



**MAINE DEPARTMENT OF  
INLAND FISHERIES AND WILDLIFE**

**ADDENDUM NO. 6**

**23-AUG-24**

TO THE SPECIFICATIONS, PROPOSAL, CONTRACT AND BOND  
FOR THE CONSTRUCTION OF

**PHASE III FACILITY CONVERSION AT NEW GLOUCESTER STATE FISH HATCHERY**

**NEW GLOUCESTER, MAINE**

**CUMBERLAND COUNTY**

BGS PROJECT NO.: 3289-312



<b>SUBJECT:</b>	<b>ADDENDUM NO. 6</b>
<b>PROJECT:</b>	Phase III Facility Conversion at New Gloucester State Fish Hatchery
<b>TO:</b>	Richard Parker - DIFW
<b>FROM:</b>	Andrew Gurski – HDR

This Addendum is issued to known individuals, firms or corporations holding Bidding Documents and Contract Documents for above listed project.

In addition to Part 1, Part 2, and Part 3 below the following Permits are attached to the end of this addendum:

**State of Maine DEP: NRPA permit, # L-18769-TB-B-N/L6-C-N/2F-D-N**

**U.S. Army Corps of Engineers: General Permits (23)**

This Addendum is hereby made a portion of Bidding Documents and Contract Documents.

**PART 1 - QUESTIONS AND ANSWERS**

1. **QUESTION:** Please accept the following BID QUESTIONS Regarding Ready-Mix Concrete:
  - a. USCOE CRD-C48 - Mod Permeability of Concrete. Is this the only testing method to determine the concrete permeability?
  - b. Will Concrete Supplier be responsible for initial testing? Or is this part of the independent third-party responsibilities prior to beginning project?
  - c. We use 100% Cement with No Fly Ash or Slag in our Concrete Mix Designs. Is Fly Ash or Slag required in any of the requested mixes?
  - d. Max W/C ratio on 3000 psi lean concrete in the table shows 0.45. Can you please clarify if this is the W/C you are targeting?
  - e. Our current mix design for 3000 has W/C ratio of 0.52 will that be acceptable with supporting historical data showing PSI data? Will this be sufficient for the 3000 psi Normal weight concrete and fill utility encasement concrete? Which also is at W/C 0.45 in the table.
  - f. Is the use of 67 stone permitted? We produce and use 67 stone in our concrete product.
  - g. Does the normal weight concrete with power trowel finish need to be 0-2 percent air entrainment? Will you accept Max 3%?
  - h. Will the independent third party be responsible for the Shrinkage test prior to beginning of project? And will you need a test result for 64 weeks in accordance with ASTM C157 and submit results to Engineer as Informational Submittals?
  - i. The ASTM 1778- is this the correct ASTM for testing Alkali-Reactive Aggregates? We will be using 100% cement in our mix design submittal.

**ANSWER:**

- a. Yes. The crystalline cementitious waterproofing manufacturer shall provide independent testing results per USCOE CRD-C48.



- b. See Specification Section 03 05 05 for concrete testing and inspection requirements.
- c. Fly Ash is not specifically required provided the requirements of Specification Section 03 31 30 are met.
- d. .45 is the maximum w/c ratio.
- e. The maximum w/c ratio allowed for normal weight lean concrete and fill for utility encasement is 0.45 regardless of concrete strength produced.
- f. Coarse aggregate used for concrete mixes shall be No. 57 stone conforming to ASTM C33 as indicated in Table 03 31 30-A unless noted otherwise.
- g. A maximum air content of 3% will be allowed for concrete that is to be power troweled provided that no surface blemishes such as blistering or delamination will occur.
- h. Shrinkage testing at 28 days is required per Specification Section 03 31 30, 2.2, G. 64 week shrinkage testing results will only be required for concrete used in the Headtank, Clarifier, Sludge Storage, and Effluent Treatment Building.
- i. ASTM C1778 is used for the evaluation of aggregates and how to address the potential for alkali aggregate reaction and should be used.

**SOURCE:** Joe LaRose [jarose@qannestonconstruction.com](mailto:jarose@qannestonconstruction.com) Mon 8/5/2024 10:36

2. **QUESTION:** The concrete approach to the upper and lower pavilion shown on sheet 02s-101 and 03s-101 are shown as 12' x 14'. On the civil drawings sheet (01c-111 & 01c-112) they appear to be 14' x 5'. What size are the concrete approach slabs?

**ANSWER:** Slab size is 12' x 14'.

**SOURCE:** Joe LaRose [jarose@qannestonconstruction.com](mailto:jarose@qannestonconstruction.com) Wed 8/14/2024 06:20

3. **QUESTION:** The concrete approach slab detail shown as detail 3 on sheet 00s-102 does not show sectional thicknesses of subbase material. What is the buildup and thickness of the material beneath the concrete approach slabs for the upper and lower pavilion?

**ANSWER:** Fill used below the approach slabs shall be compacted structural fill.

**SOURCE:** Joe LaRose [jarose@qannestonconstruction.com](mailto:jarose@qannestonconstruction.com) Wed 8/14/2024 06:20

4. **QUESTION:** On sheet 02d-102, the following lines I believe are mislabeled.

- a. 16" DRN – Should be 16" FWS or FSW?
- b. 6" DRN – Should be 6" FWS or FSW?

**ANSWER:** 16" DRN located before water weir structures shall be FSW. 16" DRN located after water weir structures shall be RSW. 6" DRN shall be FSW.

**SOURCE:** Joe LaRose [jarose@qannestonconstruction.com](mailto:jarose@qannestonconstruction.com) Wed 8/14/2024 06:20

5. **QUESTION:** According to the pipe legend on sheet 00d-603 Underslab FSW/FWS pipe is to be schedule 80. Detail 6 on sheet 02d-401 calls out C-905 pipe into and out of the Water Prioritization Weir Structure. Detail 1 & 2 on sheet 02d-401 note 8 calls out ductile iron pipe through the linkseal of the valve basin.

- a. What kind of pipe is to be used for FWS/ FSW below slab? Ductile? C905? Schedule 80?
- b. Is there a reason to switch from C-905 to Schedule 80 if it is below slab?
- c. The 6" FWS/FSW reduces to 5" before entering the valve basin. Detail 1 & 2 on sheet 02d-401 note 8 calls out ductile iron pipe through the linkseal of the valve basin. 5" DI pipe is not carried by our pipe supplier. There is 6" and 4". How would you like me to proceed?



**ANSWER:**

- a. Vertical under slab RSW shall be SCH 40 PVC. Horizontal under slab RSW shall be C900/905 PVC. 6" FSW under slab shall be schedule 40 PVC. 5" FSW under slab shall be schedule 40 PVC.
- b. The switch is used to maintain the proper velocity of water in the pipe.
- c. This section of pipe will be schedule 40 PVC.

**SOURCE:** Joe LaRose [ilarose@gannestonconstruction.com](mailto:ilarose@gannestonconstruction.com) Wed 8/14/2024 06:20

**6. QUESTION:** Pipe routing and size of the 8" FWS on sheet 01D-101 does not match the pipe routing and size on sheet 03D-102.

- a. What size should the pipe be, 8" or 6"?
- b. Which route should we use? What is shown on 03D-102 or 01D-101?

**ANSWER:** 8" pipe, and the route shown on 01D-101 shall be used.

**SOURCE:** Joe LaRose [ilarose@gannestonconstruction.com](mailto:ilarose@gannestonconstruction.com) Wed 8/14/2024 06:20

**7. QUESTION:** MH 5 is listed as an 8' ID manhole in the structure table with 4 pipe inlets. Looking at plan view it appears there may be 5 pipe inlets.

- a. Can you clarify if the 12" PVC shown below should be tied into MH5 or plugged?
- b. Are we to demolish the existing MH? It is not called out in the demolition plans.

**ANSWER:**

- a. 12" PVC is the NW 15" pipe that is to be capped per MH5 Note. The 15" NNE pipe should not be capped instead it should be cut back and elbowed into the new manhole at an invert elevation of 239.38'.
- b. Per Manhole Schedule, MH5 Note, existing manhole is to be removed.

**SOURCE:** Joe LaRose [ilarose@gannestonconstruction.com](mailto:ilarose@gannestonconstruction.com) Wed 8/14/2024 06:20

**8. QUESTION:** Do I need to carry any costs for the paving allowance? Or would any site excavation/fine grading come out of that allowance? Are you soliciting paving prices? Trying to figure out how the allowance works

**ANSWER:** The paving allowance can be used for any construction activities that are necessary for the construction of the pavement limits as set forth by DIFW. (See Addendum 01 Question 6 for addition information.) No solicitation of paving prices are required.

**SOURCE:** Joe LaRose [ilarose@gannestonconstruction.com](mailto:ilarose@gannestonconstruction.com) Wed 8/14/2024 06:20

**9. QUESTION:** Rip rap sectional thickness?

**ANSWER:** Riprap thickness shall be 2 times the d50 size of riprap.

**SOURCE:** Joe LaRose [ilarose@gannestonconstruction.com](mailto:ilarose@gannestonconstruction.com) Wed 8/14/2024 06:20

**10. QUESTION:** What material and sectional thickness should be used below the slab of the upper and lower pavilion?

**ANSWER:** Fill used below the floor slabs of the upper and lower pavilions shall be a fine clean crushed stone as specified in Section 31 32 00, 2.1. B.

**SOURCE:** Tyler Coffin [tyler@dotens.com](mailto:tyler@dotens.com) Thu 8/15/2024 08:58

**11. QUESTION:** What material and sectional thickness should be used below the 20' diameter tanks?

**ANSWER:** Fill used below the tank slabs shall be as indicated is specification Section 31 32 00, 2.1, C.



**SOURCE:** Tyler Coffin [tyler@dotens.com](mailto:tyler@dotens.com) Thu 8/15/2024 08:58

**12. QUESTION:** What material and sectional thickness should be used for backfill around the 20' diameter tanks?

**ANSWER:** Backfill around the tanks shall be a compacted fine crushed gravel as indicated on the plans and indicated in Specification Section 31 23 00 or as required by the tank manufacturer. See Specification Section 13 20 00 for additional requirements to project tank walls.

**SOURCE:** Tyler Coffin [tyler@dotens.com](mailto:tyler@dotens.com) Thu 8/15/2024 08:58

**13. QUESTION:** What material and sectional thickness should be used for backfill against the foundation walls?

**ANSWER:** The interior side of the Pavilion foundation walls shall be a compacted fine crushed gravel as indicated on the plans and indicated in Specification Section 31 23 00. Backfill on the exterior side of the foundation walls shall be structural fill as defined in Specification Section 31 23 00.

**SOURCE:** Tyler Coffin [tyler@dotens.com](mailto:tyler@dotens.com) Thu 8/15/2024 08:58

**14. QUESTION:** What is the finish of the east raceway after we place the dredged material?

**ANSWER:** Any disturbed area, including dredge fill areas, shall be graded to drain, stabilized and restored with native plants as called on plans. See Part 3 for additional Keyed note updates.

**SOURCE:** Joe LaRose [jlrose@gannestonconstruction.com](mailto:jlrose@gannestonconstruction.com) Thu 8/15/2024 13:14

**15. QUESTION:** What is the FFE of the garage? On sheet 05S-101 FFE is shown as 240.5'.

**ANSWER:** Finish floor elevation is shown correctly on 05C-101. See Part 3 for updated 05 series sheets for all elevation updates.

**SOURCE:** Tyler Coffin [tyler@dotens.com](mailto:tyler@dotens.com) Thu 8/15/2024 14:52

**16. QUESTION:** Is there a model number for the Fimbel overhead doors?

**ANSWER:** There is not an actual model number. The intent of the specifications is for these to be the manufacturer's standard commercial overhead door *Fimbel Architectural Door Specialties "ISO-DOOR Aluminum"*.

**SOURCE:** Tyler Coffin [tyler@dotens.com](mailto:tyler@dotens.com) Mon 8/19/2024 07:04

**17. QUESTION:** can you confirm the sizes the schedule suggests 10 X 12, elsewhere it suggests 12 X 12.

**ANSWER:** Overhead doors shall be 12ft x 12ft.

**SOURCE:** Tyler Coffin [tyler@dotens.com](mailto:tyler@dotens.com) Mon 8/19/2024 07:04

**18. QUESTION:** is steel insulated acceptable to bib specs suggest aluminum

**ANSWER:** Insulated steel is acceptable.

**SOURCE:** Tyler Coffin [tyler@dotens.com](mailto:tyler@dotens.com) Mon 8/19/2024 07:04

**19. QUESTION:** Please confirm what material and thickness under & around Pavilion foundations, 20' tanks, Effluent Building, Drumfilter Building, Clarifier, Sludge Tank and Storage Building.

**ANSWER:** Fill under building slabs shall be a minimum 12" thick fine clean crushed stone as specified in Section 31 32 00, 2.1. B. Footings shall be placed on native earth or Compacted structural fill as specified in section 31 23 00, 2.1, A.2.

**SOURCE:** Jeff Todd [Jeff@apex-constructioninc.com](mailto:Jeff@apex-constructioninc.com) Mon 8/19/2024 12:52



- 20. QUESTION:** Please confirm East Raceway limit of work is related to dredged fill, road relocation and sloping swales. Does East Raceway require additional fill, gravel or loam?  
**ANSWER:** Confirmed. The east raceway does not require any additional fill other than those stated in plans. Any disturbed area, including dredge fill areas, shall be graded to drain, stabilized and restored with native plants as called on plans. See Part 3 for additional Keyed note updates.  
**SOURCE:** Jeff Todd [Jeff@apex-constructioninc.com](mailto:Jeff@apex-constructioninc.com) Mon 8/19/2024 12:52
- 21. QUESTION:** Could a room finish schedule be provided along with a Paint schedule.  
**ANSWER:** As per the response to questions #12 in addendum #3, there is no paint schedule, since none of the rooms are to be painted. Room finishes are per the materials shown on the plans.  
**SOURCE:** Jeff Todd [Jeff@apex-constructioninc.com](mailto:Jeff@apex-constructioninc.com) Wed 8/21/2024 07:57
- 22. QUESTION:** assume the Clarifier will not be painted since components are Stainless Steel but Drive and misc parts might need to be?  
**ANSWER:** Clarifier mechanisms are to be painted per 09 96 00. Stainless Steel components do not need to be painted.  
**SOURCE:** Jeff Todd [Jeff@apex-constructioninc.com](mailto:Jeff@apex-constructioninc.com) Wed 8/21/2024 07:57
- 23. QUESTION:** Does the steel of Pre-Engineered Buildings need to be finish painted?  
**ANSWER:** All primary and secondary steel shall be finish painted on **all** surfaces including surfaces hidden from view.  
**SOURCE:** Jeff Todd [Jeff@apex-constructioninc.com](mailto:Jeff@apex-constructioninc.com) Wed 8/21/2024 07:57
- 24. QUESTION:** Is the ceiling material for the Effluent/ Drum Filter Building identified?  
**ANSWER:** There is no finished ceiling in the Effluent Treatment Building. The wood truss rafters shall be exposed.  
**SOURCE:** Jeff Todd [Jeff@apex-constructioninc.com](mailto:Jeff@apex-constructioninc.com) Wed 8/21/2024 07:57

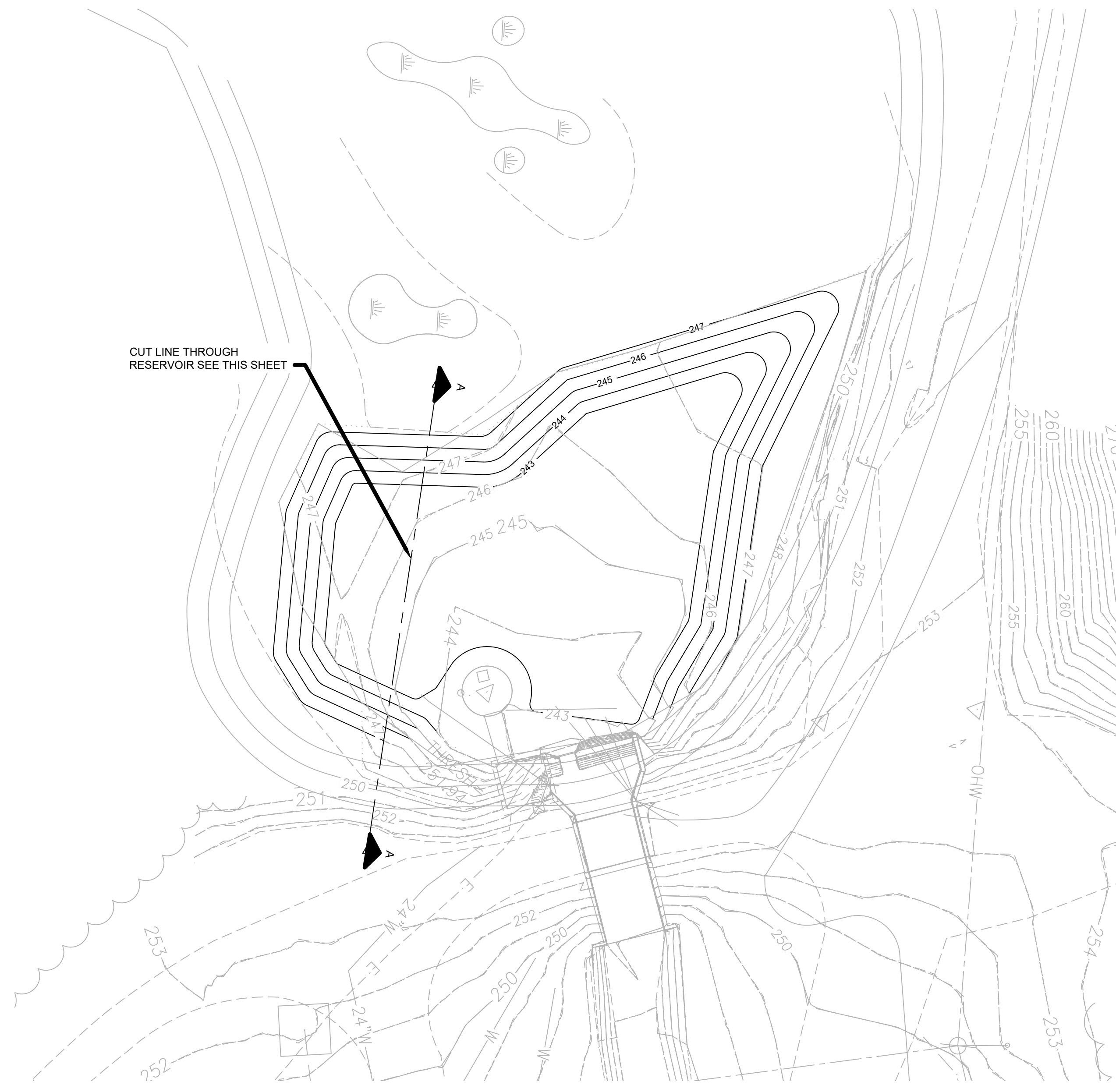
## PART 2 – PROJECT MANUAL UPDATES (NOT APPLICABLE)

## PART 3 -DRAWING UPDATES

- 25. SHEET 01C-114**  
a. **ADD:** Keyed Note 11.: ALL DISTURBED AREAS SHALL BE STABILIZED AND RESTORED BY USING NATIVE PLANTS AND SPECIES AS APPROVED BY OWNER. SEE SHEET 01C-115 FOR ADDITIONAL DETAILS ON RESTORATION AREAS.
- 26. SHEET 01C-117 (ATTACHED)**  
a. **UPDATE:** See updated sheet.
- 27. SHEET 05S-101 (ATTACHED)**  
a. **UPDATE:** See elevation updates
- 28. SHEET 05S-501 (ATTACHED)**  
a. **UPDATE:** See elevation updates
- 29. SHEET 05A-201 (ATTACHED)**  
a. **UPDATE:** See elevation updates



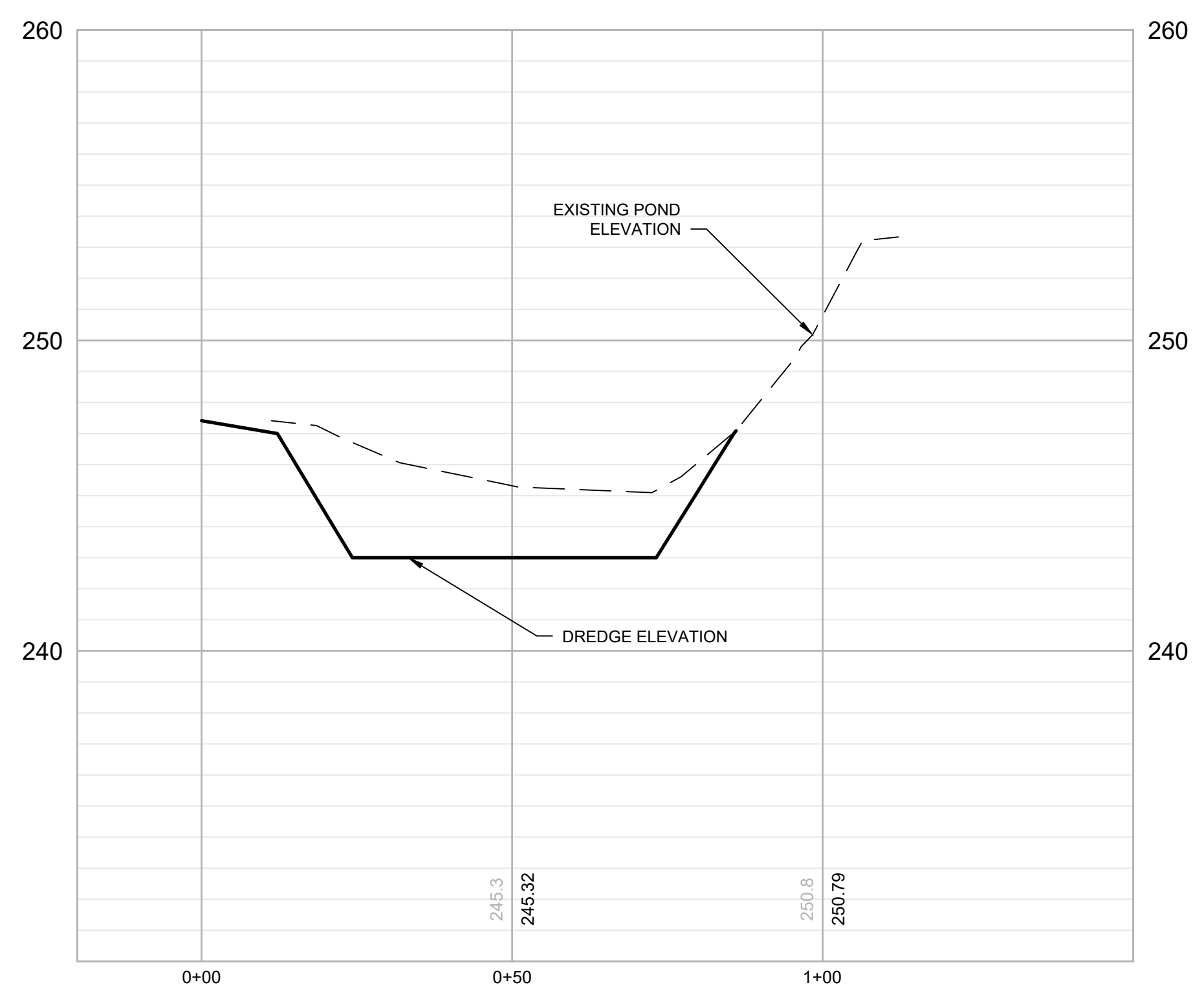
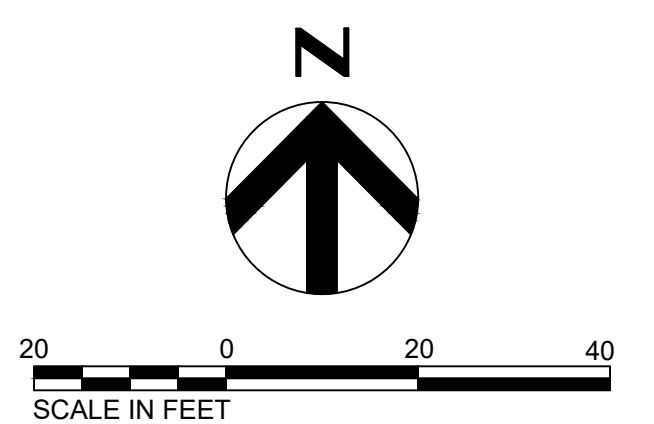
**END OF ADDENDUM 6**



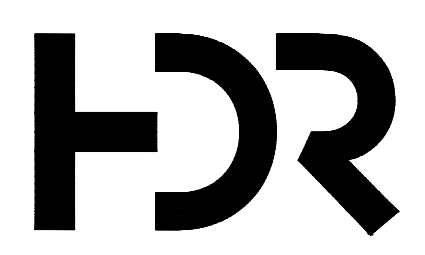
**DREDGING PLAN**  
SCALE: 1" = 20'-0"

**POND SEDIMENT EXCAVATION NOTES:**

1. THE METHOD OF DREDGING SHALL BE DETERMINED BY THE CONTRACTOR AND APPROVED BY THE OWNER PRIOR TO ANY WORK COMMENCING. DREDGING SHALL BE COMPLETED IN A DRY CONDITION BY UTILIZING MECHANICAL METHODS WITH COFFERDAMS AND OR DIVERSION MATS. CONTRACTOR SHALL LIMIT SUSPENDED CONCENTRATIONS OR TURBIDITY IN THE RECEIVING WATERBODY.
2. CONTRACTOR SHALL FOLLOW ALL REQUIREMENTS SET FORTH IN THE EROSION AND SEDIMENTATION PLANS. ALL ESCP CONTROLS SHALL BE APPROVED BY OWNER PRIOR TO COMMENCING ANY WORK.
3. THE PURPOSE OF THE POND EXCAVATION IS TO REMOVE SOILS AND VEGETATION TO IMPROVE THE WATER QUALITY OF THE HATCHERY SUPPLY WATER AND REDUCE THE DEMANDS ON THE DRUM FILTER.
4. MDIFW PERSONNEL WILL BE ONSITE IMMEDIATELY PRIOR TO DEWATERING ACTIVITIES TO RELOCATE ANY FISH, TURTLES, AND OTHER SPECIES FROM THE DREDGE AREA.
5. CONTRACTOR SHALL MECHANICALLY EXCAVATE SOIL AND VEGETATION TO THE LIMITS SHOWN ON THE DRAWING.
6. CONTRACTOR SHALL SEPARATE, TO THE EXTENT POSSIBLE, VEGETATION AND WOODY DEBRIS FROM THE EXCAVATED MATERIAL AND DISPOSE OFFSITE AT AN APPROVED DISPOSAL LOCATION.
7. CONTRACTOR SHALL USE THE REMAINING EXCAVATED MATERIAL, AFTER REMOVAL OF VEGETATION AND WOODY DEBRIS, AS COMMON BORROW FOR USE AS FILL WITHIN THE RACEWAY AS SHOWN ON THE DRAWINGS.
8. CONTRACTOR SHALL DEWATER THE EXCAVATED MATERIAL IN PREPARATION FOR USE AS FILL AND CONTROL THE RUNOFF FROM THE EXCAVATED MATERIAL AS A COMPONENT OF THE SITE EROSION AND SEDIMENTATION CONTROL PLANS (ESCP). DEWATERING CAN BE PERFORMED IN A TEMPORARY SPOIL PILE, OR WITHIN THE RACEWAY FILL AREA PROVIDING THAT THE RUNOFF AND SEDIMENT TRANSPORT ARE CONTROLLED IN ACCORDANCE WITH 06 ME CODE RULES §096-500-A. DEWATERING EFFORTS SHALL REQUIRE DOUBLE PERIMETER EROSION CONTROL MEASURES. CONTRACTOR TO SUBMIT A PROPOSED PLAN DETAILING THE MATERIAL HANDLING AND ESCP METHODS TO THE OWNER FOR APPROVAL BEFORE IMPLEMENTATION.
9. FINAL GRADES WITHIN THE POND EXCAVATION AREA SHALL NOT EXCEED 3H:1V AS INDICATED ON THE DRAWINGS.
10. CONTRACTOR TO RESTORE GRADES AND SOILS ALONG THE PERIMETER OF THE POND THAT WERE DISTURBED BY THE CONSTRUCTION ACCESS AND EXCAVATION ACTIVITIES, FOLLOWING THE ESCP REQUIREMENTS FOR RESTORATION, MONITORING, AND RE-VEGETATION. ALL RESTORATION AREAS SHALL BE RESTORED BY USING NATIVE PLANTS AS APPROVED BY OWNER.
11. ALL ESCP CONTROLS SHALL BE REMOVED FOLLOWING THE RE-ESTABLISHMENT OF VEGETATION, FOLLOWING THE REQUIREMENTS OF THE ESCP



**SECTION A-A**



ISSUE	DATE	DESCRIPTION
6	08/23/2024	ADD 6
	05/03/2024	ISSUED FOR BID

<b>PROJECT MANAGER</b>	ANDREW GURSKI
CIVIL	J. GAGNON
STRUCTURAL	B. BRADLEY
ARCHITECTURAL	M. BASKIN
PROCESS	J. CHANDLER
MECHANICAL	J. CHANDLER
ELECTRICAL	A. KANER
<b>PROJECT NUMBER</b>	10353741

**NEW GLOUCESTER STATE FISH HATCHERY**  
**Phase III Facility Conversion**

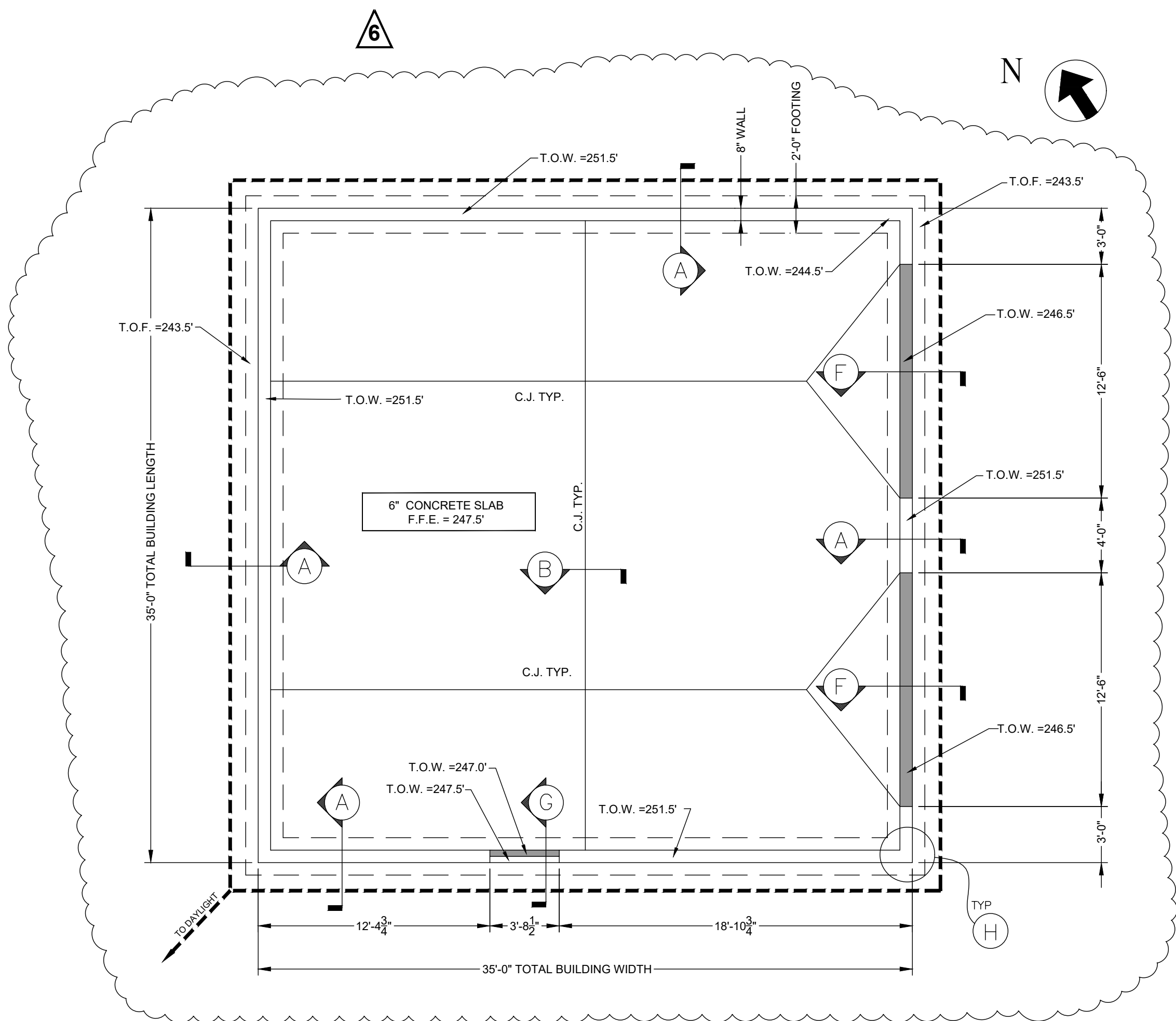


**DREDGING PLAN**  
FILENAME | 10353741-01C-117.DWG  
SCALE | 1" = 50'-0"

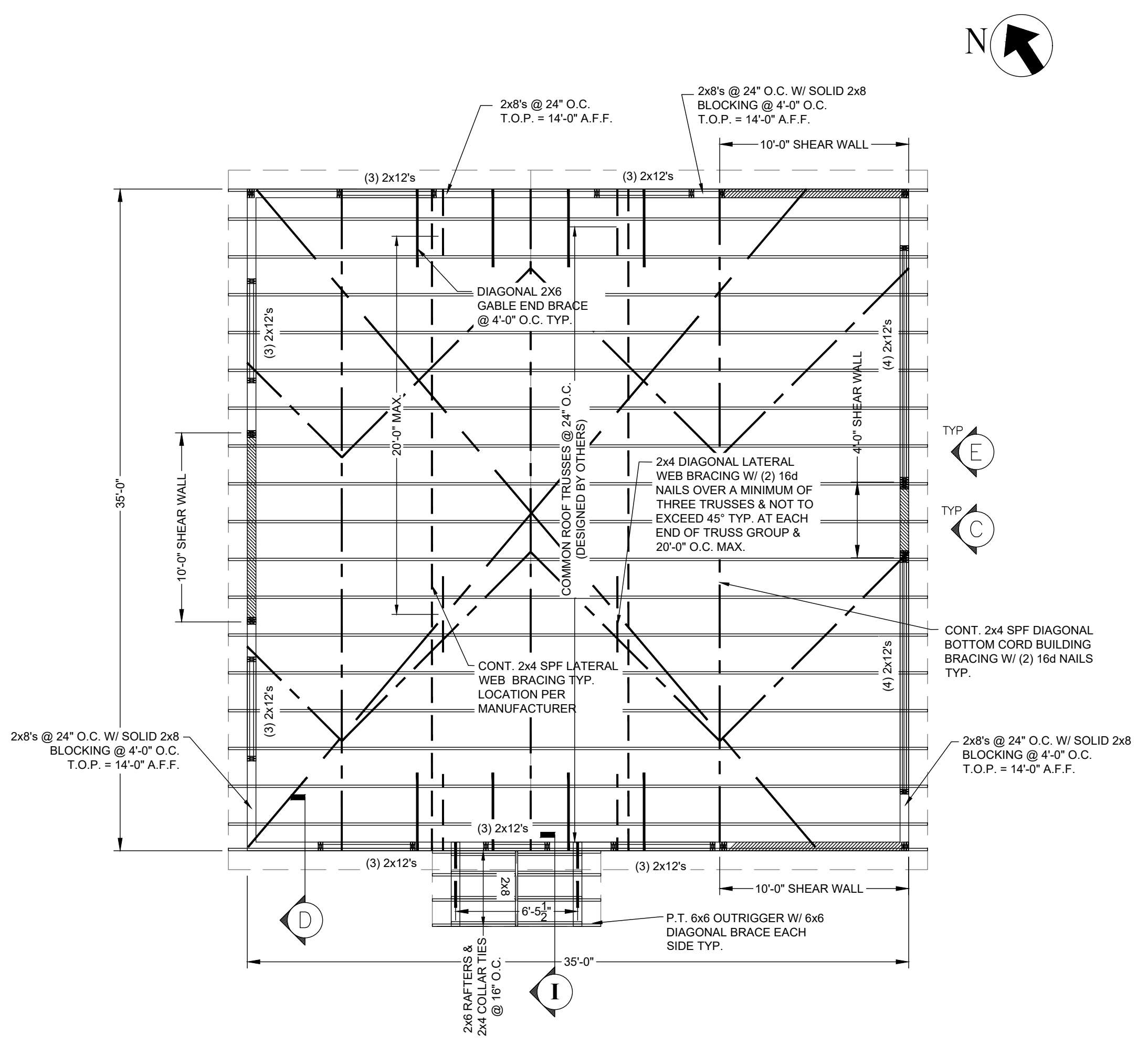
SHEET  
**01C-117**



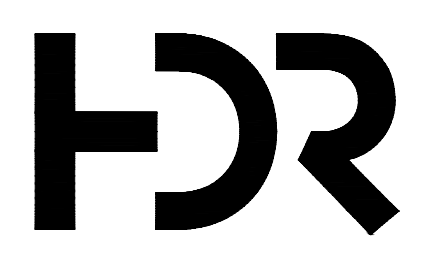
BRACING LEGEND	
	GABLE END BRACE
	LATERAL WEB BRACE
	LATERAL DIAGONAL WEB BRACE
	BOTTOM CHORD BRACE



**FOUNDATION PLAN**  
SCALE 3/16" = 1'-0"

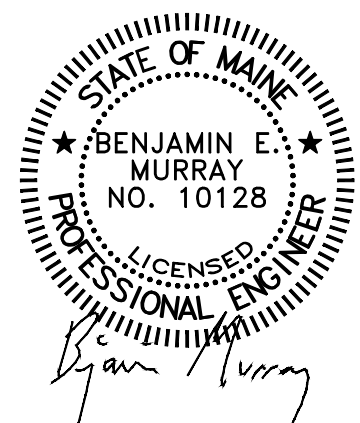


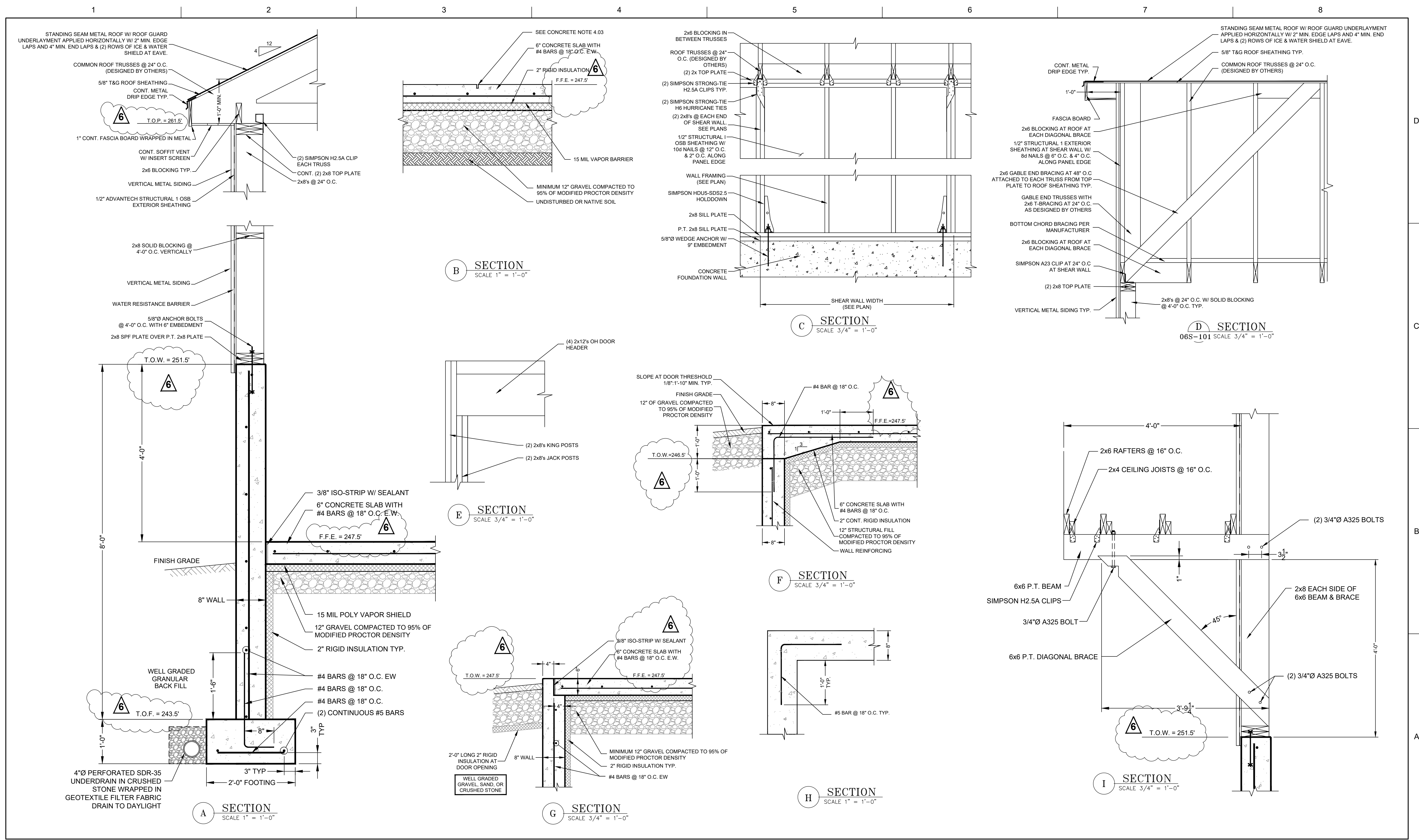
**ROOF FRAMING PLAN**  
SCALE 3/16" = 1'-0"



ISSUE	DATE	DESCRIPTION
△	8/20/2024	ADD. 6
	11/30/2023	ISSUED FOR BID

PROJECT MANAGER	BEM
PROJECT NUMBER	10353741

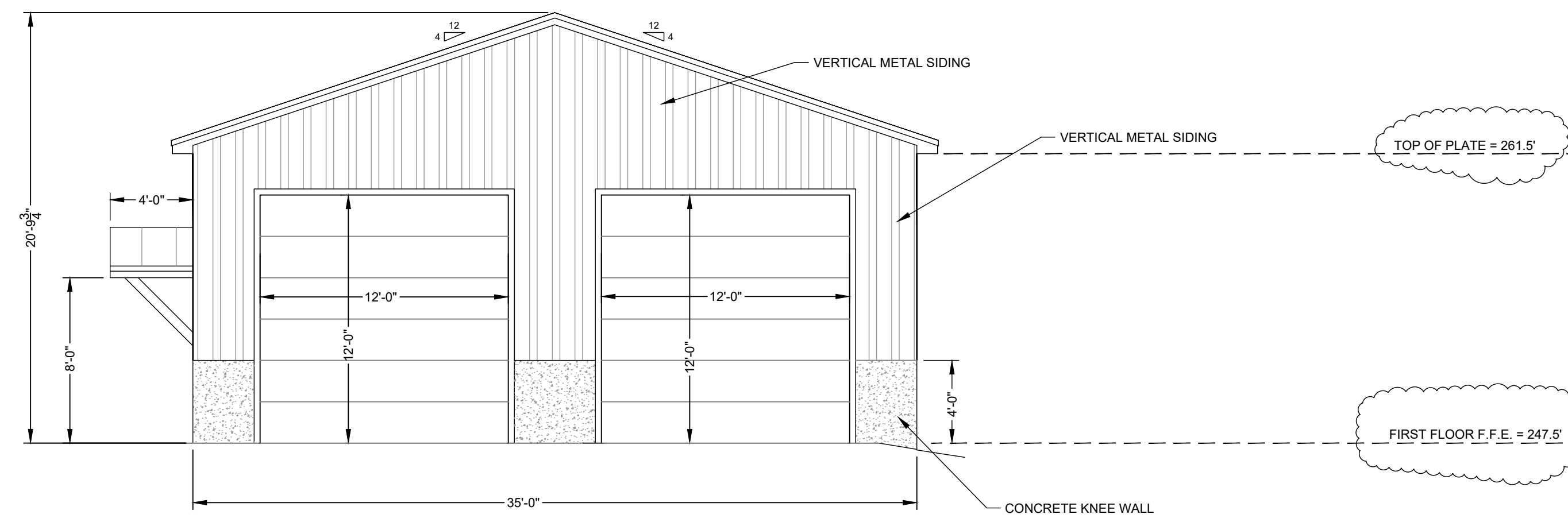




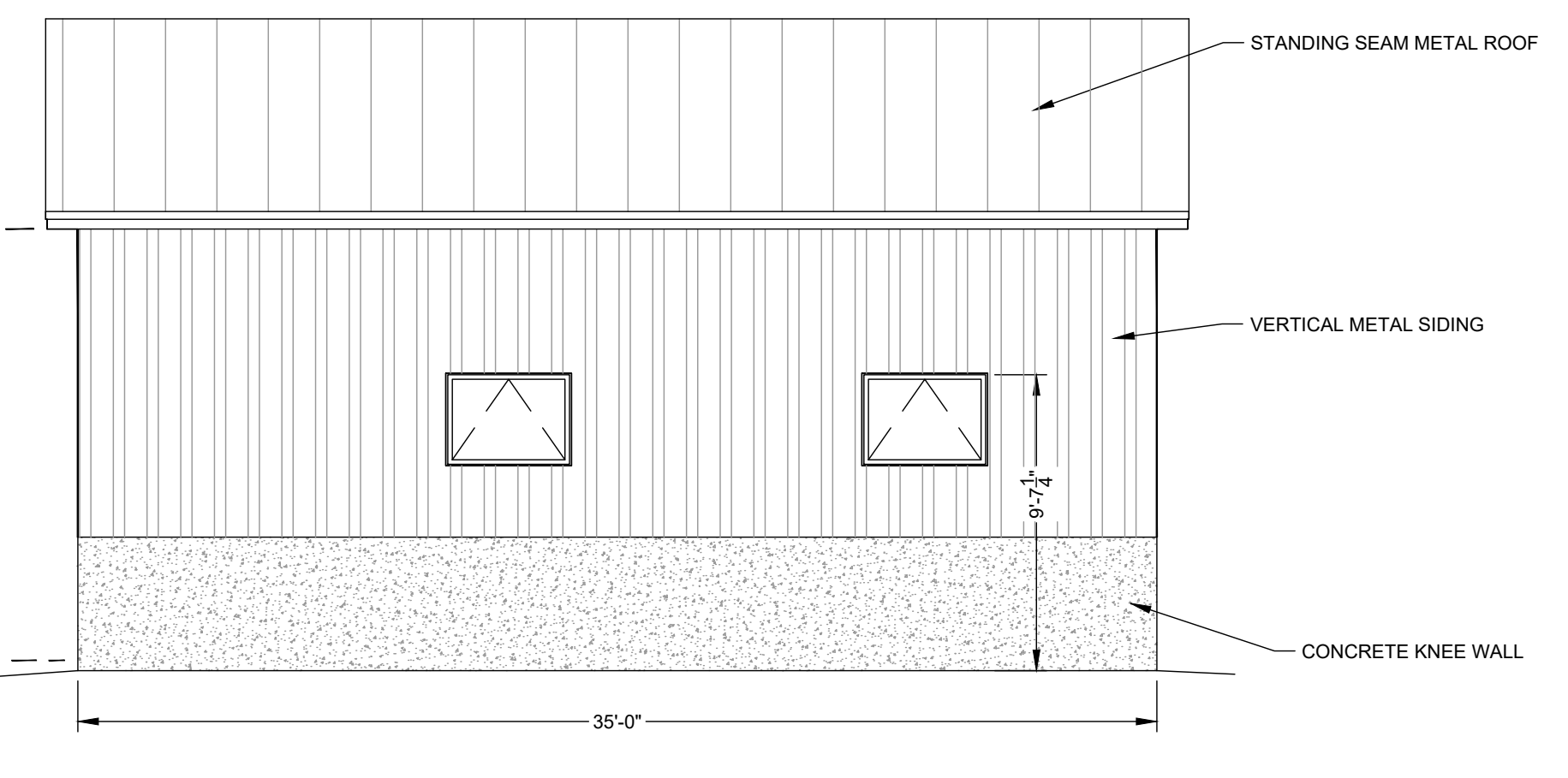
ISSUE	DATE	DESCRIPTION
ADD. 6	8/20/2024	
ISSUED FOR BID	11/30/2023	

PROJECT MANAGER	BEM
PROJECT NUMBER	10353741

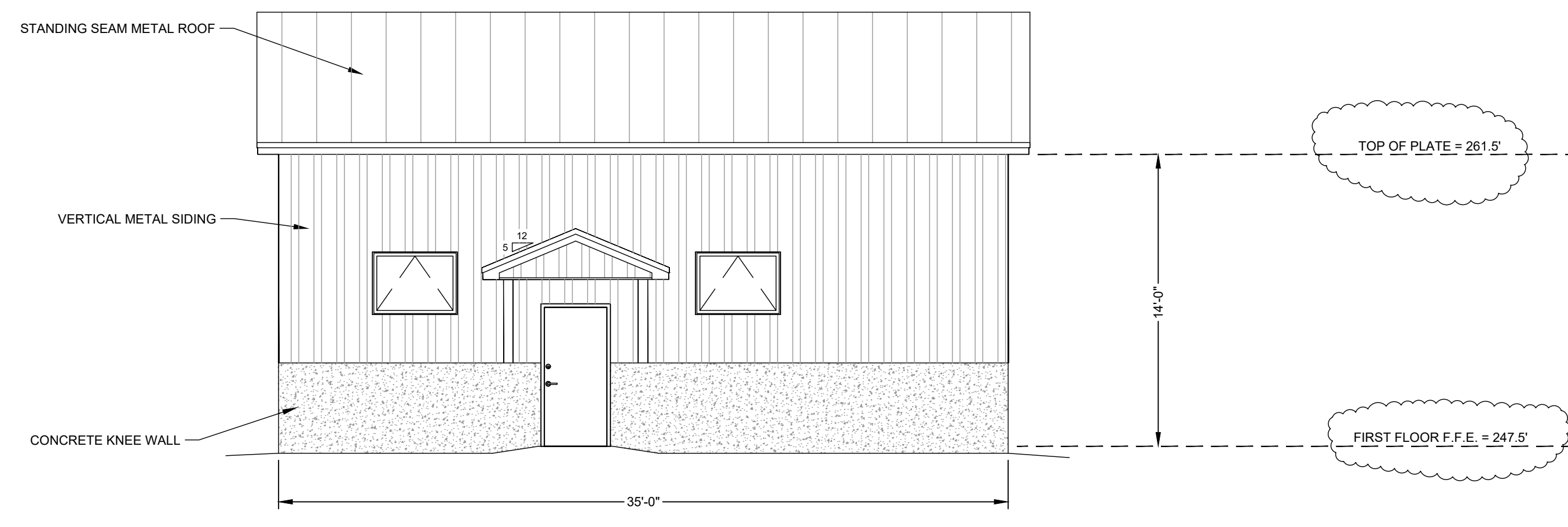




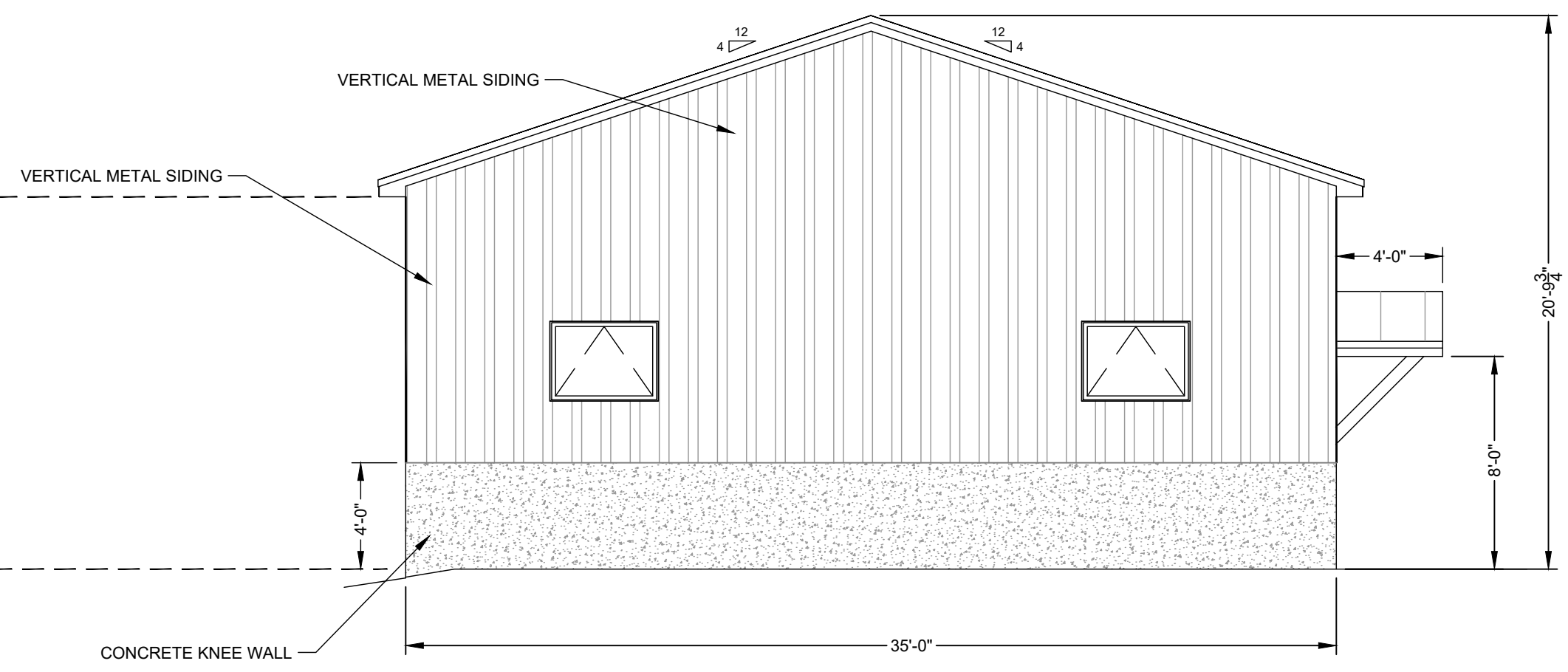
**EAST ELEVATION**  
SCALE 3/16" = 1'-0"



**NORTH ELEVATION**  
SCALE 3/16" = 1'-0"



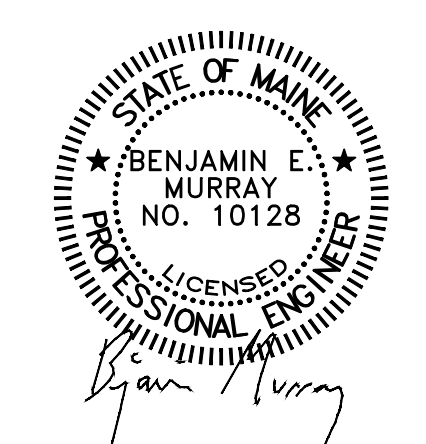
**SOUTH ELEVATION**  
SCALE 3/16" = 1'-0"



**WEST ELEVATION**  
SCALE 3/16" = 1'-0"

ISSUE	DATE	DESCRIPTION
ADD. 6	8/20/2024	
ISSUED FOR BID	11/30/2023	

PROJECT MANAGER	BEM
PROJECT NUMBER	10353741





DEPARTMENT ORDER

IN THE MATTER OF

MAINE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE	)	NATURAL RESOURCES PROTECTION ACT
New Gloucester, Cumberland County	)	FRESHWATER WETLAND ALTERATION
UPGRADE FISH HATCHERY, DREDGE RESERVOIR, STREAM WIDENING AND STABILIZATION	)	STREAM ALTERATION
L-18769-TB-B-N (approval)	)	ADJACENT TO A STREAM
L-18769-L6-C-N (approval)	)	
L-18769-2F-D-N (approval)	)	WATER QUALITY CERTIFICATION
	)	FINDINGS OF FACT AND ORDER

Pursuant to the provisions of 38 M.R.S. §§ 480-A–480-JJ, Section 401 of the Clean Water Act (33 U.S.C. § 1341), and Chapters 310 and 315 of Department rules, the Department of Environmental Protection (Department) has considered the application of MAINE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE (applicant) with the supportive data, agency review comments, and other related materials on file and FINDS THE FOLLOWING FACTS:

1. PROJECT DESCRIPTION:

A. History of Project: The fish hatchery facility was constructed in 1932, at which time Eddy Brook was dammed to form an 0.8-acre reservoir. The reservoir supplies two stepped raceways, running parallel to the brook, which provide a rearing environment for trout. The two raceway structures, one to the east and one to the west of the brook, were excavated and lined with clay. The system allowed gravity flow of water from the reservoir through the raceways and then discharged into the brook. The project site was renovated in the 1960s and again in the 1970s. The alterations of Eddy Brook, that included damming to create a reservoir, dredging, redirecting flow, narrowing the brook, as well as the alteration of associated freshwater wetlands on site occurred prior to 1987 and the enactment of the Natural Resources Protection Act (NRPA). In Department Order #L-18769-L6-A-N, dated September 30, 1994, the Department approved upgrades to the fish hatchery which included construction of three new hatchery buildings; rehabilitation of the dam and spillway; dredging of the reservoir; construction of a well water supply pipe crossing the brook, and the reconstruction of two roadway crossings of the brook. The project site is located on Fish Hatchery Road in the Town of New Gloucester.

B. Summary: The applicant proposes to upgrade the existing fish hatchery by maintenance dredging the existing dammed reservoir; filling the current clay lined raceways used for rearing fish; widening a previously altered portion of Eddy Brook; constructing two, 8,600 square-foot hatchery pavilions with accessways and utilities;

constructing a 1,231 square-foot storage garage with utilities, parking, and driveway; and constructing 3,000 square-foot effluent treatment structures.

The applicant is proposing to dredge approximately 9,000 square feet of the manmade reservoir that will remove 2,000 cubic yards of sediment to a depth of 243 feet with 3H:1V side slopes within the reservoir. Dredge material from the reservoir will be beneficially reused on site and combined with additional fill brought in from off-site to fill the existing east and west raceways that will be revegetated or repurposed to treat stormwater.

The applicant proposes to widen approximately 600 linear feet of Eddy Brook that was previously altered, by approximately five feet along the eastern stream bank, relocate approximately 600 linear feet of roadway crossing 10 feet to the east, stabilize 60 linear feet of the widened portion with riprap at a 3H:1V slope to stabilize eroding area and revegetate the remaining 540 linear feet.

The applicant is also proposing to permanently fill approximately 6,504 square feet of freshwater wetland, separate from Eddy Brook and reservoir alterations, and temporarily alter 550 square feet of freshwater wetland to construct the new hatchery pavilions. The effluent structures include a 3,000 square-foot gravel drive/pad, clarifier, drum filter building, and sludge storage within 25 feet of the brook. The project is shown on a set of plans, the first of which is titled "New Gloucester State Fish Hatchery, Phase III Facility Conversion, New Gloucester, Maine," prepared by HDR, Inc., dated November 30, 2023, with a latest revision date on any of the sheets of August 2, 2024.

The applicant submitted a Natural Resources Protection Act (NRPA) Permit by Rule Notification Form (PBR #78551) pursuant to Chapter 305 Permit by Rule Standards Sections 2, 3, 7, and 9 (06-096 Ch. 305, § 7, last amended June 8, 2012) for activities adjacent to a protected natural resource, intake pipes, outfall pipes, and utility crossing which was accepted by the Department on January 25, 2024.

Additionally, the applicant submitted a Stormwater Permit by Rule Notification Form (PBR #78552) for construction activities disturbing more than one acre of land, which was accepted by the Department on January 25, 2024. The project will meet the sedimentation control standards found in Chapter 500 Appendix A of the Department's Stormwater Management Rules. The applicant submitted a Notice of Intent (NOI# 78553) to comply with the standards and requirements of the Maine Construction General Permit which was accepted by the Department on January 25, 2024.

C. Current Use of the Site: The project parcel is approximately 144 acres in size and is identified as Lot 61 on Map 3 of the Town of New Gloucester's tax maps. The site of the proposed project is an existing fish hatchery, which draws water from and outlets to Eddy Brook, with buildings, roadways, two raceways, and a dammed reservoir.

2. EXISTING SCENIC, AESTHETIC, RECREATIONAL OR NAVIGATIONAL USES:

The Natural Resources Protection Act (NRPA), in 38 M.R.S. § 480-D(1), requires the applicant to demonstrate that the proposed project will not unreasonably interfere with existing scenic, aesthetic, recreational and navigational uses.

In accordance with Chapter 315, *Assessing and Mitigating Impacts to Scenic and Aesthetic Uses* (06-096 C.M.R. ch. 315, effective June 29, 2003), the applicant submitted a copy of the Department's Visual Evaluation Field Survey Checklist as Appendix A to the application along with a description of the property and the proposed project. The applicant also submitted several photographs of the proposed project site and surroundings. Department staff visited the project site on July 27, 2023, and March 18, 2024.

The proposed project is located along Eddy Brook, which is a scenic resource visited by the general public, in part, for the use, observation, enjoyment and appreciation of its natural and cultural visual qualities. The project will be visible from the resource; however, the project site is buffered on all sides by existing forest.

Currently, the shoreline and area adjacent to the brook is primarily developed with lawn, gravel drives, two raceways, two buildings, the water intake system adjacent to the brook and reservoir, and the effluent return system. The applicant proposes to seed and plant native vegetation within the filled raceways and along the new brook bank that will be altered. The dominant features of the landscape will be the proposed and existing hatchery buildings. The proposed project is consistent with the existing uses and visual impacts. The applicant must monitor all plantings, and the plantings must be replaced or maintained as necessary to achieve 85% survival after one full growing season.

The Department staff utilized the Department's Visual Impact Assessment Matrix in its evaluation of the proposed project and the Matrix showed an acceptable potential visual impact rating for the proposed project. Based on the information submitted in the application, the visual impact rating, and the site visits, the Department determined that the location and scale of the proposed activity is compatible with the existing visual quality and landscape characteristics found within the viewshed of the scenic resource in the project area.

The Department determined that based on the nature of the proposed project, its location, and the use of the facility, there are no existing recreational or navigational uses of the resource that would be unreasonably impacted. No uses outside those associated with the fish hatchery are anticipated to be affected by the project.

The Department finds that the proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational or navigational uses of the stream provided that the applicant monitors and maintains the plantings, as described above.

3. SOIL EROSION:

The NRPA, in 38 M.R.S. § 480-D(2), requires the applicant to demonstrate that the proposed project will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.

Dredging method will be mechanical and conducted from the upland with an excavator. The applicant intends to use cofferdams and diversion mats to prevent any sediment plume from entering Eddy Brook. Vegetation and woody debris will be separated from the dredged material and disposed of offsite at an approved disposal site. The dredge spoils will be dewatered in a temporary upland area or within the designated raceway fill area that will include double perimeter erosion control measures. After dewatering, the spoils material will be transferred to or spread within the raceway, where it will be permanently stabilized for beneficial reuse in accordance with the Department's rules. All work within Eddy Brook is to be completed in the dry and in tandem with the reservoir dredge while cofferdams stop the flow of water from the reservoir into the brook.

The applicant prepared an erosion control plan for the project. The applicant will utilize erosion and sedimentation controls in accordance with Maine Best Management Practices (BMPs). The applicant must notify the Department in writing one week prior to the construction start date.

The Department finds that the activity will not cause unreasonable erosion of soil or sediment nor unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment provided that written notice of the start date is provided to the Department as described above.

4. HABITAT CONSIDERATIONS:

The NRPA, in 38 M.R.S. § 480-D(3), requires the applicant to demonstrate that the proposed project will not unreasonably harm significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life.

The project site is known as the New Gloucester Fish Hatchery along Eddy Brook. Eddy Brook flows into a dammed reservoir where water is diverted into two raceways and back to Eddy Brook downstream. The reservoir consists of sandy and fine grain soils within the project area. Dredge spoils will be beneficially reused to fill the raceway as described in Finding 1.

According to the Department's Geographic Information System (GIS) database there are no mapped Essential or Significant Wildlife Habitats located at the site.

The Maine Department of Inland Fisheries and Wildlife (MDIFW) associated with NRPA technical review was asked for comments on the proposed project. Recommendations included allowing the mowed grass areas between the brook and access roads to revegetate and transition to scrub/shrub to create a more robust vegetated buffer. The review also recommended directing any plowed snow away from Eddy Brook and not using salt or other road treatment on site. The applicant agreed to these recommendations. In response to additional comments, the applicant provided revised plans and notes that included relocating the existing road crossing 10 feet to the east and revegetating the old road location to provide a wider vegetated buffer adjacent to the brook. Recommendations also included a more gradual planted slope as an alternative to riprap along the entire 600 linear feet of widened brook that the applicant updated to a 3H:1V vegetated slope along the majority of the east brook bank. The review also recommended that immediately prior to dewatering activity, onsite personnel relocate any fish, amphibians, or reptiles outside the project area and into adjacent waters. The applicant agreed to relocate any species encountered during dewatering. The applicant also agreed that in-water work only occur between June 1 and September 30 of any given year to protect wild brook and brown trout populations.

The Department finds that the activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine or marine fisheries or other aquatic life provided that in-water work only occur between June 1 and September 30 of any given year and that species encountered during dewatering are relocated as described above.

5. WATER QUALITY CONSIDERATIONS:

The NRPA, in 38 M.R.S. § 480-D(5), requires the applicant to demonstrate that the proposed project will not violate any state water quality law, including those governing the classification of the State's waters.

**Applicable Water Quality Standards:** The waters that are or may be affected by the proposed project are currently classified pursuant to 38 M.R.S. § 465, as Class B. Class B waters must be of such quality that they are suitable for the designated uses of recreation in and on the water, fishing, aquaculture, propagation and harvesting of shellfish, industrial process and cooling water supply, hydroelectric power generation, navigation and as habitat for fish and other estuarine and marine life. The habitat must be characterized as unimpaired pursuant to 38 M.R.S. § 465(3)(A).

As a part of this project, the applicant has incorporated effluent treatment for the hatchery, which includes a clarifier, drum filter building, and sludge storage. Previously, the water from the raceways was discharged directly into Eddy Brook, untreated. As discussed above, the waters affected by the proposed project are used to maintain and grow fish and as habitat for hatchery species and populations. In addition, the brook and reservoir are used for recreation, fishing, and the State fish hatchery program.



Based on the proposed project, the Department finds the added treatment of effluent from the hatchery will improve the water quality of Eddy Brook. Based on the historic use of a fish hatchery at this location and the construction methods proposed as described in Finding 3, the Department further finds that the proposed project will maintain and protect existing uses and the level of water quality necessary to protect those existing uses, will protect the existing water quality of affected waters, and will not result in a significant degradation of existing uses or water quality.

6. WETLANDS AND WATERBODIES PROTECTION RULES:

The applicant proposes to directly alter approximately 9,000 square feet of Eddy Brook from dredging the reservoir; altering 600 linear feet from widening Eddy Brook five feet; disturbing approximately 13,375 square feet of soil adjacent to the brook from the widening, riprapping 60 linear feet along the bank, relocating a road crossing, and constructing the effluent structures; and permanently filling 6,504 square feet and temporarily filling approximately 550 square feet of freshwater wetland to construct the new hatchery pavilions and accessways. Eddy Brook is a wetland of special significance as defined in the Department's Wetlands and Waterbodies Protection Rules, 06-096 C.M.R. ch. 310 (last amended November 11, 2018) § 4(A).

The *Wetlands and Waterbodies Protection Rules*, 06-096 C.M.R. ch. 310 (last amended November 11, 2018), interpret and elaborate on the Natural Resources Protection Act (NRPA) criteria for obtaining a permit. The rules guide the Department in its determination of whether a project's impacts would be unreasonable. A proposed project would generally be found to be unreasonable if it would cause a loss in wetland area, functions and values and there is a practicable alternative to the project that would be less damaging to the environment. Each application for a NRPA permit that involves a stream alteration and freshwater wetland alteration must provide an analysis of alternatives in order to demonstrate that a practicable alternative does not exist.

A. Avoidance. An applicant must submit an analysis of whether there is a practicable alternative to the project that would be less damaging to the environment and this analysis is considered by the Department in its assessment of the reasonableness of any impacts. Additionally, for activities proposed in, on, or over wetlands of special significance the activity must be among the types listed in Chapter 310, § 5(A) or a practicable alternative less damaging to the environment is considered to exist and the impact is unreasonable. The fish hatchery upgrades cannot practicably be located elsewhere because of the relation to the existing facility which was constructed prior to September 1, 1996; therefore, is among the activities specifically provided for pursuant to Chapter 310, § 5(A)(1)(d).

The applicant submitted an alternatives analysis for the proposed project completed by HDR, Inc., with the most recent revision dated August 2, 2024. The purpose of the project is to upgrade the fish hatchery by moving the rearing of trout from the existing raceways to the new hatchery pavilions and to treat the effluent produced from the rearing process water that is returned to Eddy Brook. This will improve the water quality

of Eddy Brook and reduce the loss of fish to predation. The applicant considered multiple alternatives to the project, including not dredging the dammed reservoir; however, the purpose of the dredge is to remove the sediments and vegetation that are potentially impacting the water quality and inhibiting water supply for the gravity fed hatchery facility. The applicant considered not filling the existing raceways; however, they no longer fulfill a purpose for the hatchery, they are structurally unstable, they can be converted to treat stormwater as swales, and once filled will be used to site the new gravity fed effluent structures. Maintaining and continuing to use the raceways will not improve the water quality of Eddy Brook, therefore, will not meet the project purpose. The applicant considered not constructing the effluent treatment structures; however, the purpose of these structures is to provide water quality treatment to the gravity fed water that circulates through the hatchery system. Previously, water entered the raceways that were filled with the reared fish and exited back into the stream, untreated. Not constructing the effluent structures will not meet the purpose of the overall project to improve the water quality of Eddy Brook. Lastly, the applicant considered not widening Eddy Brook; however, the brook is currently constricted and prone to overtopping due to previously constructed building along the bank that was used in the egg incubation process. Without taking measures to alleviate the hydraulic constriction, the proposed waste management facilities may not function as designed. The applicant determined that there is no other practicable alternative to the proposed project that meets the project goals and avoids impacts to the resource.

B. Minimal Alteration. In support of an application and to address the analysis of the reasonableness of any impacts of a proposed project, an applicant must demonstrate that the amount of brook, freshwater wetland, and area adjacent to the brook to be altered will be kept to the minimum amount necessary for meeting the overall purpose of the project. The applicant has minimized impacts to the brook by reducing the amount of riprap to armor the widened bank from 600 linear feet to 60 linear feet. Impacts to the area within 25 feet of the brook have been minimized by citing most of the other components proposed for the project outside of this area except for the proposed and associated structures that require gravity flow from the brook. The applicant stated that the project minimizes impacts to resources to the greatest extent practicable.

C. Compensation. In accordance with Chapter 310, § 5(C)(6)(b), compensation may be required to achieve the goal of no net loss of freshwater wetland functions and values. This project will not result in over 15,000 square feet of cumulative fill in a freshwater wetland; however, it will alter more than 300 feet of shoreline along Eddy Brook. The applicant provided a Functional Assessment prepared by HDR, Inc., and dated January 10, 2024, which described the wetland functions and values within the project area and of Eddy Brook. The assessment indicates that below the dam, and within the project area, the substrate of Eddy Brook is dominated by sand and gravel, has been channelized and is bordered by relatively steep fill slopes, with some previously riprapped sections. This section of the brook within the project site was altered during the original construction of the facility in 1932 as well as during routine maintenance and expansions prior to the enactment of NRPA. The brook within the project area had been dammed to create a reservoir and dredged at least once since construction of the facility. Similarly, any

previous freshwater wetland impacts on the parcel occurred prior to the NRPA. Further, the proposed project will not have an adverse impact on wildlife habitat as determined by MDIFW. For these reasons, the Department waives the compensation requirement in accordance with Chapter 310, § 5(C)(7).

The Department finds that the applicant has avoided and minimized freshwater wetland and stream impacts to the greatest extent practicable, and that the proposed project represents the least environmentally damaging alternative that meets the overall purpose of the project.

7. OTHER CONSIDERATIONS:

The proposed project is under review by the Division of Solid Waste Management, Bureau of Remediation and Waste Management application #S-22598-W3-A-N. Additionally, the fish hatchery has a Maine Pollution Discharge Elimination Permit (#ME0001040) and a Maine Waste Discharge License (#W002030-6F-G-R), issued by the Division of Water Quality Management. The license and permit from the Water Bureau require the applicant to monitor the daily flow, total suspended solids, dissolved oxygen, total phosphorus, and Formalin in the discharged effluent and to monitor the upstream and downstream total phosphorus concentration of Eddy Brook.

The Department finds, based on the design, proposed construction methods, and location, the proposed project will not inhibit the natural transfer of soil from the terrestrial to the marine environment, will not interfere with the natural flow of any surface or subsurface waters, and will not cause or increase flooding. The proposed project is not located in a coastal sand dune system, is not a crossing of an outstanding river segment.

BASED on the above findings of fact, and subject to the conditions listed below, the Department makes the following conclusions pursuant to 38 M.R.S. §§ 480-A–480-JJ and Section 401 of the Clean Water Act (33 U.S.C. § 1341):

- A. The proposed activity will not unreasonably interfere with existing scenic, aesthetic, recreational, or navigational uses provided that the applicant monitors and maintains vegetation as described in Finding 2.
- B. The proposed activity will not cause unreasonable erosion of soil or sediment provided that the applicant provides notification to the Department as described in Finding 3.
- C. The proposed activity will not unreasonably inhibit the natural transfer of soil from the terrestrial to the marine or freshwater environment.
- D. The proposed activity will not unreasonably harm any significant wildlife habitat, freshwater wetland plant habitat, threatened or endangered plant habitat, aquatic or adjacent upland habitat, travel corridor, freshwater, estuarine, or marine fisheries or other

aquatic life provided that in-water work is limited to between June 1 and September 30 of any given year and relocation of species is conducted as discussed in Finding 4.

E. The proposed activity will not unreasonably interfere with the natural flow of any surface or subsurface waters.

F. The proposed activity will not violate any state water quality law including those governing the classifications of the State's waters.

G. The proposed activity will not unreasonably cause or increase the flooding of the alteration area or adjacent properties.

H. The proposed activity is not on or adjacent to a sand dune.

I. The proposed activity is not on an outstanding river segment as noted in 38 M.R.S. § 480-P.

THEREFORE, the Department APPROVES the above noted application of MAINE DEPARTMENT OF INLAND FISHERIES AND WILDLIFE to upgrade an existing fish hatchery as described in Finding 1, SUBJECT TO THE ATTACHED CONDITIONS, and all applicable standards and regulations:

1. Standard Conditions of Approval, a copy attached.
2. The applicant shall take all necessary measures to ensure that its activities or those of its agents do not result in measurable erosion of soil on the site during the construction of the project covered by this approval.
3. Severability. The invalidity or unenforceability of any provision, or part thereof, of this License shall not affect the remainder of the provision or any other provisions. This License shall be construed and enforced in all respects as if such invalid or unenforceable provision or part thereof had been omitted.
4. The applicant shall monitor the plantings and the plantings must be replaced or maintained as necessary to achieve 85% survival after one full growing season.
5. The applicant shall provide written notice to the Department within one week of the construction start date.
6. In-water work shall be limited to only occur between June 1 and September 30 of any given year.
7. During construction, onsite personnel must relocate any fish, amphibians, or reptiles encountered from the dewatering activity outside the project area and into adjacent waters.

THIS APPROVAL DOES NOT CONSTITUTE OR SUBSTITUTE FOR ANY OTHER REQUIRED STATE, FEDERAL OR LOCAL APPROVALS NOR DOES IT VERIFY COMPLIANCE WITH ANY APPLICABLE SHORELAND ZONING ORDINANCES.

DONE AND DATED IN AUGUSTA, MAINE, THIS 21<sup>ST</sup> DAY OF AUGUST, 2024.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

BY:   
For: Melanie Loyzim, Commissioner

PLEASE NOTE THE ATTACHED SHEET FOR GUIDANCE ON APPEAL PROCEDURES.

AAS/L18769BNCNDN/ATS#91923,92742,92743

**FILED**  
August 21<sup>st</sup>, 2024  
State of Maine  
Board of Environmental Protection



## Natural Resources Protection Act (NRPA) Standard Conditions

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THE FOLLOWING STANDARD CONDITIONS SHALL APPLY TO ALL PERMITS GRANTED UNDER THE NATURAL RESOURCES PROTECTION ACT, 38 M.R.S. §§ 480-A ET SEQ., UNLESS OTHERWISE SPECIFICALLY STATED IN THE PERMIT.

- A. Approval of Variations From Plans. The granting of this permit is dependent upon and limited to the proposals and plans contained in the application and supporting documents submitted and affirmed to by the applicant. Any variation from these plans, proposals, and supporting documents is subject to review and approval prior to implementation.
- B. Compliance With All Applicable Laws. The applicant shall secure and comply with all applicable federal, state, and local licenses, permits, authorizations, conditions, agreements, and orders prior to or during construction and operation, as appropriate.
- C. Erosion Control. The applicant shall take all necessary measures to ensure that his activities or those of his agents do not result in measurable erosion of soils on the site during the construction and operation of the project covered by this Approval.
- D. Compliance With Conditions. Should the project be found, at any time, not to be in compliance with any of the Conditions of this Approval, or should the applicant construct or operate this development in any way other the specified in the Application or Supporting Documents, as modified by the Conditions of this Approval, then the terms of this Approval shall be considered to have been violated.
- E. Time frame for approvals. If construction or operation of the activity is not begun within four years, this permit shall lapse and the applicant shall reapply to the Board for a new permit. The applicant may not begin construction or operation of the activity until a new permit is granted. Reapplications for permits may include information submitted in the initial application by reference. This approval, if construction is begun within the four-year time frame, is valid for seven years. If construction is not completed within the seven-year time frame, the applicant must reapply for, and receive, approval prior to continuing construction.
- F. No Construction Equipment Below High Water. No construction equipment used in the undertaking of an approved activity is allowed below the mean high water line unless otherwise specified by this permit.
- G. Permit Included In Contract Bids. A copy of this permit must be included in or attached to all contract bid specifications for the approved activity.
- H. Permit Shown To Contractor. Work done by a contractor pursuant to this permit shall not begin before the contractor has been shown by the applicant a copy of this permit.



# DEP INFORMATION SHEET

## Appealing a Department Licensing Decision

**Dated: August 2021**

**Contact: (207) 314-1458**

### **SUMMARY**

This document provides information regarding a person's rights and obligations in filing an administrative or judicial appeal of a licensing decision made by the Department of Environmental Protection's (DEP) Commissioner.

Except as provided below, there are two methods available to an aggrieved person seeking to appeal a licensing decision made by the DEP Commissioner: (1) an administrative process before the Board of Environmental Protection (Board); or (2) a judicial process before Maine's Superior Court. An aggrieved person seeking review of a licensing decision over which the Board had original jurisdiction may seek judicial review in Maine's Superior Court.

A judicial appeal of final action by the Commissioner or the Board regarding an application for an expedited wind energy development ([35-A M.R.S. § 3451\(4\)](#)) or a general permit for an offshore wind energy demonstration project ([38 M.R.S. § 480-HH\(1\)](#)) or a general permit for a tidal energy demonstration project ([38 M.R.S. § 636-A](#)) must be taken to the Supreme Judicial Court sitting as the Law Court.

### **I. ADMINISTRATIVE APPEALS TO THE BOARD**

#### **LEGAL REFERENCES**

A person filing an appeal with the Board should review Organization and Powers, [38 M.R.S. §§ 341-D\(4\)](#) and [346](#); the Maine Administrative Procedure Act, 5 M.R.S. § [11001](#); and the DEP's [Rule Concerning the Processing of Applications and Other Administrative Matters \(Chapter 2\)](#), 06-096 C.M.R. ch. 2.

#### **DEADLINE TO SUBMIT AN APPEAL TO THE BOARD**

Not more than 30 days following the filing of a license decision by the Commissioner with the Board, an aggrieved person may appeal to the Board for review of the Commissioner's decision. The filing of an appeal with the Board, in care of the Board Clerk, is complete when the Board receives the submission by the close of business on the due date (5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board, as determined by the received time stamp on the document or electronic mail). Appeals filed after 5:00 p.m. on the 30<sup>th</sup> calendar day from which the Commissioner's decision was filed with the Board will be dismissed as untimely, absent a showing of good cause.

#### **HOW TO SUBMIT AN APPEAL TO THE BOARD**

An appeal to the Board may be submitted via postal mail or electronic mail and must contain all signatures and required appeal contents. An electronic filing must contain the scanned original signature of the appellant(s). The appeal documents must be sent to the following address.

Chair, Board of Environmental Protection  
c/o Board Clerk  
17 State House Station  
Augusta, ME 04333-0017  
[ruth.a.burke@maine.gov](mailto:ruth.a.burke@maine.gov)

The DEP may also request the submittal of the original signed paper appeal documents when the appeal is filed electronically. The risk of material not being received in a timely manner is on the sender, regardless of the method used.

At the time an appeal is filed with the Board, the appellant must send a copy of the appeal to: (1) the Commissioner of the DEP (Maine Department of Environmental Protection, 17 State House Station, Augusta, Maine 04333-0017); (2) the licensee; and if a hearing was held on the application, (3) any intervenors in that hearing proceeding. **Please contact the DEP at 207-287-7688 with questions or for contact information regarding a specific licensing decision.**

### **REQUIRED APPEAL CONTENTS**

A complete appeal must contain the following information at the time the appeal is submitted.

1. *Aggrieved status.* The appeal must explain how the appellant has standing to bring the appeal. This requires an explanation of how the appellant may suffer a particularized injury as a result of the Commissioner's decision.
2. *The findings, conclusions, or conditions objected to or believed to be in error.* The appeal must identify the specific findings of fact, conclusions of law, license conditions, or other aspects of the written license decision or of the license review process that the appellant objects to or believes to be in error.
3. *The basis of the objections or challenge.* For the objections identified in Item #2, the appeal must state why the appellant believes that the license decision is incorrect and should be modified or reversed. If possible, the appeal should cite specific evidence in the record or specific licensing criteria that the appellant believes were not properly considered or fully addressed.
4. *The remedy sought.* This can range from reversal of the Commissioner's decision on the license to changes in specific license conditions.
5. *All the matters to be contested.* The Board will limit its consideration to those matters specifically raised in the written notice of appeal.
6. *Request for hearing.* If the appellant wishes the Board to hold a public hearing on the appeal, a request for hearing must be filed as part of the notice of appeal, and it must include an offer of proof regarding the testimony and other evidence that would be presented at the hearing. The offer of proof must consist of a statement of the substance of the evidence, its relevance to the issues on appeal, and whether any witnesses would testify. The Board will hear the arguments in favor of and in opposition to a hearing on the appeal and the presentations on the merits of an appeal at a regularly scheduled meeting. If the Board decides to hold a public hearing on an appeal, that hearing will then be scheduled for a later date.
7. *New or additional evidence to be offered.* If an appellant wants to provide evidence not previously provided to DEP staff during the DEP's review of the application, the request and the proposed supplemental evidence must be submitted with the appeal. The Board may allow new or additional evidence to be considered in an appeal only under limited circumstances. The proposed supplemental evidence must be relevant and material, and (a) the person seeking to add information to the record must show due diligence in bringing the evidence to the DEP's attention at the earliest possible time in the licensing process; or (b) the evidence itself must be newly discovered and therefore unable to have been presented earlier in the process. Requirements for supplemental evidence are set forth in [Chapter 2 § 24](#).

### **OTHER CONSIDERATIONS IN APPEALING A DECISION TO THE BOARD**

1. *Be familiar with all relevant material in the DEP record.* A license application file is public information, subject to any applicable statutory exceptions, and is made accessible by the DEP. Upon request, the DEP will make application materials available to review and photocopy during normal working hours. There may be a charge for copies or copying services.



2. *Be familiar with the regulations and laws under which the application was processed, and the procedural rules governing the appeal.* DEP staff will provide this information upon request and answer general questions regarding the appeal process.
3. *The filing of an appeal does not operate as a stay to any decision.* If a license has been granted and it has been appealed, the license normally remains in effect pending the processing of the appeal. Unless a stay of the decision is requested and granted, a licensee may proceed with a project pending the outcome of an appeal, but the licensee runs the risk of the decision being reversed or modified as a result of the appeal.

## **WHAT TO EXPECT ONCE YOU FILE A TIMELY APPEAL WITH THE BOARD**

The Board will acknowledge receipt of an appeal, and it will provide the name of the DEP project manager assigned to the specific appeal. The notice of appeal, any materials admitted by the Board as supplementary evidence, any materials admitted in response to the appeal, relevant excerpts from the DEP's administrative record for the application, and the DEP staff's recommendation, in the form of a proposed Board Order, will be provided to Board members. The appellant, the licensee, and parties of record are notified in advance of the date set for the Board's consideration of an appeal or request for a hearing. The appellant and the licensee will have an opportunity to address the Board at the Board meeting. The Board will decide whether to hold a hearing on appeal when one is requested before deciding the merits of the appeal. The Board's decision on appeal may be to affirm all or part, affirm with conditions, order a hearing to be held as expeditiously as possible, reverse all or part of the decision of the Commissioner, or remand the matter to the Commissioner for further proceedings. The Board will notify the appellant, the licensee, and parties of record of its decision on appeal.

## **II. JUDICIAL APPEALS**

Maine law generally allows aggrieved persons to appeal final Commissioner or Board licensing decisions to Maine's Superior Court (see [38 M.R.S. § 346\(1\)](#); 06-096 C.M.R. ch. 2; [5 M.R.S. § 11001](#); and M.R. Civ. P. 80C). A party's appeal must be filed with the Superior Court within 30 days of receipt of notice of the Board's or the Commissioner's decision. For any other person, an appeal must be filed within 40 days of the date the decision was rendered. An appeal to court of a license decision regarding an expedited wind energy development, a general permit for an offshore wind energy demonstration project, or a general permit for a tidal energy demonstration project may only be taken directly to the Maine Supreme Judicial Court. See 38 M.R.S. § 346(4).

Maine's Administrative Procedure Act, DEP statutes governing a particular matter, and the Maine Rules of Civil Procedure must be consulted for the substantive and procedural details applicable to judicial appeals.

## **ADDITIONAL INFORMATION**

If you have questions or need additional information on the appeal process, for administrative appeals contact the Board Clerk at 207-287-2811 or the Board Executive Analyst at 207-314-1458 [bill.hinkel@maine.gov](mailto:bill.hinkel@maine.gov), or for judicial appeals contact the court clerk's office in which the appeal will be filed.

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**Note: This information sheet, in conjunction with a review of the statutory and regulatory provisions referred to herein, is provided to help a person to understand their rights and obligations in filing an administrative or judicial appeal. The DEP provides this information sheet for general guidance only; it is not intended for use as a legal reference. Maine law governs an appellant's rights.**

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**DEPARTMENT OF THE ARMY  
GENERAL PERMITS FOR  
THE STATE OF MAINE**

The New England District of the U.S. Army Corps of Engineers (Corps) hereby issues 23 General Permits (GPs), listed below, for activities subject to Corps jurisdiction in waters of the United States within the boundaries of the State of Maine including tribal lands, and in adjacent ocean waters to the seaward limit of the outer continental shelf. These GPs are issued in accordance with Corps regulations at 33 CFR 320 – 332 and specifically 33 CFR 325.2(e)(2). These GPs will protect the aquatic environment and the public interest while effectively authorizing activities that have no more than minimal individual and cumulative adverse environmental effects.

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**I. CORPS JURISDICTION**

1. Permits are required from the Corps for the following work:

a. The construction of any structure in, over, or under any navigable water of the U.S. (see 33 CFR 328), the excavating or dredging from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or capacity of such waters. The Corps regulates these activities under Section 10 of the Rivers and Harbors Act of 1899 (see 33 CFR 322);

b. The discharge of dredged or fill material and certain discharges associated with excavation into waters of the U.S. including wetlands. The Corps regulates these activities under Section 404 of the Clean Water Act (see 33 CFR 323); and

c. The transportation of dredged material for the purpose of disposal in the ocean. The Corps regulates these activities under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972 (see 33 CFR 324).

2. Related laws: Section 408 of the Rivers and Harbors Act of 1899, Section 401 of the Clean Water Act, Section 402 of the Clean Water Act, Section 307(c) of the Coastal Zone Management Act of 1972, Section 106 of the National Historic Preservation Act of 1966, Section 7 of the Endangered Species Act, the Fish and Wildlife Coordination Act of 1956, the Magnuson-Stevens Fishery Conservation and Management Act, Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, and Section 7(a) of the Wild and Scenic Rivers Act.

## II. GENERAL CRITERIA

1. In order for activities to qualify for these General Permits (GPs), they shall meet the GPs terms and eligibility criteria on pages 1-4, all applicable general conditions (GCs) in Section IV, and terms of the Maine General Permits in Section V. Any activity not specifically listed may still be eligible for authorization under these GPs; prospective permittees are advised to contact the Corps for specific eligibility determination.
2. Under these GPs, activities may qualify for the following:
  - **SELF-VERIFICATION (SV)**: Notification to the Corps is required at least two weeks before work commences; the Corps will acknowledge receipt and GP eligibility of the SV activity in writing.
  - **PRE-CONSTRUCTION NOTIFICATION (PCN)**: Notification to and written verification from the Corps is required. *No work under PCN may proceed until written verification from the Corps is received.*

The thresholds for activities eligible for SV and PCN are defined in the general conditions in Section IV and Maine General Permits in Section V.

3. Prospective permittees shall review:
  - a. Section I to determine if the activity requires Corps authorization.
  - b. Sections III , IV, and V to determine if the activity is eligible for authorization under these GPs, and specifically whether it is eligible for SV, or whether a PCN is required.
4. Prospective permittees are encouraged to contact the Corps with questions at any time (U.S. Army Corps of Engineers, Maine Project Office, 442 Civic Center Drive, Suite 350, Augusta, Maine 04330, ph. 207-623-8367). Pre-application meetings, whether arranged by the Corps or requested by a prospective permittee, are encouraged to facilitate the review of projects. Pre-application meetings and/or site visits help streamline the authorization process by alerting the prospective permittee to potentially time-consuming factors that are likely to arise during the evaluation of their project (e.g. avoidance, minimization and compensatory mitigation requirements, historic properties, endangered species, essential fish habitat, vernal pools, and dredging of contaminated sediments).
5. Permittees shall ensure compliance with all applicable GCs in Section IV and GPs in Section V. Non-compliance with these GPs and GCs may subject the permittee to criminal, civil, or administrative criminal penalties, and/or an ordered restoration, and/or the permit may be modified, suspended or revoked by the Corps.

### III. PROCEDURES

1. State Approvals. Applicants are responsible for applying for and obtaining any required state or local approvals. Federal and state jurisdiction and review criteria may differ in some instances. State permits may be required for specific projects regardless of the GP category.

In order for authorizations under these GPs to be valid, when any of the following state approvals or statutorily-required reviews is also required, the approvals shall be obtained prior to the commencement of work in Corps jurisdiction:

- Maine Department of Environmental Protection (DEP): Natural Resources Protection Act (NRPA) permit, including permit-by-rule (PBR) and general permit authorizations; Site Location of Development Act permit; Maine Waterway Development and Conservation Act permit; and Maine Hazardous Waste, Septage, and Solid Waste Management Act license.
- Maine Department of Agriculture, Conservation and Forestry: Land Use Planning Commission (LUPC) permit.
- Maine Department of Marine Resources: Aquaculture Leases and Licenses.
- Maine Department of Agriculture, Conservation and Forestry, Bureau of Parks and Lands, Submerged Lands: Submerged Lands Lease.

2. How to Obtain/Apply for Corps Authorization.

a. **Self-Verification (SV):** Prospective permittees shall confirm that the activity meets all the applicable terms and conditions of SV. Consultation with the Corps and/or other relevant federal and state agencies may be necessary to ensure compliance with the applicable general conditions (GCs) and related federal laws such as the National Historic Preservation Act (GC 15), the Endangered Species Act (GC 16), the Magnuson-Stevens Fishery Conservation and Management Act (GC 17), and the Wild and Scenic Rivers Act (GC 13). Activities that are eligible for SV are authorized under these GPs provided the prospective permittee has:

- i. Confirmed that the activity meets all applicable terms and conditions of SV.
- ii. Provided notifications to the State Historic Preservation Officer (SHPO) (the SHPO in the State of Maine is the Maine Historic Preservation Commission, or MHPC) and all five federally-recognized tribes in the State of Maine (Tribal Historic Preservation Officers, or THPOs) listed in Section VIII before submitting the SV to the Corps in order to be reviewed for the presence of historic, archeological, architectural, or tribal resources in the action area that the activity may affect (see GC 15). Prospective permittees are not required to wait for a response to their notifications before submitting the SV to the Corps.
- iii. At least two weeks before work is to commence, submitted to the Corps a Self-Verification Notification Form (SVNF, page 36) with all of the following attachments: location map, project plans, and an Official Species List of federally threatened and endangered species that may occur in the activity's action area and the email address of the person who generated the list (see GC 16).

***NOTE: A copy of a state permit application form may be an acceptable surrogate for the SVNF itself; however, the applicant shall not rely on the state permitting agency to provide the Corps a copy of their state permit application.***

b. **Pre-Construction Notification (PCN):** Notification to, and written verification from the Corps is required. For activities that do not qualify for SV or where otherwise required by the terms and conditions of the GPs, the prospective permittee shall submit a PCN and obtain written verification from the Corps before starting work in Corps jurisdiction. The Corps will coordinate review of all PCN activities with other federal and state agencies, as appropriate. The Corps will attempt to issue written verification of the PCN within 60 days of receiving a complete application.

All prospective permittees for PCN activities shall follow the instructions on found on pages 37 – 42, and in particular:

- i. Submit directly to the Corps application form *ENG Form 4345* (pages 40 – 42), or the surrogate state permit application form as noted above.

- ii. Provide project information outlined on pages 37 – 42 (Content of a Pre-Construction Notification).
- iii. Submit an Official Species List of federally threatened and endangered species that may occur in the activity's action area and the email address of the person who generated the list (GC 16).
- iv. Provide notifications to the SHPO (MHPC) and all five THPOs in the State of Maine listed in Section VIII before submitting the PCN to the Corps in order to be reviewed for the presence of historic, archeological, architectural, or tribal resources in the action area that the activity may affect (see GC 15). The PCN shall include documentation that MHPC and all of the THPOs were notified (a copy of the prospective permittee's cover letter or emails to MHPC and the THPOs is acceptable). Prospective permittees are not required to wait for a response to their notifications before submitting a PCN to the Corps.

**c. Individual Permit (IP):** Projects that are not eligible for these GPs require an IP (33 CFR 325.5(b)) and prospective permittees shall submit an application directly to the Corps. These GPs do not affect the Corps IP review process or activities exempt from Corps regulation. For general information regarding IPs prospective permittees are encouraged to contact the Corps. ***In addition, the Corps retains discretionary authority on a case-by-case basis to elevate GP-eligible activities to an IP based on concerns for the aquatic environment or for any other factor of the public interest (33 CFR 320.4(a)). Whenever the Corps notifies a prospective permittee that an IP is required, no work in Corps jurisdiction may be conducted until the Corps issues the required authorization in writing indicating that the work may proceed.***

**d. Emergency Situations:** Contact the Corps immediately in the event of an emergency situation for information on the verification process. Emergency situations are limited to sudden, unexpected occurrences that could potentially result in an unacceptable hazard to life, a significant loss of property, or an immediate, unforeseen, and significant economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process an application under standard procedures. Emergency work is subject to the same terms and conditions of these GPs as non-emergency work, and similarly, must qualify for authorization under these GPs; otherwise an IP is required. The Corps will work with all applicable agencies to expedite verification according to established procedures in emergency situations.

#### **IV. GENERAL CONDITIONS**

An activity is authorized under the General Permits (GPs) only if that activity and the permittee satisfy all of the applicable GPs terms and following general conditions (GCs):

1. Federal Jurisdiction.
2. Minimal Direct, Secondary and Cumulative Effects.
3. Other Permits.
4. Water Quality and Coastal Zone Management.
5. Fills Within 100-Year Floodplains.
6. Discretionary Authority.
7. Single and Complete Project.
8. Use of Multiple General Permits.
9. Mitigation (Avoidance, Minimization, and Compensatory Mitigation).
10. Corps Projects and Property.
11. Navigation.
12. National Lands.
13. Wild and Scenic Rivers.
14. St. John/St. Croix Rivers.
15. Historic Properties.
16. Federal Threatened and Endangered Species.
17. Essential Fish Habitat.
18. Aquatic Life Movements and Management of Water Flows.
19. Spawning, Breeding, and Migratory Areas.
20. Vernal Pools.
21. Restoration of Special Aquatic Sites (Including Wetland Areas).
22. Invasive and Other Unacceptable Species.
23. Soil Erosion, Sediment, and Turbidity Controls.
24. Time-of-Year Work Windows/Restrictions.
25. Pile Driving and Pile Removal in Navigable Waters.
26. Temporary Fill.
27. Heavy Equipment in Wetlands or Mudflats.
28. Bank and Shoreline Stabilization Including Living Shorelines.
29. Stream Work and Crossings, and Wetland Crossings.
30. Utility Line Installation and Removal.
31. Storage of Seasonal Structures.
32. Aquaculture.
33. Permit(s)/Authorization Letter On-Site.
34. Inspections.
35. Maintenance.
36. Federal Liability.
37. Property Rights.
38. Previously Authorized Activities.
39. Transfer of GP Verifications.
40. Modification, Suspension, and Revocation.
41. Special Conditions.
42. False or Incomplete Information.
43. Abandonment.
44. Enforcement Cases.
45. Duration of Authorization.

## **1. Federal Jurisdiction.**

a. Applicability of these GPs shall be evaluated with reference to federal jurisdictional boundaries (e.g. mean high water mark, high tide line, ordinary high water mark, and wetland boundary). Activities shall be evaluated with reference to “waters of the U.S.” under the Clean Water Act (33 CFR 328) and “navigable waters of the U.S.” under Section 10 of the Rivers and Harbors Act of 1899 (33 CFR 329). Prospective permittees are responsible for ensuring that the boundaries used satisfy the federal criteria defined at 33 CFR 328 – 229. These sections prescribe the policy, practice and procedures to be used in determining the extent of the Corps jurisdiction. Note: Waters of the U.S. includes all waters pursuant to 33 CFR 328.3(a), and in adjacent wetlands as that term is defined in 33 CFR 328.3(c).

b. Permittees shall identify on project plans wetlands, other special aquatic sites (SAS) including vegetated shallows (or submerged aquatic vegetation, SAV) and mudflats, and other waters, such as lakes and ponds, and perennial and intermittent streams on the project site. Wetlands shall be delineated in accordance with the Corps of Engineers Wetlands Delineation Manual and the most recent regional supplement pertaining to the State of Maine. GP-eligible activities may utilize wetland determinations conducted by State of Maine staff in-lieu of a wetland delineation. For activities located in Essential Fish Habitat (GC 17), permittees shall also identify on project plans natural rocky habitats and shellfish areas in order to satisfy the Magnuson-Stevens Fishery Conservation and Management Act.

**2. Minimal Direct, Secondary and Cumulative Effects.** To be eligible and subsequently authorized by these GPs, an activity shall result in no more than minimal individual and cumulative effects on the aquatic environment as determined by the Corps in accordance with the criteria listed within these GPs and GCs. This may require project modifications involving avoidance, minimization, or compensatory mitigation for unavoidable impacts to ensure that the net adverse effects of an activity are no more than minimal.

**3. Other Permits.** Permittees shall obtain other Federal, State, or local authorizations as required by law. Permittees are responsible for applying for and obtaining all required State of Maine or local approvals including a Flood Hazard Development Permit issued by the town/city. Work that is not regulated by the State of Maine, but is subject to Corps jurisdiction, may still be eligible for authorization under these GPs.

## **4. Water Quality and Coastal Zone Management.**

a. Permittees shall satisfy any conditions imposed by the State of Maine and EPA, where applicable, in their Clean Water Act Section 401 Water Quality Certification (WQC) for these GPs, or in any Individual Section 401 WQC. See Section VIII for state-specific contact info and to determine if any action is required to obtain a 401 WQC. The Corps may require additional water quality management measures to ensure that the authorized activity does not cause or contribute to a violation of water quality standards. All projects authorized by these GPs shall be designed, constructed and operated to minimize or eliminate the discharge of pollutants.

b. Permittees shall satisfy any additional conditions imposed by the State of Maine in their Coastal Zone Management (CZM) Act of 1972 consistency concurrences for these GPs, or in any Individual CZM consistency concurrences. The Corps may require additional measures to ensure that the authorized activity is consistent with state coastal zone management requirements.

**5. Fills Within 100-Year Floodplains.** The activity shall comply with applicable Federal Emergency Management Agency (FEMA) approved State of Maine or municipal floodplain management requirements. Permittees should contact FEMA and/or the State of Maine Floodplain Management Program regarding floodplain management requirements (see Section VIII for Federal and state-specific contact info).

**6. Discretionary Authority.** Notwithstanding compliance with the terms and conditions of these GPs, the Corps retains discretionary authority to require a PCN or IP review based on concerns for the aquatic environment or for any other factor of the public interest (see 33 CFR 320.4(a)). This authority is invoked on a case-by-case basis whenever the Corps determines that the potential consequences of the proposal warrant a higher level of review based on the concerns stated above. This authority may be invoked for projects that may contribute to cumulative environmental impacts that are more than minimal or if there is a special resource or concern associated with a particular project.

**7. 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. These GPs shall not be used for piecemeal work and shall be applied to single and complete projects and as such, the same GP shall not be used more than once for the same single and complete project.

a. For non-linear projects, a single and complete project shall have independent utility. 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.

b. Unless the Corps determines the activity has independent utility, all components of a single project and/or all planned phases of a multi-phased project (e.g., subdivisions should include all work such as roads, utilities, and lot development) shall be treated together as constituting one single and complete project. If any component of a single and complete project requires a PCN, the entire single and complete project shall be reviewed under PCN.

c. For linear projects such as power lines or pipelines with multiple crossings, a “single and complete project” is all crossings of a single water of the U.S. (i.e. 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.

**8. Use of Multiple General Permits.** The use of more than one GP for a single and complete project is prohibited, except when the acreage loss of waters of the U.S. authorized by the GPs does not exceed the acreage limit of the GPs with the highest specified acreage limit. For example, if a road crossing over waters is constructed under GP 10, with an associated utility line crossing authorized by GP 9, if the maximum acreage loss of waters of the U.S. for the total project is  $\geq 3$  acres it shall be evaluated as an IP.

**9. Mitigation (Avoidance, Minimization, and Compensatory Mitigation).**

a. Activities shall 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 to ensure that adverse effects to the aquatic environment are no more than minimal.

b. Compensatory mitigation for unavoidable impacts to waters of the U.S., including direct, secondary and temporal loss, will generally be required for permanent impacts that exceed the SV limits (SV limits are detailed in Section V), and may be required for temporary impacts that exceed the SV limits, to offset unavoidable impacts which remain after all appropriate and practicable avoidance and minimization has been achieved and to ensure that the adverse effects to the aquatic environment are no more than minimal. Proactive restoration projects or temporary impact work with no secondary effects may generally be excluded from this requirement.

c. Mitigation proposals shall follow the guidelines found in the Compensatory Mitigation for Losses of Aquatic Resources; Final Rule April 10, 2008; 33 CFR 332 (which can be found at: [www.nae.usace.army.mil/Missions/Regulatory/Mitigation](http://www.nae.usace.army.mil/Missions/Regulatory/Mitigation) under “Compensatory Mitigation for Losses of Aquatic Resources, 33 CFR 332 (Compensatory Mitigation Rule)”) and any other regulation. Permittees considering the use of a monetary payment *in-lieu* of permittee-responsible mitigation as compensation for unavoidable impacts to waters of the U.S. in the State of Maine may utilize the Maine Natural Resources Conservation Program (MNRCP). Information regarding this compensatory program can be found at: [www.mnrpc.org](http://www.mnrpc.org) For unavoidable jurisdictional impacts affecting federally-endangered Atlantic salmon and/or its critical habitat, permittees may be required to compensate for the impacts by utilizing the Maine Atlantic Salmon Restoration and Conservation Program. Information regarding this *in-lieu-fee* compensatory program can be found at: [www.maine.gov/dmr/science-research/searun/programs/ilffacts.html](http://www.maine.gov/dmr/science-research/searun/programs/ilffacts.html)

**10. Corps Projects and Property.**

a. Corps projects and property can be found at: [www.nae.usace.army.mil/Missions/Civil-Works](http://www.nae.usace.army.mil/Missions/Civil-Works)

b. In addition to any authorization under these GPs, prospective permittees shall contact the Corps Real Estate Division at (978) 318-8585 for work occurring on or potentially affecting Corps properties and/or Corps-controlled easements to initiate reviews and determine what real estate instruments are necessary to perform work. Permittees may not commence work on Corps properties and/or Corps-controlled easements until they



have received any required Corps real estate documents evidencing site-specific permission to work.

c. Any proposed temporary or permanent modification or use of a Federal project (including but not limited to a levee, dike, floodwall, channel, anchorage, breakwater, seawall, bulkhead, jetty, wharf, pier, or other work built or maintained but not necessarily owned by the United States), which may obstruct or impair the usefulness of the Federal project in any manner, is not eligible for SV and requires review and approval by the Corps pursuant to 33 USC 408 (Section 408).

d. A PCN is required for all work in, over, under, or within a distance of three times the authorized depth of a Corps Federal Navigation Project (FNP) and may require permission under Section 408.

e. Any structure or work that extends closer to the horizontal limits of any FNP than a distance of three times the project's authorized depth shall be subject to removal at the owner's expense prior to any future Corps dredging or the performance of periodic hydrographic surveys.

f. Where a Section 408 permission is applicable, written verification for the PCN will not be issued prior to the decision on the Section 408 permission request.

## 11. Navigation

a. There shall be no unreasonable interference with general navigation by the existence or use of the activity authorized herein, and no attempt shall be made by the permittee to prevent the full and free use by the public of all navigable waters at or adjacent to the activity authorized herein.

b. Work in, over, under, or within a distance of three times the authorized depth of an FNP shall specifically comply with GC 10.

c. Any safety lights and/or signals prescribed by the U.S. Coast Guard, State of Maine or municipality, through regulations or otherwise, shall be installed and maintained at the permittee's expense on authorized facilities in navigable waters of the U.S.

d. 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.

**12. National Lands.** Activities that impinge upon the value of any National Lands or Federal Properties including but not limited to a National Wildlife Refuge, National Forest, or any area administered by the National Park Service, U.S. Fish and Wildlife Service or U.S. Forest Service are not eligible for SV and require PCN.

## 13. Wild and Scenic Rivers.

a. The following activities in designated rivers of the National Wild and Scenic River (NWSR) System, or in a river designated by Congress as a "study river" for possible inclusion in the system, require a PCN unless the National Park Service has determined in writing to the prospective permittee that the proposed work will not adversely affect the NWSR designation or study status:

- i. Activities that occur in NWSR segments, in and 0.25 miles up or downstream of NWSR segments, or in tributaries within 0.25 miles of NWSR segments.
- ii. Activities that occur in wetlands within 0.25 miles of NWSR segments.
- iii. Activities that have the potential to alter free-flowing characteristics in NWSR segments.

b. As of October 14, 2020, National Wild and Scenic Rivers and congressional study rivers in Maine include: the Allagash River beginning at Telos Dam continuing to Allagash checkpoint at Eliza Hole Rapids, approximately 3 miles upstream of the confluence with the St. John River (length = 92 92.5 miles); and 11.25 miles of the York River, in the State of Maine, from its headwaters at York Pond to the mouth of the river at York Harbor, plus tributaries (the York River is currently under study).

**14. St. John/St. Croix Rivers.** A PCN is required for any work within the Saint John and Saint Croix River basins that requires approval of the International Joint Commission. In addition, a PCN is required if any temporary or permanent use, obstruction or diversion of international boundary waters could affect the natural flow or levels of waters on the Canadian side of the line; or if any construction or maintenance of remedial works,

protective works, dams, or other obstructions in waters downstream from boundary waters could raise the natural level of water on the Canadian side of the boundary.

## **15. Historic Properties.**

a. No undertaking shall cause effects (as defined at 33 CFR 325 Appendix C and 36 CFR 800) on properties listed on, determined to be eligible for listing on, or potentially eligible for listing on the National Register of Historic Places, including previously unknown historic properties within the permit area, unless the Corps or another federal action agency has satisfied the consultation requirements of Section 106 of the National Historic Preservation Act (NHPA). The majority of historic properties are not listed on the National Register of Historic Places and may require identification and evaluation by qualified historic preservation and/or archeological consultants in coordination with the Corps and the State Historic Preservation Officer (SHPO) (the SHPO in the State of Maine is the Maine Historic Preservation Commission, MHPC) and/or the five federally-recognized tribes in the State of Maine (Tribal Historic Preservation Officers, or THPOs). The MHPC, the THPOs, and the National Register of Historic Places can assist with locating information on:

- i. Previously identified historic properties; and
- ii. Areas with potential for the presence of historic resources, which may require identification and evaluation by qualified historic preservation and/or archeological consultants in consultation with the Corps and MHPC and/or the THPO(s).

b. For activities eligible for these GPs, permittees shall ensure that the activity will not cause effects as stated above in 15(a). In order to comply with this condition, both SV and PCN prospective permittees shall notify MHPC and all five THPOs for their identification of historic properties. MHPC and the THPOs will generally respond within 30 days of receiving the notification if they believe that the activity may have an adverse effect to historic properties. A PCN is required if an activity may have an adverse effect to historic properties. The PCN shall be submitted as soon as possible if a proposed activity may cause effects as stated above in 15(a) a to ensure that the Corps is aware of any potential effects of the proposed activity on any historic property to ensure all Section 106 requirements are met.

c. All PCNs shall:

- i. Show notification to MHPC and all five THPOs for their identification of historic properties;
- ii. State which historic properties may be affected by the proposed work or include a vicinity map indicating the location of the historic properties or the potential for the presence of historic properties; and
- iii. Include any available documentation from MHPC or the THPO(s) indicating that there are or are not historic properties affected.

d. The requirements to comply with Section 106 of the NHPA may be satisfied by a Programmatic Agreement (PA) or Programmatic Consultation (PC) with the Corps, New England District or another federal agency. New England District PAs and PCs are found at [www.nae.usace.army.mil/Missions/Regulatory](http://www.nae.usace.army.mil/Missions/Regulatory)

e. If the permittee discovers any previously unknown historic, cultural or archeological remains and artifacts while accomplishing the activity authorized by these permits, the permittee shall immediately notify the district engineer of what was found, and 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.

f. Federal agencies should follow their own procedures for complying with the requirements of Section 106 of the NHPA. Federal permittees shall provide the Corps with the appropriate documentation to demonstrate compliance with those requirements.

g. Federal and non-federal applicants should coordinate with the Corps before conducting any onsite archeological work (reconnaissance, surveys, recovery, etc.) requested by MHPC or the THPOs, as the Corps will determine the Permit Area for the consideration of historic properties based on 33 CFR 325 Appendix C. This is to ensure that work done is in accordance with Corps requirements.

## 16. Federal Threatened and Endangered Species.

- a. No activity is authorized by these GPs which:
  - i. 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 or proposed critical habitat of such species;
  - ii. “May affect” a listed species or critical habitat, unless Section 7 consultation addressing the effects of the proposed activity has been completed;
  - iii. Is “likely to adversely affect” a listed species or critical habitat unless Section 7 consultation has been completed by the Corps or another lead action agency in coordination with the Corps under the provisions of a Programmatic Agreement (PA) or Programmatic Consultation (PC); or
  - iv. Violates the ESA.

b. All prospective permittees shall attach to their SVNF or PCN an Official Species List obtained from the U.S. Fish and Wildlife Service’s Information for Planning and Consultation (IPaC) found at: <https://ecos.fws.gov/ipac> and provide the email address of the person who generated the list.

c. For proposed activities in tidal waters, prospective permittees should also refer to the National Oceanic and Atmospheric Administration (NOAA) Fisheries’ Section 7 Mapper for federally-listed species found at: <https://noaa.maps.arcgis.com/apps/webappviewer/index.html>

d. A PCN is required if a threatened or endangered species, a species proposed for listing as threatened or endangered, or designated or proposed critical habitat (all hereinafter referred to as “listed species or habitat”), as identified under the ESA, may be affected by the proposed work. An activity may remain eligible for SV if the only listed species affected is the northern long-eared bat (*Myotis septentrionalis*), and only after Section 7 consultation has been completed by the Corps under the 4(d) Rule Streamlined Consultation.

e. Federal agencies shall follow their own procedures for complying with the requirements of the ESA while ensuring that the Corps and any other federal action agencies are included in the consultation process.

f. Non-federal representatives designated by the Corps to conduct informal consultation or prepare a biological assessment shall follow the requirements in the designation document(s) and the ESA. Non-federal representatives shall also provide the Corps with the appropriate documentation to demonstrate compliance with those requirements. The Corps will review the documentation and determine whether it is sufficient to address ESA compliance for the GP activity, or whether additional ESA consultation is necessary.

g. The requirements to comply with Section 7 of the ESA may be satisfied by a Programmatic Agreement (PA) or Programmatic Consultation (PC) with the Corps, New England District or another federal agency. New England District PAs and PCs are found at: [www.nae.usace.army.mil/Missions/Regulatory](http://www.nae.usace.army.mil/Missions/Regulatory)

## 17. Essential Fish Habitat (EFH).

a. PCN activities in tidal waters and the following rivers and streams, including all tributaries to the extent that they are currently or were historically accessible for salmon migration, shall be reviewed for the potential to adversely affect EFH (activities meeting SV criteria have been determined to result in no more than minimal adverse effects to EFH and therefore need no additional review):

Androscoggin River	Aroostook River	Boyden River	Dennys River
Ducktrap River	East Machias River	Hobart Stream	Kennebec River
Machias River	Narraguagus River	Orland River	Passagassawaukeag River
Patten Stream	Penobscot River	Pleasant River	Presumpscot River
Saco River	Sheepscot River	St. Croix River	Tunk Stream
Union River			

b. Prospective permittees may be required to describe and identify potential adverse effects to EFH and should refer to the NOAA Fisheries’ EFH Mapper found at:

[www.fisheries.noaa.gov/resource/map/essential-fish-habitat-mapper](http://www.fisheries.noaa.gov/resource/map/essential-fish-habitat-mapper)

c. The requirements to comply with the Magnuson-Stevens Fishery Conservation and Management Act may be satisfied by a Programmatic Agreement (PA) or Programmatic Consultation (PC) with the Corps, New England District or another federal agency. New England District PAs and PCs are found at:

[www.nae.usace.army.mil/Missions/Regulatory](http://www.nae.usace.army.mil/Missions/Regulatory)

## **18. Aquatic Life Movements and Management of Water Flows.**

a. 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. Unless otherwise stated, activities permanently impounding water in a stream require a PCN to ensure impacts to aquatic life species are avoided and minimized. All permanent and temporary crossings of waterbodies and wetlands shall be:

- i. Suitably spanned, bridged, culverted, or otherwise designed and constructed to maintain low flows to sustain the movement of those aquatic species; and
- ii. Properly aligned and constructed to prevent bank erosion or streambed scour both adjacent to and inside the crossing.

b. To avoid adverse impacts on aquatic organisms, the low flow channel/thalweg shall remain unobstructed during periods of low flow, except when it is necessary to perform the authorized work.

c. For work in tidal waters, in-stream controls (e.g. cofferdams) should be installed in such a way as to not obstruct fish passage.

d. To the maximum extent practicable, the preconstruction 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 shall 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).

e. Activities that temporarily or permanently adversely impact upstream or downstream flood conditions require a PCN.

## **19. Spawning, Breeding, and Migratory Areas.**

a. Jurisdictional activities in waters of the U.S. such as certain excavations, discharges of dredged or fill material, and/or suspended sediment producing activities that provide value as fish migratory areas, fish and shellfish spawning or nursery areas, or amphibian and migratory bird breeding areas, during spawning or breeding seasons shall be avoided and minimized to the maximum extent practicable.

b. Jurisdictional activities in waters of the U.S. that provide value as breeding areas for migratory birds must be avoided to the maximum extent practicable. 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 the U.S. Fish and Wildlife's Maine Field Office (see Section VIII for contact info) 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. Vernal Pools.**

a. A PCN is required if a discharge of dredged or fill material is proposed within a vernal pool depression located within waters of the U.S.

b. GC 20(a) above does not apply to projects that are within a municipality that meets the provisions of a Corps-approved vernal pool Special Area Management Plan (SAMP) and are otherwise eligible for SV, and the applicant meets the requirements to utilize the vernal pool SAMP.

## **21. Restoration of Special Aquatic Sites (Including Wetland Areas).**

a. In areas of authorized temporary disturbance, if trees are cut they shall be cut at or above ground level and not uprooted in order to prevent disruption to the wetland soil structure and to allow stump sprouts to revegetate the work area, unless otherwise authorized.

b. The introduction or spread of invasive plant species in disturbed areas shall be controlled. If construction mats are to be used in areas of invasive plant species, they shall be thoroughly cleaned before use.

c. Wetland areas where permanent disturbance is not authorized shall be restored to their original condition and elevation. Original condition means protection and/or removal of existing soil and vegetation, and replacement back to the original location such that the original soil layering and vegetation schemes are

approximately the same, unless otherwise authorized. Restoration shall typically commence no later than the completion of construction.

d. Upon completion of construction, all areas of authorized disturbed wetland area shall be stabilized with a wetland seed mix containing only plant species native to New England and shall not contain any species listed in the “Invasive and Other Unacceptable Plant Species” Appendix K in the “New England District Compensatory Mitigation Guidance” found at: [www.nae.usace.army.mil/Missions/Regulatory/Mitigation](http://www.nae.usace.army.mil/Missions/Regulatory/Mitigation)

## 22. Invasive and Other Unacceptable Species.

a. The introduction or spread of invasive or other unacceptable plant or animal species on the project site or areas adjacent to the project site caused by the site work shall be avoided to the maximum extent practicable. For example, construction mats and equipment shall be thoroughly cleaned and free of vegetation and soil before and after use. The introduction or spread of invasive plant or animal species on the project site caused by the site work shall be controlled.

b. No cultivars, invasive or other unacceptable plant species may be used for any mitigation, bioengineering, vegetative bank stabilization or any other work authorized by these GPs. However, non-native species and cultivars may be used when it is appropriate and specified in a written verification, such as using *Secale cereale* (Annual Rye) to quickly stabilize a site. All PCNs shall justify the use of non-native species or cultivars.

c. For the purposes of these GPs, plant species that are considered invasive and unacceptable are provided in Appendix K “Invasive and Other Unacceptable Plant Species” of the most recent “New England District Compensatory Mitigation Guidance” and is found at: [www.nae.usace.army.mil/Missions/Regulatory/Mitigation](http://www.nae.usace.army.mil/Missions/Regulatory/Mitigation) The June 2009 “U.S. Army Corps of Engineers Invasive Species Policy” provides policy, goals and objectives and is located at [www.nae.usace.army.mil/Missions/Regulatory/Invasive-Species](http://www.nae.usace.army.mil/Missions/Regulatory/Invasive-Species) If an Invasive Species Control/Management Plan has been prepared it should be included with any SV or PCN.

## 23. Soil Erosion, Sediment, and Turbidity Controls.

a. Adequate sedimentation and erosion control management measures, practices and devices, such as phased construction, installation of sediment control barriers (i.e. silt fence, vegetated filter strips, geotextilesilt fences, erosion control mixes, hay bales or other devices) downhill of all exposed areas, retention of existing vegetated buffers, application of temporary mulching during construction, and permanent seeding and stabilization shall be installed and properly maintained to reduce erosion and retain sediment on-site during and after construction. They shall be capable of preventing erosion; of collecting sediment, suspended and floating materials; and of filtering fine sediment.

b. Temporary sediment control barriers shall be removed upon completion of work, but not until all disturbed areas are permanently stabilized. The sediment collected by these sediment barriers shall be removed and placed at an upland location and stabilized to prevent its later erosion into a waterway or wetland.

c. All exposed soil and other fills shall be permanently stabilized at the earliest practicable date.

**24. Time-of-Year Work (TOY) Windows/Restrictions.** In-water work shall be conducted during the following TOY work windows (work allowed) under SV and any in-water work proposed during the following TOY restrictions (no work) shall be reviewed under PCN (and shall contain written justification for deviation from the work allowed windows). The term “in-water work” does not include conditions where the work site is “in-the-dry” (e.g. intertidal areas exposed at low tide). The term also does not include work contained in a cofferdam so long as the cofferdam was installed and subsequently removed within the work allowed window.

	<u>TOY Restriction (no work)</u>	<u>TOY Work Window (work allowed)</u>
Non-tidal waters	Oct. 1 <sup>st</sup> to Jul. 14 <sup>th</sup>	Jul. 15 <sup>th</sup> to Sep. 30 <sup>th</sup>
Tidal waters	Apr. 10 <sup>th</sup> to Nov. 7 <sup>th</sup>	Nov. 8 <sup>th</sup> to Apr. 9 <sup>th</sup>

Alternate work windows proposed under PCN will generally be coordinated with the U.S. Fish and Wildlife Service, National Marine Fisheries Service, Maine Department of Inland Fisheries and Wildlife, and/or Maine Department of Marine Resources and resulting written verifications may include species-specific work allowed windows.

## **25. Pile Driving and Pile Removal in Navigable Waters.**

- a. Derelict, degraded, or abandoned piles and sheet piles in the project area shall be removed in their entirety as practicable and properly disposed of in an upland location and not in wetlands. In areas of fine-grained substrates, piles/sheets shall be removed by direct, vibratory, or clamshell pull method in order to minimize potential turbidity and sedimentation impacts. If removal is not practicable, said piles/sheets shall be cut off or driven to a depth of at least one foot below substrate.
- b. Work involving pile installation and/or removal should adhere to one of the five methods below:
  - i. "In-the-dry", or
  - ii. In-water between Nov. 8<sup>th</sup> to Apr. 9<sup>th</sup>, or
  - iii. Drilled and pinned to ledge, or
  - iv. Vibratory hammers used to install any size and quantity of wood, concrete, or steel, or impact hammers limited to one hammer and <50 piles installed/day with the following: wood piles of any diameter, concrete piles ≤18-inches diameter, steel piles ≤12-inches diameter if: (1) the hammer is ≤3,000 pounds and a wood cushion or equivalent is used between the hammer and steel pile, or (2) a soft start is used. Soft starts require an initial set of three strikes from the impact hammer at 40% energy, followed by a 1-minute waiting period between subsequent three-strike sets. The soft-start procedure shall be conducted any time hammering ceases for more than 30 minutes.

## **26. Temporary Fill.**

- a. Temporary fills, including but not limited to construction mats and corduroy roads shall be entirely removed as soon as they are no longer needed to construct the authorized work. Temporary fill shall be placed in its original location or disposed of at an upland site and suitably contained to prevent its subsequent erosion into waters of the U.S.
- b. All temporary fill and disturbed soils shall be stabilized to prevent its eroding into waters of the U.S. where it is not authorized. Work shall include phased or staged development to ensure only areas under active development are exposed and to allow for stabilization practices as soon as practicable. Temporary fill shall be placed in a manner that will prevent it from being eroded by expected high flows.
- c. Unconfined temporary fill authorized for discharge into waters of the U.S. shall consist of material that minimizes impacts to water quality (e.g. washed stone, stone, etc.).
- d. Appropriate measures shall be taken to maintain normal downstream flows and minimize flooding to the maximum extent practicable when temporary structures, work, and discharges of dredged or fill material, including cofferdams, are necessary for construction activities, access fills, or dewatering of construction sites. Materials shall be placed in a location and manner that does not adversely impact surface or subsurface water flow into or out of the wetland. Temporary fill authorized for discharge into wetlands shall be placed on geotextile fabric or other appropriate material laid on the pre-construction wetland grade where practicable to minimize impacts and to facilitate restoration to the original grade. Construction mats are excluded from this requirement.
- e. Construction debris and/or deteriorated materials shall not be placed or otherwise located in waters of the U.S.

**27. Heavy Equipment in Wetlands or Mudflats.** Operating heavy equipment (drill rigs, fixed cranes, etc.) within wetlands shall be minimized, and to the maximum extent practicable such equipment shall not be stored, maintained or repaired in wetlands. Where construction requires heavy equipment operation in wetlands, the equipment shall: a) have low ground pressure (typically <3 psi); b) be placed on swamp/construction/timber mats (herein referred to as "mats") that are adequate to support the equipment in such a way as to minimize disturbance of wetland soil and vegetation; or c) be operated on adequately dry or frozen wetlands such that shear pressure does not cause subsidence of the wetlands immediately beneath equipment and upheaval of adjacent wetlands. Mats are to be placed in the wetland from the upland or from equipment positioned on mats if already working within a wetland. Other support structures that are capable of safely supporting equipment may be used with written Corps authorization. Similarly, the permittee may request written authorization from the Corps to waive use of mats during frozen or dry conditions. Construction mats should be managed in accordance with construction mat best management practices (BMPs) found at: [www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permit](http://www.nae.usace.army.mil/Missions/Regulatory/State-General-Permits/Maine-General-Permit)

## **28. Bank and Shoreline Stabilization Including Living Shorelines.**

a. Projects involving construction of or repair, replacement, and maintenance of bank or shoreline stabilization structures including living shorelines within Corps jurisdiction shall be designed to minimize environmental effects, effects to neighboring properties, scour, etc. to the maximum extent practicable.

b. Prospective permittees shall design and construct these stabilization projects using this sequential avoidance and minimization process: avoidance of aquatic resource impacts, diversion of overland flow, vegetative stabilization, living shorelines, stone-sloped surfaces, and walls/bulkheads. New vertical walls/bulkheads shall only be used in situations where reflected wave energy can be tolerated. Prospective permittees proposing new vertical walls/bulkheads shall provide written justification demonstrating why other methods of stabilization are not practicable and how the surrounding area would be affected by the resulting reflected wave energy.

### **Additional conditions to meet SV eligibility criteria for *non-tidal* bank and shoreline stabilization activities:**

- a. Fill shall be  $\leq 500$  linear feet in total length as measured below the plane of the ordinary high watermark (OHWM), includes total if more than one stream bank.
- b. Fill placed below the plane of the OHWM shall be  $\leq 1$  cubic yard per linear foot.
- c. Fill shall not be angled steeper than 1H:1V.
- d. No discharge of fill in special aquatic sites other than wetlands.
- e. Stone revetment shall be comprised of angular material.
- f. No material shall be of the type, or placed in any location, or in any manner, to impair surface water flow into or out of any water of the U.S.
- g. No material shall be placed in a manner that will be eroded by normal or expected high flows (properly anchored trees and treetops may be used in low energy areas).
- h. The activity shall not be a stream channelization activity.

### **Additional conditions to meet SV eligibility criteria for *tidal* bank and shoreline stabilization activities:**

- a. All in-water work shall be conducted "in-the-dry".
- b. Fill shall be  $\leq 500$  linear feet in total length as measured below the plane of the high tide line (HTL) and shall be  $\leq 200$  linear feet in total length as measured below the plane of the mean high water mark (MHW), includes total for more than one bank. Vertical structures shall be  $\leq 200$  linear feet in total length as measured below the plane of the MHW and shall be  $\leq 18$  inches waterward of the existing vertical face.
- c. Fill placed below the plane of the HTL shall be  $\leq 1$  cubic yard per linear foot.
- d. Stone revetment shall be comprised of angular material.
- e. Shall not impact special aquatic sites (SAS, incl. submerged aquatic vegetation, SAV), impacts to natural rocky habitats are  $\leq 100$  square feet, and impacts to intertidal and shellfish areas are  $\leq 1,000$  square feet).
- f. No structures/fill shall be steeper than 1H:1V.
- g. No new groins, breakwaters, or jetties.

## **29. Stream Work and Crossings, and Wetland Crossings.**

a. A PCN is required for all new and replacement crossings in navigable waters.

b. In order to effectively size and configure crossings in navigable waters, new and replacement crossings shall consider factors including but not limited to: local tidal elevations over the range of tidal heights, basin topography and bathymetry, existing and proposed road elevations. Flood risk tolerance, conditions of habitat and natural community types present, and sea level rise during the useful life of the crossing.

c. A PCN is required for activities that result in unavoidable impacts to wetlands in excess of SV thresholds.

d. In-stream work and crossings and wetland crossings shall adhere to all applicable GCs including but not limited to:

- i. GC 16 (Federally Threatened and Endangered Species)
- ii. GC 17 (Essential Fish Habitat)
- iii. GC 18 (Aquatic Life Movements and Management of Water Flows)

- iv. GC 23 (Soil Erosion, Sediment and Turbidity Controls)
- v. GC 24 (Time-of-Year Work Windows/Restrictions)
- vi. GC 26 (Temporary Fill)
- vii. GC 28 (Bank Stabilization)
- e. Slip Lining. Work resulting in a decreased width, height, or diameter of an existing crossing (e.g. slip lining and invert lining) is discouraged and requires PCN. Written justification shall be provided for this activity.
- f. Culvert Extensions. A PCN is required for any extension to an existing culvert.
- g. Scour protection or armoring of the inlet and/or outlet of a crossing shall not disrupt normal flow patterns or 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 (see GC 18).
- h. The permittee shall maintain the work authorized herein in good condition and in conformance with the terms and general conditions of this permit to facilitate aquatic life passage as stated in GC 18. Culverts that develop “hanging” inlets or outlets, result in bed washout, or a stream that doesn’t match the characteristics of the substrate in the natural stream channel such as mobility, slope, stability confinement will require maintenance or repair to comply with this GC (this does not apply to temporary stream crossings).

**Additional conditions to meet SV eligibility criteria for Stream Work and Crossings:**

- a. Crossings shall be designed and constructed using the techniques and principles outlined in Stream Simulation, Stream Smart, Habitat Connectivity Design.
- b. Crossings shall be designed to be at least 1.2 times bankfull width. Any footings, abutments, and/or abutment armoring shall also be at least 1.2 times bankfull width.
- c. Crossings shall have a natural bottom substrate under or within the structure matching the characteristics of the substrate in the natural stream channel. Crossings shall be designed and constructed with appropriate streambed forms and streambed characteristics so that water depths and velocities are comparable to those found in the adjacent natural channel at a variety of flows.
- d. Crossings shall include a bank on both sides of the stream matching the horizontal profile of the existing stream and banks in order to allow terrestrial passage for wildlife and to prevent undermining of the footings as applicable.
- e. Closed bottom culverts shall be embedded at least 25 percent of the maximum height of the culvert.
- f. No unconfined fill or excavation in flowing waters is allowed. In-stream construction work shall be conducted “in-the-dry” under no-flow conditions or by using cofferdams, temporary flume pipes, culverts, etc. Downstream flows shall be maintained during in-stream construction. It is recommended that project plans include pertinent details for working in-the-dry and maintaining downstream flows.
- g. Conditions (a) thru (e) immediately above do not apply to temporary stream crossings; however, in addition to conditions (f) immediately above, temporary stream crossings shall adhere to the following:
  - i. Be placed on geotextile fabric or other material where practicable to ensure restoration to the original grade. Soil may not be used to construct or stabilize these structures and rock shall be large enough to allow for easy removal without disrupting the streambed.
  - ii. Be designed and maintained to withstand and pass high flows. Water height shall be no higher than the top of the culvert’s inlet. A minimum culvert diameter of two feet is required to pass debris. Culverts shall be aligned to prevent bank erosion or streambed scour.
  - iii. Be equipped with energy dissipating devices installed downstream if necessary to prevent scour.
  - iv. Be designed and maintained to prevent soil from entering the waterbody.
  - v. Be removed upon the completion of work. Impacts to the streambed or banks requires restoration to their original condition using the methods in (a) above.

**PCN Conditions for Stream Work and Crossings:**

- a. Crossings are recommended to meet the conditions for SV; written justification shall be provided for any deviation from SV conditions.
- b. Crossings shall be designed using the least intrusive and environmentally damaging method following this sequential minimization process: 1) spans with no stream impacts, 2) spans with stream impacts, and 3) embedded culverts with Stream Simulation, Stream Smart, or Habitat Connectivity.



### **Additional Conditions for Wetland Crossings:**

a. New and replacement wetland crossings that are permanent shall be constructed in such a manner as to preserve hydraulic and ecological connectivity, at its present level, between the wetlands on either side of the road. Crossing structures commonly include but are not limited to spans and culverts. To meet this condition, spans or culverts should be placed at least every 50 feet with an opening at least 2 feet high and 3 feet wide at ground level. Closed bottom culverts should be embedded at least 6 inches and should have a natural bottom substrate within the structure. Alternative crossing designs that preserve wetland hydraulic and ecological connectivity (e.g. “rock sandwiches”) may also be considered.

b. Any work that results in flooding, or impacts to wetland drainage from the upgradient side of the wetland crossing does not qualify for SV.

c. In the case of non-compliance, the permittee shall take necessary measures to correct wetland damage due to lack of hydraulic and ecological connectivity.

### **30. Utility Line Installation and Removal.**

a. Utility lines in jurisdictional waters should be installed subsurface and shall be maintained in such a way so that they remain subsurface. If it is necessary to discharge dredged or filled material to keep such utility lines buried or restore them to their original subsurface condition, a PCN and written verification from the Corps may be required (e.g., in the case of side casting into wetlands from utility trenches).

b. For subsurface utility lines the bottom and side slope cover associated with the initial installation under Federal Navigation Projects (FNPs) is a technical determination. The depth requirement varies based on geotechnical (composition of bottom materials and layering), hydraulic (current, or wave induced scour depth), navigation (propeller induced scour depth and ships’ anchor penetration), maintenance dredging (penetration of barge spuds), construction factors (energy from blasting potentially transmitted to utility crossings), physical conditions (exposed open water conditions or sheltered/harbor conditions), and the proposed location of the utility crossing within any FNP or within navigable waters, including areas dredged by others. On a case-by-case basis, the Corps will determine the depth and cover requirements for each proposed utility crossing.

Additional conditions to the GP will be attached to address pre and post installation requirements. In waterways that do not have existing FNPs, this depth should be taken as two feet below the existing bottom or maximum depth of proposed dredging, as applicable.

c. Aerial utility lines crossing navigable waters require PCN and shall meet minimum clearances per 33 CFR 322.5(i).

d. For horizontal directional drilling work, returns of drilling fluids to the surface (i.e., frac-outs) are not authorized and require restoration to the maximum extent practicable in accordance with the terms and conditions of these GPs. The permittee and its contractor shall have onsite and shall implement the procedures detailed in a frac-out contingency plan for monitoring drilling operations and for the immediate containment, control and recovery/removal of drilling fluids released into the environment should a discharge of material occur during drilling operations.

e. For new installations within waters of the U.S., any abandoned or inactive utility lines should be removed and faulty lines (e.g., leaking hazardous substances, petroleum products, etc.) shall be removed or repaired to the extent practicable. A PCN is required if they are to remain in place, e.g., to protect sensitive areas or ensure safety.

f. No work shall drain a water of the U.S. by providing a conduit for water on or below the surface. Trench plugs installed along pipelines may be effective.

g. Trenches should be backfilled with native sediment immediately after completion of work.

h. Pre-construction elevations should be re-established. Any additional material needed to accomplish this should be of consistent type and grain-size as the existing substrate sediment.

i. Utility line activities in non-tidal waters adjacent to special aquatic sites, and all work in tidal waters should utilize horizontal directional drilling as practicable.

**31. Storage of Seasonal Structures.** Seasonal or recreational structures such as pier sections, floats, aquaculture structures, etc. that are removed from the waterway for a portion of the year shall be stored in an upland location and not in wetlands, tidal wetlands, their substrate, or on mudflats. These seasonal structures may be stored on the fixed, pile-supported portion of a structure that is waterward of the mean high water mark or the ordinary high water mark, e.g. the storage of a ramp or gangway on the pile-supported pier. Seasonal storage of structures in navigable waters, e.g., in a protected cove, requires prior Corps approval and local harbormaster approval.

**32. Aquaculture.** Activities involving the cultivation of Atlantic salmon and other salmonids, or other federally-listed threatened or endangered species are not eligible for authorization under these GPs. All other aquaculture activities shall adhere to all applicable GCs including but not limited to:

- a. GC 3 (Other Permits) In particular, permittees shall maintain a current State of Maine Department of Marine Resources lease or license.
- b. GC 10 (Corps Projects and Property)
- c. GC 11 (Navigation)
- d. GC 16 (Federal Threatened and Endangered Species)
- e. GC 17 (Essential Fish Habitat)
- f. GC 18 (Aquatic Life Movements and Management of Water Flows)
- g. GC 31 (Storage of Seasonal Structures)

**Additional conditions to meet SY eligibility criteria for Tidal Aquaculture:**

- a. Shall not exceed 400 square feet in area.
- b. Shall receive signed approval from Harbormaster or appropriate Town Official.
- c. Shall not include enclosures or impoundments.
- d. Shall not be located in or within a distance of three times the authorized depth of a FNP.
- e. Shall not be located in or impinge upon the value of National Lands and Federal Properties including but not limited to National Parks and National Wildlife Refuges.
- f. Shall not impact special aquatic sites (SAS, incl. submerged aquatic vegetation, SAV), impacts to natural rocky habitats are  $\leq 100$  square feet, and impacts to intertidal and shellfish areas are  $\leq 1,000$  square feet.
- g. No structures, cages, gear, or shell hash shall be located in/within 25 feet of SAV.
- h. All gear, except for mooring tackle, when not in use on the site shall be stored in an upland location above the mean high water mark and not on wetland (incl. salt marsh).

**33. Permit(s)/Authorization Letter On-Site.** The permittee shall ensure that a copy of the terms and conditions of these GPs and any accompanying authorization letter with attached plans are at the site of the work authorized by these GPs whenever work is being performed and that all construction personnel performing work which may affect waters of the U.S. are fully aware of the accompanying terms and conditions. The entire permit authorization shall be made a part of any and all contracts and subcontracts for work that affects areas of Corps jurisdiction at the site of the work authorized by these GPs. This shall be achieved by including the entire permit authorization in the specifications for work. The term "entire permit authorization" means all terms and conditions of the GPs, the GPs, and the authorization letter (including its drawings, plans, appendices and other attachments) and subsequent permit modifications as applicable. If the authorization letter is issued after the construction specifications, but before receipt of bids or quotes, the entire permit authorization shall be included as an addendum to the specifications. If the authorization letter is issued after receipt of bids or quotes, the entire permit authorization shall be included in the contract or subcontract. Although the permittee may assign various aspects of the work to different contractors or subcontractors, all contractors and subcontractors shall be obligated by contract to comply with all environmental protection provisions contained within the entire GP authorization, and no contract or subcontract shall require or allow unauthorized work in areas of Corps jurisdiction.

**34. Inspections.** The permittee shall allow the Corps to make periodic inspections at any time deemed necessary in order to ensure that the work is eligible for authorization under these GPs, is being, or has been performed in accordance with the terms and conditions of these GPs. To facilitate these inspections, the permittee shall

complete and return to the Corps the Work-Start Notification Form and the Compliance Certification Form when either is provided with an authorization letter. The Corps may also require post-construction engineering drawings and/or photographs for completed work or post-dredging survey drawings for any dredging work to verify compliance.

**35. Maintenance.** The permittee shall maintain the activity authorized by these GPs in good condition and in conformance with the terms and condition of these permits. This does not include maintenance dredging, related disposal, or beach nourishment projects, which are subject to review thresholds for GP 5 on page 30, unless specified in written authorization from the Corps.

**36. Federal Liability.** In issuing these permits, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes;
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the U.S. in the public interest;
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit;
- d. Design or construction deficiencies associated with the permitted work; or
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

**37. Property Rights.** Per 33 CFR 320.4(g)(6), these GPs do not convey any property rights, either in real estate or material, or any exclusive privileges, nor does it authorize any injury to property or invasion of rights or any infringement of federal, state, or local laws or regulations.

**38. Previously Authorized Activities.**

- a. Projects that received prior authorization from the Corps (via Category 1 or 2) and that completed authorized work under the previous nationwide permits, programmatic permits, regional general permits or letters of permission, shall remain authorized in accordance with the original terms and conditions of those authorizations, including their terms, general conditions, expiration date, and any special conditions provided in a written verification.
- b. Activities authorized pursuant to 33 CFR Part 330.3 (“Activities occurring before certain dates”) are not affected by these GPs.
- c. Any work not commenced, not under contract to commence, nor completed that was originally authorized by the Corps under the GP in effect between October 13, 2015 and October 13, 2020 remains authorized subject to the terms and general conditions of this GP along with any special conditions included in written authorizations. Exception: if previously authorized work has not commenced or not under contract to commence and a new federally-listed threatened or endangered species may be affected, the Corps shall consult with the U.S. Fish and Wildlife Service or NOAA Fisheries prior to re-authorizing the work under these GPs. Requests for re-authorization shall include an Official Species List per GC 16.

**39. Transfer of GP Verifications.** If the permittee sells the property associated with a GP verification, the permittee may transfer the GP verification to the new owner by submitting a letter to the Corps to validate the transfer. A copy of the GP verification shall be attached to the letter, the letter shall contain the name, address, phone number and email of the transferee (new owner), shall include the following statement and signature, and be mailed to: U.S. Army Corps of Engineers, Maine Project Office, 442 Civic Center Drive, Suite 350, Augusta, Maine 04330:

“When the structures or work authorized by these GPs are still in existence at the time the property is transferred, the terms and conditions of these GPs, including any special conditions, will continue to be binding on the new owner(s) of the property.”

\_\_\_\_\_  
Transferee Printed Name

\_\_\_\_\_  
Transferee Signature                      Date

**40. Modification, Suspension, and Revocation.** These GPs and any individual authorization issued thereof may be either modified, suspended, or revoked, in whole or in part, pursuant to the policies and procedures of 33 CFR 325.7, and any such action shall not be the basis for any claim for damages against the U.S.

**41. Special Conditions.** The Corps may independently or in coordination with federal resource agencies impose special conditions on a project authorized pursuant to these GPs that are determined necessary to minimize adverse navigational and/or environmental effects, or based on any other factor of the public interest. Failure to comply with all terms and conditions of the authorization, including special conditions, constitutes a permit violation and may subject the permittee to criminal, civil or administrative penalties and/or an ordered restoration.

**42. False or Incomplete Information.** If the Corps makes a determination regarding the eligibility of a project under these GPs and subsequently discovers that it has relied on false, incomplete or inaccurate information provided by the permittee, the Corps may determine that the GP authorization is not valid; modify, suspend or revoke the authorization; and the U.S. Government may institute legal proceedings.

**43. Abandonment.** If the permittee decides to abandon the activity authorized under these GPs, unless such abandonment is merely the transfer of property to a third party, he/she may be required to restore the area to the satisfaction of the Corps.

**44. Enforcement cases.** These GPs do not apply to any existing or proposed activity in Corps jurisdiction associated with an ongoing Corps or EPA enforcement action, until such time as the enforcement action is resolved or the Corps or EPA, as appropriate, determines that the activity may proceed independently without compromising the enforcement action.

**45. Duration of Authorization.**

a. These GPs expire on October 14, 2025 unless otherwise specifically indicated in an individual authorization letter. Activities authorized under these GPs that have either commenced or are under contract to commence in reliance upon this authorization will have an additional year from the expiration date to complete the work. The permittee must be able to document to the Corps' satisfaction that the activity commenced or was under contract to commence by the expiration date of these GPs. If work is not completed within the one year extended timeframe, the permittee must contact the Corps. The Corps may issue a new authorization, provided the activity meets the applicable terms and conditions of the Maine GPs that are in effect at the time.

b. Activities authorized under these GPs will remain authorized until these GPs expire, unless discretionary authority has been exercised on a case-by-case basis to modify, suspend, or revoke the authorization in accordance with 33 CFR 325.2(e)(2). Activities completed under the SV or PCN authorizations of these GPs will continue to be authorized after its expiration date.

**TURLEY.TAMMY.**

**R.1229735124**

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Tammy R. Turley  
Chief, Regulatory Division

## V. MAINE GENERAL PERMITS

An activity is authorized under General Permits 1 through 23 listed below only if that activity and the permittee satisfy all of the applicable GP terms and general conditions. Any activity not specifically listed may still be eligible for authorization under these GPs; prospective permittees are advised to contact the Corps for specific eligibility determination.

### 1. **Repair, Replacement, and Maintenance of Authorized Structures and Fills;**

Repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure, or fill and minor expansions thereof.

### 2. **Moorings**

New moorings and mooring fields, the relocation of previously authorized moorings, expansions, boundary reconfigurations or modifications of previously authorized mooring fields, conversion of mooring types (e.g. private to rental), and maintenance and replacement of moorings. Moored floats, lobster cars, rafts, and similar float structures are not included in this GP.

### 3. **Structures, Floats and Lifts**

New, expansions, reconfigurations or modifications of structures for navigational access in waters of the U.S. including but not limited to temporary/seasonal or permanent pile and crib-supported piers, floats, stairs, shore outhauls, and boat and float lifts/ways. Floats may include lobster cars, work floats, moored floats, swim floats, and shellfish upweller floats.

### 4. **Aids to Navigation, and Temporary Recreational Structures**

Aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the U.S. Coast Guard (see 33 CFR, chapter I, subchapter C, part 66) and temporary buoys, markers, small floating docks, and similar structures placed for recreational use during specific events such as fireworks displays, water skiing competitions, and boat races or seasonal use.

### 5. **Dredging, Disposal of Dredged Material, Beach Nourishment, and Rock Removal and Relocation**

New, maintenance, and improvement dredging, including: a) Disposal of dredged material at a confined aquatic disposal, beach nourishment, near shore, designated open water or ocean water disposal site(s), provided the Corps finds the dredged material to be suitable for such disposal; (b) Beach nourishment not associated with dredging; (c) Rock removal and relocation for navigation.

### 6. **U.S. Coast Guard Approved Bridges and Causeways**

Discharges of dredged or fill material incidental to the construction and modification of bridges across navigable waters of the U.S., including cofferdams abutments, foundation seals, piers, approach fills, and temporary construction and access fills provided that the USCG authorizes the construction of the bridge structure under Section 9 of the Rivers and Harbors Act of 1899 or other applicable laws.

### 7. **Bank and Shoreline Stabilization Including Living Shorelines**

Bank stabilization activities necessary for erosion protection along the banks of lakes, ponds, streams, and marine/tidal waters. Includes bulkheads, seawalls, riprap, revetments or slope protection & similar structures as well as vegetative planting, soil bioengineering or alternative techniques that are a combination of the two (i.e. living shorelines), specifically for the purpose of shoreline protection.

### 8. **Residential, Commercial and Institutional Developments, and Recreational Facilities**

Discharges of dredged or fill material into waters of the U.S for the construction or expansion of: residences and residential subdivisions; commercial and institutional buildings or subdivisions; and recreational facilities; and attendant features including but not limited to roads, parking lots, garages, stormwater management facilities, yards, and utilities.

## **9. Utility Line Activities**

Activities required for (a) the construction, maintenance, relocation, repair, & removal of utility lines, including outfall and intake structures, and the associated excavation, backfill, or bedding for utility lines; (b) the construction, maintenance or expansion of utility line substation facilities associated with a power/utility line in non-tidal waters; and (c) the construction and maintenance of foundations for overhead utility line towers, poles, and anchors provided the foundations are the minimum size necessary and separate footings for each tower leg (rather than a larger single pad) are used where feasible. This GP authorizes the construction of access roads to facilitate construction of the above activities provided the activity, in combination with all other activities included in one single and complete project.

## **10. Linear Transportation Projects**

Activities required for the construction, expansion, modification, or improvement of linear transportation projects (e.g., driveways, roads, highways, railways, trails, airport runways, and taxiways) and attendant features.

## **11. Mining Activities**

Temporary or permanent discharges of dredged or fill material into waters of the U.S. for mining activities.

## **12. Boat Ramps and Marine Railways**

Temporary or permanent discharges of dredged or fill material, excavation and other work in waters of the U.S. required for the construction of temporary or permanent boat ramps and marine railways.

## **13. Land and Water-Based Renewable Energy Generation Facilities and Hydropower Projects**

Structures and work and discharges of dredged or fill material into waters of the U.S. for the construction, expansion, modification or removal of: (a) land-based renewable energy production facilities (e.g. solar and wind) and their attendant features; (b) water-based wind or hydrokinetic renewable energy generation pilot projects and their attendant features; and (c) discharges of dredged or fill material associated with hydropower projects. Attendant features may include, but are not limited to, land-based collection and distribution facilities, control facilities, and parking lots.

## **14. Reshaping Existing Drainage Ditches and Mosquito Management**

Discharges to modify the cross-sectional configuration of currently serviceable drainage ditches constructed in waters of the U.S., for the purpose of improving water quality by regrading the drainage ditch with gentler slopes, which can reduce erosion, increase growth of vegetation, and increase uptake of nutrients and other substances by vegetation. Also authorized are mosquito reduction activities.

## **15. Response Operations for Oil or Hazardous Substances**

Activities conducted in response to a discharge or release of oil and hazardous substances that are subject to the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300) including containment, cleanup, and mitigation efforts, provided activities are done under either (i) The Spill Prevent, Control & Countermeasure Plan require by 40 CFR 112.3; (ii) The direction or oversight of the Federal on-site coordinator designated by 40 CFR 300; or (iii) Any approved existing State, regional or local contingency plan provided that the Regional Response Team (if one exists in the area) concurs with the proposed response efforts or does not object to the response effort. Activities required for the cleanup of oil releases in waters of the U.S. from electrical equipment that are governed by EPA's polychlorinated biphenyl (PCB) spill response regulations at 40 CFR 761. Booms placed in tidal waters. Use of temporary structures & fills for spill response training exercises.

## **16. Cleanup of Hazardous and Toxic Waste**

Specific activities to effect the containment, stabilization or removal of hazardous or toxic waste materials, including court ordered remedial action plans or related settlements which are performed, ordered or sponsored by a government agency with established legal or regulatory authority.

### **17. Scientific Measurement Devices**

Scientific devices for measuring and recording scientific data, such as staff gauges, tide and current gauges, meteorological stations, water recording and biological observation devices, water quality testing and improvement devices, and similar structures.

### **18. Survey Activities**

Survey activities such as soil borings, core sampling, seismic exploratory operations, plugging of seismic shot holes and other exploratory-type bore holes, exploratory trenching and historic resources surveys (but not recovery).

### **19. Agricultural Activities**

Regulated discharges of dredged or fill material in non-tidal waters of the U.S. for agricultural activities, including the construction of building pads for farm buildings. Authorized activities include: (a) installation, placement, or construction of drainage tiles, ditches, or levees; mechanized land clearing; land leveling; the relocation of existing serviceable drainage ditches; and similar activities; (b) construction of farm ponds, excluding perennial streams, provided the farm pond is used solely for agricultural purposes; and (c) discharges of dredged or fill material to relocate existing serviceable drainage ditches constructed in non-tidal streams.

### **20. Fish and Wildlife Harvesting, Enhancement, and Attraction Devices**

Activities in waters of the U.S. associated with fish and wildlife harvesting devices including pound nets, crab and lobster traps, crab dredging, eel pots, duck blinds, and clam and oyster digging, fish aggregating devices, and small fish attraction devices such as open water fish concentrators (sea kites, etc.). This GP does not include aquaculture activities.

### **21. Habitat Restoration, Establishment and Enhancement Activities**

Activities in waters of the U.S. associated with the restoration, enhancement and establishment of non-tidal and tidal wetlands and riparian areas, including invasive, non-native or nuisance species control; the restoration and enhancement of non-tidal streams and other non-tidal open waters; the relocation of non-tidal waters, including non-tidal streams & associated wetlands for reestablishment of a natural stream morphology and reconnection of the floodplain; the restoration and enhancement of shellfish, finfish and wildlife; and the rehabilitation or enhancement of tidal streams, tidal wetlands and tidal open waters; provided those activities result in net increases in aquatic resource functions and services. Also included are shellfish enhancement measures including but not limited to “brushing”, clam pots, boxes, and netting.

### **22. Stream and Wetland Work and Crossings**

Activities required for the construction, expansion, modification, or improvement of linear transportation projects that cross waters of the U.S. (e.g., driveways, roads, highways, railways, trails, airport runways, and taxiways) and attendant features. Crossing structures include, but are not limited to temporary or permanent jurisdictional spans, bridges, culverts, and fords. Any stream channel modification is limited to the minimum necessary to construct or protect the project; such modifications must be in the immediate vicinity of the project.

### **23. Aquaculture**

The installation of buoys, floats, racks, trays, nets, lines or other structures in waters of the U.S. for the containment and cultivation of fish, shellfish and seaweed/kelp. Also authorized are anchored upweller floats, small-scale shellfish hatchery seawater intake/discharge structures, and discharges of dredged or fill material associated with cultivation such as the placement of cultch or spatting-shell on bottom.

SELF-VERIFICATION (SV)

PRE-CONSTRUCTION NOTIFICATION (PCN)

<p><b>22. Stream and Wetland Work and Crossings</b> (see also GC 29)</p>	<p>Stream work and crossings with &lt;15,000 SF of permanent and/or temporary inland waterway and/or wetland fill, and associated secondary impacts, provided:</p> <ul style="list-style-type: none"> <li>• No work in designated or proposed critical habitat for endangered species.</li> <li>• Crossings are designed and constructed using the techniques and principles outlined in Stream Simulation, Stream Smart, or Habitat Connectivity Design.</li> <li>• Crossings are designed to be 1.2 times bankfull width.</li> <li>• Crossings have a natural bottom substrate.</li> <li>• Crossings include a bank on both sides of the channel.</li> <li>• Closed bottom culverts are embedded at least 25% of the maximum width of the culvert.</li> <li>• In-stream work is limited to Jul. 15<sup>th</sup> to Sep. 30<sup>th</sup></li> <li>• In-stream work is conducted “in-the-dry”.</li> <li>• No slip lining.</li> <li>• No culvert extensions.</li> <li>• No stream channelization, relocation, or loss of streambed including impoundments.</li> </ul> <p>Wetland work and crossings, provided:</p> <ul style="list-style-type: none"> <li>• No flooding or impacts to wetland drainage from the upgradient side of the crossing.</li> </ul>	<p>Stream and Wetland Work and Crossings not eligible for SV, provided:</p> <ul style="list-style-type: none"> <li>• &lt;3 acres of permanent and/or temporary inland waterway and/or wetland fill, and associated secondary impacts.</li> </ul>
<p><b>23. Aquaculture</b> (see also GC 32)</p>	<p>Aquaculture activities with &lt;15,000 SF of permanent and/or temporary inland waterway and/or wetland fill, and associated secondary impacts, provided:</p> <ul style="list-style-type: none"> <li>• No water impoundments allowed.</li> <li>• No conversion of i) a stream to wetland or vice versa, a wetland to a pond or uplands, and ii) one wetland type to another.</li> </ul>	<p>Aquaculture activities not eligible for SV, provided:</p> <ul style="list-style-type: none"> <li>• &lt;3 acres of permanent and/or temporary inland waterway and/or wetland fill, and associated secondary impacts.</li> </ul>



SELF-VERIFICATION (SV)

PRE-CONSTRUCTION NOTIFICATION (PCN)

<p><b>21. Habitat Restoration, Establishment, and Enhancement</b></p>	<p>Those activities, provided:</p> <ul style="list-style-type: none"> <li>No impacts to SAS (incl. SAV), impacts to natural rocky habitat ≤100 SF, impacts to intertidal areas ≤1,000 SF, and impacts to tidal resources &lt;0.5 acre</li> <li>No thin layer deposition for salt marsh restoration.</li> <li>SAS planting and transplanting is &lt;100 SF</li> <li>No artificial or living reefs.</li> <li>The activity is authorized in writing by a local, state, or non-Corps federal environmental agency. Water impoundments require PCN.</li> <li>No conversion of i) a stream to wetland or vice versa, wetland to a pond or uplands, and ii) one wetland type to another.</li> <li>No dam removal.</li> </ul>	<p>Those activities not eligible for SV provided those activities are proactive and result in net increases in aquatic resource functions and services.</p>
<p><b>22. Stream and Wetland Work and Crossings (see also GC 29) (see GP 6 for bridges &amp; causeways)</b></p>	<p>Not Eligible</p>	<p>Those crossings of tidal navigable water not including bridges and causeways, provided:</p> <ul style="list-style-type: none"> <li>&lt;1 acre temporary or permanent impacts, fill, excavation, and/or secondary impacts.</li> <li>Temporary and/or permanent fill or excavation in SAV &lt;1,000 SF</li> <li>Permanent fill or excavation in other SAS &lt;4,300 SF</li> </ul>
<p><b>23. Aquaculture* (see also GC 32)</b></p>	<p>Shellfish and marine algae installations that do not exceed 400 SF in area, provided:</p> <ul style="list-style-type: none"> <li>Signed approval from Harbormaster or appropriate Town Official.</li> <li>No enclosures or impoundments.</li> <li>Not located in or within a distance of three times the authorized depth of a Federal Navigation Project.</li> <li>Not located in or impinge upon the value of any National Lands or Federal Properties.</li> <li>No impacts to SAS (incl. SAV), impacts to natural rocky habitat ≤100 SF, and impacts to intertidal and shellfish areas ≤1,000 SF</li> <li>No structures, cages, gear, or shell hash located in/within 25 feet of SAV.</li> <li>All gear, except for mooring tackle, when not in use on the site is stored in an upland location above the MHWM and not on wetland (incl. salt marsh).</li> </ul>	<p>Shellfish, finfish, and marine algae aquaculture (with the exception of Atlantic salmon and any other salmonid, or other federally-listed endangered or threatened species), or other aquaculture facilities with no more than minimal individual and cumulative impacts to environmental resources or navigation. This is inclusive but not limited to cages, nets, bags, racks, long lines, fences, posts, poles, predator screening, etc.</p> <p><b>*State of Maine Aquaculture guidelines are provided at: <a href="http://www.maine.gov/dmr/aquaculture/index.html">www.maine.gov/dmr/aquaculture/index.html</a></b></p>

## Section VIII: Agency Contacts

### 1. Federal

U.S. Army Corps of Engineers  
Maine Project Office  
442 Civic Center Drive, Suite 350  
Augusta, Maine 04330  
(207) 623-8367; (207) 623-8206 (fax)  
Email: cenae-r-me@usace.army.mil

U.S. Environmental Protection Agency  
5 Post Office Square  
Suite 100 (OEP05-2)  
Boston, Massachusetts 02109-3912  
(617) 918-1589

U.S. Fish and Wildlife Service  
Maine Field Office  
P.O. Box A  
East Orland, Maine 04431  
(207) 469-7300; (207) 902-1588 (fax)  
*(Federal endangered species)*

National Marine Fisheries Service  
Maine Field Office  
17 Godfrey Drive, Suite 1  
Orono, Maine 04473  
(207) 866-7379; (207) 866-7342 (fax)  
*(Federal endangered species)*

FEMA Region 1  
Federal Insurance and Mitigation Division  
99 High Street 6<sup>th</sup> Floor  
Boston, Massachusetts 02110  
*(floodplains)*

Federal Emergency Management Agency  
99 High Street  
Boston, Massachusetts 02110  
(877) 336-2734  
*(Floodplain Management)*

National Marine Fisheries Service  
55 Great Republic Drive  
Gloucester, Massachusetts 01930  
(978) 281-9102; (978) 281-9301 (fax)  
*(Federal endangered species & EFH)*

National Park Service  
North Atlantic Region  
15 State Street  
Boston, Massachusetts 02109  
(617) 223-5203  
*(Wild and Scenic Rivers)*

Commander (dpb)  
First Coast Guard District  
One South Street - Battery Building  
New York, New York 10004-1466  
(212) 668-7021; (212) 668-7967 (fax)  
*(bridge permits)*

### 2. State of Maine

#### a. Department of Environmental Protection *(State permits & Water Quality Certifications)*

Augusta Regional Office  
17 State House Station  
Augusta, Maine 04333  
(207) 287-7688

Southern Maine Regional Office  
312 Canco Road  
Portland, Maine 04103  
(201) 822-6300

Eastern Maine Regional Office  
106 Hogan Road  
Bangor, Maine 04401  
(207) 941-4570

Northern Maine Regional Office  
1235 Central Drive  
Presque Isle, Maine 04769  
(207) 764-0477

b. Department of Agriculture, Conservation and Forestry

i. Maine Land Use Planning Commission (LUPC) (*State permits & Water Quality Certifications for the unorganized areas of the State*)

Augusta Office  
22 State House Station  
Augusta, Maine 04333-0022  
(207) 287-2631; (207) 287-7439 (fax)

Downeast Regional Office  
106 Hogan Road, Suite 8  
Bangor, Maine 04401  
(207) 215-4685; (207) 941-4222 (fax)

Greenville Regional Office  
43 Lakeview Drive  
P.O. Box 1107  
Greenville, Maine 04441  
(207) 695-2466; (207) 695-2380 (fax)

Ashland Regional Office  
45 Radar Road  
Ashland, Maine 04732-3600  
(207) 435-7963; (207) 435-7184 (fax)

Western Region Office  
932 U.S. Route 2  
East Wilton, Maine 04992  
(207) 670-7492; (207) 287-7439 (fax)

Eastern Region Office  
191 Main Street  
East Millinocket, Maine 04430  
(207) 399-2176; (207) 746-2243 (fax)

ii. Maine Coastal Program

21 State House Station  
Augusta, Maine 04333  
(207) 707-2324; (207) 624-6024 (fax)  
*(CZM consistency determinations)*

iii. Division of Parks and Public Lands

22 State House Station  
Augusta, Maine 04333  
(207) 287-3061; (207) 287-6170 (fax)  
*(submerged lands leases)*

iv. Maine Floodplain Management Program

17 Elkins Lane  
Augusta, Maine 04333  
(207) 287-8063  
*(floodplains)*

c. Department of Marine Resources

21 State House Station  
Augusta, Maine 04333  
(207) 633-9500; (207) 624-6024 (fax)  
*(aquaculture leases/licenses)*

### 3. Historic Properties

#### a. State Historic Preservation Officer (SHPO)

Kirk F. Mohny, Director  
Maine Historic Preservation Commission  
65 State House Station  
Augusta, Maine 04333-0065  
(207) 287-2132; (207) 287-2335 (fax)

#### b. Tribal Historic Preservation Officers (THPOs)

*Houlton Band of Maliseet Indians*  
88 Bell Road  
Littleton, Maine 04730  
(207) 532-4273, x215; (207) 532-6883 (fax)  
istjohn@maliseets.com

*Passamaquoddy Tribe of Indians*  
Pleasant Point Reservation  
P.O. Box 343  
Perry, Maine 04667  
(207) 853-2600; (207) 853-6039 (fax)  
soctomah@gmail.com

*Passamaquoddy Tribe of Indians*  
Indian Township Reservation  
P.O. Box 301  
Princeton, Maine 04668  
(207) 796-2301; (207) 796-5256 (fax)  
soctomah@gmail.com

*Aroostook Band of Micmacs*  
7 Northern Road  
Presque Isle, Maine 04769  
(207) 764-1972; (207) 764-7667 (fax)  
jdennis@micmac-nsn.gov

*Penobscot Nation*  
Cultural and Historic Preservation Dept.  
12 Wabanaki Way  
Indian Island, Maine 04468  
(207) 817-7471  
chris.sockalexis@penobscotnation.org

## Section IX: Definitions

**Action Area:** The “Endangered Species Consultation Handbook – Procedures for Conducting Consultation and Conference Activities Under Section 7 of the ESA,” defines action area as “all areas to be affected directly or indirectly by the federal action and not merely the immediate area involved in the action. [50 CFR 402.02].”

**Agricultural Activities:** The Clean Water Act exempts certain discharges associated with normal farming, ranching, and forestry activities such as plowing, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices (Section 404(f)(1)(A)). Prospective permittees are strongly advised to contact the Corps for a determination of whether their activity is exempt or requires a permit.

**Attendant Features:** Occurring with or as a result of; accompanying.

**Aquatic Habitat Restoration, Establishment and Enhancement:** The Corps will decide if a project qualifies and must determine in consultation with federal and state agencies that the net effects are beneficial. The Corps may refer to Nationwide Permit 27 published in the January 6, 2017 Federal Register. Activities authorized here may include, but are not limited to: the removal of accumulated sediments; the installation, removal, and maintenance of small water control structures, dikes, and berms; the installation of current deflectors; the enhancement, restoration, or establishment of riffle and pool stream structure; the placement of in-stream habitat structures; modifications of the stream bed and/or banks to restore or establish stream meanders; the backfilling of artificial channels and drainage ditches; the removal of existing drainage structures; the construction of small nesting islands in inland waters; the construction of open water areas; the construction of native shellfish species habitat over unvegetated bottom for the purpose of habitat protection or restoration in tidal waters; shellfish seeding; activities needed to reestablish vegetation, including plowing or discing for seed bed preparation and the planting of appropriate wetland species; mechanized land clearing to remove non-native invasive, exotic, or nuisance vegetation; and other related activities. Only native plant species shall be planted at the site.

**Biodegradable:** A material that decomposes into elements found in nature within a reasonably short period of time and will not leave a residue of plastic or a petroleum derivative in the environment after degradation. Examples of biodegradable materials include jute, sisal, cotton, straw, burlap, coconut husk fiber (coir) or excelsior. In contrast, degradable plastics break down into plastic fragments that remain in the environment after degradation.

**Boating facilities:** These provide, rent or sell mooring space, such as marinas, yacht clubs, boat yards, dockominiums, town facilities, land/home owners, etc. Not classified as boating facilities are piers shared between two abutting properties or town mooring fields that charge an equitable user fee based on the actual costs incurred.

**Bordering and Contiguous Wetlands:** A bordering wetland is immediately next to its adjacent waterbody and may lie at, or below, the ordinary high water mark (mean high water mark in navigable waters) of that waterbody and is directly influenced by its hydrologic regime. Contiguous wetlands extend landward from their adjacent waterbody to a point where a natural or manmade discontinuity exists. Contiguous wetlands include bordering wetlands as well as wetlands that are situated immediately above the ordinary high water mark and above the normal hydrologic influence of their adjacent waterbody.

**Brushing:** The placement of tree boughs, wooden lath structure, or small-mesh fencing on mudflats, or any bottom disturbance (e.g., discing, plowing, raking, etc.), to enhance recruitment of shellfish.

**Buffer Zone:** The buffer zone of an FNP is equal to three times the authorized depth of the FNP.

**Construction mats:** Constructions, swamp and timber mats (herein referred to as “construction mats”) are generic terms used to describe structures that distribute equipment weight to prevent wetland damage while facilitating passage and providing work platforms for workers and equipment. They are comprised of sheets or mats made from a variety of materials in various sizes. A timber mat consists of large timbers bolted or cabled together. Corduroy roads, which are not considered to be construction mats, are cut trees and/or saplings with the

crowns and branches removed, and the trunks lined up next to one another. Corduroy roads are typically installed as permanent structures. Like construction mats, they are considered as fill whether they are installed temporarily or permanently.

**Cumulative effects:** See “Direct, secondary, and cumulative effects.”

**Currently Serviceable:** Useable as-is or with some maintenance, but not so degraded as to essential require reconstruction.

**Direct, secondary, and cumulative effects:**

Direct Effects: The loss of aquatic ecosystem within the footprint of the discharge of dredged or fill material. Direct effects are caused by the action and occur at the same time and place.

Secondary Effects: These are effects on an aquatic ecosystem that are associated with a discharge of dredged or fill materials, but do not result from the actual placement of the dredged or fill material. Information about secondary effects on aquatic ecosystems shall be considered prior to the time final Section 404 action is taken by permitting authorities. Some examples of secondary effects on an aquatic ecosystem are a) aquatic areas drained, flooded, fragmented, or mechanically cleared, b) fluctuating water levels in all impoundment and downstream associated with the operation of a dam, c) septic tank leaching and surface runoff from residential or commercial developments on fill, and d) leachate and runoff from a sanitary landfill located in waters of the U.S. See 40 CFR 230.11(h).

Cumulative Effects: The changes in an aquatic ecosystem that are attributable to the collective effect of a number of individual 1) discharges of dredged or fill material, or 2) structures. Although the impact of a particular discharge may constitute a minor change in itself, the cumulative effect of numerous such piecemeal changes can result in a major impairment of the water resources and interfere with the productivity and water quality of existing aquatic ecosystems. See 40 CFR 230(g).

**Dredging:**

Maintenance Dredging: Includes areas and depths previously authorized by the Corps and dredged.

The Corps may require proof of authorization. Maintenance dredging typically refers to the routine removal of accumulated sediment from channel beds to maintain the design depths of navigation channels, harbors, marinas, boat launches and port facilities. Routine maintenance dredging is conducted regularly for navigational purposes (typically at least once every ten years) and does not include any expansion of the previously dredged area or depth. The Corps may review a maintenance dredging activity as new dredging if sufficient time has elapsed to allow for the colonization of SAS, shellfish, etc. The main characteristics of maintenance dredging projects are variable quantities of material; soft, uncompacted soil; contaminant content possible; thin layers of material; occurring in navigation channels and harbors; repetitive activity

New Dredging: Dredging of an area or to a depth that has never been authorized by the Corps or dredged.

**Dredged material & discharge of dredged material:** These are defined at 323.2(c) and (d). The term dredged material means material that is excavated or dredged from waters of the U.S.

**Essential Fish Habitat (EFH):** This is broadly defined to include those waters and substrate necessary to fish for spawning, breeding, feeding, or growth to maturity.

**Fill material & discharge of fill material:** These are defined at 323.2(e) and (f). The term fill material is defined as material placed in waters of the U.S. where the material has the effect of either replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of any portion of a water of the U.S.

**Fill area:** Fill area includes all temporary and permanent fill (including mats), and regulated discharges associated with excavation.

**Federal navigation projects (FNPs):** These areas are maintained by the Corps; authorized, constructed and maintained on the premise that they will be accessible and available to all on equal terms; and are comprised of Federal Anchorages, Federal Channels and Federal Turning Basins. The buffer zone is equal to three times the authorized depth of a FNP. More information on the following FNPs is provided at [www.nae.usace.army.mil/missions/navigation.aspx](http://www.nae.usace.army.mil/missions/navigation.aspx) >> Navigation Projects.

**Flume:** An open artificial water channel, in the form of a gravity chute that leads water from a diversion dam or weir completely aside a natural flow. A flume can be used to measure the rate of flow.

**Frac out:** During normal drilling operations, drilling fluid travels up the borehole into a pit. When the borehole becomes obstructed or the pressure becomes too great inside the borehole, the ground fractures and fluid escapes to the surface.

**Habitat Connectivity Design:** projects designed and constructed for consistency with natural stream dimensions, profiles, and dynamics, in accordance with the following technical references: U.S. Forest Service guide (Forest Service Stream-Simulation Working Group 2008), augmented by documents published by the states of Washington (Barnard et al. 2013), Vermont (Bates and Kirn 2009) and California (Love and Bates 2009).

**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.

**Individual Permit:** A Department of the Army authorization that is issued following a case-by-case evaluation of a specific structure or work in accordance with the procedures of 33 CFR 322, or a specific project involving the proposed discharge(s) in accordance with the procedures of 33 CFR 323, and in accordance with the procedures of 33 CFR 325 and a determination that the proposed discharge is in the public interest pursuant to 33 CFR 320.

**Living Shoreline:** Living shorelines stabilize banks and shores in coastal waters along shores with small fetch and gentle slopes that are subject to low-to mid-energy waves. A living shoreline has a footprint that is made up mostly of native material. It incorporates vegetation or other living, natural “soft” elements alone or in combination with some type of harder shoreline structure (e.g., oyster or mussel reefs or rock sills) for added protection and stability. Living shorelines shall maintain the natural continuity of the land-water interface, and retain or enhance shoreline ecological processes. Living shorelines must have a substantial biological component, either tidal or lacustrine fringe wetlands or oyster or mussel reef structures.

#### **Maintenance:**

a. The repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill authorized by 33 CFR 330.3 – “Activities occurring before certain dates,” 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.

- 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 that are necessary to make repair, rehabilitation, or replacement are authorized.
- Currently serviceable means useable as is or with some maintenance, but not so degraded as to essentially require reconstruction.
- No seaward expansion for bulkheads or any other fill activity is considered SV maintenance.
- Only structures or fills that were previously authorized and are in compliance with the terms and condition of the original authorization can be maintained as a non-regulated activity under 33 CFR 323.4(a)(2), or in accordance with the SV or PCN thresholds in Section V.

b. The state’s maintenance provisions may differ from the Corps and may require reporting and written authorization from the state.

c. Contact the Corps to determine whether stream crossing replacements require a PCN.

d. Exempted Maintenance. In accordance with 33 CFR 323.4(a)(2), any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under Section 404 of the CWA: “Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design.”

The following definition is also applicable:

**Minor deviations:** 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, which are necessary to make repair, rehabilitation, or replacement are permitted, provided the adverse environmental effects resulting from such repair, rehabilitation, or replacement are minimal.

**Marina reconfiguration zone:** A Corps-authorized area in which permittees may rearrange pile-supported structures and floats without additional authorizations. A reconfiguration zone does not grant exclusive privileges to an area or an increase in structure or float area.

**Natural Rocky Habitats:** Natural rocky habitats are intertidal and subtidal substrates composed of pebble-gravel, cobble, boulder, or rock ledge and outcrops. Manufactured stone (e.g. cut or engineered rip-rap) is not considered a natural rocky habitat. Natural rocky habitats are either found as pavement (consolidated pebble-gravel, cobble, or boulder areas) or as a mixture with fines (i.e. clay and sand) and other substrates.

**Navigable waters of the U.S.:** See Waters of the U.S. below.

**Overall project:** See "single and complete linear project" below.

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

**Permanent impacts:** Permanent impacts means waters of the U.S. that are permanently affected by filling, flooding, excavation, or drainage because of the regulated activity. Permanent impacts 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.

**Pre-construction notification (PCN):** A request submitted by a prospective permittee to the Corps for confirmation that a particular activity is authorized by this GP. 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 these GPs. A PCN may be voluntarily submitted in cases where PCN is not required and the project proponent wants confirmation that the activity is authorized under this GP.

**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 again 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.

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



**Secondary effects:** See “Direct, secondary, and cumulative effects.”

**Shellfish Areas:** Areas that currently support molluscan shellfish. Information regarding these locations can be obtained from the State of Maine GeoLibrary Data Catalog at: [www.maine.gov/geolib/catalog.html](http://www.maine.gov/geolib/catalog.html)

**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 U.S. (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 the purposes of this GP. 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. The overall project, for purposes of this GP, includes all regulated activities that are reasonably related and necessary to accomplish the project purpose.

**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. For non-linear projects, the single and complete project shall have independent utility (see definition).

**Special aquatic sites (SAS):** These are defined at 40 CFR 230 Subpart E. They include sanctuaries and refuges, wetlands, mud flats, vegetated shallows (submerged aquatic vegetation, SAV), coral reefs, and riffle and pool complexes.

**Stream:** The term “stream” in the document means rivers, streams, brooks, etc.

**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.

**Stream Simulation:** A method for designing and building road-stream crossings intended to permit free and unrestricted movements of any aquatic species. Reference: <https://www.nae.usace.army.mil/Missions/Regulatory/Stream-and-River-Continuity/>

**Stream Smart Design:** projects designed to allow the stream to act like a stream by passing fish and wildlife as well as the higher flows that come with large infrequent storms while protecting the stability of the road and public safety. Stream Smart Design follows the “Four S’s”: The culvert must SPAN the stream, allowing for passage of aquatic and terrestrial wildlife. The culvert has to be SET at the right elevation. The SLOPE of the culvert must match the stream. There must be SUBSTRATE (natural sediment) in the crossing. Reference: [www1.maine.gov/mdot/publications/docs/brochures/pocket\\_guide\\_stream\\_smart\\_web.pdf](http://www1.maine.gov/mdot/publications/docs/brochures/pocket_guide_stream_smart_web.pdf)

**Temporary impacts:** Temporary impacts include waters of the U.S. that are temporarily filled, flooded, excavated, drained or mechanically cleared because of the regulated activity.

**Temporal loss:** The time lag between the loss of aquatic resource functions caused by the permitted impacts and the replacement of aquatic resource functions at the compensatory mitigation site(s) (33 CFR 332.2).

**Utility line:** Any pipe or pipeline for the transportation of any gaseous, liquid, liquescent, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone, and telegraph messages, and radio and television communication. The term ‘utility line’ does not include activities that drain a water of the U.S., such as drainage tile or French drains, but it does apply to pipes conveying drainage from another area.

**Vegetated shallows/Submerged Aquatic Vegetation (SAV):** Permanently inundated areas that under normal circumstances support communities of rooted aquatic vegetation, such as eelgrass in marine systems as well as a number of freshwater species in rivers and lakes. Note: Eelgrass surveys should be conducted between May and October unless otherwise directed.

**Vernal pools (VPs):** The State of Maine, Department of Environmental Protection has specific protections for VPs. For the purposes of these GPs, VPs are depressional wetland basins that typically go dry in most years and may contain inlets or outlets, typically of intermittent flow. Vernal pools range in both size and depth depending upon landscape position and parent material(s). In most years, VPs support one or more of the following obligate indicator species: wood frogs (*Rana sylvatica*), spotted salamanders (*Ambystoma maculatum*), blue-spotted salamanders (*Ambystoma laterale*), and fairy shrimp (*Eubranchipus* sp.). However, they should preclude sustainable populations of predatory fish.

**Water dependency:** activity requiring access or proximity to or siting within a special aquatic site (SAS) to fulfill its basic project purpose.

**Water diversions:** Water diversions are activities such as bypass pumping (e.g., “dam and pump”) or water withdrawals. Temporary flume pipes, culverts or cofferdams where normal flows are maintained within the stream boundary’s confines aren’t water diversions. “Normal flows” are defined as no change in flow from pre-project conditions.

**Weir:** A barrier across a river designed to alter the flow characteristics. In most cases, weirs take the form of a barrier, smaller than most conventional dams, across a river that causes water to pool behind the structure (not unlike a dam) and allows water to flow over the top. Weirs are commonly used to alter the flow regime of the river, prevent flooding, measure discharge and help render a river navigable.

### **Waters of the United States (U.S.)**

**Waters of the U.S.:** The term waters of the U.S. and all other terms relating to the geographic scope of jurisdiction are defined at 33 CFR 328. Also see Section 502(7) of the Federal CWA [33 USC 1352(7)]. Waters of the U.S. include jurisdictional wetlands. Not all waters and wetlands are jurisdictional. Contact the Corps with any questions regarding jurisdiction.

**Navigable waters:** Refer to 33 CFR 329. These waters include the following federally-designated navigable waters in New England. This list represents only those waterbodies for which affirmative determinations have been made; absence from this list shall not be taken as an indication that the waterbody is not navigable: In Maine, navigable waters are those waters that are subject to the ebb and flow of the tide in addition to the non-tidal portions of the following federally-designated waters in Maine (the Kennebec River to Moosehead Lake, the Penobscot River to the confluence of the East and West Branch at Medway and, Lake Umbagog within the State of Maine).

**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).

**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 tideline.