

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 1311

ENTERED
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April 30, 2021
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Public Record

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

APPLICATION FOR ADVERSE DISCONTINUANCE

FILED
April 30, 2021
**SURFACE
TRANSPORTATION BOARD**

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TRANSPORTATION BOARD**

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Company*

Date: April 30, 2021

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SURFACE TRANSPORTATION BOARD**

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

Pursuant to 49 U.S.C. § 10903(a) and 49 C.F.R. § 1152.22, Metro-North Commuter Railroad Company (“Metro-North”) hereby petitions the Surface Transportation Board (“STB” or “Board”) for a determination that the public convenience and necessity require the adverse discontinuance of the authority of the Housatonic Railroad Company (“HRRC”) to operate over a 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 from Beacon, New York to Brewster, New York, in Dutchess and Putnam Counties, New York.¹

I. Statement of Facts

a. Parties

Metro-North is a New York State public benefit corporation and subsidiary of the Metropolitan Transportation Authority (“MTA”), a New York State public authority. Metro-North was established in 1982 to assume the common carrier commuter rail service formerly provided

¹ Metro-North filed a *Petition for Partial Waivers of Discontinuance Regulations and for Exemption* (“*Petition for Partial Waivers*”) on February 8, 2021. In the *Petition for Partial Waivers*, Metro-North indicated that it intended to file this Application for Adverse Discontinuance of Trackage Rights “on or about March 29, 2021.” *Petition for Partial Waivers*, 3. However, because the Board had not issued a decision on the *Petition for Partial Waivers* as of March 29, 2021, Metro-North delayed filing this Application until the Board issued its decision on that Petition in order to ensure that this Application included all the information required. Because the Board has now issued its decision on that Petition, *Metro-North Commuter R.R. Co.—Adverse Discontinuance of Trackage Rights—Housatonic R.R. Co.*, STB Docket No. AB 1311 (Service Date April 20, 2021), Metro-North is submitting this Application with information that conforms with the Board’s requirements.

by Consolidated Rail Corporation (“Conrail”) on the Hudson, Harlem and New Haven lines to and from Grand Central Terminal in New York City. HRRC is a Class III common carrier subject to 49 U.S.C. Subtitle IV, chapter 105. HRRC’s rail network extends from Pittsfield, Massachusetts, through Connecticut to New Haven and over to the Beacon Line in New York.

b. Historical Ownership & Operation of the Beacon Line

In 1992, Maybrook Railroad Company (“MRC”) acquired from Conrail, a line of railroad in Dutchess County, New York from milepost 12.8 in the City of Beacon, New York, to railroad milepost 0.3 in the town of Fishkill, New York and the line of railroad from milepost 42.6 to 42.9 and continuing to milepost 58.0, located at the county line between Dutchess and Putnam Counties in New York. MRC also acquired the line of railroad in Putnam County from milepost 58.0 to milepost 71.0. Collectively, these lines in Dutchess and Putnam Counties are referred to in this Proceeding as the “Beacon Line.”

MRC and its affiliate, the Danbury Terminal Railroad Company (“DTRC”) acquired authority to operate over the Beacon 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). In 1996, DTRC and HRRC, which were previously affiliates, 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). Both the HRRC and MRC are affiliate companies 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 January 9, 1995, MRC conveyed by two quitclaim deeds and an assignment assumption agreement, the Beacon Line in New York State to Metro-North. **Exhibit A**. In the quitclaim deeds, MRC reserved to itself and DTRC the right to conduct common carrier freight service on the Beacon Line. **Exhibit A**, p. 1-2 (of each deed).

On January 12, 1995, the Interstate Commerce Commission (“ICC”) granted an earlier filed petition by Metro-North to acquire the Beacon Line (referred to as the “Maybrook Line” in that proceeding), and to exempt Metro-North from most of the provisions of 49 U.S.C. Subtitle IV. *Metro North Commuter R.R. Co.—Acquisition Exemption—The Maybrook Line; Metro North Commuter R.R. Co.—Exemption—From 49 U.S.C. Subtitle IV*, ICC Finance Docket No. 32639; ICC Finance Docket No. 32639 (Sub-No. 1) (Service Date Jan. 13, 1995). The ICC decision set forth Metro-North’s interest in the line:

By purchasing the Maybrook Line, Metro-North will assure its continued ability to conduct... non-revenue repositioning moves and could provide cross-state commuter rail service in the future. DTRR’s freight service will also benefit because [Metro-North] is a public corporation, its acquisition of the line will exempt the line from local property taxes and other assessments.

[Metro-North] also seeks an exemption from 49 U.S.C. Subtitle IV because it does not desire and is not equipped to conduct rail freight common carrier service.

Slip op. at 2. The ICC exempted Metro-North from acquiring a residual common carrier obligation, and permitted Metro-North to abandon the Beacon Line subject only to DTRC seeking authority to discontinue freight service. *Id.* at 3-4.

In the associated Trackage Rights Agreement between MRC, Metro-North, and DTRC, Metro-North granted exclusive freight operating rights for the Beacon Line to DTRC. **Exhibit B**, Trackage Rights Agreement, Sections 3 and 5.

Pursuant to Section 13 of the Trackage Rights Agreement, Metro-North would construct turnouts on the Beacon Line “for bona fide freight customers of [HRRC], provided that the location of the proposed turnouts does not unreasonably interfere with [Metro-North’s] use of the lines or operation of its trains.” **Exhibit B**, TRA, Section 13, pp. 17-18.

Section 20(a) of the Trackage Rights Agreement states:

Notwithstanding any other provision of this agreement, Owner [Metro-North] may abandon the Subject trackage or any portion thereof, during the term of this Agreement upon giving User [HRRC] not less than one hundred twenty (120) days’ notice of Owner’s intent to abandon. *In the event regulatory authority is required to effect such abandonment, [HRRC] will not interfere with [Metro-North]’s actions to seek and to exercise such authority. [HRRC] agrees that it will not oppose nor will it cause any other person or entity to oppose any petition by [Metro-North] to the Interstate Commerce Commission to abandon rail service on the Subject Trackage, or any portion thereof, or any other action by [Metro-North] to abandon or discontinue rail service on said subject trackage or any portion thereof.*

In the event regulatory authority is required for [Metro-North] to discontinue its own operations over the Subject Trackage, [HRRC] will seek such regulatory authority at the same time that [Metro-North] seeks regulatory authority to abandon the Subject Trackage, unless [HRRC] or another carrier acquires the Subject Trackage from Owner or subsidizes operations pursuant to 49 U.S.C. Section 10905.

Emphasis supplied.

Accordingly, under the terms of the Trackage Rights Agreement and the ICC’s decision, Metro-North is permitted to abandon the Beacon Line without seeking STB approval, is only required to give HRRC 120 days’ notice of its intent to abandon the Line, and HRRC has contractually agreed not to oppose Metro-North’s actions to abandon the Line.

c. Procedural History

On February 18, 2020, Metro-North provided HRRC with 120 days’ notice of its intent to abandon the Beacon Line. See **Exhibit C**, Letter from C. Rinaldi to E. Rodriguez. Despite adequate notice of Metro-North’s intent to abandon the line, HRRC refused to seek discontinuance

authority from the STB unless Metro-North provides HRRC with a lump sum payment for upgrades to HRRC grade crossings in Connecticut. After waiting nearly a year for HRRC to seek STB authority to discontinue service of the Beacon Line, on February 8, 2021, Metro-North initiated this proceeding by filing a Petition for Partial Waivers of Discontinuance Regulation and for Exemption in conjunction with this forthcoming application for adverse discontinuance. *Petition for Partial Waivers of Discontinuance Regulations and for Exemption*, Feb. 8, 2020 (“*Petition for Partial Waivers*”).

Metro-North asked the Board to waive the following requirements in this proceeding: system diagram map requirements of 49 C.F.R. § 1152.10 to § 1152.14 and § 1152.24(e)(1); notice and service and posting requirement for the Notice of Intent pursuant to 49 C.F.R. § 1152.20; form of the Notice of Intent under 49 C.F.R. § 1152.21; physical condition of the line per 49 C.F.R. § 1152.22(b); service provided on the line per 49 C.F.R. § 1152.22(c); and revenue and cost data per 49 C.F.R. § 1152.22(d). On April 20, 2021, the Board issued a decision granting with only limited exceptions the exemptions and waivers Metro-North requested in its Application for Adverse Discontinuance. *Metro-North Commuter Railroad Company—Adverse Discontinuance of Trackage Rights—Housatonic R.R. Co.*, STB Docket No. AB 1311 (Service Date April 20, 2021) (“*Decision*”). Consistent with the Board’s decision, Metro-North has provided the requisite information for its Application for Adverse Discontinuance in the following paragraphs.

II. Metro-North’s Application for Adverse Discontinuance

Metro-North has found that commuter service on the Beacon Line is not feasible. In addition, freight has not moved over the Beacon Line for decades. Metro-North has no record of any train movement – including freight – over any portion of the Beacon Line from 2014 to present

day.² See **Exhibit D**, Verified Statement of John Longobardi. Given the lack of need for commuter service and the lack of demand for freight rail service on the line, and in view of the current and prospective trail use on the line, Metro-North seeks a discontinuance of HRRC's rail service on the line. Metro-North hereby submits the following information in accordance with the requirements of 49 C.F.R. § 1152.20 and § 1152.22.

a. 49 C.F.R. § 1152.20(a)(1) and (2) Filing and Service of Notice of Intent.

Metro-North sought a waiver from the form of the Notice of Intent set forth in 49 C.F.R. § 1152.21. *Petition for Partial Waivers*, 6. On March 10, 2021, while the *Petition for Partial Waivers* was pending before the Board, Metro-North filed a Notice of Intent with the Board. Metro-North also sent, via certified mail, the Notice of Intent to the parties listed in 49 C.F.R. § 1152.20(a)(2). See **Exhibit E** for the full list of recipients for the Beacon Line.

When the Board issued its Decision on the Petition for Partial Waivers, the Board granted Metro-North's request for modification of the Notice of Intent and noted that Metro-North filed its Notice of Intent prior to the issuance of the STB's Decision. *Decision*, 4 n. 3. The Board directed Metro-North to send a copy of its Decision to the recipients listed in 49 C.F.R. § 1152.20(a). *Id.* Accordingly, on April 26, 2021, Metro-North mailed each recipient listed in 1152.20(a) a copy of the Board's Decision with the letter attached as **Exhibit F**.

b. 49 C.F.R. § 1150.20(a)(4) Newspaper Notice.

Metro-North published the required newspaper notice in the Westchester Putnam Journal News on March 10, March 17 and March 24, 2021. See **Exhibit G**. Metro-North also published

² Metro-North does not have records regarding train movements for the years prior to 2014, however Metro-North's Chief Transportation Officer, John Longobardi, has submitted a verified statement indicating that, to the best of his recollection, no freight has moved over the Beacon Line since Metro-North acquired the line. See **Exhibit D**, Verified Statement of John Longobardi.

the required newspaper notice in the Poughkeepsie Journal on March 10, March 17 and March 24, 2021. See **Exhibit H**.

c. 49 C.F.R. § 1152.20(c) Environmental and Historic Reports.

Consistent with the requirements of 49 C.F.R. § 1105.7 and § 1105.8, Metro-North served the requisite parties with Environmental and Historic Reports on March 5, 2021. The list of recipients for the Beacon Line and the Environmental and Historic Report is attached as **Exhibit I**. The Environmental and Historic Report is attached as **Exhibit J**. Included with **Exhibit J** is the response Metro-North received from Region 2 of the Environmental Protection Agency. In an email to Metro-North's counsel, Mark Austin, Team Leader, Environmental Reviews, indicated that the EPA did not have any comments on the proposed adverse discontinuance of the Beacon Line. Metro-North did not receive any other responses to the Environmental and Historic Report.

d. 49 C.F.R. § 1152.22(a)(1) Exact name of applicant.

Metro-North Commuter Railroad Company
420 Lexington Avenue
New York, NY 10170

e. 49 C.F.R. § 1152.22(a)(2) Whether applicant is a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105.

Metro-North is not a common carrier by railroad subject to 49 U.S.C. Subtitle IV, chapter 105. HRRC is a common carrier railroad subject to the 49 U.S.C. Subtitle IV, chapter 105.

f. 49 C.F.R. § 1152.22(a)(3) Relief sought.

Metro-North seeks authority of the Board to discontinue HRRC's Certificate of Public Convenience and Necessity with respect to service over the Beacon Line in Dutchess and Putnam Counties in New York, consistent with the terms of the parties' Trackage Rights Agreement and the public convenience and necessity.

g. 49 C.F.R. § 1152.22(a)(4) Detailed map of the subject line.

Metro-North has included two maps of the subject line as **Exhibit K**.

h. 49 C.F.R. § 1152.22(a)(5) Reference to inclusion of the rail line to be abandoned or over which service is to be discontinued on the carrier's system diagram map or narrative, in compliance with §§ 1152.10.

The Board granted Metro-North's request for waivers related to the system-diagram map.

Decision, 2.

i. 49 C.F.R. § 1152.22(a)(6) Detailed statement of reasons for filing application.

Metro-North seeks adverse discontinuance of HRRC's trackage rights over the Beacon Line due to the fact that that no traffic has moved over the line in years and there is no evidence of a *bona fide* offer or commitment from any shipper to seek to move freight traffic over the Beacon Line that would cause rail traffic to resume in the near future. Under the terms of the ICC's decision allowing Metro-North to acquire the Beacon Line, Metro-North is not required to seek authorization from the Board in order to abandon the line. Moreover, the public convenience and necessity support Metro-North's Application for Adverse Discontinuance which will promote trail use on the now unused line.

j. 49 C.F.R. § 1152.22(a)(7) Name, title, and address of representative of applicant to whom correspondence should be sent.

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k. 49 C.F.R. § 1152.22(a)(8) List of all United States Postal Service ZIP Codes that the line proposed for abandonment traverses.

The line traverses the following zip codes: 12508, 12524, 12533, 12582, 12570, 12531, 12564, 12563, and 10509.

l. 49 C.F.R. § 1152.22(b) Condition of properties.

Because no rail traffic has moved on the Beacon Line in years, the Beacon Line is not suitable for rail traffic. See **Exhibit L**, Verified Statement of David Melillo. However, the line remains intact and Metro-North has been performing maintenance associated with dangerous trees and grade crossing conditions. The bridges on the Beacon Line have been inspected consistently in accordance with applicable rules of the Federal Railroad Administration and are suitable for their current pedestrian use. *Id.* Metro-North roughly estimates that the cost to rehabilitate the Line for rail traffic is approximately \$75.5 Million, which includes expenses for rehabilitation of track, communications and signals, and structures.³

m. 49 C.F.R. § 1152.22(c) Service provided.

The Board granted Metro-North's request for a waiver of this requirement. *Decision*, 4.

n. 49 C.F.R. § 1152.22(d) Revenue and Cost data.

The Board granted Metro-North's request for a waiver of this requirement. *Decision*, 4.

o. 49 C.F.R. § 1152.22(e) Rural and Community Impact.

The Board granted Metro-North's request for a waiver of this requirement. *Decision*, 4.

p. 49 C.F.R. § 1152.22(f) Environmental impact.

As set forth above, the Environmental and Historic Report is attached as **Exhibit J**.

³ Because there is no current freight or passenger service on the Line, there are no workpapers detailing the exact costs of rehabilitation of the Line as described in 49 C.F.R. § 1152.22(b).

q. 49 C.F.R. § 1152.22(g) Passenger service.

There is no passenger rail service on the Beacon Line; therefore Metro-North is not required to take action pursuant to the Rail Passenger Service Act, 45 U.S.C. 501 et. seq.

r. 49 C.F.R. § 1152.22(h) Additional information.

Metro-North is not aware of any additional information necessary to support the Application for Adverse Discontinuance at this time.

s. 49 C.F.R. § 1152.22 (i) Draft Federal Register Notice.

The Board approved Metro-North's use of an alternative Federal Register Notice, *Decision*, 3-4, which is attached as **Exhibit M**.

t. 49 C.F.R. § 1152.22(j) Verification.

Metro-North has prepared and executed the required verification as set forth in **Exhibit N**.

III. The Public Convenience and Necessity Permit the Adverse Discontinuance of HRRC's Operating Authority Over the Beacon Line

"The statutory standard governing discontinuances of operations is whether the present or future public convenience and necessity require or permit the proposed discontinuance." 49 U.S.C. § 10903(d)." *Port of Benton County, Wash.—Adverse Discontinuance of Rail Service—Tri-City R.R. Co., LLC*, STB Docket No. AB 1270, slip op. at 4 (Service Date October 31, 2019). "The Board may consider an 'adverse' application to discontinue operations so long as the applicant establishes that it has a proper interest in the proceeding." *Id. (citations omitted)*.

"In implementing this statutory standard in an adverse proceeding, [the Board] consider[s] the relative burdens that continuation of service on the one hand, and cessation of service on the other hand, would have on the involved carrier, the owner-lessor of the line, and the public." *Boston and Maine Corp. and Springfield Terminal Ry. Co.—Adverse Discontinuance—New*

England Southern R.R. Co., Inc., STB Docket No. AB 32 (Sub-No. 100), slip op. at 3 (Service Date April 30, 2010). “In an application by a third party for a determination that the public convenience and necessity permits a line to be discontinued or abandoned, the issue before the Board is whether the public interest requires that the line in question be retained as part of the national rail system.” *Grand Trunk Western R.R. Inc.—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Ry. Co. in Cincinnati, Hamilton County, OH*, STB Docket No. AB 31 (Sub-No. 30), slip op. at 3 (Service Date Feb. 12, 1998). “[T]he Board balances the competing benefits and burdens of discontinuance or abandonment on all interested parties, including the railroads involved, the shippers on the line, the communities involved, and interstate commerce generally.” *Port of Benton County, Wash.*, slip op. at 5. “The Board must also consider whether the discontinuance would have a serious, adverse impact on rural and community development.” *Id.*

“In an adverse discontinuance, the burden of proof is on the applicant.” *Boston and Maine Corp. and Springfield Terminal Ry. Co.*, slip op. at 3.

The Public Convenience and Necessity permit the adverse discontinuance of the HRRC’s trackage rights over the Beacon Line. There has been no freight or passenger traffic on the Beacon Line in decades. The Board has authorized the adverse discontinuance of a line in cases where freight has not moved over the line in many years and when the right-of-way is “needed for a valid public purpose.” *Grand Trunk Western R.R. Inc.—Adverse Discontinuance of Trackage Rights Application—A Line of Norfolk and Western Ry. Co. in Cincinnati, Hamilton County, OH*, STB Docket No. AB 31 (Sub No. 30), slip op. at 4 (Service Date May 13, 1998) (noting that freight had not moved over the subject line for 11 years and the potential for future multi-purpose improvements in the City of Cincinnati’s downtown area).

There are no rail shippers who have expressed willingness to pay the cost of moving freight, including the costs associated with restoration of the line to FRA standards for operation of trains along the line. There has been no rail service – neither freight nor passenger - in years. The discontinuance will have no rural or community impact given the lack of shippers on the line. And the nearby communities already benefit from the existing Maybrook Trailway in the Beacon Line's right-of-way. In addition, allowing the adverse discontinuance of HRRC's trackage rights will relieve Metro-North, a public entity, of the burden and liability of maintenance of the Line.

When the ICC authorized Metro-North's acquisition of the Line, the ICC relieved Metro-North of the future obligation to seek abandonment authority. HRRC's refusal to discontinue service on the Line upon Metro-North's request, as the Trackage Rights Agreement requires it to do, and moreover its opposition to this petition, which the Trackage Rights Agreement forbids it to do, places HRRC in blatant violation of the Trackage Rights Agreement. This creates an undue burden on Metro-North which the ICC sought to eliminate in 1995. The discontinuance of HRRC's trackage rights over the Beacon Line will be absolutely consistent with the public convenience and necessity, and Metro-North's request for adverse discontinuance of HRRC's trackage rights should be granted.

Respectfully Submitted,



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kbourdon@kaplankirsch.com

Date: April 30, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have on the 30th of April, 2021, caused to be served a copy of the foregoing Application for Adverse Discontinuance, upon the following parties of record in this proceeding by U.S. mail and email:

Dick Welsh
National Association of Reversionary Property Owners
1100 Bellevue Way NE Ste 8A PMB 719
Bellevue, Washington 98004
dick156@earthlink.net

Edward J. Rodriguez
Housatonic Railroad Company
4 Huntley Road
P.O. Box 687
Old Lyme, Connecticut 06371-1448
e.rodriguez@hrrc.com



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Dated: April 30, 2021

Exhibit A

Quitclaim Deeds from MRC to Metro-North

Putnam

QUIT CLAIM DEED

THIS INDENTURE, made the 9th day of January, Nineteen Hundred and Ninety-Five (1995), BETWEEN MAYBROOK RAILROAD COMPANY, a railroad Corporation of the State of Delaware, having a mailing address of P.O. Box 537, Old Saybrook, Connecticut 06475, formerly known as MAYBROOK PROPERTIES, INC., a railroad Corporation of the State of Delaware, having a mailing address of P.O. Box 537, Old Saybrook, Connecticut 06475, hereinafter referred to as the Grantor and METRO-NORTH COMMUTER RAILROAD COMPANY, a public benefit corporation of the State of New York, having an address at 347 Madison Avenue, New York, New York 10017, hereinafter referred to as the Grantee;

WITNESSETH: That the Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States, paid by the Grantee, the receipt whereof is hereby acknowledge, does hereby remise, release and quitclaim unto the Grantee, the heirs or successors and assigns of the Grantee forever, all right, title and interest of the Grantor of, in and to:

ALL THAT CERTAIN property of the Grantor, together with all of the improvements thereon, being portions of Grantor's line of railroad known as the Maybrook Line (Line Code 4223), and Situate in the County of Putnam, New York, and generally described in Exhibit "A" hereof, hereinafter referred to as "Premises", and being the same premises conveyed to the Grantor herein by Consolidated Rail Corporation by deed dated December 30, 1992 together with the appurtenances and all the estate of rights of Grantor in and to and over said premises.

Reserving, however, from the grant, subject to the qualifications and limitations contained in the Trackage Rights Agreement of even date herewith among Grantor, Danbury Terminal Railroad Company ("DTRR") and Grantee, the right which continues to remain with DTRR, it successors and assigns, to operate upon the property (the "Trackage") herein granted a common carrier service

to the extent (i) authorized under the Interstate Commerce Act, or any future law of like import, or (ii) otherwise permitted by law, including the right: (a) to operate over the Trackage freight trains, cars and locomotives to provide local and overhead freight service at any point (exclusive of passenger station areas) along the Trackage, and (iii) the Trackage is used for rail transportation.

To Have and to Hold all and singular the said line of railroad and other property hereinbefore described and every part and parcel thereof hereby conveyed or intended so to be unto the Grantee, it successors and assigns forever, Reserving as aforesaid.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) easements or agreements of records or otherwise affecting the land hereby conveyed, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove as the same may exist.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective legal representatives, successors and assigns of Grantor and Grantee. Grantee hereby knowingly, willingly, and voluntarily waives the benefit of any rule, law, custom, or statute of the State of New York now or hereafter in force with respect to the covenants set forth below.

(1) Except as described in Exhibit A, no right or means of ingress, egress or passageway to or from the Premises is hereby granted, expressly or by implication, and Grantor shall not be liable or obligated to provide or obtain for Grantee any such means of ingress, egress or passageway.

(2) Should a claim adverse to the title hereby quitclaimed by asserted and/or proved, no recourse shall be had against the Grantor herein.

(3) Grantee by the acceptance of this Instrument, does hereby accept all existing and prospective responsibility for removal and/or restoration costs for any and all railroad bridges and grade crossings and their appurtenances that may be located on the Premises conveyed to the said Grantee; and Grantee further covenants and agrees that it will also assume any obligation and/or responsibility as may have been or may hereafter be imposed on grantor by any Public utility Commission or any other governmental

agency having jurisdiction for any and all bridge structures and grade crossings and their appurtenances, including but not limited to the removal, repairing or restoration of same in accordance with the requirements of said Commission or other governmental agency; and Grantee further agrees to indemnify, defend and hold Grantor harmless against all costs, penalties, expenses, obligations, responsibility and requirements associated with said bridge structures and grade crossing and their appurtenances.

THIS INSTRUMENT is not intended and shall not be interpreted as creating any rights or interest in third parties or as creating any duties or obligations or Grantor or Grantee to third parties and neither Grantor nor Grantee assume any obligation hereunder from which it would otherwise be exempt or immune pursuant to law (except any such obligations either Grantee or Grantor shall owe one to the other).

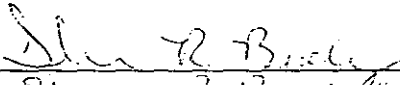
And the Grantor in compliance with Section 13 of the Lien Law, covenants that it will receive the consideration for this conveyance or an equal sum and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvements, if any, made by it upon said premises and that it will apply the same first to the payment of the cost of any such improvements before using any part of the total of same for any other purposes.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantor's" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include all the times and in all cases the successors and assigns of the Grantor and Grantee.

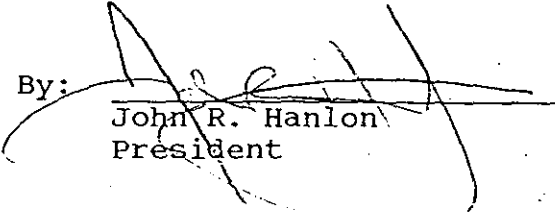
IN WITNESS WHEREOF, the Grantor has caused its Corporate name to be hereunto affixed and these presents to be signed by its duly authorized officer, the day and year first above written.

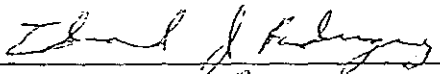
SEALED AND DELIVERED in
the presence of us:

MAYBROOK RAILROAD COMPANY


Sharon R. Berkley

By:


John R. Hanlon
President

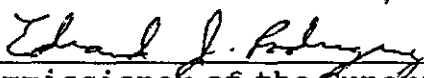

Edward J. Rodriguez

STATE OF CONNECTICUT:

: ss: Old Saybrook

COUNTY OF MIDDLESEX :

On the 9th day of January, 1995, before me personally came John H. Hanlon, Jr. to me known, who, being by me duly sworn, did depose and say that he resides at 175 Shunpike Road, Sheffield, Massachusetts, that he is the President of MAYBROOK RAILROAD COMPANY, the, the Delaware corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation.



Commissioner of the Superior Court (Conn.)

DEED TO
METRO NORTH COMMUTER RAILROAD COMPANY

EXHIBIT "A"

Putnam County, New York

Maybrook Line; Line Code 4223

ALL THAT CERTAIN portion of Grantor's line of railroad known as the Maybrook Line (Line Code 4223) and being the former Penn Central Transportation Company's line of railroad known as the Maybrook Branch (a.k.a. Danbury Secondary), and identified as Line Code 4223 in the Recorder's Office of Putnam County, New York in Volume 755 at page 484; being further described as follows:

SITUATE in Putnam County, New York; and BEGINNING at the County Line between the County of Dutchess, New York on the north and the County of Putnam, New York, on the south, being at approximately Railroad Mile Post 58.0 and thence continuing from said County Line in a general southeasterly/easterly direction, passing through the Town of Patterson and South East, the Village of Brewster and re-entering the Town of South East and ENDING at approximately Railroad Mile post 71.0 (a.k.a. Railroad mile Post 71.26), being the County, Town and State Line between the County of Putnam and State of New York on the west and the Town of Danbury and State of Connecticut on the east;

And also all lands under water, water courses, water rights, riparian rights, franchises, licenses and permits, and all other lands, premises, rights, easements and property held for or in connection with the construction, maintenance, operation or use of said line of railroad or forming a part thereof or thereunto belonging or in any wise appertaining.

Together with all and singular the tracks, sidings, turnouts, bridges, culverts, fences, station houses, tool houses, shops, turntables, stations, pole lines and wires, overhead conductors, catenary systems, substations, switch gear, power and control cables, power houses, buildings, erections, fixtures and all other structures, improvements and facilities of every kind and nature whatsoever located upon said premises and held for or in connection with the maintenance, operation or use of said lines of railroad.

THIS EXHIBIT "A" CONTAINS 2 PAGES, OF WHICH THIS IS PAGE 1 OF 2.

BEING and intending to convey all the same premises under Line Code 4223 which Robert W. Blanchette, Richard C. Bond and John J. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-129, dated March 30, 1976 and recorded on October 3, 1978, in the Recorder's Office of Putnam County, New York in Deed Book Volume 755 at page 479&c., granted and conveyed unto Consolidated Rail Corporation EXCEPT, however, such portions thereof of interest therein under Line Code 4223 as have been conveyed by Consolidated Rail Corporation to any other parties.

Being the same premises conveyed by Consolidated Rail Corporation to the Grantor herein by deed dated December 30, 1992.

THIS EXHIBIT "A" CONTAINS 2 PAGES, OF WHICH THIS IS PAGE 2 OF 2.

Purchase

QUIT CLAIM DEED

THIS INDENTURE, made the 9th day of January, Nineteen Hundred and Ninety-Five (1995), between MAYBROOK RAILROAD COMPANY, a railroad Corporation of the State of Delaware, having a mailing address of P.O. Box 537, Old Saybrook, Connecticut 06475, formerly known as MAYBROOK PROPERTIES, INC., a railroad Corporation of the State of Delaware, having a mailing address of P.O. Box 537, Old Saybrook, Connecticut 06475, hereinafter referred to as the Grantor, and METRO-NORTH COMMUTER RAILROAD COMPANY, a public benefit corporation of the State of New York, having an address at 347 Madison Avenue, New York, New York 10017, hereinafter referred to as the Grantee;

WITNESSETH: That the Grantor, for and in consideration of the sum of ONE DOLLAR (\$1.00), lawful money of the United States, paid by the Grantee, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the Grantee, the successors and assigns of the Grantee forever, all right, title and interest of the Grantor of, in and to:

ALL THAT CERTAIN property of the Grantor, together with all of the improvements thereon, being portions of Grantor's lines of railroad known as the Maybrook Line and Beacon Line, (Line Codes 4246 and 4223), and Situate in the County of Dutchess, New York and described in Exhibit "A" hereof, hereinafter referred to as "Premises", and being the same premises conveyed to the Grantor herein by Consolidated Rail Corporation by deed dated December 30, 1992 together with the appurtenances and all the estate of rights of Grantor in and to and over said premises.

Reserving, however, from the grant, subject to the qualifications and limitations contained in that certain Trackage Rights Agreement of even date herewith among Grantor, Danbury Terminal Railroad Company ("DTRR") and Grantee, the right which continues to remain with DTRR, its successors and assigns, to operate upon the property (the "Trackage") herein granted a common

carrier service to the extent (i) authorized under the Interstate Commerce Act, or any future law of like import, or (ii) otherwise permitted by law, including the right: (a) to operate over the Trackage freight trains, cars and locomotives to provide local and overhead freight service at any point (exclusive of passenger station areas) along the Trackage, and (iii) the Trackage is used for rail transportation.

To Have and to Hold all and singular the said line of railroad and other property hereinbefore described and every part and parcel thereof hereby conveyed or intended so to be unto the Grantee, it successors and assigns forever, Reserving as aforesaid.

UNDER and SUBJECT, however, to (1) whatever rights the public may have to the use of any roads, alleys, bridges or streets crossing the Premises, (2) any streams, rivers, creeks and water ways passing under, across or through the Premises, and (3) easements or agreements of record or otherwise affecting the land hereby conveyed, and to the state of facts which a personal inspection or accurate survey would disclose, and to any pipes, wires, poles, cables, culverts, drainage courses or systems and their appurtenances now existing and remaining in, on, under, over, across and through the Premises, together with the right to maintain, repair, renew, replace, use and remove as the same may exist.

THIS INSTRUMENT is executed and delivered by Grantor, and is accepted by Grantee, subject to the covenants set forth below, which shall be deemed part of the consideration of this conveyance and which shall run with the land and be binding upon, and inure to the benefit of, the respective legal representatives, successors and assigns of Grantor and Grantee.

(1) Except as described in Exhibit A, no right or means of ingress, egress or passageway to or from the Premises is hereby granted, expressly or by implication, and Grantor shall not be liable or obligated to provide or obtain for Grantee any such means of ingress, egress or passageway.

(2) Should a claim adverse to the title hereby quitclaim be asserted and/or proved, no recourse shall be had against the Grantor herein.

(3) Grantee by the acceptance of this Instrument, does hereby accept all existing and prospective responsibility for removal and/or restoration costs for any and all railroad bridges and grade crossings and their appurtenances that may be located on the Premises conveyed to the said Grantee; and Grantee further covenants and agrees that it will also assume any obligation and/or responsibility as may have been or may hereafter be imposed on Grantor by any Public Utility Commission or any other governmental agency having jurisdiction for any and all bridge structures and grade crossings and their appurtenances, including but not limited to the removal, repairing or restoration of same in accordance with

the requirements of said Commission or other governmental agency; and Grantee further agrees to indemnify, defend and hold Grantor harmless against all costs, penalties, expenses, obligations, responsibility and requirements associated with said bridge structures and grade crossing and their appurtenances.

THIS INSTRUMENT is not intended and shall not be interpreted as creating any rights or interest in third parties or as creating any duties or obligations on Grantor or Grantee to third parties and neither Grantor nor Grantee assume any obligation hereunder from which it would otherwise be exempt or immune pursuant to law (except any such obligations either Grantee or Grantor shall owe one to the other).

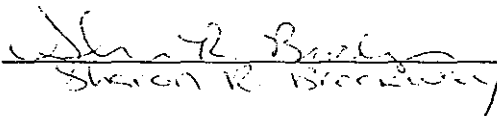
And the Grantor in compliance with Section 13 of the Lien Law, covenants that it will receive the consideration for this conveyance or an equal sum and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvements, if any, made by it upon said premises and that it will apply the same first to the payment of the cost of any such improvements before using any part of the total of same for any other purposes.

THE words "Grantor" and "Grantee" used herein shall be construed as if they read "Grantors" and "Grantees", respectively, whenever the sense of this instrument so requires and whether singular or plural, such words shall be deemed to include all the times and in all cases the successors and assigns of the Grantor and Grantee.

IN WITNESS WHEREOF, the Grantor has caused its Corporate name to be hereunto affixed and these presents to be signed by its duly authorized officer, the day and year first above written.

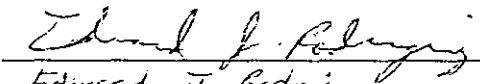
SEALED AND DELIVERED in
the presence of us:

MAYBROOK RAILROAD COMPANY


Sharon R. Brockway

By:

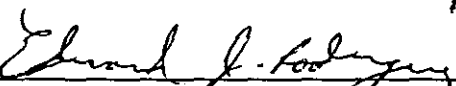

John R. Hanlon
President


Edward J. Rodriguez

STATE OF CONNECTICUT:

: ss: Old Saybrook
COUNTY OF MIDDLESEX :

On the 9th day of January, 1995, before me personally came John H. Hanlon, Jr. to me known, who, being by me duly sworn, did depose and say that he resides at 175 Shunpike Road, Sheffield, Massachusetts, that he is the President of MAYBROOK RAILROAD COMPANY, the, the Delaware corporation described in and which executed the foregoing instrument; and that he signed his name thereto by order of the board of directors of said corporation.



Commissioner of the Superior Court (Conn.)

DEED TO
METRO NORTH COMMUTER RAILROAD COMPANY

"EXHIBIT A"

Dutchess County, New York

Beacon Line, Line Code 4246

ALL THAT CERTAIN portion of Grantor's line of railroad known as the Beacon Line (Line Code 4246) and being the former Penn Central Transportation Company's line of railroad known as the Beacon Secondary Track (a.k.a. Danbury Secondary), and identified as Line Code 4246 in the Recorder's Office of Dutchess County, New York in Liber 1492 at page 573; being further described as follows:

SITUATE in Dutchess County, New York; and BEGINNING at approximately Railroad Mile post 12.8 (at the connection to Metro North Commuter Railroad Company's Hudson Line being at approximately Railroad Mile Post 12.6) in the City of Beacon; thence extending in a generally northeasterly direction, passing through the Town and Village of Fishkill to the ENDING at approximately Railroad Mile Post 0.3 (a.k.a. Railroad Mile Post 42.6 of Line Code 4223) at Hopewell Junction in the Town of East Fishkill).

ALSO see description of Maybrook Line, Line Code 4223, Mile Post 42.6 to Mile Post 42.9, on page 2 of 2 of this Exhibit "A".

And also all lands under water, water courses, water rights, riparian rights, franchises, licenses and permits, and all other lands, premises, rights, easements and property held for or in connection with the construction, maintenance, operation or use of said line of railroad or forming a part thereof or thereunto belonging or in any wise appertaining.

Together with all and singular the tracks, sidings, turnouts, bridges, culverts, fences, station houses, tool houses, shops, turntables, stations, pole lines and wires, overhead conductors, catenary systems, substations, switch gear, power and control cables, power houses, buildings, erections, fixtures and all other structures, improvements and facilities of every kind and nature whatsoever located upon said premises and held for or in connection with the maintenance, operation or use of said lines of railroad.

THIS EXHIBIT "A" CONTAINS 3 PAGES, OF WHICH THIS IS PAGE 1 OF 3.

BEING and intending to convey all the same premises under Line Code 4246 which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor, by Conveyance Document No. PC-CRC-RP-108, dated March 30, 1976 and recorded on October 2, 1978, in the Recorder's Office of Dutchess County, New York, in Liber 1492 at page 567&c., granted and conveyed unto Consolidated Rail Corporation; EXCEPT, however, such provisions thereof or interests therein under Line Code 4246 as have been conveyed by Consolidated Rail Corporation to any other parties or excepted by Consolidated Rail Corporation from the conveyance by Consolidated Rail Corporation to the Grantor herein.

Being the same premises conveyed by Consolidated Rail Corporation to the Grantor herein by deed dated December 30, 1992.

THIS EXHIBIT "A" CONTAINS 3 PAGES, OF WHICH THIS IS PAGE 2 OF 3.

DEED TO
METRO NORTH COMMUTER RAILROAD COMPANY

"EXHIBIT A"

Dutchess County, New York

Maybrook Line, Line Code 4223

ALL THAT CERTAIN portion of Grantor's line of railroad known as the Maybrook Line (Line Code 4223) and being a portion of the former Penn Central Transportation Company's line of railroad known as the Maybrook Branch (a.k.a. Danbury Secondary), and identified as Line Code 4223 in the Recorder's Office of Dutchess County, New York in Liber 1492 at page 572; being further described as follows:

SITUATE in Dutchess County, New York; and BEGINNING at approximately Railroad Mile post 42.6 (a.k.a. Railroad Mile Post 0.3 of the Line Code 4246); thence extending in a general easterly direction to approximately Railroad Mile Post 42.9 (a.k.a. Railroad Mile Post 0.0 of Line Code 4246), at Hopewell Junction in the Town of East Fishkill; and thence CONTINUING from said Railroad Mile Post 42.9, at Hopewell Junction in the Town of East Fishkill, in a general easterly/southeasterly direction, passing through the Towns of Beekman and Pawling, and EXTENDING at approximately Mile Post 58.0, being the County Line between the County of Dutchess, New York on the north and the County of Putnam, New York on the south.

BEING and intending to convey all the same premises under Line Code 4223 which Robert W. Blanchette, Richard C. Bond and John H. McArthur, as Trustees of the Property of Penn Central Transportation Company, Debtor by Conveyance Document No. PC-CRC-RP-108, dated March 30, 1976 and recorded on October 2, 1978, in the Recorder's Office of Dutchess County, New York, in Liber 1492 at page 567&c., granted and conveyed unto Consolidated Rail Corporation; EXCEPT, however, such portions thereof or interest therein under Line Code 4223 as have been conveyed prior to December 30, 1992 by Consolidated Rail Corporation to any other parties.

Being the same premises conveyed by Consolidated Rail Corporation to the Grantor herein by deed dated December 30, 1992.

THIS EXHIBIT "A" CONTAINS 3 PAGES, OF WHICH THIS IS PAGE 3 OF 3.

Exhibit B

Trackage Rights Agreement

TRACKAGE RIGHTS AGREEMENT

THIS AGREEMENT, entered into effective as of the 19th day of January, 1995, by and between DANBURY TERMINAL RAILROAD COMPANY, a Connecticut railroad corporation ("DTRR"), MAYBROOK RAILROAD COMPANY, a Delaware railroad corporation ("Maybrook"), and METRO NORTH COMMUTER RAILROAD COMPANY, a public benefit corporation of the State of New York ("MNCR").

WHEREAS, MNCR has acquired from Maybrook certain rail lines located in Putnam and Dutchess Counties, State of New York, comprising the BEACON LINE from Beacon, New York (M.P. 0.0) to Hopewell Junction, New York (M.P. 12.8) and the portion of the MAYBROOK LINE from Hopewell Junction, New York (M.P. 42.9) to the Connecticut/New York state line at Southeast, New York (approximate M.P. 71.2), said property being sometimes herein collectively referred to as the "NEW YORK LINES";

WHEREAS, MTA leases a certain rail line located in the Counties of Dutchess, Putnam and Westchester, New York, comprising a portion of the Harlem Line from mile post 22.0 in White Plains to mile post 77.00 in Dover Plains, said property being sometimes herein referred to as the HARLEM LINE;

WHEREAS, MNCR plans to acquire a certain rail line located in the County of Dutchess, New York, comprising a portion of the Harlem Line from mile post 77.00 in Dover Plains to mile post 81.60 in Wassaic, said property sometimes referred to as the "WASSAIC EXTENSION",

WHEREAS, DTRR has operating rights on a certain rail line owned by Maybrook, which rail line is located in Fairfield County, State of Connecticut comprising a portion of the MAYBROOK LINE from the Connecticut/New York state line at Southeast, New York (approximate M.P. 71.2) to a point in Danbury, Connecticut 1000 feet east of the Wildman Street crossing (approximate M.P. 77.7) in proximity to the junction with MNCR's Danbury Branch, said property being sometimes herein referred to as the "CONNECTICUT LINE";

WHEREAS, DTRR has freight service trackage rights on the Harlem Line, exclusive freight service trackage rights on the New York Lines and the Wassaic Extension, as well as common carrier freight service obligations on all three lines ;

WHEREAS, MNCR is the passenger operator of the Harlem Line and the Danbury Branch and has operating rights on the New York Lines;

WHEREAS, it is efficient and desirable for MNCR to enjoy trackage rights over the Connecticut Line in order to connect the New York Lines and the Harlem Line with the Danbury Branch; and

WHEREAS, DTRR is willing to grant MNCR trackage rights on the Connecticut Line; and

WHEREAS, the parties hereto desire to enter into a Trackage Rights Agreement which will govern the operation by DTRR over the Harlem Line, the Wassaic Extension, and the New York Lines and the operation by MNCR over the Connecticut Line;

NOW THEREFORE, the parties hereto, intending to be legally bound, agree as follows:

SECTION 1. DEFINITIONS

When used in this Agreement, the terms set forth in this section shall have the meanings as herein defined:

(a) "Actual Costs" shall mean all expenses incurred by the party in connection with a transaction, including retroactive wage adjustments and the party's applicable additives and overhead rates in effect at the time the work is performed.

(b) "Car Mile" shall mean a locomotive, car, unit of self-propelled work equipment, whether or not loaded, whether or not carrying passengers or freight, moved one mile over Rail Properties.

(c) "Crossover" shall mean a track fixture which is used to switch a train from one track to an adjacent parallel track and consists of two (2) turnouts. A turnout consists of a switch and other track components.

(d) "DTRR" shall mean Danbury Terminal Railroad Company, a railroad corporation organized under the laws of the State of Connecticut.

(e) "DTRR Rail Properties" shall mean the Connecticut Line, including (except as otherwise specifically provided herein) additions and betterments thereto, identified in paragraph 2 hereto.

(f) "Maybrook" shall mean Maybrook Railroad Company, a corporation of the State of Delaware.

(g) "MNCR" shall mean the Metro North Commuter Railroad Company, a public benefit corporation of the State of New York and a wholly owned subsidiary of Metropolitan Transportation Authority.

(h) "MNCR Rail Properties" shall mean the New York Lines identified in Section 3 hereof, the Harlem Line identified in Section 4A hereof, and the Wassaic Extension identified in Section 4B hereof, including facilities existing thereon and additions and betterments thereto.

(i) "MTA" shall mean the Metropolitan Transportation Authority.

(j) "Non-Routine Maintenance" shall be that work generally performed and programmed on a maintenance cycle, on a project or emergency basis with respect to turnouts, including, but not limited to, partial or entire replacement of switch timbers, ties, metal materials, ballast, switch stands, signal apparatus and derails, if any.

(k) "Owner" shall mean DTRR, when referring to DTRR Rail Properties, and shall mean MNCR when referring to MNCR Rail Properties.

(l) "Parties" shall mean DTRR, MNCR and Maybrook collectively.

(m) "Rail Properties" or "Subject Trackage" shall mean the MNCR Rail Properties and the DTRR Rail Properties.

(n) "Routine Maintenance" shall be that work performed by basic maintenance forces with respect to turnouts including, but not limited to, inspections, switch stand and rod adjustments, lubricating, welding, respiking, spot surfacing and tamping, signal department tests and inspection, snow removal and turnout surfacing.

(o) "User" shall mean DTRR when referring to MNCR Rail Properties, and shall mean MNCR when referring to DTRR Rail Properties.

SECTION 2. GRANT OF TRACKAGE RIGHTS ON THE CONNECTICUT LINE

Subject to the terms and conditions herein provided, DTRR, with the consent of Maybrook, hereby grants to MNCR the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of DTRR's railroad (hereinafter referred to as the "DTRR Subject Trackage"):

That portion of the Maybrook Line from the New York/Connecticut state line at approximately Mile Post 71.2 to a point in Danbury, Connecticut 1000 feet east of the Wildman Street crossing (approximate M.P. 77.7).

SECTION 3. GRANT OF TRACKAGE RIGHTS ON THE NEW YORK LINES

Subject to the terms and conditions herein provided, MNCR hereby grants to DTRR the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as

the "Trackage Rights") over the following segment of MNCR's railroad:

Those rail lines located in Putnam and Dutchess Counties, State of New York, comprising the BEACON LINE from Beacon, New York (M.P. 0.0) to Hopewell Junction, New York (M.P. 12.8) and the portion of the MAYBROOK LINE from Hopewell Junction, New York (M.P. 42.9) to the Connecticut/New York state line at Southeast, New York (approximate M.P. 71.2) and any future extension thereof, said property being sometimes herein collectively referred to as the "NEW YORK LINES";

SECTION 4. GRANT OF TRackage RIGHTS ON THE HARLEM LINE AND WASSAIC EXTENSION

A. Subject to the terms and conditions herein provided, MNCR hereby grants to DTRR the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of MNCR's railroad:

A portion of the Harlem Line from mile post 22.0 in White Plains to mile post 77.00 in Dover Plains and any future extension thereof, sometimes herein referred to as the "HARLEM LINE".

This right shall be the same as that reserved by the Penn Central Corporation in the Harlem-Hudson Lease Agreement, as amended, and transferred to Conrail pursuant to the Final System Plan, and

affirmed by the Special Court in action No. 83-14, and transferred by Conrail to DTRR by instrument dated December 30, 1992.

B. Subject to the terms and conditions herein provided, MNCR hereby grants to DTRR the right to operate its trains, locomotives, cars and equipment with its own crews (hereinafter referred to as the "Trackage Rights") over the following segment of MNCR's railroad:

A portion of the Harlem Line from mile post 77.00 in Dover Plains to mile post 81.60 in Wassaic and any future extension thereof, sometimes herein referred to as the "WASSAIC EXTENSION".

SECTION 5. USE OF SUBJECT TRACKAGE

(a) DTRR shall have the exclusive freight right to use the New York Lines and the Wassaic Extension to provide both local freight service to customers located on said lines and to provide overhead freight service to customers located on the Harlem Line, DTRR's other lines or on the lines of other railroads. While this agreement is in effect, MNCR shall not grant the right to any other railroad to use the New York Line of the Wassaic Extension for local or overhead rail freight purposes. DTRR shall have the right to use all or any part of the New York Lines and the Wassaic Extension to accomplish such service.

DTRR also shall have the freight right to use the Harlem Line to provide both local freight service to customers located on DTRR's other lines, the New York Lines, the Wassaic Extension or on

the lines of other railroads. DTRR shall have the right to use all or any part of the Harlem Line to accomplish such service.

MNCR shall have the right to use the DTRR Subject Trackage for non-revenue movement of passenger trains, work trains and railroad equipment and locomotives and for the purpose of revenue passenger service but not for the movement of common carrier revenue freight.

(b) User's use of the Subject Trackage shall be in common with Owner and any other user of the Subject Trackage, and Owner's right to use the Subject Trackage shall not be diminished by this Agreement, except as specifically provided herein with respect to DTRR's enumerated freight service rights. Owner shall retain the right to grant to other persons rights of any nature in the Subject Trackage, not inconsistent with the rights granted herein.

(c) Owner shall have exclusive control of the management and operation of the Subject Trackage.

(d) User shall have the right to operate in either direction over the Subject Trackage.

SECTION 6. THIRD PARTY BENEFICIARIES

The rights and obligations established by this agreement are for the exclusive benefit of the parties hereto and are not intended and shall not be construed to create any rights of enforcement or any other rights in any other party. The parties to this agreement reserve the right to modify the provisions hereof, or to terminate the Agreement in its entirety, without obtaining the consent of any other person or entity except the consent of the

Interstate Commerce Commission if such consent is required by law.

SECTION 7. FEE PAYABLE BY USER

(a) For the privilege of operating on Owner's railroad, User will pay to Owner a fee computed on the basis of \$0.302 per car mile (hereinafter referred to as the "Current Charge") times (i) the number of cars (loaded or empty), locomotive, and caboose units moved by User with its own crews and power over the Subject Trackage by, (ii) the miles of Subject Trackage used. For the purpose of this Agreement, each locomotive unit, each caboose and each platform of an articulated car shall be counted as one car.

(b) No fee shall be payable by DTRR for operation on the Harlem Line until the number of car miles in any calendar year exceeds the use levels set forth in Appendix III-A of the Harlem-Hudson Lease Agreement dated as of June 1, 1972, between Metropolitan Transportation Authority and the Trustees of the Property of Penn Central Transportation Company, Debtor, a copy of which Appendix is attached hereto. Thereafter the fee established herein shall apply only to the car miles which exceed said use levels.

(c) No fee shall be payable by DTRR for operation on the New York Lines until the number of car miles in any calendar year exceeds the number of car miles operated on said line by Conrail and DTRR during calendar year 1992. Thereafter the fee established herein shall apply only to the car miles which exceed said use levels.

(d) No fee shall be payable by MNCR for operation on the Connecticut Line.

(e) Within sixty (60) days following the end of each calendar quarter, User will furnish to Owner a statement of the number of cars, locomotives, cabooses, and total car miles operated by User over the Subject Trackage during the preceding quarter, together with a check in payment of the trackage rights charges, computed in accordance with the provisions of this section, for User's use of the Subject Trackage.

SECTION 8. REVISION OF CURRENT CHARGE

(a) The Current Charge set forth in Section 7 above shall be revised effective January 1 of each year, beginning January 1, 1994, to compensate for the increase or decrease in the cost of labor and material, excluding fuel, to reflect the change in the "Material prices, wage rates and supplements combined (excl. fuel)" index as contained in Table A, Annual Indexes of Chargeout Prices and Wage Rates (1977=100) - East, Series RCR included in "AAR Railroad Cost Indexes"; published quarterly by the Association of American Railroads (June AAR published in September). The September issue contains the final index for the preceding calendar year. The Current Charge shall be revised by calculating the percentage of increase, or decrease, in the index of the year to be revised as related to the index of the prior calendar year and then applying that percentage to the Current Charge.

(b) By way of example, assuming "A" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the year prior to the year to be revised; "B" to be the "Material prices, wage rates and supplements combined (excl. fuel)" final index figure for the calendar year to be revised; "C" to be the prior year Current Charge; "D" to be the percentage of increase or decrease, the new revised Current Charge "E" would be determined by the following formula:

$$\frac{B}{A} = D \quad \frac{1994 \text{ Index}}{1993 \text{ Index}} = \text{Percent Change}$$

$$D \times C = E$$

Example:

$$\frac{241.1\%}{240.6\%} = 101.45\% \times \$.298 = \$.302$$

(c) If the Association of American Railroads or any successor organization discontinues publication of the Annual Indexes of Chargeout Prices and Wage Rates, an appropriate substitute for determining the percentage of increase or decrease shall be negotiated by the parties hereto. In the absence of agreement, the matter will be referred to the Interstate Commerce Commission for determination. In the event said Commission is without jurisdiction to make such a determination, the parties shall submit the matter to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator so appointed by said Association shall be final and binding upon the parties hereto. Each party to the arbitration shall pay the compensation, costs, fees, and expenses of its own

witnesses, exhibits, and counsel. The compensation, costs, and expenses of the arbitrator shall be borne equally by such parties.

SECTION 9. LEASE OF HOPEWELL YARD AND USE OF OTHER FACILITIES FOR FREIGHT OPERATIONS.

(a) DTRR shall have the right to use property at Hopewell Junction, New York, at no charge for "Railroad Purposes" so long as said property is not needed by MNCR for its own purposes.

(b) The term "Railroad Purposes" shall, for the purposes of this agreement, include all dependent rail freight uses and purposes necessary, convenient or supportive of freight railroad operations including, but not limited to, moving, switching, weighing or storage of rail cars; make-up and break-up of trains; loading and unloading of rail cars; inter-modal, reloading, team track, or other transfer or storage of lading; and maintenance of office or storage facilities in connection with any of the foregoing or in connection with railroad operation and administration.

(c) DTRR's right to use Hopewell Yard shall be subject to the right of MNCR to use or develop said property, or any part thereof, for non-freight railroad purposes. MNCR may terminate DTRR's use upon thirty (30) days notice in the event MNCR desires to exercise said rights.

(d) DTRR shall have the right to use property on the Maybrook Line in the Village of Brewster between Station 10054 + 35.6 and Station 10077 + 60 for railroad freight use including the right to

install sidings, loading and unloading facilities or customer storage facilities, subject to the right of MNCR to use or develop said property, or any part thereof.

(e) DTRR, upon qualification, if necessary, of DTRR crews and equipment, shall have the right to interchange with freight carriers on the Hudson Line by means of the existing Maybrook Line sidetrack at approximately Milepost 12.5 at Beacon or, at DTRR's request, a new sidetrack to be installed at DTRR's expense at an area to be designated by MNCR and located west of the Hudson Line tracks at property now constituting a portion of the Beacon terminal of the Maybrook Line.

SECTION 10. MAINTENANCE OF SUBJECT TRACKAGE

(a) Owner shall maintain, repair, and renew the Subject Trackage at its own expense and with its own supervision and labor. Owner shall keep and maintain the Subject Trackage to Federal Railroad Administration ("FRA") Class 1 standards as such standards were defined on January 1, 1995. User shall have the right at reasonable times to inspect the Subject Trackage and to notify Owner of any condition requiring maintenance or repair and Owner shall perform such maintenance or repair as necessary to restore the track to Class 1 standards within ten (10) days from the date of written notice from User that such condition exists (or such longer period as may be reasonably required in view of weather conditions or other factors).

(b) Notwithstanding the foregoing, MNCR shall maintain all signals and crossing protection devices on the DTRR Subject Trackage. Such maintenance shall include all Routine Maintenance and all Non-Routine Maintenance, including replacement and upgrading of such equipment and the furnishing of electrical power as required.

(c) Subject to the availability of equipment and forces, Owner shall also perform, at the expense of User, such additional maintenance as User may request.

(d) Owner does not guarantee the condition of the Subject Trackage or that operations thereon will not be interrupted. Furthermore, User shall not by reason of failure or neglect on the part of Owner to maintain, repair, or renew the Subject Trackage, have or make any claim or demand against the Owner or its directors, officers, agents or employees for any injury to or death of any person or persons whomsoever, or for any damage to or loss or destruction of any property whatsoever, or for any damages of any nature suffered by User resulting from such failure or neglect, including, but not limited to consequential and incidental damages. Nothing in this subparagraph shall limit in any way User's right to seek relief in an appropriate forum to compel Owner to perform the maintenance pursuant to section 10 (a) above.

(e) For maintenance purposes, DTRR shall be deemed the "Owner" of any MNCR property leased or made available to it pursuant to subsections (a) through (d) of Section 9.

SECTION 11. ADDITIONS, RETIREMENTS AND ALTERATIONS

(a) Owner, from time to time and at its sole cost and expense, may make such changes in, additions and betterments to, and retirements from the Subject Trackage as shall, in its judgment, be necessary or desirable for the economical or safe operation or improvement thereof or as shall be required by any law, rule, regulation, or ordinance promulgated by any governmental body having jurisdiction. Such additions and betterments shall become a part of the Subject Trackage and such retirements shall be excluded from the Subject Trackage. Notwithstanding anything to the contrary in this subparagraph, owner shall not make any such changes, additions, betterments or retirements which would have a material adverse effect on User's ability to exercise the trackage rights being granted herein for their intended purpose.

(b) If User requests Owner to make changes in or additions and betterments to the Subject Trackage, including without limitation changes in communication or signal facilities, for purposes beyond that required for Owner's operation, owner shall have the option:

(i) to make such changes in or additions and betterments to the Subject Trackage and User shall pay to owner the cost thereof, including the annual expense of maintaining, repairing, and renewing such additional or altered facilities; or,

(ii) to deny such request, in which event User will be authorized to make the requested change in or addition and betterment with its own personnel, providing that the proposed

change, addition or betterment does not unreasonably interfere with Owner's current or proposed use of the Subject Trackage.

SECTION 12. MAINTENANCE AND REPLACEMENT OF FREIGHT TURNOUTS ON HARLEM LINE.

(a) DTRR shall pay MNCR a flat rate payment for maintenance and replacement associated with new and existing freight turnouts and crossovers maintained by MNCR for DTRR on the Harlem Line between M.P. 22 and M.P. 77.0 and for maintenance and replacement associated with new freight turnouts and crossovers maintained by MNCR for DTRR on the Harlem Line between M.P. 77.0 and M.P. 81.6. A list of existing freight turnouts maintained by MNCR for DTRR on the Harlem Line and a list of existing freight turnouts on the Harlem Line between M.P. 77.0 and M.P. 81.6 is attached as Exhibit A. In addition, DTRR shall pay MNCR a flat rate payment for maintenance and replacement associated with the turnout on the Harlem Line at the Dykemans connection with the Maybrook Line, which said payment shall be 50% of the maintenance cost as established by the provisions of the following paragraph. The flat rate payments shall constitute the entire amount due for all maintenance and replacement of said turnouts and crossovers and include maintenance of the turnout and related facilities up to the clearance point. It is understood and agreed that MNCR is not responsible for maintenance of freight or industrial sidetracks beyond the clearance point.

(b) The flat rate for calendar year 1993 shall be \$8,224.00 total per year for routine and non-routine maintenance. DTRR shall pay MNCR at the rate of \$685.32 per month per turnout (except Dykemans which shall be \$342.66 per month). This rate shall be effective as of January 1, 1993 and shall be adjusted annually as provided in Section 8 hereof. Payments shall be made in two installments on July 15 and January 15 of each calendar year, covering the periods January 1 through June 30 and July 1 through December 31, respectively.

(c) DTRR may notify MNCR in writing at any time that a freight turnout is no longer required by DTRR for rail freight purposes. Beginning with the first day of the month following receipt of said notice by MNCR, DTRR shall not be responsible or liable for any maintenance charges with respect to such turnout and MNCR may remove, at its sole option, the turnout so designated by DTRR as not required.

(d) DTRR shall not be obligated to pay MNCR for maintenance or replacement of existing freight turnouts on the Wassaic Extension between M.P. 77.0 and M.P. 81.6 nor for existing freight turnouts on the New York Lines.

SECTION 13. CONSTRUCTION OF NEW FREIGHT TURNOUTS ON NEW YORK LINES AND HARLEM LINE

Upon the written request of DTRR, MNCR will construct or cause to be constructed, turnouts on the New York Lines and Harlem Line for bona fide freight customers of DTRR, provided

that the location of the proposed turnouts does not unreasonably interfere with MNCR's use of the lines or operation of its trains.

DTRR shall pay to MNCR, MNCR's actual costs of labor, including applicable overheads, and material in constructing any such new turnouts. DTRR shall have the right to provide construction material for the construction of new turnouts providing that the material conforms to MNCR specifications.

SECTION 14. PAYMENT OF BILLS

(a) Except as provided in Paragraph 7 (f) , all payments called for under this Agreement shall be made by User within thirty (30) days after receipt of bills therefor. No payments shall be withheld because of any dispute as to the correctness of items in the bills rendered, and any discrepancies reconciled between the parties hereto shall be adjusted in the accounts of a subsequent month. The records of each party hereto, insofar as they pertain to matters covered by this Agreement, shall be open at all reasonable times to inspection by the other party.

(b) Bills rendered pursuant to the provisions of this Agreement, other than those set forth in Section 7 and Section 12 hereof, shall include direct labor and material costs, together with the overhead percentages, and equipment rentals in effect at the time any work is performed by Owner. The MNCR labor, equipment, and overhead rates shall not exceed the lower of the rates charged for work performed for the State of New York or the

State of Connecticut.

SECTION 15. MANAGEMENT AND OPERATIONS

(a) User shall comply with the provisions of the Federal Locomotive Inspection Act and the Federal Safety Appliance Acts, as amended, and all other applicable federal and state laws, regulations, and rules respecting the operation, condition, inspection, and safety of its trains, locomotives, cars, and equipment while such trains, locomotives, cars and equipment are being operated over the Subject Trackage. User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents, and employees from and against all fines, penalties, and liabilities imposed upon owner or its directors, officers, agents, or employees under such laws, rules, and regulations by any public authority or court having jurisdiction in the premises, when attributable to the failure of User to comply with its obligations in this regard.

(b) User in its use of the Subject Trackage will comply in all respects with the operating rules and regulations of Owner, and the movement of User's trains, locomotives, cars, and equipment over the Subject Trackage shall at all times be subject to the orders of the transportation officers of Owner. User's trains shall not include locomotives, cars or equipment which exceed the width, height, weight or other restrictions or capacities of the Subject Trackage as published in Railway Line Clearances, or in Owner's timetable provided that the Subject

Trackage must be capable of handling movement of 100 ton loaded cars (263,000 lbs. gross weight). User shall indemnify, protect, defend, and save harmless Owner and its directors, officers, agents and employees from and against all liabilities when attributable to the failure of User to comply with the provisions of this subsection.

(c) DTRR's use of the Harlem Line and Wassaic Extension shall be limited to those hours during which MNCR does not operate passenger trains on the Line.

(d) User and Owner shall cooperate to have all of User's employees who shall operate its trains, locomotives, cars, and equipment over the Subject Trackage qualified for operation thereon and Owner shall provide such employees with such instruction as may be reasonably required in connection with such qualification.

(e) As a condition of qualification, User's employees shall not be required to demonstrate familiarity or proficiency with respect to physical characteristics of any portion of Owner's railroad except such portion for which such employee requests qualification. Within sixty (60) days of the effective date hereof, DTRR may furnish MNCR with a list of employees who are qualified with respect to the physical characteristics of the New York Lines and, upon MNCR's reasonable concurrence, such employees shall be deemed to be qualified with respect thereto. Within sixty (60) days of the effective date hereof, MNCR may furnish DTRR with a list of employees who are qualified with

respect to the physical characteristics of the Connecticut Line and, upon DTRR's reasonable concurrence, such employees shall be deemed to be qualified with respect thereto.

(f) As a condition of qualification, User's employees shall not be required to demonstrate familiarity or proficiency with respect to operating rules of Owner which are not applicable to the portion of Owner's lines for which such employee requests qualification.

(g) Owner may refuse to qualify or may exclude from its property any employee of User if Owner determines after a good faith review that the employee is unqualified to operate on the Subject Trackage, or, without limiting the generality of the foregoing, if an employee has a history of violations of operating or other rules, drug or alcohol abuse which has not been satisfactorily corrected, criminal or motor vehicle violations of a serious nature or which affect said employee's ability to operate on the Subject Trackage, or for any other reason, which, in the sole judgment of Owner, indicate that the operation or presence of said employee on Owner's property would create a safety risk. Notwithstanding the above, Owner will not refuse to qualify nor exclude from its property any employee for a reason which is unlawful under any applicable law. Upon request of Owner, User agrees to furnish to Owner a copy of all records of User with respect to the above matters for any employee which User proposes to work on Owner's property, except records which are confidential and may not be furnished to Owner

under provisions of applicable law.

(h) Owner may, following a good faith determination, exclude from the Subject Trackage any employee of User determined by Owner to be in violation of Owner's rules, regulations, orders, practices or instructions. If Owner takes any such action to exclude such employee, Owner will reasonably cooperate with User concerning User's compliance with the requirements of any collective bargaining agreement concerning investigation and hearing. User will bear any expense of such compliance.

(i) Owner shall incur no liability or obligation to either User or User's employee as a result of any action taken by Owner in connection with the qualification, refusal to qualify, exclusion, or suspension of any employee of User, and User agrees to indemnify Owner and hold it harmless from any claims or actions of any employee or former employee of User or representative thereof asserted against Owner as a result of any such action by Owner.

(j) In the event Owner and User agree that Owner should provide additional employees for the sole benefit of User, including pilots, the parties hereto shall enter into a separate agreement under which User shall bear all cost and expense for any such additional employees, including wages and applicable overheads.

SECTION 16. CLEARING OF WRECKS AND DERAILMENTS

Whenever User's use of the Subject Trackage requires rerailing, wrecking service or wrecking train service, including

the repair and restoration of roadbed, track, and structures damaged by a wreck or derailment, Owner shall perform such service, unless Owner requests User to perform such service or any portion thereof. The cost and expense thereof, including without limitation loss of, damage to, and destruction of any property whatsoever (including damage to the Subject Trackage) and injury to or death of any person or persons whomsoever resulting therefrom, shall be apportioned in accordance with the provisions of Section 17 hereof. All locomotives, cars, and equipment and salvage from the same so picked up and removed which are owned by or under the management and control of or used by User at the time of such wreck shall be promptly delivered to it.

SECTION 17. LIABILITY

The responsibility of the parties hereto as between themselves for loss of, damage to, or destruction of any property whatsoever or injury to or death of any person or persons whomsoever, resulting from, arising out of, incidental to, or occurring in connection with the Trackage Rights granted in this Agreement, or operation of User on the Subject Trackage, shall be allocated as follows in this Section 17. In no case shall any party claim compensation for loss of revenue from any other party.

(a) Liability - DTRR Employees and Passengers. DTRR agrees to protect, defend, indemnify and save harmless MNCR,

irrespective of any negligence or fault of MNCR or MNCR's Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any DTRR Employee or DTRR Passenger or for loss of, damage to, or destruction of the property of any such DTRR Employee or DTRR Passenger. "DTRR Employee" means a person who is an employee of DTRR or any affiliate, agent or contractor of DTRR, or any person who at the time in question is acting within the scope of his or her employment by such agent or contractor. MNCR employees who are involved in the provision of services to DTRR under the terms of this agreement shall be MNCR employees and not DTRR employees. "DTRR Passenger" means any person other than a DTRR employee or MNCR employee who is on board, getting on, or alighting from a DTRR train or is on DTRR or MNCR property for the purpose of getting on a DTRR train or having alighted from a DTRR train.

(b) Liability - MNCR Employees and Passengers. MNCR agrees to protect, defend, indemnify and save harmless DTRR and Maybrook, irrespective of any negligence or fault of DTRR or Maybrook or DTRR's Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any MNCR Employee or MNCR Passenger or for loss of, damage to, or destruction of the property of any such MNCR Employee or MNCR Passenger. "MNCR Employee" means a person who is an employee of MNCR or any affiliate, agent or contractor of MNCR, or any person who at the time in question is acting within the scope of his or her employment by such agent or contractor. DTRR employees who

are involved in the provision of services to MNCR under the terms of this agreement shall be DTRR employees and not MNCR employees. "MNCR Passenger" means any person other than a MNCR employee who is on board, getting on, or alighting from a MNCR train or is on DTRR or MNCR property for the purpose of getting on a MNCR train or having alighted from a MNCR train.

(c) Liability - DTRR Property DTRR agrees to protect, defend, indemnify and save harmless MNCR, irrespective of any negligence or fault of MNCR or MNCR's Employees, or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to, or destruction of any DTRR Property. "DTRR Property" means any locomotive, railroad car, including contents, and any other property, real or personal, owned, leased, used by or otherwise in the custody or possession of DTRR, other than any DTRR rolling stock operating in MNCR's trains.

(d) Liability - MNCR Property MNCR agrees to protect, defend, indemnify and save harmless DTRR, irrespective of any negligence or fault of DTRR or DTRR's Employees, or howsoever the same shall occur or be caused, from any and all liability for loss of, damage to, or destruction of any MNCR Property. "MNCR Property" means any locomotive, railroad car, including contents, and any other property, real or personal, owned, leased, used by or otherwise in the custody or possession of MNCR, other than any MNCR rolling stock operating in DTRR's trains.

(e) Liability - DTRR Occurrence Whenever any loss of, damage to, or destruction of any property whatsoever, or injury

to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account, of, DTRR being involved, without the trains, locomotives, cars, or equipment of MNCR being involved, DTRR shall assume all liability therefor and bear all cost and expense in connection therewith, including and expense referred to in Section 16 hereof, but excluding liability for injury to or death of MNCR's employees or passengers or damage to MNCR's property which shall be governed by the provisions of subparagraphs (b) and (d) hereof, and shall forever protect, defend, indemnify, and save harmless MNCR and its directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of MNCR or its directors, officers, agents or employees.

(f) Liability - MNCR Occurrence Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, MNCR being involved, without the trains, locomotives, cars, or equipment of DTRR being involved, MNCR shall assume all liability therefor, and bear all cost and expense in connection

therewith, including without limitation all cost and expense referred to in Section 16 hereof, but excluding liability for injury to or death of DTRR's employees or passengers or damage to DTRR's property which shall be governed by the provisions of subparagraphs (a) and (c) hereof, and shall forever protect, defend, indemnify, and save harmless DTRR and Maybrook and their directors, officers, agents, and employees from and against any such liability, cost, and expense, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of DTRR or its directors, officers, agents, or employees.

(g) Whenever any loss of, damage to, or destruction of any property whatsoever, or injury to or death of any person or persons whomsoever, or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, occurs with the trains, locomotives, cars, or equipment of, or in the account of, both DTRR AND MNCR being involved, DTRR AND MNCR shall separately assume and bear all liability, cost, and expense for loss of and damage to said trains, locomotives, cars (including without limitation lading), and equipment operated by each of them and for injury to and death of each of their directors, officers, agents, passengers, and employees, and persons in each of their care and custody. All liability, cost, and expense for injury to and death of any other person or persons whomsoever, for loss of, damage to, or destruction of all other property (including

without limitation the Subject Trackage) and for any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, so occurring shall be borne equally by DTRR and MNCR, including without limitation all cost and expense referred to in Section 16 hereof. Whenever any liability, cost, or expense is assumed by or apportioned to a party hereto under the foregoing provisions, that party shall forever protect, defend, indemnify, and save harmless the other party to this Agreement and its directors, officers, agents, and employees from and against that liability, cost, and expense assumed by that party or apportioned to it, regardless of whether caused in whole or in part by the fault, failure, negligence, misconduct, nonfeasance or misfeasance of the indemnitee or its directors, officers, agents or employees.

(h) User agrees to protect, defend, indemnify and save harmless Owner irrespective of any negligence or fault of Owner or Owner's Employees, or howsoever the same shall occur or be caused, from any and all liability for injury to or death of any person, for loss of, damage to, or destruction of any property, other than persons or property for which Owner is responsible under subparagraphs (a), (b), (c), or (d) of this section, if such injury, death, loss, damage or destruction either (i) arises from a collision of a vehicle or a person with a train of User at the intersection at grade, of a street or road, whether public or private, and the tracks over which such train of User is operating, (ii) arises from a collision of a vehicle or a

person with a train of User on the right-of-way or (iii) occurs when such person or property is located off the right-of-way on which the aforesaid tracks are situated and arises from the operation of a train of User. Notwithstanding the foregoing, the party having the duty to maintain grade crossing warning and protection equipment shall be required to protect, defend, indemnify or save harmless the other for any liability, loss, damage, or injury which was proximately caused by the negligent failure of said party to properly maintain said equipment. It is understood and agreed, however, that neither party shall have the duty to maintain grade crossing warning and protection equipment for any crossing as to which an appropriate bulletin order or other directive has been issued to advise train and engine crews that the crossing protection devices are out of service and that they must protect train movements over the crossing by flagging.

(i) Notwithstanding any other provision of this Section 17, User agrees to indemnify and save harmless Owner irrespective of any negligence or fault of Owner or Owner's employees, or howsoever the same shall occur or be caused, from any and all damage and liability for injury to or death of any person or for loss of, damage to or destruction of any property, other than persons or property for which Owner is responsible under subparagraphs (a), (b), (c), or (d) of this section; or any damage to or destruction of the environment whatsoever, including without limitation land, air, water, wildlife, and vegetation, where such injury, death, loss, damage or destruction arises from

the transportation in trains of User of hazardous or toxic materials as defined in applicable federal or state laws or regulations, and including petroleum, crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance by such federal or state laws or regulations. Hazardous or toxic materials shall also include natural gas, natural gas liquids, liquified natural gas, or synthetic gas useable for fuel (or mixtures of natural gas and such synthetic gas).

Notwithstanding any provisions of this Agreement to the contrary, damage for which User is responsible under the preceding paragraph shall include clean-up, removal, and remedial action required by law or the lawful directive of any agency having jurisdiction thereof, and remediation of hazardous or toxic materials on such property. User shall perform or cause to be performed such clean-up, removal or remediation; however Owner shall have the right to perform or cause to have such work performed at User's sole cost and expense in the event that user fails or refuses to undertake the performance of such work within ten (10) days of Owner's reasonable demand therefor.

(j) Notwithstanding the provisions of Section 21 (e) of this Agreement, for the purposes of this Section 17 the word "equipment" shall mean and be confined to (i) cabooses, (ii) vehicles and machinery which are capable of being operated on railroad tracks that, at the time of an occurrence, are being operated on the Subject Trackage, and (iii) vehicles and

machinery that, at the time of any occurrence, are on the Subject Trackage or its right-of-way for the purpose of the maintenance or repair thereof or the clearing of wrecks thereon.

SECTION 18. INVESTIGATION

(a) Except as provided in Subsection (b) hereof, all claims, injuries, deaths, property damages, and losses arising out of or connected with this Agreement shall be investigated, adjusted, and defended by the party bearing the liability, cost, and expense therefor under the provisions of this Agreement.

(b) Each party will investigate, adjust, and defend all freight loss and damage claims filed with it in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, or in accordance with any applicable transportation contract filed pursuant to 49 U.S.C. Section 10713.

(c) In the event a claim or suit is asserted against Owner or User which is the other's duty hereunder to investigate, adjust, or defend, then, unless otherwise agreed, such other party shall, upon request, take over the investigation, adjustment, and defense of such claim or suit.

(d) All costs and expenses in connection with the investigation, adjustment, and defense of any claim or suit under this Agreement shall be included as costs and expenses in applying the liability provisions set forth in the Agreement, except that salaries or wages of full-time claim agents, full-time attorneys, and other full-time employees of either

party engaged directly or indirectly in such work shall be borne by such party.

(e) Excluding freight loss and damage claims filed in accordance with 49 U.S.C. Section 11707 or 49 C.F.R. Section 1005, neither party shall settle or compromise any claim, demand, suit, or cause of action for which the other party has any liability under this Agreement without the concurrence of such other party if the consideration for such settlement or compromise exceeds Ten Thousand (\$10,000) Dollars.

(f) It is understood that nothing in this Section shall modify or waive the conditions, obligations, assumptions, or apportionments provided in Section 17 hereof.

SECTION 19. INSURANCE PROVISION

During the term, and any continued term, of this Agreement, User shall provide and maintain in effect a policy of public liability insurance, including contractual liability assumed by User under the provisions of this Agreement, which names Owner (and, (1) in the case of MNCR insurance, Maybrook Railroad Company and, (2) in the case of DTRR insurance, MTA and American Premier Underwriters, Inc.) as additional insureds and provides for a minimum of thirty (30) days advance notice to owner before any changes or cancellation. Said insurance shall be in limits of not less than \$3 million single limit bodily injury and/or property damage, subject to retentions and co-insurance as User may in its reasonable discretion deem appropriate, and shall be

in companies and form reasonably acceptable to Owner. User shall forward annually evidence of the amount of public liability insurance currently in effect to Owner. User shall promptly notify Owner of any termination, decrease, lapse, or other adverse change in coverage. It is agreed that MNCR shall be deemed in compliance with this requirement by its participation in an Excess Loss Fund maintained by MTA with the appropriate deductible amounts as provided therein.

SECTION 20. ABANDONMENT OF SUBJECT TRACKAGE

(a) Notwithstanding any other provision of this Agreement, Owner may abandon the Subject Trackage or any portion thereof, during the term of this Agreement upon giving User not less than one hundred twenty (120) days notice of Owner's intent to abandon. In the event regulatory authority is required to effect such abandonment, User will not interfere with Owner's actions to seek and to exercise such authority. User agrees that it will not oppose nor will it cause any other person or entity to oppose any petition by Owner to the Interstate Commerce Commission to abandon rail service on the Subject Trackage, or any portion thereof, or any other action by Owner to abandon or discontinue rail service on said Subject Trackage or any portion thereof.

(b) In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek such regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, unless

User or another carrier acquires the Subject Trackage from Owner or subsidizes operations pursuant to 49 U.S.C. Section 10905. Otherwise Owner and User will exercise the abandonment and discontinuance authority within thirty (30) days from the date Owner and User obtain the aforementioned regulatory authority. Upon the date established by Owner for abandonment of the Subject Trackage by its aforesaid notice to User or upon the above specified date of exercise of the regulatory authority to abandon and discontinue operations, whichever is later, this Agreement shall terminate with respect to the abandoned trackage, and be of no further force and effect, except that termination of this Agreement shall not relieve or release either party hereto from any obligations assumed or from any liability which may have arisen or been incurred prior to said termination. As used herein, Subject Trackage means the entire Subject Trackage or any portion or portions thereof.

(c) DTRR may discontinue freight service on the Harlem Line, the New York Lines, or any portion thereof. In the event regulatory authority is required to effect such discontinuance, MNCR will not interfere with DTRR's actions to seek and to exercise such authority. MNCR agrees that it will not oppose nor will it cause any other person or entity to oppose any petition by DTRR to the Interstate Commerce Commission to discontinue rail freight service on the Harlem Line, the New York Lines, or any portion thereof, or any other action by DTRR to abandon or discontinue rail service on said Subject Trackage or any portion thereof. Upon approval of any

such discontinuance, DTRR may continue to use the lines as a contract carrier or otherwise for freight service, provided that such use is otherwise legally permitted and MNCR has not granted common carrier freight trackage rights to another carrier. At any time after discontinuance of common carrier freight service DTRR may resume common carrier rail freight service, provided that such use is otherwise legally permitted and MNCR has not granted common carrier freight trackage rights to another carrier. After discontinuance of common carrier freight service by DTRR, MNCR may grant common carrier freight trackage rights to another carrier provided that MNCR first gives DTRR notice of its intent to do so and an opportunity to resume common carrier freight operation within sixty (60) days of receipt of said notice from MNCR, and provided that DTRR does not resume common carrier freight service (or seek permission of the ICC to do so) within said sixty (60) day period.

SECTION 21. GENERAL PROVISIONS

(a) This Agreement and each and every provision hereof are for the exclusive benefit of the parties hereto. Nothing herein contained shall be taken as creating or increasing any right in any third party to recover by way of damages or otherwise against either of the parties hereto.

(b) All Section headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

(c) This Agreement and the attachments annexed hereto and integrated herewith contain the entire agreement of the parties hereto and supersede any and all oral understandings between the parties.

(d) No term or provision of this Agreement may be changed, waived, discharged, or terminated except by an instrument in writing signed by both parties to this Agreement.

(e) As used in this Agreement, whenever reference is made to the trains, locomotives, cars, or equipment of, or in the account of, one of the parties hereto such expression means the trains, locomotives, cars or equipment in the possession of or operated by one of the parties and includes such trains, locomotives, cars, or equipment which are owned by, leased to, or in the account of such party. Whenever such locomotives, cars, or equipment are owned or leased by one party to this Agreement, and are in the possession or account of the other party to this agreement, such locomotives, cars, and equipment shall be considered those of the other party under this Agreement.

(f) All words, terms, and phrases used in this Agreement shall be construed in accordance with the generally accepted definition or meaning of such words, terms, and phrases in the railroad industry.

(g) Owner will be excused from its obligations under this Agreement to provide and maintain Owner's property where non-performance is occasioned by any event beyond its control, including, without limiting the generality of the foregoing, a

catastrophic event which causes damage to the Subject Trackage, which damage Owner determines not to repair. In the event that Owner takes a portion of the Subject Trackage out of service on a permanent basis because of track conditions, Owner will, upon the request of User, institute abandonment proceedings with the Interstate Commerce Commission.

(h) The rights granted herein to MNCR with respect to the Connecticut Line are expressly made subject to the rights of the State of Connecticut, if any, to acquire the property. Any transfer of the Connecticut Line to another entity for rail purposes shall be subject to MNCR's trackage rights as described herein.

SECTION 22. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto. DTRR may assign its local freight service rights over a portion of the Subject Trackage while retaining its local freight rights over the remaining portion of the Subject Trackage or may appoint another carrier to perform some or all of DTRR's freight service on a permanent or temporary basis, subject, if required by law, to Interstate Commerce Commission approval. DTRR may assign or permit another carrier to exercise some or all of its overhead freight service rights over all or a portion of the Subject Trackage on a permanent or temporary basis with or without retaining local or overhead rights on the same trackage. Any assignee of any rights

hereunder shall be bound to the terms hereof and the obligations of the Assignor hereunder and under other agreements then in effect between DTRR and MNCR and related to the Subject Trackage or traffic moving over the Subject Trackage, provided that any such assignment is otherwise lawful and has been approved or by the Interstate Commerce Commission or exempted from approval thereby, and provided that the assignee agrees to indemnify Owner and hold it harmless from any costs, expenses or liability caused by the assignment.

SECTION 23. LABOR RIGHTS

(a) The user agrees that its entrance upon and use of the Owner's properties is for its corporate purpose of providing service pursuant to appropriate authority and that such use does not create or continue any rights on the part of the User's employees or its contractors with respect to any other current or future use of the Owner's properties, including, but not limited to, maintenance, operation, rehabilitation and improvement thereof by the Owner or Owner's contractors. The User shall indemnify, defend and hold harmless the Owner and the Owner's contractors against any liability arising from any claim of employment rights, or employment protection, arising from the performance of any work for the User on the Owner's properties by the Owner or the Owner's contractors under this Agreement.

(b) Nothing contained in this Agreement shall require either party to perform any service or take any action which would violate

any term or condition of any then-current labor agreement between the respective parties and any organization representing any of their respective employees or which would violate any applicable law, provided that the employees of either party shall not be prohibited from entering the property of the other party or performing work thereon merely because said employees are not members of a collective bargaining unit or of any particular collective bargaining unit.

SECTION 24. DISPUTE RESOLUTION

(a) Resolution of Disputes Concerning Operations and Costs.

In the event, and at such time as, any operating or cost dispute shall arise under this Agreement between MNCR and DTRR, including any disagreement with the applicability or scope of any current MNCR, DTRR, or federally mandated operating or safety rule, order, procedure, or standard applicable to such properties, either party shall have the right to submit such dispute or matter for binding determination by the unanimous vote of an arbitration panel constituted pursuant to the provisions of this subparagraph. The parties agree that before any operating or cost dispute is submitted to arbitration every effort will be made to resolve said dispute. The arbitration panel, under the provisions of this paragraph, shall consist of a committee consisting of two (2) members to be appointed by MNCR and two (2) members to be appointed by DTRR. In the event the arbitration panel is unable to resolve any dispute or controversy within sixty (60) days of submission, it

may be submitted by a party to binding arbitration in accordance with the following paragraph.

(b) Resolution of Disputes Concerning Matters Other than Operations and Costs.

In the event and at such time as a dispute arises as to any matter other than operations or costs as set forth in the preceding paragraph, or in the event that the arbitration panel established under the provisions of the preceding paragraph shall be unable to resolve a dispute submitted to it, any party shall have the right to submit such matter for binding arbitration in accordance with the provisions of the following paragraph.

(c) Arbitration by Independent Arbitrators.

A dispute submitted to arbitration under the provisions of the preceding paragraph 24(b) shall be determined under the provisions of this subparagraph. The parties shall determine whether they are able to agree upon a single arbitrator. If the parties are unable to agree upon a single arbitrator within fifteen (15) days after receipt of the demand for arbitration, either party may notify the other in writing of an election to proceed with a panel of three (3) arbitrators. Upon the election of either party to proceed with a panel of three (3) arbitrators, the selection and compensation of arbitrators shall be in accordance with the following procedure:

1. Each party will appoint one (1) neutral arbitrator who need not be an attorney nor a member of the Commercial Arbitration Panel of the American Arbitration Association.

2. The party appointed arbitrators shall appoint a third

neutral arbitrator who shall be a member of the Commercial Arbitration Panel of the American Arbitration Association. A party appointed arbitrator may consult with the appointing party regarding the selection of the third arbitrator.

3. The fees and expenses of the party appointed arbitrators will be paid by the party appointing each. Fees and expenses of the American Arbitration Association and of the third arbitrator shall be divided equally between the parties.

The arbitration proceeding shall be conducted under the commercial arbitration rules of the American Arbitration Association. In the event that the dispute arises with respect to property located within the State of New York or an incident occurring within the State of New York, the arbitration shall be conducted, unless otherwise agreed, within the State of New York. If the dispute arises with respect to property located within the State of Connecticut or in connection with an incident within the State of Connecticut or in connection with property or an incident located both in Connecticut and elsewhere, the arbitration will be conducted within Connecticut unless the parties agree otherwise.

SECTION 25. NOTICE

All notices, requests, consents, demands, or other communications desired or required to be given or submitted by one party to the other shall be sent by United States express, certified or registered mail, or by a private courier service

providing proof of delivery, addressed as set forth below (or to such other address as either of the parties hereto may designate by written notice to the other party). A return receipt shall be conclusive evidence of the fact, date and time of receipt.

If to MNCR:

Metro North Railroad
347 Madison Avenue
New York, NY 10017-3739

Attention: Richard Bernard, General Counsel

If to Maybrook:

Maybrook Railroad Company
48 Main Street
P.O. Box 537
Old Saybrook, CT 06475

Attention: Edward J. Rodriguez, General Counsel

If to DTRR:

Danbury Terminal Railroad Company
48 Main Street
P.O. Box 537
Old Saybrook, CT 06475

Attention: Edward J. Rodriguez, General Counsel

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the day of January, 1995.

MAYBROOK RAILROAD COMPANY

Witness

Edward J. Rodzys

By:

John R. Hanlon
President

DANBURY TERMINAL RAILROAD CO.

Witness

Edward J. Rodzys

By:

John R. Hanlon
President

METRO NORTH COMMUTER RAILROAD
COMPANY

Witness

Robert W. O'Brien

By:

E. J. Mulser

Title: President

APPROVED
AS TO FORM

STATE OF CONNECTICUT

COUNTY OF Middlesex

In Old Saybrook on the 9th day of January, 1995, before me personally appeared John R. Hanlon, Jr., President of DANBURY TERMINAL RAILROAD COMPANY, to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed and the free act and deed of DANBURY TERMINAL RAILROAD COMPANY.

Edward J. Rodriguez
Commissioner of the Superior Court

STATE OF CONNECTICUT

COUNTY OF Middlesex

In Old Saybrook on the 9th day of January, 1995, before me personally appeared John R. Hanlon, Jr., President of MAYBROOK RAILROAD COMPANY, to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed and the free act and deed of MAYBROOK RAILROAD COMPANY.

Edward J. Rodriguez
Commissioner of the Superior Court

STATE OF NEW YORK

COUNTY OF New York

In New York on the 13 day of January, 1995, before me personally appeared Donald N. Nelson, President of METRO NORTH COMMUTER RAILROAD COMPANY, to me known and known by me to be the party executing the foregoing instrument and he acknowledged said instrument by him executed to be his free act and deed and the free act and deed of METRO NORTH COMMUTER RAILROAD COMPANY.

Notary Public

My Commission Expires:

Walter E. Zullig

MNCRC SECRETARY'S REG. NO.

1555

EXHIBIT A
TRACKAGE RIGHTS AGREEMENT
DTRR-MNCR-MAYBROOK

LIST OF EXISTING FREIGHT TURNOUTS ON HARLEM LINE
USED BY DTRR, MAINTAINED BY MNCR, SECTION 12 CHARGES APPLY

M.P. 28.1	Hawthorne/Consolidated Edison
M.P. 37.7	Grand Union
M.P. 34.4	King Lumber
M.P. 55.2	Dykemans (50% - Section 12)

Harlem-Hudson Lease
Agreement
Appendix III-A

OTHER THAN HARLEM-HUDSON SERVICE AND OTHER THAN
NEW HAVEN SERVICE OPERATION USE LEVELS

Table 1
Freight Operation Use Levels

Freight operation use levels shall be limited by line segment to the service units generated between March 1, 1971 and February 29, 1972, or the service units for the calendar year 1970, whichever is, with respect to line segments 1 through 7, less, and whichever is, with respect to line segments 8 through 10, greater.

Line Segment	Service Units			
	Gross Ton Miles (000)		Car Miles	
	1970	Mar. '71- Feb. '72	1970	Mar. '71- Feb. '72
<i>Harlem Line</i>				
(1)	(2)	(3)	(4)	(5)
1) GCT-MO Junction	0	0	0	0
2) MO Jct.-Woodlawn Jct.	6,721	4,243	147,124	94,824
3) Woodlawn Jct.-No. White Plains	7,808	7,432	175,511	155,683
4) No. White Plains- Putnam Jct.	12,363	11,620	332,372	280,871
5) Putnam Jct.- Pawling	1,524	1,670	45,583	43,142
6) Pawling-Dover Plains	1,587	1,919	48,996	50,397
<i>Hudson Line</i>				
7) MO Jct.-Spuyten Duyvil	57,015	32,448	1,144,392	640,298
8) Spuyten Duyvil- Croton Harmon	310,958	217,017	6,230,700	4,342,287
9) Croton Harmon- Beacon	352,515	262,186	7,343,339	5,252,550
10) Beacon-Poughkeep- sie	201,682	215,591	4,169,910	4,435,105
Total	952,173	754,126	19,637,927	15,295,157

Exhibit C

Letter from Catherine Rinaldi to Ed Rodriguez



February 18, 2020

VIA OVERNIGHT DELIVERY

Housatonic Railroad Company
8 Davis Road West
P.O. Box 687
Old Lyme, Connecticut 06371-1448
ATT: Edward J. Rodriguez, Vice President and General Counsel

Re: Notice of Abandonment: Beacon Line

Dear Mr. Rodriguez:

This letter serves as the required one hundred twenty (120) days' notice that Metro-North Commuter Railroad Company ("Metro-North") intends to abandon the "Beacon Line" in New York State from the "Division Post" at the Connecticut State Line to "River" at the Hudson Line in Beacon, New York (the "Subject Trackage"). This Notice is provided pursuant to the Trackage Rights Agreement ("TRA"), dated January 19, 1995, between Maybrook Railroad Company, Housatonic's predecessor-in-interest, and Metro-North. A copy of the TRA is attached for your ready reference.

Section 20(a) of the TRA provides that "notwithstanding any other provision of this Agreement, owner [Metro-North] may abandon the Subject Trackage or any portion thereof, during the term of this Agreement upon giving User [Housatonic] not less than one hundred twenty (120) days' notice of Owner's intent to abandon." TRA at 33. The TRA further provides that "in the event regulatory authority is required to effect abandonment, User will not interfere with Owner's actions to seek and to exercise such authority," and "... agrees that it will not oppose nor will it cause any other person or entity to oppose any petition by owner to the Interstate Commerce Commission [now Surface Transportation Board] to abandon rail service on the Subject Trackage or any portion thereof, or any other action by Owner to abandon or discontinue rail service on said Subject Trackage or any portion thereof." Id.

Accordingly, upon the expiration of 120 days from your receipt of this notice, Metro-North will petition the Surface Transportation Board ("STB") for authority to abandon the Subject Trackage. Section 20(b) of the TRA contemplates that the User (Housatonic) will either seek discontinuance of its own operation over the Subject Trackage or acquire the Subject Trackage. Specifically, Section 20(b) of the TRA provides:

In the event regulatory authority is required for User to discontinue its own operations over the Subject Trackage, User will seek such


regulatory authority at the same time that Owner seeks regulatory authority to abandon the Subject Trackage, unless User or another carrier acquires the Subject Trackage from Owner or subsidizes operations pursuant to 49 U.S.C. Section 10905. Otherwise Owner and User will exercise the abandonment and discontinuance authority within thirty (30) days from the date Owner and User obtain the aforementioned regulatory authority.

TRA at 33-34.

Therefore, the Housatonic is now required to either seek discontinuance of its operations at the same time as Metro-North seeks authority to abandon the Subject Trackage, or the Housatonic is required to acquire the Subject Trackage from Metro-North unless another carrier acquires the Subject Trackage from Metro-North. Please let Metro-North know whether the Housatonic will seek discontinuance or wants to acquire the Subject Trackage.

Thank you for your anticipated cooperation.

Sincerely,


Catherine Rinaldi, President

Attachment: Trackage Rights Agreement

Exhibit D

Verified Statement of John Longobardi

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 1311

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

VERIFIED STATEMENT OF JOHN LONGOBARDI

I, John Longobardi, on oath state the following on the 21 of April, 2021:

Introduction

1. I am the Chief Transportation Officer at Metro-North Commuter Railroad Company (“Metro-North”).
2. I began my career with Metro-North in 1992. I have served as the Chief Transportation Officer since March of 2019. Prior to this position I served in the following roles with Metro-North: Deputy Chief--Field Operations, Line Superintendent, Superintendent PM Field Operations, District Superintendent, Trainmaster, Locomotive Engineer and Signal Maintainer.
3. As the Chief Transportation Officer, I have access to Metro-North’s freight records and train movement sheets, which detail traffic flows on Metro-North lines, including the Beacon Line.
4. Metro-North has no record of any freight train movement over any portion of the Beacon Line from 2014 to present day. Metro-North does not retain documents regarding train movements over the Beacon Line for the years prior to 2014.
5. To the best of my recollection, no freight has moved over the Beacon Line since Metro-North acquired the line in 1995.
6. In the past, Metro-North has occasionally conducted high-rail inspections of the Beacon

Line. Twice Metro-North used the line for non-revenue equipment moves, first, following a wash out on another line and second, to support the MTA's K9 training facility. Metro-North has never used the Beacon Line for revenue train operation.

7. If called on to testify as a witness, I can testify competently to the matters and facts set forth in this Verified Statement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 21 day of April 2021, in New Haven, CT.

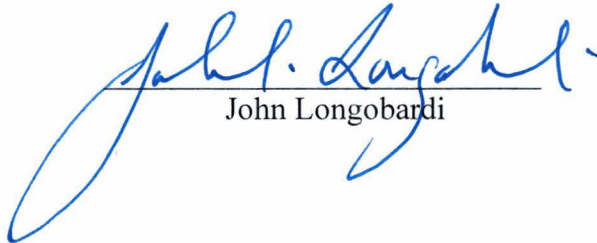

John Longobardi

Exhibit E

49 C.F.R. § 1152.20 Notice of Intent

49 C.F.R. § 1152.20 Notice of Intent Recipients

[Separate Letter Sent via Certified Mail to Each Recipient, also sent via e-mail where available]

The Honorable Andrew M. Cuomo
Governor of New York State
NYS Capitol Building
Albany, NY 12224

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350
Secretary@dps.ny.gov

Marie Therese Dominguez, Esq.
Commissioner
Department of Transportation
New York State
50 Wolf Road
Albany, NY 12232
commissioner@dot.ny.gov

CCE Putnam County
Terravest Corporate Park
1 Geneva Road
Brewster, NY 10509
putnam@cornell.edu

CCE Dutchess County
2715 Route 44
Millbrook, NY 12545
dutchess@cornell.edu

Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
frapa@dot.gov

Peter Matthews
Surface Deployment and Distribution
Command
Engineering Agency
Railroads for National Defense Program
1 Soldier way, Building 1900W
Scott AFB, IL 62225
Peter.W.Matthews.civ@mail.mil

Bob Ratcliffe
Program Chief, Conservation and Outdoor
Recreation
Conservation and Outdoor Recreation
Division Office
National Park Service
1849 C Street NW
Washington, DC 20240
Bob_Ratcliffe@nps.gov

Railroad Retirement Board
Leo O'Brien Federal Bldg.
11A Clinton Ave., Suite 264
Albany, NY 12207-2382

Railroad Retirement Board
William O. Lipinski Federal Building
844 North Rush Street
Chicago, IL 60611-1275

Laurel McClean
U.S. Department of Agriculture
Chief of Forest Service
1400 Independence Ave., SW
Washington, DC 20250-0003
Laurel.McClean@usda.gov

Edward J. Rodriguez
Vice President and General Counsel
Housatonic Railroad Company
4 Huntley Road
P.O. Box 687
Old Lyme, Connecticut 06371-1448

Dick Welsh
National Association of Reversionary
Property Owners
1100 Bellevue Way NE Ste.8A PMB 719
Bellevue, Washington 98004

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

March 9, 2021

[Recipient Address]

Re: Metro-North Commuter Railroad Company—Adverse Discontinuance of Trackage Rights—Housatonic Railroad Company, STB Docket No. AB-1311

Dear Sir or Madam:

Metro-North Commuter Railroad Company (“Metro-North” or “Applicant”) gives notice that on or about March 29, 2021, it intends to file with the Surface Transportation Board, Washington, DC 20423, an application seeking adverse discontinuance of the authority of Housatonic Railroad Company (“HRRC”) to operate 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 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 Applicant’s possession that indicate that the Line contains federally granted rights-of-way. If the Applicant becomes aware of the existence of any such documentation, it will be made available to those requesting it.

The application for adverse discontinuance can be viewed following its filing on the Surface Transportation Board’s website at www.stb.gov, or a copy can be obtained from Applicant’s counsel whose name and address below. The application will include Applicant’s entire case for discontinuance. Any interested person, after the application is filed on or about March 29, 2021, may file with the Surface Transportation Board 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 application. 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 (vi) 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 Board no later than 10 days after the application is filed.

Written comments and protests, including all request for public use and trail use conditions, should indicate the proceeding designation STB No. AB 1311 and must be filed with the Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than April 15, 2021.


Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served upon Applicant's counsel in this matter, Charles A. Spitulnik, Kaplan, Kirsch and Rockwell, 1634 I (Eye) Street, NW, Suite 300, Washington, DC 20006, phone (202) 955-5600; email cspitulnik@kaplankirsch.com. The original and 10 copies of all comments and protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the discontinuance proceeding.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) 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 (or EIS) may contact the Office of Environmental Analysis. EAs in this discontinuance proceeding normally will be made available

April 12, 2021
Page 3

within 33 days of the filing of the application. 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 Board's decision. A supplemental EA or EIS may be issued where appropriate.

Yours Truly,



Charles A Spitulnik

Exhibit F

Letter to Notice of Intent Recipients

Recipients of Surface Transportation Board's April 20, 2021 Decision
[Separate Letter Sent to Each Recipient, also sent via email where available]

The Honorable Andrew M. Cuomo
Governor of New York State
NYS Capitol Building
Albany, NY 12224

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350
Secretary@dps.ny.gov

Marie Therese Dominguez, Esq.
Commissioner
Department of Transportation
New York State
50 Wolf Road
Albany, NY 12232
commissioner@dot.ny.gov

CCE Putnam County
Terravest Corporate Park
1 Geneva Road
Brewster, NY 10509
putnam@cornell.edu

CCE Dutchess County
2715 Route 44
Millbrook, NY 12545
dutchess@cornell.edu

Federal Railroad Administration
1200 New Jersey Avenue, SE
Washington, DC 20590
frapa@dot.gov

Peter Matthews
Surface Deployment and Distribution
Command
Engineering Agency
Railroads for National Defense Program
1 Soldier way, Building 1900W
Scott AFB, IL 62225
Peter.W.Matthews.civ@mail.mil

Bob Ratcliffe
Program Chief, Conservation and Outdoor
Recreation
Conservation and Outdoor Recreation
Division Office
National Park Service
1849 C Street NW
Washington, DC 20240
Bob_Ratcliffe@nps.gov

Railroad Retirement Board
Leo O'Brien Federal Bldg.
11A Clinton Ave., Suite 264
Albany, NY 12207-2382

Railroad Retirement Board
William O. Lipinski Federal Building
844 North Rush Street
Chicago, IL 60611-1275

Laurel McClean
U.S. Department of Agriculture
Chief of Forest Service
1400 Independence Ave., SW
Washington, DC 20250-0003
Laurel.McClean@usda.gov

Edward J. Rodriguez
Vice President and General Counsel
Housatonic Railroad Company
4 Huntley Road
P.O. Box 687
Old Lyme, Connecticut 06371-1448
e.rodriguez@hrrc.com

Dick Welsh
National Association of Reversionary
Property Owners
1100 Bellevue Way NE Ste.8A PMB 719
Bellevue, Washington 98004
dick156@earthlink.net

April 26, 2021

[Recipient Address]

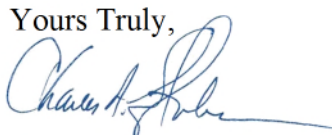
Re: Metro-North Commuter Railroad Company—Adverse Discontinuance of Trackage Rights—Housatonic Railroad Company, STB Docket No. AB-1311

Dear Sir or Madam:

On March 9, 2021, Metro-North Commuter Railroad Company (“Metro-North”) provided notice of its intent to file with the Surface Transportation Board (“STB”), an application seeking adverse discontinuance of the authority of Housatonic Railroad Company (“HRRC”) to operate 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 approximately 41 miles in Putnam and Dutchess Counties, New York.

On April 21, 2021, the STB issued a decision granting in part and denying in part Metro-North’s Petition for Partial Waivers of Discontinuance Regulations and for Exemption associated with Metro-North’s planned application for adverse discontinuance. *Metro-North Commuter R.R. Co.—Adverse Discontinuance of Trackage Rights—Hosuatonic R.R. Co.*, STB Docket No. AB 1311 (Service Date April 20, 2021). In its decision, the STB ordered Metro-North to send the recipients of the March 9, 2021 Notice of Intent Letter a copy of the STB’s decision. *Id.* at 4 n. 3. Accordingly, a copy of the STB’s decision is enclosed.

Please contact me with any questions.

Yours Truly,


Charles A. Spitulnik

Enclosure

Exhibit G

Westchester Putnam Journal Notice



Agency:
KAPLAN KIRSCH ROCKWELL
 1634 EYE STREET NW SUITE 300
 WASHINGTON, DC 20006
 ATTN: Katherine Bourdon
Acct: 2029555600KAPL

Client: KAPLAN KIRSCH ROCKWELL
 1634 EYE STREET NW SUITE 300,
 WASHINGTON, DC 20006
 Acct No: 2029555600KAPL

This is not an invoice

Order #	Advertisement/Description	Items	# Col x # Lines	Cost
0004636131	STBDOCKETNOAB1311NOTICEOFINTENTTOFILEA PETITIONFORANVERSUSDISCONTINUANCEFOR	Legal Notices	2 col x 72 lines	\$864.00
		Affidavit of Publication Charge	1	\$30.00
		Tearsheet Charge	0	\$0.00
		Subtotal:		\$894.00
		Agency Commission	0	\$0.00
Net Total Due:				\$894.00

Run Dates: 03/10/2021, 03/17/2021, 03/24/2021

The Journal News
 P. O. Box 822883
 Philadelphia, PA 19182-2883



AFFIDAVIT OF PUBLICATION FROM

State of Wisconsin
County of Brown, ss.:

On the 24 day of March, in the year 2021, before me, the undersigned, a Notary Public in and for said State, personally appeared Nicholas Reuther, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed, the instrument.

Nicholas Reuther being duly sworn says that he/she is the principal clerk of **THE JOURNAL NEWS**, a newspaper published in the County of Westchester and the State of New York, and the notice of which the annexed is a printed copy, was published in the newspaper area(s) on the date (s) below:

Zone:
Westchester

Run Dates:
03/10/2021, 03/17/2021, 03/24/2021

Signature [Signature]

Sworn to before me, this 24 day of March, 2021

[Signature]
Notary Public, State of Wisconsin, County of Brown

5.15.23

My commission expires

Legend:

WESTCHESTER:

Amawalk, Ardsley, Ardsley on Hudson, Armonk, Baldwin Place, Bedford, Bedford Hills, Brewster, Briarcliff Manor, Bronxville, Buchanan, Carmel, Chappaqua, Cold Spring, Crompond, Cross River, Croton Falls, Croton on Hudson, Dobbs Ferry, Eastchester, Elmsford, Garrison, Goldens Bridge, Granite Springs, Greenburg, Harrison, Hartsdale, Hastings, Hastings on Hudson, Hawthorne, Irvington, Jefferson Valley, Katonah, Lake Peekskill, Larchmont, Lincoln Dale, Mahopac, Mahopac Falls, Mamaroneck, Millwood, Mohegan Lake, Montrose, Mount Kisco, Mount Vernon, New Rochelle, North Salem, Ossining, Patterson, Peekskill, Pelham, Pleasantville, Port Chester, Pound Ridge, Purchase, Purdys, Putnam Valley, Rye, Scarsdale, Shenorock, Shrub Oak, Somers, South Salem, Tarrytown, Thornwood, Tuckahoe, Valhalla, Verplanck, Waccabuc, White Plains, Yorktown Heights, Yonkers

ROCKLAND:

Blauvelt, Congers, Garnerville, Haverstraw, Hillburn, Monsey, Nanuet, New City, Nyack, Orangeburg, Palisades, Pearl River, Piermont, Pomona, Sloatsburg, Sparkill, Spring Valley, Stony Point, Suffern, Tappan, Thiells, Tomkins Cove, Valley Cottage, West Haverstraw, West Nyack

Ad Number: 0004636131

NANCY HEYRMAN
Notary Public
State of Wisconsin

STB Docket No. AB 1311

Notice of Intent to File Application for Adverse Discontinuance of Rail Line

Metro-North Commuter Railroad Company ("Metro-North" or "Applicant") gives notice that on or about March 29, 2021, it intends to file with the Surface Transportation Board, Washington, DC 20423, an application seeking adverse discontinuance of the authority of Housatonic Railroad Company ("HRC") to operate 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, 12514, 12533, 12582, 12570, 12531, 12563, 10508, and 06811, a distance of approximately 43 miles in Putnam and Dutchess Counties, New York.

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 Applicant's possession that indicate that the Line contains federally granted rights-of-way. If the Applicant becomes aware of the existence of any such documentation, it will be made available to those requesting it.

The application for adverse discontinuance can be viewed following its filing on the Surface Transportation Board's website at www.stb.gov, or a copy can be obtained from Applicant's counsel whose name and address appear below. The application will include the Applicant's entire case for discontinuance. Any interested person, after the application is filed on or about March 29, 2021, may file with the Surface Transportation Board 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 application. 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 facts); 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. § 10305; and (v) prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(b) 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 Board no later than 70 days after the application is filed.

Written comments and protests, including all request for public use and trail use conditions, should indicate the proceeding designation STB No. AB 1311 and must be filed with the Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than April 15, 2021.

Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served upon Applicant's counsel in this matter, Charles A. Spitznirk, Kaplan, Kirsch and Shackwell, 1634 I (Eye) Street, NW, Suite 300, Washington, DC 20006, phone (202) 955-5600; email cspitznirk@kaplankirsch.com. The original and 10 copies of all comments and protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the discontinuance proceeding.

An environmental assessment (EA) for environmental impact statement (EIS), if necessary, 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 (or EIS) may contact the Office of Environmental Analysis. EAs in this discontinuance proceeding normally will be made available within 23 days of the filing of the application. 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 Board's decision. A supplemental EA or EIS may be issued where appropriate.

0636131

Exhibit H

Poughkeepsie Journal Notice

Poughkeepsie Journal **MEDIA GROUP** *Delivering Customers. Driving Results.*

A GANNETT COMPANY

Agency:

KAPLAN KIRCH ROCKWELL
1634 EYE STREET NW
WASHINGTON, DC, 20006

Client:

KAPLAN KIRCH ROCKWELL
1634 EYE STREET NW, SUITE 300
WASHINGTON, DC 20006

Acct No: 2029555600KAPLA

This is not an invoice

Acct: 2029555600KAPLA

Ad #	Advertisement/Description	Zone	Items	# Col x # Lines	Cost
0004636182	STBDOCKETNOAB1311NOTI CEOFINTENTTOFILEAPPLICA TIONFORADVERSEDISCONT		Legal Notices	2 col x 99 lines	\$201.96
			Affidavit of Publication Charge	1	\$25.00
			Tearsheet Charge		\$0.00
			Subtotal:		\$226.96
			Agency Commission	0	\$0.00
Net Total Due:					\$0.00

Run Dates: 03/10/2021, 03/17/2021, 03/24/2021

The Poughkeepsie Journal
P. O. Box 822837
Philadelphia, PA 19182-2837

**AFFIDAVIT OF PUBLICATION
FROM**



Nicholas Renston

being duly sworn says that he/she is the principal clerk of **THE**

POUGHKEEPSIE JOURNAL, a newspaper published in the County of Dutchess and the State of New York, and the

notice of which the annexed is a printed copy, was published in the newspaper on the date (s) below:

Zone:

Run Dates:

03/10/2021, 03/17/2021, 03/24/2021

Signature 

Sworn to before me, this 24 day of March, 2021


Notary Signature State of Wisconsin County of Brown

5.15.23
My commission expires

NANCY HEYRMAN
Notary Public
State of Wisconsin

Ad Number: 0004636182

STB Docket No. AB 1311

Notice of Intent to File Application for Adverse Discontinuance of Rail Line

Metro-North Commuter Railroad Company ("Metro-North" or "Applicant") gives notice that on or about March 29, 2021, it intends to file with the Surface Transportation Board, Washington, DC 20423, an application seeking adverse discontinuance of the authority of Housatonic Railroad Company ("HRRC") to operate 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 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 Applicant's possession that indicate that the Line contains federally granted rights-of-way. If the Applicant becomes aware of the existence of any such documentation, it will be made available to those requesting it.

The application for adverse discontinuance can be viewed following its filing on the Surface Transportation Board's website at www.stb.gov, or a copy can be obtained from Applicant's counsel whose name and address appear below. The application will include the Applicant's entire case for discontinuance. Any interested person, after the application is filed on or about March 29, 2021, may file with the Surface Transportation Board 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 application. 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. § 10505; and (v) prospective use of the right-of-way for interim trail use and rail banking under 16 U.S.C. § 1247(d) and § 1152.53. 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 Board no later than 10 days after the application is filed.

Written comments and protests, including all request for public use and trail use conditions, should indicate the proceeding designation STB No. AB 1311 and must be filed with the Office of Proceedings, Surface Transportation Board, Washington, DC 20423-0001, no later than April 15, 2021.

Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served upon Applicant's counsel in this matter, Charles A. Spitulnik, Kaplan, Kirsch and Rockwell, 1634 I (Eye) Street, NW, Suite 300, Washington, DC 20006, phone (202) 955-5600; email csputulnik@kaplankirsch.com. The original and 10 copies of all comments and protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, each document filed with the Board must be served on all parties to the discontinuance proceeding.

An environmental assessment (EA) for environmental impact statement (EIS), if necessary, 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 (or EIS) may contact the Office of Environmental Analysis. EAs in this discontinuance proceeding normally will be made available within 33 days of the filing of the application. 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 Board's decision. A supplemental EA or EIS may be issued where appropriate.

Exhibit I

List of Recipients of Combined Environmental and Historic Report

Environmental and Historic Report Recipients

[Separate Letters and Report Mailed to Each Recipient, also sent email where available]

Hon. Michelle L. Phillips
Secretary to the Commission
New York State Public Service Commission
Empire State Plaza
Agency Building 3
Albany, NY 12223-1350
Secretary@dps.ny.gov

Marie Therese Dominguez, Esq.
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Department of Transportation
New York State
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commissioner@dot.ny.gov

Basil Seggos
Commissioner
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New York Department of State
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countyexec@dutchessny.gov

Marcus J. Molinaro
County Executive
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countyexec@dutchessny.gov

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Lieber.thomas@epa.gov
austin.mark@epa.gov

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

Conservation and Outdoor Recreation
Division Office
National Park Service
1849 C Street NW
Washington, D.C. 20240

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

Deborah Brooks
National Geodetic Survey
SSMC3 #9340
1315 East-West Highway
Silver Spring, MD 20910-3282
NGS.infocenter@noaa.gov

New York State Historic Preservation
Peebles Island Resource Center
P.O. Box 189
Waterford, NY 12188-0189
Chelsea.towers@parks.ny.gov

Peter Matthews
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Command
Engineering Agency
Railroads for National Defense Program
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Scott AFB, IL 62225
Peter.w.matthews.civ@mail.mil

Edward J. Rodriguez
Vice President and General Counsel
Housatonic Railroad Company
4 Huntley Road
P.O. Box 687
Old Lyme, Connecticut 06371-1448
e.rodriguez@hrrc.com

Dick Welsh
National Association of Reversionary
Owners (NARPO)
1100 Bellevue Way NE Ste.
Bellevue, Washington 98004
dick156@earthlink.net

March 4, 2021

Re: *Metro-North Commuter Railroad Company—Adverse Discontinuance of Trackage Rights—Housatonic Railroad Company*, STB Docket No. AB 1311

Dear Sir or Madam:

On March 29, 2021, Metro-North Commuter Railroad Company (“Metro-North”) expects to file a Petition for Adverse Discontinuance with the Surface Transportation Board (“STB” or “Board”) to discontinue service over a 41.1-mile line of railroad in Dutchess and Putnam Counties, New York, known as the Beacon Line (“the Line”). The Line is operated by the Housatonic Railroad company (“HRRC”).

When Metro-North acquired the Line, the Interstate Commerce Commission, predecessor agency to the STB, 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. at 3-4 (Service Date Jan 13, 1995). Accordingly, Metro-North is not required to seek authority from the STB in order to abandon the 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. Accordingly, attached is an Environmental Report and Historic Report describing the proposed action and any expected environmental and historic effects, as well as a map of the affected area.

We are 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, D.C., via telephone at (202) 245-0238 and refer to the above Docket Number. Because the applicable

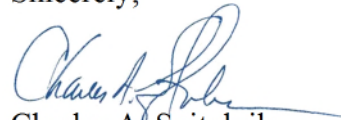
April 23, 2021

Page 2

statutes and regulations impose stringent deadlines for processing this action, your written comments to OEA (with a copy to us) 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 us at your earliest convenience.

Sincerely,



Charles A. Spitulnik

cc: Susan Sarch, Metro-North Commuter Railroad Company
Edward Rodriguez, Housatonic Railroad Company

Exhibit J

Combined Environmental and Historic Report

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 1311

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

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

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

Counsel for Metro-North Commuter Railroad Company

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 1311

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

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

Metro-North Commuter Railroad Company (“Metro-North”) has filed an Application for Adverse Discontinuance with the Surface Transportation Board (“STB” or “Board”) 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 predecessor¹ 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. at 3-4

¹ 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).

(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.² 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

² 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 Line³ 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.

³ The map included as **Exhibit C** was prepared using the Federal Railroad Administration's Safety Map (available at <https://fragis.fra.dot.gov/gisfrasaafety/>). Metro-North has provided additional maps of the line as **Exhibit K** of the Application for Adverse Discontinuance.

(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**.

Following the submission of this Environmental and Historic Report to the New York State Historic Preservation Office (NY SHPO), neither Metro-North nor Metro-North’s outside counsel received a response or request for additional for additional information from the NY SHPO.

Respectfully Submitted,



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

Archived: Tuesday, April 27, 2021 11:28:58 AM
From: [Austin, Mark](#)
Sent: Wed, 24 Mar 2021 17:23:10
To: [Katherine Bourdon](#)
Cc: [Poetzsch, Michael](#)
Subject: STB Environmental and Historic Report
Sensitivity: Normal

Ms. Bourdon,

Re: Metro-North Commuter Railroad Company—Adverse Discontinuance of Trackage Rights—Housatonic Railroad Company, STB Docket No. AB 1311

We have reviewed your document dated March 4, 2021 on the subject noted above. The proposal is to discontinue use of the Beacon line. No construction or demolition is proposed other than activities associated 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 presented, these activities have been coordinated with appropriate regulatory agencies. As such, we do not have any comments to offer at this time. If the project scope changes or new construction/demolition is proposed, we recommend the MTA prepare an environmental assessment according to the National Environmental Policy Act and submit it to our office for review.

If you wouldn't mind, please forward this message on to Mr. Spitulnik, Ms. Sarch and Mr. Rodriguez for their awareness as well.

If you have follow up questions on our review of this project, please reach out to Mike Poetzsch at 212-637-4147 or Poetzsch.Michael@epa.gov. Thank you for including us in the review of your project.

Mark

Mark Austin
Team Leader, Environmental Reviews
Strategic Programs, Office of the Regional Administrator
US Environmental Protection Agency Region 2
New York, NY
212.637.3954

From: Lieber, Thomas <Lieber.Thomas@epa.gov>
Sent: Tuesday, March 16, 2021 5:41 PM
To: Austin, Mark <Austin.Mark@epa.gov>
Subject: FW: STB Environmental and Historic Report

From: Katherine Bourdon <kbourdon@kaplankirsch.com>
Sent: Friday, March 5, 2021 12:20 PM
To: Lieber, Thomas <Lieber.Thomas@epa.gov>; mark.austin@epa.gov
Subject: STB Environmental and Historic Report

Good Afternoon – Attached please find a copy of the Environmental and Historic Report for Metro-North Commuter Railroad's Adverse Discontinuance of the Beacon rail line in Putnam and Dutchess counties, New York. A copy has also been sent via U.S. mail.

This email has been scanned for spam and viruses. Click [here](#) to report this email as spam.

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:



Department of
Environmental
Conservation

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, 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.

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 and Lisa Masi, NYSDEC Bureau of Wildlife, at 845-256-2257 or by email at 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. 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

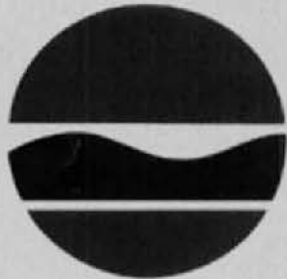
The permittee is responsible for obtaining any other permits, approvals, lands, easements and rights-of-way that may be required to carry out the activities that are authorized by this permit.

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

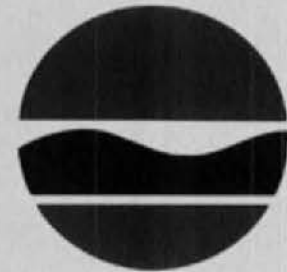
This permit does not convey to the permittee any right to trespass upon the lands or interfere with the riparian rights of others in order to perform the permitted work nor does it authorize the impairment of any rights, title, or interest in real or personal property held or vested in a person not a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

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

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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 (NYSDOS) 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 NWP 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:

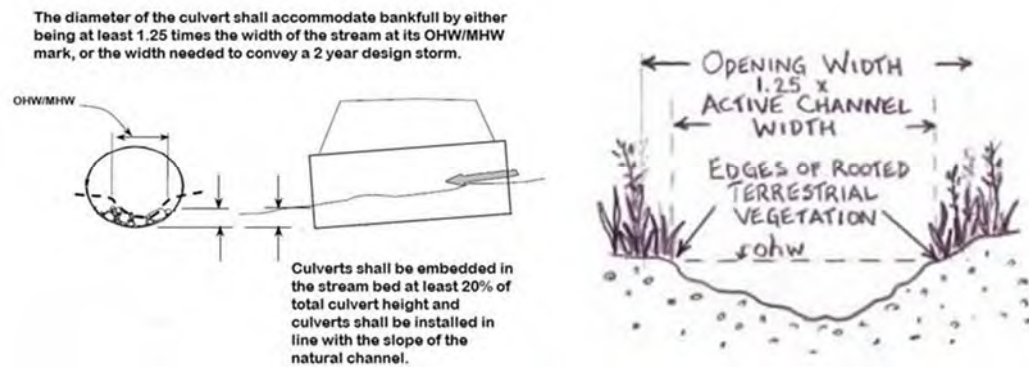
- a. Size: Bank-full flows shall be accommodated through maintenance of the existing bank-full channel cross sectional dimensions within one culvert. Bank-full width is generally considered to be the top width at the stage where a stream begins to overtop its banks and spread into the floodplain. Either 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 1/10th 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/nrcr/programs/rta/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

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
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, 3rd Floor
Watervliet, NY 12189-4000
(518) 266-6350 - Permits team
(518) 266-6360 - Compliance Team

Email: cenan.rfo@usace.army.mil

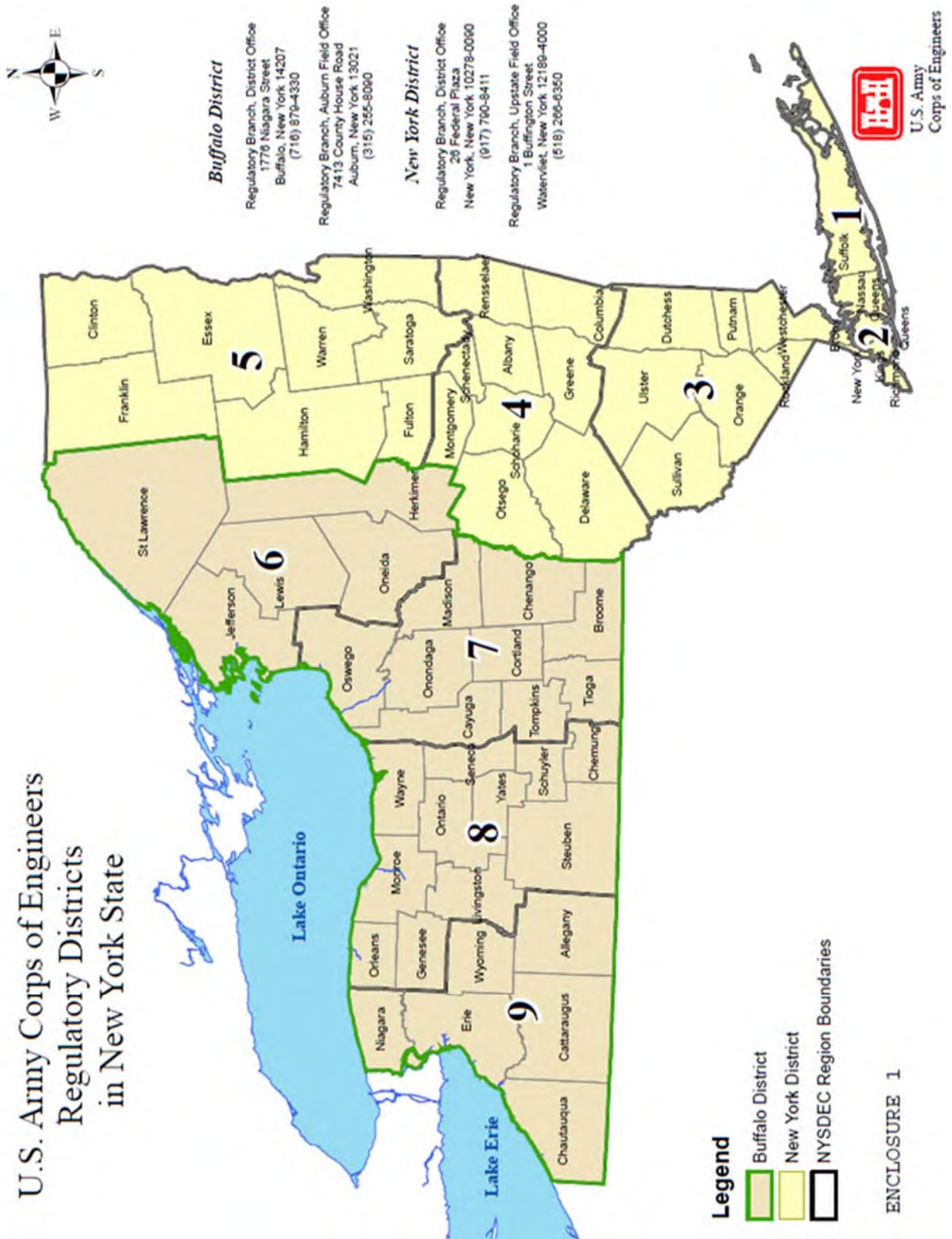
(For DEC Regions 6, 7, 8, 9)

US Army Corps of Engineers

Buffalo District

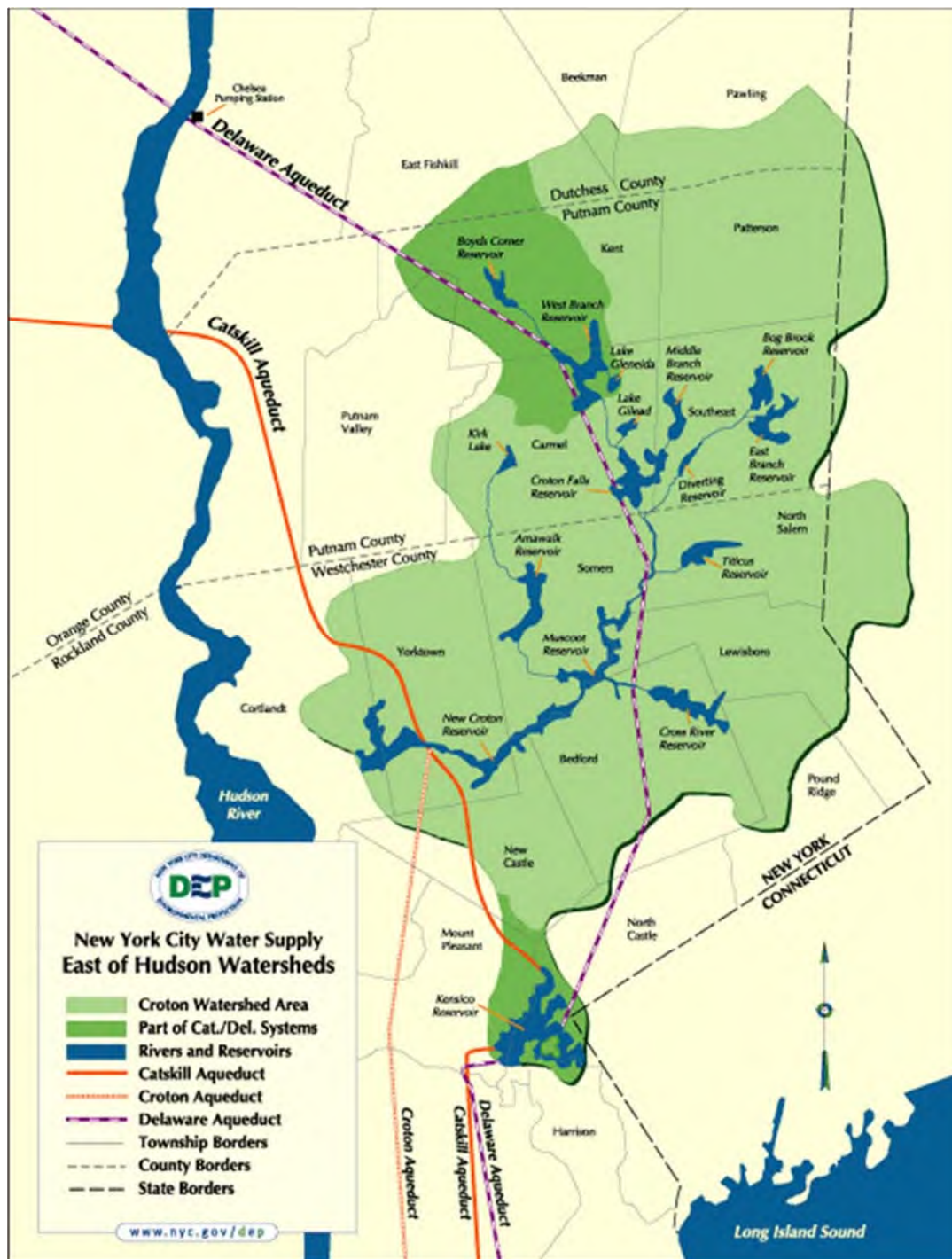
ATTN: Regulatory Branch
1776 Niagara Street
Buffalo, NY 14207-3199
(716) 879-4330
Email: LRB.Regulatory@usace.army.mil
www.lrb.usace.army.mil

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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.

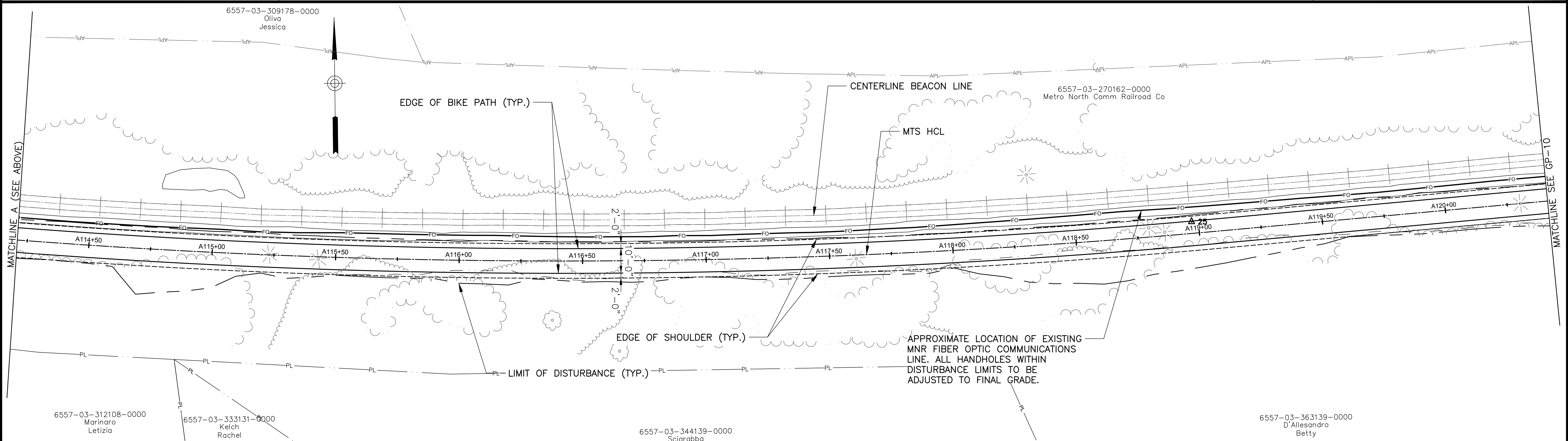
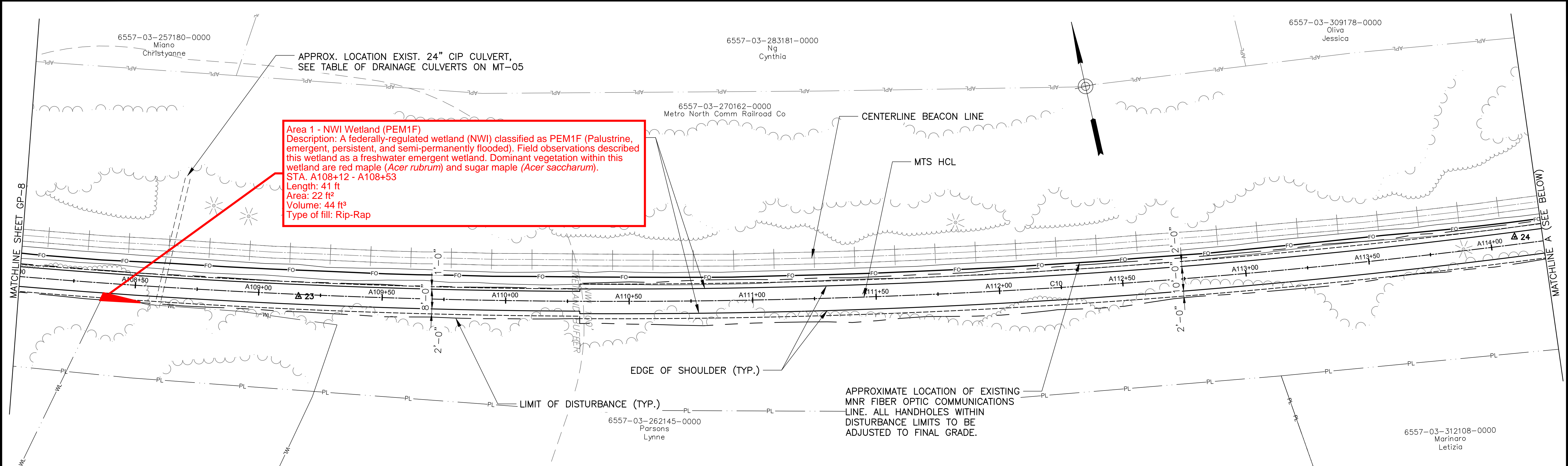
 3/7/2019



Signature and date of
Regulatory staff member
completing PJD

Signature and date of
person requesting PJD
(REQUIRED, unless obtaining
the signature is impracticable)¹

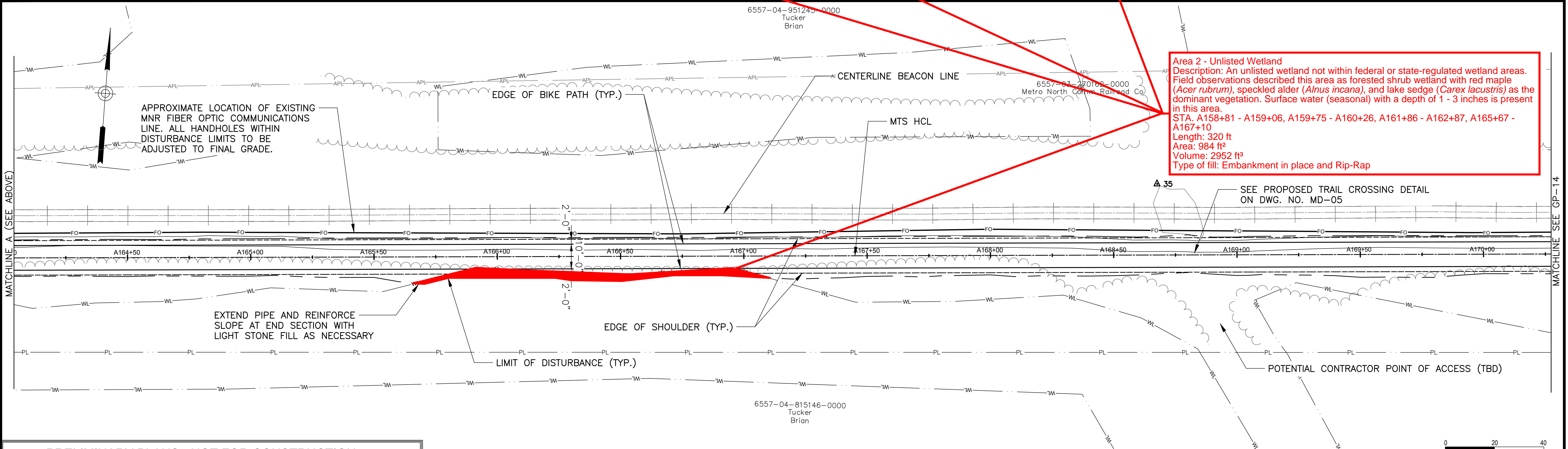
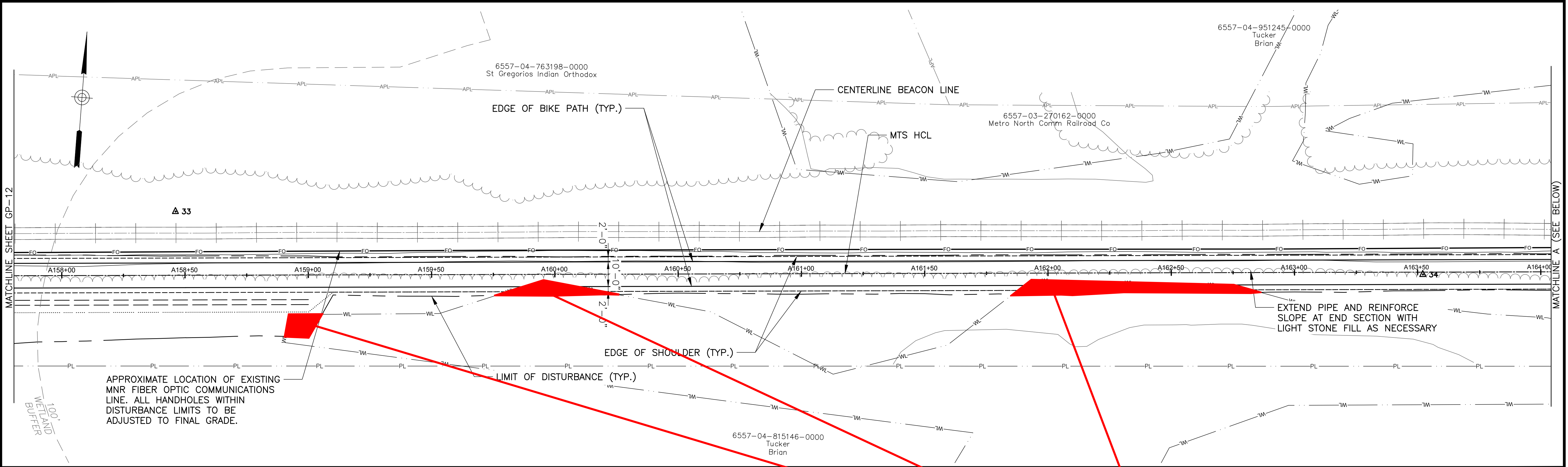
¹ Districts may establish timeframes for requestor to return signed PJD forms. If the requestor does not respond within the established time frame, the district may presume concurrence and no additional follow up is necessary prior to finalizing an action.

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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PRELIMINARY PLANS - NOT FOR CONSTRUCTION																																																																									
<table border="1"><thead><tr><th>REV. NO.</th><th>DRAWN BY</th><th>CHK. BY</th><th>DESCRIPTION</th><th>DATE</th></tr></thead><tbody><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr><tr><td> </td><td> </td><td> </td><td> </td><td> </td></tr></tbody></table>		REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE																																														<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>		<table border="1"><tr><td>DESIGNED BY:</td><td>KB</td></tr><tr><td>DRAWN BY:</td><td>MS</td></tr><tr><td>CHECKED BY:</td><td>DG</td></tr><tr><td>APPROVED BY:</td><td>JK</td></tr></table>		DESIGNED BY:	KB	DRAWN BY:	MS	CHECKED BY:	DG	APPROVED BY:	JK	 <p>WSP USA INC. 555 PLEASANTVILLE ROAD SOUTH BUILDING P.O. BOX 2650 BRIARCLIFF MANOR, NY 10510 TEL: +1 914 747 1120</p>		 <p>Metro-North Railroad 420 Lexington Avenue New York, N.Y. 10170</p>		<p>PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER</p> <p>DRAWING TITLE: GENERAL PLAN - 9</p>		<p>P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY</p> <p>SCALE: 1"=20' DATE: JULY 2018</p> <p>DRAWING NUMBER: GP-09</p> <p>SHEET OF 314</p>	
REV. NO.	DRAWN BY	CHK. BY	DESCRIPTION	DATE																																																																					
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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 ft²
Volume: 2952 ft³
Type of fill: Embankment in place and Rip-Rap

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 - 13

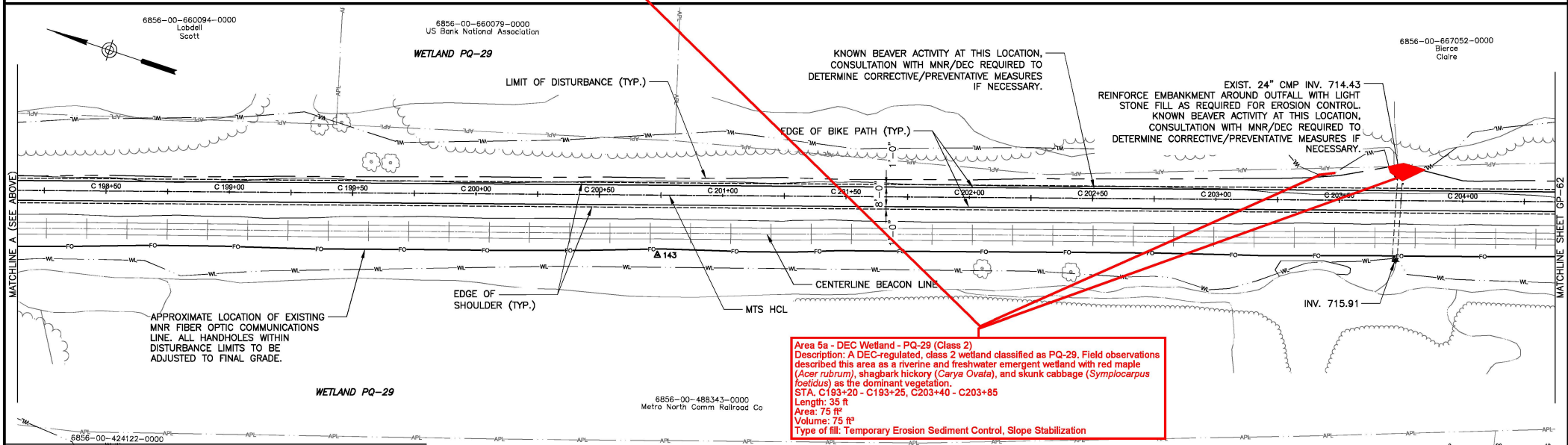
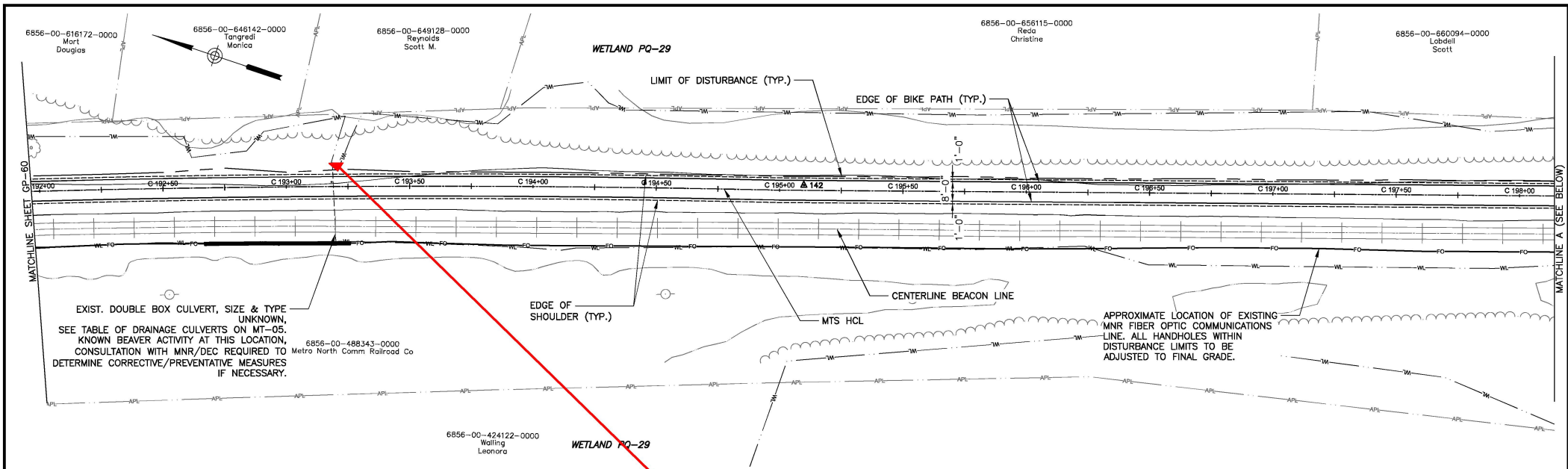
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MAYBROOK TRAILWAY

SCALE: 1"=20' DATE: JULY 2018

DRAWING NUMBER:
GP-13

SHEET OF 314

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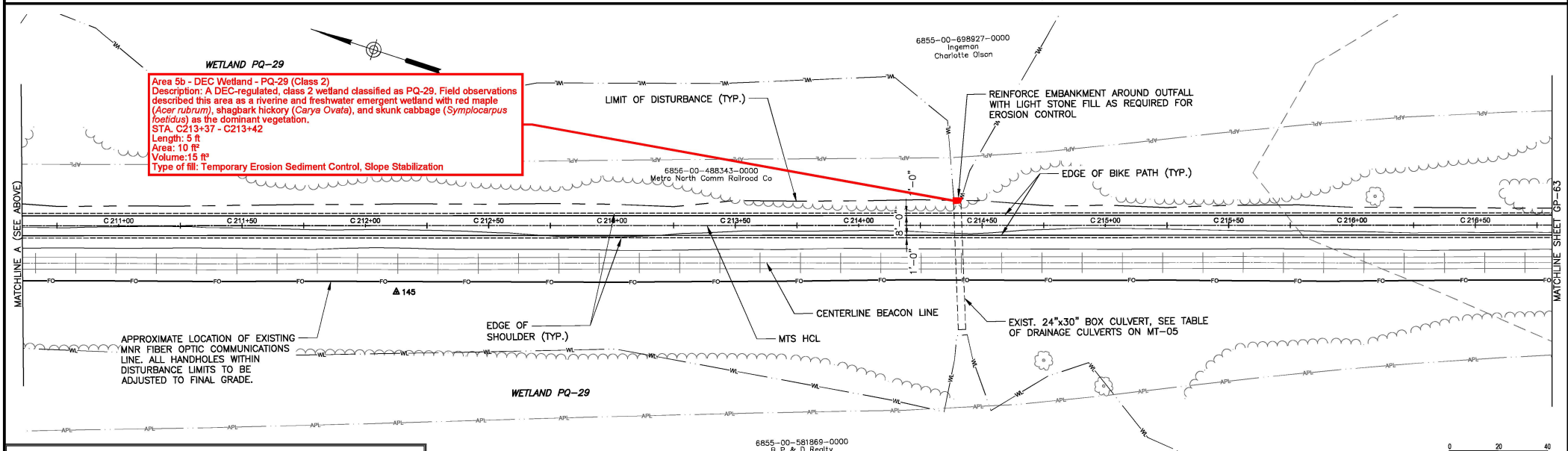
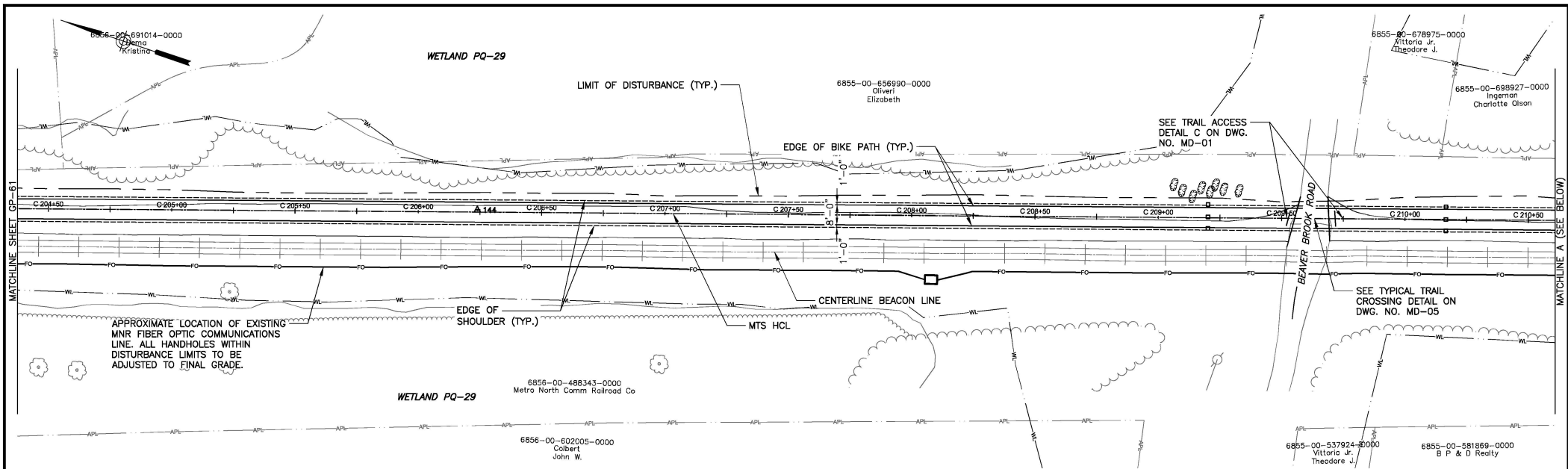


Area 5a - DEC Wetland - PQ-29 (Class 2)
Description: A DEC-regulated, class 2 wetland classified as PQ-29. Field observations described this area as a riverine and freshwater emergent wetland with red maple (*Acer rubrum*), shagbark hickory (*Carya Ovata*), and skunk cabbage (*Symplocarpus foetidus*) as the dominant vegetation.
STA. C193+20 - C193+25, C203+40 - C203+85
Length: 35 ft
Area: 75 ft²
Volume: 75 ft³
Type of fill: Temporary Erosion Sediment Control, Slope Stabilization

PRELIMINARY PLANS - NOT FOR CONSTRUCTION			DESIGNED BY:			EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER	DRAFTING TITLE:	GENERAL PLAN - 61	P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY	SCALE: 1"=20'	DATE: JULY 2018	DRAWING NUMBER: GP-61									
REV.	NO.	DATE	DESCRIPTION										DATE								

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Drawing Path: \\mtr\p1\161670A - MNR Beacon Line Rail Trail\3-CADD\AutoCAD\Contract DWGs\B0399_cph_gen_Plan.dwg
User: jgallagher Date: 11/28/18 Time: 10:00am



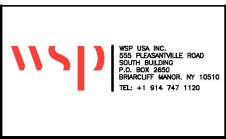
Area 5b - DEC Wetland - PQ-29 (Class 2)
Description: A DEC-regulated, class 2 wetland classified as PQ-29. Field observations described this area as a riverine and freshwater emergent wetland with red maple (*Acer rubrum*), shagbark hickory (*Carya Ovata*), and skunk cabbage (*Symplocarpus foetidus*) as the dominant vegetation.
STA. C213+37 - C213+42
Length: 5 ft
Area: 10 ft²
Volume: 15 ft³
Type of fill: Temporary Erosion Sediment Control, Slope Stabilization

PRELIMINARY PLANS - NOT FOR CONSTRUCTION

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

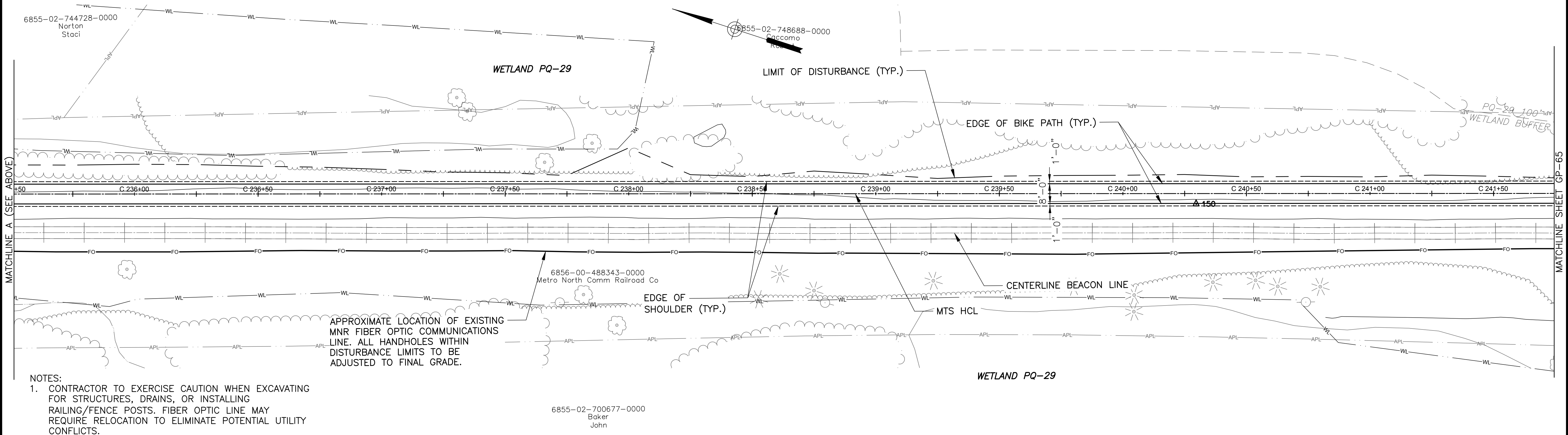
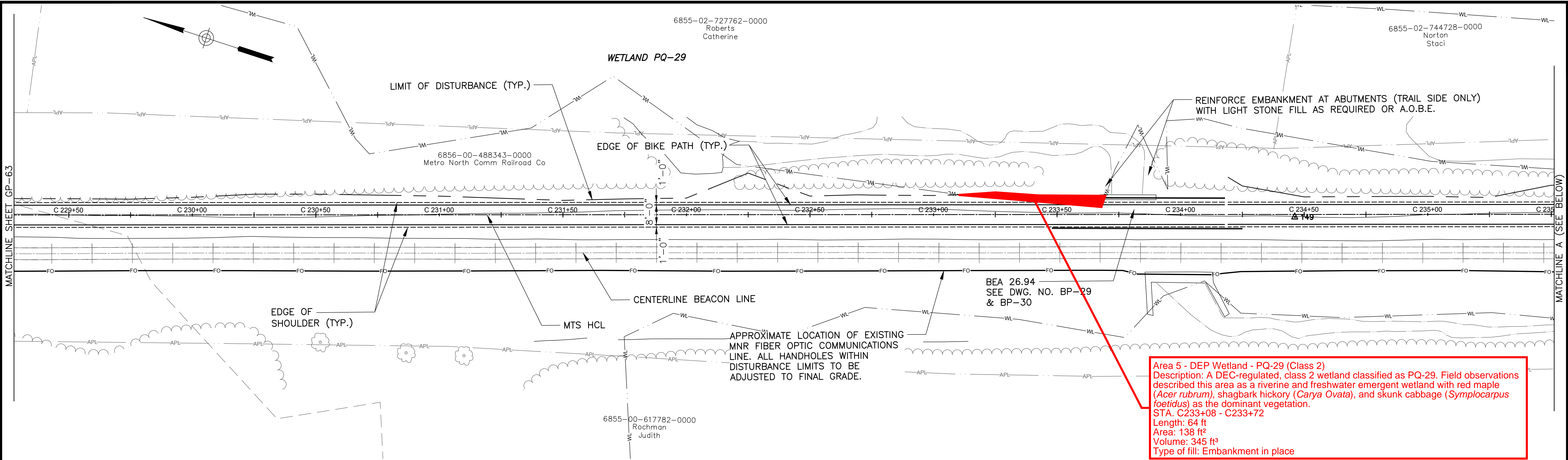


EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION
HOPEWELL JUNCTION TO BREWSTER

GENERAL PLAN - 62

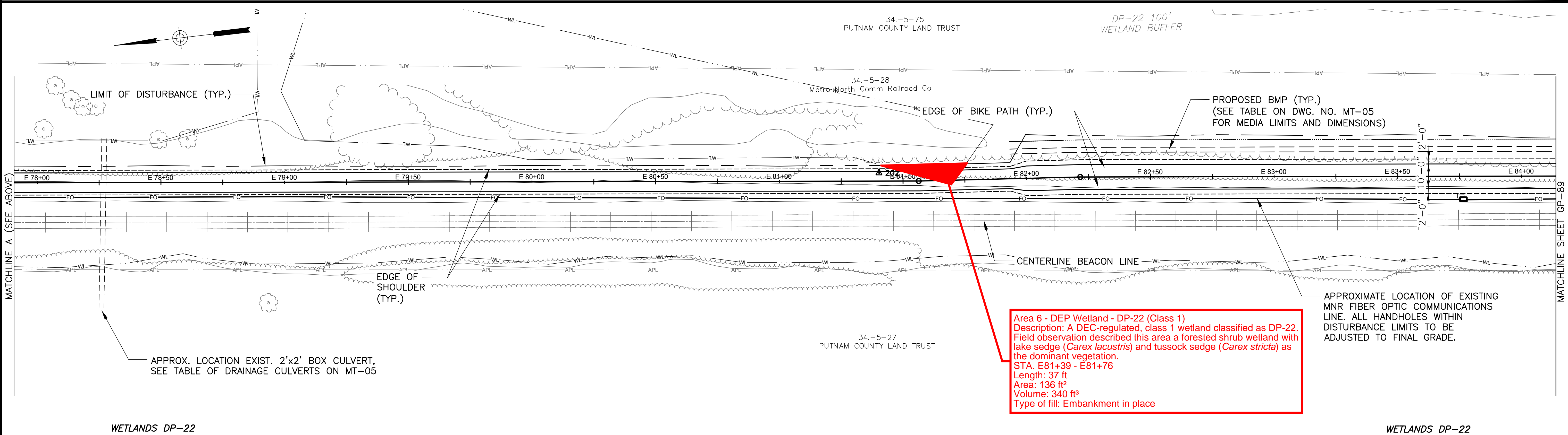
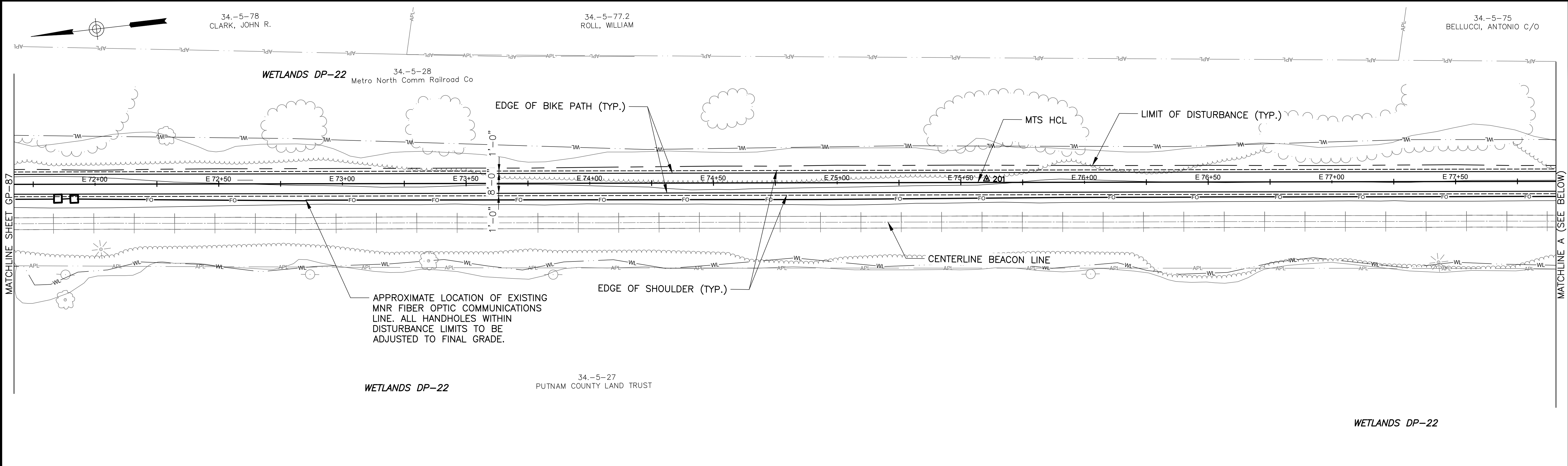
P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY
SCALE: 1"=20'
DATE: JULY 2018
DRAWING NUMBER: GP-62
SHEET 169 OF 314

Drawing Path Name: L:\Pro\191670A - MNR Beacon Line Rail Trail\3_CADD\AutoCAD\Contract DWGs\89399_cph_gen_General Plans.dwg
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					<div>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.</div>	<div>PE:</div>	<div>DESIGNED BY: KB</div>	<div>DRAWN BY: MS</div>	<div>CHECKED BY: DG</div>	<div>APPROVED BY: JK</div>	<div><div><div>WSP</div><div>WSP USA INC. 555 PLEASANTVILLE ROAD SOUTH BUILDING P.O. BOX 2650 BRIARCLIFF MANOR, NY 10510 TEL: +1 914 747 1120</div></div></div>	<div><div><div>MTA</div><div>Metro-North Railroad</div><div>420 Lexington Avenue New York, N.Y. 10170</div></div></div>	<div>PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER</div>		<div>P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY</div>	
													<div>SCALE: 1"=20'</div>	<div>DATE: JULY 2018</div>		
													<div>DRAWING NUMBER: GP-64</div>			
													<div>SHEET OF 314</div>			
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WETLANDS DP-22

PRELIMINARY PLANS - NOT FOR CONSTRUCTION

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PE:


DESIGNED BY: SM

DRAWN BY: MS

CHECKED BY: DB

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

DRAWING TITLE:
GENERAL PLAN - 88

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

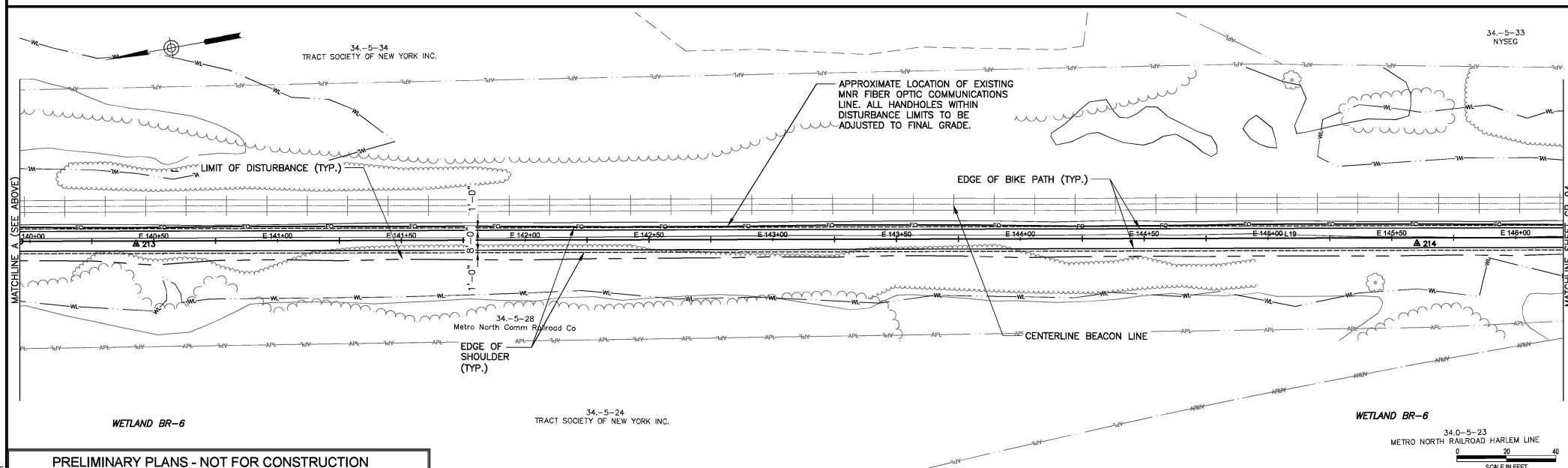
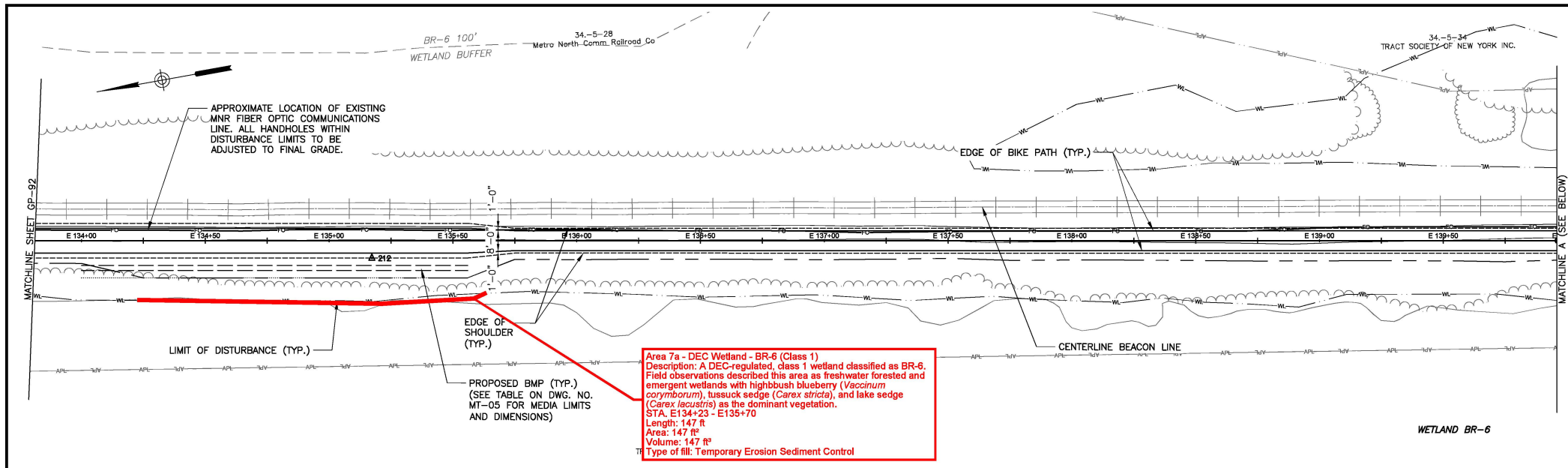
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DATE: JULY 2018

DRAWING NUMBER:
GP-88

SHEET
OF 314

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User: jk
Date: 11/16/2016 10:50:00 AM



PRELIMINARY PLANS - NOT FOR CONSTRUCTION

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

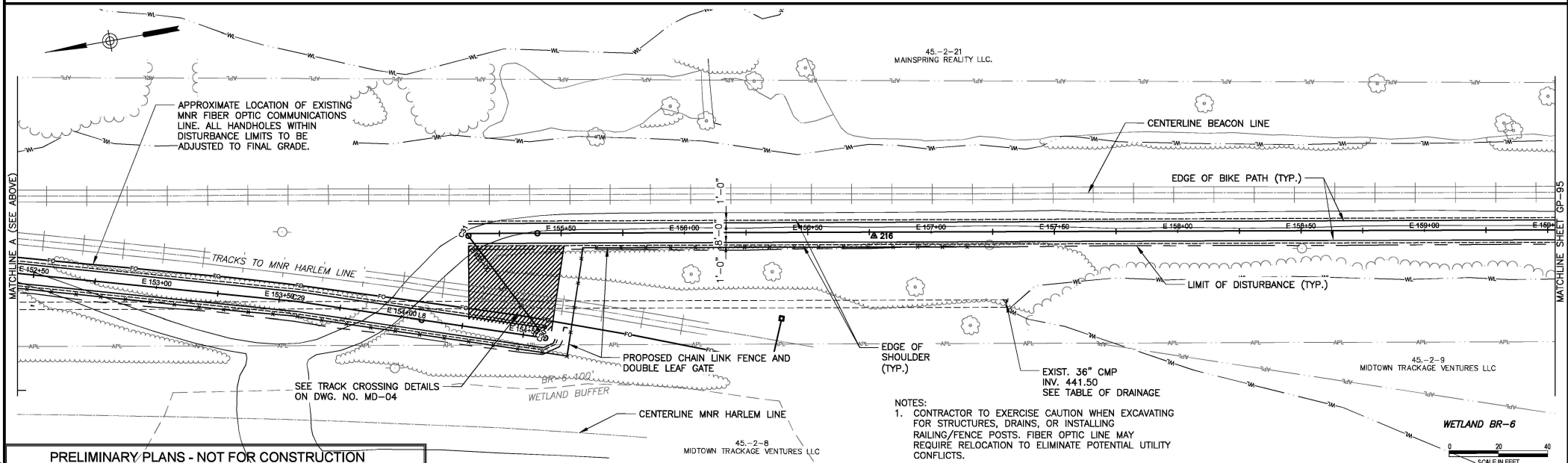
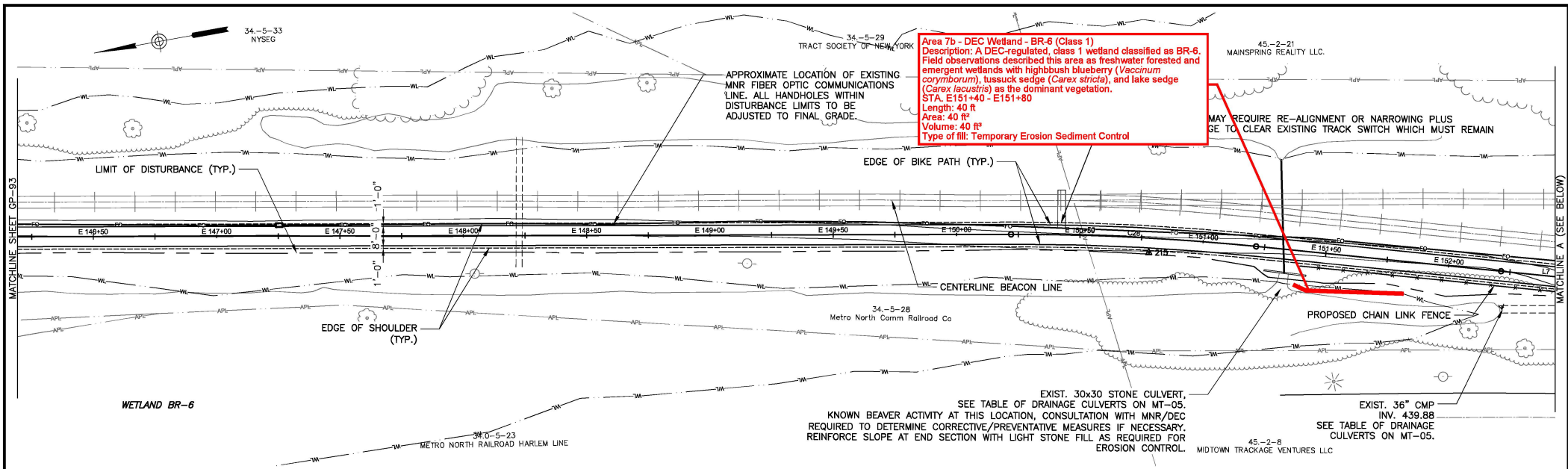
WSP USA INC.
505 PLAZA DRIVE
SOUTH BAY
BRANCOY MANOR, NY 10510
TEL: +1 914 747 1120

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

EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION
HOPEWELL JUNCTION TO BREWSTER
GENERAL PLAN - 93

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

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Plot Date: 11/11/2016 1:50:00 PM



PRELIMINARY PLANS - NOT FOR CONSTRUCTION

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			DESIGNED BY: SM		
			DRAWN BY: MS		
			CHECKED BY: DB		
			APPROVED BY: JK		
			WSP USA, INC. 500 PLAZA DRIVE SOUTH BULLOCK P.O. BOX 2600 BRANFORD, CT 06405 TEL: 41 914 747 1120		
			MTA Metro-North Railroad 420 Lexington Avenue New York, N.Y. 10170		
			PROJECT: EMPIRE STATE TRAIL- MAYBROOK TRAILWAY SECTION HOPEWELL JUNCTION TO BREWSTER	P.O.: 1000442201-DESIGN-BUILD MAYBROOK TRAILWAY	
			DRAWING TITLE: GENERAL PLAN - 94	SCALE: 1"=20' DATE: JULY 2018	
				DRAWING NUMBER: GP-94	
				SHEET 274 OF 314	

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 TEMP. 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) present at the impact area, and thought about how bog turtles may be impacted at this particular spot	Amt. of PERM. 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) present at the impact area, and thought about how bog turtles may be impacted at this particular spot	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 amomum</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 > 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 > 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 1st through March 31st) 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 1st and March 31st, 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
AND
NYSDEC Wildlife Office
(845)-256-3098 or email 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
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 a 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

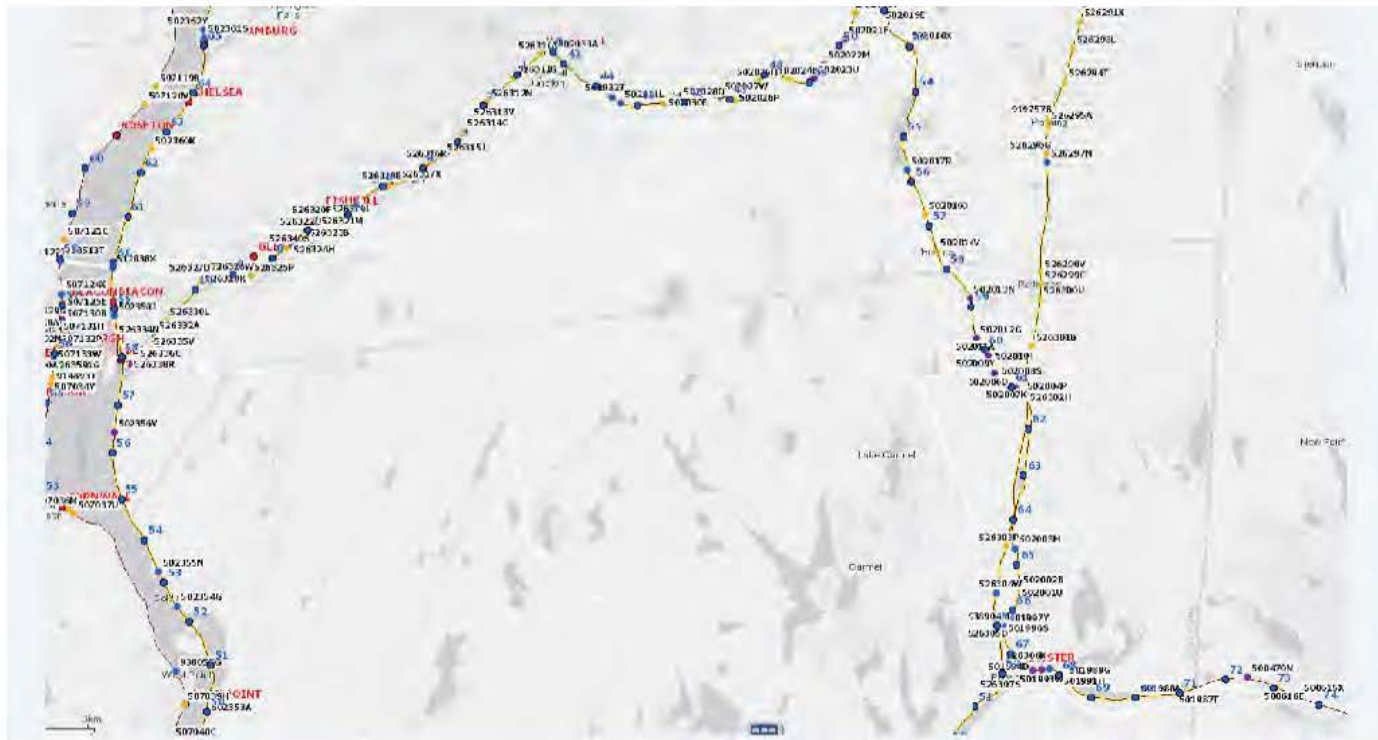


EXHIBIT D

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)

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)

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 Lusier, 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 recommended 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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Map List

- Map 1. Project Location (USGS 2015)
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Photograph List

- 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.
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Photo 5. View of the railroad bed as it cuts through bedrock as it extends southeast passed Trailhead 2 on the left.
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Photo 11. View facing east along Route 164 as it cross 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.
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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.

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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 Archaeological 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: $124 \times 63 \text{ m}$ ($407 \times 206 \text{ ft}$)

Acreage: 0.97 acre (0.39 ha)

Trailhead #2

Length and Width: $82 \times 30 \text{ m}$ ($270 \times 100 \text{ ft}$)

Acreage: 0.61 acre (0.25 ha)

Trailhead #3

Length and Width: $51 \times 98 \text{ m}$ ($168 \times 322 \text{ ft}$)

Acreage: 1.24 acre (0.50 ha)

Trailhead #4

Length and Width: $92 \times 125 \text{ m}$ ($303 \times 410 \text{ ft}$)

Acreage: 2.84 acres (1.15 ha)

Trailhead #5

Length and Width: $79 \times 41 \text{ m}$ ($260 \times 135 \text{ ft}$)

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
Trailhead #1: S Green Haven Rd., Beekman, NY						
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
Trailhead #2: Bard Rd., Beekman, NY						
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
Trailhead #3: Rt. 292, Pawling, NY						
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
Trailhead #4: Bullet Hole Rd. and Rt. 164, Patterson, NY						
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
Trailhead #5: Pumpphouse Rd., Southeast, NY						
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
Trailhead # 1				
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 th 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
Trailhead # 2 (two sites just over one mile from Trailhead 3)				
-	10404	Site 1	Historic barn site	5,895 feet southeast, Pawling
-	3142	ACP Dutch 10	Described as “recent relics”	5,590 feet northwest, Beekman
No sites within a mile of Trailhead # 3				
Trailhead # 4				
-	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
Trailhead # 5				
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 th 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 th 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 th -20 th 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 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 ± 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 20th-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 ± 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 ± 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 20th 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

Characteristic	Site information
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	± 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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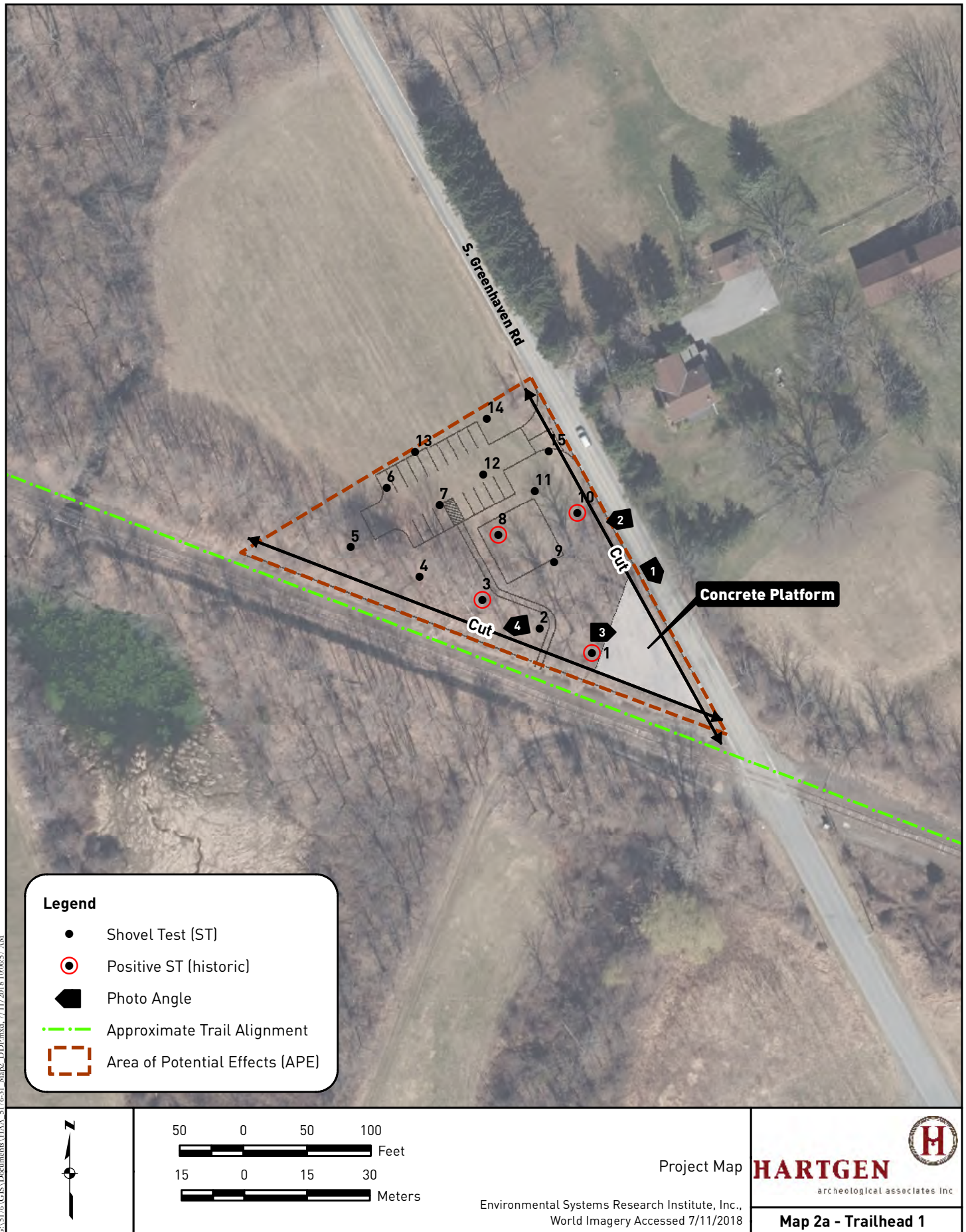
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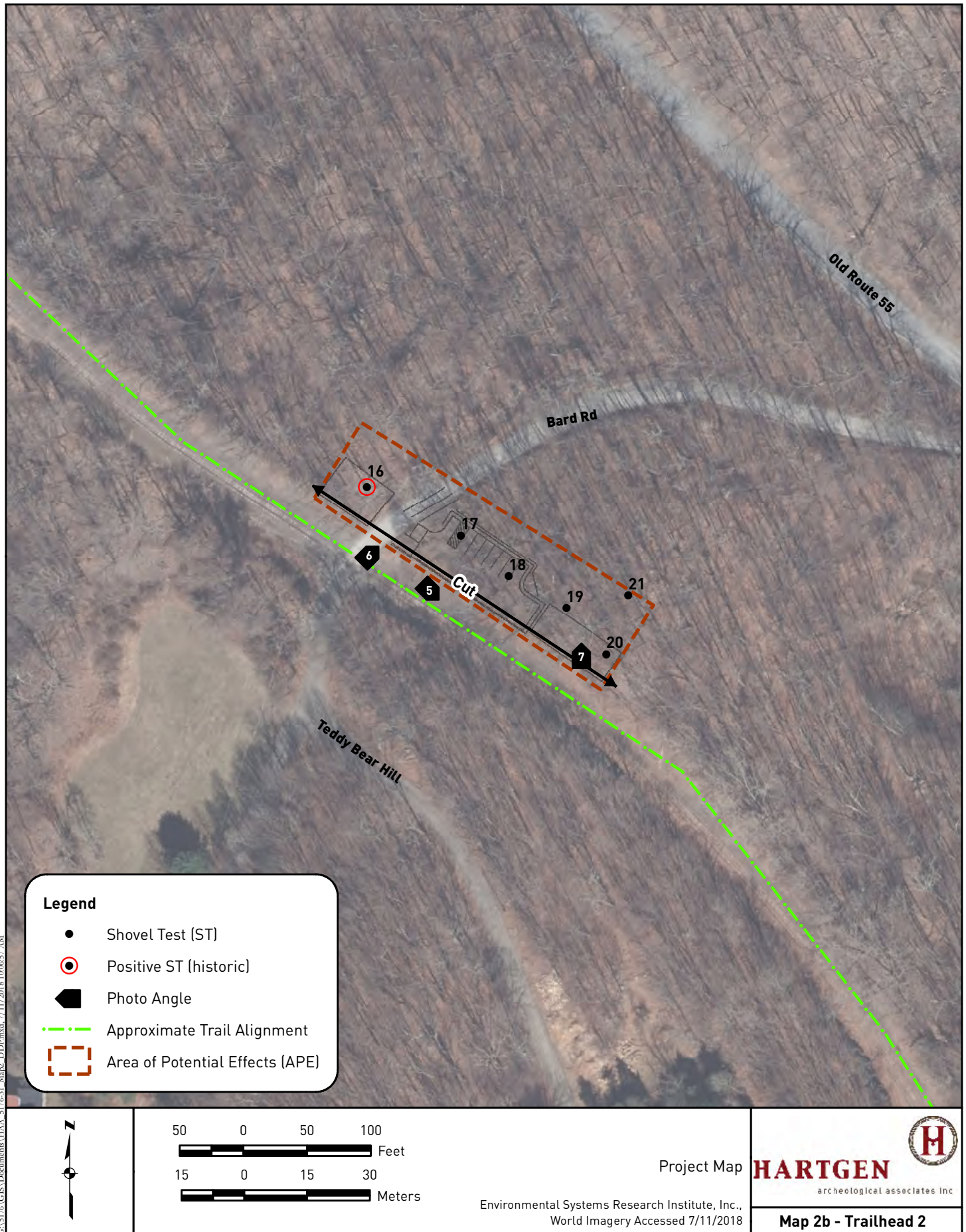
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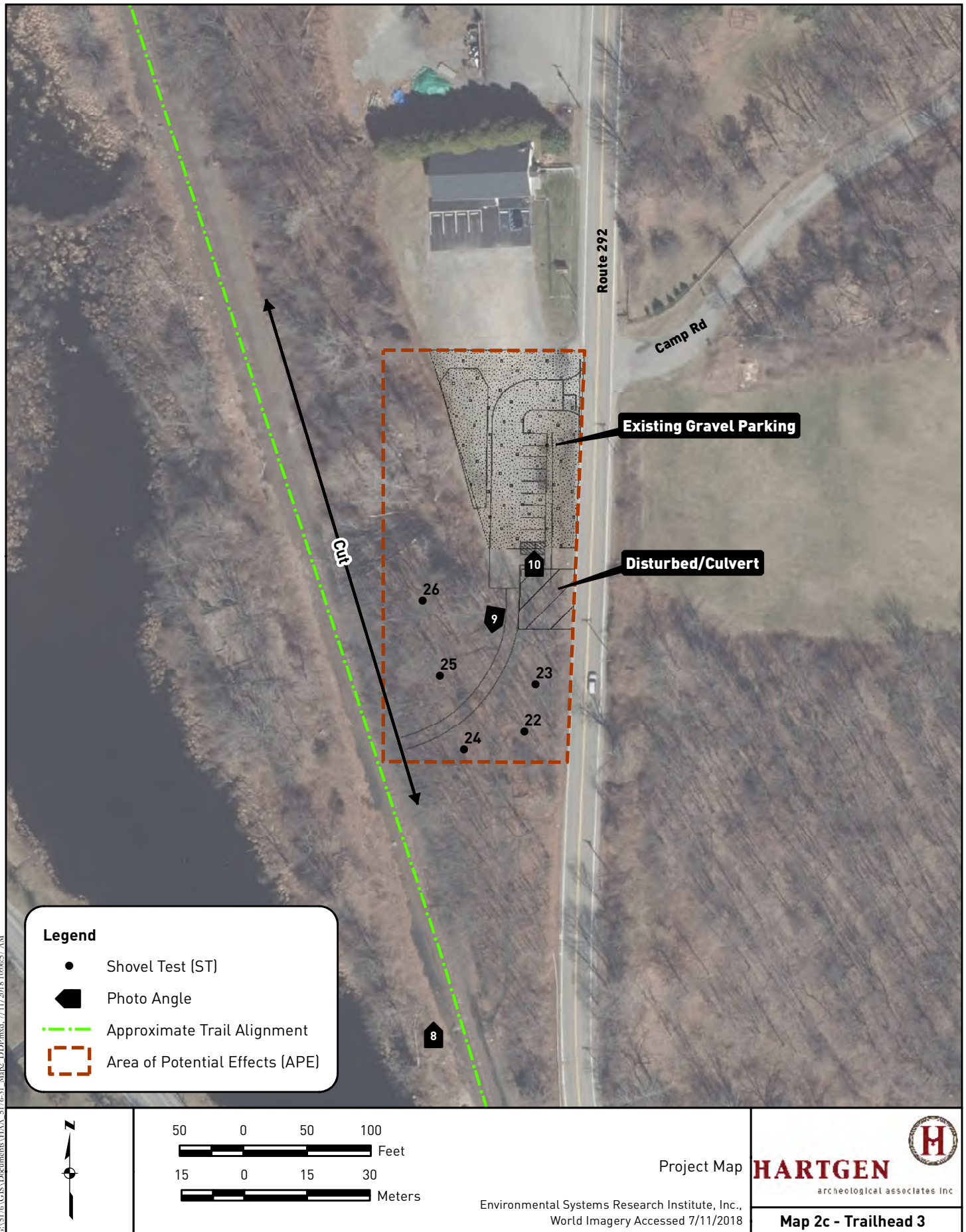
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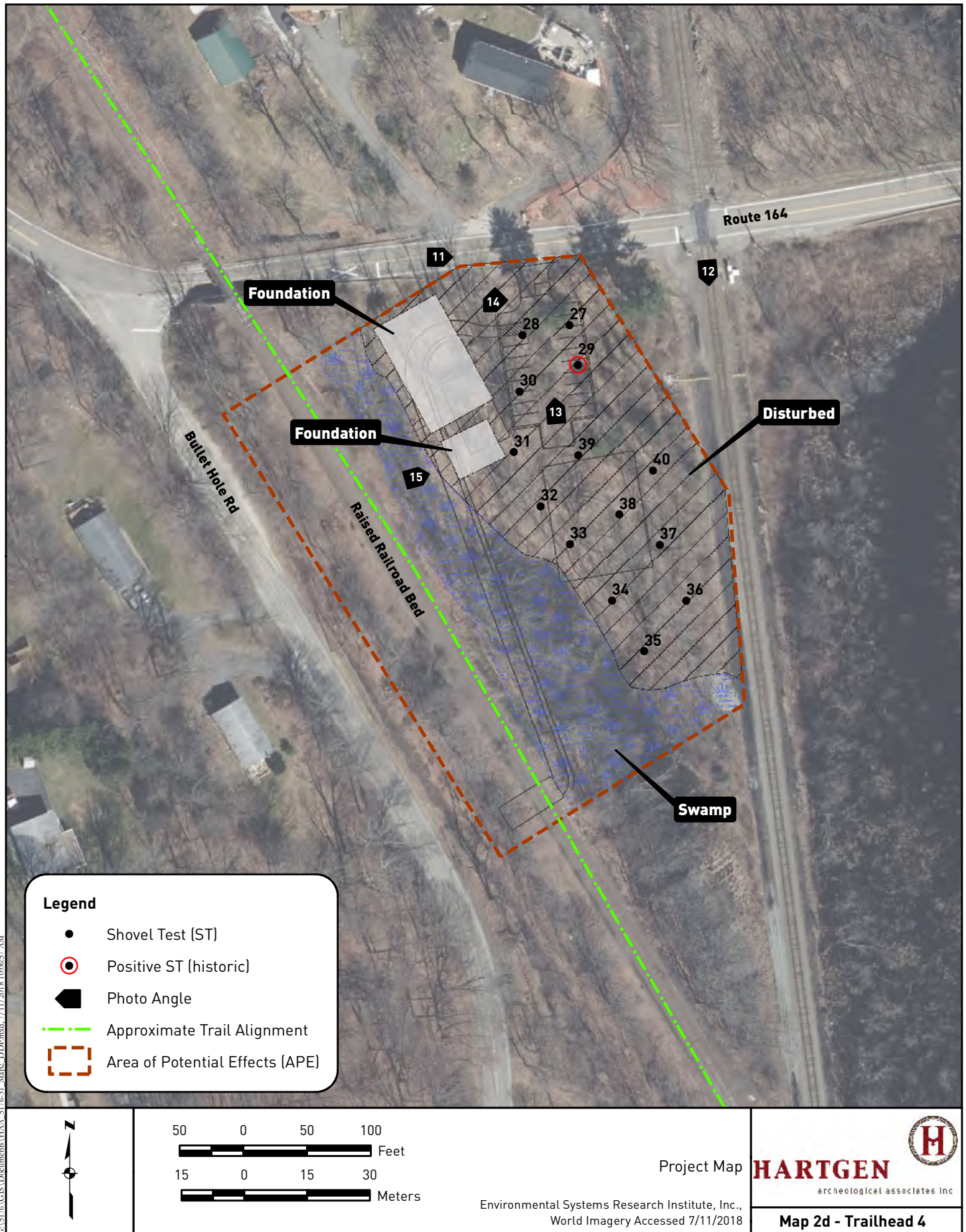
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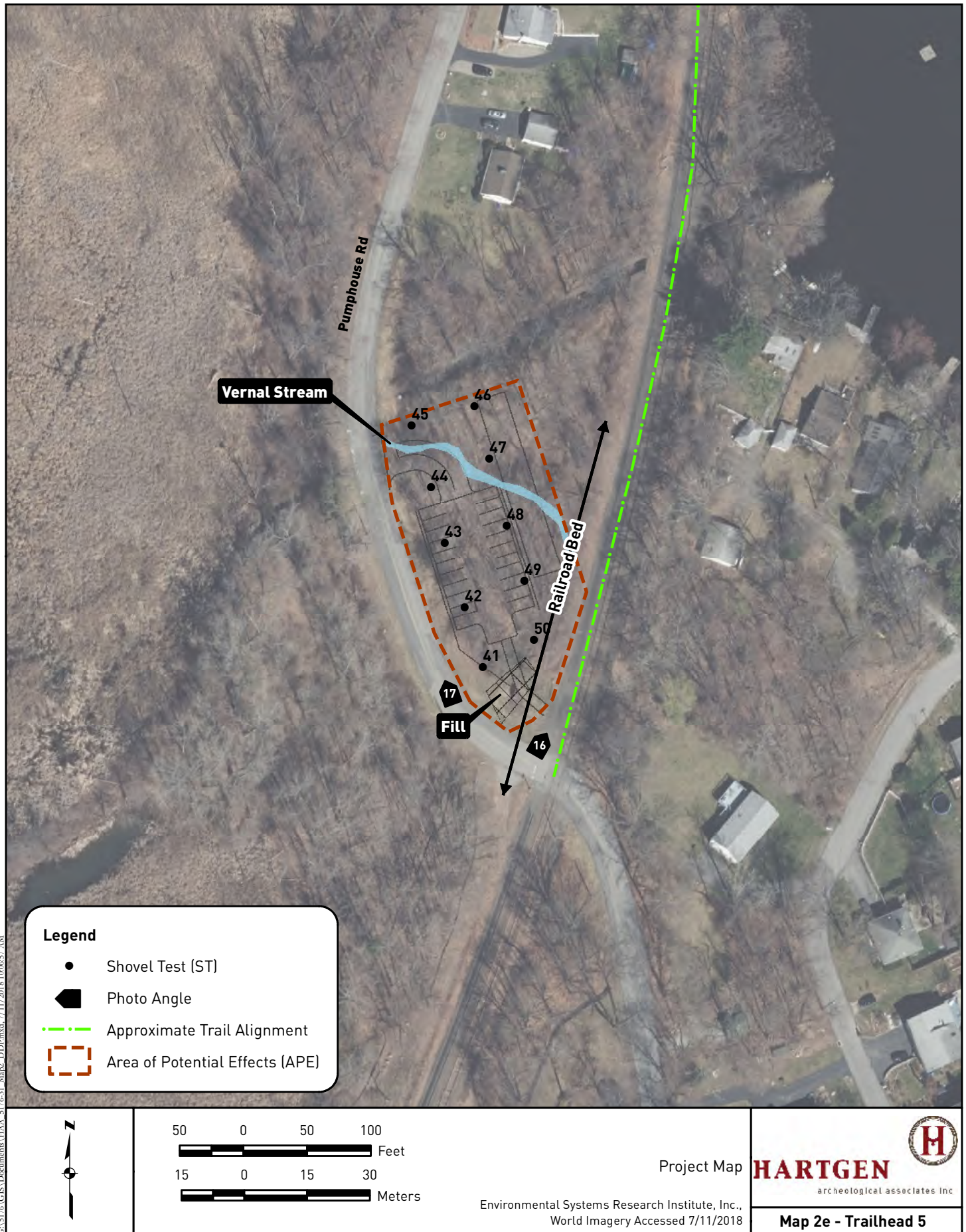
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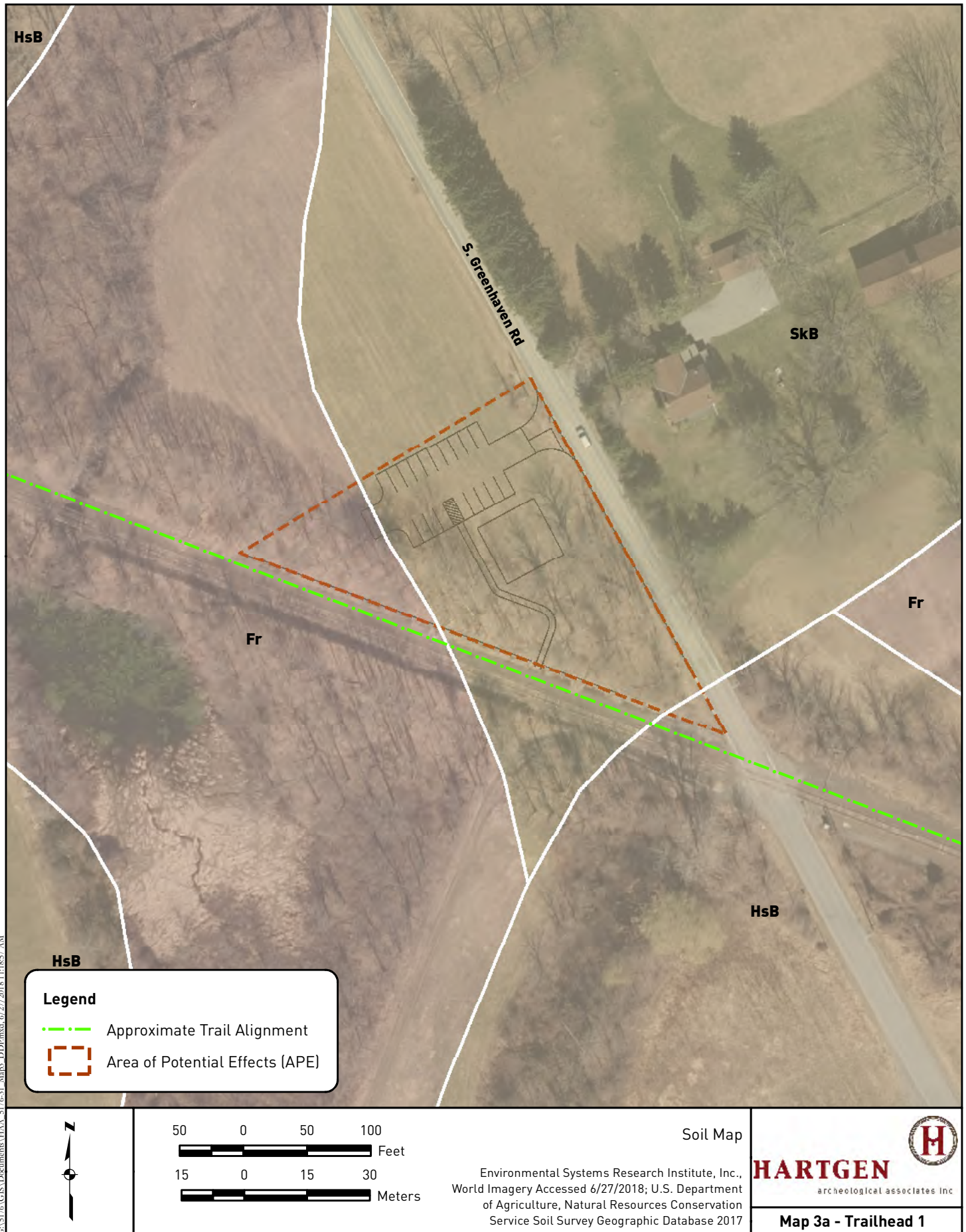


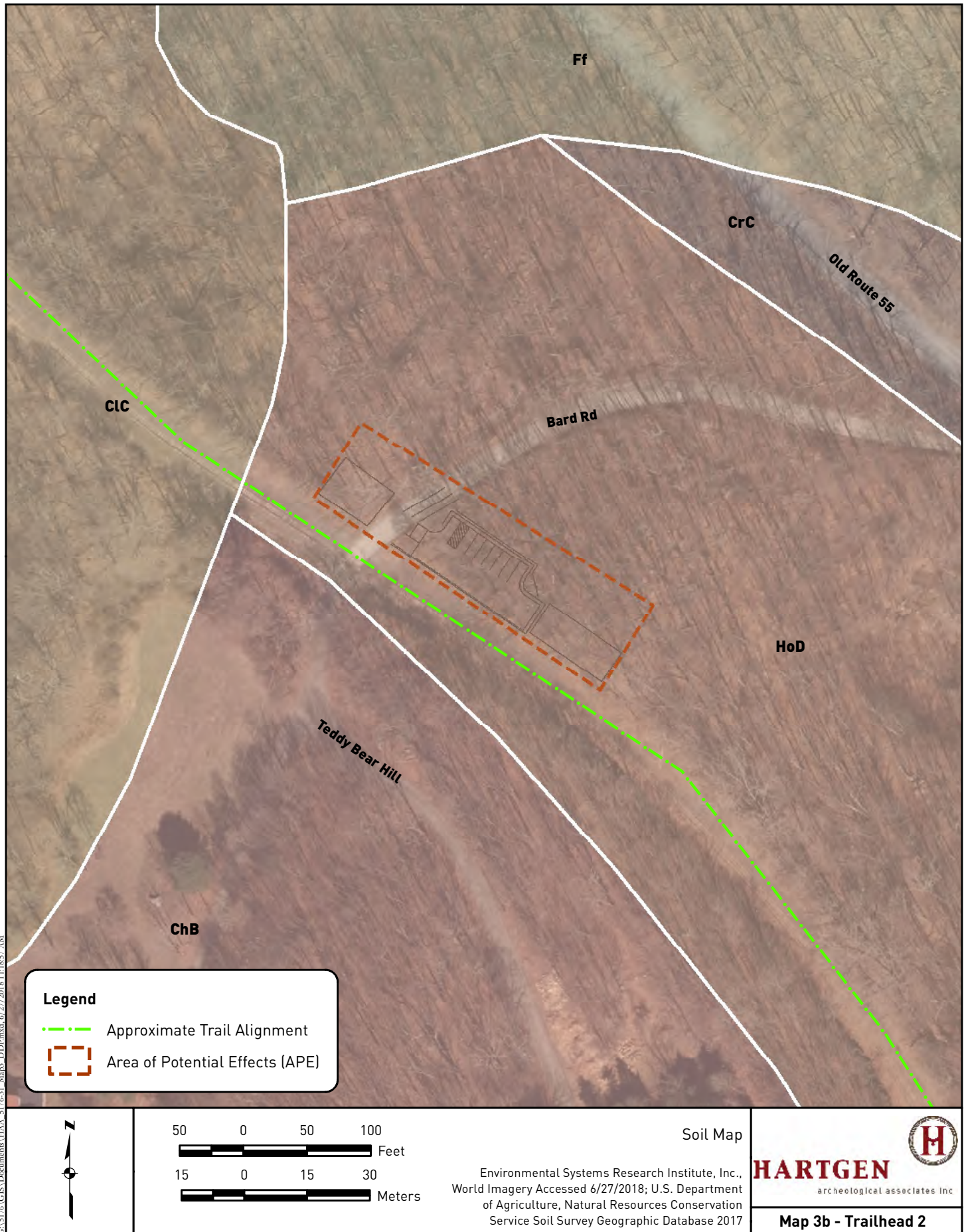


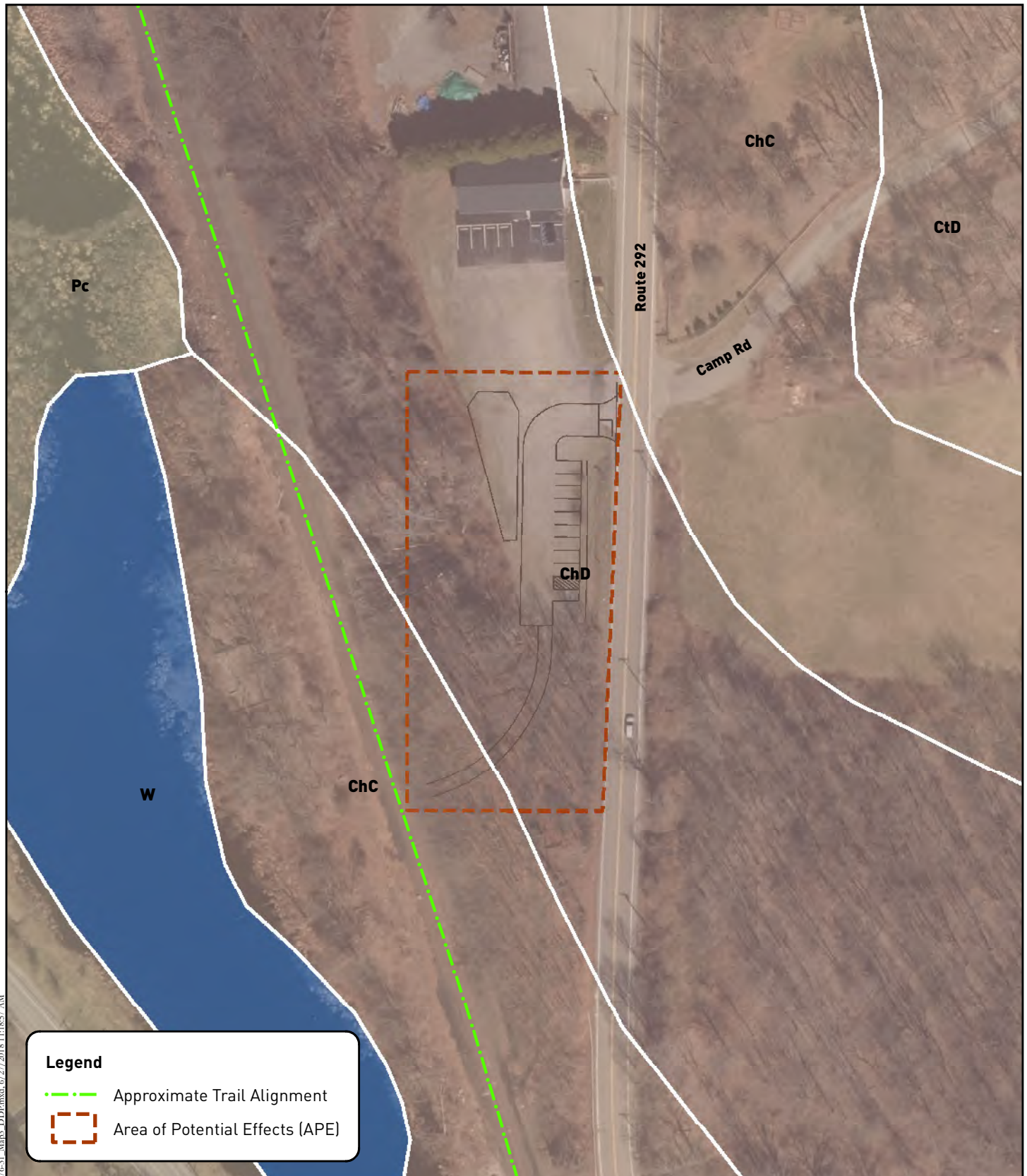










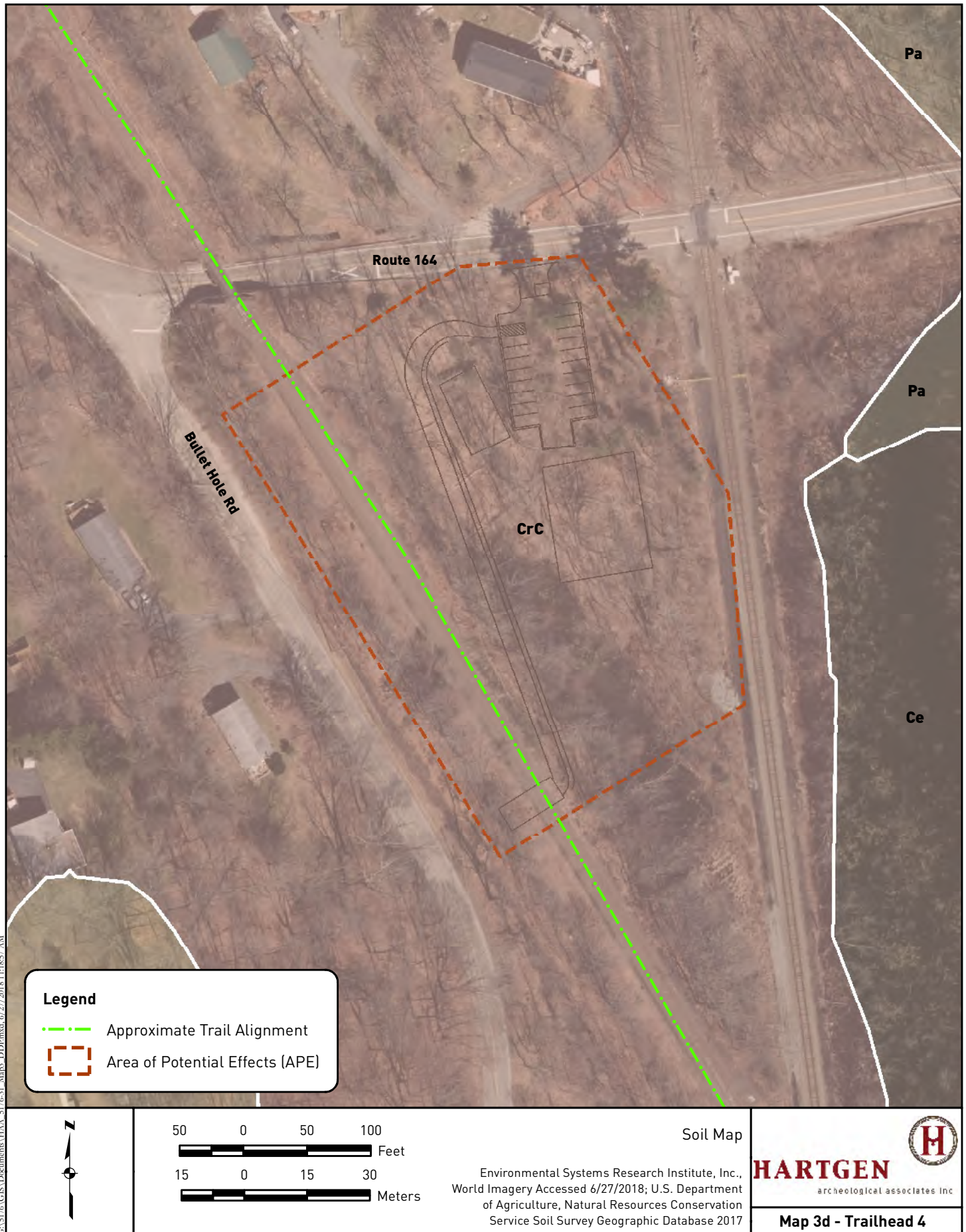


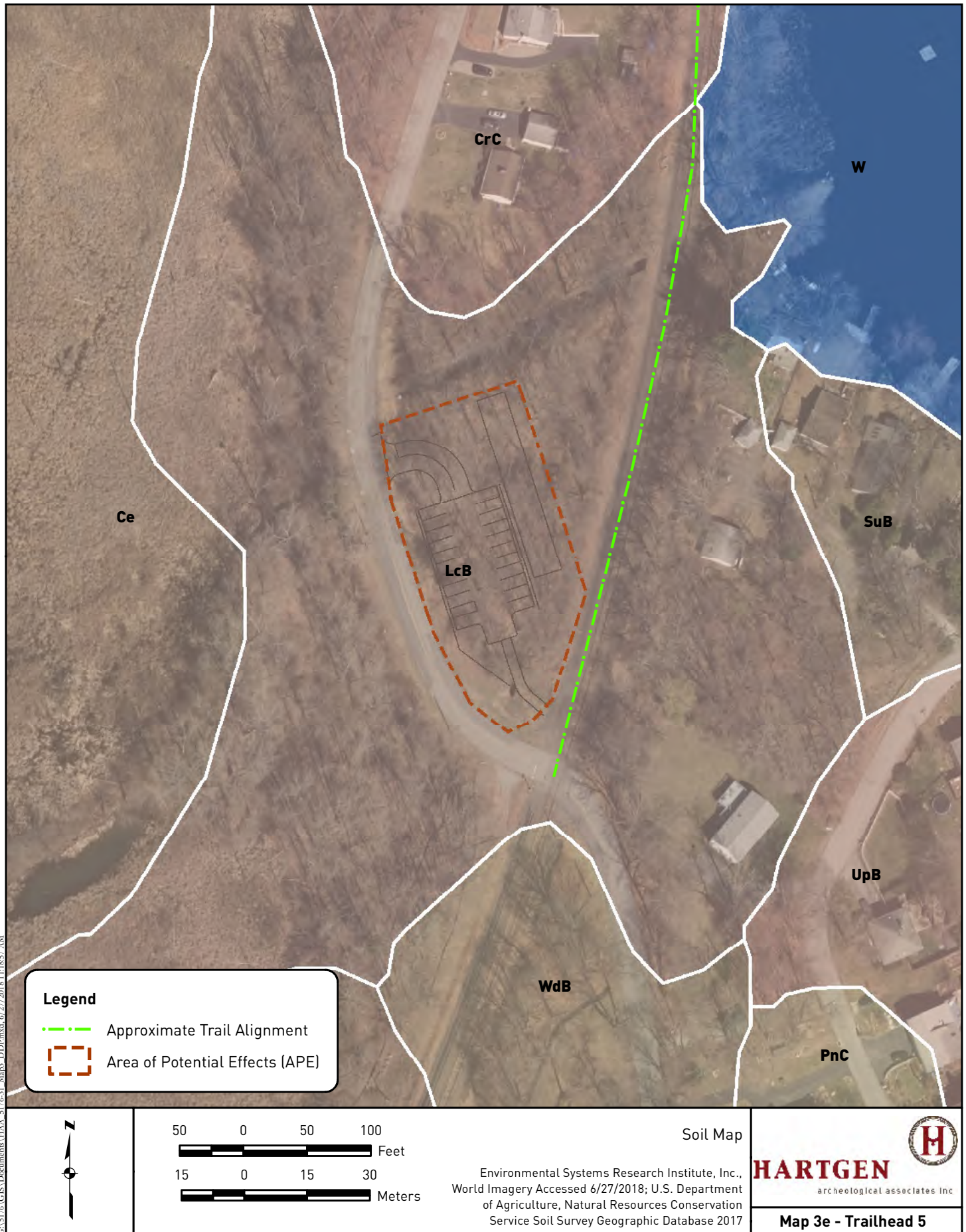
Soil Map

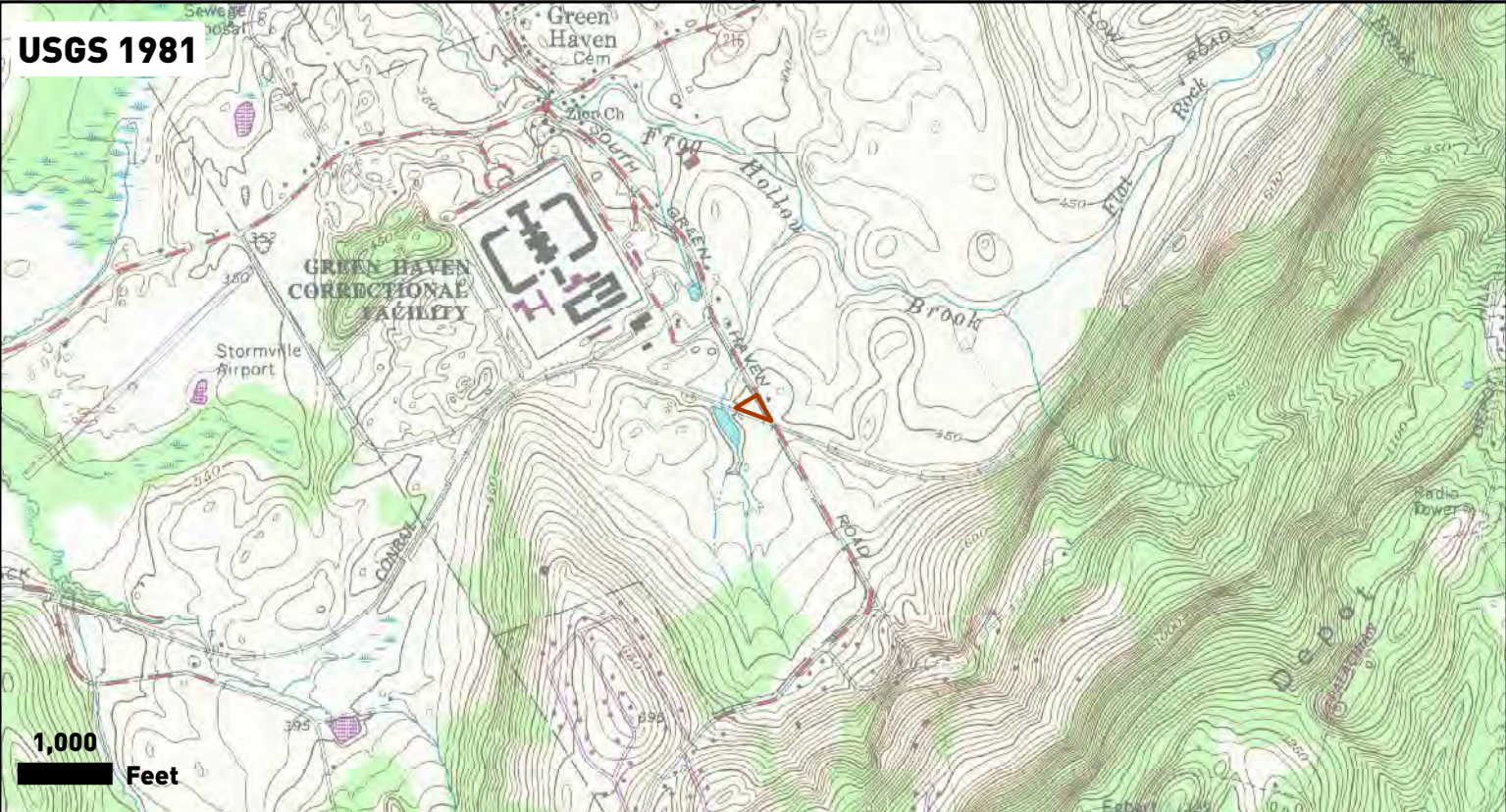
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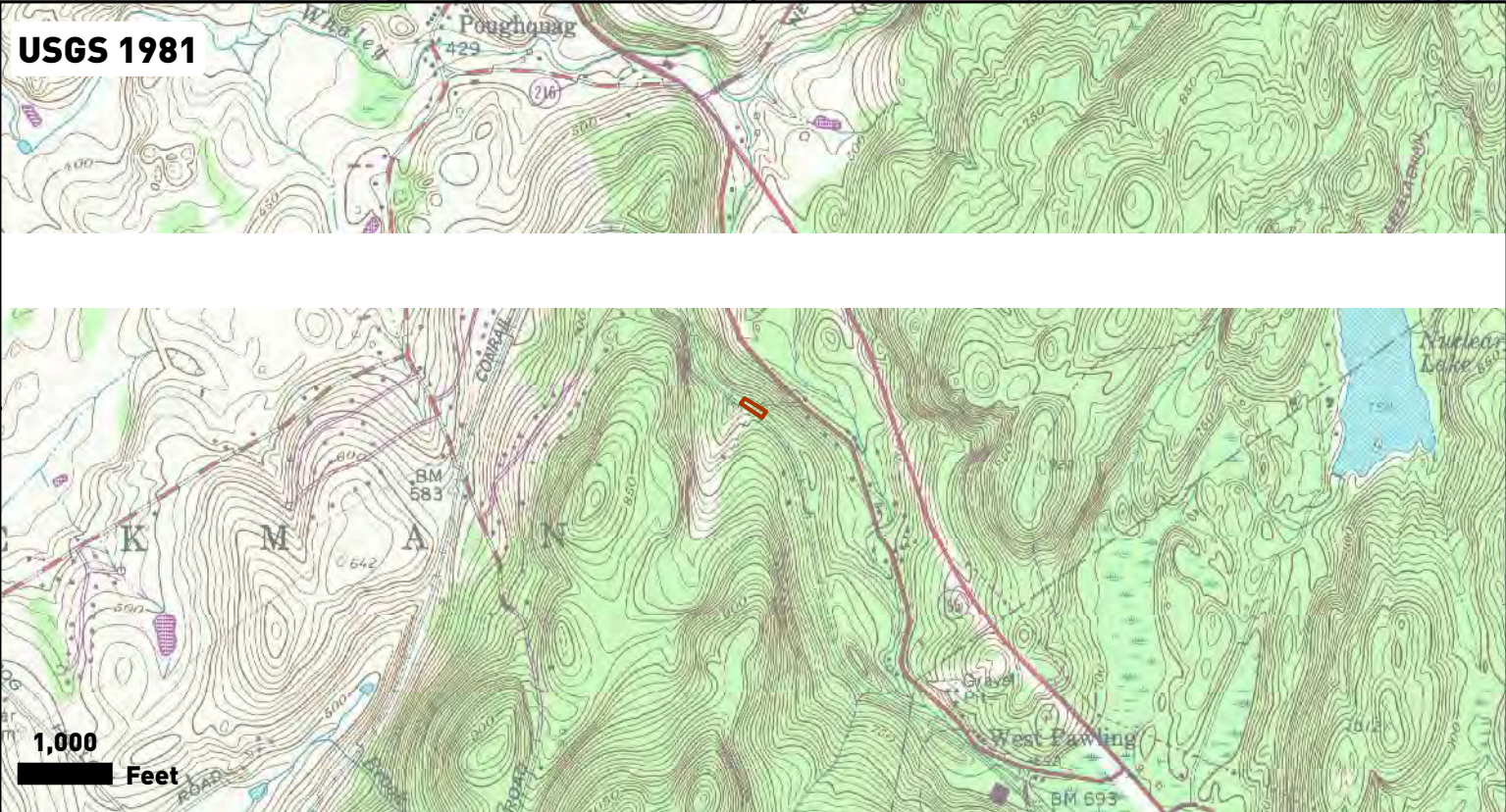


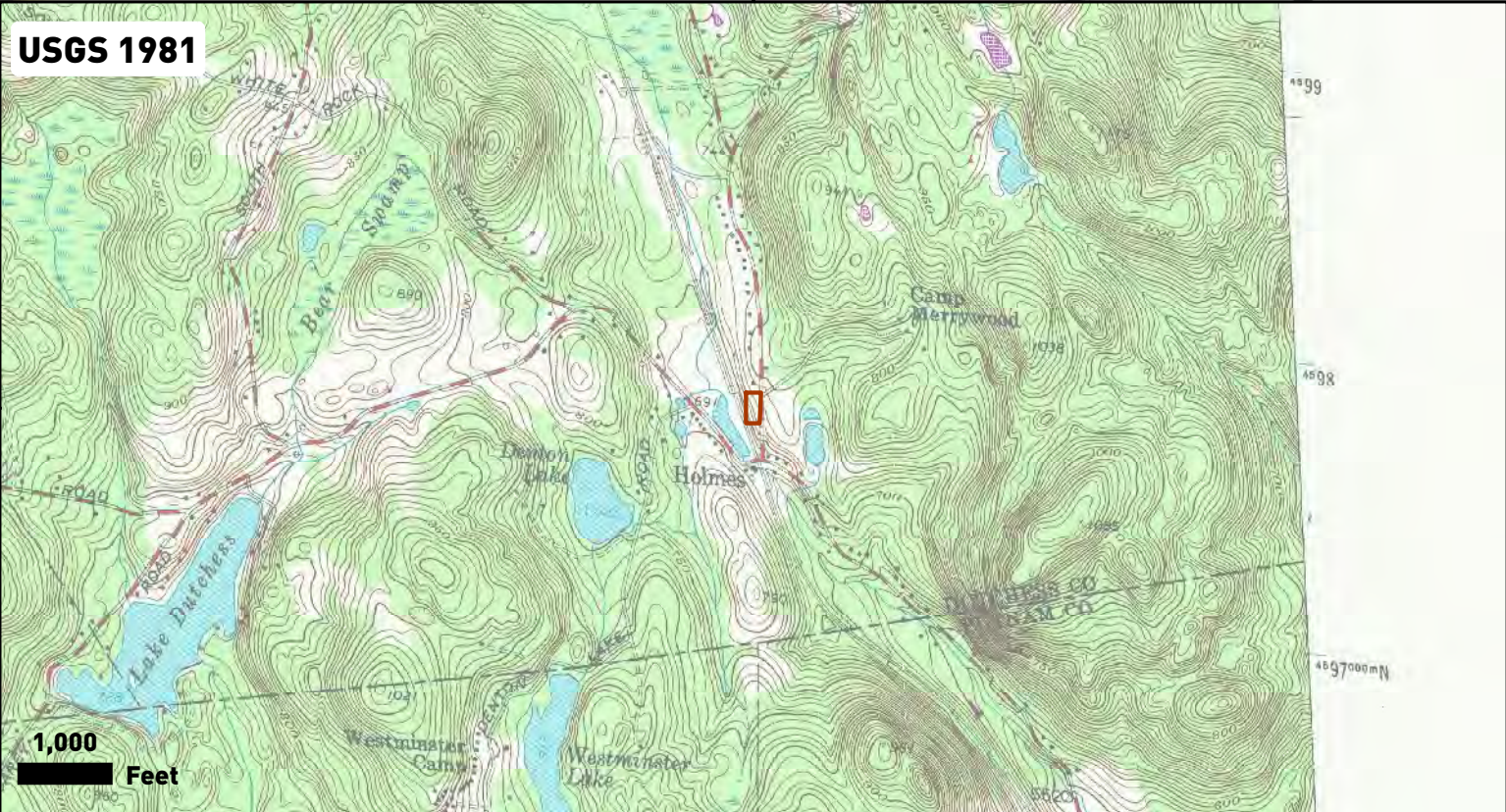
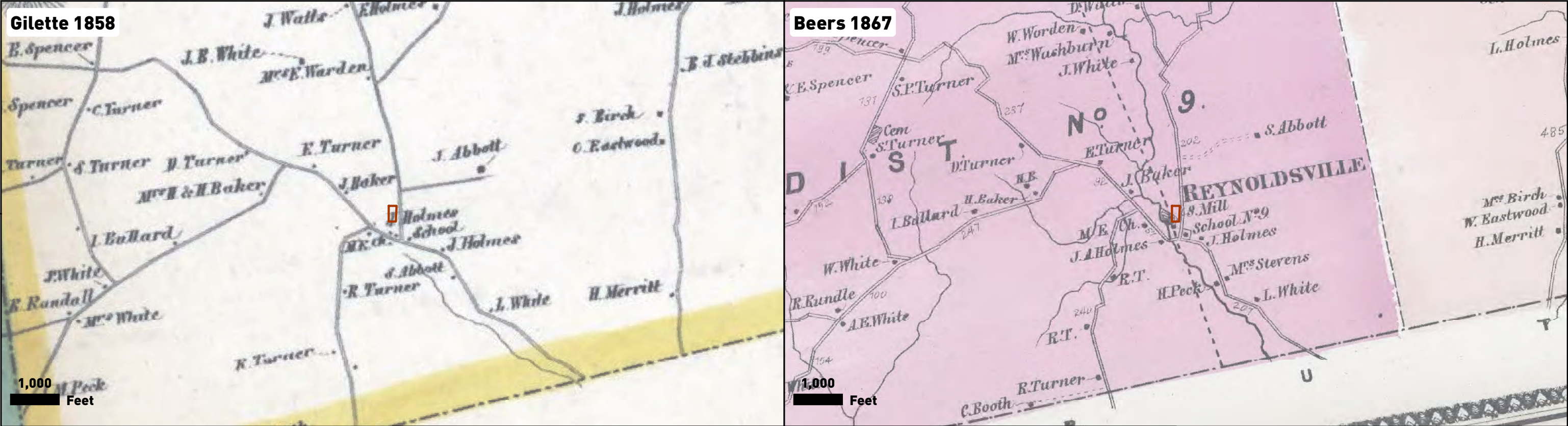
Map 3c - Trailhead 3

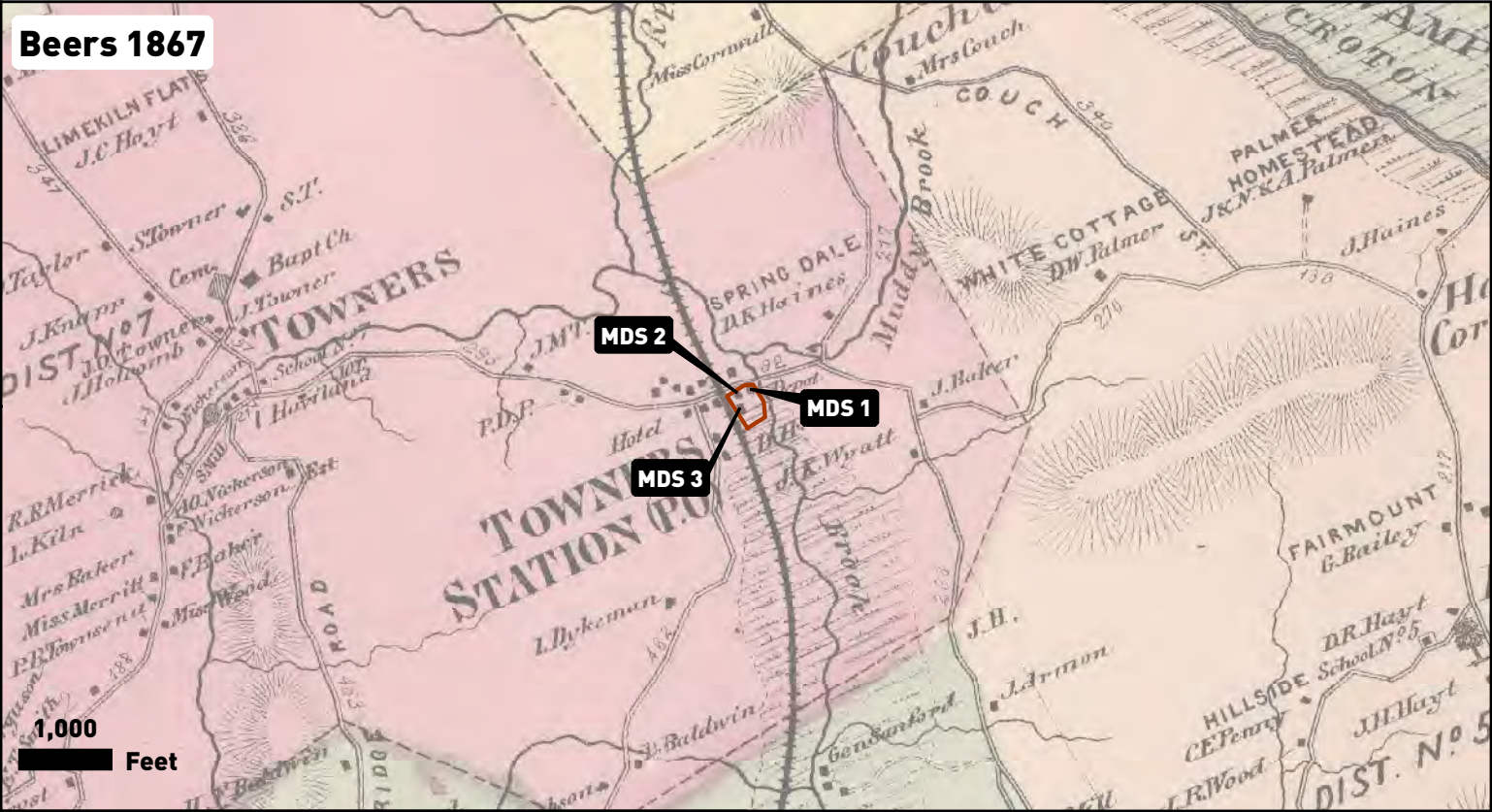


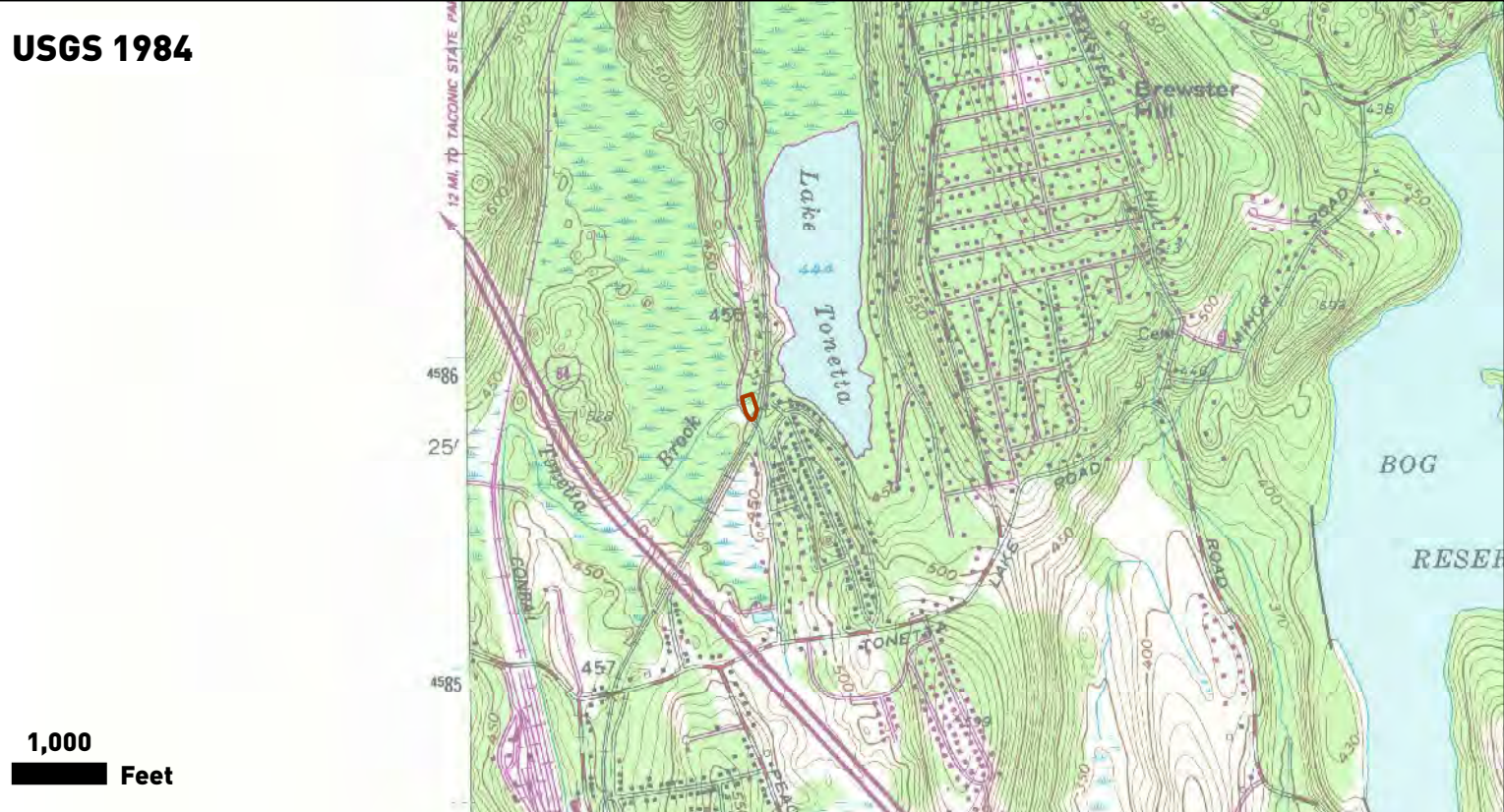
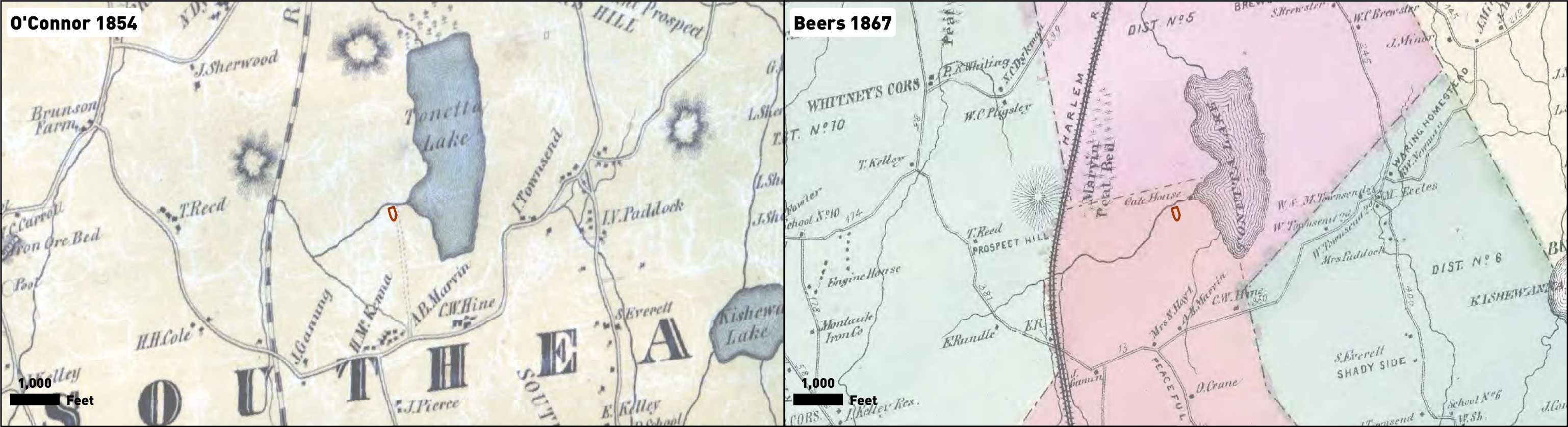












Photographs



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 cross 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	buff/pink bodied stoneware	stoneware	8.3
				1.1	1	buff/pink bodied stoneware, stoneware, salt-glazed		8.3
STP 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	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	4	23	nail	iron alloy	54.0
STP 1	1		1	5	3	cap	iron alloy	5.4
STP 1	1		1	6	1	washer	iron alloy	5.3
STP 1	1		1	7	1	ring/ring shaped	iron alloy	244.6
STP 1	1		1	8	1	unidentified	lead alloy	0.1
STP 3	2		2	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	lamp chimney	glass	1.8
STP 3	2		2	3	1	nail	iron alloy	17.8
STP 3	2		2	4	3	scrap metal	iron alloy	14.3
STP 8	1		3	1	4	bottle	glass	17.2
STP 8	1		3	2	2	vessel	glass	2.8
STP 8	1		3	3	2	window	glass	2.7
STP 8	1		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	bottle, glass, embossed, manganese solarized, "...183...SAN..."		6.7
				1.2	1	bottle, glass, embossed, manganese solarized, "...MO..."		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	leather, leather, perforated		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	bottle, glass, brown, machine made		11.0
				1.2	5	bottle, glass, green		21.7
STP 29	1		6	2	4	cap	iron alloy	10.2
				2.1	4	cap, bottle, beverage, iron alloy		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

via e-mail only

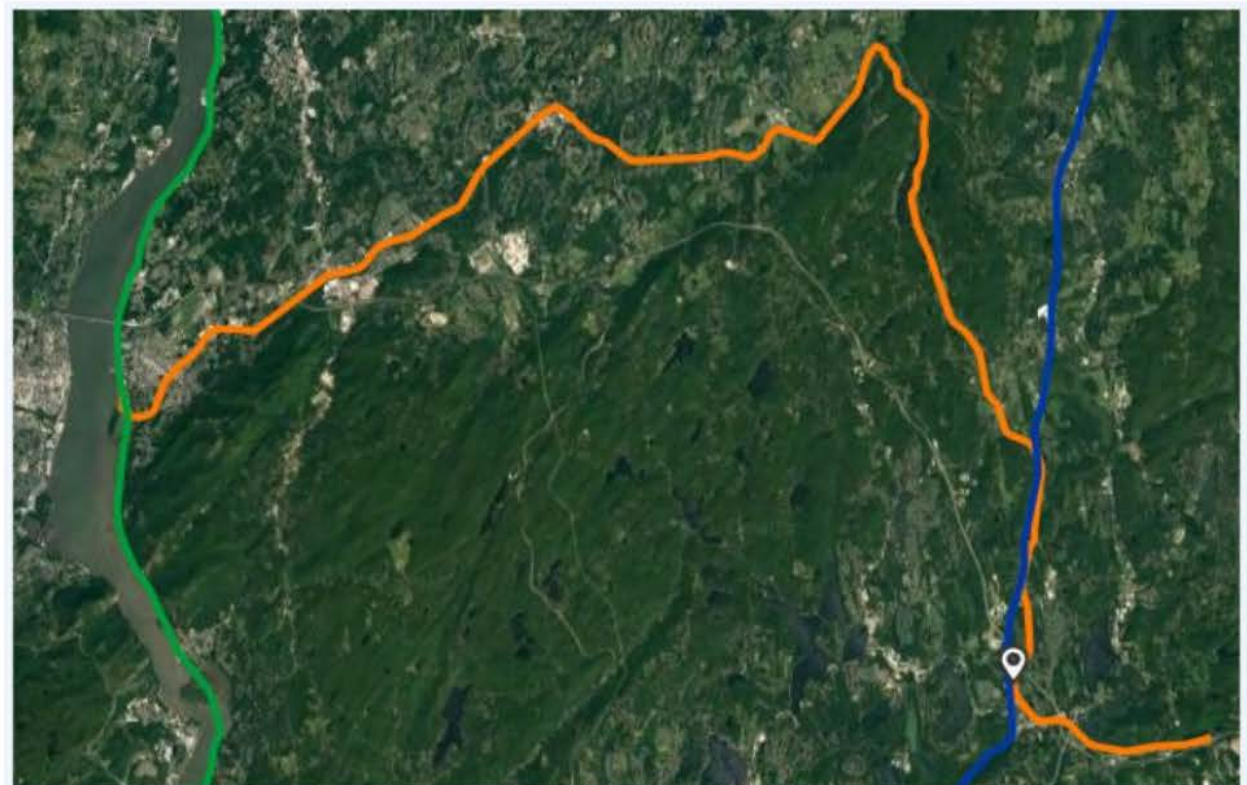
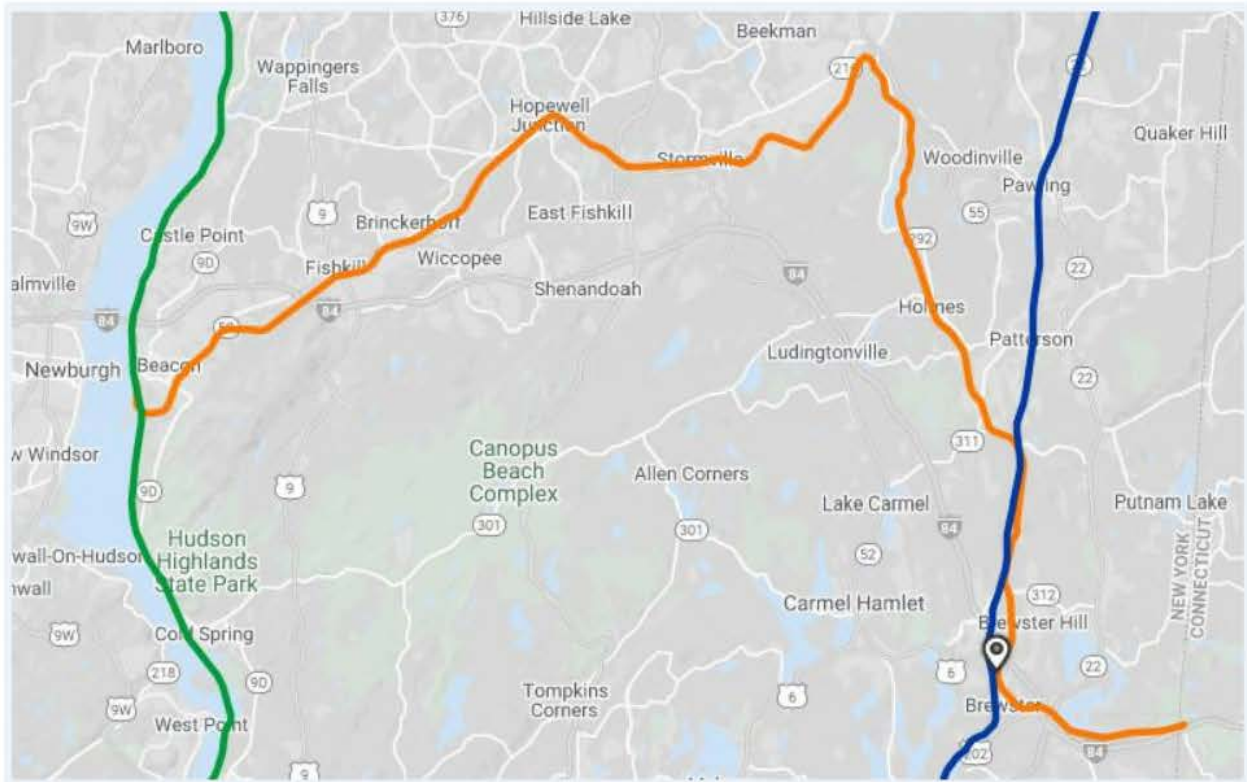
Division for Historic Preservation

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

Exhibit K

Maps of the Beacon Line

Maps of the Beacon Rail Line (Beacon Line Highlighted in Orange)



The map displays the New York Thruway Authority's toll roads, which are highlighted in red. The main route is the New York Thruway, running from Albany, New York, to New Jersey. Other toll roads shown include the New York State Thruway and the New York State Thruway Extension. The map also shows major highways, toll plazas, and surrounding areas like Albany, New York, and New Jersey. A scale bar indicates 30 miles.

Exhibit L

Verified Statement of David Melillo

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 1311

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

VERIFIED STATEMENT OF DAVID MELILLO

I, David Melillo, on oath state the following on the 26 of April, 2021:

1. I am the Vice President – Engineering at Metro-North Commuter Railroad Company (“Metro-North”).
2. I began my career with Metro-North in 1993. I have served as the Vice President - Engineering since June of 2020. Prior to this position I served as the Chief Engineer and Director of Track and Structures for Metro-North.
3. As the Vice President - Engineering, I am aware of all of the rail lines owned or used by Metro-North and maintain records relating to the condition of Metro-North’s rail lines. As part of my duties I remain aware of and familiar with the condition of the rail line known as the “Beacon Line” in Dutchess and Putnam Counties, New York.
4. No freight or passenger rail traffic has moved over the Beacon Line in years. Accordingly, the track has not required maintenance to support revenue movements on the line.
5. At present, the Beacon Line is not in a suitable condition for rail traffic. However, the line remains intact and Metro-North has been performing maintenance associated with dangerous trees and grade crossing conditions. The bridges on the Beacon Line have been inspected consistently in accordance with applicable rules of the Federal Railroad Administration, and are suitable for their

current pedestrian use.

6. In addition to the rail structures on the Beacon Line, there is an existing fiber optic line that must remain intact along the right-of-way. Metro-North has responsibility for ensuring the continuing integrity of that line and will continue to do so following the discontinuance of Housatonic Railroad Company's right to provide freight service on the line.

7. If called on to testify as a witness, I can testify competently to the matters and facts set forth in this Verified Statement.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on the 26 day of April 2021, in New Haven, Connecticut.

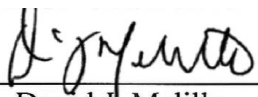
BY: 
David J. Melillo

Exhibit M

Draft Federal Register Notice

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. AB 1311

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

Metro-North Commuter Railroad Company (“Applicant”) gives notice that on April 30, 2021, it filed with the Surface Transportation Board (“the Board”), Washington, DC 20423, an application seeking discontinuance of the authority of Housatonic Railroad Company (“HRRC”) to operate 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, a distance of 41 miles 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.

Applicant is not aware of any document that indicates the Line contains federally granted rights of way. Any documentation in the railroad’s possession will be made available promptly to those requesting it. The applicant’s entire case for discontinuance (case in chief) was filed with the application.

Any interested person may file with the Board written comments concerning the proposed discontinuance or protests (including protestant’s entire opposition case), within 45 days after the application is filed. 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 interested only in seeking public use or trail use conditions should also file comments. Persons opposing the proposed discontinuance that do wish to participate actively and fully in the process should file a protest.

In addition, a commenting party or protestant may provide: (i) recommended provisions for protection of the interests of employees; (ii) a statement pertaining to prospective use of the right-of-way for interim trial use and rail banking under 16 U.S.C. § 1247(d) and 49 C.F.R. § 1152.29. Parties seeking information concerning the filing of protests should refer to 49 C.F.R. § 1152.25.

Written comments and protests, including all requests for public use and trail use conditions, must indicate the proceeding designation STB AB 1311 and should be filed with the Office of Proceedings, Surface Transportation Board (Board), Washington, Dc 20423-0001, no later than June 14, 2021. Interested persons may file a written comment or protest with the Board to become a party to this discontinuance proceeding. A copy of each written comment or protest shall be served upon the Applicant's representative, Charles A. Spitulnik, Kaplan, Kirsch and Rockwell, 1634 I (Eye) Street, NW, Suite 300, Washington, DC 20006. The original and 10 copies of all comments or protests shall be filed with the Board with a certificate of service. Except as otherwise set forth in part 1152, every document filed with the Board must be served on all parties to the discontinuance proceeding. 49 C.F.R. § 1104.12.

Persons seeking further information concerning discontinuance procedures may contact the Surface Transportation Board or refer to the full discontinuance regulations at 49 C.F.R. part

1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) 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 (or EIS) may contact the Office of Environmental Analysis. EAs in these discontinuance proceedings normally will be made available 33 days after the filing of the application. 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 Board's decision. A supplemental EA or EIS may be issued where appropriate.

Exhibit N

Verification

Exhibit N

Verification

State of New York.

County of Westchester.

Susan Sarch makes oath and says that she is a Vice President and the General Counsel of Metro-North Commuter Railroad Company; that she has been authorized by Metro-North Commuter Railroad Company to verify and file with the Surface Transportation Board the foregoing application in STB AB 1311; that she has carefully examined all of the statements in the application as well as the exhibits attached thereto and made a part thereof; that she has 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 her knowledge, information and belief.



Susan Sarch
Vice President and General Counsel
Metro-North Commuter Railroad Company

Subscribed and sworn to before me online in and for the State and County above named, this
29th day of April, 2021.

My Commission expires



MICHELLE LARRAGOITY
Notary Public, State of New York
No. 01LA6035954
Qualified in Westchester County
Commission Expires Jan 10, 2022