Public Notice

U S Army Corps
of Engineers
Huntington District

In reply refer to Public Notice No. 200800689 Issuance Date: OCT 2 3 2009

Stream: N/A Closing Date: OCT 2 3 2014

Please address all comments and inquiries to:
U.S. Army Corps of Engineers, Huntington District
ATTN: CELRH-OR-F Public Notice No. (*reference above*)
502 Eighth Street
Huntington, West Virginia 25701-2070 Phone: (304) 399-5210

REGIONAL GENERAL PERMIT
FOR THE
STATE OF OHIO, DEPARTMENT OF TRANSPORATION

To Whom It May Concern: In accordance with Title 33 CFR 325.5(c)(1) as published on November 13, 1986, in the Federal Register, Volume 51, Number 219, the District Engineer of the Huntington District U.S. Army Corps of Engineers on February 6, 2009, issued a public notice under Department of Army (DA) number 200800689, proposing a Regional General Permit (RGP) for the Ohio Department of Transportation that would authorize certain linear transportation projects pursuant to Section 10 of the Rivers and Harbors Act of 1899 and Section 404 of the Clean Water Act (CWA).

As of the date of this public notice, the RGP is effective and authorizes activities in waters of the United States (U.S.) including work, structures, and filling (both temporary and permanent) associated with linear transportation projects and the maintenance of existing transportation infrastructure conducted by the Ohio Department of Transportation in the State of Ohio. This RGP authorizes activities in such waters except those excluded by the attached special and general permit conditions.

The Ohio Department of Transportation is responsible for ensuring that projects are in full compliance with all conditions of the permit. The permittee's authorization could be suspended, modified or revoked in accordance with 33 CFR 325.7 if a determination is made by the Corps of Engineers (Corps) that the permittee's request was inaccurate, incomplete, or made in bad faith. Enforcement action may be initiated if such a determination is made.

An integral part of the Corps' regulatory program is the concept of general permits for minor activities. RGPs are activity specific and are designed to relieve some of the administrative burdens associated with permit processing for both the applicant and the Federal government. This RGP is issued by the District Engineer of the Huntington District U.S. Army Corps of Engineers and is intended to apply to the Ohio Department of Transportation throughout the state of Ohio.

Conditions and limitations for the activities authorized by this regional permit are attached. The permit remains in effect for a period of five years unless modified or rescinded. At the end of five years, a complete re-evaluation will be performed according to regulations governing the use of regional permits.

This RGP is not valid until the appropriate state agency certifies the discharge does not violate state water quality standards. In response to the February 6, 2009 public notice, the Ohio Environmental Protection Agency (Ohio EPA), on July 6, 2009, granted Section 401 Water Quality Certification (WQC) with general and special limitations and conditions for this RGP. In addition, by letter dated August 4, 2009, the Ohio Department of Natural Resources-Office of Coastal Management provided conditional concurrence with the Federal Consistency Determination. This conditional concurrence determination is located under Special Condition D of the RGP.

Ginger Mullins, Chief
Regulatory Branch

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1. Categories of Activities Covered by the Proposed Regional General Permit (RGP):
This proposed RGP would authorize activities in waters of the U.S. including work, structures, and filling (both temporary and permanent) associated with linear transportation projects and the maintenance of existing transportation infrastructure conducted by the Ohio Department of Transportation in the State of Ohio. Authorized activities would include:

A. Linear Transportation Projects: Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., roads and highways) in waters of the U.S. The discharge cannot cause the loss of greater than 1/2 acre of waters of the U.S. Any stream channel modification, including bank stabilization, is limited to the minimum necessary to construct or protect the linear transportation project. Such modifications must be in the immediate vicinity of the project.

Examples of authorized activities include: new roadway alignments, roadway realignments, construction of roadway embankments and bridge abutments, installation of additional traffic lanes to existing roadways, intersection improvements, new bridges, bike baths, roadway and railway grade separations and the replacement of structures and fills that are not currently in service.

Excluded activities include non-linear features commonly associated with transportation projects, such as vehicle maintenance or storage buildings, parking lots, and construction of staging, borrow, and disposal sites. Interior roadways for recreational facilities and residential, commercial, and institutional developments are not authorized by the proposed RGP.

Notification: The permittee must submit a Pre-Construction Notification (PCN) to the District Engineer prior to commencing the activity if:

(1) the loss of waters of the U.S. exceeds 1/10 acre;

(2) there is a discharge in a special aquatic site, including wetlands;

(3) the activity is in a Section 10 water;

(4) the total stream impacts are greater than 500 linear feet; or

(5) the combined perennial and intermittent stream impacts are greater than 250 linear feet.

Note: Impacts shall be measured linearly from upstream to downstream, including the length of permanent or temporary stream impoundments, when calculating the total length of stream impacts.

B. Maintenance: Activities associated with the repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure, or fill provided that the structure or fill is not to be put to uses differing from those uses specified or contemplated for it in the original permit or the most recently authorized modification. Also included are activities associated with any currently serviceable structure or fill authorized by 33 CFR 330.3.

Examples of authorized activities include:

(1) minor deviations in the structure's configuration or filled area (including those due to changes in

materials, construction techniques, or current construction codes or safety standards) necessary for the needed repair, rehabilitation, or replacement;

(2) the repair, rehabilitation, or replacement of those structures or fills destroyed or damaged by storms, floods, fire or other discrete events, provided the repair, rehabilitation, or replacement is commenced, or is under contract to commence, within two years of the date of their destruction or damage. In cases of catastrophic events, this two-year limit may be waived by the district engineer, provided the permittee can demonstrate funding, contract, or other similar delays;

(3) the removal of accumulated sediments and debris in the vicinity of and within existing structures (e.g., bridges and culverted road crossings) and the placement of new or additional riprap to protect the structure. The removal of sediment is limited to the minimum necessary to restore the waterway in the immediate vicinity of the structure to the approximate dimensions that existed when the structure was built, but cannot extend further than 250 feet in any direction from the structure. This 250 foot limit does not apply to maintenance dredging to remove accumulated sediments blocking or restricting outfall and intake structures or to maintenance dredging to remove accumulated sediments from canals associated with outfall and intake structures. All dredged or excavated materials must be deposited and retained in an upland area unless otherwise specifically approved by the district engineer under separate authorization. The placement of riprap must be the minimum necessary to protect the structure or to ensure the safety of the structure. Any bank stabilization measures not directly associated with the structure will require a separate authorization from the district engineer; and

The placement of any new rip-rap is limited to a total of 250 feet per single and complete project.

This RGP does not authorize new stream channelization or stream relocation projects.

Notification: The permittee must submit a PCN to the District Engineer prior to commencing the activity if:

(1) the activity is authorized by paragraph B(3) of this RGP. Where maintenance dredging is proposed, the PCN must include information regarding the original design capacities and configurations of the outfalls, intakes, small impoundments, and canals; or

(2) the activity requires the use of vertical sheet piling and closed structures in the special habitat waters of Lake Erie (See General Condition S - Designated Critical Resource Waters.)

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

C. Temporary Construction, Access, and Dewatering: Temporary structures, work, and discharges, including cofferdams, necessary for construction activities or access fills or dewatering of construction sites, provided that the associated primary activity is authorized by the Corps and/or the U.S. Coast Guard. This RGP also authorizes temporary structures, work, and discharges, including cofferdams, necessary for construction activities not otherwise subject to the Corps or U.S. Coast Guard permit requirements. Appropriate measures must be taken to maintain near normal downstream flows and to minimize flooding. Authorized temporary discharges shall accommodate a flow equal to twice the highest average monthly flow as reported by the USGS web based application StreamStats

(http://water.usgs.gov/osw/streamstats/) or other methodology approved by the Corps, to ensure adequate flow is maintained and no rise in the backwater is permitted. Fill material must be of appropriate consistency and be placed in a manner that will not be eroded by expected high flows. The use of dredged material may be allowed if the district engineer determines that it will not cause more than minimal adverse effects on aquatic resources. Following completion of construction, temporary fill must be entirely removed to upland areas, dredged material must be returned to its original location, and the affected areas must be restored to pre-construction elevations. The affected areas must also be revegetated, as appropriate. This permit does not authorize the use of cofferdams to dewater wetlands or other aquatic areas to change their use. Structures left in place after construction is completed require a Section 10 permit if located in navigable waters of the U.S. (See 33 CFR part 322.)

Examples of authorized activities include:

(1) the placement of wetland and/or crane mats;

(2) the placement of cofferdams to include inflatable, H-piles, or sheet piling;

(3) bridge demolition, with subsequent removal, provided the demolition debris consists of suitable non-erodible material. Bridge demolition debris may be used for temporary work/access pads provided it is composed of suitable material, free of exposed re-bar or other steel, and stabilized to prevent erosion;

(4) access fills (i.e. work pads and causeways) provided total impacts to perennial or intermittent streams do not exceed 250 feet. Impacts shall be measured linearly from upstream to downstream; and

(5) temporary trestle bridges.

Notification: The PCN must include a restoration plan showing how all temporary fills and structures will be removed and the area restored to pre-project conditions. The permittee must submit a PCN to the District Engineer prior to commencing the activity if:

(1) the hydraulic requirements based on the StreamStats application are exceeded;

(2) the project will involve the use of dredged material;

(3) the removal of bridge demolition debris will exceed 72 hours;

(4) the maximum length of temporary and permanent impacts to perennial and intermittent streams as measured upstream to downstream exceeds 250 feet;

(5) the affected resource is regulated under Section 10 of the Rivers and Harbors Act of 1899 or is a forested or shrub-scrub wetland; or

(6) the proposed activity is within 2000 feet downstream of a flood control facility or within 1000 feet of a stream gage (www.rivergages.com).

2. Special Conditions:

A. Fens and Bogs: Any activity which impacts a bog and/or fen is not authorized.

B. ODNR In-Water Work Exclusion Dates: Any authorized work cannot take place during the restricted period of the following ODNR Division of Wildlife Statewide In-Water Work Restrictions unless the permittee notifies the District Engineer in accordance with the PCN General Condition and receives written approval from the Corps:

Location	Restricted Period
Salmonid streams[1]	9/15 – 6/30
Percid streams[2]	3/15 – 6/30
Other streams[3]	4/15 – 6/30

(1) Arcola Creek (entire reach), Ashtabula River (to Hadlock Rd.), Ashtabula Harbor, Chagrin River (to I-90), Cold Creek (entire reach), Conneaut Creek (entire reach), Conneaut Harbor, Cowles Creek (entire reach), Euclid Creek (entire reach), Grand River (to dam at Harpersfield Covered Bridge Park just upstream of the State Route 534 Bridge)/Fairport Harbor, Indian Creek (entire reach), Rocky River (to dam off Park Drive just south, of the I-90 Bridge south of Rock River), Turkey Creek (entire reach), Vermillion River (to dam at Wakeman upstream of the State Route 20/60 Bridge), Wheeler Creek (entire reach), Whitman Creek (entire reach).

(2) Cuyahoga River (to dam below the State Route 82 Bridge east of Brecksville (Chippewa Rd.)), Great Miami River (to dam south of New Baltimore), Hocking River (lower section), Little Miami River (lower section), Maumee River (to split dam at Mary Jane Thurston State Park and Providence Park in Grand Rapids), Maumee Bay, Muskingum River (to Devola Dam No. 2 off State Route 60 north of Marietta), Ohio River (entire reach), Portage River (entire reach), Sandusky River (to Ballville Dam off River Road in Fremont), Sandusky Bay, Scioto River (lower section), Toussaint River (entire reach).

(3) Class 3 primary headwater streams (watershed ≤ 1 mi^2), Exceptional Warm Water Habitat (EWH), Cold Water Habitat (CWH), Warm Water Habitat (WWH), or streams with Threatened and Endangered (T&E) species. Includes Lake Erie & bays. Special conditions (such as occurrence of T&E species) may mandate local variation of restrictions.

C. Waters of Special Concern: The permittee must notify the District Engineer in accordance with the PCN General Condition for activities in the following resources:

(1) Category 3 Wetlands: PCN is required for all temporary or permanent impacts to Category 3 wetlands as determined through use of the latest approved version of Ohio EPA's Ohio Rapid Assessment Method (ORAM) for wetland evaluation **long form.**

(2) Ohio Stream Designations: PCN is required for all temporary or permanent impacts to Exceptional Warmwater Habitat, Cold Water Habitat, Seasonal Salmonid, or any equivalent designation; or water bodies with an antidegradation category of Superior High Quality Water, Outstanding National

Resource Water, or Outstanding High Quality Waters as determined by Ohio EPA except for those activities authorized in section B. Maintenance. The current list of these streams can be found on the Ohio EPA web-site (http://www.epa.state.oh.us/dsw/rules/3745-1.html).

(3) State Wild and Scenic Rivers: PCN is required for all activities in State Wild and Scenic Rivers. The following are **State Wild and Scenic Rivers**:

Little Miami River - Clermont County line at Loveland to headwaters, including North Fork, Clermont County line at Loveland to confluence with East Fork and from the confluence with East Fork to Ohio River. Miles designated (approximate): 105

Sandusky River – U.S. Route 30 in Upper Sandusky to Roger Young Memorial Park in Fremont. Miles designated (approximate): 65

Olentangy River - Delaware Dam to Old Wilson Bridge Road in Worthington. Miles designated (approximate): 22

Little Beaver Creek - *Wild segments* - West Fork from 1/4 mile downstream from Township. Road. 914 to confluence with Middle Fork. North Fork from Township Road. 952 to confluence with Little Beaver Creek. Little Beaver Creek from confluence of West and Middle Forks downstream to 3/4 mile north of Grimm's Bridge.

Scenic segments - North Fork from Ohio-Pennsylvania line downstream to Jackman Road. Middle Fork from Elkton Road. (Township Road 901) downstream to confluence with West Fork. Little Beaver Creek from 3/4 mile north of Grimm's Bridge downstream to the Ohio-Pennsylvania line. Miles designated (approximate): Wild 20, Scenic 16

Grand River - *Wild segment* - from Harpersfield covered Bridge downstream to Norfolk and Western Railroad trestle south of Painesville.

Scenic segment - from State Route 322 Bridge in Ashtabula County downstream to Harpersfield Covered Bridge. Miles designated (approximate): Scenic 33, Wild 23

Upper Cuyahoga River - Troy-Burton Township Line in Geauga County to U.S. Route 14. Miles designated (approximate): 25

Maumee River - Scenic segment - Ohio-Indiana line to State Route 24 Bridge west of Defiance.

Recreational segment - State Route 24 Bridge west of Defiance to U.S. Route 25 Bridge near Perrysburg. Miles designated (approximate): Scenic 43, Recreational 53

Stillwater River System - *Recreational segment* - Englewood Dam to confluence with Great Miami River.

Scenic segments - Stillwater River from Riffle Road Bridge in Darke County to Englewood Dam. Greenville Creek from the Ohio-Indiana state line to the confluence with the Stillwater. Miles designated (approximate): Scenic 83, Recreational 10

Chagrin River - Aurora Branch from State Route 82 Bridge downstream to confluence with Chagrin. Chagrin River from confluence with Aurora Branch downstream to State

Route 6 Bridge. East Branch from Heath Road Bridge downstream to confluence with Chagrin. Miles designated (approximate): 49

Big and Little Darby Creeks - Big Darby Creek from the Champaign-Union County line downstream to the U.S. Route 40 Bridge, from the northern boundary of Battelle-Darby Creek Metro Park to the confluence with the Little Darby Creek downstream to the Scioto River. Little Darby Creek from the Lafayette-Plain City Road Bridge downstream to the confluence with Big Darby Creek. Miles designated (approximate): 84

Kokosing River - Knox/Morrow County line to confluence with Mohican River. North Branch of Kokosing from confluence with East Branch downstream to confluence with main stem. Miles designated (approximate): 48

(4) Oak Openings: PCN is required for all activities conducted in the Oak Openings Region of Northwest Ohio located in Lucas, Henry, and Fulton counties. For a map of the Oak Openings Region, visit http://www.oakopen.org/maps/.

D. Ohio Coastal Management Program Federal Consistency Conditions:

(1) This Regional General Permit shall not authorize the construction of a beach, groin, or other structure to control erosion, wave action, or inundation (flooding) along or near the shoreline of Lake Erie.

(2) Construction and/or demolition debris and clean hard fill associated with any project authorized under this Regional General Permit shall not be placed along or near the shoreline of Lake Erie or within the territory of Lake Erie as defined in Ohio Revised Code §1506.11.

E. Pre-Construction Notification (PCN) Submittals: In addition to the information required under the PCN General Condition Y, the following information is needed for each PCN:

(1) Drawings: The PCN must include project drawings on 8 1/2" x 11" paper. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map (i.e. a location map such as a USGS topographical map), a Plan View and a Typical Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross-section). In addition, each illustration should be identified with a figure or attachment number.

(2) Agency Coordination: Activities that result in the loss of greater than 1/2 acre of waters of the U.S. require full agency coordination (See General Condition Y – Pre-construction Notification). In an effort to expedite permit review, it is requested that all PCN's for activities resulting in the loss of greater than 1/2 acre of waters of the U.S. include five (5) copies of the notification package. Applicants are encouraged to submit this information in electronic format in order to minimize the use of paper.

(3) Floodplain Coordination: All PCN's must include a copy of the applicable FIRM map.

3. General Conditions:

Note: To qualify for authorization under the proposed RGP, the applicant must comply with the following general conditions, as appropriate, in addition to special conditions listed above or case-specific conditions imposed by the Division Engineer or District Engineer.

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

(2) 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 U.S.

(3) The permittee understands and agrees that, if future operations by the U.S. 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 to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the U.S. No claim shall be made against the U.S. on account of any such removal or alteration.

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

C. 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.

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

E. Shellfish Beds.
No activity may occur in areas of concentrated shellfish populations.

F. 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 CWA). However, bridge demolition debris may be used for temporary work/access pads provided it is composed of suitable material, free of exposed re-bar or other steel, and stabilized to prevent erosion.

G. 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.

H. 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.

I. 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 and storm water management activities, 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).

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

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

L. 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. When possible, work within waters of the U.S. should be performed during periods of low-flow or no-flow.

M. 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.

N. Proper Maintenance.
Any authorized structure or fill shall be properly maintained, including maintenance to ensure public safety.

O. Wild and Scenic Rivers.
No activity may occur in a component of the National Wild and Scenic River System, or in a river officially designated by Congress as a "study river" for possible inclusion in the system while the river is in an official study status, unless the appropriate Federal agency with direct management responsibility for such river, has determined in writing that the proposed activity will not adversely affect the Wild and Scenic River designation or study status. PCN is required for all work in components of the National Wild and Scenic River System. The following are components of the **National Wild and Scenic River System:**

Big and Little Darby Creeks (National Wild and Scenic River System): Big Darby Creek

fromChampaign-Union County line downstream to the Conrail railroad trestle and from the confluence with the Little Darby Creek downstream to the Scioto River. Little Darby Creek from the Lafayette-Plain City Road Bridge downstream to within 0.8 mile from the confluence with Big Darby Creek. Total designation is approximately 82 miles.

Little Beaver Creek (National Wild and Scenic River System): Little Beaver Creek main stem, from the confluence of West Fork with Middle Fork near Williamsport to mouth; North Fork from confluence of Brush Run and North Fork to confluence of North Fork with main stem at Fredericktown; Middle Fork from vicinity of County Road 901 (Elkton Road) Bridge crossing to confluence of Middle Fork with West Fork near Williamsport; West Fork from vicinity of County Road 914 (Y-Camp Road) Bridge crossing east to confluence of West Fork with Middle Fork near Williamsport. Total designation is 33 miles.

Little Miami (Scenic component of the National System from Clifton to Foster): the portion from Foster to the Ohio River was designated a Recreational component of the National system. Total designation is 92 miles.

P. Tribal Rights.
No activity or its operation may impair reserved tribal rights, including, but not limited to, reserved water rights and treaty fishing and hunting rights.

Q. Endangered Species.
(1) No activity is authorized which is likely to jeopardize the continued existence of a T&E species or a species proposed for such designation, as identified under the Endangered Species Act (ESA), or which will destroy or adversely modify the critical habitat of such species. No activity is authorized which "may affect" a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed.

(2) The Federal Highway Administration is the lead federal agency with ultimate responsibility to ensure compliance with Section 7 of the ESA for projects conducted by the Ohio Department of Transportation. The applicant will coordinate with the United States Fish and Wildlife Service (FWS) as required by the Fish and Wildlife Coordination Act and Section 7 of the ESA.

(3) As a result of formal or informal consultation with the FWS the District Engineer may add species-specific conditions.

(4) Authorization of an activity 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, both lethal and non-lethal "takes" of protected species are in violation of the ESA. Information on the location of threatened and endangered species and their critical habitat can be obtained directly from the offices of the FWS (www.fws.gov) and the National Marine Fisheries Service (www.noaa.fov/fisheries.html) .

R. Historic Properties.
(1) In cases where it is determined that the activity may affect properties listed, or eligible for listing, in the National Register of Historic Places, the activity is not authorized, until the requirements of Section 106 of the National Historic Preservation Act (NHPA) have been satisfied.

(2) The Federal Highway Administration is the lead federal agency with ultimate responsibility to

ensure compliance with Section 106 of the NHPA. The applicant will coordinate with the Ohio Historic Preservation Office (OHPO) in accordance with the "*Programmatic Agreement Among The Federal Highway Administration, The Advisory Council on Historic Preservation, The Ohio Historical Society, State Historic Preservation Office, And The State of Ohio, Department of Transportation Regarding Implementation of the Federal-Aid Highway Program in Ohio (Agreement No. 12642)*", executed July 17, 2006 and the "*Programmatic Agreement Among The Federal Highway Administration, Ohio Division, The Advisory Council of Historic Preservation, Ohio Department of Transportation, Ohio State Historic Preservation Officer, Regarding Federally Funded or Approved Highway Bridge Projects (Agreement No. -10978)*", executed April 3, 2002. In such cases where a PCN is required, the applicant must provide the District Engineer with the appropriate documentation to demonstrate compliance with the requirements of Section 106 of the NHPA.

(3) While accomplishing the activity authorized by this RGP, the inadvertent discovery of any artifacts (human remains, funerary objects, sacred objects, and objects of cultural matrimony/patrimony, etc.) shall result in immediately ceasing work and contacting the Ohio Department of Transportation, Office of Environmental Services, Cultural Resource Section (OES-CR) and the Regulatory Branch of the appropriate Corps district. The Corps in coordination with the OES-CR will initiate the Federal, state, and tribal coordination required to satisfy the NHPA and all other applicable laws and regulations. Federally recognized tribes are afforded a government-to-government status as sovereign nations and consultation is required under Executive Order 13175 and 36 CFR Part 800.

(4) 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. Section 106 consultation is not required when the Corps determines that the activity does not have the potential to cause effects on historic properties (see 36 CFR 800.3(a)). If NHPA Section 106 consultation is required and will occur, the District Engineer will notify the applicant that he or she cannot begin work until Section 106 consultation is completed.

(5) Prospective permittees should be aware that section 110k of the NHPA (16 U.S.C. 470h-2(k)) 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, explaining 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.

S. Designated Critical Resource Waters.

(1) PCN is required for any activity proposed in designated critical resource water, including wetlands adjacent to those waters. Discharges of dredged or fill material into waters of the U.S. under Section A. Linear Transportation Projects are not authorized for any activity within, or directly affecting, critical resource waters, including wetlands adjacent to such waters. The District Engineer may authorize activities under Section B. Maintenance and Section C. Temporary Construction, Access, and

Dewatering only after it is determined that the impacts to the critical resource waters will be no more than minimal.

(2) Critical resource waters include NOAA-designated marine sanctuaries, National Estuarine Research Reserves, state natural heritage sites, and outstanding national resource waters or other waters officially designated by a state as having particular environmental or ecological significance and identified by the District Engineer after notice and opportunity for public comment. The District Engineer may also designate additional critical resource waters after notice and opportunity for comment. The following are designated as **Critical Resource Waters**:

(a) Special habitat waters of Lake Erie including the shoreline, off shore islands, rock outcrops, and adjacent waters within the boundaries defined as 82° 22' 30" West Longitude, 83° 07' 30" West Longitude, 41° 33' 00" North Latitude, and 42°00'00" North Latitude.

(b) In Ohio, two areas have been designated critical habitat for the piping plover (Charadrius melodus) and are defined as lands 0.62 miles inland from normal high water line. Unit OH-1 extends from the mouth of Sawmill Creek to the western property boundary of Sheldon Marsh State Natural Area, Erie County, encompassing approximately 2.0 miles. Unit OH-2 extends from the eastern boundary line of Headland Dunes Nature Preserve to the western boundary of the Nature Preserve and Headland Dunes State Park, Lake County, encompassing approximately 0.5 mile.

T. Mitigation.

The District Engineer will consider the following factors when determining appropriate and practicable mitigation necessary to ensure that adverse effects on the aquatic environment are minimal:

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

(2) Mitigation in all its forms (avoiding, minimizing, rectifying, reducing, or compensating) will be required to the extent necessary to ensure that the adverse effects to the aquatic environment are minimal.

(3) Compensatory mitigation at a minimum one-for-one ratio will be required for all wetland losses that exceed 1/10 acre and require PCN, unless the District Engineer determines in writing that some other form of mitigation would be more environmentally appropriate and provides a project-specific waiver of this requirement. For wetland losses of 1/10 acre or less that require PCN, the District Engineer may determine on a case-by-case basis that compensatory mitigation is required to ensure that the activity results in minimal adverse effects on the aquatic environment. Since the likelihood of success is greater and the impacts to potentially valuable uplands are reduced, wetland restoration should be the first compensatory mitigation option considered.

(4) For losses of streams or other open waters that require PCN, the District Engineer may require compensatory mitigation, such as stream restoration, to ensure that the activity results in minimal adverse effects on the aquatic environment.

(5) Compensatory mitigation will not be used to increase the acreage losses allowed by the acreage limits of the RGP. However, compensatory mitigation can and should be used, as necessary, to ensure that a project already meeting the established acreage limits also satisfies the minimal impact requirements associated with the RGP.

(6) Compensatory mitigation plans for projects in or near streams or other open waters will normally include a requirement for the establishment, maintenance, and legal protection (e.g., conservation easements) of riparian areas next to open waters. In some cases, riparian areas may be the only compensatory mitigation required. Riparian areas should consist of native species. The width of the required riparian area will address documented water quality or aquatic habitat loss concerns. Normally, the riparian area will be 25 to 50 feet wide on each side of the stream, but the district engineer may require slightly wider riparian areas to address documented water quality or habitat loss concerns. Where both wetlands and open waters exist on the project site, the district engineer will determine the appropriate compensatory mitigation (e.g., riparian areas and/or wetlands compensation) based on what is best for the aquatic environment on a watershed basis. In cases where riparian areas are determined to be the most appropriate form of compensatory mitigation, the District Engineer may waive or reduce the requirement to provide wetland compensatory mitigation for wetland losses.

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

(8) Where certain functions and services of waters of the U.S. are permanently adversely affected, such as the conversion of a forested or scrub-shrub wetland to an herbaceous wetland in a permanently maintained right-of-way, mitigation may be required to reduce the adverse effects of the project to the minimal level.

U. Case-By-Case Conditions.
The activity must comply with any case specific conditions added by the Corps, by the state in its section 401 Water Quality Certification, or by the state in its CZMA determination.

V. Use of Multiple Permits.
The use of any combination of Sections A, B, and C for a single and complete project is permitted as long as impact thresholds identified in each section are not exceeded.
In addition, the use of any other general permit in combination with any Section (A, B, or C) of this RGP for a single and complete project is prohibited, except when the acreage loss of waters of the U.S. authorized by a Section of the RGP or the Nationwide Permit (NWP) does not exceed the acreage limit of the section of the RGP or NWP with the highest specified acreage limit. For example, if a road crossing is constructed under Section A of the RGP, with associated bank stabilization authorized by NWP 13, the maximum acreage loss of waters of the U.S. for the total project cannot exceed 1/2-acre.

W. Transfer of Regional Permit Verifications.
If the permittee sells the property associated with regional permit verification, the permittee may transfer the regional permit verification to the new owner by submitting a letter to the appropriate Corps district office to validate the transfer. A copy of the regional 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 regional permit are still in existence at the time the property is transferred, the terms and conditions of this regional permit, including any special conditions, will continue to be binding on the new owner(s) of the property. To validate the transfer of this regional permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below."

(Transferee)

(Date)

X. Compliance Certification.
For each RGP verification received from the Corps, the permittee must submit a signed certification form to the Corps indicating the authorized work and any required mitigation has been completed. The certification form must be forwarded by the Corps with the RGP verification letter and will include:

(1) A statement that the authorized work was done in accordance with the RGP authorization, including any general or specific conditions;

(2) A statement that any required mitigation was completed in accordance with the permit conditions; and

(3) The signature of the permittee certifying the completion of the work and mitigation.

Y. Pre-Construction Notification (PCN).
(1) Timing. Where required by the terms of the RGP, the applicant must notify the District Engineer by submitting a PCN as early as possible. The District Engineer must determine if the PCN is complete within 30 calendar days of the date of receipt and, as a general rule, will request additional information necessary to make the PCN complete only once. However, if the applicant does not provide all of the requested information, then the District Engineer will notify the applicant 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 applicant shall not begin the activity until either:

(a) the applicant is notified in writing by the District Engineer that the activity may proceed under the RGP with any special conditions imposed by the District Engineer; or

(b) forty-five calendar days have passed from the District Engineer's receipt of the complete PCN and the applicant has not received written notice from the District Engineer. However, if the permittee was required to notify the Corps if any listed species or critical habitat might be affected or is located in the vicinity of the project, or if the activity may have the potential to cause effects to historic properties, the applicant 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 ESA (see 33 CFR 330.4(f)) and/or Section 106 of the NHPA (see 33 CFR 330.4(g)) is completed. If the District or Division Engineer notifies the applicant 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 RGP may be modified, suspended, or revoked only in accordance with the procedure set forth in 33 CFR 325.7.

(2) Contents of PCN: The PCN must be in writing and include the following information:

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

(b) Location of the proposed project;

(c) A description of the proposed project; the project's purpose; direct and indirect adverse environmental effects the project would cause; any other NWP(s), RGP(s), or individual permit(s) used or intended to be used to authorize any part of the proposed project or any related activity. The description should be sufficiently detailed to allow the District Engineer to determine that the adverse effects of the project will be minimal and to determine the need for compensatory mitigation;

(d) Project drawings on 8 1/2" x 11" paper. Three types of illustrations are needed to properly depict the work to be undertaken. These illustrations or drawings are identified as a Vicinity Map (i.e. a location map such as a USGS topographical map), a Plan View and a Typical Cross-Section Map. Each illustration should identify the project, the applicant, and the type of illustration (vicinity map, plan view or cross-section). In addition, each illustration should be identified with a figure or attachment number;

(e) For activities resulting in the loss of greater than 1/2 acre of waters of the U.S., full agency coordination is required. In an effort to expedite permit review, it is requested that all PCN's for activities resulting in the loss of greater than 1/2 acre of waters of the U.S. include five (5) copies of the notification package. Applicants are encouraged to submit this information in electronic format in order to minimize the use of paper;

(f) A copy of the applicable FIRM map;

(g) A delineation of special aquatic sites and other waters of the U.S. on the project site. Wetland delineations must be prepared in accordance with the current method required by the Corps. The applicant may ask the Corps to delineate the special aquatic sites and other waters of the U.S., but there may be a delay if the Corps does the delineation, especially if the project site is large or contains many waters of the U.S. Furthermore, the 45 day period will not start until the delineation has been submitted to or completed by the Corps, where appropriate;

(h) For activities resulting in the loss of greater than 1/10 acre of wetlands and a PCN is required, the applicant must submit a statement describing how the mitigation requirement will be satisfied. As an alternative, the applicant may submit a conceptual or detailed mitigation plan;

(i) The Federal Highway Administration (FHWA) is the lead federal agency with ultimate responsibility to ensure compliance with Section 7 of the ESA for projects conducted by

the Ohio Department of Transportation. The applicant will coordinate with the FWS as required by the Fish and Wildlife Coordination Act and Section 7 of the ESA;

(j) The FHWA is the lead federal agency with ultimate responsibility to ensure compliance with Section 106 of the NHPA. The applicant will coordinate with the OHPO in accordance with the *"Programmatic Agreement Among the Federal Highway Administration, The Advisory Council on Historic Preservation The Ohio Historical Society, State Historic Preservation Office, and the State of Ohio, Department of Transportation Regarding Implementation of the Federal-Aid Highway Program in Ohio Agreement No. 12642"* executed on July 17, 2006, and the *"Programmatic Agreement Among The Federal Highway Administration Ohio Division, The Advisory Council of Historic Preservation, Ohio Department of Transportation, Ohio State Historic Preservation Officer, Regarding Federally Funded or Approved Highway Bridge Projects Agreement No. -10978"* executed April 3, 2002. In such cases where a PCN is required, the applicant must provide the District Engineer with the appropriate documentation to demonstrate compliance with the requirements of Section 106 of the NHPA.

(3) Form of PCN: The standard individual permit application form (Form ENG 4345) may be used, but the completed application form must clearly indicate that it is a PCN and must include all of the information required in paragraphs (b)(1) through (11) of this general condition. A letter containing the required information may also be used.

(4) Agency Coordination: 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 RGP and the need for mitigation to reduce the project's adverse environmental effects to a minimal level.

For all RGP activities requiring PCN to the District Engineer that result in the loss of greater than 1/2-acre of waters of the U.S., the District Engineer will immediately provide (e.g., via facsimile transmission, overnight mail, or other expeditious manner) a copy of the PCN to the appropriate Federal or state offices (FWS, state natural resource or water quality agency, Ohio EPA, SHPO). The agencies will then have 10 calendar days from the date the material is transmitted to notify the District Engineer that they intend to provide substantive, site-specific comments. If so contacted by an agency, the District Engineer will wait an additional 15 calendar days before making a decision on the pre-construction notification. The District Engineer will fully consider agency comments received within the specified time frame, but will provide no response to the resource agency. The District Engineer will indicate in the administrative record associated with each PCN that the resource agencies' concerns were considered.

(5) District Engineer's Decision:
In reviewing the PCN for the proposed activity, the District Engineer will determine whether the activity authorized by the RGP will result in more than minimal individual or cumulative adverse environmental effects or may be contrary to the public interest. If the proposed activity requires a PCN and will result in a loss of greater than 1/10 acre of wetlands, the prospective permittee should submit a mitigation proposal with the PCN. Applicants may also propose compensatory mitigation for projects with smaller impacts. The District Engineer will consider any proposed compensatory mitigation the applicant has included in the proposal in determining whether the net adverse environmental effects to the aquatic environment of the proposed work are minimal. The compensatory mitigation proposal may

be either conceptual or detailed. If the District Engineer determines that the activity complies with the terms and conditions of the RGP and that the adverse effects on the aquatic environment are minimal, after considering mitigation, the District Engineer will notify the permittee and include any conditions the District Engineer deems necessary. The District Engineer must approve any compensatory mitigation proposal before the permittee commences work. If the prospective permittee elects to submit a compensatory mitigation plan with the PCN, the District Engineer will expeditiously review the proposed compensatory mitigation plan. The District Engineer must review the plan within 45 calendar days of receiving a complete PCN and determine whether the proposed mitigation would ensure no more than minimal adverse effects on the aquatic environment. If the net adverse effects of the project on the aquatic environment (after consideration of the compensatory mitigation proposal) are determined by the District Engineer to be minimal, the District Engineer will provide a timely written response to the applicant. The response will state that the project can proceed under the terms and conditions of the RGP.

If the District Engineer determines that the adverse effects of the proposed work are more than minimal, then the District Engineer will notify the applicant either: (1) That the project does not qualify for authorization under the RGP and instruct the applicant on the procedures to seek authorization under an individual permit; (2) that the project is authorized under the RGP subject to the applicant's submission of a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level; or (3) that the project is authorized under the RGP with specific modifications or conditions. Where the District Engineer determines that mitigation is required to ensure no more than minimal adverse effects occur to the aquatic environment, the activity will be authorized within the 45-day PCN period. The authorization will include the necessary conceptual or specific mitigation or a requirement that the applicant submit a mitigation plan that would reduce the adverse effects on the aquatic environment to the minimal level. When mitigation is required, no work in waters of the U.S. may occur until the District Engineer has approved a specific mitigation plan.

Z. Single and Complete Project.
The activity must be a single and complete project. Section A, B, or C of this RGP cannot be used more than once for the same single and complete project.

4. <u>Further Information:</u>

A. Congressional Authorities:
Proposed activities under this RGP would be authorized
under Section 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 403) and Section 404
of the Clean Water Act (33 U.S.C. 1344).

B. Limits of this authorization:
(1) This RGP does not obviate the need to obtain other Federal, state, or local authorizations required by law.

(2) This RGP does not grant any property rights or exclusive privileges.

(3) This RGP does not authorize any injury to the property or rights of others.

(4) This RGP does not authorize interference with any existing or proposed Federal project.

C. Limits of Federal Liability:
(1) Damages to the permitted project or uses hereof as a result of other permitted or unpermitted activities or from natural causes.

(2) Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.

(3) Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.

(4) Design or construction deficiencies associated with the permitted work.

(5) Damage claims associated with any future modification, suspension, or revocation of this permit.

D. Reevaluation of Permit Decision:
Should circumstances warrant, this office may reevaluate its decision on the RGP. Circumstances that could require reevaluation include but are not limited to the following:

(1) Failure to comply with the terms and conditions of this RGP.

(2) If information provided in support of the project description is false, incomplete, or inaccurate.

(3) Significant new information surfaces which was not considered in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 32.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring compliance with the terms and conditions of the permit and for the initiation of legal action where appropriate. The permittee would be required to pay for any corrective measures ordered by this office, and for failure to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contact or otherwise and bill the permittee for the costs. In addition, unpermitted work or violation of permit conditions may result in civil, criminal or administrative penalties (33 U.S.C. 1319 c, d, and g.).

5. <u>Definitions:</u>

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, establishment (creation), enhancement, or preservation of aquatic resources for the purpose of compensating for 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.

Discharge: The term "discharge" means any discharge of dredged or fill material.

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.

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

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

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

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

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

Loss of waters of the United States (U.S.): Waters of the U.S. 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 U.S. is a threshold measurement of the impact to jurisdictional waters for determining whether a project may qualify for the RGP; it is not a net threshold that is calculated after considering compensatory mitigation that may be used to offset losses of aquatic functions and services. The loss of stream bed includes the linear feet of stream bed that is filled or excavated. Waters of the U.S. 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 U.S. Impacts

resulting from activities eligible for exemptions under Section 404(f) of the Clean Water Act are not considered when calculating the loss of waters of the U.S.

Non-tidal wetland: A non-tidal wetland is a wetland that is not subject to the ebb and flow of tidal waters. The definition of a wetland can be found at 33 CFR 328.3(b). Non-tidal wetlands contiguous to tidal waters are located landward of the high tide line (i.e., spring high tide line).

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

Ordinary High Water Mark (OHWM): An ordinary high water mark is a line on the shore established by the fluctuations of water and indicated by physical characteristics, or by other appropriate means that consider the characteristics of the surrounding areas (see 33 CFR 328.3(e)).

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

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.

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.

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 course substrate in riffles results in a rough flow, a turbulent surface, and high dissolved oxygen levels in the water. Pools are deeper areas associated with riffles. A slower stream velocity, a streaming flow, a smooth surface, and a finer substrate characterize pools.

Riparian areas: Riparian areas are lands adjacent to streams, lakes, and estuarine-marine shorelines. Riparian areas are transitional between terrestrial and aquatic ecosystems, through which surface and subsurface hydrology connects waterbodies with their adjacent uplands. Riparian areas provide a variety of ecological functions and services and help improve or maintain local water quality. (See general condition 20.)

Single and complete project: The term "single and complete project" is defined at 33 CFR 330.2(i) as the total project proposed or accomplished by one owner/developer or partnership or other association of owners/developers. A single and complete project must have independent utility (see definition). For linear projects, a "single and complete project" is all crossings of a single water of the United States (i.e., a single waterbody) at a specific location. For linear projects crossing a single waterbody several times at separate and distant locations, each crossing is considered a single and complete project. However, individual channels in a braided stream or river, or individual arms of a large, irregularly shaped wetland or lake, etc., are not separate waterbodies, and crossings of such features cannot be considered separately.

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 U.S.

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.

Suitable Material: Clean, non-erodable materials including hard fill that is free of toxic pollutants in toxic amounts (see Section 307 of the Clean Water Act). Trash, debris, car bodies, and asphalt are examples of unsuitable material. However, bridge demolition debris may be used for temporary work/access pads provided it is composed of suitable material, free of exposed re-bar or other steel, and stabilized to prevent erosion.

Temporary: A finite period of time limited to the duration of the construction or maintenance of a transportation project, but never to exceed 2 years.

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 sea grasses in marine and estuarine systems and a variety of vascular rooted plants in freshwater systems.

Waterbody: For purposes of this RGP, a waterbody is a jurisdictional water of the U.S. that, during a year with normal patterns of precipitation, has water flowing or standing above ground to the extent that an ordinary high water mark (OHWM) or other indicators of jurisdiction can be determined, as well as any wetland area (see 33 CFR 328.3(b)). If a jurisdictional wetland is adjacent--meaning bordering, contiguous, or neighboring--to a jurisdictional waterbody displaying an OHWM or other indicators of jurisdiction, that waterbody and its adjacent wetlands are considered together as a single aquatic unit (see 33 CFR 328.4(c)(2)). Examples of "waterbodies" include streams, rivers, lakes, ponds, and wetlands.