

# NOTICE OF AVAILABILITY OF AN ENVIRONMENTAL ASSESSMENT AND COMPATIBILITY DETERMINATION

## Science & Technology Advanced Manufacturing Park (STAMP) Right-of-Way Permit at Iroquois National Wildlife Refuge

**JANUARY 16, 2020**

**Name of Responsible Entity:** U.S. Fish and Wildlife Service (USFWS), Iroquois National Wildlife Refuge (INWR), 1101 Casey Road, Basom, NY 14103. Contact: Thomas Roster (585) 948-5445.

An Environmental Assessment (EA) has been drafted for the U.S. Fish and Wildlife Service (USFWS) in accordance with the National Environmental Policy Act (NEPA) of 1969, as amended (42 USC § 4321 *et seq.*), the regulations of the Council of Environmental Quality (CEQ), 40 Code of Federal Regulations (CFR) parts 1500 through 1508, and the regulations of the Department of the Interior (DOI) 43 CFR part 46. This EA evaluates the effects of USFWS issuance to the Genesee County Industrial Development Agency d/b/a the Genesee County Economic Development Center (GCEDC) and its affiliate, the Genesee Gateway Local Development Corporation (GGLDC) of approximately 14.32 acres of new right-of-way located within the Iroquois National Wildlife Refuge (INWR) to accommodate a proposed new force main (Force Main) for sanitary and process wastewater to extend from the proposed Western New York Science & Technology Advanced Manufacturing Park (STAMP) site (Site) to a discharge location at Oak Orchard Creek on Highway 63, approximately 4.8 miles north of the Hamlet of Alabama.

A Compatibility Determination (CD) has been drafted for the Force Main in accordance with federal law and Service policy which provide the direction and planning framework to protect the Refuge System from incompatible or harmful human activities and ensure that Americans can enjoy Refuge System lands and waters. The National Wildlife Refuge System Improvement Act of 1997 is the key legislation regarding management of public uses and compatibility. The compatibility requirements of the Improvement Act were adopted in the Service Final Compatibility Regulations and Final Compatibility Policy published October 18, 2000 (*Federal Register*, Vol. 65, No. 202, pp. 62458 to 62496).

**Copies of the EA and the CD are available for review during business hours at the locations listed below. In addition, digital copies of the EA and CD may be reviewed online at [www.gcedc.com](http://www.gcedc.com) and <https://www.fws.gov/refuge/iroquois/>.**

Iroquois National Wildlife Refuge  
1101 Casey Road  
Basom, New York 14013

Genesee County Economic Development Center  
99 MedTech Drive, Suite 106  
Batavia, New York 14020

**Two public review meetings will be held during the comment period as follows:**

Tuesday, February 4, 2020  
Town of Alabama Town Hall  
2218 Judge Road  
Oakfield, NY 14125  
5:00 PM to 7:00 PM

Thursday, February 6, 2020  
Town of Shelby Town Hall  
4062 Salt Works Road  
Medina, NY 14103  
5:00 PM to 7:00 PM

**Written comments on the EA and/or CD will be accepted by USFWS until 5:00 PM on February 14, 2020.** Written comments shall be forwarded to Thomas P. Roster, Refuge Manager, Iroquois National Wildlife Refuge, 1101 Casey Road, Basom, NY 14103 or electronically via email to [tom\\_roster@fws.gov](mailto:tom_roster@fws.gov). Please include “Environmental Assessment and/or Compatibility Determination” in the subject line of email correspondence.

Further information may be requested by writing to the above address, emailing [tom\\_roster@fws.gov](mailto:tom_roster@fws.gov) or by calling (585) 948-5445. This Notice is being sent to individuals and groups known to be interested in these activities, local news media, and appropriate local, state and federal agencies.

**FINDING OF NO SIGNIFICANT IMPACT  
AND DECISION TO ISSUE RIGHT-OF-WAY EASEMENT TO  
GENESEE COUNTY ECONOMIC DEVELOPMENT COUNCIL**

**IROQUOIS NATIONAL WILDLIFE REFUGE  
ALABAMA, NEW YORK**

The U.S. Fish and Wildlife Service (Service) modification of existing Right-Of-Way (ROW) along New York State Highway 63 for allowance of sanitary and processed wastewater sewer main for proposed Western New York Science and Technology Advanced Manufacturing Park (STAMP) is being developed by Genesee County Economic Corporation (GCEDC). The Service's Regional Refuge Chief, acting as the Secretary of the Interior's representative, is authorized to permit the use of ROWs on national wildlife refuges in accordance with applicable authorities and regulations (i.e., 16 U.S.C. 715s and 50 CFR § 29). A ROW is defined in 340 FW 3 as "a use that will encumber real property by granting a right to use and possibly alter the landscape through construction of a facility such as a road, powerline, pipeline, or building" on lands under control by the Service.

**Selected Action**

**Alternative B—Proposed Action Alternative:**

This alternative would provide for the issuance of a long-term ROW permit for installation and operation of off-site treated wastewater force main to GCEDC. This is the applicant preferred alternative and a more direct route from the STAMP location and the discharge site at Oak Orchard Creek that is North of the Iroquois National Wildlife Refuge (NWR) with 32,000 total feet of linear pipeline. Overall construction would take 27 weeks with an estimated cost of \$13.1 million. For conservation lands this alternative would include about 14,332 feet of pipeline, 14.32 acres of ROW, 0.74 acres of temporary disturbance to lands, and 0.06 acres of permanent change to surface grade from installation of infrastructure.

**Other Alternatives Considered and Analyzed**

**Alternative A— [No Action Alternative]**

The Council of Environmental Quality regulations on implementing the National Environmental Policy Act (NEPA) requires a "No Action" alternative, which we define as avoiding the refuge and thus no issuance of a ROW permit. This alternative would not impact any Federal lands and provides baseline in comparison to impacts. The installation of this force main would skirt around the western side of Iroquois NWR through New York State Department of Environmental Conservation (NYS DEC) properties and private lands to reach its discharge site into Oak Orchard Creek North of the Iroquois NWR. This project would include 49,000 feet of linear pipeline. Overall construction would take 35 weeks with an estimated cost of \$16.7 million. For conservation lands this alternative would include about 15,000 feet of pipeline, 15.70 acres of ROW, temporary disturbance of 0.85 acres of lands, and 0.07 acres of permanent change to surface grade from installation of infrastructure.

## **Summary of Effects of Selected Action**

An Environmental Assessment (EA) was prepared in compliance with the NEPA to provide a decision-making framework that (1) explored a reasonable range of alternatives to meet project objectives, (2) evaluated potential issues and impacts to the refuge, resources and values, and (3) identified mitigation measures to lessen the degree or extent of these impacts. The EA evaluated the effects associated with the proposed action. It is incorporated as part of this finding.

Implementation of the agency's decision would be expected to result in the following environmental, social, and economic effects:

- The adverse and direct impacts to land use, soils, surface water, groundwater, vegetation, and wildlife are expected to be minor or short-termed in nature.
- Wetlands and Floodplains: preferred action will have an impact to 0.56 acres of wetlands, with permanent loss of 0.06 acres with 139 cubic yards of fill for installation of permanent infrastructure.
- Threatened and Endangered Species: a Section 7 consultation was completed, and a Northern Long-Eared Bat (NLEB) 4(d) Rule Streamlined Consultation Form completed with concurrence that this project may affect the NLEB, but that any resulting incidental take of the NLEB is not prohibited by the final 4(d) rule.
- Cultural resources: Phase 1 cultural resource survey was conducted with no cultural resources eligible for the State or National Registers for Historic Places were not found. Survey results were reviewed and concurred by the Regional Historic Preservation Officer, with no impacts expected to cultural resources.
- The project is not anticipated to contribute to any significant effects to public health and safety, visual/aesthetics, socioeconomic, climate change, environmental justice or air quality impacts.

Measures to mitigate and/or minimize adverse effects to wetlands and NLEB have been incorporated into the selected action.

- Long-term impacts include a permanent loss of 0.06 acres of refuge wetlands due to infrastructure required for the installation, operation, and maintenance of the Force Main, which includes the 139 cubic yards of fill within the floodplain. Mitigation for the loss of wetland acres include removing two existing non-functional road crossings within the floodplain. Following removal of all road material, the elevation would be contoured similar to the surrounding area. The disturbed area, estimated to be 0.26 acres, would be seeded/revegetated with native plants. This would be minimal compensatory mitigation for wetland loss and in addition to requirements placed by the U.S. Army Corps of Engineers (USACE) or NYS DEC permits.

- No trees are anticipated for being removed along this corridor, however, to avoid disturbance to NLEB, no tree removal will occur between June 1 and July 31 to avoid impacts to non-volant pups and, during months of hibernation, October 31 to March 31.

While refuges, by their nature, are unique protected areas for conservation of fish, wildlife and habitat, the proposed action will not have a significant impact on refuge resources and uses for several reasons:

- The action is allowing a pipeline to be installed within an existing highway ROW, with minor modification to the ROW to allow for installation of structures and avoidance of existing bridge abutment.
- The adverse direct and indirect effects of the proposed action on air, water, soil, habitat, wildlife, aesthetic/visual resources are expected to be minor and short-term.
- The adverse direct or indirect effects will not contribute to any cumulative impacts to habitat or wildlife from climate change, population growth and development, or local, State, or regional wildlife management.
- The action, along with proposed mitigation measures, will ensure that there is low danger to the health and safety of refuge staff, visitors, and the hunters/fishers themselves.
- The action is not in an ecologically sensitive area.
- The action will not impact any threatened or endangered species; or any federally designated critical habitat.
- The action will not impact any cultural or historical resources.
- The action will not impact any wilderness areas.
- There is no scientific controversy over the impacts of this action and the impacts of the proposed action are relatively certain.
- The proposal is not expected to have any significant adverse effects on wetlands and floodplains, pursuant to Executive Orders 11990 and 11988 because: there will be a net gain in wetlands along Highway 63 due to proposed mitigation measures to restore floodplain and wetlands as part of this action.

## **Public Review**

The draft EA was available for public review from January 16, 2020 until February 21, 2020. The notice of availability for the EA was distributed to local news media, government organizations (Federal, State, and local), as well as, local interest and conservation groups. The documents were available at the Iroquois NWR office, the GCEDC office, and via download from the GCEDC website.

Two public meetings were held, one on February 4, 2020, and the other on February 6, 2020, within the Towns of Alabama and Shelby, respectively. A request to extend the public review period by 1 week was granted at the first public meeting so that interested public had time to review engineering plans associated with the development and operation of the STAMP site. A total of nine individuals attended the public meetings, six on the first night and three on the second night. However, the three that attended on the second night were also at the first meeting, so attendance was only by six different individuals. Only one written document was received during the public meetings. Appendix G of the Final EA includes responses to comments received from the public meeting as well as written.

Many of the questions/comments received throughout the comment period? revolved around the overall operation of the STAMP site and permitting and regulating requirements by agencies such as USACE and the NYS DEC.

Several comments were received that expressed concern over all wildlife (e.g., salamander, turtles, and birds) during the construction phase. Thus, during construction planning, horizontal directional drilling staging areas will be assessed for impacts to wildlife prior to construction and actions taken as appropriate.

Other comments received included the potential of pollution due to a leak in the force main pipe. The current project proposal will have full time electronic monitoring for leak detection in place. We will ensure that an Emergency Action Plan addresses a quick response after leak detection.

## **Finding of No Significant Impact**

Based upon a review and evaluation of the information contained in the EA, as well as other documents and actions of record affiliated with this proposal, the Service has determined that the proposal to implement issuing a ROW permit on the Iroquois NWR does not constitute a major Federal action significantly affecting the quality of the human environment under the meaning of section 102 (2) (c) of the NEPA of 1969 (as amended). As such, an Environmental Impact Statement is not required.

## **Decision**

The Service has decided to issue a ROW permit to GCEDC to install a treated wastewater pipeline along an existing road ROW for Western New York Science and Technology Advanced Manufacturing Park.

This action is compatible with the purposed of the refuge and the mission of the National Wildlife Refuge System. See attached Compatibility Determination.

The action is consistent with applicable laws and policies.

\_\_\_\_\_  
Regional Chief  
National Wildlife Refuge System

\_\_\_\_\_  
Date

## **COMPATIBILITY DETERMINATION**

**USE:** Minor modification of existing Right-Of-Way (ROW) along New York State Highway 63 for allowance of sanitary and processed wastewater sewer main for proposed Western New York Science and Technology Advanced Manufacturing Park (STAMP) is being developed by Genesee County Economic Corporation (GCEDC).

**REFUGE NAME:** Iroquois National Wildlife Refuge

**DATE ESTABLISHED:** 1958

### **ESTABLISHING and ACQUISITION AUTHORITY (IES):**

Migratory Bird Conservation Act (16 U.S.C. 715d)

### **REFUGE PURPOSE(S):**

...for use as an inviolate sanctuary, or for any other management purpose, for migratory birds...  
16 U.S.C. § 715d (Migratory Bird Conservation Act)

### **NATIONAL WILDLIFE REFUGE SYSTEM MISSION:**

“The mission of the National Wildlife Refuge System (Refuge System) is to administer a national network of lands and waters for the conservation, management and, where appropriate, restoration of the fish, wildlife, and plant resources and their habitats within the United States for the benefit of present and future generations of Americans” (National Wildlife Refuge System Improvement Act of 1997, Public Law 105-57).

### **DESCRIPTION OF USE:**

**(a) What is the Use?** The use is a minor modification to an existing ROW. A ROW is defined in 340 FW 3 as “a use that will encumber real property by granting a right to use and possibly alter the landscape through construction of a facility such as a road, powerline, pipeline, or building” on lands under control by the U.S. Fish and Wildlife Service (Service). The Service’s Northeast Regional Refuge Chief, acting as the Secretary of the Interior’s representative, is authorized to permit the use of ROWs on national wildlife refuges in accordance with applicable authorities and regulations (i.e., 16 U.S.C. 715s and 50 CFR § 29). The Service will grant GCEDC a ROW permit to bury a new wastewater sewer main that would run parallel to New York State (NYS) Highway 63 in order to cross Iroquois National Wildlife Refuge (NWR). The GCEDC is developing the Western New York STAMP located just south of the refuge. The proposed campus is approximately 1,300 acres and may employ an estimated 9,000 people with manufacturing new energy technologies.

The permit will allow GCEDC to enter and occupy refuge lands to install, operate, and maintain an approximate 20-inch high-density polyethylene buried pipe. The requested 43-foot to 53-foot ROW from centerline of existing NYS Highway 63 is to provide for maintenance and

construction access as well as avoiding existing structures, road, and facilities. The Force Main would move effluent from the STAMP location south of the refuge to a discharge point into Oak Orchard Creek that is north of the refuge. An estimated 6,000,000 gallons of treated sanitary effluent or processed water is expected to flow per day. In addition to the actual pipeline, the ROW request would also include other infrastructure to be installed at time of construction, including 12 maintenance manholes, 2 metering manholes, 26 valves, and 14 force main markers.

The total length of the proposed pipeline is 33,000 feet with 14,332 feet that would run parallel to NYS Highway 63 on refuge lands. The majority of the pipeline would be buried entirely within the existing NYS Highway 63 road ROW, except for an 800-foot segment needed to avoid an existing New York State Department of Transportation (NYS DOT) bridge and concrete wingwalls at Oak Orchard Creek. In addition, the minor modification adds 10 feet to the existing 33-foot NYS DOT ROW to facilitate installation and future maintenance needs.

The current NYS DOT Highway 63 ROW is 33 feet from centerline of the road amounting to approximately 10.85 total acres. The requested ROW would be 43 feet (distance of 13,532 feet) and 53 feet (distance of 800 feet) from centerline of existing road or approximately 14.32 total acres. Modification of the existing ROW would expand the overall ROW by 3.47 acres.

The issuance of a ROW permit for a buried sewer line is not a priority public use of the Refuge System under the Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105-57). The issuance of a ROW through the refuge for a wastewater sewer line, along a current NYS Highway, will allow for the discharge of 6,000,000 gallons daily into Oak Orchard Creek beyond any Federal, State, and Tribal lands, thus reducing any potential effects this discharge may have on the these lands.

**(b) Where is the use conducted?** Installation of the Force Main pipeline would occur entirely within the existing NYS Highway 63 ROW, except for an 800-foot segment needed to avoid a NYS DOT bridge and concrete wingwalls at Oak Orchard Creek. The proposed project location is shown as Alternative B on Attachment 1. All activity will be within 43 or 53 feet of centerline of NYS Highway 63. The NYS Highway 63 ROW crosses refuge tracts 29, 36a, 38a, and 80 acquired by the refuge from 1959 to 1965. The Highway 63 ROW allows for public access as a road, maintenance of ROW for public safety, and allowance for other utilities.

This area crossing Iroquois NWR consists of road embankments, grass field, wetlands, and forested areas characterized by freshwater emergent wetlands or freshwater forested/shrub wetlands. Each of these areas can be seasonally flooded and/or saturated. The area of potential impact (API) consists of currently maintained road shoulders, excavated ditches, and culverts. Herbaceous plants dominate the API due to annual mowing by NYS DOT crews.

Attachment 1 contains Figures 1, 3, and 4 from the Environmental Assessment (EA) for STAMP Offsite Sanitary and Process Wastewater Sewer Force Main for Project Area, National Wetlands Inventory classification and NYSDEC Regulated wetlands maps.

**(c) When is the use conducted?** The ROW would be valid for a period of 50 years to send daily an estimated 6,000,000 gallons of treated sanitary effluent or processed water through at STAMP full build-out. Installation of the Force Main will be parallel to existing NYS Highway 63, making construction of the pipeline easier as well as the long-term monitoring required to ensure functionality. Construction of the pipeline within Iroquois NWR is estimated to take 2 to 3 months and would occur outside of migratory bird breeding periods of April 15 to July 15. Hours of construction would be done between 7 a.m. to 4 p.m., Monday through Friday with coordination with refuge staff.

The long-term monitoring schedule is unknown, but checking meters attached to two manholes will be monitored weekly for leak detection should take place during normal business hour Monday through Friday with access along existing NYS Highway 63. The Draft Emergency Response Plan has been developed and coordination with refuge staff will be done to address any emergencies, should they occur.

**(d) How is the use conducted?** The Force Main will be installed approximately 5 feet below the surface, except at Oak Orchard Creek crossing where it will be 6 feet below creek channel. The pipeline will be installed using horizontal directional drilling (HDD), which is a low-impact technique used to install pipe underground. Due to equipment limitation, the HDD setup will be no longer than 1,000 feet. Thus, it will require up to 27 staging areas within the refuge to complete the pipeline the entire distance of the refuge. Each staging area will be 20 feet by 60 feet. This staging area will house the drilling rig and allow drilling in both directions, staging area are where the two sections of pipe will be joined, where maintenance manholes will be installed, as well as the monitoring manholes.

A watertight area is required for staging area locations, clay will be imported to create the cofferdam required around the staging area. The cofferdam soil will originate off-site of the refuge, be screened, and placed with a compaction to prevent seepage. The cofferdam will be constructed to be about 1-foot above the average water level height. Staging areas may stay in place for 2 to 3 months to allow for completion of other sections of pipeline and testing prior to removal and restoration of each site.

Maintenance and monitoring manholes are 6 feet in diameter, and a total of 14 manholes will be placed along the route that encompasses Iroquois NWR. After the entire pipeline is in, only the 2-foot manhole cover will be visible from above. Since the manholes need to be above the high water mark, they will be raised to be the same elevation as the NYS Highway 63 centerline. These raised manhole rims will then have earthen material placed around them to blend in with surroundings. In doing this, an estimated 140 cubic yards of soil will be permanently added into the floodplain.

**(e) Why is the use being proposed?** The GCEDC has been trying to develop STAMP for over 10 years and has completed a Generic Environmental Impact Statement (GEIS) and a Smart Growth Impact Statement as it pertains to the requirements under New York State Environmental Quality Review Act and the State Smart Growth Public Information Policy Act.

In 2012, the Final GEIS identified alternatives for wastewater treatment for STAMP and assumed a maximum of 3,000,000 gallons per day of sanitary discharge would be needed. At the time, an on-site wastewater treatment plant was identified with potential discharge into Whitney Creek, Oak Orchard Creek, or Tonawanda Creek. The Tonawanda Seneca Nation expressed significant concern on the potential effects to their lifestyle and culture if effluent was discharged into Whitney Creek. At the same time, NYS Department of Environmental Conservation (NY DEC) was concerned over appropriate management capabilities to Tonawanda Wildlife Management Area due to the volume of daily discharge.

In 2013, potential daily discharge of the wastewater increased from the 3,000,000 gallons per day to 12,000,000 gallons per day. Alternative options for treatment and discharge were conducted for the increased potential use and subsequent treatment of wastewater with final determination by GCEDC through their study, that the Village of Medina's existing waste water treatment facility was the best recommendation for wastewater treatment and final discharge into Lake Ontario.

In 2016, CC Environment and Planning, the environmental consulting firm for GCEDC, approached Iroquois NWR to request information on the ROW process and requirements for their Force Main to reach the Medina Waste Water Treatment Plant. The Service initiated its ROW application process and entered into discussion with GCEDC and CC Environment and Planning. The Service requested, as part of this process, for the applicant to address why their project could not avoid the Iroquois NWR. GCEDC agreed to initiate an EA to address issues avoiding the refuge as well as to show the potential effects to the refuge of their preferred alternative, which is to go along NYS Highway 63. An EA has been developed by CC Environment and Planning that documents avoiding Iroquois NWR will increase construction time, infrastructure, environmental impacts, and overall cost to GCEDC in order for the Force Main to reach the Medina Waste Water Treatment Plant.

During their development of the EA, technology use of the STAMP site has changed to where the effluent would qualify for a NYS DEC State Pollutant Discharge Elimination System (SPDES) permit and the proposal would be to discharge north of the Iroquois NWR into Oak Orchard Creek. The request from GCEDC to the Service stayed the same in relation to size and length of pipe, staging areas, construction techniques, etc., just the type of effluent flowing through the pipe as well as the final discharge site, which is still off refuge. The purpose of this is to eliminate the potential adverse effects from discharge of 6,000,000 gallons daily into creeks that flow onto Federal, State, or Tribal managed lands by providing access through the refuge and discharging downstream of these lands.

#### **AVAILABILITY OF RESOURCES:**

The processing of a ROW request on or over refuge lands requires that the Service will be reimbursed for ROW permit processing, value of the land required for the ROW permit, cost of administrative procedures (NEPA, compatibility, Section 7 consultation, etc.), and pre- and post-construction monitoring construction, if approved.

After easement approval and construction activities completed, it is anticipated that yearly coordination would be completed to address routine maintenance and operations of the Force Main and ROW management. If this is the case, then this use can be administered within existing staffing and budgets.

If a leak or other emergency should occur, then the Service will be reimbursed for their time associated with containment, permits, access, etc.

### **ANTICIPATED IMPACTS OF THE USE:**

As a requirement of the ROW request, GCEDC has contracted with CC Environment and Planning to complete an EA and Cultural Resources Review to provide information on technical aspects of the pipeline installation and operation as well as to provide data to assist with this compatibility determination. A summary of their findings by topic is below. The EA contains more specifics on these impacts.

**Soils:** The impacts would be localized and largely contained within the current NYS Highway 63 ROW, including the placement of up to 27 staging areas for HDD. The staging areas are 20 feet wide (perpendicular to road) and 60 feet long (parallel to road) as measured from the graveled road shoulder, thus they are placed mostly on existing maintained road shoulder. Surface disturbance from construction of these staging areas and equipment may result in soil compaction, puddling, displacement or and accelerated erosion due to wind and water may occur after vegetation removal (Miller, Richard et al. 2004) The use of HDD reduces soil impacts as compared to other methods, but also requires a drilling fluid. Rarely, fluid release can occur during the HDD process. Best Management Practices (BMP) will be used, including erosion, sand, and sediment control measures; topsoil segregation for future reclamation; reseeding areas immediately after construction activities; use of appropriately sized equipment; maintaining proper drainage; regrading to match topography post installation; and providing adequate depth of cover for pipe installation; monitoring and controlling the fluid injection rate; and using fluid containment procedures. The impacts are not expected to cause or contribute to significant adverse impact to soils.

**Surface Water:** Four streams within the Iroquois NWR would need to be crossed; however, since the method of installing the Force Main is by way of HDD the pipe would pass underneath the streambed, thus avoiding direct and indirect impacts to surface water resources.

**Wetlands:** Due to the nature of Iroquois NWR, completely avoiding wetlands would not be feasible. Overall, 0.56 acres of wetlands will be impacted either temporarily during construction or permanently due to infrastructure. Temporary impacts to 0.5 acres will occur with the installation of required staging areas for HDD sites. After completion of the Force Main installation, all fill brought in for the HDD staging areas would be completely removed and the area restored to its original elevation.

Permanent impacts to 0.06 acres will be due to infrastructure installed, like maintenance and metering manholes, for the operation of the Force Main. Compensatory mitigation for the permanent loss of wetland acres is proposed to include removing two non-functional refuge

access points along NYS Highway 63. It is unknown when these crossings were installed to access the refuge dike structure along NYS Highway 63, but during a ditch improvement project in the early 2000s, the culverts for crossing the ditch were not replaced and the access road remnants remain. The surface area of these old access points comprise about 0.25 acres. To remove these access points, the culvert would be removed, ground elevation restored to a similar elevation in the floodplain, and the area would be seeded with native vegetation and along with other disturbed areas, ensure successful restoration of vegetation.

Groundwater: Local groundwater monitoring wells indicate that average groundwater depth in the area is almost 42 feet deep. The Force Main will be placed at about 6 feet deep. An HDD drilling fluid release, which is rare, could potentially contaminate groundwater resources beneath and downstream. Preventative and containment measures will be used as described in “Soils;” thus no direct or indirect impacts are expected.

Floodplains: Installation of the Force Main will add 139.2 cubic yards of fill to the floodplain. The access point for the maintenance and metering manholes that will be installed needs to be above high water mark in this area. After installation, these access manholes would be backfilled to support structure and to blend in with surroundings. Floodplain characteristics would be unchanged, with overall wetland impacts and offsets discussed in wetlands section above.

Vegetation: The NYS Highway 63 ROW outside of the asphalt road is mostly disturbed lands including mowed road shoulders, excavated ditches, culverts, and brush. Sections that are part of the intermittent stream or wetlands include associations with shallow emergent marsh, common reed marsh, and shrub marsh. Impacts to vegetation areas are expected to be about 0.74 acres due to ground clearing activities for HDD staging areas. Use of BMPs include keeping ground disturbance to an absolute minimum, use of weed-free seed, use of designated cleaning areas for tools and equipment, and implementing erosion control measures. The BMPs will help reduce impacts associated with ground clearing activities. Additionally, all HDD staging areas will be restored, including removing cofferdam material, grading to match the elevation prior to construction, and re-seeding disturbed areas with native mixture that represents the area prior to construction.

Noise: Construction equipment and activities will temporarily add to noise level along the NYS Highway 63 associated with vehicle traffic. Estimated volume levels are based on 5,000 vehicles daily with posted speed limit of 55 miles per hour. Documented responses of wildlife to noise include increased heart rate, startle responses, flight, disruption of behavior, and separation of mothers and young (Selye 1956, Clough 1982, Anderssen et al. 1993). Noise can mask sounds that wildlife rely on such as finding desirable habitat and mates, avoiding predators, detecting prey, and protecting young (NPS, 2012). The 2 to 3 months construction duration would be outside of the breeding and nesting season for most animals, particularly birds of April 15 to July 15. Post-construction there will be no additive noise generated from operation of Force Main above local traffic noise.

Threatened and Endangered Species: Only one federally listed species may occur in the area, which is the threatened northern long-eared bat (*Myotis septentrionalis*). A Northern Long-

Eared Bat 4(d) Rule Streamlined Consultation Form was completed in October of 2017 and resulted in concurrence from the New York Field Office that this project may affect the northern long-eared bat, but complies with the 4(d) rule. Any tree removal would be conducted from October 1 to March 31. However, no tree removal is anticipated with this project.

Several State-listed species have been identified in the EA, including pied-billed grebe, sedge wren, Henslow's sparrow, bald eagle, and northern harrier. The alignment for the requested ROW and API does not contain suitable habitat for breeding and nesting of the above species. However, they are recorded as nesting on the refuge and would expect them to be in refuge habitats near NYS Highway 63 or be moving over the API in the case of bald eagle or marsh hawk. All have potential for temporary habitat avoidance due to construction activities, noise, dust, etc. as partially mentioned in noise section above. Construction activities will be outside of nesting period for these species of April 15 to July 15. No impacts expected after operation of the Force Main.

There should be no effect on the State-endangered bog turtle or eastern massasauga since neither these species nor their suitable habitat are present within the API.

Other Avian: Iroquois NWR has recorded over 260 different species of birds on the refuge with 125 known to breed. Construction activities for groundwork activities of building HDD staging areas, including noise, dust, etc. may affect individual birds in these locations. Avoidance of these construction sites is anticipated during the 8- to 10-week installation time. The alignment for the requested ROW and API does not contain suitable habitat for breeding and nesting of the bird species since road safety requires mowing of the shoulders. However, these species do nest and breed in the habitats adjacent to NYS Highway 63 and the API, and there is movement through the API for birds to access other habitats. For example, a heron rookery is located just east of NYS Highway 63 that contains approximately 300 nests. These birds consistently fly over the road to feed in marshes that are located to the west of NYS Highway 63 and the API. Construction activities will be conducted outside of the nesting season, April 15 to July 15, to prevent impacts to breeding migratory bird species. This includes all ground clearing activities as well.

Other Wildlife: Iroquois NWR has recorded 42 species of mammal on the refuge including moles, shrews, bats, rabbits, rodents, and carnivores. Additionally, Iroquois NWR hosts reptiles, fish, amphibians, and insects. It is expected that these animals will avoid the construction areas due to noise, dust, and vehicle movements. Vehicle and equipment deployment and noise should push amphibians, reptiles, and small mammals out of the area prior to cofferdam construction. BMPs, as listed in previous sections, will be used to minimize these short-term disturbances.

#### Short- and Long-term Impacts:

Short-term impacts include the ground clearing and/or disruption of 0.74 acres of Iroquois NWR lands while the HDD staging areas, including soil erosion measures, are put in and the Force Main is drilled between the staging sites. Wetlands comprise 0.56 acres of the 0.74 acres of land. There would be temporary impact to 0.50 acres of wetlands. Clean clay soil will be trucked for the cofferdam construction to ensure that there is a watertight seal for the staging areas. Topsoil and flora would be removed as well. After the 2 to 3 month anticipated

construction time, the trucked in soil would be removed and disposed offsite. These areas would be restored to pre-construction conditions, including elevation and seeding with native plant seed mix. It is anticipated that most wildlife would avoid the area of construction during this time.

HDD techniques require drilling fluid. This fluid is a combination of bentonite, other additives, and water. Rarely, fluid release can occur during the HDD process; this is known as frac-out. Seepage can result from pressure or fractures in the rock. BMPs are used to ensure depth of cover for pipe installation, control of injection rates, and monitoring of fluid levels at entrance and exit points. The cofferdam will act as a temporary fluid containment area, providing early indications of fluid encroaching on the surface. Equipment to contain fluid and immediate suspension of drilling operation would occur if fluid broke the containment area, until control is regained. The primary drilling fluid, bentonite, has many advantages in the drilling operation. However, it also has several disadvantages and potential affects if released during a frac-out. The bentonite is normally non-toxic, can be used in farming practices, and is not a hazardous substance as defined by U.S. Environmental Protection Agency; however, it can be toxic to fish, fish eggs and aquatic invertebrates if discharged in large quantities. Additionally, if drilling fluid is discharged into a wetland from an inadvertent release, it is classified as “dredged or fill materials” as defined in the Clean Waters Act Section 404(b)(1)(Slade 2000).

If a leak should ever happen, the emergency response plan would be activated, effluent pumping would cease, shutoff valves would help isolate the leak and then a plan to repair would be put in place. The damaged pipe and fittings would be replaced by excavating the affected area. If the leak is in an inaccessible area, a new pipe may need to be placed between the two manholes using the same HDD technique as describe for installation. In either case, a temporary bypass may be put into place within the approved ROW to continue operations since the STAMP has limited storage capacity on-site. All disturbed areas would be restored to previous conditions.

Effluent cleanup may not be feasible depending on the leak and when detected. Effluent may absorb into the ground or flow away from ROW area. The complete effects of effluent discharge will be unknown; however, the STAMP is required to have a NYS DEC SPDES permit for their discharge into the Oak Orchard Creek north of the Iroquois NWR, so effluent would not pose a threat to the environment due to SPDES permit limits for direct discharge. NYS DEC (2017) Groundwater Assessment indicates that level of concern from sewer lines is low in the State. The potential for contamination is higher in forced mains than gravity fed. However, leaks in force mains are normally detected early and corrected quickly. Leak potential will be minimized by utilizing fused HDPE pipe, which reduces the number of pipe joints and the number of mechanical fittings put into place.

Long-term impacts include a permanent loss of 0.06 acres of refuge wetlands due to infrastructure required for the installation, operation, and maintenance of the Force Main. Mitigation for loss of wetland acres has proposed improvements to refuge wetlands in this same corridor that would remove two existing non-functional road crossings within the floodplain. Following, removal of all road material, the elevation would be contoured similar to surrounding area. The disturbed area, estimated to be 0.26 acres, would be seeded/revegetated with native plants. This would be minimal compensatory mitigation for wetland loss and in addition to

requirements placed by the Army Corps of Engineers (ACOE) or NYS DEC permits, if any. A full mitigation plan will be developed requiring Service concurrence.

The approval for the ROW request for this project would add an additional 3.47 acres of refuge land into a long-term agreement and be accessible to GCEDC for the installation of the pipeline as well as ensure adequate footprint to repair or replace pipeline sections in the future, if needed. GCEDC will offset this 3.47 acres locked into this long-term agreement by restoring 4.5 acres of refuge lands currently inhabited by non-native conifer plantations. These conifer plantations have been identified in the Iroquois NWR's 2011 Comprehensive Conservation Plan for removal and restoration. GCEDC will remove existing tree logs, mulch tops and branches, plant bare root hardwoods with tree guards with a minimum of 250 trees per acres, and guarantee survival of 75 percent after 5 years.

**Cumulative Impacts:** No adverse cumulative impacts are expected with this project. There will be temporarily avoidance by wildlife at the HDD staging areas during construction, and while pipeline is being installed and staging areas removed. Noise from construction equipment will be additive to the noise produced by vehicles traveling the highway, but only temporary in nature, 2 to 3 months. Vegetation and soil disturbance during construction will be restored with native vegetation loss of 0.05 acres of wetland from infrastructure for the operation of the Force Main. After installation and restoration, the Force Main will be monitored with access coming directly from the shoulder of existing NYS Highway 63.

**Summary of Impacts:** Overall, we anticipate that this project will have negligible impacts on refuge resources and not materially interfere or detract from the refuge's purposes because the project will:

- Be a minor modification to an existing ROW width.
- Occur mostly within an existing NYS Highway ROW.
- Be of short duration for installation, 2 to 3 months.
- Use horizontally direct drilling technique
- Take place outside the migratory bird nesting period of April 15 to July 15.
- Not interfere with other refuge operations, recreation or trust resources after installation.
- Permanent loss of 0.06 acres of wetlands will be mitigated with 0.26 acres of wetland improvements.
- Additional 3.47 acres of ROW will be mitigated with 4.5 acres of native habitat restoration.

**PUBLIC REVIEW AND COMMENT:**

The draft compatibility determination was available for public review ran from January 16, 2020 until February 21, 2020, along with the Draft Environmental Assessment for Right-of-Way Across Iroquois National Wildlife Refuge (INWR) by Science & Technology Advanced Manufacturing Park (STAMP) Offsite Sewer Project Request. The notice of availability for both the CD and the EA was distributed to local news media, government organizations (Federal, State, and local), as well as, local interest and conservation groups. The documents were available at the Iroquois NWR office, the GCEDC office, and via download from the GCEDC website.

Two public meetings were held one on February 4, 2020, and the other on February 6, 2020, within the Towns of Alabama and Shelby, respectively. A request to extend the public review period by 1 week was granted at the first public meeting so that interested public had time to review engineering plans associated with the development and operation of the STAMP site. A total attendance was nine individuals the public meetings, six on the first night and three on the second night. However, the three that attended on the second night were also at the first meeting, so attendance was only by six individuals. Only one written comment was received.

Many of the questions/comments received revolved around the overall operation of the STAMP site, permitting, and regulating requirements for the project, clarification of wording/meaning in CD or EA, lack of trust in GCEDC or New York State Department of Environmental Conservation.

Several questions/concerns were received on specific impacts within the refuge to all wildlife during construction phase, including salamander and turtles, colonial nesting birds, the use of HDD for going underneath a creek bed, extra protection on construction equipment and potential future detection and pollution of the refuge and wetlands if the sewer line were to leak.

All comments received at the public meetings and written comments were responded to as part of the NEPA process.

**DETERMINATION (CHECK ONE BELOW):**

Use is not compatible.

Use is compatible with the following stipulations.

**STIPULATIONS NECESSARY TO ENSURE COMPATIBILITY:**

The Service has worked with GCEDC to ensure that this minor modification to an existing ROW will be established, operated, and maintained in accordance with 50 CFR § 29.21, as well as refuge purposes. To ensure compatibility with Refuge System and Iroquois NWR goals and objectives, as well as to avoid or minimize adverse impacts as described above, the use may occur under the following stipulations:

- Only effluent that meets NYS DEC SPDES permit for discharge is allowed. If manufacturing of materials requires effluent be treated at a wastewater treatment plant, compatibility will be reevaluated.
- The Service is reimbursed for its time in processing the ROW permit, as well as, salary and other expenditures associated with an emergency response and any follow-up requirement. An agreement will be setup prior to ROW permit issued.
- GCEDC would be required to secure all required environmental and regulatory permits, including for wetland mitigation, from appropriate regulatory agencies and at GCEDC's expense.
- Permittee will setup a construction plan, with approval for timing of refuge work to ensure construction does not interfere with other refuge operations or trust resources. Construction plan will include at minimum: timing (mobilization, vegetation removal, excavation,), project updates, reporting emergencies (construction issues, resource damage) and avoiding conflicts with other refuge operations recreation.
- Prior to any construction activities, the project area, i.e. ROW width, will be surveyed and marked. Markings are required to stay in place until completion of project to ensure no activities/impacts occur outside of ROW area. All HDD staging areas will be visually checked by biologist prior to construction to identify any obvious impacts to wildlife like evidence of turtle nests, etc. that need attention prior to construction.
- GCEDC will be responsible for monitoring all restoration areas within the ROW for 2 years after construction to ensure successful restoration of native plant species. An annual report is required due October 1 for each of the 2 years after construction is completed. The Service must concur that restoration has been achieved. If restoration is not achieved, another 2-year plan will be developed and implemented by applicant with guidance from the Service.
- Compensatory mitigation for wetlands mentioned in this compatibility determination is a minimum and in addition to requirements requested by ACOE or NYS DEC.
- GCEDC will restore 4.5 acres of non-native conifer plantations (see Attachment 2) to offset the additional 3.47 acres needed outside the Highway 63 ROW. The refuge will require a 75 percent survival rate for trees after 5 years.
- The Service will have concurrence on any habitat plans associated with the Force Main section that is within Iroquois NWR.

**JUSTIFICATION:**

This activity will not conflict with any of the other priority public uses or adversely impact biological resources. Through the compatibility determination process, the refuge manager has determined that a minor modification of an existing ROW, in accordance with the stipulations

provided above is a compatible use that will not materially interfere with or detract from the fulfillment of the National Wildlife Refuge System mission or the purpose of the refuge.

**SIGNATURE:**

Refuge Manager:

\_\_\_\_\_  
(Signature)

16 JUL 20

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

**CONCURRENCE:**

Regional Chief:

\_\_\_\_\_  
(Signature)

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

**MANDATORY 10/15 YEAR RE-EVALUATION DATE:**

\_\_\_\_\_

## REFERENCES:

- Anderssen, S.H., Nicolaisen, R.B., and Gabrielsen, G.W. 1993. Autonomic response to auditory stimulation. *Acta Paediatrica*, 82, 913-918.
- CC Environment and Planning (CCEP), 2019. Draft Environmental Assessment: Proposed STAMP Offsite Sanitary and Process Wastewater Sewer Force Main. Prepared for Gensee County Economic Development Center by CC Environment & Planning. July 2019
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- Miller, R. Ph.D., Colbert, S. PH.D., and Morris, L. Ph.D., 2004. Effects of Heavy equipment on Physical Properties of Soils and the Long-term Productivity: A Review of Literature and Current Research. Technical Bulletin 887. National Council for Air and Stream Improvement.
- New York State Department of Environmental Conservation (NYSDEC), 2017. New York State Groundwater Assessment. [http://www.dec.ny.gov/docs/water\\_pdf/305bgrndw10.pdf](http://www.dec.ny.gov/docs/water_pdf/305bgrndw10.pdf)
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- Slade, Dana A. 2000. Case Study: Environmental Considerations of Horizontal Directional Drills. 2000 International Pipeline Conference – Volume 1: Codes, Standards and Regulations; Design and Constructions; Environmental; GIS/Database Development; Innovative Projects and Emerging Issues
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Right-of-way Permit: IRQ (P-1)  
IROQUIOS NATIONAL WILDLIFE REFUGE

United States Department of the Interior  
Fish and Wildlife Service, Interior Region 1

Right-of-way Permit for  
Sewer Force Main  
STAMP Sewer Works, Inc., a subsidiary of the Genesee Gateway Local  
Development Corporation, the non-profit real estate affiliate of the  
Genesee County Industrial Development Agency  
d/b/a Genesee County Economic Development Center

The U.S. Fish and Wildlife Service (*Service*), by signature of the Regional Chief, National Wildlife Refuge System, Interior Region 1, (*Regional Chief*) hereby issues a Right-of-Way Permit (*Permit*) to the STAMP Sewer Works, Inc., a subsidiary of the Genesee Gateway Local Development Corporation, the non-profit real estate affiliate of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center (*Permittee*) for development, construction, installation, operation, maintenance, repair, and/or removal (*Permitted Use*) of a Sewer Force Main, in, under, though, over, across and upon land described below within Iroquois National Wildlife Refuge, New York (*Refuge*), subject to the terms and conditions stated below.

**BACKGROUND**

The *Permittee* has requested the right to construct and maintain Sewer Force Main on the *Refuge*. This *Permit* will allow the *Permittee* to construct certain improvements (*Permitted Facilities*) which include all proposed development of the *Permitted Use*. The *Permitted Use* will be wholly within the area located along the westerly side of Alleghany Road (NYS Route 63). This will include the installation of approximately 14,286 feet of Force Main through the refuge. The *Regional Chief*, as a delegated representative of the Secretary of the Interior, is authorized to issue this *Permit* in accordance with 16 U.S.C. § 668dd(d), regulations in 50 CFR § 29, and the North Atlantic-Appalachian Regional Director's Order [18-01]. The *Regional Chief* is identified in the signature block at the end of this document (50 CFR § 29.21-4(b)).

The *Permittee*, by accepting this *Permit*, agrees to the *Permit* terms and conditions as prescribed by this *Permit*. Such terms and conditions will be followed, unless waived in part by the *Regional Chief*, and may include additional special stipulations at his/her discretion. This *Permit* is granted only for the specific uses described in this document and may not be construed to include any other use within the described *Permitted Area* unless approved in writing by the *Regional Chief* (50 CFR § 29.21-4(b)(15)).

The *Regional Chief* found that the requested *Permitted Use* is compatible with the purposes for which the *Refuge* was established, as determined and conditioned by a Compatibility Determination and Finding of No Significant Impact, both signed July 27, 2020. The *Service* also

completed consultations under Section 106 of National Historic Preservation Act and Section 7 of the Endangered Species Act, and determined that this *Permit* was consistent with both acts.

**DESCRIPTION OF LAND SUBJECT TO PERMIT:** The following description of the land subject to the *Permit* (*Permitted Area*) shall be an interim description while work is being done pursuant to the conditions of the *Permit*.

*The permit will allow Permittee to enter and occupy refuge lands to install, operate, and maintain an approximate 20-inch high-density polyethylene buried pipe. The requested 43-foot to 53-foot ROW from centerline of existing NYS Highway 63 is to provide for maintenance and construction access as well as avoiding existing structures, road, and facilities. The Force Main would move effluent from the STAMP location south of the refuge to a discharge point into Oak Orchard Creek that is north of the refuge. An estimated 6,000,000 gallons of treated sanitary effluent or processed water is expected to flow per day. In addition to the actual pipeline, the ROW request would also include other infrastructure to be installed at time of construction, including 12 maintenance manholes, 2 metering manholes, 26 valves, and 14 force main markers.*

*The total length of the proposed pipeline is 33,000 feet with 14,286 feet that would run parallel to NYS Highway 63 on refuge lands. The majority of the pipeline would be buried entirely within the existing NYS Highway 63 road ROW, except for an 800-foot segment needed to avoid an existing New York State Department of Transportation (NYS DOT) bridge and concrete wingwalls at Oak Orchard Creek. In addition, the minor modification adds 10 feet to the existing 33-foot NYS DOT ROW to facilitate installation and future maintenance needs.*

*The current NYS DOT Highway 63 ROW is 33 feet from centerline of the road encumbering approximately 10.823 total acres of refuge lands. The requested ROW would be 43 feet (distance of 13,486 feet) and 53 feet (distance of 800 feet) from centerline of existing road or approximately 14.047 total acres. An additional 3.224 acres of unencumbered refuge lands is required for the Permitted Use.*

*The issuance of a ROW permit for a buried sewer line is not a priority public use of the Refuge System under the Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997 (Public Law 105- 57). The issuance of this ROW Permit through the refuge for a wastewater sewer line, along a current NYS Highway, will allow for the discharge of 6,000,000 gallons daily into Oak Orchard Creek beyond any Federal, State, and Tribal lands, thus reducing any potential effects this discharge may have on these lands.*

A sketch of the *Permitted Area* is hereby included and made a part of this document as Exhibit A.

Prior to development, construction, and installation of the *Permitted Facilities*, an interim metes and bounds description of *Permitted Area* is made a part of this document as Exhibit B and a preliminary survey plan attached hereto as Exhibit C.

Should any revisions to the bounds within Exhibits [B] and [C] be requested by the *Permittee* prior to any construction, the *Regional Chief* will review the proposed plan alteration. If the *Regional Chief* approves of such plan alteration, this description is to be revised with a final metes and bounds description and a final survey plan as described in Condition (36) below.

**EFFECTIVE DATE AND TERM OF PERMIT:** The term of this permit is for fifty (50) years or while it is used for the purpose granted, whichever period is shorter. The term of the *Permit* shall commence upon signature of both parties. The *Permittee* has the option to apply for renewal of the *Permit*.

This *Permit* may be renewed at the discretion of the *Regional Chief*. Applications for renewal must be submitted to the *Regional Chief* at least six months before expiration of this *Permit* to assure uninterrupted authorization of the right-of-way. All applications for renewal and permit renewals shall be subject to applicable law, regulations, fair market values, fees, and cost reimbursement requirements existing at the time of renewal application and renewal.

**AUTHORITY TO ACCEPT PERMIT:** The *Permittee* represents and warrants that:

- (1) The *Permittee* is authorized under applicable law, regulations, delegations, charters and /or bylaws to accept this *Permit* and comply with the terms and conditions of this *Permit*;
- (2) The *Permittee* has duly authorized and approved, or delegated authority to authorize and approve, acceptance of this *Permit* and compliance with the terms and conditions of this *Permit* by the *Permittee's* signatory;
- (3) The *Permittee* has completed all actions necessary for valid acceptance of this *Permit* and compliance with the terms and conditions of this *Permit*; and
- (4) All authorizations, delegations, and actions represented and warranted above are valid on the effective date of this *Permit*.

**FEES AND COST REIMBURSEMENT:** Payment of the following fees, reimbursements, charges, and rents shall be made payable to the U.S. Fish and Wildlife Service and submitted to the Division of Realty (*Realty*):

U.S. Fish and Wildlife Service  
Division of Realty  
300 Westgate Center Drive  
Hadley, Massachusetts 01035-9589

- (1) Application and Processing Fees:
  - a. The nonreturnable application fee of in the amount of One Hundred and Thirty Six Dollars (\$136.00) has been paid pursuant to 50 C.F.R. 29.21-2(a)(2)ii(A). Calculation: 14,332 linear feet = 2.714 miles x \$50/mile.

AND

b. It has been determined that the applicant is an “instrumentality” of state or local government and therefore additional fees for processing the Permit have been waived in accordance with 50 C.F.R. 29.21-2(a)(2)ii(D).

(2) Monitoring Fees:

It has been determined that the applicant is an “instrumentality” of state or local government and therefore fees for monitoring the Permit have been waived in accordance with 50 C.F.R. 29.21-2(a)(3)ii(D).

(3) Land Use Fee:

The *Permittee* shall pay rent of Fifteen Thousand Seven Hundred and Thirty Dollars (\$15,730.00) for the use and occupancy of land in the *Refuge* pursuant to 50 C.F.R. § 29.21-7(a).

(4) Termination Fees:

Following the termination of this permit, the former holder will be required to pay additional amounts to the extent the actual costs to the United States have exceeded the payments required by paragraphs (2) and (3) above.

**PERMIT TERMS AND CONDITIONS**

By accepting this *Permit*, the *Permittee* agrees to the following terms and conditions. The *Permittee* shall comply with these conditions and shall ensure that all of the *Permittee*'s agents, representatives, contractors, and assignees are also familiar with and comply with them.

(1) CONTACTS: The *Permittee* shall keep the Project Leader for the *Refuge* informed at all times of the *Permittee*'s address and, in case of corporations, of the address of its principal place of business and the names and addresses of its principal officers. 50 CFR § 29.21-4(b)(11)

(A) All references in this *Permit* to the *Regional Chief* shall mean the Regional Chief, National Wildlife Refuge System, Interior Region 1 of the U.S. Fish and Wildlife Service. All references in this *Permit* to the Iroquois National Wildlife Refuge shall mean the Project Leader (*Project Leader*) or his/her designated representative. Communications regarding this *Permit* should be directed as follows:

- (i) Iroquois NWR  
1101 Casey Road  
Basom, NY 14013  
Phone: (585) 948-5445  
Email: [iroquois@fws.gov](mailto:iroquois@fws.gov)

(ii) Regional Chief, National Wildlife Refuge System  
300 Westgate Center Drive  
Hadley, Massachusetts 01035-9589  
Phone: (413) 253-8550  
Fax: (413) 253-8468

(B) All references in this *Permit* to the *Permittee* shall mean STAMP Sewer Works, Inc., a subsidiary of the Genesee Gateway Local Development Corporation, the non-profit real estate affiliate of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, its agents, representative, contractors, and assignees, and any other parties authorized to act under the authority of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center, on its behalf. For the purposes of this *Permit*, the *Permittee's* designated representative is:

STAMP Sewer Works, Inc., a subsidiary of the Genesee Gateway Local Development Corporation, the non-profit real estate affiliate of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center  
99 MedTech Drive, Suite 106, Batavia NY 14020  
Phone: (585) 343-4866  
Fax: (585) 343-0848

- (2) PERMITTED FACILITIES: *Permitted Facilities* in the *Permitted Area* are limited to those improvements described and shown on certain plans entitled 1) “Basis for Design Report for the Genesee County Economic Development Center (GCEDC)”, dated June 2020 and last revised December 2020 (Exhibit D); 2) Draft ROW plans entitled “STAMP Wastewater Sanitary Force Main”, dated December 17, 2020, and last revised May 6, 2021, Sheets D-01 thru D10 (Exhibit E); 3) “Construction Drawings for Genesee County Economic Development Center STAMP Force Main Contract A: Central Area Contract B: North Area March 2021”, dated March 8, 2021, and last revised May 11, 2021 (Pages 1-30) includes General Notes, Sheet Layout, Plan and Profile Drawings (S23-S40), Misc. Details, and Maintenance & Protection of Traffic Notes/Details (Exhibit F); and 4) “Science & Advanced Manufacturing Park (STAMP) Offsite Wastewater Joint Permit Application Pre-construction Notification” dated June 2016 Creek Crossing and Freshwater Wetlands Permit NYSDEC and U.S. Army Corps of Engineers for Genesee County Economic Development Center STAMP Offsite Sewer”, dated June 2016 and last revised October 2020 as prepared by CC Environment & Planning (Exhibit G); all on file at the FWS Regional Office in Hadley, MA (*Realty*). All plan sets are to be in final form and no work is permitted that does not strictly adhere to these Plans.
- (3) OTHER PERMITS: The *Permittee* shall apply for and receive any other permits required by the State, County, or municipality in which the *Permitted Use* is proposed. The *Permittee* shall apply for and receive any other permits required by all other Federal

agencies, including the U.S. Army Corps of Engineers or any other applicable authorities. The *Permittee* shall provide copies of all such required permits to *Realty* prior to beginning construction of the *Permitted Facilities*.

- (4) STATE AND FEDERAL LAWS: *Permittee* shall comply with State and Federal laws applicable to the project within which the *Permit* is granted, and to the lands included in the *Permitted Area*, and lawful existing regulations thereunder, and particularly this *Permit* incorporates by reference all conditions required to be included pursuant to 50 C.F.R. part 29, subpart B. Failure to recite any condition required to be included by 50 C.F.R. part 29 explicitly herein does not affect the applicability or enforceability of such a condition. 50 CFR § 29.21-4(b)(1).
- (5) DISCRIMINATION: *Permittee* shall not discriminate against any employee or applicant for employment because of race, creed, color, or national origin and shall require an identical provision to be included in all subcontracts for the purposes of this *Permit*. 50 CFR § 29.21-4(b)(12).
- (6) NO BENEFIT TO THIRD PARTIES: No member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this *Permit* or to any benefit that may arise there from, but this provision shall not be construed to extend to this *Permit* if made with a corporation for its general benefit.
- (7) THIRD PARTY RIGHTS: This *Permit* shall be subject to outstanding rights, if any, in third parties. 50 CFR § 29.21-4(a).
- (8) MANAGEMENT OF LANDS BY SERVICE: This *Permit* is subject to the express condition that the exercise thereof will not unduly interfere with the management, administration, or disposal by the United States of the land affected thereby. The *Permittee* agrees and consents to the occupancy and use by the United States, its grantees, permittees, or lessees, of any part of the *Permitted Area* not actually occupied for the *Permitted Use* to the extent that it does not interfere with the full and safe utilization thereof by the *Permittee*. The *Permittee* also agrees that authorized representatives of the United States will have the right of access to the right-of-way for the purpose of making inspections and monitoring the *Permitted Use*. 50 C.F.R. § 29.21-4(b)(13).
- (9) CONSTRUCTION TECHNIQUES: The *Permittee* shall use construction techniques described in the Sediment Control Handbook for Construction, Best Management Practices and best management standards established by the Natural Resources Conservation Service to minimize potential impacts to land and water resources. Installation of the Sewer Force Main will be by horizontal directional drilling (HDD). No open trenching is permitted, except for the 27 (or less) staging areas identified within the plans identified within Condition 2 Exhibits. It is anticipated that each staging area be approximately 20'x 60'. All temporarily impacted areas will be restored to pre-construction grades and in accordance with Conditions 11, 13, 14 and 48. Any future repair or replacement performed by open trenching may require additional ROW Permits. See Condition 52

- (10) VEGETATION AND RESTORATION: The *Permittee* shall remove the minimum amount of vegetation from the *Permitted Area* necessary for the *Permitted Use* and revegetate all soils disturbed in the *Permitted Area*. No vegetation shall be disturbed outside of the *Permitted Area*. All wetland and upland restoration including the use of nursery plants shall be approved in advance and in writing by the *Project Leader*. The *Permittee* shall reimburse the United States for the market value, if any, of any vegetation removed or destroyed, or replace the vegetation as specified by the *Project Leader*.
- (11) RESOURCE CONSERVATION: *Permittee* shall take such soil and resource conservation and protection measures, including weed control on the land covered by the *Permitted Area* as the *Project Leader* in charge may request. 50 CFR § 29.21-4(b)(4).
- (12) EROSION CONTROL: The *Permittee* shall use construction techniques described in the Sediment Control Handbook for Construction, Best Management Practices and best management standards established by the Natural Resources Conservation Service to minimize potential impacts to land and water resources. Erosion Control plans are included within the Plans referred to in Condition (2) Exhibits above.
- (13) REMOVAL OF MATERIAL, EARTH, OR STONE: *Permittee* shall not remove any material, earth, or stone from the *Refuge* unless otherwise provided by this *Permit*. Stone or earth necessarily removed from one area within the *Permitted Area* during the construction of the *Permitted Facilities* may be used elsewhere within the *Permitted Area* in accordance with the Plans referred to in Condition (2) above. 50 CFR 29.21-3(b). Any materials proposed to be removed from the *Refuge* shall be identified by: There will be no removal of Materials, Earth or Stone as a part of this *Permit*.
- (14) TIMBER: No Trees shall be removed or disturbed.
- (15) CULTURAL RESOURCES: The *Permittee* has completed an archeological investigation of the *Permitted Area* in accordance with the Archeological Resources Protection Act (16 U.S.C. § 470aa). The *Permittee* shall arrange with the *Project Leader* at least one week prior to any excavation necessary for the *Permitted Use* for an archeologist approved by the *Service* to monitor the excavation. The *Permittee* will immediately halt all surface and subsurface disturbing activities and notify the *Project Leader* of any discovery of archeological, paleontological, or historical resources. All such artifacts shall remain the property of the United States.
- (16) PESTICIDES AND HERBICIDES: The use of pesticides and herbicides by the *Permittee* is prohibited.
- (17) HAZARDOUS MATERIALS: *Permittee* shall not transport, deliver, transfer, store, or use any hazardous materials or fuels in the *Permitted Area* except as authorized by this *Permit*. All transport, delivery, transfer, storage or use of hazardous materials and fuels authorized by this *Permit* shall comply with all applicable Federal and State law and regulations. Best management practices for spill prevention shall be employed.

- (18) ACCIDENTS: The *Permittee* shall notify the *Project Leader* as soon as possible and no later than twelve (12) hours after learning of any accident or other event in the *Permitted Area* that could result in damage to the resources, values or purposes of the refuge. In the event of such accidents or other events, the *Permittee* shall take all reasonable steps to prevent or mitigate damage to the resources, values or purposes of the refuge both independently and at the direction of the *Project Leader*.
- (19) WILDLIFE: The *Permittee* shall immediately report any problems with wildlife to the *Project Leader*. In order to limit impacts to fisheries, no construction equipment is allowed in any stream (if applicable) and any construction will occur from the stream banks. No activity will occur in the water other than those shown within the Plans referenced in Condition (2), Permitted Facilities.
- (20) ACCESS: Ingress and egress to the *Permitted Area* by the *Permittee* is limited to vehicular use of Alleghany Road (NYS Route 63). No off-road access is authorized by this *Permit*.
- (21) STORAGE OF VEHICLES AND EQUIPMENT: No unattended vehicles, equipment or materials may be parked or stored in the *Permitted Area* without prior written authorization by the *Project Leader*.
- (22) OBSTRUCTIONS: *Permittee* shall clear and keep clear the lands within the *Permitted Area* to the extent and in the manner directed by the *Project Leader*; and to dispose of all vegetative and other material cut, uprooted, or otherwise accumulated during the construction and maintenance of the *Permitted Facilities* in such a manner as to decrease the fire hazard and also in accordance with such instructions as the *Project Leader* may specify. 50 CFR § 29.21-4(b)(2).
- (23) FIRE CONTROL: *Permittee* shall do everything reasonably within its power, both independently and on request of any duly authorized representative of the United States, to prevent and suppress fires on or near lands to be occupied under this *Permit*, including making available such construction and maintenance forces as may be reasonably obtainable for the suppression of such fires. 50 CFR § 29.21-4(b)(5).
- (24) SIGNAGE: No signs that are not expressly authorized by this *Permit* shall be placed in the *Permitted Area*. The *Permittee* shall place and maintain appropriate signs, barricades and/or other warnings to notify the public of any danger posed by the construction or by the *Permitted Facilities*. Signage plans are included within the Plans referred to in Condition (2) Exhibits above.
- (25) SURVEY MONUMENTS: *Permittee* shall not disturb or remove any survey monument or project boundary monument unless *Permittee* requests and receives approval from *Realty* through the *Regional Chief*. *Permittee* shall make appropriate measures to perpetuate the location of an aforesaid monument. 50 CFR § 29.21-4(b)(3).

- (26) PROTECTION OF UTILITY LINES: *Permittee* shall protect in a workmanlike manner, those areas where the *Permitted Facilities* are to be in the proximity or cross transmission lines located within the *Permitted Area*. Work within such locations shall be performed in accordance with the rules prescribed in the National Electric Safety Code and all Government and other telephone, telegraph, and power transmission lines from contact and all highways and railroads from obstructions and to maintain its transmission lines in such manner as not to menace life or property.
- (27) REQUIRED MODIFICATIONS: This *Permit* is subject to the express covenant that any facilities constructed thereby will be modified or adapted, if such is found by the *Regional Chief* to be necessary, without liability or expense to the United States, so that such facilities will not conflict with the use and occupancy of the land for any authorized works which may hereafter be constructed thereon under the authority of the United States. Any such modification will be planned and scheduled so as not to interfere unduly with or to have minimal effect upon the *Permitted Use*. 50 CFR § 29.21-4(b)(14).
- (28) AIR POLLUTION CONTROL: Fugitive dust should be kept to a minimum using precaution such as water for dust control, covering open equipment for conveying materials, and prompt removal of spilled or tracked dirt.
- (29) MONITORING: *Permittee* shall allow the *Project Leader* or designated staff access for routine monitoring of all construction-related activities as described in this *Permit*.
- (30) AS-BUILT SURVEY: The *Permittee* shall provide the *Regional Chief* with four original copies of a survey drawing of the *Permitted Area* and the *Permitted Facilities* within ninety (90) days after development, construction, and installation of the *Permitted Facilities* is completed. When appropriate, the revised metes and bounds description, attached hereto as Exhibit [Br] and a final survey plan attached hereto as Exhibit [Cr] will supersede any previous Exhibits, and thereafter constitute the description of the land subject to this *Permit*.
- (31) CERTIFICATE OF COMPLETION: *Permittee* shall, upon completion of construction, file a certification of completion with the *Regional Chief* as proof of construction. 50 CFR § 29.21-5(b).
- (32) EXTENT OF USE PERMITTED: This *Permit* is for the specific use, purpose (*Permitted Use*) and *Permitted Facilities* described herein and may not be construed to include any other right or authorization of any other use within the *Permitted Area* unless approved in writing by the *Regional Chief*. 50 CFR § 29.21-4(b)(15).
- (33) CHANGE IN JURISDICTION OVER AND DISPOSAL OF LANDS: The final disposal by the United States of any tract of land traversed by a *Permitted Area* shall not be construed to be a revocation of the *Permitted Area* in whole or in part, but such final disposition will be deemed and taken to be subject to such *Permitted Area* unless it has been specifically canceled. 50 CFR § 29.21-6(a).

- (34) **TERMINATION:** All or part of this *Permit* may be terminated by the *Regional Chief*, for failure to comply with any or all of the terms or conditions of the *Permit* or for abandonment. A rebuttable presumption of abandonment is raised by deliberate failure of the *Permittee* to use for any continuous 2-year period the *Permitted Area* for the *Permitted Use*. In the event of noncompliance or abandonment, the *Regional Chief* will notify the *Permittee* in writing of her or his intention to suspend or terminate the *Permit* 60 days from the date of the notice, stating the reasons therefore, unless prior to that time the *Permittee* completes such corrective actions as are specified in the notice. The *Regional Chief* may permit an extension of time within which to complete corrective actions when, in his or her judgement, extenuating circumstances not within the *Permittee's* control such as adverse weather conditions, periods of wildlife breeding or peak concentration that require non-action, or other compelling reasons warrant. Failure to take corrective action within the 60-day period or any extension thereof shall result in suspension or termination of the *Permit*. No administrative proceeding shall be required where the *Permit* terminates under its terms. 50 CFR § 29.21-4(b)(9).
- (35) **TERMINATION THRU NON-ACTION:** If construction is not commenced within two (2) years after the issuance date of this *Permit*, the *Permit* may be terminated by the *Regional Chief* at her or his discretion. 50 CFR § 29.21-5(a).
- (36) **TRANSFER OF PERMIT:** Any proposed transfer, by assignment, lease, operating agreement or otherwise, of this *Permit* must be filed in triplicate with the *Regional Chief* and must be supported by a stipulation that the transferee agrees to comply with and be bound by the terms and conditions of the original *Permit* as amended, if applicable. A \$25.00 nonreturnable service fee must accompany the proposal. No transfer will be recognized unless and until approved in writing by the *Regional Chief*. 50 CFR § 29.21-6(b).
- (37) **DISINCORPORATION:** If the *Permittee* disincorporates or otherwise ceases to exist the *Permit* shall transfer to the Town of Alabama New York which has already agreed to comply with and be bound by the terms and conditions of the original *Permit* as amended.
- (38) **DISPOSAL OF PROPERTY:** Any property, improvements, or facilities remaining in the *Permitted Area* after termination or expiration of this *Permit* shall become the property of the United States or shall be removed by the *Service* at the *Permittee's* cost. The *Project Leader* may allow additional time for removal or require underground property, improvements, or facilities to be abandoned in place to prevent or mitigate derogation of resources. The *Permittee* shall not remove any property, improvements, or facilities of value if the *Permittee* owes money to the United States.
- (39) **NO COST TO SERVICE:** Nothing herein contained shall be construed to bind the *Service* to expend in any one fiscal year any sum in excess of appropriations made by Congress or administratively allocated for the purpose of this *Permit* for the fiscal year, or to involve the *Service* in any contract or other obligation for the further expenditure of money in excess of such appropriations or allocations.

- (40) REPAIRS TO INFRASTRUCTURE: *Permittee* shall rebuild and repair such roads, fences, structures and trails as may be destroyed or injured by construction work and build and maintain necessary and suitable crossings for all roads and trails that intersect the works constructed, maintained or operated under the *Permit* as directed by the *Regional Chief*. 50 CFR § 29.21-4(b)(6).
- (41) DAMAGES: *Permittee* shall pay the United States the full value for all damages to the lands or other property of the United States caused by *Permittee*, its employees, contractors, or employees of the contractors and indemnify the United States against any liability for damages to life, person or property arising from the use of the lands under the *Permit*, except where the *Permittee* is a State or other governmental agency which has no legal power to assume such a liability with respect to damages caused by it to lands or property, such agency in lieu thereof agrees to repair all such damages. Where the *Permit* involves lands that are under the exclusive jurisdiction of the United States, the *Permittee* or its employees, contractors, or agents of the contractors, shall be liable to third parties for injuries incurred in connection with the *Permitted Area*. *Permits* involving special hazards will impose liability without fault for injury and damage to the land and property of the United States up to a specified maximum limit commensurate with the foreseeable risks or hazards presented. The amount of no-fault liability for each occurrence is hereby limited to no more than \$1,000,000. 50 CFR § 29.21-4(b)(7).
- (42) RESTORATION: *Permittee* shall restore the land to its original condition to the satisfaction of the *Regional Chief*, so far as it is reasonably possible to do so upon revocation and/or termination of the *Permit*, unless this requirement is waived in writing by the *Regional Chief*. Termination also includes *Permits* that terminate under the terms of the *Permit*. 50 CFR § 29.21-4(b)(10).
- (43) DISPOSAL OF PROPERTY ON TERMINATION OF RIGHT OF WAY: *Permittee* shall, in the absence of any agreement to the contrary, be allowed six (6) months after termination of this *Permit* to remove all property or improvements other than a road and useable improvements to a road, placed thereon by *Permittee*; otherwise, all such property and improvements shall become the property of the United States. Extensions of time may be allowed at the discretion of the *Regional Chief*. 50 CFR § 29.21-6(c).
- (44) PERMIT EXTENSIONS OR RE-AUTHORIZATIONS: Consistent with 50 CFR 25.21(h), the *Service* may require Permit modifications at any future time to insure compatibility with the use and occupancy of the land. The *Service* will make a new compatibility determination prior to extending or renewing *Permits* at the expiration of the authorization. Compatibility for the re-authorization of an existing *Permit* will be based on the *Service's* analysis on the existing conditions with the use in place, not from a pre-use perspective.
- (45) RIGHT-OF-WAY REGULATIONS: Some conditions within this Permit have been reworded from that referenced in applicable Code of Federal Regulations (CFR). If any conflicting interpretations exist between this Permit and the CFR, the interpretation of CFR shall prevail.

- (46) SPECIAL CONDITION - Repair and Replacement: During the planning of the proposed Sewer Force Main, Permittee was required to assure there was enough space within the ROW limits to Construct, Monitor, Repair and Replace all structures needed for the proposed Force Main and associated components. It was the obligation of the Permittee to submit plans prepared by a State Licensed Engineer that include construction plans that addressed future open trench repair and assure these repairs could be accomplished within the ROW limits. Applicant, as Permit holder understands and agrees that should there be any occurrence in the future requiring additional Refuge lands; including emergency situations; this Permit will terminate and flow within the Force Main will stop. This Force Main will not reopen until all necessary Permits are obtained for any new ROW area lying outside the permitted area described herein. Permittee remains responsible for all cleanup associated with a release.

**WAIVER NOT CONTINUING:**

The waiver of any breach of any provision of this *Permit*, whether such waiver be expressed or implied, shall not be construed to be a continuing waiver or a waiver of, or consent to, any subsequent or prior breach of the same or any other provision of this *Permit*.

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This Right-of-way Permit, Iroquois National Wildlife Refuge, New York, Tract (P-1) executed and accepted:

U.S. FISH AND WILDLIFE SERVICE

By: Holly Gaboriault

Date: 8/25/21

Holly Gaboriault, Deputy Regional Chief  
National Wildlife Refuge System, Interior Region I  
U.S. Fish and Wildlife Service

WITNESS: F. Safulo

ACKNOWLEDGMENT STATE OF MASSACHUSETTS ) ss.

COUNTY OF Hampden

I, Jennifer Mercer a Notary Public in and for the State and County aforesaid, do certify that Holly Gaboriault, Deputy Regional Chief, NWRS, Interior Region I, United States Fish and Wildlife Service, whose name is signed to the writing above, bearing date on the 25 day of August, 2021, has acknowledged the same before me in my County aforesaid.

Notary Public Jennifer R Mercer

Print Name Jennifer R Mercer

My commission expires: January 28, 2022  
[SEAL]



JENNIFER R. MERCER  
Notary Public  
Commonwealth of Massachusetts  
My Commission Expires Jan. 28, 2022

Hampden County, MA

This Right-of-way Permit, Iroquois National Wildlife Refuge, New York, Tract (P-1) executed and accepted:

By: Donald S. Cunningham  
Donald S. Cunningham  
President of Genesee Gateway Local Development Corporation  
99 MedTech Drive, Suite 106  
Batavia, NY 14020

Date: 8/19/21

For: STAMP Sewer Works, Inc., a subsidiary of the Genesee Gateway Local Development Corporation, the non-profit real estate affiliate of the Genesee County Industrial Development Agency d/b/a Genesee County Economic Development Center

WITNESS: Lauren Casey

ACKNOWLEDGMENT

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF Genesee )

I, Penny C. Kennett, a Notary Public in and for State and County aforesaid, do hereby certify that Donald S. Cunningham, President of Genesee Gateway Local Development Corporation, proven to me to be authorized to sign on behalf of STAMP Sewer Works, Inc. (Permittee herein), and whose name is signed to the writing above, bearing date on the 19<sup>th</sup> day of August, 2021, has acknowledged the same before me in my County aforesaid.

My commission expires: 10/3/21

Penny C. Kennett  
Notary Public

[SEAL]



Penny C. Kennett  
Print Name

Genesee County, NY

Condition 37 of the aforementioned Right-of-way Permit, Iroquois National Wildlife Refuge, New York, Tract (P-1) "DISINCORPORATION: If the Permittee disincorporates or otherwise ceases to exist the Permit shall transfer to the Town of Alabama, New York which has already agreed to comply with and be bound by the terms and conditions of the original Permit as amended." The Town of Alabama hereby accepts all terms and conditions for the entire length of said Permit and all conditions and financial liability as contained within this Permit should STAMP Sewer Works, Inc. disincorporation. Executed and accepted:

By: Robert M. Crossen  
Town of Alabama Supervisor

Date: 8/10/21

WITNESS: Rebecca L. Borkholder

ACKNOWLEDGMENT

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF GENESEE )

I, Rebecca L. Borkholder, a Notary Public in and for State and County aforesaid, do hereby certify that Robert Crossen, Supervisor for the Town of Alabama (designee in case of disincorporation), and whose name is signed to the writing above, bearing date on the day of August, 2021, has acknowledged the same before me in my County aforesaid.

My commission expires: 8/28/2022

Rebecca L. Borkholder  
Notary Public

[SEAL]

REBECCA L. BORKHOLDER  
Notary Public, State of New York  
Reg. #01BO6047373  
QUAL. IN GENESEE COUNTY  
COMM EXPIRES AUG 28, 2022

Rebecca L. Borkholder  
Print Name

Genesee County, NY