

SPECIAL CONDITIONS, for DA Permit No. 1989-98111 (12 September 2018):

Administrative:

1. This permit was issued on your certification that the mitigation project is consistent with the New York Coastal Zone Management Plan. The New York State Department of State concurs with your certification, attached to this permit as Attachment A, provided you comply with any special conditions imposed by that agency. Noncompliance with the conditions may be a basis for suspension, revocation or modification of this permit.
2. The Section 401 Water Quality Certification issued for this project by the State of New York, attached to this permit as Attachment B, is hereby part of this Department of the Army permit pursuant to Section 401(d) of the Clean Water Act. Noncompliance with any limitations or requirements stated in the certification may be a basis for suspension, revocation or modification of this permit.
3. You are responsible for ensuring that the contractor and/or workers executing the activity(s) authorized by this permit have knowledge of the terms and conditions of the authorization and that a copy of the permit document is at the project site throughout the period the work is underway. For purposes of this permit, the term “project site” means the portion of the SWMF property where impacts to wetlands and stream resources are authorized by this permit. For purposes of this permit, the term “on-site mitigation parcel” means the portion of the SWMF property where mitigation activities required by this permit will occur.
4. At the request of an authorized representative of the Buffalo District, U.S. Army Corps of Engineers, you shall allow access to the project site and the on-site mitigation parcel and you shall coordinate access to the off-site mitigation parcel to determine compliance with the conditions of this permit. For purposes of this permit, the term “off-site mitigation parcel” means the off-site property on Skinner Road in the Town of Ellisburg, Jefferson County, New York owned by the NYS Department of Environmental Conservation (“NYSDEC”) and referred to as the Lakeview Wildlife Management Area where the permittee will conduct mitigation activities. The “off-site mitigation parcel” is also referred to in this permit as the “Skinner Road Site.”
5. All reports/submittals required under this permit shall be submitted to Mr. Harold Keppner, Chief, Monitoring & Enforcement Section, U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199, unless otherwise specified.

Prior to Construction:

6. No work authorized by this permit in waters of the United States on the project site, the on-site mitigation parcel or the off-site mitigation parcel can commence until the respective NYSDEC permits required for the work in each of these areas are authorized.
7. In the event that the authorized work and tree clearing is not completed by March 30, 2022, the permittee must contact Margaret Crawford, USACE, 7413 County House Road,

Auburn, New York 13021, (315) 255-8090, prior to March 30, 2021 to reinstate consultation under the Endangered Species Act.

8. The permittee must notify the Regulatory Branch in writing one week prior to the date the activities authorized in waters of the United States, including wetlands, are scheduled to begin. Notification shall either be by 1) e-mail sent to "david.w.leput2@usace.army.mil <mailto:david.w.leput2@usace.army.mil> " AND "LRB.Regulatory@usace.army.mil <mailto:LRB.Regulatory@usace.army.mil> " or 2) mailed to the following address: Mr. David Leput, Compliance Officer, U.S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, New York 14207-3199. (Note: This condition was satisfied on August 6, 2018).

9. Prior to any grading or filling operations, siltation fencing or hay bales shall be installed at the toe of the earthwork to minimize damage to undisturbed wetlands. The siltation fence shall be checked periodically to ensure that it is not damaged. Repairs to damaged siltation barriers must be completed promptly, and the siltation barriers must remain in place until the site is stabilized by the re-growth of suitable vegetation. All controls must be completely removed once the area is stabilized.

During Construction:

10. To reduce any potential adverse effects on the Federally threatened Northern long-eared bat (*Myotis septentrionalis*), trees (woody stems > 3 inches Diameter at Breast Height) must not be cut between April 1 and October 31, of any year.

11. If any historic or archeological artifacts or remains are discovered while conducting work authorized by this permit, you must notify the Corps of Engineers in accordance with General Condition 3 and all work in the vicinity of the discovery must be stopped immediately, pending initiation of any required consultation under the National Historic Preservation Act.

12. Should human remains be encountered during any phase of the proposed project, such person or persons encountering the human remains must immediately cease work in the vicinity of the discovery and must not disturb or remove the remains, must protect the exposed portions of the remains from inclement weather and vandalism, and immediately notify the permittee. Continuing work on the project may result in adverse effects to the remains, which may be contrary to the National Historic Preservation Act. After discovery, the permittee must immediately notify (within 24 hours) Margaret Crawford, Project Manager, 7413 County House Road, Auburn, New York 13021 at (315) 255-8090, and the New York State Office of Parks, Recreation, and Historic Preservation, Peebles Island State Park, P.O. Box 189, Waterford, New York 12188-0189, (518) 237-8643.

Mitigation:

13. As mitigation to compensate for the permanent and unavoidable impacts to 12.26 acres of wetland and 2,143 linear feet of stream, the permittee shall:

- a. Restore 28.6 acres of wetland, including 7.9 acres of forested wetland, 7.0 acres of scrub-shrub wetland, 6.1 acres of emergent marsh, and 7.6 acres of wet meadow at the Skinner Road Site;
- b. Restore 650 linear feet of Sandy Creek at the Skinner Road Site;
- c. Enhance 100 foot buffer along 8,102 linear feet of on-site streams (totaling 30.4 acres) on the SWMF property;
- d. Preserve the Skinner Road Site in accordance with the terms of an Adopt a Natural Resource Agreement between the permittee and NYSDEC (30 acres);
- e. **(Modified September 12, 2018)** Preserve on-site remaining wetlands, streams and buffer on the SWMF property in perpetuity (435 acres).

14. The plan entitled 'Proposed Landfill Expansion, Final Aquatic Resource Mitigation Strategy' and dated May 2012, Revised October 2012 (the "compensatory mitigation plan"), is hereby incorporated into and made part of the permit as Attachment C. The permittee must implement the mitigation in accordance with the compensatory mitigation plan and any permit conditions. The mitigation performance standards listed in the Special Conditions of this permit supersede any conflicting standards listed in the compensatory mitigation plan.

15. **(Modified September 12, 2018)** The permittee must complete all aspects of the on-site and off-site wetland and stream mitigation prior to the commencement of work at the project site authorized by this permit, with the exception of seeding and planting, which must be completed within 10 months of the completion of the wetland and stream grading activities.

16. The permittee shall assume all liability for accomplishing corrective work should the District Engineer determine the compensatory mitigation to be unsuccessful. In the event that the mitigation area does not meet the criteria set forth in this permit, the permittee may be required to undertake additional mitigative measures. These actions may include, but are not limited to, corrective actions on-site including regrading or replanting. If corrective measures are required, additional yearly monitoring, beyond the 10-year monitoring period, may be required at the discretion of the Corps Project Manager.

17. In the event that planting substitutions are proposed (from page 10 of compensatory mitigation plan), prior approval from this office is required. In addition, quantities may only be adjusted after prior approval from the Corps.

18. Performance Goals: on-site

- a. Construction has been completed in accordance with approved plans and specifications of the permit.
- b. At the end of the first year of monitoring, planted woody species will have a survivorship of at least 75%. Replacement of plantings will be required for any area falling below this level.
- c. For all monitoring periods, the enhanced stream buffers will support a minimum of 200 individual, surviving, established, and free-to-grow woody plants per acre. Additional plantings will be required for any area falling below this level.
- d. Invasive species purple loosestrife (*Lythrum salicaria*) and common reed (*Phragmites australis*) must cumulatively comprise no more than 5%, and reed canary grass (*Phalaris*

arundinacea) and buckthorn (*Rhamnus* spp.), must cumulatively comprise no more than 15%, of the total vegetated cover in the enhanced stream buffer areas in any monitored year.

- e. The percent of total relative cover by any one species will not exceed 60%.

19. Performance Goals: off-site

- a. Construction has been completed in accordance with approved plans and specifications of the permit.
- b. The wetland exhibits a saturated soil condition and/or evidence of inundation during the growing season (April-September). Data will be collected at permanently established observation locations during the monitoring period. Two water gauges will be installed within the mitigation site and monitored during the growing season to evaluate water elevations.
- c. The wetland areas shall have at least an 80% coverage rate of hydrophytic plants (those with a regional indicator status of FAC, FACW, or OBL). The percent cover calculation will include PEM, PSS and PFO habitats.
- d. At the end of the first year of monitoring, planted woody species will have a survivorship of at least 75%. Survivorship will be estimated each monitoring year for the duration of monitoring activities on site.
- e. At the end of the third monitoring year, stem density in PSS and PFO areas shall be at least 200 stems per acre. At the end of the fifth monitoring year, woody plant species in PSS and PFO area shall have a stem density of 300 plants per acre. At the end of the monitoring period, woody plant species in PSS and PFO areas shall have a stem density of 400 plants per acre.
- f. At the end of the third monitoring year, woody plants in PSS and PFO areas shall have a relative cover rate of 30%. At the end of the fifth monitoring year, woody plants in PSS and PFO area shall have a relative cover rate of 50%. At the end of the 10 year monitoring period, woody plants in PSS and PFO areas shall have a relative cover rate of 80%.
- g. At the end of the ten year monitoring period, no more than 5% of the vegetation in the restored wetland areas will cumulatively consist of purple loosestrife (*Lythrum salicaria*), common reed (*Phragmites australis*), buckthorn (*Rhamnus* spp.), narrow-leaf cattail (*Typha angustifolia*) or hybrid cattail (*Typha x glauca*), and no more than 15% of reed canary grass (*Phalaris arundinacea*).
- h. The wetland plant community will exhibit less than 50% total relative cover by any one species.
- i. At the end of the monitoring period the restored wetland areas will meet the federal wetland criteria outlined in the report entitled "Corps of Engineers Wetlands Delineation Manual", dated January 1987, as modified by the Northeast and Northcentral Regional Supplement (January 2012).
- j. The riparian buffer plant community will exhibit less than 60% total relative cover by any one species.
- k. Planted seedlings/trees in the riparian buffer area will have a survivorship of at least 75% for the duration of the monitoring period.
- l. The stream bank shall exhibit that 70% of its vegetative cover has a deep binding root mass.

- m. There should be insignificant changes (<10%) from the as-built longitudinal profile and cross-section profiles. Bank pins (i.e., bank profiles) will be installed at permanent cross section locations, as described in the approved plans.

20. Your responsibility to complete the required compensatory mitigation as set forth in Special Conditions 13-19 will not be considered fulfilled until you have demonstrated compensatory project success and have received written verification of that success from the U.S. Army Corps of Engineers.

21. Protective Covenants, On-site: Prior to conducting any work authorized by this permit, the permittee is required to place a Declaration of Conservation Covenants and Restrictions (the “deed restriction”) in perpetuity on all remaining wetland and stream channels and the designated upland buffers to guarantee their preservation for wetland and wildlife resources, as depicted in Appendix D of the compensatory mitigation plan (in Attachment C of the permit). The Final deed restriction shall be written in accordance with the DRAFT deed restriction included in Appendix D of the compensatory mitigation plan. This DRAFT deed restriction has been approved by the U.S. Army Corps of Engineers. The deed restrictions shall not be removed without the written approval of the U.S. Army Corps of Engineers, Buffalo District. An approved, certified copy of the recorded deed restriction and a resolution from the permittee adopting the deed restriction and authorizing the signatory to sign the deed restriction on behalf of the permittee are required to be provided to Mr. Harold T. Keppner, Chief, Monitoring & Enforcement Section, U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207-3199, prior to conducting work authorized by this permit, or by an extension authorized in writing from this office.

22. **(Modified September 12, 2018)** Protective Covenants, off-site: The off-site mitigation parcel shall be preserved, in accordance with the ‘Adopt a Natural Resource Agreement’ between the permittee and the NYSDEC, which is hereby incorporated into this permit as Attachment E.

23. The on-site mitigation parcel subject to the deed restriction and the off-site mitigation parcel subject to the Adopt a Natural Resources Agreement must be used solely for the protection of aquatic resources. Any other uses, including but not limited to the placement of buildings, roads, camping accommodations, mobile homes, fences, signs, billboards or other advertising material, filling, dredging, mining or drilling, removal of topsoil, sand, gravel, rock, minerals, or other materials, use of ATVs or other recreational motorized vehicles, or change in topography of the land in any manner (with the exception of the maintenance of small foot trails) are prohibited. There shall be no removal, destruction, or cutting of vegetation, spraying with herbicides, grazing of domestic animals, or disturbance or manipulation of these mitigation areas without first obtaining Department of the Army authorization. Control of nuisance vegetation, or any other manipulation within the mitigation parcels, shall only occur after Corps of Engineers concurrence that such management practices are necessary to ensure the long-term success of the mitigation program.

Financial Assurances:

24. **(Modified September 12, 2018)** The permittee must maintain the established reserve fund in the amount of \$677,400 to provide financial assurance for the performance of all the obligations, covenants, terms, conditions, and agreements required of the permittee under this permit. The reserve fund will be maintained in accordance with Section 10.0 of the above incorporated compensatory mitigation plan (Attachment C). The copy of the signed resolution authorizing the reserve fund is hereby incorporated into the permit as Attachment D.

25. The permittee shall provide materials and/or services valued up to \$1,500 annually to the NYSDEC for 20 years in accordance with the Adopt a Natural Resource Agreement referenced in Special Condition No. 22.

Monitoring, Off-site Wetland Restoration:

26. A baseline wetland construction report must be forwarded to this office by December 31 in the year of completion of all mitigation construction activities, or by a Corps-approved extension date. For purposes of this special condition, "completion" means all activities associated with site grading and seeding and/or planting. The baseline report must include the following:

- a. An "as-built" topographic survey of the mitigation parcel at 0.5 foot contour intervals.
- b. Photographs from fixed locations with a photo-location map.
- c. A list of plants introduced through seeding and/or planting.
- d. Water depth and date of measurement from representative locations within the mitigation parcel. The sample points will be fixed locations and shall be plotted on a map.
- e. A list of any modifications that were made from the original compensatory mitigation plan.

27. The permittee is required to submit annual monitoring reports for the off-site wetland restoration project to this office for the first ten (10) years following completion of the mitigation construction based upon data collected during each monitored year between June and October. The reports must follow the requirements outlined in Regulatory Guidance Letter No. 08-03 (Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources). The first annual report is due by December 31 in the year following completion of mitigation construction, or by a Corps-approved extension date. For purposes of this special condition, "completion" means all activities associated with site grading and seeding and/or planting. All reports must be submitted to Mr. Harold Keppner, Chief, Monitoring & Enforcement Section by December 31 of the year due, or by a Corps-approved extension date. This requirement may be waived for years 3, 5, 7 and 9 if the mitigation is shown to meet performance criteria listed in the permit and compensatory mitigation plan. These reports must include:

- a. Comparison of site conditions to an as-built survey.
- b. Wetland Delineation, including a map of wetland boundary.
- c. Photographs (minimum 5) from fixed locations with a photo location reference map.
- d. Plant species list with the following information:

- Wetland Indicator Status and strata;
 - Dominant plants and percent cover; and
 - A list of plants introduced through seeding or planting.
- e. Water depth and date of measurement from representative locations within the mitigation parcel during the growing season. The sample points will be fixed locations and shall be plotted on a map.
 - f. Fish and wildlife observations at the mitigation parcel.
 - g. Summary statement regarding the perceived success of the wetland creation project. The report will evaluate the goals/performance standards as set forth in the permit or compensatory mitigation plan as well as current wetland functions. These reports must also address any potential problem areas and include suggestions and timetable for correction if it is anticipated that projected goals may not be met.
 - h. Date(s) of field inspection(s).

Monitoring, Off-site Stream Restoration:

28. A baseline stream restoration construction report must be forwarded to this office by December 31 in the year of completion of all mitigation construction activities, or by a Corps-approved extension date. For purposes of this special condition, "completion" means all activities associated with site grading and seeding and/or planting. The baseline report must include the following:

- a. An "as-built" topographic survey of the stream bank, including water level elevations, and linear feet of stream bank. Monitoring stations, boundaries of various vegetation communities, planting zones and rock vanes will also be identified on the drawings.
- b. Color photographs from monitoring stations and a photograph location map showing all representative areas along the stream restoration site.
- c. A list of plants introduced through seeding and/or planting.
- d. A list of any modifications that were made from the original compensatory mitigation plan.

29. The permittee is required to submit monitoring and/or compliance reports for the off-site stream restoration project to this office for the first five (5) years following completion of the stream restoration construction based upon data collected during each monitored year. Data on the stream portion of the mitigation project will be collected annually for a five-year monitoring period with no less than two bankfull events recorded throughout the monitoring period. To ensure the structural integrity and functions of the restored in-stream structures and riparian buffers, monitoring data will be collected twice (at a minimum) during the first monitoring year, once following the first spring flood event (i.e., March-April), and once at the end of the first full growing season following the completion of site construction. Monitoring years 2, 3, 4, and 5 will be completed annually at the end of the growing season (i.e., August-September). The reports must follow the requirements outlined in Regulatory Guidance Letter No. 08-03 (Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources). The first annual report is due by December 31 in the year following completion of mitigation construction, or by a Corps-approved extension date. For purposes of this special condition, "completion" means all

activities associated with site grading and seeding and/or planting. All reports must be submitted to Mr. Harold Keppner, Chief, Monitoring & Enforcement Section by December 31 of the year due, or by a Corps-approved extension date. These reports must include:

- a. A surveyed drawing of the stream bank, including water level elevations, and linear feet of stream bank. Monitoring stations, boundaries of various vegetation communities, planting zones and rock vanes will also be identified on the drawings.
- b. Color photographs from monitoring stations and a photograph location map showing all representative areas along the stream restoration site.
- c. A collection of basic information on the vegetative buffer and bank stability at three fixed locations within the stream enhancement areas. Data will include, bankfull height, bank angle, streambank root mass (total number of species with deep roots, such as trees, shrubs, sedges), plant species composition, percent areal cover, and buffer width. Collected woody vegetation data will include average species height and average species diameter at breast height of individuals greater than 7 meters in height.
- d. A survival estimate and growth observations (height and dbh) of planted shrubs and trees.
- e. An evaluation of stream restoration and stabilization. This will be completed by collecting baseline data such as longitudinal and cross-section bank profiles (max depth at bankfull, bank height ratio, substrate characteristics, and bank elevation).
- f. A final post-construction habitat assessment and as-built survey will be completed to document existing conditions along the restored stream bank. A comparison of the pre- and post site conditions will assist with quantifying the ecological gain of the mitigation.

Monitoring, On-site Stream Buffer Enhancement:

30. A baseline stream enhancement report must be forwarded to this office by December 31 in the year of completion of on-site stream buffer enhancement activities, or by a Corps-approved extension date. For purposes of this special condition, "completion" means all activities associated with site grading and seeding and/or planting. The baseline report must include the following:

- a. An "as-built" survey identifying completed activities
- b. Photographs from fixed locations with a photo-location map.
- c. A list of plants introduced through seeding or planting.
- d. A list of any modifications that were made from the original plan.

31. The permittee is required to submit monitoring and/or compliance reports for the on-site stream buffer enhancement project to this office for the first ten (10) years following completion of the mitigation construction based upon data collected during each monitored year between June and October. Monitoring shall be conducted in years 1, 2, 4, 6, 8 and 10 after completion of stream buffer enhancement activities. The reports must follow the requirements outlined in Regulatory Guidance Letter No. 08-03 (Minimum Monitoring Requirements for Compensatory Mitigation Projects Involving the Restoration, Establishment, and/or Enhancement of Aquatic Resources). The first report is due by December 31 in the year following completion of stream buffer enhancement activities, or by a Corps-approved extension date. For purposes of this special condition, "completion" means all activities associated with site grading and seeding

and/or planting. All reports must be submitted to Mr. Harold Keppner, Chief, Monitoring & Enforcement Section by December 31 of the year due, or by a Corps-approved extension date. These reports must include:

- a. A map showing the locations of the enhancements, monitoring stations and photo points.
- b. Color photographs from monitoring stations and photo points.
- c. Comparison of site conditions to an as-built survey.
- d. A list of plants introduced through seeding or planting.
- e. Existing plant species list including dominant plants and percent cover.
- f. Summary statement regarding the perceived success of the stream buffer enhancement project. The report will evaluate the goals/performance standards as set forth in the permit or compensatory mitigation plan. These reports must also address any potential problem areas and include suggestions and timetable for correction if it is anticipated that projected goals may not be met.
- g. Date(s) of field inspection(s).
- h. A collection of basic information on the vegetative buffer at 10 fixed locations in the enhanced stream buffer areas, including plant species composition, percent areal cover, and buffer width. Collected woody vegetation data will include average species height and average species diameter at breast height (dbh) of individuals greater than 7 meters in height.
- i. A survival estimate and growth observations (height and dbh) of planted shrubs and trees.
- j. A list of wildlife species observed within the enhanced stream segments and associated riparian buffer areas.
- k. A quantitative assessment of monitoring data and a statement as to whether or not the goals of the mitigation project are being met. If required, a plan with an implementation timetable to correct any deficiencies will also be provided.

LIST OF ATTACHMENTS, DA PERMIT NO. 1989-9811:

Attachment A: The New York State Department of State concurrence with the New York Coastal Zone Management Plan certification for the mitigation site at Skinner Road, in the Town of Ellisburg, Jefferson County, New York.

Attachment B: The Section 401 Water Quality Certification issued for this project by the State of New York (dated January 3, 2017).

Attachment C: The compensatory wetland mitigation plan entitled 'Proposed Landfill Expansion, Final Aquatic Resource Mitigation Strategy' and dated May 2012, Revised October 2012.

Attachment D: Signed resolution establishing the reserve fund providing for financial assurance (Board Resolution No. 2015-01-13; January 29, 2015).

Attachment E: Signed Adopt a Natural Resource Agreement' between the permittee and the NYSDEC dated June 15, 2017.