed material, stream type, existing natural or manmade barriers, etc.) assessed to determine appropriate culvert design and to ensure management of water flows and aquatic life movement.
  - Evaluation of the replacement for its impacts on: downstream flooding, upstream and downstream habitat (in-stream habitat, wetlands), potential for erosion and headcutting, and stream stability.
  - Flow/storm event the proposed culvert is designed to pass (2 year, 50 year, etc.)
- iv. Cross sections of the stream used to calculate the stream bed low point and ordinary high water width, consisting of:



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- Stream channel cross sections shall be taken at proximal locations to the crossing location to determine the average of the lowest points in elevation of the stream bed and the average width at ordinary high water.
  - For new crossing locations, the average values from at least three measurements (project location and straight sections of the stream upstream and downstream) shall be used.
  - For replacement of an existing structure, the average values from at least two cross sections (straight sections of the stream upstream and downstream from the existing structure representative of the natural channel) shall be used.
- This average low point shall be used to ensure low flow is maintained through the culvert and from which all embedment depths are measured.
- If the above cross section method was not practicable to use, an alternative method may be utilized. The PCN shall include justification for the method used including the data used and an explanation as to how it provides an equivalent measure.
- v. An evaluation of the effects the crossing would have on aquatic life movement and/or water flows; and
- vi. Mitigation measures that will be employed to minimize these effects. Mitigation measures may include, but are not limited to baffles, weirs, roughened channels, and grade control structures

A variance of the requirement(s) will be issued by the Corps if it can be demonstrated that the proposal would meet General Conditions #2 & #9 and would result in the least environmentally damaging practicable alternative (e.g. compliance with any of the requirement(s) would result in detrimental impacts to the aquatic system).

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

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

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**Preconstruction Notification (PCN) Requirements:**

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

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

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

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

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

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

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

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

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corridor. Aquatic resource information shall be submitted using the Cowardin Classification System mapping conventions (e.g. PFO, PEM, etc.)

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

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

**5. Mitigation** (See General Conditions 23 & 32(b)(6)): The PCN must include at least a conceptual compensatory mitigation plan for all projects resulting in the loss of greater than 1/10<sup>th</sup> of an acre of waters of the United States; or for which a waiver of the 300 linear foot limit on intermittent and ephemeral streams is being requested. Mitigation conceptual plans submitted with the PCN must include the following information at a minimum: proposed compensation type (bank or in-lieu fee credit, restoration, creation, preservation, etc.), location and brief discussion on factors considered for site selection (i.e. soils, water source, potential for invasive species, etc.), amount proposed per resource type and a discussion of how the proposal will compensate for aquatic resource functions and services lost as a result of the project.

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

<http://www.lrb.usace.army.mil/Portals/45/docs/regulatory/MitandMon/FinalMitigationRuleApril2008.pdf> and any applicable District Guidelines.

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

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

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

<http://www.nps.gov/nrc/programs/rca/nri/states/ny.html>.

**7. Historic or Cultural Resources:** In accordance with General Condition 20, a PCN is required for any non-federal activity which may have the potential to cause effects to any historic properties\*

listed, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places (NR). Please refer to General Condition 20 for submission requirements. In addition, all PCNs must include:

- A written statement indicating if any such properties may be affected by the proposed project.
- A copy of any completed archaeology or building/structure survey reports. If a survey has not been performed, the statement shall include a list of resources checked in the determination.

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- Copies of any available correspondence from the New York State Office of Parks, Recreation, and Historic Preservation State Historic Preservation Officer (SHPO) regarding historic properties.
- Copies of any available correspondence from federally recognized Indian Nations regarding historic properties that may be affected by the project.
- Projects with ground disturbance may have the potential to cause effects to buried historic properties, regardless of occurring outside SHPO designated archaeological sensitive areas. Therefore, the PCN shall indicate if the ground disturbance will occur in any areas of previously undisturbed soil. For areas with prior disturbance, the PCN shall include a brief narrative describing the disturbance and its limit (i.e. type of disturbance, size of area with current undisturbed soil, size of area with existing disturbed soils, when the disturbance occurred, an estimate on how deep the soil disturbance extends, etc.) as well as photos of the existing ground disturbance.
- Above ground buildings/structures that are over 50 years old and potentially affected by the project will need to be assessed to determine if they are eligible for the NR. The PCN shall: identify any structures present in the project area, which have not already been subject to SHPO review, include photos of the structures, and describe how the project would/would not affect them.

\* - see NWP definition section for further clarification

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

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

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

- a written statement and documentation concerning any Essential Fish Habitat (EFH) and any federally listed or proposed Threatened, Endangered, or Candidate (TE&C) species or designated and/or proposed critical habitat that might be affected or located in the vicinity of the project.
- a copy of any correspondence from the U.S. Fish and Wildlife Service (USFWS) and/or National Oceanic and Atmospheric Administration Fisheries Service (NOAA-Fisheries), regarding the potential presence of TE&C species on the project site. USFWS TE&C website: <http://www.fws.gov/northeast/nyfo/es/section7.htm>. Information on NOAA-Fisheries (NMFS) species (both TE&C and EFH) can be found at: <https://www.greateratlantic.fisheries.noaa.gov/>
- an official TE&C species list printed within 90 days of the PCN submission from the USFWS Website.
- For projects where TE&C species are listed, a discussion of potential TE&C species habitat within the project site (See USFWS T&E website for species habitat information).
- If there is potential habitat for any TE&C species within the project site the following, as applicable, shall be submitted:
  - a. The results of any habitat surveys and presence/absence surveys. Note: all surveys should be coordinated with the USFWS and/or NOAA-Fisheries (NMFS) prior to initiation.

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- b. A detailed description of the proposed project, including secondary impacts and approximate proposed project construction schedule of project activities (e.g. land clearing, utilities, stormwater management).
- c. A description of the natural characteristics of the property and surrounding area (e.g. forested areas, freshwater wetlands, open waters, and soils) and a description of surrounding land use (residential, agricultural, or commercial).
- d. A description of the area to be impacted by the proposed project, including the species, typical sizes (d.b.h.) and number or acres of trees to be removed.
- e. The location of the above referenced property and extent of any project related activities or discharges clearly indicated on a copy of a USGS 7.5 minute topographic quadrangle (quad) with the name of the quad(s) and latitude/longitude clearly labeled.
- f. A description of conservation measures to avoid, minimize and/or mitigate impacts to listed species.

NOTE 1: There are no known TE&C species or EFH species under the jurisdiction of the NOAA-Fisheries (NMFS) within the Buffalo District. Therefore, all Buffalo District requests for information regarding the presence of TE&C species should be directed to the USFWS. In addition, no EFH review is necessary within the following New York District counties: Clinton, Essex, Franklin, Fulton, Hamilton, Montgomery, Otsego, Schenectady, Schoharie and Warren.

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

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

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

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

**10. Submission of Multiple Copies of PCN:**

- a) One (1) additional copy of the application drawings shall be provided to USACE for coordination with National Oceanic and Atmospheric Administration (NOAA) for utility lines to be constructed or installed in navigable waters of the U.S. proposed under NWP #12, (See Note 1 of NWP #12)
- b) One (1) additional copy of the PCN package shall be provided to USACE for coordination with Department of Defense Siting Clearinghouse (See NWP #12, 39, 51 & 52 Notes) for:
  - i. overhead utility lines proposed under NWP #12 and
  - ii. any activity that involves the construction of a wind energy generating structure, solar tower, or overhead transmission lines proposed under NWP #39, 51 or 52
- c) Two (2) additional copies of the PCN package shall be provided to USACE when the project is located within the New York City Watershed, for coordination with the New York City Department of Environmental Protection.
- d) Five (5) additional copies of the PCN package shall be submitted to USACE for agency coordination in accordance with General Condition # 31(d)(2) for:
  - i. All NWP activities that result in the loss of greater than 1/2-acre of waters of the United States,



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- ii. NWP 21, 29, 39, 40, 42, 43, 44, 50, 51, and 52 activities that will result in the loss of greater than 300 linear feet of intermittent & ephemeral stream bed,
- iii. NWP 13 activities in excess of 500 linear feet, fills greater than one cubic yard per running foot, or involve discharges of dredged or fill material into special aquatic sites;
- iv. NWP 54 activities in excess of 500 linear feet or that extend into the waterbody more than 30 feet from the mean low water line in tidal waters or the ordinary high water mark in the Great Lakes.

**G-F. CRITICAL RESOURCE WATERS**

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

Critical Resource Waters in New York State include the following:

1. **East-of-Hudson portion of the New York City Water Supply:** This area includes portions of Dutchess, Putnam and Westchester Counties as delineated on Enclosure 2.
2. **Hudson River National Estuarine Research Reserves (NERR):** The Hudson River NERR consists of four components: Piermont Marsh, Iona Island, Tivoli Bay, and Stockport Flats.

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

1. Non-contamination of Waters

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

2. Installation and Replacement of Culverts

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

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

3. Discharge and Disturbance Limits of the Blanket WQC

- For Nationwide Permits # 5, 7,12, 13, 14, 15, 18, 19, 23, 25, 29, 31, 32, 34, 36, 37, 39, 40, 42, 45, 46, 48, 51, utility line replacement projects under Nationwide Permit #3 and non-maintenance activities under Nationwide Permit #43.
- The following discharge limits apply:

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- a) Temporary or permanent discharges of dredged or fill material into wetlands and other waters of the U.S. must not exceed ¼ acre;
- b) Temporary or permanent impacts (i.e., loss) to stream beds must not exceed 300 linear feet.
- c) The discharge area limit under paragraph (a) plus the equivalent stream impact area limit under paragraph (b) must not exceed ¼ acre total.

•For Nationwide Permits # 3, 4, 6, 20, 22, 27, 30, 33, 41 and maintenance activities under Nationwide Permit # 43, this certification authorizes discharges and disturbances up to the limit of the respective Nationwide Permit or regional conditions, whichever is most restrictive.

•If a project requiring coverage under two or more Nationwide Permits results in a temporary or permanent discharge or disturbance, the most restrictive threshold applies to the project.

4. Bulkheads

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

5. Maintenance of Water Levels

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

6. Dewatering

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

7. Endangered or Threatened Species

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

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

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Expiration March 18, 2022**

8. Rare Mollusks

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

9. Prohibition Period for In-water Work

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

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

To determine if the prohibition period is in effect for a particular water, contact the Regional Natural Resources Supervisor in the appropriate New York State Department of Environmental Conservation regional office. Water Classification values can be determined on the DEC's Environmental Resource Mapper available on the Departments Website @ <http://www.dec.ny.gov/gis/erm/> Work windows may be extended by the Regional Natural Resources Supervisor or their designee.

10. Significant Coastal Fish and Wildlife Habitat

- This certification does not authorize any discharge occurring in a designated Significant Coastal Fish and Wildlife Habitat area pursuant to 19 NYCRR Part 602; Title 19 Chapter 13, Waterfront Revitalization and Coastal Resources. <https://www.dos.ny.gov/opd/programs/consistency/scfwhabitats.html>

11. Coastal Erosion Hazard Areas

- This certification does not authorize projects in Coastal Erosion Hazard Areas, as identified in New York State Environmental Conservation Law Article 34, and its implementing regulations, 6 NYCRR Part 505.  
<http://www.dec.ny.gov/lands/86541.html>

12. State-owned Underwater Lands

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

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

13. Tidal Wetlands

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

14. Wild, Scenic and Recreational Rivers

- This certification does not authorize activities in any Wild, Scenic or Recreational River pursuant to 6 NYCRR Part 666 or state designated Wild, Scenic or Recreational River corridors.  
<http://www.dec.ny.gov/permits/6033.html>

15. Floodplains

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

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16. Public Service Commission

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

17. Utility Projects

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

18. Preventing the Spread of Terrestrial and Aquatic Invasive Species

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

**I. New York State Department of State (NYSDOS) Coastal Zone Management Consistency Determination  
Additional Information (applicable to all NWPs located within or affecting the NYS Coastal Zone):**

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

Further Information:

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

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**J. INFORMATION ON NATIONWIDE PERMIT VERIFICATION**

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

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

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

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



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**K. AGENCY CONTACT INFORMATION**

**NYS Department of Environmental Conservation**

[www.dec.ny.gov](http://www.dec.ny.gov)

**NYS DEC REGION 1**

Regional Permit Administrator  
SUNY @ Stony Brook  
50 Circle Road  
Stony Brook, NY 11790-3409  
(631) 444-0365

**NYS DEC REGION 2**

Regional Permit Administrator  
1 Hunter's Point Plaza  
47-40 21st Street  
Long Island City, NY 11101-5407  
(718) 482-4997

**NYS DEC REGION 3**

Regional Permit Administrator  
21 South Putt Corners Road  
New Paltz, NY 12561-1620  
(845) 256-3054

**NYS DEC REGION 4**

Regional Permit Administrator  
1130 North Westcott Road  
Schenectady, NY 12306-2014  
(518) 357-2069

**NYS DEC REGION 4 Sub-Office**

Deputy Regional Permit Administrator  
65561 State Hwy 10  
Stamford, NY 12167-9503  
(607) 652-7741

**NYS DEC REGION 5**

Regional Permit Administrator  
PO Box 296  
1115 Route 86  
Ray Brook, NY 12977-0296  
(518)897-1234

**NYS DEC REGION 5 Sub-Office**

Deputy Regional Permit Administrator  
PO Box 220  
232 Golf Course Rd  
Warrensburg, NY 12885-0220  
(518) 623-1281

**NYS DEC REGION 6**

Regional Permit Administrator  
317 Washington Street  
Watertown, NY 13601-3787  
(315) 785-2245

**NYS DEC REGION 6 Sub-Office**

Deputy Regional Permit Administrator  
207 Genesee Street  
Utica, NY 13501-2885  
(315) 793-2555

**NYS DEC REGION 7**

Regional Permit Administrator  
615 Erie Blvd. West  
Syracuse, NY 13204-2400  
(315)426-7438

**NYS DEC REGION 7 Sub-Office**

Deputy Regional Permit Administrator  
1285 Fisher Avenue  
Cortland, NY 13045-1090  
(607) 753-3095

**NYS DEC REGION 8**

Regional Permit Administrator  
6274 E. Avon - Lima Road  
Avon, NY 14414-9519  
(585) 226-2466

**NYS DEC REGION 9**

Regional Permit Administrator  
270 Michigan Avenue  
Buffalo, NY 14203-2915  
(716) 851-7165

**NYS DEC REGION 9 Sub-Office**

Deputy Regional Permit Administrator  
182 East Union Street  
Allegany, NY 14706-1328  
(716) 372-0645

**NYS Department of State**

Division of Coastal Resources  
Consistency Review Unit  
One Commerce Plaza  
99 Washington Avenue, Suite 1010  
Albany, NY 12231-00001  
(518) 474-6000  
<https://www.dos.ny.gov/opd/programs/consistency/index.html>

**US Army Corps of Engineers**

<http://www.nan.usace.army.mil>

(For DEC Regions 1, 2 and 3)

**US Army Corps of Engineers NY District**

ATTN: Regulatory Branch  
26 Federal Plaza, Room 1937  
New York, NY 10278-0090  
Email: [CENAN.PublicNotice@usace.army.mil](mailto:CENAN.PublicNotice@usace.army.mil)  
For DEC Regions 1, 2, Westchester County  
and Rockland County (917) 790-8511  
For the other counties of DEC Region 3 -  
(917) 790-8411

(For DEC Regions 4, 5)

**Department of the Army**

**ATTN: CENAN-OP-R  
NY District, Corps of Engineers**

1 Buffington Street  
Building 10, 3<sup>rd</sup> Floor  
Watervliet, NY 12189-4000  
(518) 266-6350 - Permits team  
(518) 266-6360 - Compliance Team

Email: [cenan.rfo@usace.army.mil](mailto:cenan.rfo@usace.army.mil)

(For DEC Regions 6, 7, 8, 9)

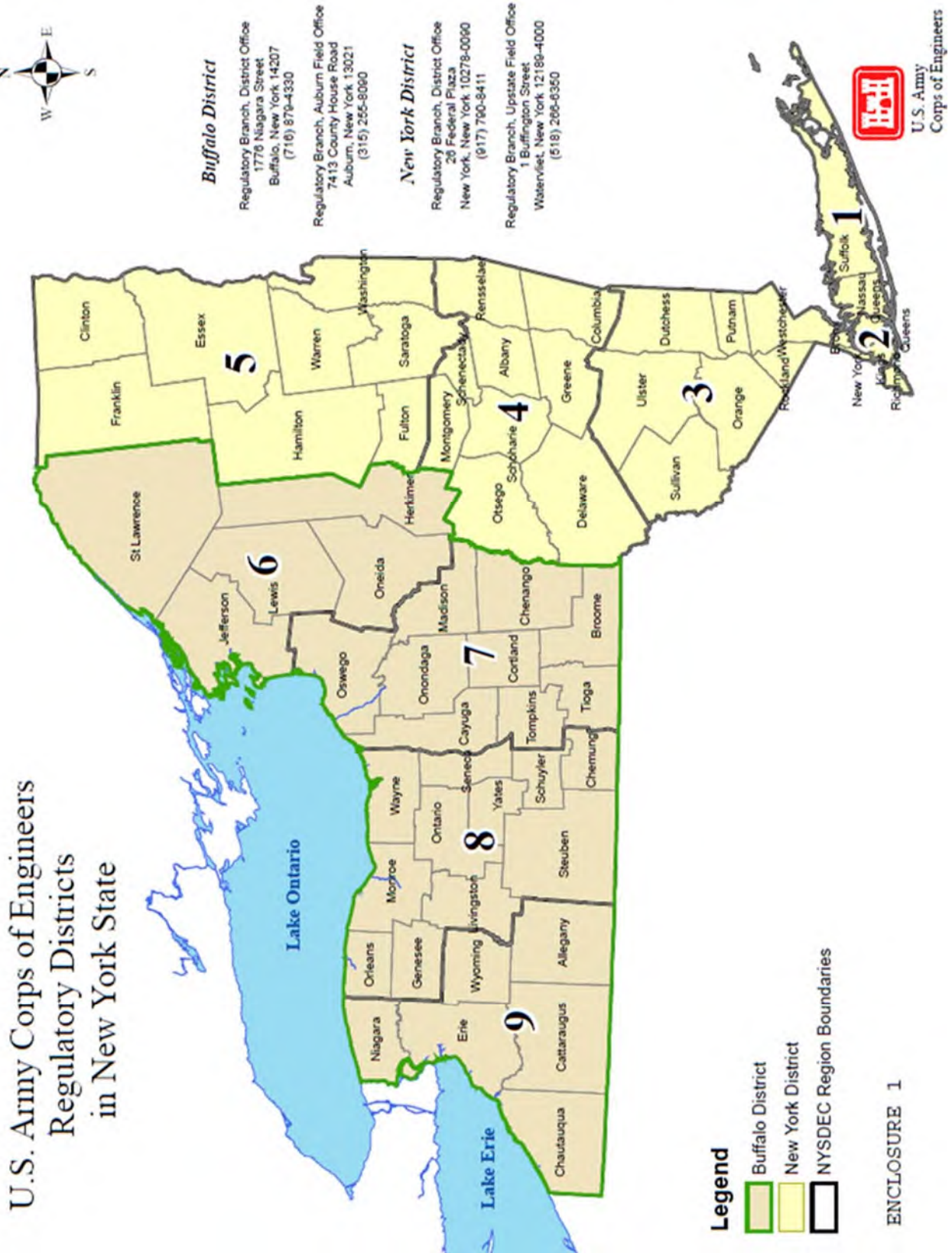
**US Army Corps of Engineers**

**Buffalo District**  
ATTN: Regulatory Branch

1776 Niagara Street  
Buffalo, NY 14207-3199  
(716) 879-4330

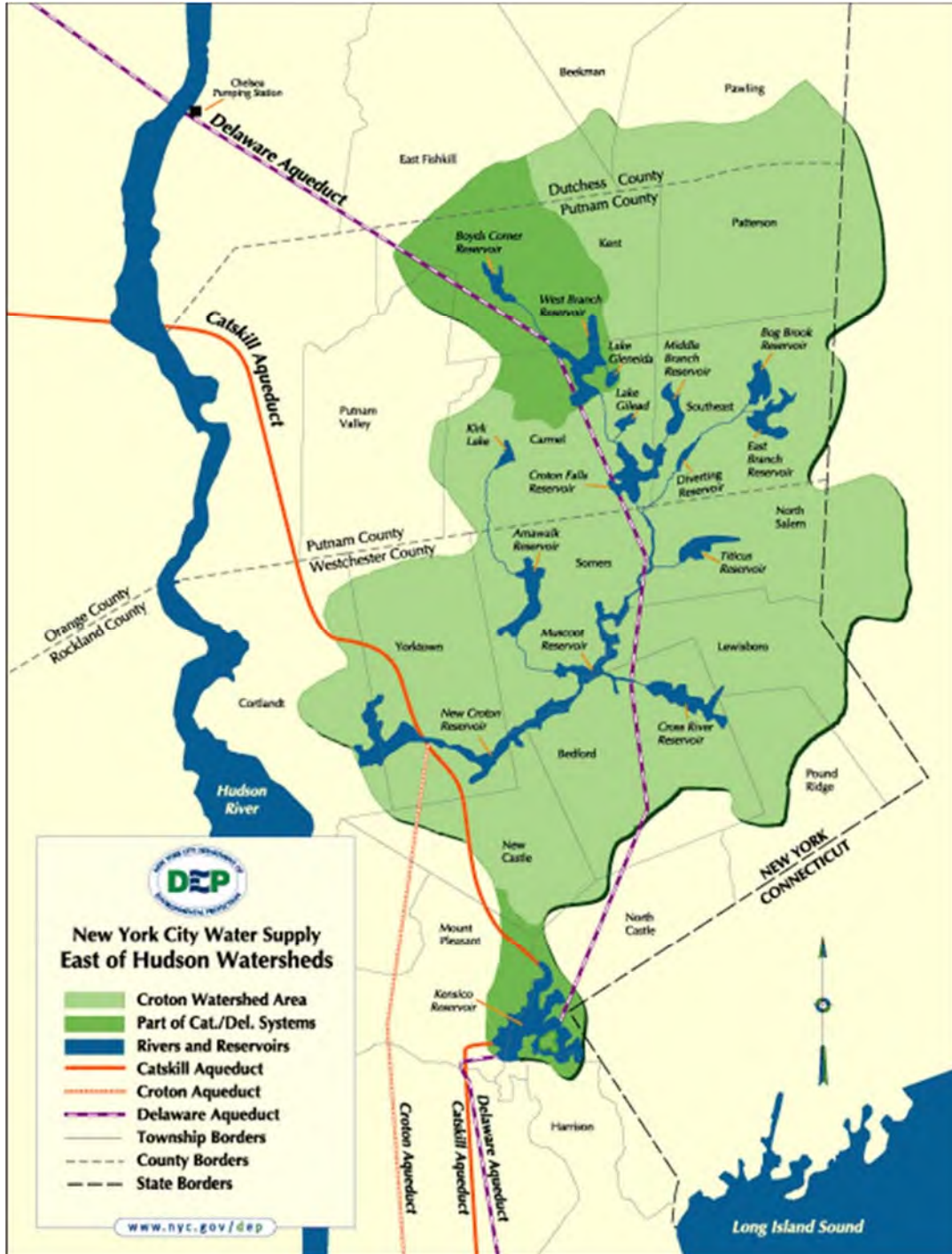
Email: [LRB.Regulatory@usace.army.mil](mailto:LRB.Regulatory@usace.army.mil)  
[www.lrb.usace.army.mil](http://www.lrb.usace.army.mil)

**Final Regional Conditions, Water Quality Certification and Coastal Zone Concurrence for  
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**ENCLOSURE 2**





DEPARTMENT OF THE ARMY  
 U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT  
 JACOB K. JAVITS FEDERAL BUILDING  
 26 FEDERAL PLAZA  
 NEW YORK NY 10278-0090

CENAN-OP-RW

**NATIONWIDE PERMIT COMPLIANCE CERTIFICATION AND REPORT FORM**

Permittee: Metro North Railroad

Permit No.: NAN-2018-00153

Date Permit Issued: March 7, 2019

Location: Towns of Beekman, East Fishkill and Pawling, Dutchess County, and Towns of Patterson and Southeast, Putnam 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  
 26 Federal Plaza, Room 1937  
 ATTN: CENAN-OP-RW  
 New York, New York 10278-0090

**Appendix 2 - PRELIMINARY JURISDICTIONAL DETERMINATION (PJD) FORM**

**BACKGROUND INFORMATION**

**A. REPORT COMPLETION DATE FOR PJD:** March 7, 2019

**B. NAME AND ADDRESS OF PERSON REQUESTING PJD:** Metro North RR, 525 N Broadway, White Plains, NY 10603

**C. DISTRICT OFFICE, FILE NAME, AND NUMBER:** NY District, Metro North Railroad, NAN-2018-00153-WNE

**D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION:**

**(USE THE TABLE BELOW TO DOCUMENT MULTIPLE AQUATIC RESOURCES AND/OR AQUATIC RESOURCES AT DIFFERENT SITES)**

State: New York County/parish/borough: Dutchess, Putnam City: Beekman, East Fishkill, Pawling, Patterson, Southeast

Center coordinates of site (lat/long in degree decimal format):

Lat.: 41.5098 Long.: -73.7061

Universal Transverse Mercator:

Name of nearest waterbody: Multiple

**E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):**

Office (Desk) Determination. Date: March 1, 2019

Field Determination. Date(s): April 18, 2018

**TABLE OF AQUATIC RESOURCES IN REVIEW AREA WHICH "MAY BE" SUBJECT TO REGULATORY JURISDICTION.**

Site number	Latitude (decimal degrees)	Longitude (decimal degrees)	Estimated amount of aquatic resource in review area (acreage and linear feet, if applicable)	Type of aquatic resource (i.e., wetland vs. non-wetland waters)	Geographic authority to which the aquatic resource "may be" subject (i.e., Section 404 or Section 10/404)
Wetland UL 107	41.5676	-73.7750	0.46 Acres	Wetland	Section 404
Wetland UL 29	41.5682	-73.7562	1.38 Acres	Wetland	Section 404
Wetland PQ10	41.5858	-73.6587	1.61 Acres	Wetland	Section 404
Wetland PQ29	41.5340	-73.6517	4.13 Acres	Wetland	Section 404
Wetland DP22	41.4518	-73.6099	7.58 Acres	Wetland	Section 404
Wetland BR6	41.4465	-73.6143	3.44 Acres	Wetland	Section 404



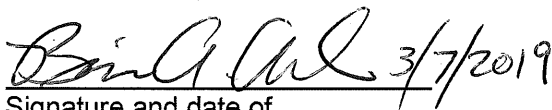
- 1) The Corps of Engineers believes that there may be jurisdictional aquatic resources in the review area, and the requestor of this PJD is hereby advised of his or her option to request and obtain an approved JD (AJD) for that review area based on an informed decision after having discussed the various types of JDs and their characteristics and circumstances when they may be appropriate.
- 2) In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an AJD for the activity, the permit applicant is hereby made aware that: (1) the permit applicant has elected to seek a permit authorization based on a PJD, which does not make an official determination of jurisdictional aquatic resources; (2) the applicant has the option to request an AJD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an AJD could possibly result in less compensatory mitigation being required or different special conditions; (3) the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) undertaking any activity in reliance upon the subject permit authorization without requesting an AJD constitutes the applicant's acceptance of the use of the PJD; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a PJD constitutes agreement that all aquatic resources in the review area affected in any way by that activity will be treated as jurisdictional, and waives any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an AJD or a PJD, the JD will be processed as soon as practicable. Further, an AJD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331. If, during an administrative appeal, it becomes appropriate to make an official determination whether geographic jurisdiction exists over aquatic resources in the review area, or to provide an official delineation of jurisdictional aquatic resources in the review area, the Corps will provide an AJD to accomplish that result, as soon as is practicable. This PJD finds that there "*may be*" waters of the U.S. and/or that there "*may be*" navigable waters of the U.S. on the subject review area, and identifies all aquatic features in the review area that could be affected by the proposed activity, based on the following information:

**SUPPORTING DATA. Data reviewed for PJD (check all that apply)**

Checked items should be included in subject file. Appropriately reference sources below where indicated for all checked items:

- Maps, plans, plots or plat submitted by or on behalf of the PJD requestor:  
Map: \_\_\_\_\_
- Data sheets prepared/submitted by or on behalf of the PJD requestor.
  - Office concurs with data sheets/delineation report.
  - Office does not concur with data sheets/delineation report. Rationale: \_\_\_\_\_
- Data sheets prepared by the Corps: \_\_\_\_\_
- Corps navigable waters' study: \_\_\_\_\_
- U.S. Geological Survey Hydrologic Atlas: \_\_\_\_\_
  - USGS NHD data.
  - USGS 8 and 12 digit HUC maps.
- U.S. Geological Survey map(s). Cite scale & quad name: Brewster, Pawling, Poughquag, Hopewell Junction, NY
- Natural Resources Conservation Service Soil Survey. Citation: Dutchess, Putnam Counties, NY
- National wetlands inventory map(s). Cite name: Brewster, Pawling, Poughquag, Hopewell Junction, NY
- State/local wetland inventory map(s): Brewster, Pawling, Poughquag, Hopewell Junction, NY
- FEMA/FIRM maps: \_\_\_\_\_
- 100-year Floodplain Elevation is: \_\_\_\_\_ (National Geodetic Vertical Datum of 1929)
- Photographs:  Aerial (Name & Date): \_\_\_\_\_  
or  Other (Name & Date): \_\_\_\_\_
- Previous determination(s). File no. and date of response letter: \_\_\_\_\_
- Other information (please specify): \_\_\_\_\_

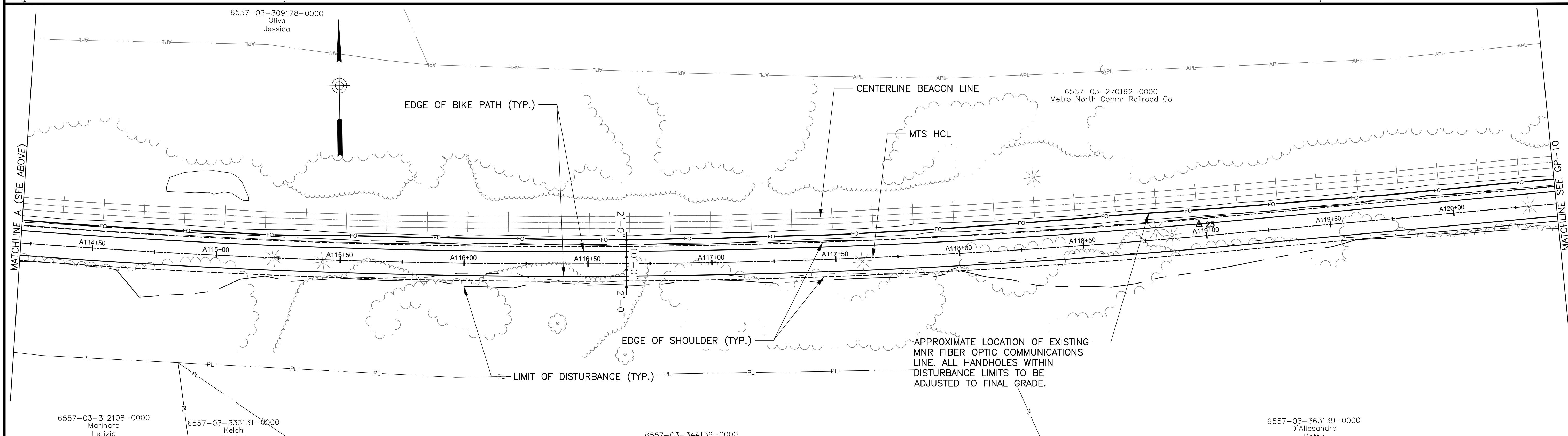
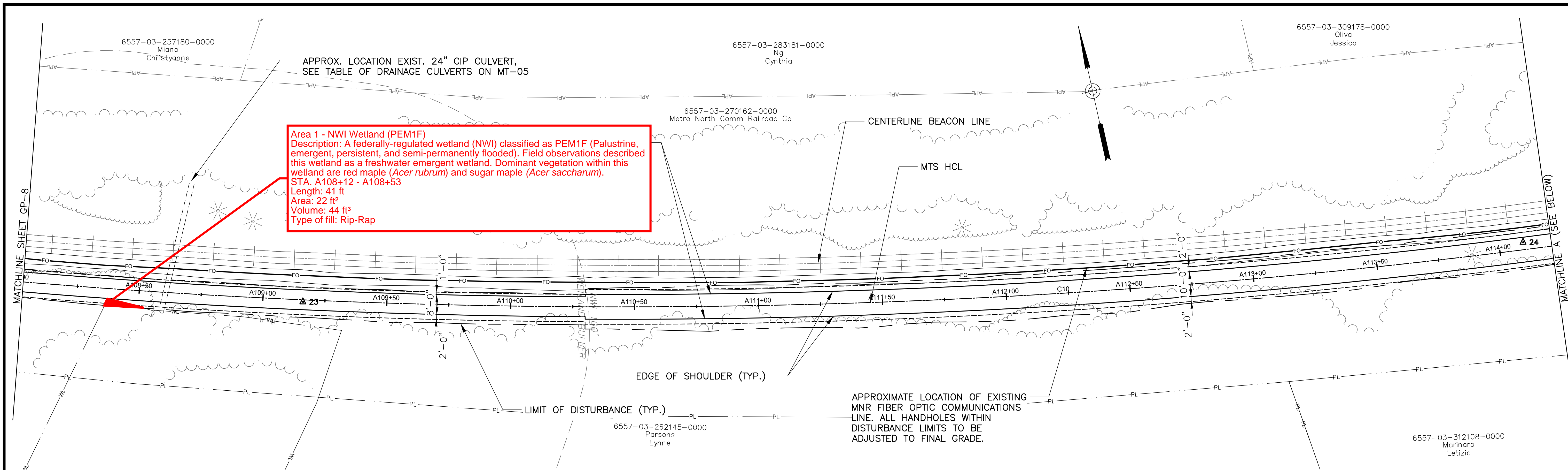
**IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.**

 3/7/2019

Signature and date of  
Regulatory staff member  
completing PJD

\_\_\_\_\_  
Signature and date of  
person requesting PJD  
(REQUIRED, unless obtaining  
the signature is impracticable)<sup>1</sup>

<sup>1</sup> Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.



**PRELIMINARY PLANS - NOT FOR CONSTRUCTION**

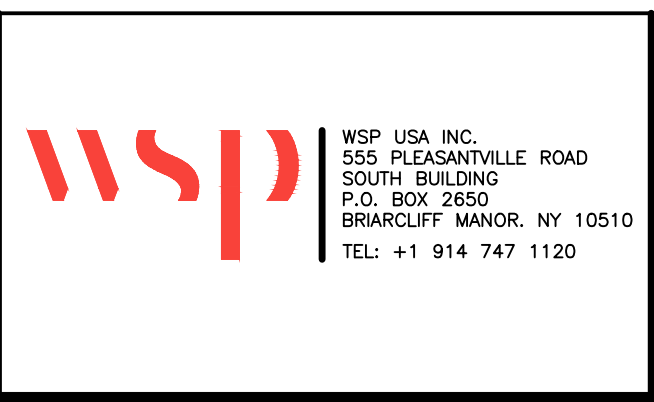


REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE

IT IS A VIOLATION OF THE PROFESSIONAL LICENSE LAW FOR ANY PERSON TO ALTER THIS DOCUMENT IN ANY WAY UNLESS THAT PERSON IS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL. THE LICENSED PROFESSIONAL SHALL AFFIX TO THIS DOCUMENT THE SEAL AND THE NOTATION "ALTERED BY", FOLLOWED BY THE AUTHORIZED SIGNATURE AND THE DATE OF THE ALTERATION.

PE:

DESIGNED BY: KB  
 DRAWN BY: MS  
 CHECKED BY: DG  
 APPROVED BY: JK



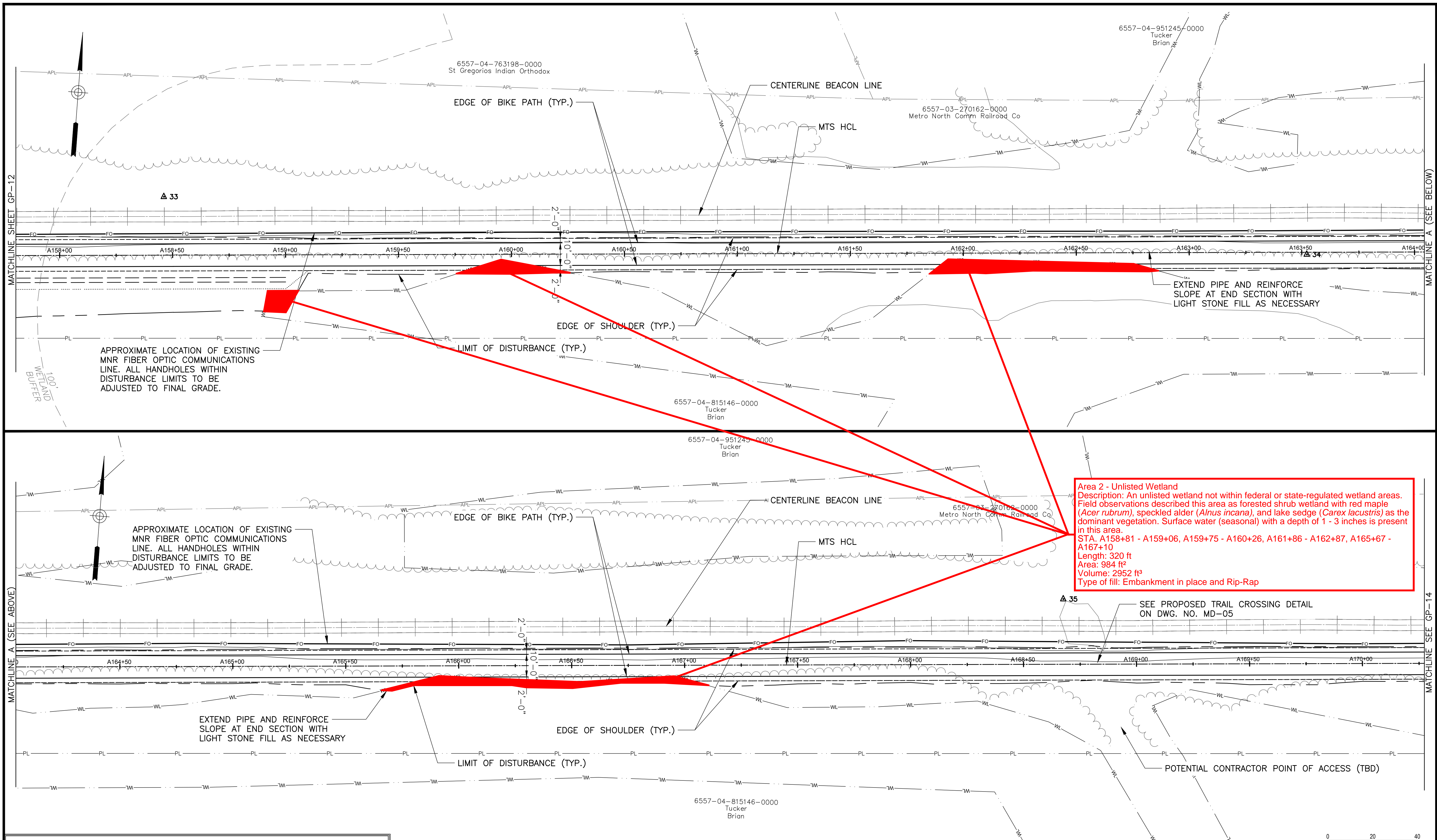
PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 9

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20'  
 DATE: JULY 2018  
 DRAWING NUMBER: GP-09  
 SHEET OF 314

Drawing Path Name: L:\Pro\191670A - MNR Beacon Line Rail Trail\3\_CADD\AutoCAD\Contract DWGs\89399\_cph\_gen\_General Plans.dwg  
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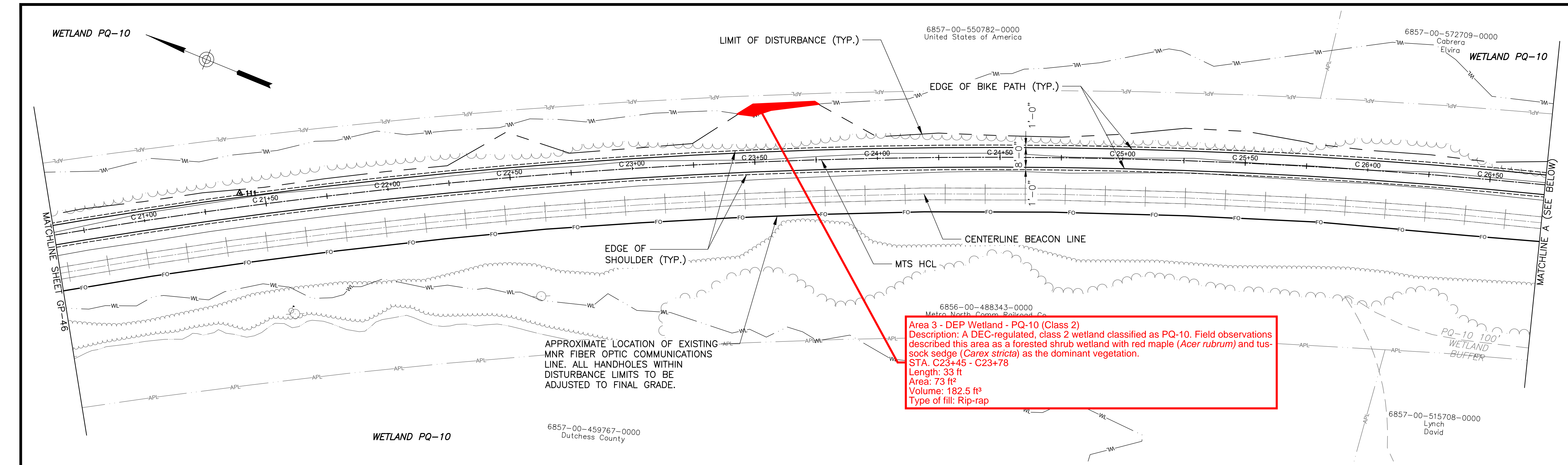
**Area 2 - Unlisted Wetland**  
 Description: An unlisted wetland not within federal or state-regulated wetland areas. Field observations described this area as forested shrub wetland with red maple (*Acer rubrum*), speckled alder (*Alnus incana*), and lake sedge (*Carex lacustris*) as the dominant vegetation. Surface water (seasonal) with a depth of 1 - 3 inches is present in this area.  
 STA. A158+81 - A159+06, A159+75 - A160+26, A161+86 - A162+87, A165+67 - A167+10  
 Length: 320 ft  
 Area: 984 ft<sup>2</sup>  
 Volume: 2952 ft<sup>3</sup>  
 Type of fill: Embankment in place and Rip-Rap

**PRELIMINARY PLANS - NOT FOR CONSTRUCTION**

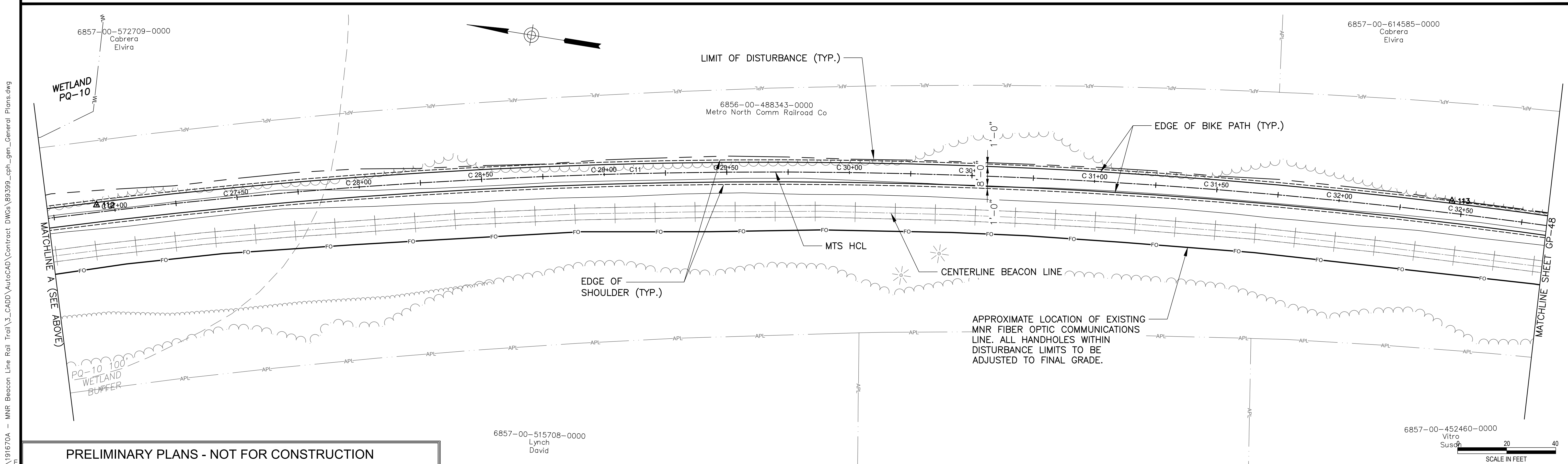


DESIGNED BY: KB	PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER	PE:	DRAWING TITLE: GENERAL PLAN - 13	P.O.:	1000442201-DESIGN-BUILD MAYBROOK TRAILWAY	SCALE:	1"=20'
DRAWN BY: MS	WSP USA INC. 555 PLEASANTVILLE ROAD SOUTH BUILDING P.O. BOX 2650 BRIARCLIFF MANOR, NY 10510 TEL: +1 914 747 1120		MTA Metro-North Railroad 420 Lexington Avenue New York, N.Y. 10170	DATE:	JULY 2018	DRAWING NUMBER:	GP-13
CHECKED BY: DG				SHEET	OF 314		
APPROVED BY: JK							
REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE			





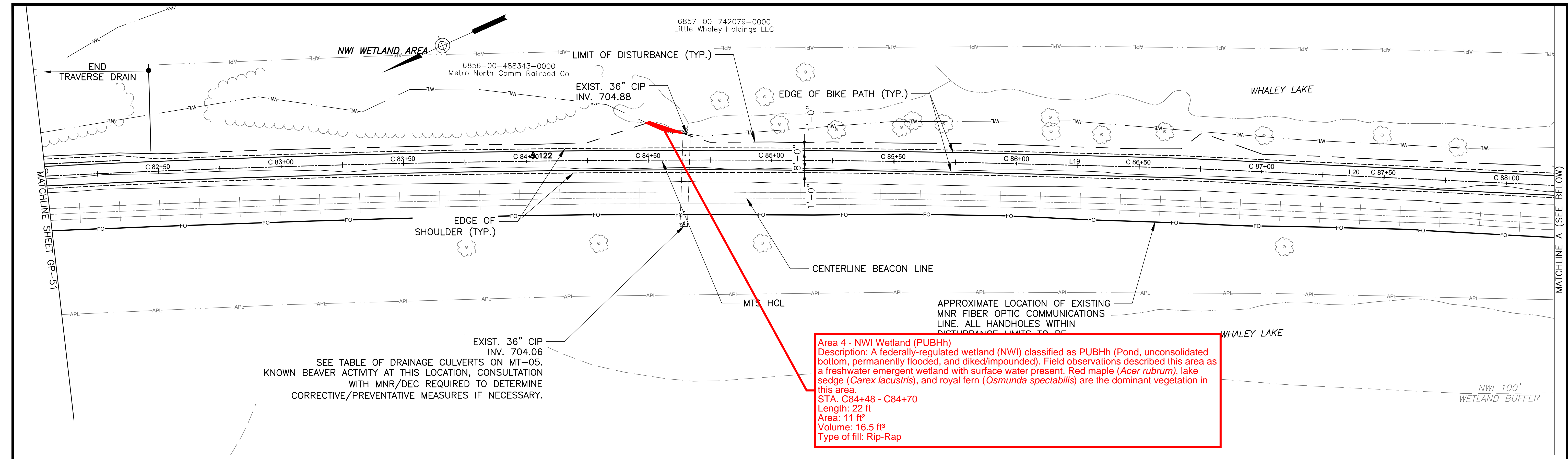
**Area 3 - DEP Wetland - PQ-10 (Class 2)**  
 Description: A DEC-regulated, class 2 wetland classified as PQ-10. Field observations described this area as a forested shrub wetland with red maple (*Acer rubrum*) and tussock sedge (*Carex stricta*) as the dominant vegetation.  
 Length: 33 ft  
 Area: 73 ft<sup>2</sup>  
 Volume: 182.5 ft<sup>3</sup>  
 Type of fill: Rip-rap



<p><b>PRELIMINARY PLANS - NOT FOR CONSTRUCTION</b></p>		<p>6857-00-515708-0000 Lynch David</p>	<p>6857-00-614585-0000 Cabrera Elvira</p>	<p>6857-00-452460-0000 Vitro Susch</p>
<p>IT IS A VIOLATION OF THE PROFESSIONAL LICENSE LAW FOR ANY PERSON TO ALTER THIS DOCUMENT IN ANY WAY UNLESS THAT PERSON IS ACTING UNDER THE DIRECTION OF A LICENSED PROFESSIONAL. THE LICENSED PROFESSIONAL SHALL AFFIX TO THIS DOCUMENT THE SEAL AND THE NOTATION "ALTERED BY", FOLLOWED BY THE AUTHORIZED SIGNATURE AND THE DATE OF THE ALTERATION.</p>	<p>PE:</p>	<p>DESIGNED BY: KB</p> <p>DRAWN BY: MS</p> <p>CHECKED BY: DG</p> <p>APPROVED BY: JK</p>	<p><b>wsp</b> WSP USA INC. 555 PLEASANTVILLE ROAD SOUTH BUILDING P.O. BOX 2650 BRIARCLIFF MANOR, NY 10510 TEL: +1 914 747 1120</p>	<p><b>MTA</b> Metro-North Railroad 420 Lexington Avenue New York, N.Y. 10170</p>
<p>PROJECT: <b>EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER</b></p>		<p>DRAWING TITLE: <b>GENERAL PLAN - 47</b></p>		<p>P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY</p> <p>SCALE: 1"=20' DATE: JULY 2018</p> <p>DRAWING NUMBER: <b>GP-47</b></p> <p>SHEET OF 314</p>

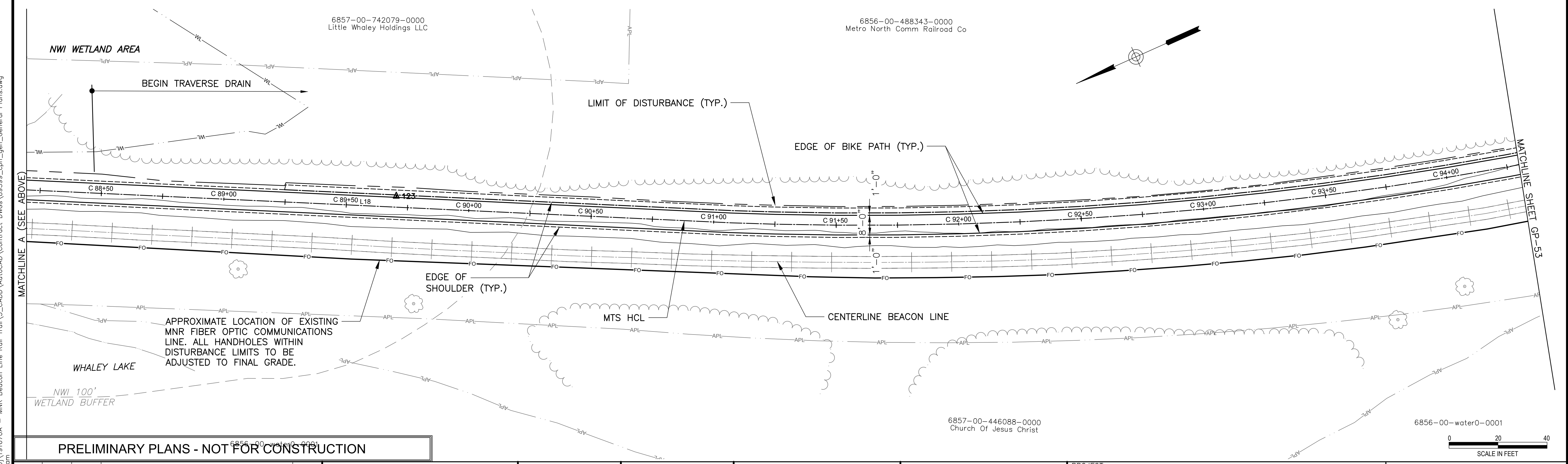
Drawing Path Name: L:\Pro\191670A - MNR Beacon Line Rail Trail\3\_CADD\AutoCAD\Contract DWGs\893399\_cph\_gen\_General Plans.dwg  
 Printed: Jul 20, 2018, 9:44am





**Area 4 - NWI Wetland (PUBHh)**  
 Description: A federally-regulated wetland (NWI) classified as PUBHh (Pond, unconsolidated bottom, permanently flooded, and diked/impounded). Field observations described this area as a freshwater emergent wetland with surface water present. Red maple (*Acer rubrum*), lake sedge (*Carex lacustris*), and royal fern (*Osmunda spectabilis*) are the dominant vegetation in this area.  
 STA. C84+48 - C84+70  
 Length: 22 ft  
 Area: 11 ft<sup>2</sup>  
 Volume: 16.5 ft<sup>3</sup>  
 Type of fill: Rip-Rap

EXIST. 36" CIP INV. 704.06  
 SEE TABLE OF DRAINAGE CULVERTS ON MT-05.  
 KNOWN BEAVER ACTIVITY AT THIS LOCATION, CONSULTATION WITH MNR/DEC REQUIRED TO DETERMINE CORRECTIVE/PREVENTATIVE MEASURES IF NECESSARY.



**PRELIMINARY PLANS - NOT FOR CONSTRUCTION**

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PE:

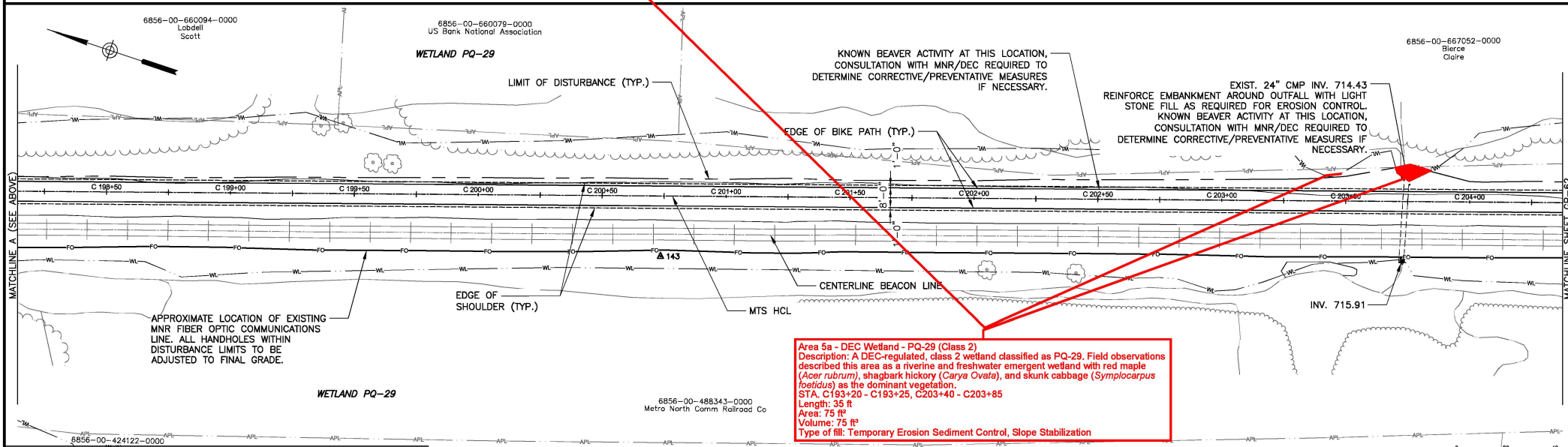
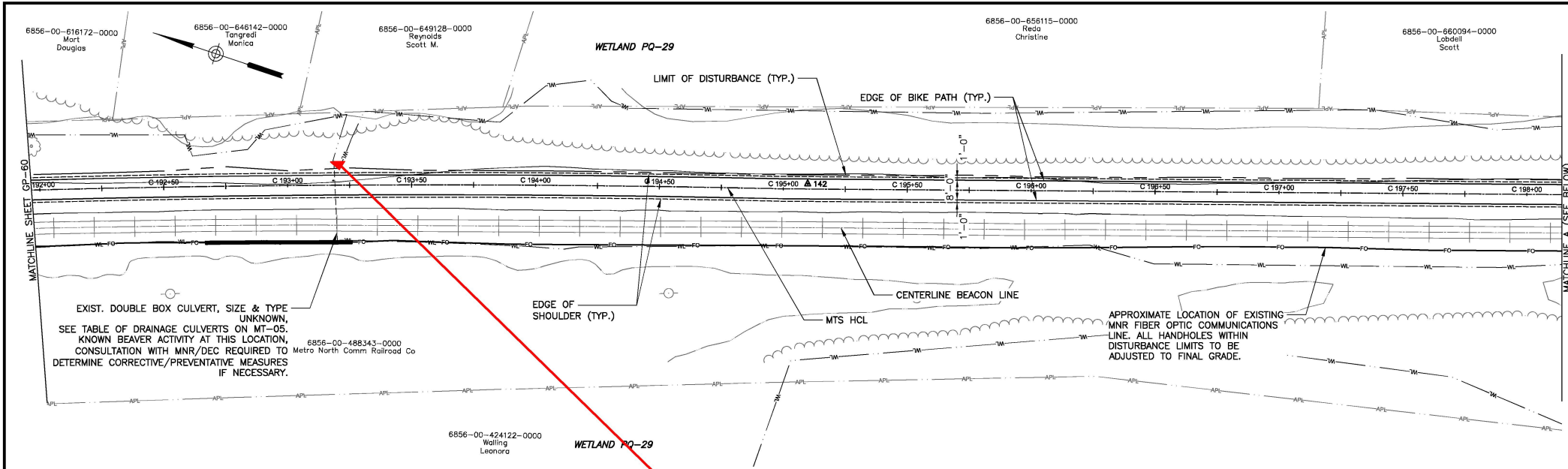
DESIGNED BY: KB  
 DRAWN BY: MS  
 CHECKED BY: DG  
 APPROVED BY: JK



PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 52

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20'  
 DATE: JULY 2018  
 DRAWING NUMBER: GP-52  
 SHEET OF 314

Drawing Path Name: L:\Pro\191670A - MNR Beacon Line Rail Trail\3\_CADD\AutoCAD\Contract DWGs\89399\_cph\_gen\_General Plans.dwg  
 Printed: Jul 20, 2018, 9:51am



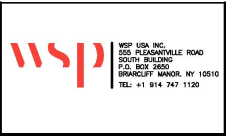
**Area 5a - DEC Wetland - PQ-29 (Class 2)**  
 Description: A DEC-regulated, class 2 wetland classified as PQ-29. Field observations described this area as a riverine and freshwater emergent wetland with red maple (*Acer rubrum*), shagbark hickory (*Carya Ovata*), and skunk cabbage (*Symplocarpus foetidus*) as the dominant vegetation.  
 STA. C193+20 - C193+25, C203+40 - C203+85  
 Length: 35 ft  
 Area: 75 ft<sup>2</sup>  
 Volume: 75 ft<sup>3</sup>  
 Type of fill: Temporary Erosion Sediment Control, Slope Stabilization

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 CHECKED BY: DG  
 APPROVED BY: JK



**MTA Metro-North Railroad**  
 420 Lexington Avenue  
 New York, N.Y. 10170

PROJECT: EMPIRE STATE TRAIL - MAYBROOK TRAILWAY SECTION  
 HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 61

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20' DATE: JULY 2018  
 DRAWING NUMBER: GP-61  
 SHEET 168 OF 314

Drawing Path: \\metro-north-rail\proj\191670A - MNR Beacon Line Rail Trail\3-CADD\AutoCAD\Contract\DWG\B2392\_cpl\_gm\_General Planning.dwg  
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MATCHLINE SHEET GP-60

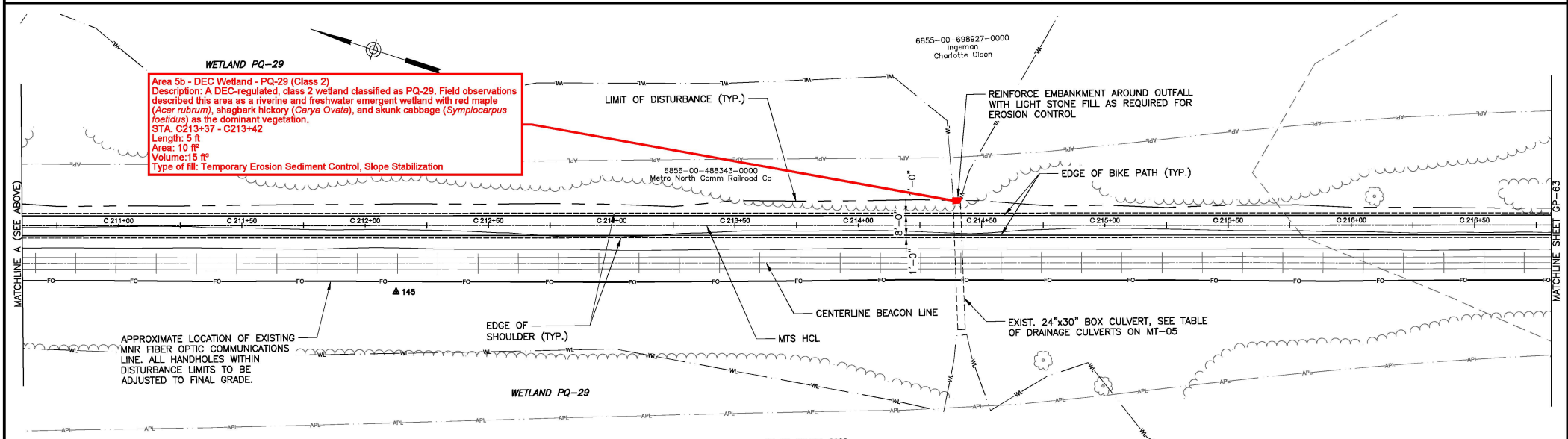
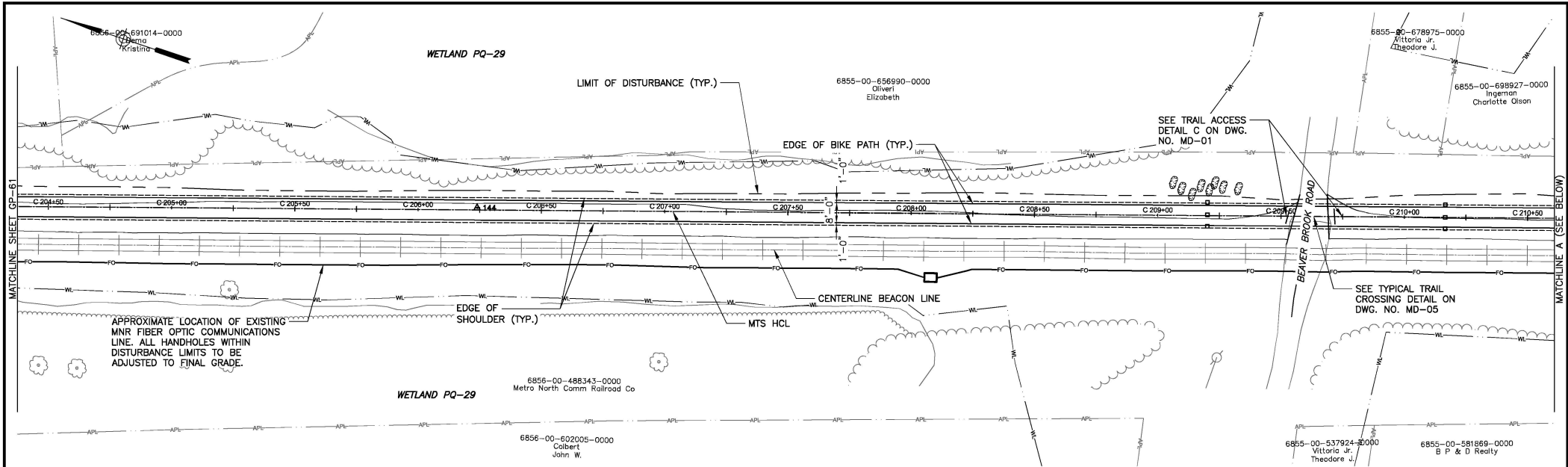
MATCHLINE A (SEE BELOW)

MATCHLINE A (SEE ABOVE)

MATCHLINE SHEET GP-62





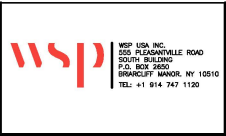


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 CHECKED BY: OG  
 APPROVED BY: JK

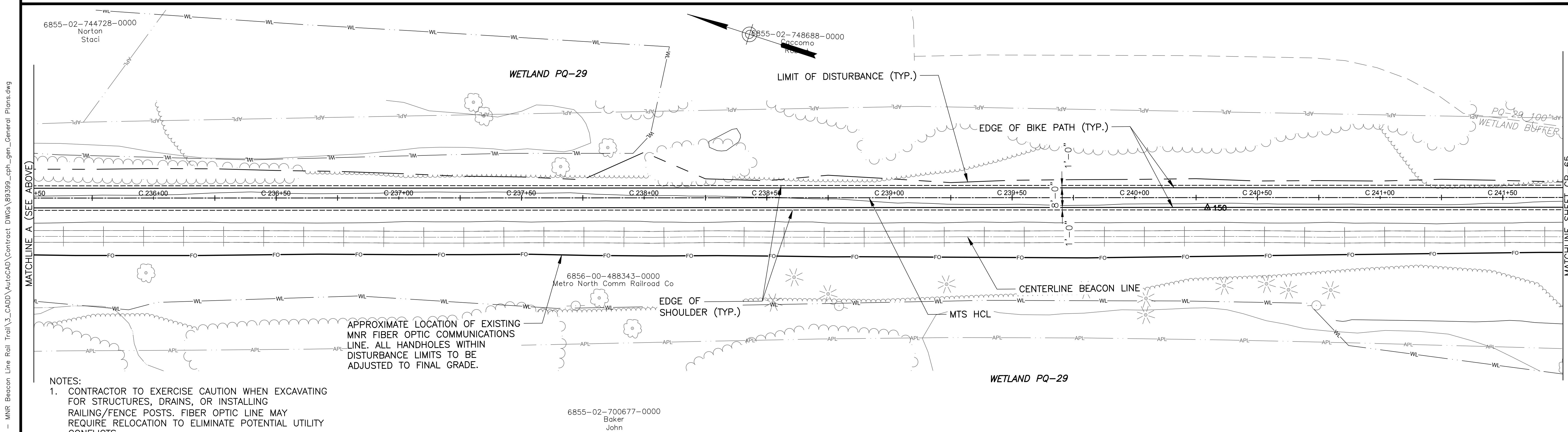
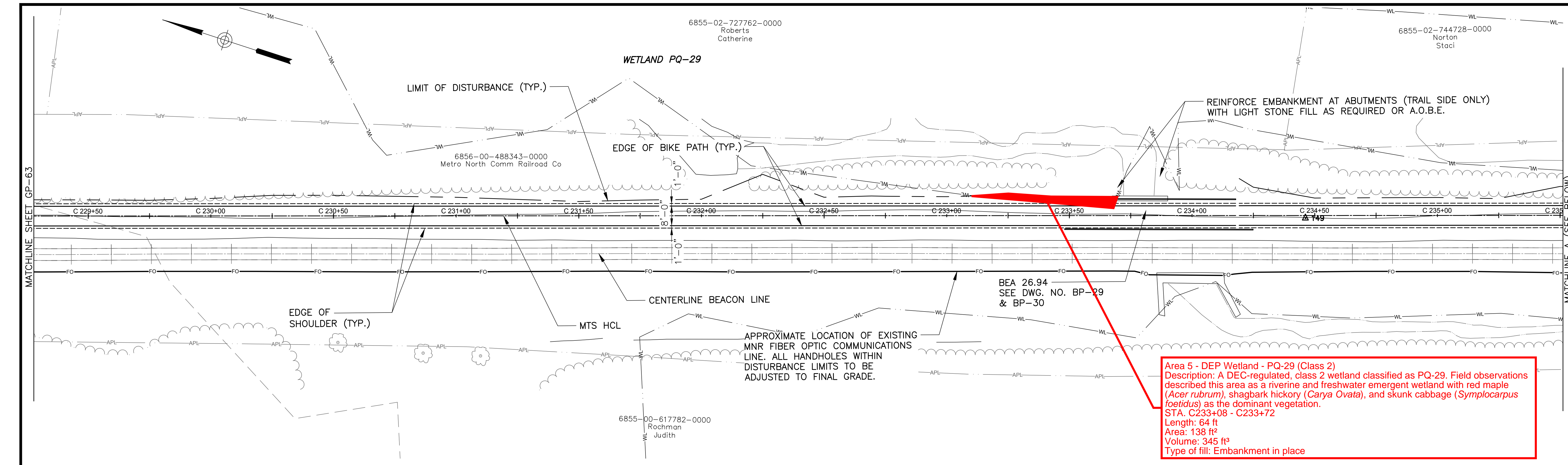


PROJECT: EMPIRE STATE TRAIL - MAYBROOK TRAILWAY SECTION  
 HOPEWELL JUNCTION TO BREWSTER

DRAWING TITLE: GENERAL PLAN - 62

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20'  
 DATE: JULY 2018  
 DRAWING NUMBER: GP-62  
 SHEET 169 OF 314

Drawing Path: \\msb\proj\191670A - MNR Beacon Line Rail Trail\3\_CADD\AutoCAD\Contract DWG\B0392\_cpl\_gm\_General Plans.dwg

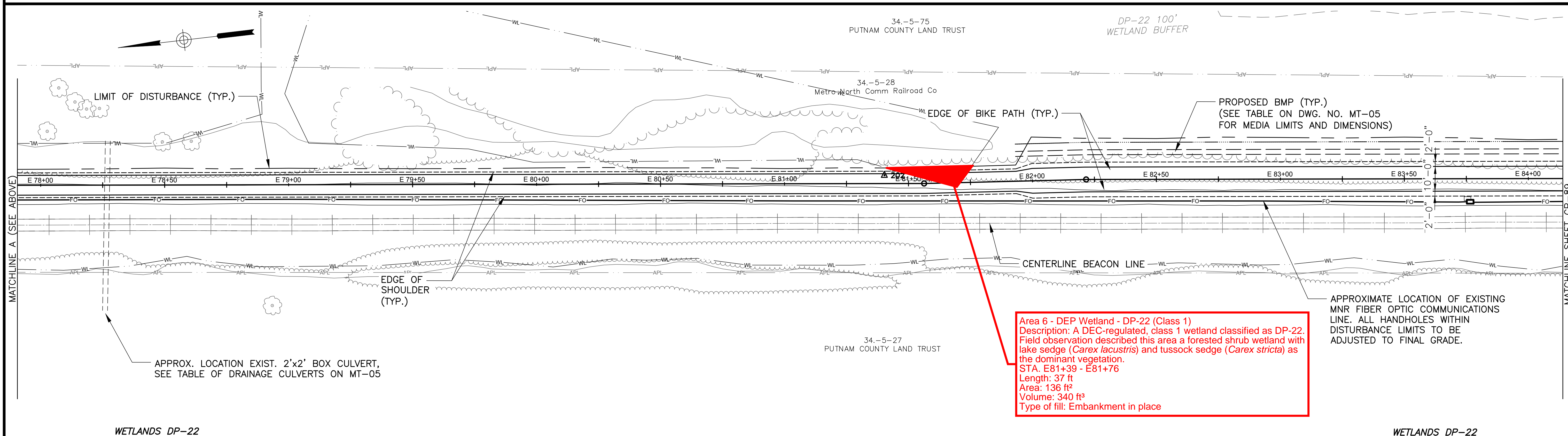
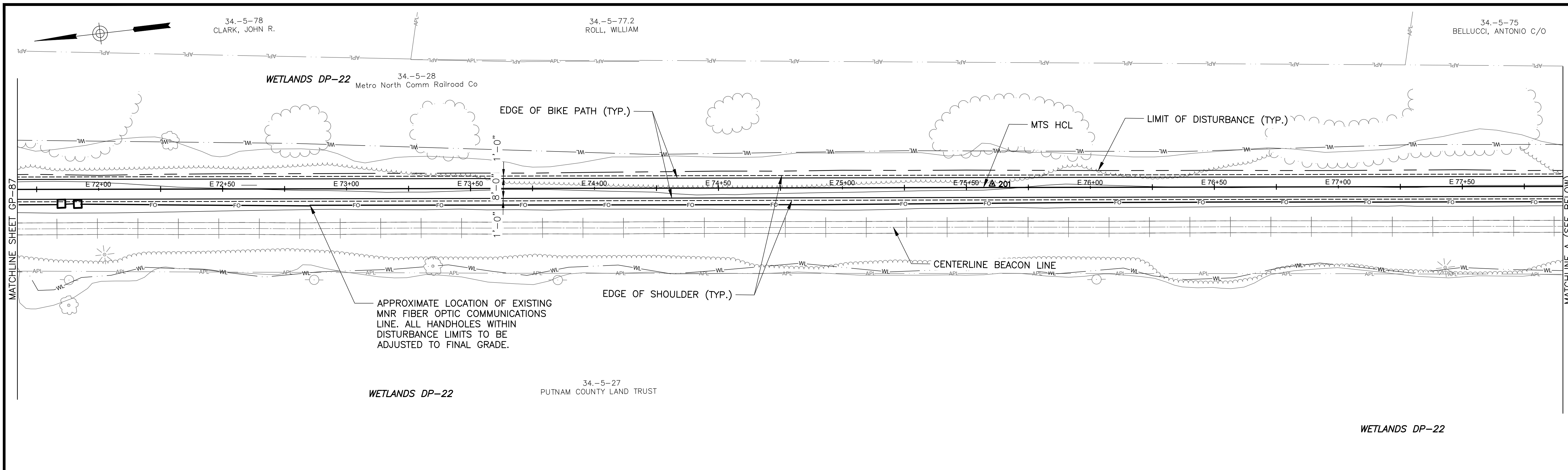


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	DRAWN BY: MS	CHECKED BY: DG		APPROVED BY: JK			DRAWING TITLE: GENERAL PLAN - 64	SCALE: 1"=20' DATE: JULY 2018





**Area 6 - DEP Wetland - DP-22 (Class 1)**  
 Description: A DEC-regulated, class 1 wetland classified as DP-22. Field observation described this area a forested shrub wetland with lake sedge (*Carex lacustris*) and tussock sedge (*Carex stricta*) as the dominant vegetation.  
 STA. E81+39 - E81+76  
 Length: 37 ft  
 Area: 136 ft<sup>2</sup>  
 Volume: 340 ft<sup>3</sup>  
 Type of fill: Embankment in place

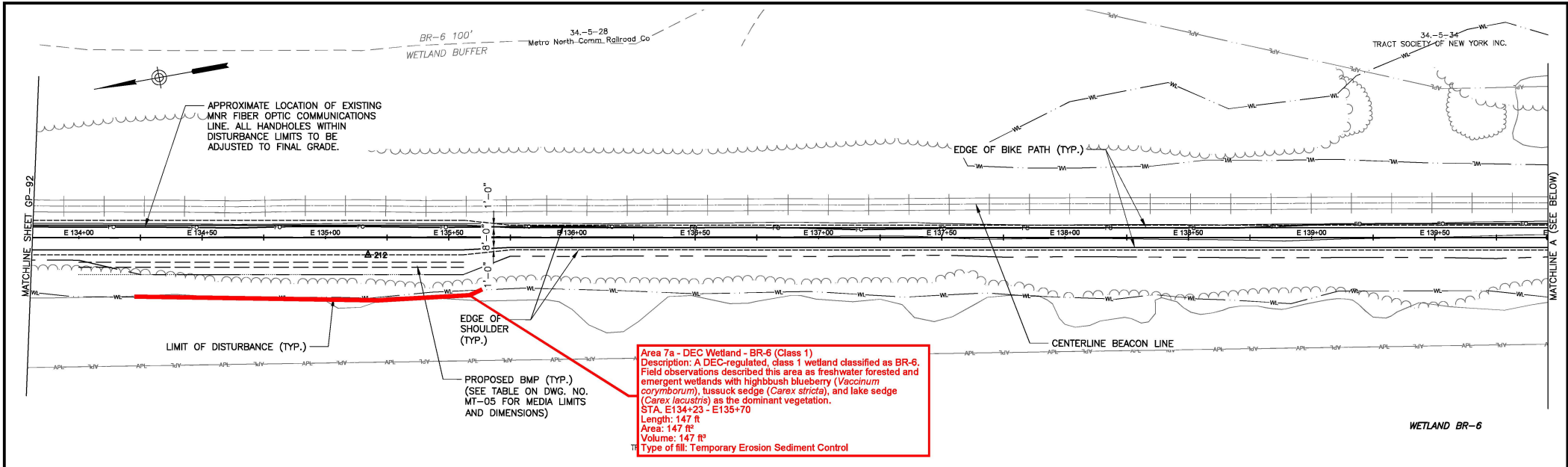
**PRELIMINARY PLANS - NOT FOR CONSTRUCTION**

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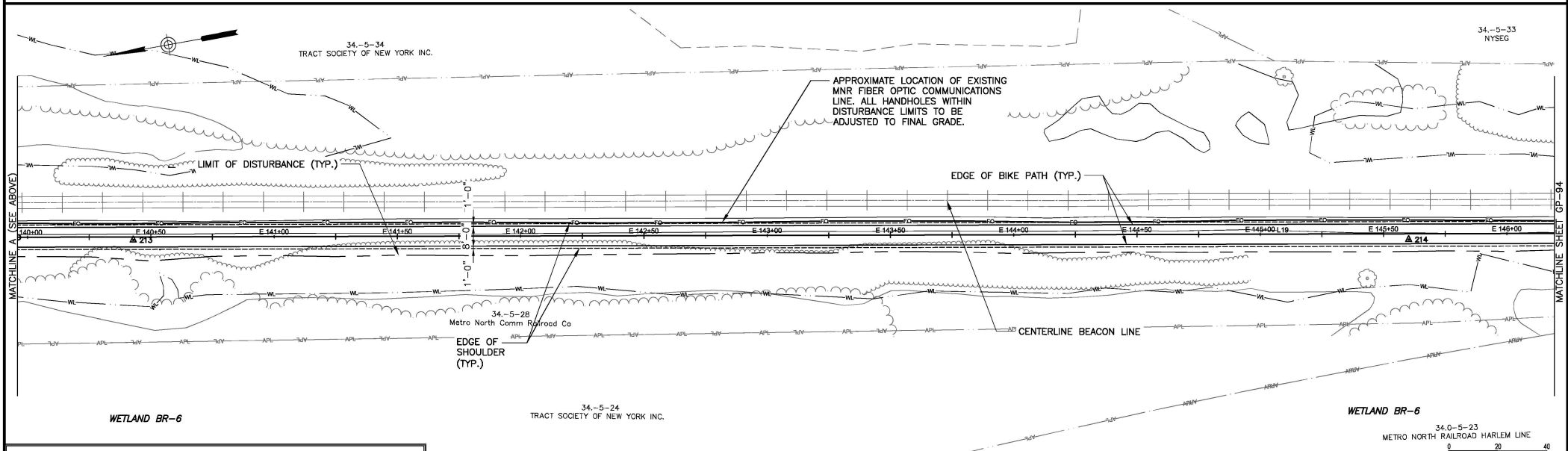
REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE

Drawing Path Name: L:\Pro\191670A - MNR Beacon Line Rail Trail\3\_CADD\AutoCAD\Contract DWGs\89399\_cph\_gen\_General Plans.dwg  
 Printed: Jul 20, 2018, 10:37am





**Area 7a - DEC Wetland - BR-6 (Class 1)**  
 Description: A DEC-regulated, class 1 wetland classified as BR-6. Field observations described this area as freshwater forested and emergent wetlands with highbush blueberry (*Vaccinium corymbosum*), tussock sedge (*Carex stricta*), and lake sedge (*Carex lasiocarpa*) as the dominant vegetation.  
 STA. E134+23 - E135+70  
 Length: 147 ft  
 Area: 147 ft<sup>2</sup>  
 Volume: 147 ft<sup>3</sup>  
 Type of fill: Temporary Erosion Sediment Control

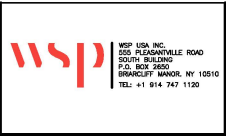


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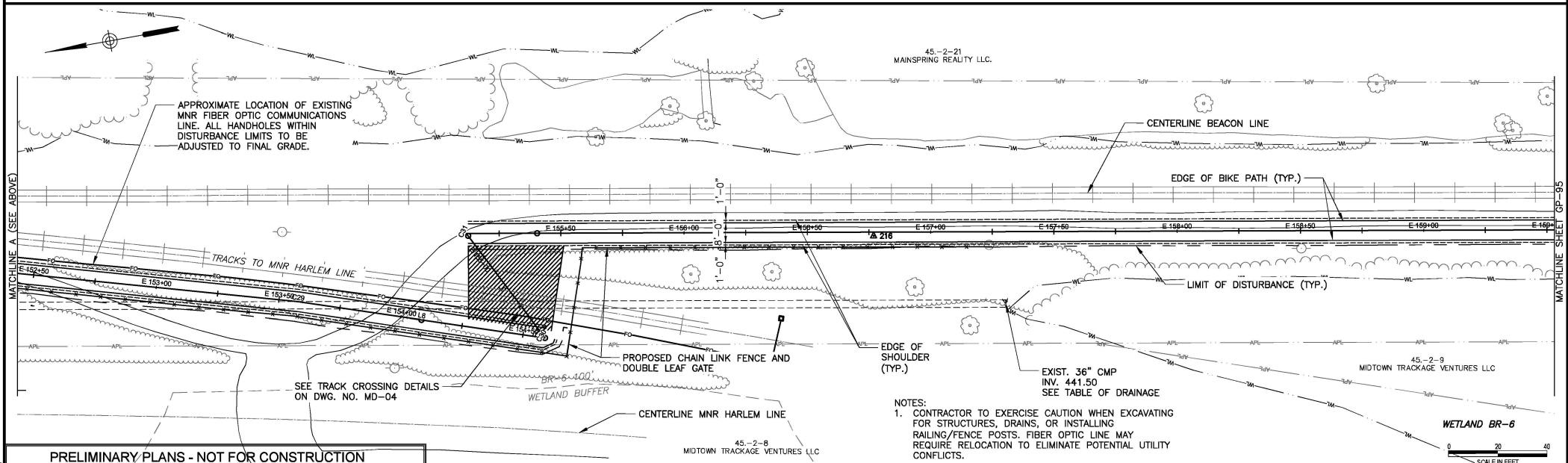
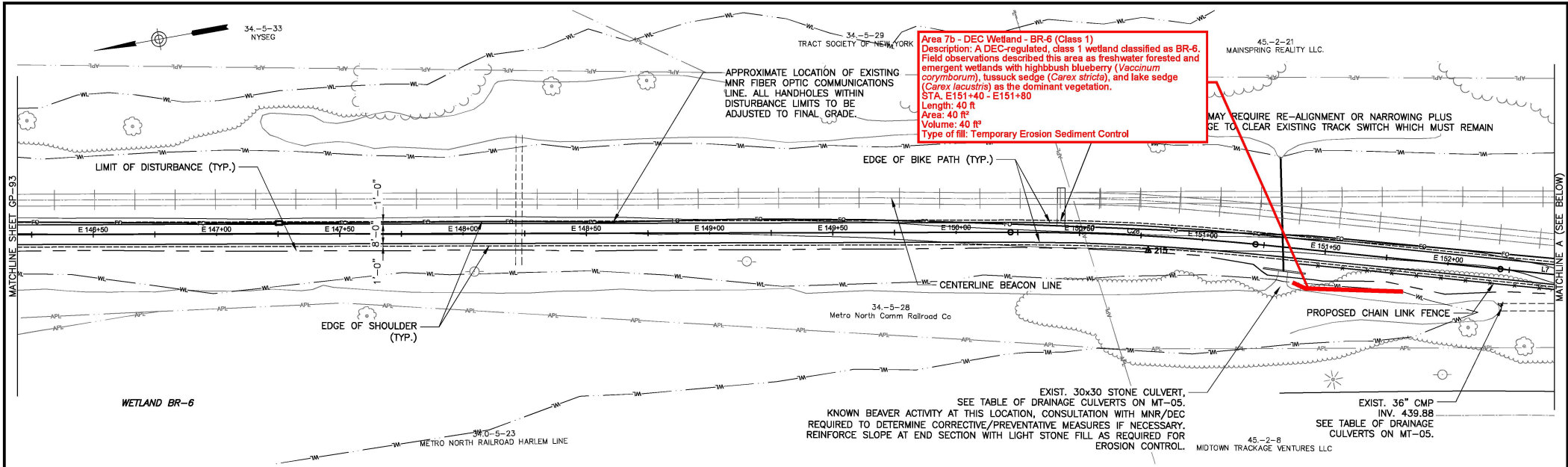


**MTA Metro-North Railroad**  
 420 Lexington Avenue  
 New York, N.Y. 10170

PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 93

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20' DATE: JULY 2018  
 DRAWING NUMBER: GP-93  
 SHEET 273 OF 314

Drawing Path: \\metro-north-rail\proj\161670A - MNR Beacon Line Rail Trail\3\_CADD\AutoCAD\Contract\_DWG\B0392\_cpl\_gm\_General Plans.dwg  
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PRELIMINARY PLANS - NOT FOR CONSTRUCTION

Drawing Path: \\proj\191670A - MNR Beacon Line Rail Trail\3\_CADD\AutoCAD\Contract DWG\B2392\_cpl\_gm\_General Plans.dwg  
 Date: 07/11/2018 10:28:18 AM

REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE

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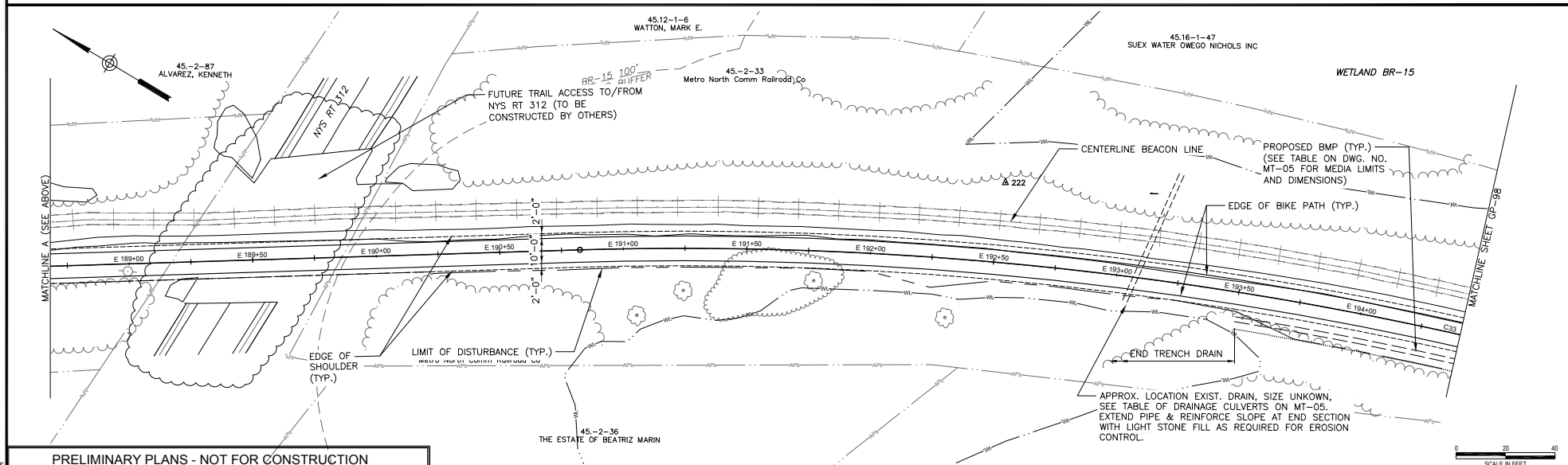
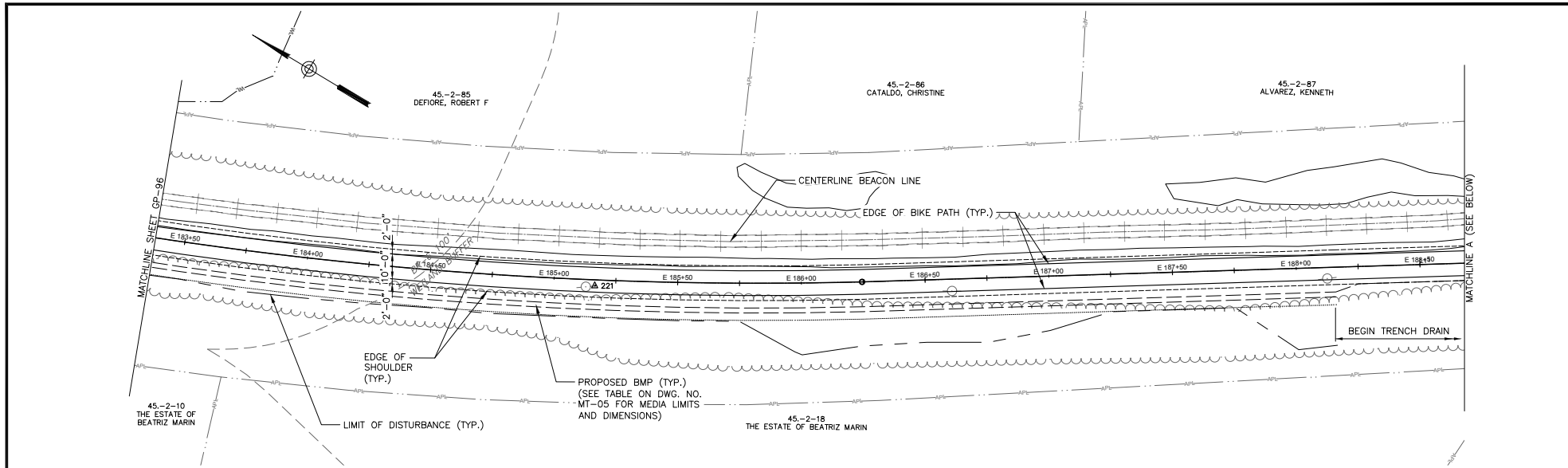
DESIGNED BY: SM  
 DRAWN BY: MS  
 CHECKED BY: DB  
 APPROVED BY: JK



**MTA Metro-North Railroad**  
 420 Lexington Avenue  
 New York, N.Y. 10170

PROJECT: EMPIRE STATE TRAIL - MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 94

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20' DATE: JULY 2018  
 DRAWING NUMBER: GP-94  
 SHEET 274 OF 314

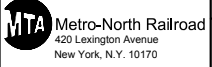


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 DRAWN BY: MS  
 CHECKED BY: DB  
 APPROVED BY: JK



PROJECT: EMPIRE STATE TRAIL - MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER  
 DRAWING TITLE: GENERAL PLAN - 97

P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY  
 SCALE: 1"=20'  
 DATE: JULY 2018  
 DRAWING NUMBER: GP-97  
 SHEET OF 314

Drawing Path Name: L:\Projects\181876720 - MNR Beacon Line Roll Trail\3\_CADD\AutoCAD\Contract DWG\181876720\_gp\_General Plans.dwg  
 Printed: Nov 12, 2018, 2:25pm



Maybrook-Beacon Rail Trail Wetland Impacts Table

01/25/2019

Wetland impacts anticipated in areas identified as having potential suitable bog turtle habitat.

GP or Map #	Amt. of <b>TEMP.</b> wetland impact in acres <u>and</u> sq. ft.	Reason for impact (e.g., silt fence installation, boardwalk installation, other)	Nova Consulting evaluation of habitat (e.g., vegetation type, soil and hydrology info) <b>present at the impact area, and thought about how bog turtles may be impacted at this particular spot</b>	Amt. of <b>PERM.</b> wetland impact in acres <u>and</u> sq. ft.	Reason for impact (e.g., embankment grading for boardwalk approach, embankment fill/grading area, installation of culvert pipe, other)	Nova Consulting evaluation of habitat (e.g., vegetation type, soil and hydrology info) <b>present at the impact area, and thought about how bog turtles may be impacted at this particular spot</b>	Photo reference # (photo depicting area of impact)	Conservation measures at each impact area (e.g., use NYSDEC-permitted monitoring biologist to conduct visual survey, probe, etc.)
GP-09	0.0011Ac (50sf)	Silt Fence Installation	NWI-classified as Palustrine, emergent, persistent, and semi-permanently flooded with dominant vegetation of red maple ( <i>Acer rubrum</i> ), silky dogwood ( <i>Cornus amonum</i> ), and duckweed ( <i>Lemna minor</i> ). USGS soil type is HsB- Hoosic gravelly loam and field observations described the soil as ~20" of mucky sand, with underlying ballast at the 20" depth mark. Not likely bog turtle habitat.	0.0005 Ac (22sf)	Embankment stabilization at existing pipe outfall.	NWI-classified as Palustrine, emergent, persistent, and semi-permanently flooded with dominant vegetation of red maple ( <i>Acer rubrum</i> ) and sugar maple ( <i>Acer saccharum</i> ). USGS soil type is HsB- Hoosic gravelly loam and field observations described the soil as ~20" of mucky sand, with underlying ballast at the 20" depth mark. No impacts to bog turtles as habitat is not suitable	Figure 1	NYSDEC permitted monitoring biologist will perform a visual survey for turtles before and during construction activities; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.
GP-13	0.0114Ac (500sf)	Silt Fence Installation	Unlisted wetland composed of forested shrub wetland with	0.0225Ac (984sf)	Embankment Fill/Grading.	Unlisted wetland composed of forested	No photo available	NYSDEC permitted monitoring biologist

NAN-2018-00153

MAR - 7 2019

			seasonally standing water and a gravelly loam substrate. Impact area has a USGS soil type of HsA – Hoosic gravelly loam. Not likely to be bog turtle habitat.			shrub wetland with seasonally standing water and a gravelly loam substrate. Impact area has a USGS soil type of HsA – Hoosic gravelly loam. No impacts to bog turtles as habitat is not suitable.		will perform a visual survey for turtles before and during construction activities; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.
GP-46	0.0011Ac (50sf)	Silt Fence Installation	DEC-regulated, class 2 wetland classified as PQ-10. Field observations describe this area as forested shrub wetland with semi-permanently flooded emergent areas. Red maple ( <i>Acer rubrum</i> ) and tussock sedge ( <i>Carex stricta</i> ) are the dominant vegetation. USGS soil type is Pc-Natchaug muck and field observations described the soil as ~16" of mucky loam/clay, with underlying mineral soils over ballast below the 16" depth. Not likely to be bog turtle habitat	0.0052Ac (228sf)	Embankment Fill/Grading for Washout Repair of Railroad	DEC-regulated, class 2 wetland classified as PQ-10. Field observations describe this area as forested shrub wetland with semi-permanently flooded emergent areas. Red maple ( <i>Acer rubrum</i> ) and tussock sedge ( <i>Carex stricta</i> ) are the dominant vegetation. USGS soil type is Pc- Natchaug muck and field observations described the soil as ~16" of mucky loam/clay, with underlying mineral soils over ballast below the 16" depth mark. No impacts to bog turtles as habitat is not suitable.		NYSDEC permitted monitoring biologist will perform a visual survey for turtles before and during construction activities; hand probe, where possible; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.
GP-47	0.0011Ac (100sf)	Silt Fence Installation	DEC-regulated, class 2 wetland classified as PQ-10. Field observations describe this area as forested shrub	0.0016Ac (73sf)	Embankment Fill/Grading.	DEC-regulated, class 2 wetland classified as PQ-10. Field observations	Figure 2	NYSDEC permitted monitoring biologist will perform a visual



			wetland with semi-permanently flooded emergent areas. Red maple ( <i>Acer rubrum</i> ) and tussock sedge ( <i>Carex stricta</i> ) are the dominant vegetation. USGS soil type is Pc-Natchaug muck and field observations described the soil as ~16" of mucky loam/clay, with underlying mineral soils over ballast below the 16" depth. Not likely to be bog turtle habitat			describe this area as forested shrub wetland with semi-permanently flooded emergent areas. Red maple ( <i>Acer rubrum</i> ) and tussock sedge ( <i>Carex stricta</i> ) are the dominant vegetation. USGS soil type is Pc- Natchaug muck and field observations described the soil as ~16" of mucky loam/clay, with underlying mineral soils over ballast below the 16" depth mark. No impacts to bog turtles as habitat is not suitable.		survey for turtles before and during construction activities; hand probe, where possible; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.
GP-52	0.0011Ac (50sf)	Silt Fence Installation	NWI-classified as riverine and pond. Field observations described emergent vegetation type surrounding the pond with dominant species including red maple ( <i>Acer rubrum</i> ), lake sedge ( <i>Carex lacustris</i> ), and royal fern ( <i>Osmunda spectabilis</i> ). USGS soil type is a rocky Charlton-Chatfield complex and field observations described the soil as ~6" of organic silty loam, with underlying mix of mineral soils and ballast at the 6" depth mark. Not likely bog turtle habitat.	0.0002Ac (11sf)	Embankment stabilization at existing pipe outfall.	NWI-classified as riverine and pond. Field observations described emergent vegetation type surrounding the pond with dominant species including red maple ( <i>Acer rubrum</i> ), lake sedge ( <i>Carex lacustris</i> ), and royal fern ( <i>Osmunda spectabilis</i> ). USGS soil type is a rocky Charlton-Chatfield complex and field observations described the soil as ~6" of organic silty loam, with underlying mix of mineral soils and ballast at the 6"	Figure 3	NYSDEC permitted monitoring biologist will perform a visual survey for turtles before and during construction activities; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.

						depth mark. No impacts to bog turtles as habitat is not suitable.		
GP-61,62,64	0.0046Ac (200sf)	Silt Fence Installation	DEC-regulated, class 2 wetland classified as PQ-29 which is characterized as riverine and freshwater emergent wetlands. Field observations recorded vegetation dominated by red maple ( <i>Acer rubrum</i> ), shagbark hickory ( <i>Carya Ovata</i> ), ad skunk cabbage ( <i>Symplocarpus foetidus</i> ). USGS soil type is HeB- Haven loam and field observations described the soil as saturated mucky sand with standing water. The impact area is riverine in landscape with standing water and rocky substrate, and sparse vegetation, with skunk cabbage ( <i>Symplocarpus foetidus</i> ) as the dominant vegetation. Not likely bog turtle habitat.	0.0051Ac (223sf)	Embankment Fill/Grading.	DEC-regulated, class 2 wetland classified as PQ-29 which is characterized as riverine and freshwater emergent wetlands dominated by red maple ( <i>Acer rubrum</i> ), shagbark hickory ( <i>Carya Ovata</i> ), ad skunk cabbage ( <i>Symplocarpus foetidus</i> ). USGS soil type is HeB- Haven loam and field observations described the soil as saturated mucky sand with standing water. The impact area is riverine in landscape with standing water and rocky substrate, and sparse vegetation, with skunk cabbage ( <i>Symplocarpus foetidus</i> ) as the dominant vegetation. No impacts to bog turtles as habitat is not suitable.	No photo available	NYSDEC permitted monitoring biologist will perform a visual survey for turtles before and during construction activities; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.
GP-88	0.0022Ac (100sf)	Silt Fence Installation	A DEC-regulated class-1 wetland classified as DP-22 and characterized as a forested shrub wetland with lake sedge ( <i>Carex lacustris</i> ) and tussocks sedge ( <i>Carex stricta</i> ) as dominant vegetation. USGS soil type is ChB-	0.0031Ac (136sf)	Embankment Fill/Grading.	A DEC-regulated class-1 wetland classified as DP-22 and characterized as a forested shrub wetland with lake sedge ( <i>Carex lacustris</i> ) and tussocks	Figure 5 (shows adjacent habitat)	NYSDEC permitted monitoring biologist will perform a visual survey for turtles before and during construction

			<p>Charlton loam and field observations described the soil as saturated mucky sand. Not likely bog turtle habitat in disturbance area but is adjacent to an area of suitable habitat. The impact area is separated from the suitable adjacent bog turtle habitat by a small (about 5- 10 feet in width) access path. The impact area consists of a small, saturated, elongated depression formed by the raised ballasted rail area and natural hill form located on either side. Standing water was present within the impact area at the time of field observations with &gt; 12 inches of muck and a mix of mineral soils and ballast underneath. Silt fences may result in restricted movement or entrapment.</p>			<p>sedge (<i>Carex stricta</i>) as dominant vegetation. USGS soil type is ChB- Charlton loam and field observations described the soil as saturated mucky sand. The impact area is separated from the suitable adjacent bog turtle habitat by a small (about 5- 10 feet in width) access path. The impact area consists of a small, saturated, elongated depression formed by the raised ballasted rail area and natural hill form located on either side. Standing water was present within the impact area at the time of field observations with &gt; 12 inches of muck and a mix of mineral soils and ballast underneath. Not likely bog turtle habitat but is adjacent to an area of suitable habitat.</p>	<p>activities; hand probe, where possible; no equipment, materials, or stockpiles will be stored in or upland of wetlands and suitable habitat.</p>
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**Maybrook-Beacon Rail Trail  
Long-Term Trail Maintenance Plan**

**March 7, 2019**

The trail crosses many areas potentially containing sensitive species. The following shall be done within the trail footprint for pre- and post-construction activities, as well as for long-term maintenance of the trail to avoid significant adverse effect to threatened or endangered species and their habitat:

1. Introduction of invasive species shall be minimized due to the disturbance from construction, maintenance and use of the trail within the habitats via the following measures.
  - a) Equipment shall be washed prior to use on the trail if previously used at another location.
  - b) Any invasive species found along the trail will be removed (clipped, hand-pulled, etc.) from trailside locations.
2. Pesticides, fertilizers, and road salt, along with other potentially harmful products will not be used for long-term maintenance of the trail.
3. Construction and maintenance personnel shall be trained by a Monitoring Biologist, permitted by the New York State Department of Environmental Conservation to handle threatened or endangered species, to readily identify the various threatened or endangered species that exist within the work corridor. Personnel shall implement the following procedures for potential encounters with threatened or endangered species:
  - a) If any federal- or state-listed threatened or endangered species are encountered (*i.e.*, sick, injured) during trail maintenance, the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service, New York Field Office shall be contacted within 24 hours.
  - b) If any maintenance has an adverse impact (*i.e.*, injury due to road collision) on a federal- or state-listed threatened or endangered species, then the New York State Department of Environmental Conservation and the U.S. Fish and Wildlife Service, New York Field Office shall be contacted immediately.
  - c) See attached Education and Encounter Plan
4. Necessary maintenance activity (*e.g.* - replacing a broken or deteriorated fence post, cold patching a pothole in the trail pavement, etc.) will be conducted to avoid harming any threatened or endangered species.
  - a) Personnel shall visually inspect for any threatened or endangered species within the work area prior to conducting any work. The protocol (see Education and Encounter Plan) shall be followed upon encountering threatened or endangered species.
  - b) Maintenance equipment, stockpiles, and equipment shall not be staged within wetland areas, upland of wetlands, or in sensitive species habitat (identified by the Permitted Biologist). All equipment should be staged on the trail.
  - c) Mowing will be limited to trailheads only.
  - d) Mowing shall only be completed during winter hibernation period (October 1<sup>st</sup> through March 31<sup>st</sup>) at trailheads within 300 feet of a wetland (Share #3 ad #5 Trailheads).
  - e) Mowing deck will be kept at least six inches above ground level.
  - f) Trail maintenance personnel will use ATV's or light duty pickup trucks for transportation and will keep vehicles on the path at all times. No off-road activities are permitted.



- g) Hand equipment will be used to weed-whack, clean out drainage ditches and pipes of debris, perform pavement repairs, and/or place additional stone along steep embankments as needed for stabilization.
    - i) Existing trailside ditch rehabilitation/cleaning will be minimal, and will only be done to preserve the integrity of trail in order to avoid ditch silting and/or debris build up resulting in trail flooding, washout or loss of railroad embankment.
      - (1) Ditch work would take place throughout the year during periods of dry weather, and prioritized in the spring, summer, and fall months when the earth is not frozen.
      - (2) Ditches will primarily be stone lined, except for where there are larger grassed swales. Minimal muck is present at the proposed ditch sites.
    - ii) Bog turtles have been known to use ditches at various times of the year (including hibernation); therefore, ditches will not be constructed adjacent to suitable bog turtle habitat. If any ditch work is planned adjacent to suitable habitat any time of year, then a Monitoring Biologist will need to inspect the ditches (perform visual and/or hand probe survey) to determine if bog turtles are present.
  - h) All fence posts shall be replaced in-kind. No new fence posts shall be installed in the wetland or suitable habitat.
    - i) Installation of permanent fencing may be installed to discourage trail users from wandering off the trail and into critical and suitable habitat areas. The fencing shall be installed along critical and suitable habitat areas extending 25 feet beyond the habitat limits and 2 feet from the edge of the trail.
      - (1) Fencing would run parallel to ditches and should never cross a ditch or swale.
    - ii) If installation occurs during the turtle active season (between April 1 and September 31), then a Monitoring Biologist will be on site to make sure there are no bog or Blanding's turtles in the work area;
  - i) Tree removal should only be conducted between November 1<sup>st</sup> and March 31<sup>st</sup>, unless if required for emergency hazard tree removal.
5. Signs will be installed as needed to convey important information to trail users:
- a) No signs shall be posted that directs trail users to location of habitats or the exact type of threatened or endangered species that may exist.
  - b) Signs shall direct trail users to not touch, trap or feed any wildlife within the trail corridor, and to not wonder off the trail, explaining the importance of protecting natural environment along the path.
  - c) Signs should prohibit the capture and possession of any wildlife species.
  - d) Signs should restrict pet activities, directing trail users to keep pets on a leash and on the trail.

## MEASURES TO TAKE DURING AN ENCOUNTER

- All personnel working at the site will be trained by a DEC-Permitted, qualified Monitoring Biologist to be able to identify bog turtles and Blanding's turtles and what procedures to follow upon encounter of a turtle.
- It is illegal to take, import, transport, possess, or sell an animal listed as threatened without a license.
- If a turtle is seen within or near the work area, stop all work immediately and notify the Biologist. If the turtle does not move along on its own or is found within the enclosed work area, the Monitoring Biologist will safely move the turtle to a wetland in the direction the turtle was traveling in.
- If the turtle was found within the enclosed work area, work cannot commence until fencing is inspected by, and signed off on, by the Monitoring Biologist.
- The Project Engineer will provide educational materials for all contractors and residents to inform of the potential for Bog turtle or Blanding's Turtle encounters and what to do if a turtle is encountered to ensure the animals are not collected or persecuted.
- The USFWS and the NYSDEC shall be notified within 24 hours of encounter to report location, project name, and explanation of the incident.

In case of a sighting, please notify the following within 24 hours of encounter:



### Bog Turtle Encounter:

Contact Noelle Rayman  
USFWS New York Field Office  
(607)-753-9334 or email [noelle\\_rayman@fws.gov](mailto:noelle_rayman@fws.gov)  
**AND**  
NYSDEC Wildlife Office  
(845)-256-3098 or email [Wildlife.R3@dec.ny.gov](mailto:Wildlife.R3@dec.ny.gov)  
**AND** Michael Nowicki (203-910-4716)



### Blanding's Turtle Encounter:

NYSDEC Wildlife Office  
(845)-256-3098 or email [Wildlife.R3@dec.ny.gov](mailto:Wildlife.R3@dec.ny.gov)  
**AND** Michael Nowicki (203-910-4716)

**PLEASE: Provide the Location, Project Name, and an Explanation of the incident. THANK YOU!**



MAYBROOK TRAILWAY  
DUTCHESS &  
PUTNAM COUNTY

## MAYBROOK TRAILWAY

# Education and Encounter Plan



Bog Turtle



Blanding's Turtle

This pamphlet is to be distributed to all construction workers at the project site by the Project Engineer **after initial training by a DEC-Permitted, Qualified Monitoring Biologist**. Its purpose is to educate the workers on the identification and encounter procedures for endangered and threatened species in the project area.

*Metro- North Railroad*



**Bog Turtles:** Bog Turtles are New York's smallest turtles, with an maximum shell length of 4.5 inches. A bright yellow or orange blotch (like the one in the picture above) on each side of its head and neck are a distinctive feature of this species.



**Blanding's Turtles:** Blanding's Turtles are a medium sized turtle that can be distinguished by its bright yellow chin and throat (see picture) The average shell length is 7 to 9 inches.

## BOG TURTLE FACTS

Federally Endangered, NYS Threatened

- The Bog turtle is New York's smallest turtle, reaching a maximum length of 4.5 inches. A bright yellow or orange blotch on each side of its head and neck are a distinctive feature of this species. The body color is dark with an orange-red wash on the inside of the legs of some individuals. The carapace "upper shell" is domed and somewhat rectangular, often with prominent rings on the shell plates.
- This is a semi-aquatic species, preferring habitat with cool, shallow, slow-moving water, deep soft muck soils, and tussock-forming herbaceous vegetation. Bog turtles have also been known to travel over land.
- In New York bog turtles often hibernate communally with other bog turtles and with spotted turtles. Generally both the air and water temperature must exceed 50 degrees F for the turtle to become active. Mating occurs primarily in the spring but may also occur in the fall and may be focused in or near their winter shelter.
- Although generally very secretive, the bog turtle can be seen basking in the open, especially in the early spring just after emerging from hibernation. It is an opportunistic feeder, eating what it can get, although it prefers invertebrates such as slugs, worms, and insects. Seeds, plant leaves, and carrion are also included in its diet.

## BLANDING'S TURTLE FACTS

NYS Threatened

- The Blanding's turtle is a medium sized turtle with an average shell length of approximately seven to nine inches and a maximum length of 10 inches. A distinguishing feature of this turtle is the bright yellow chin and throat.
- Mating probably occurs in April and early May with nesting beginning in early June and lasting throughout the month.
- The Blanding's turtle overwinters under or near water, in mud or under vegetation or debris. During the nesting season, a female Blanding's turtle may be found more than a kilometer from where it hibernated.
- Blanding's turtles take 18-22 years to reach sexual maturity and may live to be 70 years old.
- Blanding's turtles move through and/or utilize several habitat types. Aquatic/wetland habitats are used for hibernation, mating, feeding, shelter, estivating, and basking, while terrestrial habitats are used for nesting and seasonal migrations, as well as estivating, and basking. Although there is variation throughout the geographic distribution of the Blanding's turtle, terrestrial habitats can often be well over ½ mile from core wetland habitats, and an individual turtle's home.

# **EXHIBIT C**



# FRA Rail Map Displaying the Beacon Line in New York





# EXHIBIT D

## PHASE I ARCHEOLOGICAL INVESTIGATION

### Metro-North Beacon Rail Trail

Towns of East Fishkill, Beekman, Pawling, Patterson, and Southeast  
Dutchess and Putnam Counties, New York

HAA # 5176-31  
OPRHP 17PR08729

**Submitted to:**

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JULY 2018

## MANAGEMENT SUMMARY

SHPO Project Review Number: 17PR08729

Involved State and Federal Agencies: *US Army Corps of Engineers (Corps)*

Phase of Survey: *LA/IB*

## LOCATION INFORMATION

Municipalities: *Towns of East Fishkill, Beekman, Pawling, Patterson, and Southeast*

Counties: *Dutchess and Putnam*

## SURVEY AREA

Total Trail Length: *22.82 miles*

### Trailhead #1

Length and Width: *124 x 63 m (407 x 206 ft)*

Acreeage: *0.97 acre (0.39 ha)*

### Trailhead #2

Length and Width: *82 x 30 m (270 x 100 ft)*

Acreeage: *0.61 acre (0.25 ha)*

### Trailhead #3

Length and Width: *51 x 98 m (168 x 322 ft)*

Acreeage: *1.24 acre (0.50 ha)*

### Trailhead #4

Length and Width: *92 x 125 m (303 x 410 ft)*

Acreeage: *2.84 acres (1.15 ha)*

### Trailhead #5

Length and Width: *79 x 41 m (260 x 135 ft)*

Acreeage: *0.81 acre (0.33 ha)*

## ARCHEOLOGICAL SURVEY OVERVIEW

Number and Interval of Shovel Tests: *50 tests at 15 meters (50 ft)*

Number and Size of Units: *n/a*

Width of Plowed Strips: *n/a*

Surface Survey Transect Interval: *n/a*

## RESULTS OF ARCHEOLOGICAL SURVEY

Number and Name of Precontact Sites Identified: *none*

Number and Name of Historic Sites Identified: *1 Bullet Hole Rd Depot/Rail yard Site*

Number and Name of Sites Recommended for Phase II or Avoidance: *none*

## RECOMMENDATIONS

No significant archeological deposits or sites were identified by the Phase I archeological field reconnaissance of proposed trailheads. No further archeological work is recommended.

Report Authors: *Adam Luscier, Elizabeth Gregory, Matthew J. Kirk R.P.A.*

Date of Report: *June 2018*

## **ABSTRACT**

The proposed Beacon Line Rail Trail Project is a shared-use bicycling and pedestrian path that will be constructed within a 23-mile section of the Metro-North Railroad (MNR) Beacon Line Corridor from Brewster, NY to Hopewell Junction, New York. OPRHP did not recommend archeology for the trail itself, however did recommend a Phase I investigation for five (5) trailheads that will be located outside of the disturbed/filled railroad bed.

The Phase I investigation of the trailheads included a sensitivity assessment and the excavation of 50 shovel tests. No significant archeological deposits were discovered.

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## Photograph List

- Photo 1. View facing southeast along South Greenhaven Road as it cross the Metro-North railroad.
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- Photo 3. View of part of the concrete platform/loading dock that covers the southeast part of the Trailhead 1 APE.
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- Photo 6. View as Bard Road extends east through Trailhead 2 on the right and left.
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- Photo 16. View of the existing railroad as it extends north passed the Trailhead 5 APE on the left.
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## **PHASE I CULTURAL RESOURCES SURVEY**

### **1 Introduction**

Hartgen Archeological Associates, Inc. (Hartgen) conducted a Phase I archeological investigation for the proposed Metro-North Beacon Rail Trail (Project) located in the Towns of East Fishkill, Beekman, Pawling, Patterson, and Southeast, Dutchess and Putnam Counties, New York. The Project requires approvals the US Army Corps of Engineers (Corps).

This investigation was conducted to comply with Section 106 of the National Historic Preservation Act and will be reviewed by the New York State Office of Parks, Recreation and Historic Preservation (OPRHP). The investigation was conducted according to the New York Archaeological Council's *Standards for Cultural Resource Investigations and the Curation of Archaeological Collections* (1994), which are endorsed by OPRHP. This report has been prepared according to OPRHP's *State Historic Preservation Office (SHPO) Phase I Archeological Report Format Requirements* (2005).

### **2 Project Information**

#### **2.1 Project Location**

The proposed Beacon Line Rail Trail will be a shared-use bicycling and pedestrian path running along a 23-mile section of the Metro-North Railroad (MNR) Beacon Line Corridor from Brewster, NY to Hopewell Junction, New York. On this route the Project will pass through the Towns of East Fishkill, Beekman, and Pawling in Dutchess County, and the Towns of Patterson and Southeast in Putnam County.

This archeological study was undertaken of five (5) trailhead locations that are proposed along the route outside of the existing railroad bed at S Green Haven Rd. in Beekman (Trailhead #1), on Bard Road in Beekman (Trailhead #2), near the intersection of Camp Rd. and Rt. 292 in Pawling (Trailhead #3), near the intersection of Bullet Hole Rd. and Rt. 164 in Patterson (Trailhead #4), and near the trail's intersection with Pumphouse Rd. in the Town of Southeast (Trailhead #5)(Map 1).

#### **2.2 Description of the Project**

The Beacon Line Rail Trail project will become a key component of the Empire State Trail system by connecting a gap between the Putnam Trailway and the Maybrook Trailway, and to the north, the Dutchess Rail Trail.

The proposed Project will follow a section of the Beacon Line that is not currently active. Construction will include a 10 foot (3 m) paved path with 2 foot (0.6 m) wide shoulders, within the existing Beacon Line right-of-way. Each trailhead location will include a parking area, informational signage and a footpath to the trail (Map 2a-e).

The OPRHP issued a letter of No Effect on historic properties for the proposed trail that will be located within the existing the railroad bed (correspondence dated 10 January 2018). However, OPRHP recommended Phase I archeological investigation for the five (5) proposed trailheads that will be located outside of the existing railroad bed (correspondence dated 7 March 2018).

### 2.3 Description of the Area of Potential Effects (APE)

The area of potential effects (APE) includes all portions of the property that will be directly altered by the proposed undertaking. As described above, this Phase I archeological investigation focused on that five (5) trailheads that have been proposed along the Project. Each of the individual APEs measure as follows:

#### Trailhead #1

Length and Width: 124 x 63 m (407 x 206 ft)  
Acreage: 0.97 acre (0.39 ha)

#### Trailhead #2

Length and Width: 82 x 30 m (270 x 100 ft)  
Acreage: 0.61 acre (0.25 ha)

#### Trailhead #3

Length and Width: 51 x 98 m (168 x 322 ft)  
Acreage: 1.24 acre (0.50 ha)

#### Trailhead #4

Length and Width: 92 x 125 m (303 x 410 ft)  
Acreage: 2.84 acres (1.15 ha)

#### Trailhead #5

Length and Width: 79 x 41 m (260 x 135 ft)  
Acreage: 0.81 acre (0.33 ha)

## 3 Environmental Background

The environment of an area is significant for determining the sensitivity of the Project for archeological resources. Precontact and historic groups often favored level, well-drained areas near wetlands and waterways. Therefore, topography, proximity to wetlands, and soils are examined to determine if there are landforms in the Project that are more likely to contain archeological resources. In addition, bedrock formations may contain chert or other resources that may have been quarried by precontact groups. Soil conditions can provide a clue to past climatic conditions, as well as changes in local hydrology.

### 3.1 Present Land Use and Current Conditions

All of the proposed trailheads are located immediately adjacent to the areas where the railroad crosses main roads. Each area is bounded on two sides by the railroad itself and an adjacent road. The sides that border the railroad are cut and/or filled. Trailhead 1 and Trailhead 4 contain concrete foundations and platforms of former axillary structures of the railroad; Trailhead 4 is heavily disturbed. All of the proposed areas are currently wooded.

### 3.2 Soils

Soil surveys provide a general characterization of the types and depth of soils that are found in an area. This information is an important factor in determining the appropriate methodology if and when a field study is recommended.

Table 1. Soils in Project

Symbol	Name	Depth	Textures	Slope	Drainage	Landform
<b>Trailhead #1: S Green Haven Rd., Beekman, NY</b>						
Fr	Fredon silt loam	0-23 cm (0-9 in) 23-79 cm (9-31 in) 79-178 cm (31-70 in)	Silt loam Very fine sandy loam Stratified very gravelly sand to loamy fine sand	0-3%	Somewhat poorly drained	Depressions

Symbol	Name	Depth	Textures	Slope	Drainage	Landform
HsB	Hoosic gravelly loam, undulating	0-23 cm (0-9 in) 23-61 cm (9-24 in) 61-178 cm (24-70 in)	Gravelly loam Very gravelly sandy loam Extremely gravelly loamy sand	1-6%	Somewhat excessively drained	Deltas, outwash plains, terraces
SkB	Stockbridge silt loam	0-15 cm (0-6 in) 15-58 cm (6-23 in) 58-203 cm (23-80 in)	Silt loam Silt loam Silt loam	3-8%	Well drained	Till plains, drumlinoid ridges, hills
<b>Trailhead #2: Bard Rd., Beekman, NY</b>						
HoD	Hollis-Chatfield-Rock outcrop complex, hilly	0-8 cm (0-3 in) 8-38 cm (3-15 in) 38-48 cm (15-19 in)	Loam Loam Unweathered bedrock	15-30%	Somewhat excessively drained	Ridges, hills
<b>Trailhead #3: Rt. 292, Pawling, NY</b>						
ChC	Charlton fine sandy loam	0-18 cm (0-7 in) 18-56 cm (7-22 in) 56-165 cm (22-65 in)	Fine sandy loam Gravelly fine sandy loam Gravelly fine sandy loam	8-15%	Well drained	Ridges, hills, ground moraines
ChD	Charlton fine sandy loam	0-18 cm (0-7 in) 18-56 cm (7-22 in) 56-165 cm (22-65 in)	Fine sandy loam Gravelly fine sandy loam Gravelly fine sandy loam	15-25%	Well drained	Ridges, hills, ground moraines
<b>Trailhead #4: Bullet Hole Rd. and Rt. 164, Patterson, NY</b>						
CrC	Charlton-Chatfield complex, very rocky	0-5 cm (0-2 in) 5-10 cm (2-4 in) 10-69 cm (4-27 in) 69-165 cm (27-65 in)	Moderately decomposed plant material Fine sandy loam Gravelly fine sandy loam Gravelly fine sandy loam	0-15%	Well drained	Ridges, hills
<b>Trailhead #5: Pumphouse Rd., Southeast, NY</b>						
LcB	Leicester loam, stony	cm (0-8 in) cm (8-26 in) cm (26-60)	Loam Sandy loam Sandy loam	3-8%	Somewhat poorly drained	Hills, till plains, ridges

### 3.3 Bedrock Geology

The bedrock geology for each trailhead is as follows.

Trailhead #1: The bedrock underlying Trailhead #1 is of the metamorphic Wappinger Group (OCw), and is known to bear Rochdale chert, from the Rochdale Limestone formation, in Dutchess County.

Trailhead #2: The bedrock underlying Trailhead #2 is Poughquag Quartzite (Cpg). Quartzites in the area were used by Native Americans for making stone tools, as evidenced by Site 07903.000113.

Trailhead #3: The bedrock underlying Trailhead #3 consists of Biotite-quartz-plagioclase paragneiss (bqpc), found in southeastern New York. This formation is not chert bearing.

Trailhead #4: The bedrock underlying Trailhead #4 is Stockbridge Marble (OCst), and is not chert bearing.

Trailhead #5: The bedrock underlying Trailhead #5 is Amphibolite, pyroxenic amphibolite (am), categorized as “Metamorphic rocks of uncertain origin, Adirondacks.” This formation is not known to be chert bearing in Putnam County.

### 3.4 Physiography and Hydrology

Steeply sloped areas are considered largely unsuitable for human occupation. As such, the standards for archeological fieldwork in New York State generally exclude areas with a slope in excess of 12% from archeological testing (NYAC 1994). Exceptions to this rule include steep areas with bedrock outcrops, overhangs, and large boulders that may have been used by precontact people as quarries or rock-shelters. Such

areas may still warrant a systematic field examination. According to the soil maps for these areas, Trailheads #2 and #3 may contain areas of excessive slope.

All five trailheads are located less than 0.25 mile from water sources.

Trailhead #1 is located 0.16 mile southwest of a small lake or pond and 125 feet northeast of an unnamed tributary of Frog Hollow Brook and another associated small lake or pond.

Trailhead #2 is located 485 feet southwest of Whaley Lake Stream, and is also within a mile of several other small ponds and streams.

Trailhead #3 is located 120 feet east of a small pond, 500 feet west of another small pond, and also nearby several drainages of the Beaver Brook and their associated ponds.

Trailhead #4 is located within the Muddy Brook swamp, immediately west of the Muddy Brook, and approximately 0.25 mile west of Turtle Pond.

Trailhead #5 is located adjacent to Lake Tonetta, approximately 300 feet west of the lake, and 35 feet south of the Tonetta Brook, which continues to the northwest of the Trailhead #5 APE.

## 4 Documentary Research

Hartgen conducted research using the New York State Cultural Resource Information System (CRIS), which is maintained by the New York SHPO and the Division for Historic Preservation DHP within OPRHP. CRIS contains a comprehensive inventory of archeological sites, State and National Register (NR) properties, properties determined eligible for the NR (NRE), and previous cultural resource surveys.

### 4.1 Archeological Sites

An examination of CRIS identified 48 reported archeological sites within one mile (1.6 km) of the total Project. Twelve of these were within one mile of the five trailheads (**Error! Reference source not found.**). Previously reported archeological sites provide an overview of both the types of sites that may be present in the Project and relation of sites throughout the surrounding region. The presence of few reported sites, however, may result from a lack of previous systematic survey and does not necessarily indicate a decreased archeological sensitivity within the Project.

Native American sites are prevalent throughout the Beacon and Fishkill area. The section of the Hudson River, close to the base of the Shawangunk Mountains, was plentiful with resources. The river was a travel route and food source and the mountains contained rockshelters and lithic sources (quartzite and chert) for making stone tools.

Table 2. Archeological sites within one mile (1.6 km) of each trailhead

OPRHP Site No.	NYSM Site No.	Site Identifier	Description	Proximity to Project
<b>Trailhead # 1</b>				
02702.000017	11045	Green Haven Disciplinary Barracks Dump Site	Historic dump site c. 1942-47, formerly owned by the U.S. Department of the Army. Determined not NR eligible	3,475 feet west, Beekman
02702.000018	11046	Green Haven Winter Site	Late 19 <sup>th</sup> Century historic site with possible foundations	2,950 feet west, Beekman
02702.000019	11047	The Green Haven Correctional Facility I Site	Precontact site containing 1-2 chert flakes, and chert and quartz pieces. Determined not NR eligible	2,380 feet northwest, Beekman
02702.000032	-	Option 2 Midden	Historic midden possibly associated with Green Haven Disciplinary Barracks	4,600 feet northwest, Beekman
-	3143	ACP Dutch 11	Described as a "cache of flint"	3,980 feet northwest, Beekman



OPRHP Site No.	NYSM Site No.	Site Identifier	Description	Proximity to Project
-	7765	Green Haven Prison	General location of a precontact site identified during a different survey, on the Greenhaven Prison grounds	350 feet northeast, Beekman
<b>Trailhead # 2 (two sites just over one mile from Trailhead 3)</b>				
-	10404	Site 1	Historic barn site	5,895 feet southeast, Pawling
-	3142	ACP Dutch 10	Described as "recent relics"	5,590 feet northwest, Beekman
<b>No sites within a mile of Trailhead # 3</b>				
<b>Trailhead # 4</b>				
-	5949	Muddy Brook Rockshelter, Brewster	Precontact rockshelter	2,800 feet northeast, Patterson
07903.000113	-	Cornwall Hill Estates Archeological Site	Prehistoric quartz/quartzite quarry site with two associated lithic reduction/camp areas on top of bedrock outcrop. Recovered artifacts include three broken projectile points, quartz hatchet, bifaces, core, adze-like tool, scrapers and serrated knives, burins, and hammerstones	4,010 feet northeast, Patterson
<b>Trailhead # 5</b>				
07906.000012	-	Brewster Heights Site (Loci A-C)	Precontact late Archaic, Sylvan Lake camp site	4,980 feet southwest, Southeast
07906.000055	-	Sherwood House / Highland Prehistoric Site	Early to mid-19 <sup>th</sup> c. farmhouse with assorted ceramics and kaolin pipe bowl fragments; Precontact lithic workshop containing chert and quartz flakes	4,075 feet northwest, Southeast

#### 4.2 Historic Properties

An examination of CRIS identified one NR property, no NRE properties, no properties previously determined to be ineligible, and no properties of undetermined status within the Project (Table 3). However, the Taconic State Parkway (02NR05036) is located over 3.5 miles west of Trailhead #1, and does not impact the historic archeological sensitivity of any of the five trailheads.

Table 3. Inventoried properties within the Project

USN	Property Name	Status	Description	Location and Proximity to Project
02NR05036	Taconic State Parkway	NR	Kensico Dam Plaza to I-90	Intersects Project in East Fishkill

#### 4.3 Previous Surveys

A review of CRIS identified five previous surveys within the immediate vicinity of the Project (Table 4).

Table 4 Relevant previous surveys within or adjacent to the Project

Project/Phase	Summary	Citation
Martin Road Subdivision, Stage 1	This survey was completed on Martin Rd. in East Fishkill, Hopewell Junction, near the northwestern section of the trail. No archeological sites were identified. This project was not located in the vicinity of any of the 5 trailheads.	(Jay R. Cohen 2000)

Project/Phase	Summary	Citation
Proposed Greenhaven Correctional Facility Utility Line, Phase I	Linear project running north from the Green Haven Correctional Facility (GCF) to the GCF farm, across Rt. 216. No precontact or historic archeological sites were identified, and no further work was recommended.	(Historical Archaeological Zoological Explorations 2012)
MTA Police Canine Training Facility, Phase IA/IB	A single button, c. early-19 <sup>th</sup> century, was recovered from a farm field. No other archeological resources were recovered, and no further archeological investigations were recommended.	(Historical Perspectives 2012)
Farm to Market Road Subdivision, Phase IB	The survey identified two prehistoric sites (Farm to Market prehistoric site and Field and Forest prehistoric site) and two historic sites (C. Snow site and J.T. Barnes site). The southern boundary of this project was located approximately 1.25 miles northeast of Trailhead #5.	(CITY/SCAPE: Cultural Resource Consultants 2014)
Hopewell Precision Site, Stage IB	One historic site (91 Clove Branch Rd Site) was identified, containing late 18 <sup>th</sup> -20 <sup>th</sup> c. domestic artifacts. No precontact sites were identified. The southernmost point of this project was located approximately 0.5 mile north of the northernmost portion of the current Project. This project was not located in the vicinity of any of the 5 trailheads.	(CITY/SCAPE: Cultural Resource Consultants 2014)

The southernmost point of the linear Proposed Greenhaven Correctional Facility Utility Line project was located approximately 800 feet northwest of Trailhead #1 (H.A.Z.Ex. 2012). No significant cultural materials were recovered during this survey, and no further work was recommended.

The MTA Police Canine Training Facility project (Historical Perspectives 2012) was located approximately 4,050 feet southwest of Trailhead #1. No significant precontact or historic archeological artifacts or features were noted, and no further work was recommended.

None of the other surveys were in the vicinity of the five trailheads.

## 5 Historical Map Review

Historic maps documenting 240 years of history and change throughout the area were reviewed for this Project. The 1779 Sauthier map shows early land patents and that development shortly after the Revolution was scattered and sparse across the local landscape. By the mid-1800s, many of the exiting road systems and municipal boundaries had been established. Farms were scattered throughout the landscape and various mechanic shops and stores were located near the town centers.

Many of the railroad systems that became an integral part of New York's infrastructure were also established by mid-1800s. The New York and Harlem Railroad was opened in sections between the 1830s and 1860s and connected Lower Manhattan with Harlem and areas beyond. It passed in the vicinity of Trailheads 1, 2, and 5 and passed immediately west of the Trailhead 4. Sections of this historic line are today part of the Metro-North system.

In the 1860s, Trailhead 3 was located near a proposed section of the Boston, Hartford and Erie line. This line opened in the 1870s, connecting southern New York with New England. Sections of this historic line have also been assimilated into the Metro-North system (Maps 4a-d).

There are no map-documented structures (MDS) in the APEs for Trailheads 1, 2, 3 or 5. Trailhead 4 however, encompasses an area that was the location of a depot/rail yard along the New York and Harlem Railroad. The historic line itself crosses through the west side of the APE and is abandoned. Today, an active section of the Metro-North line passes on the immediate east side of the APE (Map 4d).

## 5.1 Map-Documented and Existing Structures

Map-documented structures—those structures that are depicted on one or more maps—are distinguished using the abbreviation “MDS” after the structure number.

There are three (3) mapped documented structures within the Trailhead 4 APE, as shown in Table 5.

Table 5. Summary of map-documented and existing structures within the Project/APE

Structure #	Trailhead #	(O'Connor 1854)	(Beers 1867)	(USGS 1981b)	Extant (2018)
1	4	X “Penny & Co.”	X “Depot”		
2	4		X “Depot”		
3	4		X “Depot”		

## 6 Archeological Sensitivity Assessment

The New York Archaeological Council provides the following description of archeological sensitivity:

Archaeologically sensitive areas contain one or more variables that make them likely locations for evidence of past human activities. Sensitive areas can include places near known prehistoric sites that share the same valley or that occupy a similar landform (e.g., terrace above a river), areas where historic maps or photographs show that a building once stood but is now gone as well as the areas within the former yards around such structures, an environmental setting similar to settings that tend to contain cultural resources, and locations where Native Americans and published sources note sacred places, such as cemeteries or spots of spiritual importance (NYAC 1994:9).

### 6.1 Precontact Archeological Sensitivity

The precontact sensitivity of an area is based on proximity to previously documented precontact archeological sites, known precontact resources (e.g. chert outcrops), and physiographic characteristics such as topography and drainage. Generally, areas in the vicinity of streams and wetlands are considered to have elevated sensitivity for sites associated with Native American use or occupation because they presented potential food and water sources as well as transportation corridors. All five of the proposed trailheads are located within ¼ mile of water sources, indicating an elevated precontact archeological sensitivity.

Three precontact sites are located within a mile of Trailhead 1. This APE has a high precontact archeological sensitivity.

There are no precontact sites located within a mile of Trailhead 2 or Trailhead 3. These APEs have a moderate precontact sensitivity.

Two precontact sites are located within one mile of Trailhead 4. However the APE is located on artificial land that has been extensively disturbed. Sensitivity is considered low.

There are two precontact archeological sites within one mile of Trailhead 5. This APE has a high precontact archeological sensitivity.

### 6.2 Historic Archeological Sensitivity

The historic sensitivity of an area is based primarily on proximity to previously documented historic archeological sites, map-documented structures, or other documented historical activities (e.g. battlefields).

Trailhead 1 did not contain any MDSs, and is located on the outskirts of Green Haven. However, it was also located in the vicinity of the mapped Flagler house seen on the 1858 and 1867 maps (across the street from the APE) and three historic sites are located within a mile of this APE. The historic archeological sensitivity for Trailhead 1 is low to moderate.

Historically, Trailhead 2 was also located along an established road but with little development in the vicinity. A historic barn site is located slightly over one mile from this APE. Trailhead 2 has a low historic archeological sensitivity.

Trailhead 3 did not contain any historic MDSs, but was located near an intersection of Reynoldsville containing several homes and a school. There are no historic archeological sites within one mile of this APE. Trailhead 3 has a low to moderate historic sensitivity.

Trailhead 4 has a high historic archeological sensitivity due to the map-documented structures within the APE.

Trailhead 5 was historically located in an undeveloped area adjacent to Tonetta Lake, although an 1854 map depicts a pathway to the APE and an 1867 map depicts a Gate House at the mouth of the river at Toneetta Lake. The historic archeological sensitivity for this APE is low to moderate.

## **7 Archeological Potential**

Archeological potential is the likelihood of locating intact archeological remains within an area. The consideration of archeological potential takes into account subsequent uses of an area and the impact those uses would likely have on archeological remains.

According to the soil maps for these areas, Trailheads #2 and #3 contain areas of excessive slope and therefore have a lower archeological potential. Trailhead 2 (which contains part of a parking lot and driveway) and Trailhead 4 (which experienced several episodes of historic development) have a moderate archeological potential. The remaining three trailheads appear to have remained undeveloped and, therefore, maintain a high archeological potential.

## 8 Archeological Survey

Each trailhead proposed for testing is located in a wooded and in an upland setting. The most effective means for determining the presence or absence of archeological sites at each location was through the hand-excavation of shovel tests. In all, 50 tests were excavated.

### 8.1 Methodology

#### 8.1.1 Shovel Testing

Shovel tests were excavated at a standard interval of 15 meters (50 ft). Each shovel test was 40 centimeters (16 in) in diameter. All excavated soil was passed through 0.25-inch hardware mesh and examined for both precontact (Native American) and historic artifacts. The stratigraphy of each test was recorded including the depth, Munsell color, soil description, and artifact content (Munsell Color 2000). The location of each shovel test was plotted on the project map. Test excavation was photographed.

#### 8.1.2 Artifacts and Laboratory

As general procedure, all precontact (Native American) cultural material identified during the fieldwork are collected. Significant historic artifacts such as glass, ceramics, food remains, hardware, and miscellaneous items are collected. Coal, ash, cinder, brick, and modern materials are noted. Any artifacts collected are placed in paper or plastic bags labeled by provenience and inventoried in a bag list. Bags are numbered in the field and transported to the Hartgen laboratory in the Town of North Greenbush, Rensselaer County, New York, for processing.

Shovel test records and other provenience information were entered into a Microsoft *Access* database (Appendix 1). Artifacts were cleaned and cataloged. Cataloging entailed entering artifact provenience information, counts, weights, and descriptive information into the database (Appendix 2).

### 8.2 Results

The Phase IB archeological field reconnaissance was conducted on June 25, 2018. The field crew consisted of Adam Gersten, Eli Smith and Joe Rynasko. The weather was clear and cool and the artifact visibility was excellent.

Trailhead #1 borders the north side of the Metro-North Railroad at it intersects with South Greenhaven Road. It includes  $\pm 0.97$  acres (0.39 ha) of land that will encompass a wooded corridor along the railroad and a small portion of an adjacent open field. An unnamed tributary of Frog Hollow Brook meanders along the west side of the field. The south and east sides of the APE are defined by a deep, artificial cut of the railroad and a drainage ditch along the road. The south corner of the APE is covered by a large concrete platform (abandoned railroad loading dock).

Archeological testing (Tests 1-15) recorded disturbed cut and fill soils along the railroad and the loading dock, while the rest recorded typical plowzone-subsoil horizons. The soils were rocky. Tests 1, 3, 8 and 10 recovered modern bottle glass and other 20<sup>th</sup>-century refuse. These are not considered significant archeological deposits (Photos 1-4 and Map 2a).

Trailhead #2 borders the northeast side of the railroad, encompassing  $\pm 0.61$  acres (0.25 ha) of wooded land on both sides of Bard Road. Bedrock is shallow and the terrain very steep. Tests 16-21 were excavated across the flattest part of the APE parallel with the railroad. Soils included a thin, humic forestmat over silt subsoil. Bedrock was encountered at various depths in each test. Test 16 recovered modern refuse (Photos 5-7 and Map 2b).

Trailhead #3 is located on a steep hill above the east side of the railroad. The east side of the APE borders the Route 292 road berm and the northeast part is covered by a gravel parking area. Tests 22-26 excavated outside of the sloped and disturbed areas did not identify any cultural materials (Photos 8-10 and Map 2c).



Trailhead #4 will encompass about 2.84 acres (1.15 ha) of artificial land between Route 146, Bullet Hole Road and the Metro-North Railroad. The APE sits in the Muddy Brook swamp at the base of uplands to the north and west. A small area was filled to create land for the railroad bed itself and a depot. Concrete foundations of the depot are present in the APE and the old Harlem railroad bed crosses through the west side of the APE. This bed is raised  $\pm 50$  feet (15 m) above existing grade. The Metro-North Railroad is also built on filled/artificial land that defines the east side of the APE. Tests 27-40 excavated within the APE all encountered artificial coal ash fill. Test 29 recovered modern bottle glass. No significant archeological deposits were encountered (Photos 11-15 and Map 2d).

Although two concrete fountains were identified in the APE that are likely from the former depot/rail yard, testing did not find corresponding artifact deposits; all of the tests encountered deep levels of coal ash/gravel fill. Additionally, the concrete foundations that are present within the APE likely date from the 20<sup>th</sup> century and are indicative that earlier 1800s structures were either replaced or modified. This site has poor archeological integrity based on the condition of the foundations and the absence of corresponding artifacts deposits in the surrounding shovel tests.

#### Archeological Site 1

Table 6. Summary of Archeological Site 1

<b>Characteristic</b>	<b>Site information</b>
Site Name	Bullet Hole Depot Site
Description	This site was the location of a depot/rail yard of the former New York and Harlem Railroad. Archeology identified two (2) concrete foundations and deep levels of coal ash fill. No corresponding artifact deposits were recovered.
Date	Mid-1800 to mid-1900s
Function	Railroad depot/rail yard
Size	$\pm 1.5$ acres (0.6 ha)
Location	NAD 83, UTM Zone 18T, 6160009 Easting, 4592900 Northing

Trailhead #5 is situated in a low-lying, wooded area between the Metro-North Railroad and Pumphouse Road. The railroad bed is raised about 15 to 20 feet above grade. Tests 41-50 encountered rocky soils and typical plowzone-subsoil horizons. No cultural materials were recovered (Photos 16 and 17 and Map 2e).

## 9 Recommendations

No significant archeological deposits or sites were identified by the Phase I archeological field reconnaissance of proposed trailheads. No further archeological work is recommended.

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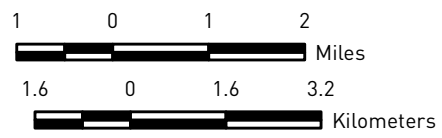
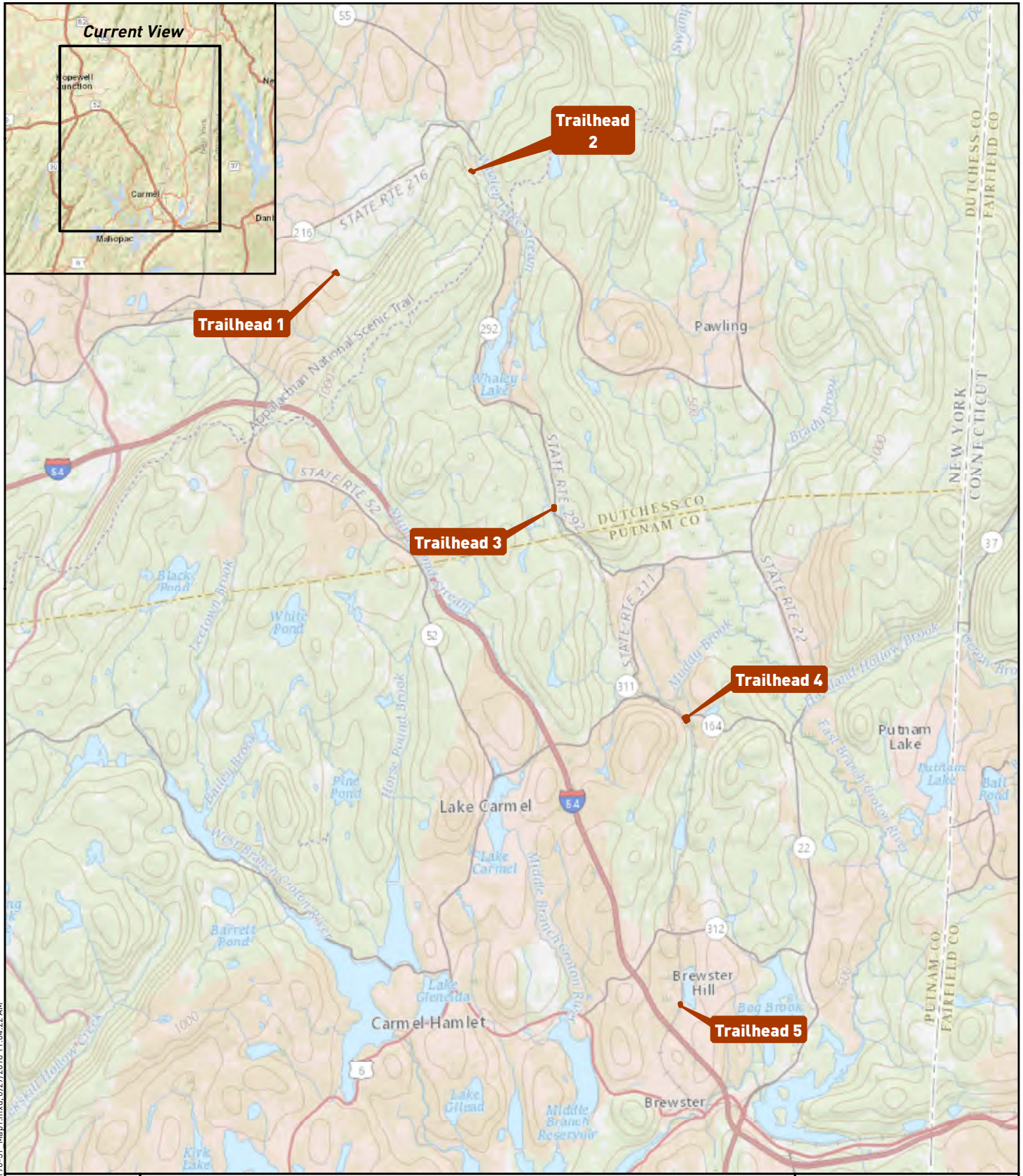
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## **Maps**



Note: Contour interval is 100 feet.

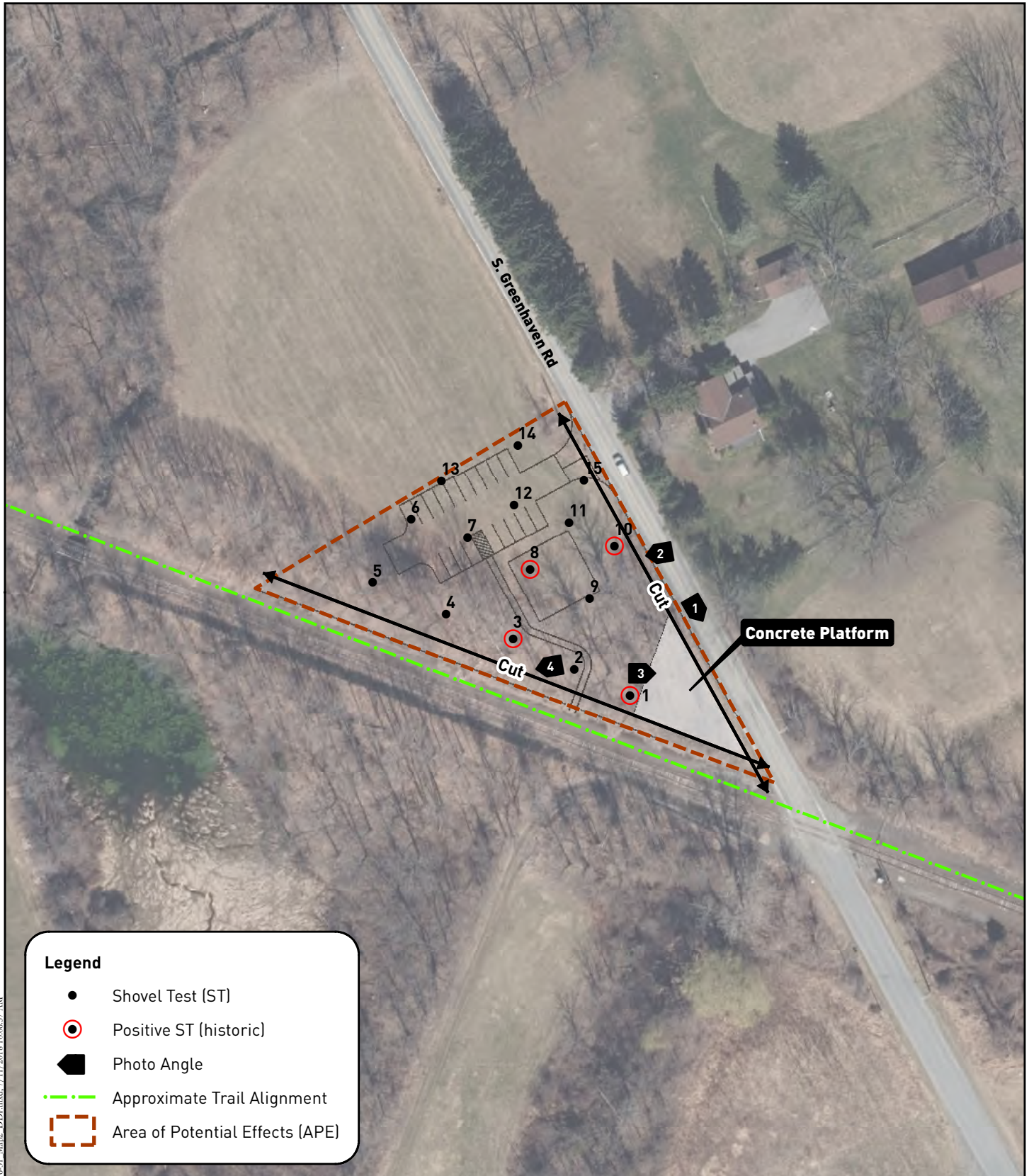
Project Location

GIS Services Accessed 6/27/2018:  
Environmental Systems Research  
Institute, Inc., World Street Map  
The National Map, USGS Topo Layer



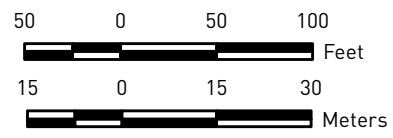
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**Legend**

- Shovel Test (ST)
- ⊙ Positive ST (historic)
- ▣ Photo Angle
- .-.- Approximate Trail Alignment
- - - Area of Potential Effects (APE)



Project Map



Environmental Systems Research Institute, Inc.,  
World Imagery Accessed 7/11/2018

**Map 2a - Trailhead 1**

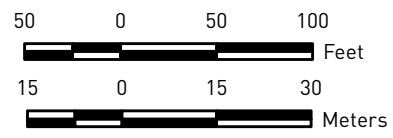
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**Legend**

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- ◼ Photo Angle
- Approximate Trail Alignment
- ▭ Area of Potential Effects (APE)



Project Map

Environmental Systems Research Institute, Inc.,  
 World Imagery Accessed 7/11/2018

**Map 2b - Trailhead 2**

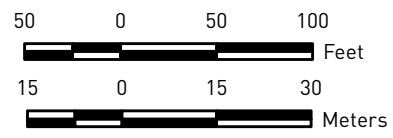
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**Legend**

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- ▭ Area of Potential Effects (APE)



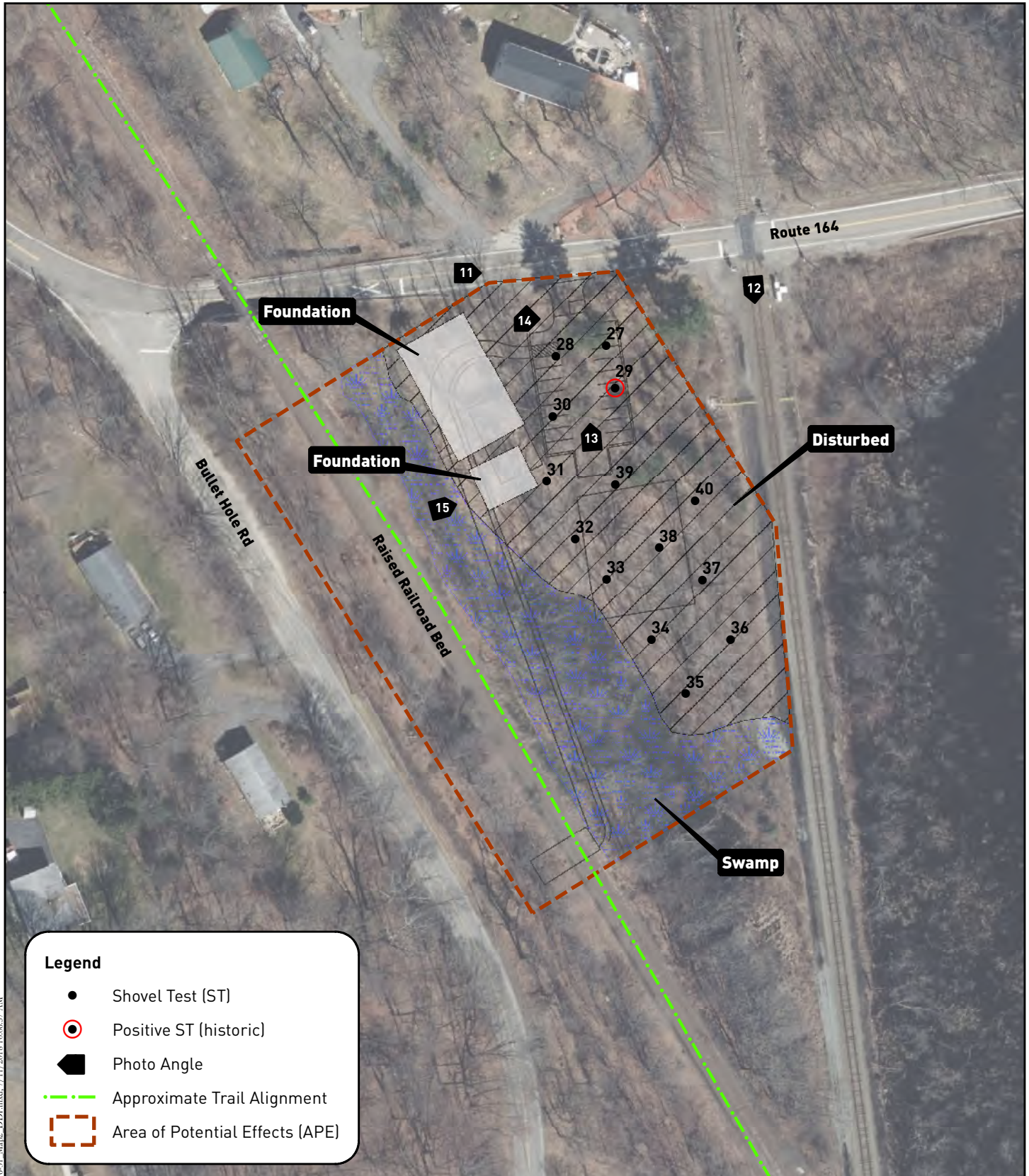
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Project Map

**Map 2c - Trailhead 3**

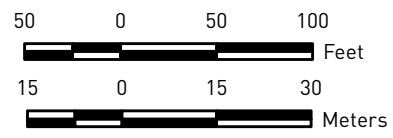
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**Legend**

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Project Map

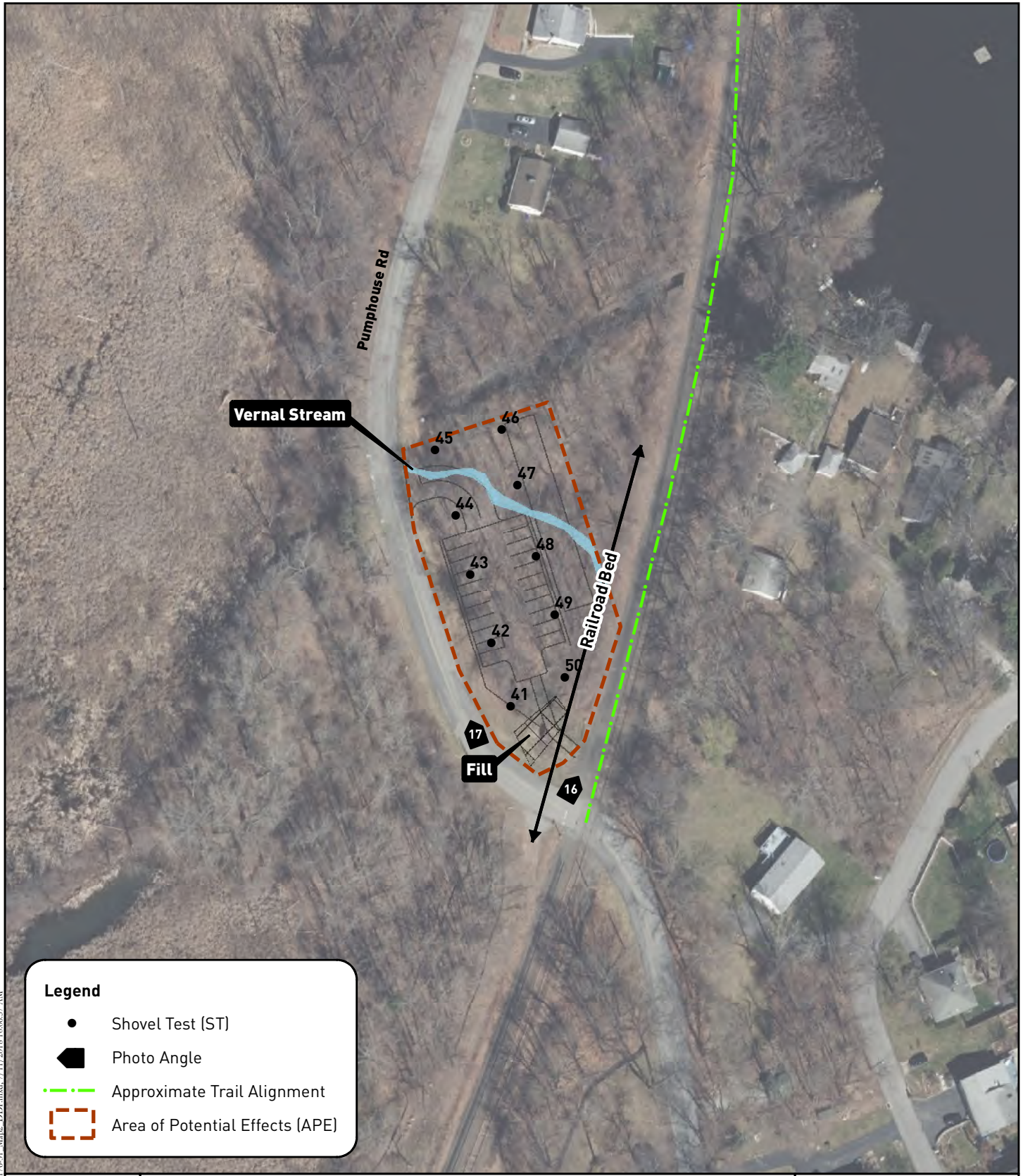


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**Map 2d - Trailhead 4**

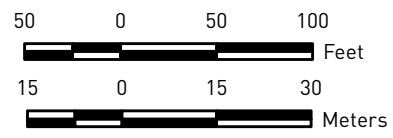
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**Legend**

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- - - - - Approximate Trail Alignment
- ⬠ Area of Potential Effects (APE)



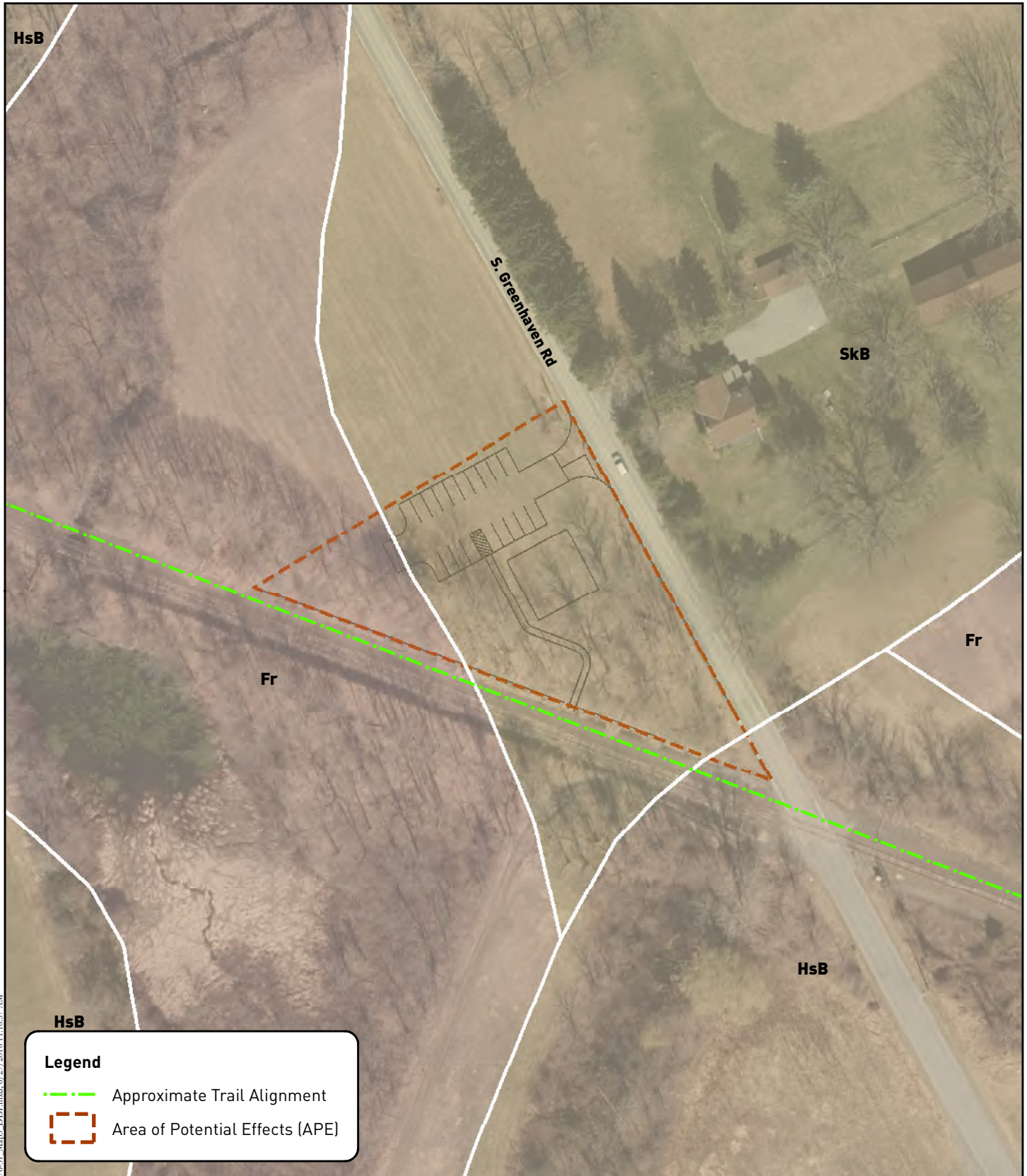
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Project Map

**Map 2e - Trailhead 5**

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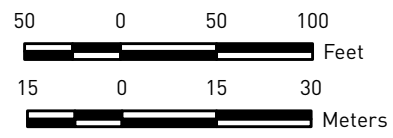


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**Legend**

- Approximate Trail Alignment
- Area of Potential Effects (APE)



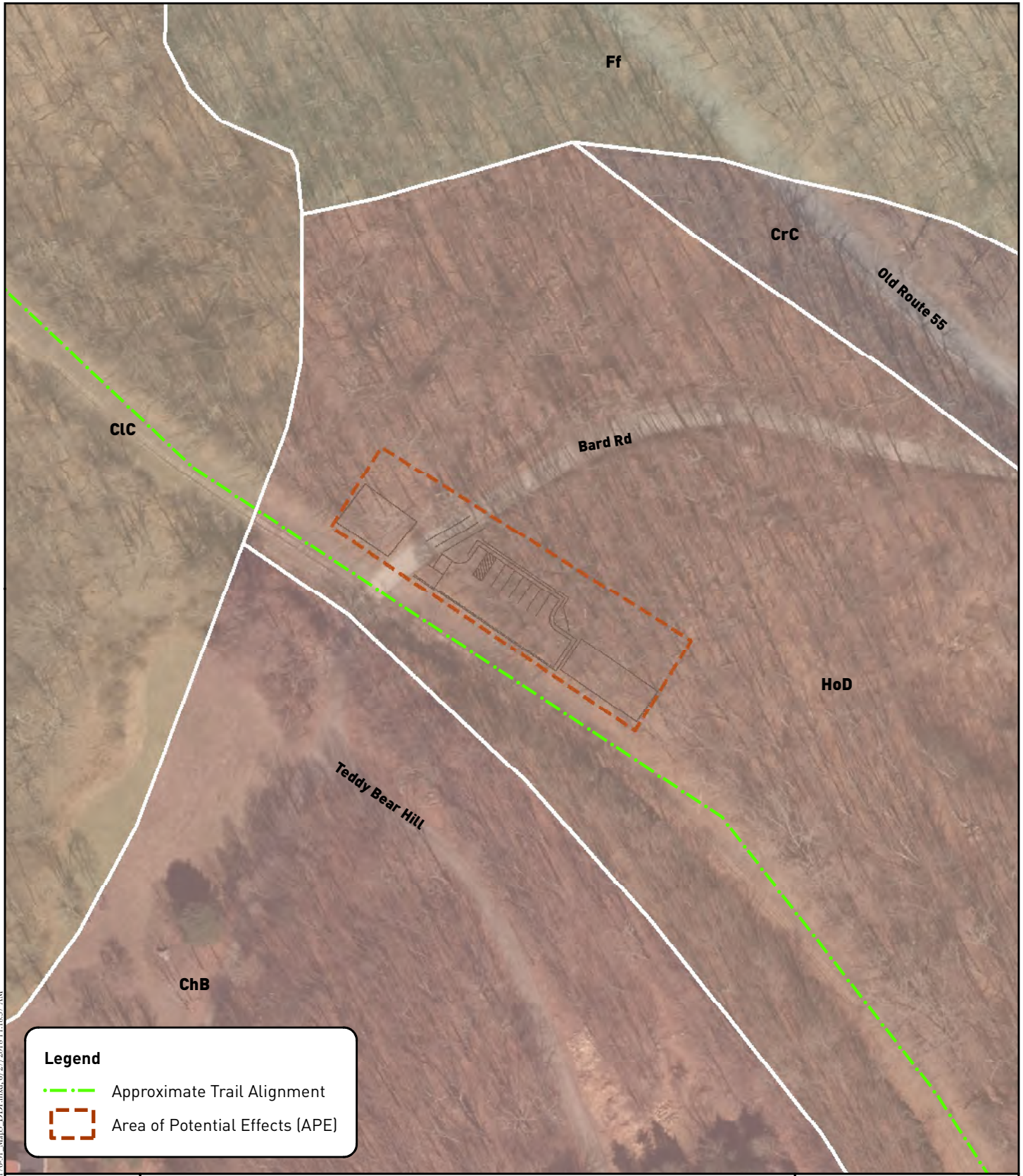
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Environmental Systems Research Institute, Inc.,  
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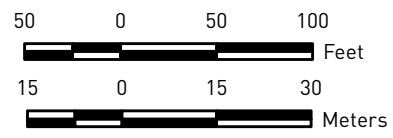
**Map 3a - Trailhead 1**





**Legend**

- Approximate Trail Alignment
- Area of Potential Effects (APE)



Soil Map

Environmental Systems Research Institute, Inc.,  
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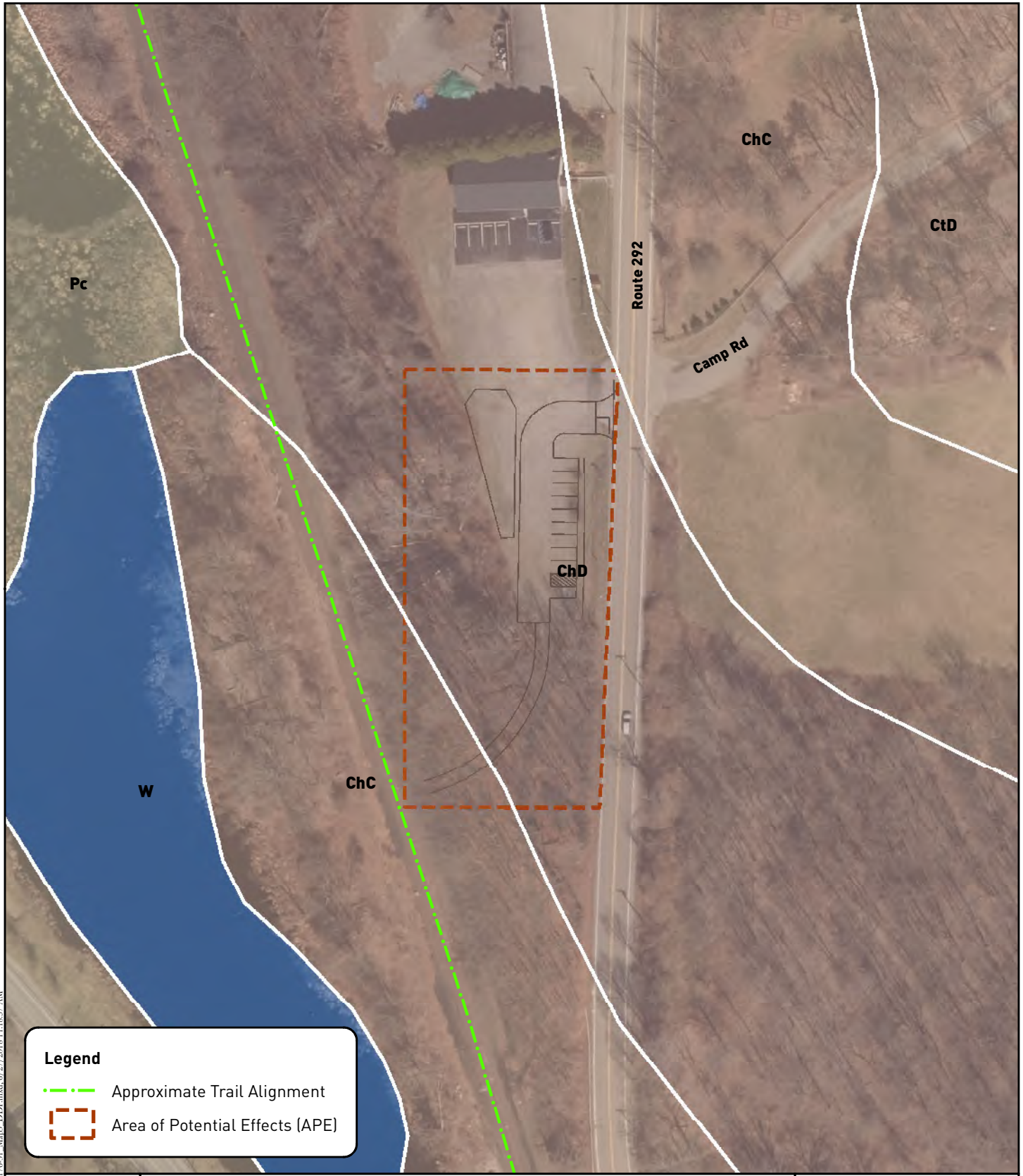
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**Map 3b - Trailhead 2**

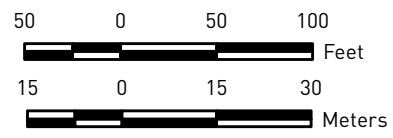
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**Legend**

-  Approximate Trail Alignment
-  Area of Potential Effects (APE)



Soil Map

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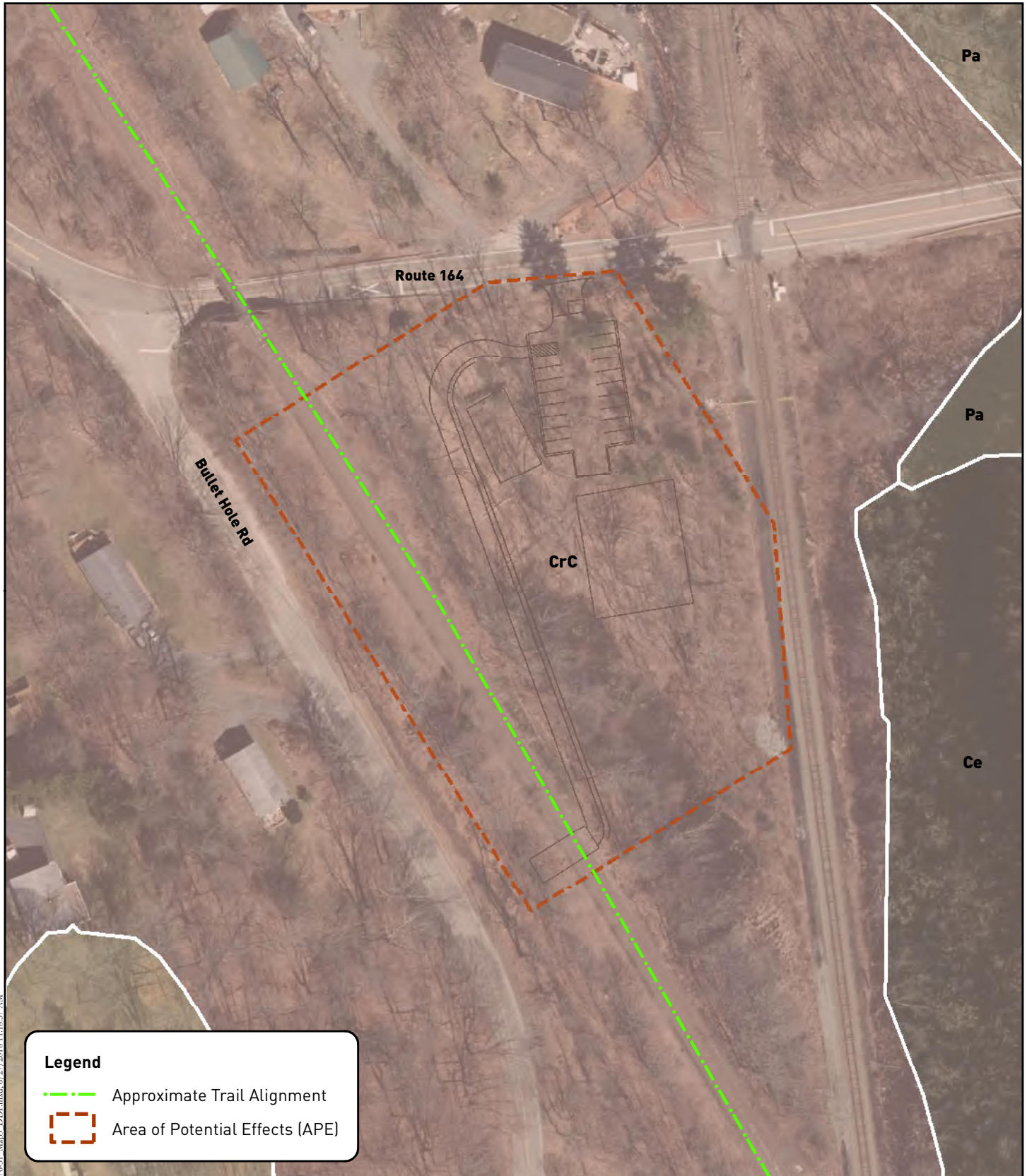


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**Map 3c - Trailhead 3**

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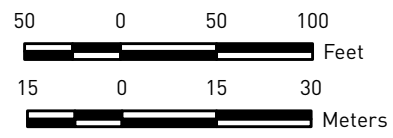




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- Area of Potential Effects (APE)



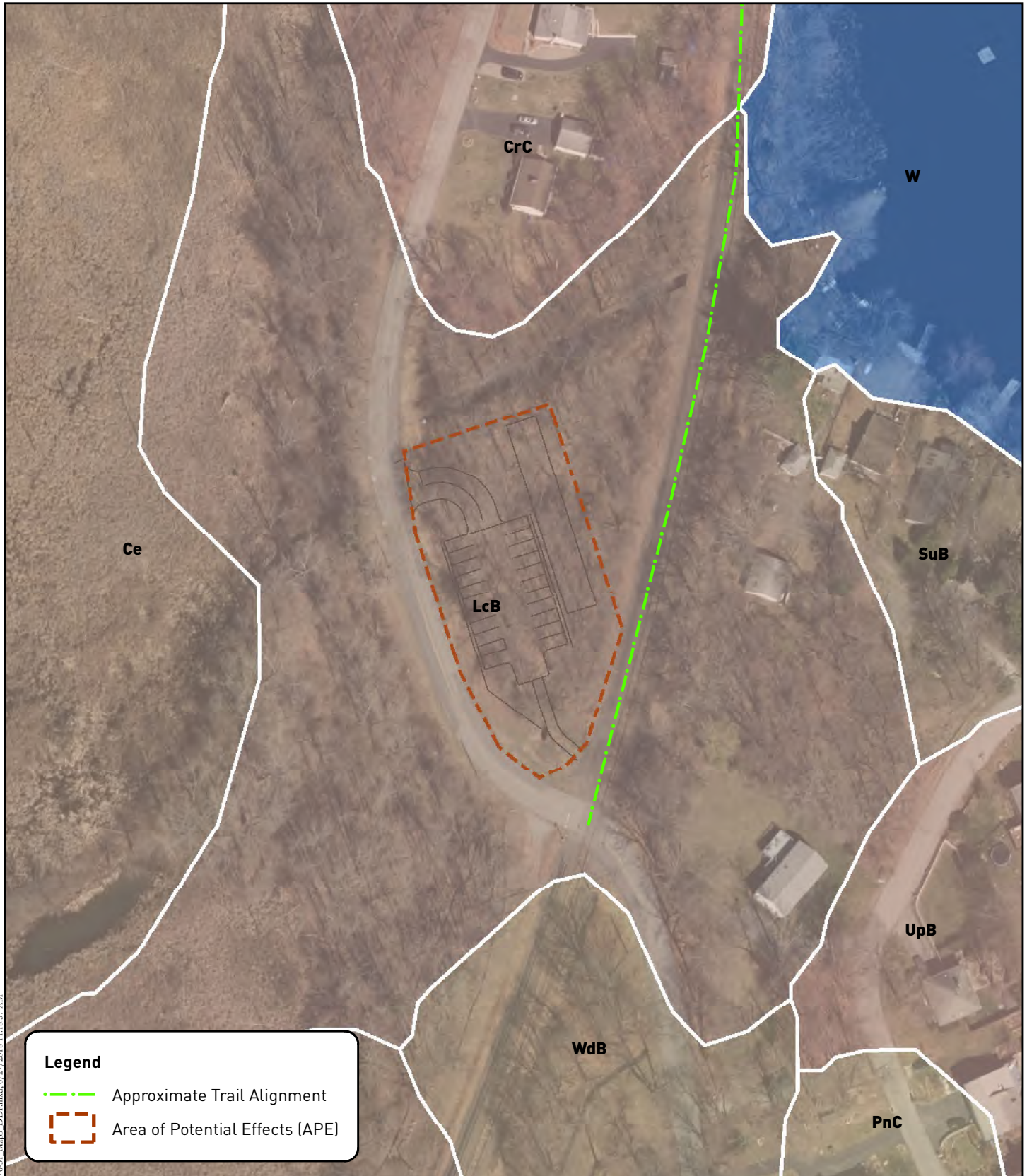
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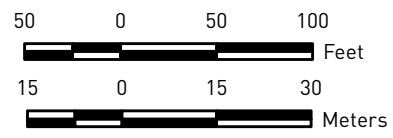
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Soil Map

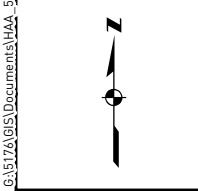
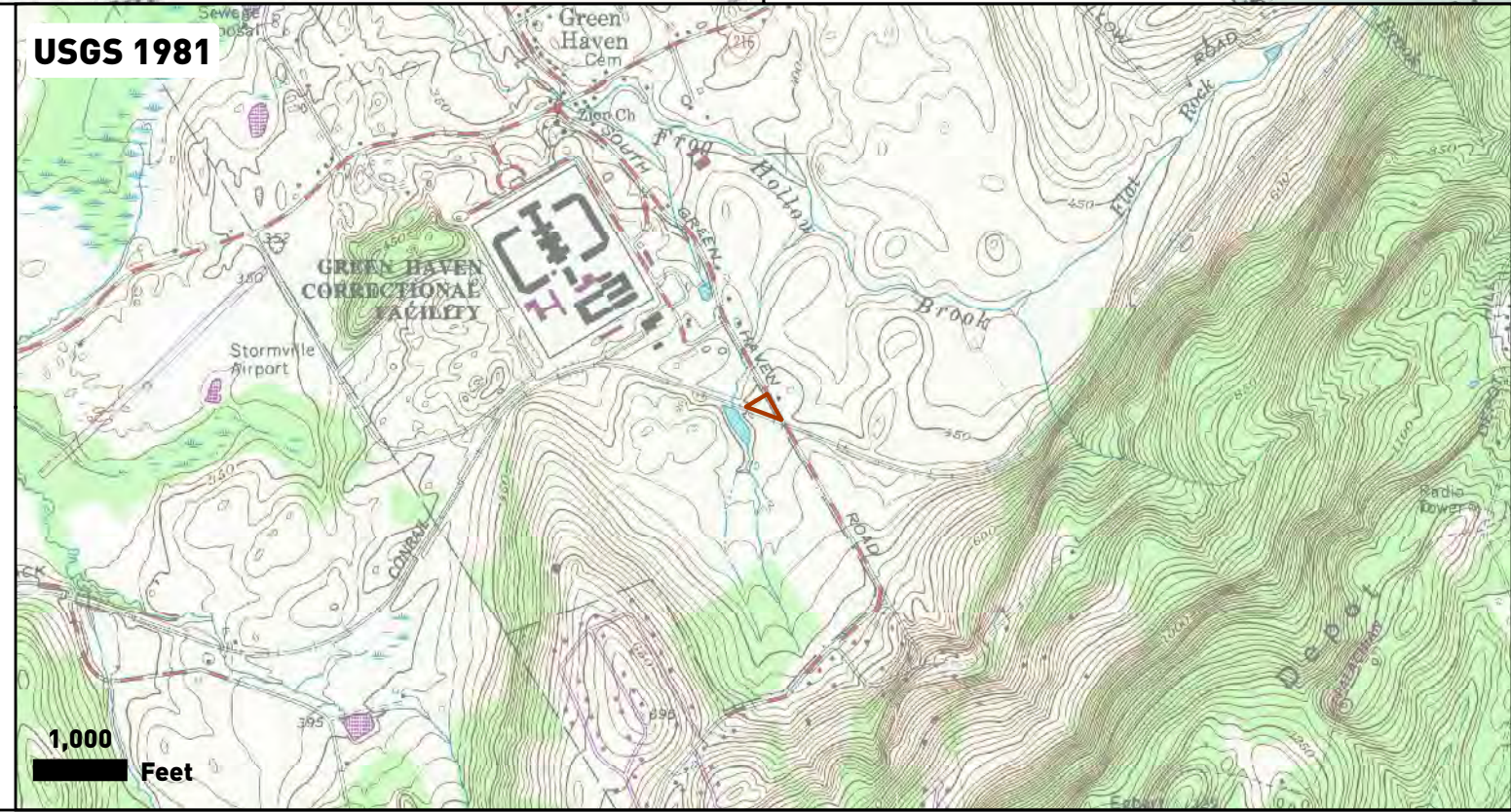
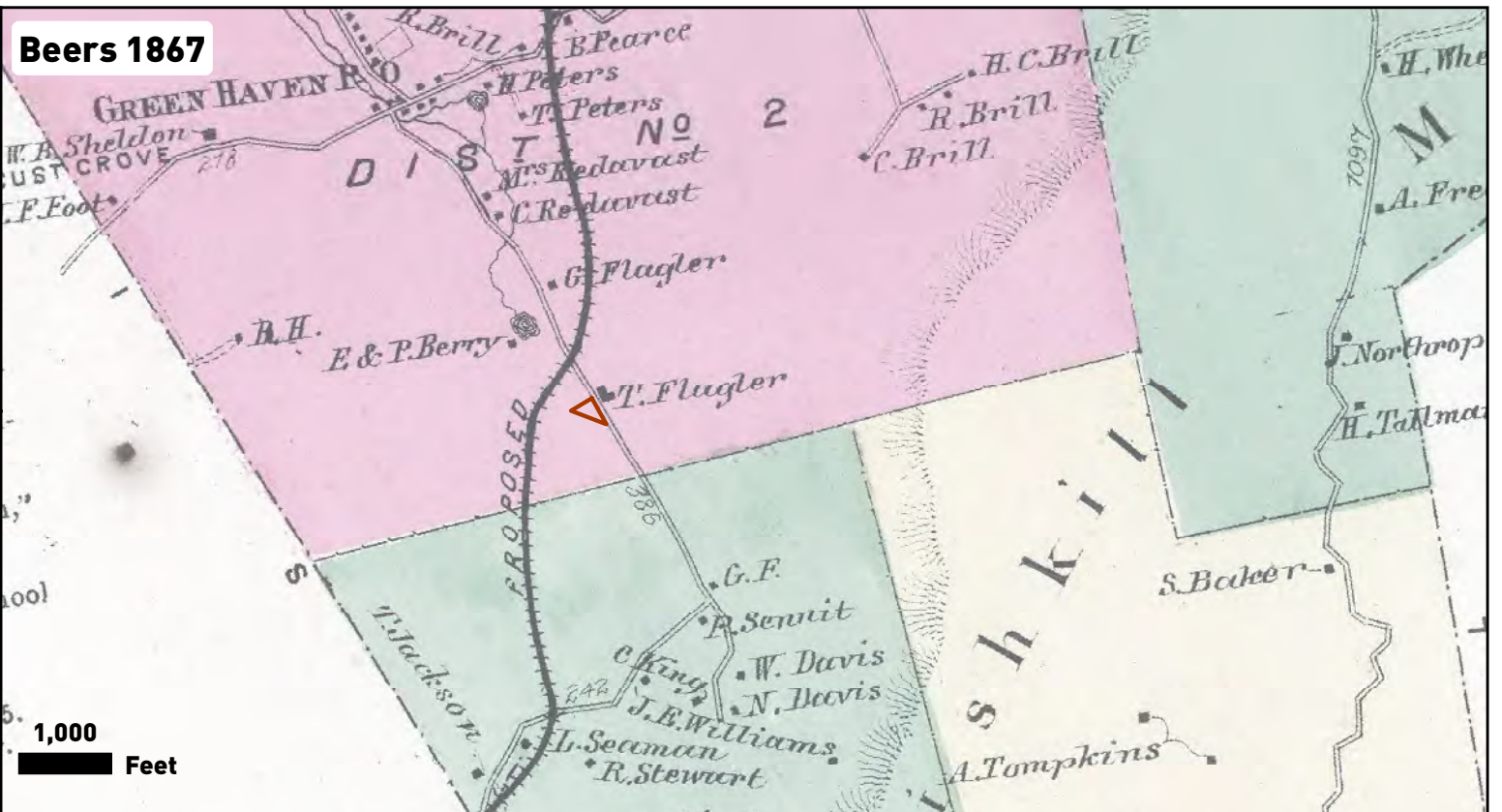
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Service Soil Survey Geographic Database 2017

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archeological associates inc


**Map 3e - Trailhead 5**

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**Legend**

 Area of Potential Effects (APE)

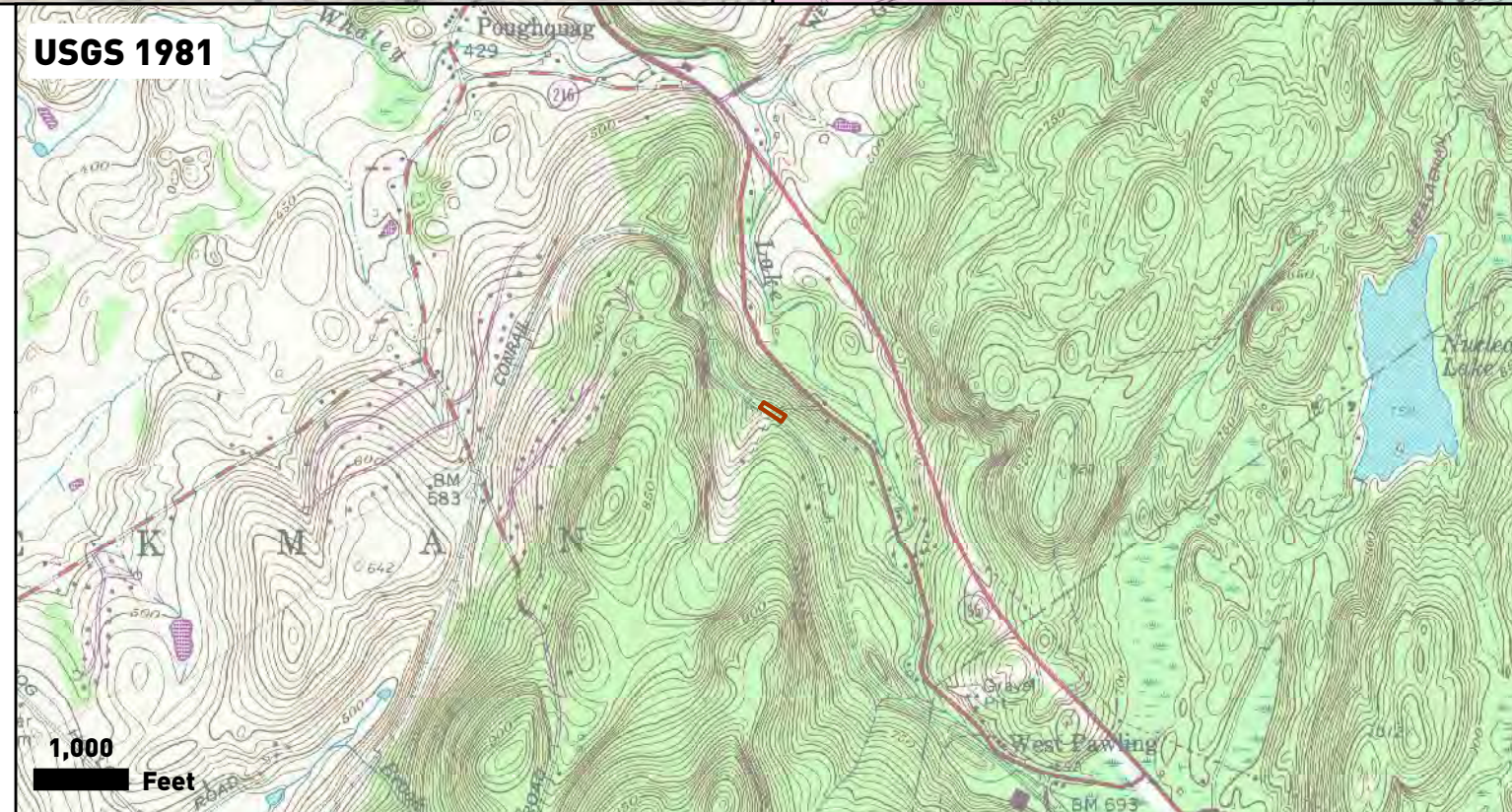
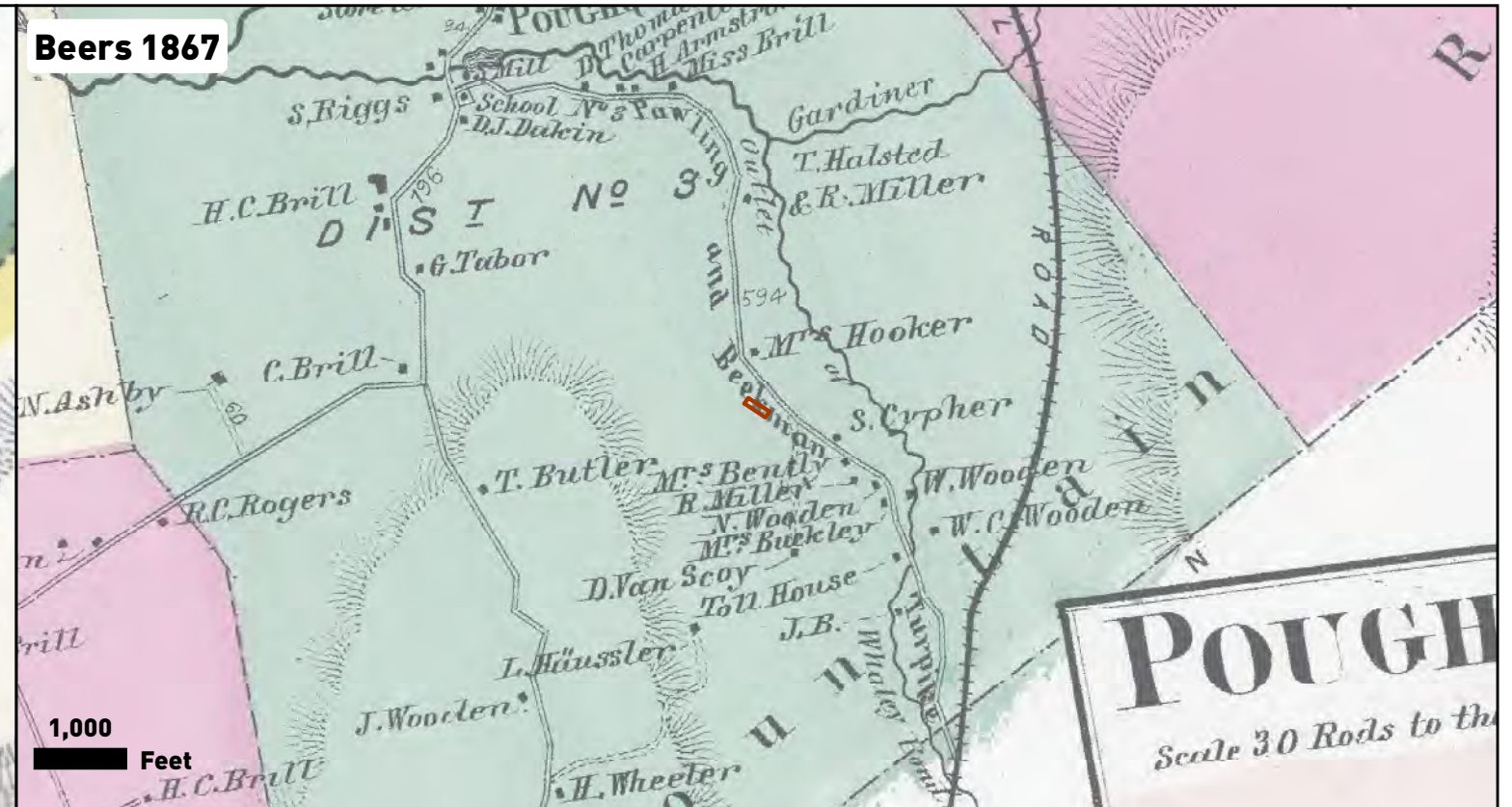
**HARTGEN**  
archeological associates inc

Historical Maps 1858-1981

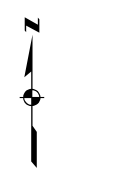
Map 4a - Trailhead 1

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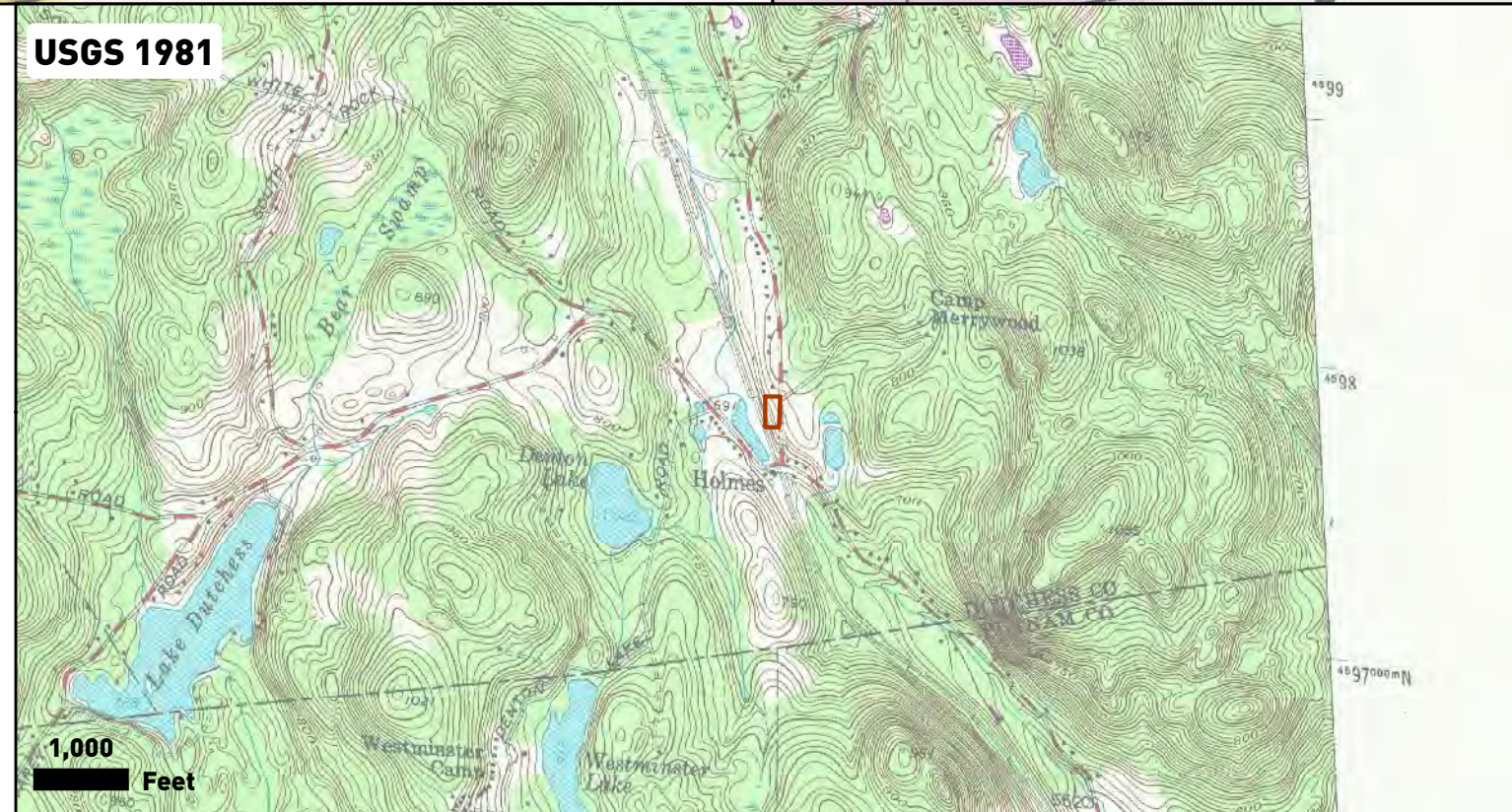
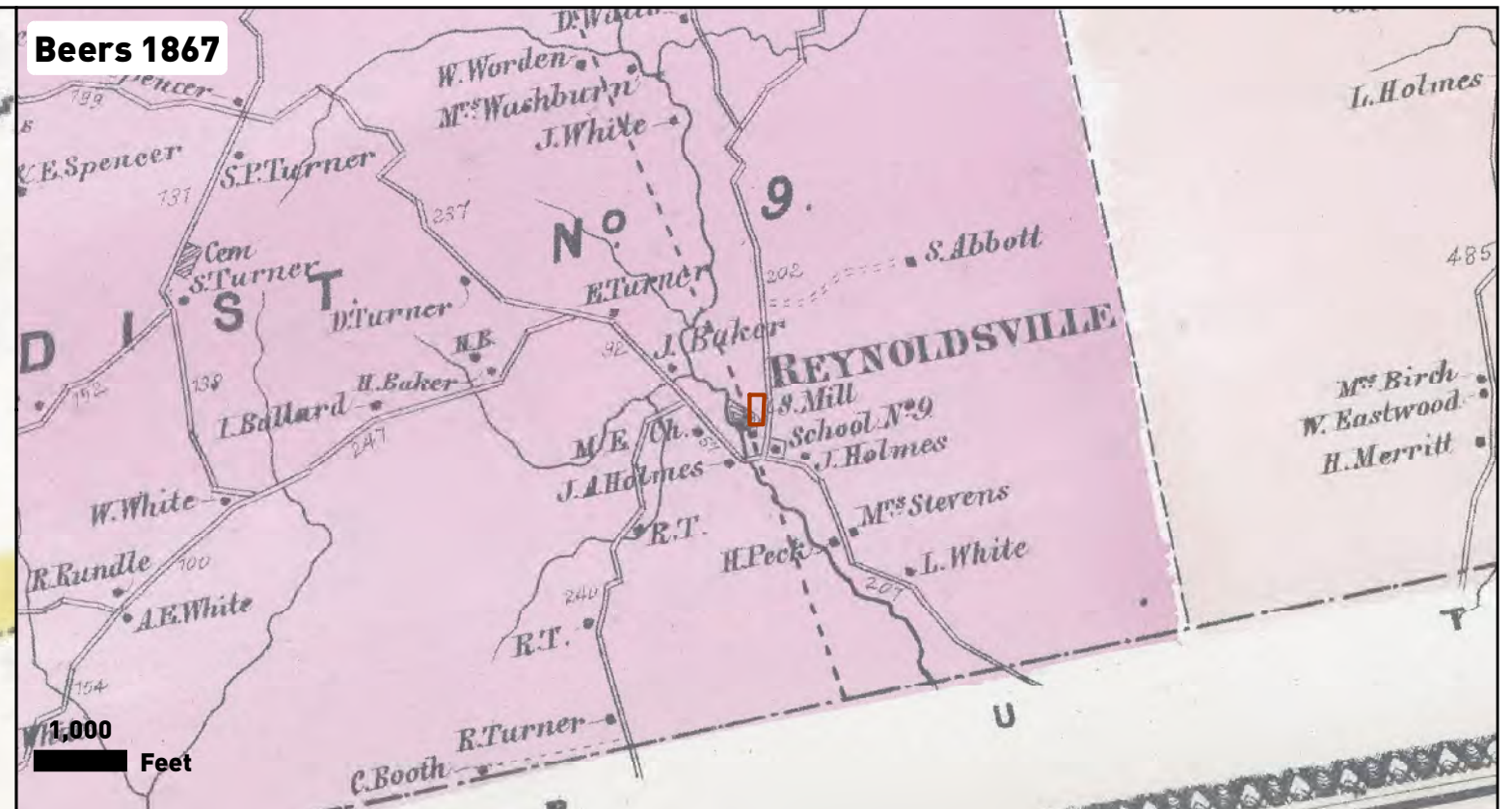
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**Legend**  
 Area of Potential Effects (APE)







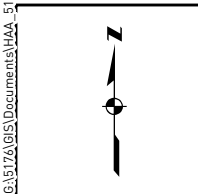
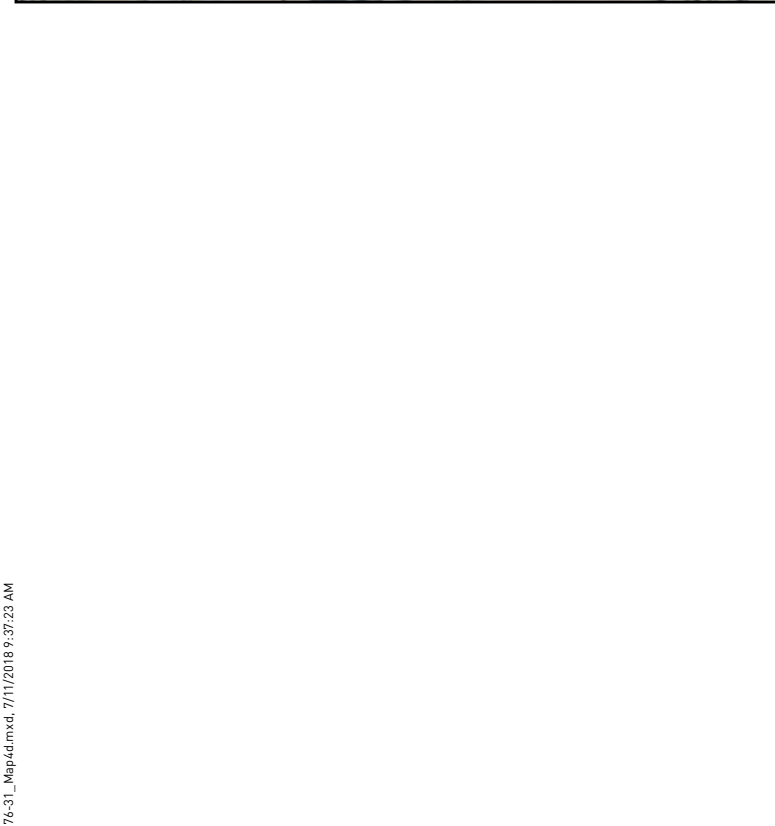
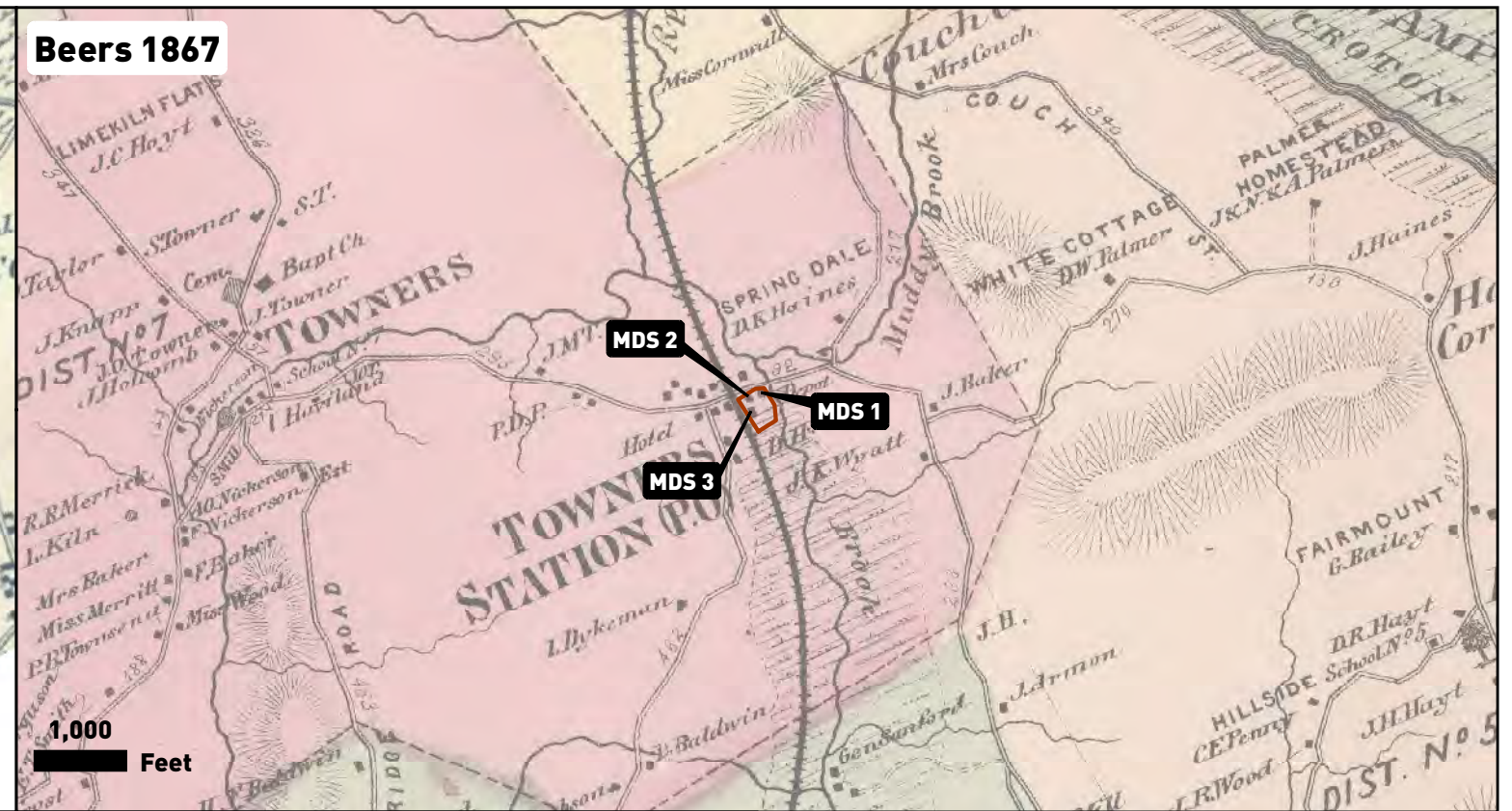
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**Legend**  
 Area of Potential Effects (APE)







**Legend**

Area of Potential Effects (APE)

**HARTGEN**  
archeological associates inc.

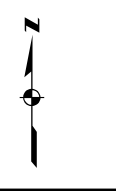
Historical Maps 1854-1984

**Map 4d - Trailhead 4**





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**Legend**

Area of Potential Effects (APE)





## **Photographs**



Photo 1. View facing southeast along South Greenhaven Road as it cross the Metro-North railroad.



Photo 2. View facing west across the part of the field located within the Trailhead 1 APE.





Photo 3. View of part of the concrete platform/loading dock that covers the southeast part of the Trailhead 1 APE.



Photo 4. View facing





Photo 5. View of the railroad bed as it cuts through bedrock as it extends southeast passed Trailhead 2 on the left.



Photo 6. View as Bard Road extends east through Trailhead 2 on the right and left.





Photo 7. View facing east of the flattest terrain within the Trailhead 2 APE, where STs 20 and 21 were excavated.



Photo 8. View facing north along the railroad bed with Trailhead 3 in the wooded area on the right.





Photo 9. View facing southeast along the footpath that crosses through the Trailhead 3 APE. Note the slope of the terrain.



Photo 10. View facing north across the existing parking area located in the Trailhead 3 APE.





Photo 11. View facing east along Route 164 as it crosses the Metro-North rail line. The Trailhead 4 APE is on the right.



Photo 12. View of the Metro-North rail line as it extends south passed the Trailhead 4 APE on the right.





Photo 13. View facing west showing the extent of the dense vegetation that covered the Trailhead 4 APE.



Photo 14. View of the east wall of a large concrete foundation, likely of the old depot building that was located within Trailhead 4.





Photo 15. View of the west wall of a concrete foundation that for a smaller building within the depot.



Photo 16. View of the existing railroad as it extends north passed the Trailhead 5 APE on the left.





Photo 17. View facing northwest along Pumphouse Road with the Trailhead 5 APE in the right.

## **Appendix 1: Shovel Test Records**

# 517631: Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Shovel Test Records

	<u>Ending Depth (cm)</u>	<u>Level</u>	<u>Soil Type</u>	<u>Soil Inclusions</u>		<u>Munsell Color</u>	<u>Termination Reason</u>
1	34	1	sand	gravel	10yr 2/1	black	
	57	2	silt		10yr 7/2	light gray	impasse (rocks)
2	20	1	sand	roots	10yr 3/1	very dark gray	
	60	2	sand	roots	10yr 5/4	yellowish brown	subsoil
3	36	1	silt sand		10yr 4/1	dark gray	
	58	2	silt		10yr 5/4	yellowish brown	
	78	3	silt	cobbles, mortar	10yr 5/2	grayish brown	impasse (rocks)
4	26	1	sand	roots	10yr 3/1	very dark gray	
	55	2	sand	roots	10yr 5/4	yellowish brown	subsoil
5	28	1	sand loam		10yr 3/2	very dark grayish brown	
	49	2	sand loam	gravel	10yr 4/6	dark yellowish brown	subsoil
6	25	1	sand loam		10yr 3/2	very dark grayish brown	
	36	2	sand loam	cobbles	10yr 6/8	brownish yellow	subsoil
7	45	1	silt sand	gravel	10yr 3/3	dark brown	
	50	2	sand	gravel, cobbles	10yr 4/6	dark yellowish brown	impasse (rocks)
8	52	1	silt loam		10yr 3/2	very dark grayish brown	
	73	2	silt		10yr 4/6	dark yellowish brown	subsoil
9	10	1	silt	gravel	10yr 2/1	black	
	37	2	silt		10yr 3/2	very dark grayish brown	impasse (rocks)
10	27	1	silt		10yr 4/2	dark grayish brown	
	47	2	loam		10yr 6/3	pale brown	subsoil
11	30	1	silt loam		10yr 3/2	very dark grayish brown	
	57	2	silt		10yr 5/3	brown	subsoil

# 517631: Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Shovel Test Records

	<u>Ending Depth (cm)</u>	<u>Level</u>	<u>Soil Type</u>	<u>Soil Inclusions</u>		<u>Munsell Color</u>	<u>Termination Reason</u>
12	29	1	silt	gravel		10yr 6/2	light brownish gray
	55	2	other (Rock)	gravel, exfoliating bedrock		5y 6/1	gray subsoil
13	32	1	sand loam			10yr 3/2	very dark grayish brown
	44	2	silt loam	cobbles		10yr 4/6	dark yellowish brown subsoil
						10yr 6/3	pale brown
14	20	1	sand clay	gravel		10yr 3/1	very dark gray
	55	2	silt sand	gravel		10yr 4/6	dark yellowish brown subsoil
15	20	1	silt			10yr 4/2	dark grayish brown
	50	2	sand			10yr 6/4	light yellowish brown subsoil
16	33	1	silt	gravel		10yr 2/1	black
	35	2	silt sand	exfoliating bedrock		10yr 4/6	dark yellowish brown impasse (rocks)
17	20	1	sand			10yr 8/1	white
	38	2	silt			10yr 4/2	dark grayish brown impasse (rocks)
18	20	1	sand	gravel, roots		10yr 2/1	black
	35	2	sand	gravel		2.5y 6/8	olive yellow impasse (rocks)
19	17	1	sand			10yr 2/1	black
	38	2	silt			10yr 6/8	brownish yellow subsoil
20	24	1	silt loam			10yr 2/1	black
	43	2	silt loam			10yr 5/4	yellowish brown subsoil
21	10	1	sand	gravel		10yr 2/1	black bedrock
22	20	1	silt			10yr 4/3	brown
	42	2	silt sand			10yr 6/4	light yellowish brown subsoil
23	23	1	silt			10yr 3/2	very dark grayish brown
	41	2	silt			10yr 5/4	yellowish brown subsoil



# 517631: Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Shovel Test Records

	<u>Ending Depth (cm)</u>	<u>Level</u>	<u>Soil Type</u>	<u>Soil Inclusions</u>		<u>Munsell Color</u>	<u>Termination Reason</u>
24	21	1	sand	gravel, roots		10yr 3/2 very dark grayish brown	impasse (rocks)
25	25	1	silt loam			10yr 3/2 very dark grayish brown	
	43	2	sand loam	cobbles		10yr 4/3 brown	subsoil
26	28	1	silt sand			10yr 3/2 very dark grayish brown	
	52	2	silt			10yr 4/4 dark yellowish brown	subsoil
27	22	1	silt sand			10yr 3/2 very dark grayish brown	
	29	2	other (Rock)			10yr 2/1 black	impasse (rocks)
28	24	1	sand loam	gravel, roots		10yr 3/2 very dark grayish brown	
	32	2	sand	gravel, roots		10yr 5/4 yellowish brown	impasse (rocks)
29	32	1	silt	gravel		10yr 2/2 very dark brown	impasse (compact soil)
30	30	1	sand loam other (Tiny stones)	cobbles, roots		10yr 3/2 very dark grayish brown	impasse (rocks)
31	37	1	loam other (Rocks and slag)			10yr 2/1 black	
	52	2	silt			2.5y 5/2 grayish brown	subsoil
32	30	1	other (fill)	gravel, crushed stone, coal ash		10yr 2/1 black	impasse (rocks)
33	37	1	sand	gravel, crushed stone, coal ash		10yr 2/1 black	water
34	37	1	sand	gravel, crushed stone, roots, coal ash		10yr 2/1 black	impasse (roots)
35	35	1	sand	gravel, crushed stone, roots, coal ash		10yr 2/1 black	water

# 517631: Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Shovel Test Records

	<u>Ending Depth (cm)</u>	<u>Level</u>	<u>Soil Type</u>	<u>Soil Inclusions</u>		<u>Munsell Color</u>	<u>Termination Reason</u>
36	25	1	sand	gravel, cobbles, coal ash	10yr 2/1	black	
	45	2	sand		10yr 4/1	dark gray	subsoil
37	25	1	sand	gravel, cobbles, coal ash	10yr 2/1	black	
	38	2	sand		10yr 4/1	dark gray	subsoil
38	17	1	sand loam	gravel, cobbles, coal ash	10yr 3/1	very dark gray	impasse (rocks)
39	60	1	other	gravel, coal ash	10yr 3/1	very dark gray	impasse (compact soil)
40	50	1	silt	gravel, coal ash	10yr 2/1	black	disturbance
					10yr 5/1	gray	
41	48	1	silt		10yr 2/1	black	disturbance
					10yr 5/1	gray	
42	26	1	sand loam	roots	10yr 2/1	black	
	50	2	silt sand		10yr 5/6	yellowish brown	subsoil
43	21	1	silt loam		10yr 3/2	very dark grayish brown	
	40	2	silt		10yr 5/6	yellowish brown	subsoil
44	27	1	silt sand	roots	10yr 2/2	very dark brown	impasse (roots)
45	30	1	sand	gravel, crushed stone, roots	10yr 3/2	very dark grayish brown	impasse (roots)
46	35	1	silt loam		10yr 2/1	black	
	47	2	silt		10yr 4/1	dark gray	impasse (roots)
47	26	1	sand loam	crushed stone	10yr 2/1	black	
	51	2	loam clay		2.5yr 6/1	reddish gray	subsoil
48	25	1	silt loam		10yr 3/1	very dark gray	
	46	2	silt		2.5y 5/4	light olive brown	subsoil
49	15	1	sand loam	gravel, roots	10yr 3/1	very dark gray	bedrock

# 517631: Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Shovel Test Records

	<u>Ending Depth (cm)</u>	<u>Level</u>	<u>Soil Type</u>	<u>Soil Inclusions</u>		<u>Munsell Color</u>	<u>Termination Reason</u>
50	38	1	silt loam		10yr 4/2	dark grayish brown	
	54	2	silt loam	cobbles	10yr 5/4	yellowish brown	subsoil

## **Appendix 2: Artifact Inventory**



# Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Artifact Inventory, HAA# 5176-31

<u>Provenience</u>	<u>Level</u>	<u>Feature</u>	<u>Bag</u>	<u>Item</u>	<u>Count</u>	<u>Artifact Description</u>	<u>Material</u>	<u>Weight (g)</u>
STP 1	1	1	1	1	1	buff/pink bodied stoneware	stoneware	8.3
				1.1	1	buff/pink bodied stoneware, stoneware, salt-glazed		8.3
STP 1	1	1	1	2	22	bottle	glass	994.2
				2.1	3	bottle, gin, glass, embossed, pale aqua, Gordon Dry Gin, finish, base, and body fragments		427.6
				2.2	2	bottle, beer, glass, embossed, Liebmann Breweries Inc., base and body fragments, TPQ 1964		181.8
				2.3	14	bottle, beer, glass, embossed, pale green, Liebmann Breweries Inc., some fragments mend, base, finish, and body fragments, TPQ 1964		304.8
				2.4	3	bottle, base, glass, colorless, fragments mend		80.0
STP 1	1	1	1	3	2	vessel	glass	214.4
				3.1	2	vessel, mug/tankard, glass, paneled, colorless, fragments mend, base and body fragments		214.4
STP 1	1	1	1	4	23	nail	iron alloy	54.0
STP 1	1	1	1	5	3	cap	iron alloy	5.4
STP 1	1	1	1	6	1	washer	iron alloy	5.3
STP 1	1	1	1	7	1	ring/ring shaped	iron alloy	244.6
STP 1	1	1	1	8	1	unidentified	lead alloy	0.1
STP 3	2	2	1	1	6	whiteware	refined earthenware	18.0
				1.1	2	whiteware, hollowware, body, refined earthenware, decal, polychrome, apple and flower decal		7.0
				1.2	1	whiteware, hollowware, base, refined earthenware, gilt		5.8
				1.3	3	whiteware, body, refined earthenware, undecorated		5.2
STP 3	2	2	2	2	2	lamp chimney	glass	1.8
STP 3	2	2	2	3	1	nail	iron alloy	17.8
STP 3	2	2	2	4	3	scrap metal	iron alloy	14.3
STP 8	1	3	3	1	4	bottle	glass	17.2
STP 8	1	3	3	2	2	vessel	glass	2.8
STP 8	1	3	3	3	2	window	glass	2.7
STP 8	1	3	3	4	2	nail	iron alloy	22.5

# Phase IB Archeological Investigation, Metro North Beacon Line Rail Trail

## Artifact Inventory, HAA# 5176-31

<u>Provenience</u>	<u>Level</u>	<u>Feature</u>	<u>Bag</u>	<u>Item</u>	<u>Count</u>	<u>Artifact Description</u>	<u>Material</u>	<u>Weight (g)</u>
STP 10	2		4	1	1	vessel	glass	3.1
STP 16	1		5	1	2	bottle	glass	12.4
				1.1	1	<i>bottle, glass, embossed, manganese solarized, "...183...SAN..."</i>		6.7
				1.2	1	<i>bottle, glass, embossed, manganese solarized, "...MO..."</i>		5.7
STP 16	1		5	2	2	vessel	glass	15.1
STP 16	1		5	3	2	leather	leather	3.4
				3.1	2	<i>leather, leather, perforated</i>		3.4
STP 16	1		5	4	1	tack	iron alloy	5.0
STP 16	1		5	5	1	unidentified hardware	iron alloy	37.0
STP 29	1		6	1	7	bottle	glass	32.7
				1.1	2	<i>bottle, glass, brown, machine made</i>		11.0
				1.2	5	<i>bottle, glass, green</i>		21.7
STP 29	1		6	2	4	cap	iron alloy	10.2
				2.1	4	<i>cap, bottle, beverage, iron alloy</i>		10.2
STP 29	1		6	3	1	jar lid	iron alloy	9.0

# **EXHIBIT E**



# Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO  
Governor

ROSE HARVEY  
Commissioner

July 19, 2018

Mr. Joseph Kelley  
WSP  
555 Pleasantville Road  
South Building  
Briarcliff Manor, NY 10510

Re: USACE  
Metro-North Beacon Rail Trail  
Dutchess and Putnam Counties, NY  
17PR08729

Dear Mr. Kelley:

Thank you for requesting the comments of the New York State Historic Preservation Office (SHPO). We have reviewed the submitted materials in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources.

SHPO has reviewed *Phase I Archeological Investigation, Metro-North Beacon Rail Trail, Towns of East Fishkill, Beekman, Pawling, Patterson, and Southeast, Dutchess and Putnam Counties, New York* (Hartgen Archeological Associates, July 2018).

Based on the information provided, SHPO recommends that the planned project will have **No Effect** on historic properties listed or eligible for listing on the National Register of Historic Places. This recommendation pertains only to the Area of Potential Effects (APE) examined during the above-referenced investigation. Should the project design be changed SHPO recommends further consultation with this office.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Philip A. Perazio, Historic Preservation Program Analyst - Archaeology Unit  
Phone: 518-268-2175  
e-mail: [philip.perazio@parks.ny.gov](mailto:philip.perazio@parks.ny.gov)

via e-mail only

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## Division for Historic Preservation

P.O. Box 189, Waterford, New York 12188-0189 • (518) 237-8643 • [www.nysparks.com](http://www.nysparks.com)



**EXHIBIT E**

to the Notice of Exemption  
file on January 30, 2023

**Newspaper Notice**

**Classified Ad Receipt**  
**(For Info Only - NOT A BILL)**

**Customer:** KAPLAN KIRSCH ROCKWELL

**Address:** 1634 I STREET NW, STE 300  
WASHINGTON DC 20006  
USA

**Ad No.:** 0005565049  
**Pymt Method** Credit Card  
**Net Amount** \$94.52  
**Run Times:** 1  
**Run Dates:** 01/22/23

**Text of Ad:**

STB Docket. No. AB 733  
Notice of Intent to File Verified Notice of Exemption --  
Discontinuance of Service

Housatonic Railroad Company ("HRRC") gives notice that on or about January 30, 2023, it intends to file with the Surface Transportation Board ("STB"), Washington, DC 20423, a Verified Notice of Exemption to discontinue operations over a line of railroad known as the Beacon Line (the "Line") extending from railroad milepost 0.0 in Beacon, New York to milepost 71.2 at the Connecticut/New York state line, which traverses through United States Postal Service Zip Codes 12508, 12524, 12533, 12582, 12570, 12531, 12563, 10509, and 06811, a distance of approximately 41 miles in Putnam and Dutchess Counties, New York. The proceeding will be docketed as No. AB 733 (Sub No. 1X).

The reason for the proposed discontinuance is the lack of need for rail service on the Line and the potential for other, non-rail use of the property. There are no documents in HRRC's possession that indicate that the Line contains federally granted rights-of-way. If the HRRC becomes aware of the existence of any such documentation, it will be made available to those requesting it.

The Notice of Exemption can be viewed following its filing on the STB's website at [www.stb.gov](http://www.stb.gov), or a copy can be obtained from HRRC's counsel whose name and address appear below. The Notice of Exemption will include the HRRC's entire case for discontinuance. Any interested person, after the application is filed on or about January 30, 2023, may file with the STB its protest of, or written comments concerning, the proposed discontinuance identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing of the Notice of Exemption. All interested persons should be aware that following any discontinuance of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments.

Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address, and business; (2) the protestant's interest in the proceeding, including their use of the Line or the public interest represented, if the protestant's interest is limited to the retention of service over a portion of the Line, a description of the portion of the Line subject to the protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the Line profitably, including an appropriate return on its investment for those operations; (3) specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the fact(s)); and (4) any rebuttal of material submitted by applicant. In addition, a commenting party or protestant may provide a statement of position and evidence regarding (i) environmental impact; (ii) impact on rural and community development; (iii) recommended provisions for the protection of the interests of employees; (iv) suitability of the properties for other public purposes pursuant to 49 U.S.C. § 10905; and (v) prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and § 1152.59. If an oral hearing is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary.

Oral hearing requests must be filed with the STB no later than 10 days after the Notice of Exemption is filed.

Interested persons may file a written comment or protest with the STB to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served upon HRRC's counsel in this matter, Edward J. Rodriguez, 4 Huntley Road, P.O. Box 687, Old Lyme, Connecticut 06371, phone: (860) 434-4303, email: [e.rodiguez@hrrc.com](mailto:e.rodiguez@hrrc.com). The original and 10 copies of all comments and protests shall be filed with the STB with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the STB must be served on all parties to the discontinuance proceeding.

An environmental assessment ("EA") prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA may contact the Office of Environmental Analysis. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the STB's decision. A supplemental Environmental Assessment or Environmental Impact Statement may be issued where appropriate.  
0005565049



**Classified Ad Receipt**  
**(For Info Only - NOT A BILL)**

**Customer:** KAPLAN KIRSCH ROCKWELL  
**Address:** 1634 EYE STREET NW SUITE 300  
WASHINGTON DC 20006  
USA

**Ad No.:** 0005565063  
**Pymt Method** Credit Card  
**NET AMOUNT** \$302.00  
**Zone:** TJN-Rockland  
**No. of Affidavits:** 1

**Run Times:** 1

**Run Dates:** 01/22/23



**Text of Ad:**

STB Docket. No. AB 733

Notice of Intent to File Verified Notice of Exemption -- Discontinuance of Service

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The reason for the proposed discontinuance is the lack of need for rail service on the Line and the potential for other, non-rail use of the property. There are no documents in HRRC's possession that indicate that the Line contains federally granted rights-of-way. If the HRRC becomes aware of the existence of any such documentation, it will be made available to those requesting it.

The Notice of Exemption can be viewed following its filing on the STB's website at [www.stb.gov](http://www.stb.gov), or a copy can be obtained from HRRC's counsel whose name and address appear below. The Notice of Exemption will include the HRRC's entire case for discontinuance. Any interested person, after the application is filed on or about January 30, 2023, may file with the STB its protest of, or written comments concerning, the proposed discontinuance identifying it by the proceeding's docket number. These filings are due 45 days from the date of filing of the Notice of Exemption. All interested persons should be aware that following any discontinuance of rail service and salvage of the Line, the Line may be suitable for other public use, including interim trail use. Persons who may oppose the discontinuance, but who do not wish to participate fully in the process by appearing at any oral hearings or by submitting verified statements of witnesses containing detailed evidence, should file comments.

Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest. Protests must contain that party's entire case in opposition including the following: (1) the protestant's name, address, and business; (2) the protestant's interest in the proceeding, including their use of the Line or the public interest represented, if the protestant's interest is limited to the retention of service over a portion of the Line, a description of the portion of the Line subject to the protestant's interest (with milepost designations if available) and evidence showing that the applicant can operate the portion of the Line profitably, including an appropriate return on its investment for those operations; (3) specific reasons why protestant opposes the application including information regarding protestant's reliance on the involved service (this information must be supported by affidavits of persons with personal knowledge of the fact(s)); and (4) any rebuttal of material submitted by applicant. In addition, a commenting party or protestant may provide a statement of position and evidence regarding (i) environmental impact; (ii) impact on rural and community development; (iii) recommended provisions for the protection of the interests of employees; (iv) suitability of the properties for other public purposes pursuant to 49 U.S.C. § 10905; and (v) prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and § 1152.59. If an oral hearing

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is desired, the requester must make a request for an oral hearing and provide reasons why an oral hearing is necessary.

Oral hearing requests must be filed with the STB no later than 10 days after the Notice of Exemption is filed.

Interested persons may file a written comment or protest with the STB to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served upon HRRC's counsel in this matter, Edward J. Rodriguez, 4 Huntley Road, P.O. Box 687, Old Lyme, Connecticut 06371, phone: (860) 434-4303, email: [e.rodriguez@hrrc.com](mailto:e.rodriguez@hrrc.com). The original and 10 copies of all comments and protests shall be filed with the STB with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the STB must be served on all parties to the discontinuance proceeding.

An environmental assessment ("EA") prepared by the Office of Environmental Analysis will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Any other persons who would like to obtain a copy of the EA may contact the Office of Environmental Analysis. The deadline for submission of comments on the EA will generally be within 30 days of its service. The comments received will be addressed in the STB's decision. A supplemental Environmental Assessment or Environmental Impact Statement may be issued where appropriate.

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