



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NEW YORK 10278-0090

Regulatory Branch

November 8, 2022

SUBJECT: Permit Application Number NAN-2020-00296 by the New Jersey Department of Transportation, for a 2.1-Mile Drainage Improvement Alignment Along New Jersey State Highway Route 7 (Belleville Turnpike), Town of Kearny, Hudson County, New Jersey

Ms. Amber Cheney
New Jersey Department of Transportation
1035 Parkway Ave, E&O Building, 3rd Floor
Trenton, New Jersey 08625

Dear Ms. Cheney:

On July 14, 2022, the New York District of the U.S. Army Corps of Engineers received a request for Department of the Army authorization for the discharge of fill material into and/or the placement of structures in and over navigable waters of the United States. The project is proposed along Route 7 from its interchange with the Newark-Jersey City Turnpike (MP 1.5) to adjacent the Arlington Memorial Park and Cemetery (MP 4.20). The contour of Route 7 is proposed to be raised a maximum of 3.5-feet to alleviate flooding conditions. Modification of the approach slabs of the Route 7 bridge over NJ Transit Boonton Line (Structure No. 0910-154) at MP 3.0 will be constructed as well as guiderail relocations or replacements and updates to the existing roadway conditions, and steel sheeting, barrier curbs, earthen berms, filling, and grading are also proposed to mitigate the tidal and storm surge flooding conditions. Steel sheeting will be capped at an elevation of 6.5 feet. Stormwater spread on the roadway will be controlled for the 10-year storm event and proposed drainage systems will direct runoff into existing ditches and marshland. To further improve flooding conditions, multiple drainage system outfalls are proposed to be extended, modified or reconstructed. Additionally, three new stormwater pump stations are required where proposed drainage system elevations are below those necessary to achieve gravity flow conditions. Six (6) new storm drainage outfalls are proposed with discharge points to wetland and watercourses along the roadway; three (3) new outfalls will be constructed at the proposed pump station locations. Manufactured treatment devices (MTDs) will be used to provide water quality treatment of stormwater prior to entering the pump stations and discharging into the tidal marshlands. Impacts within the Meadowlands are as follows: open water impacts of 0.237-acres permanent & 0.183-acres of temporary impacts. Wetland impacts are 0.754-acres permanent and 0.260-acres of temporary impacts. Outside of the Meadowlands impacts are as follows; there are no open water impacts. Wetland Impacts 0.214-acres permanent & 0.033-acres temporary impacts. The total wetland disturbance of the project is 1.264-acres which consists of 0.970-

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acres permanent wetland disturbance and 0.294-acres temporary wetland disturbance. The site is located in the Hackensack River waterway, in the Town of Kearny, Hudson County, New Jersey. The specific applicant-provided details are as shown on the attached permit drawings, titled "New Jersey Department of Transportation USACE Permit Plans Plan Sheet Index, Route 7 Kearny Drainage Improvements, MP 1.7 to MP 3.8", Sheets 1 through 26", prepared by McCormick Taylor, Inc., and dated September 16, 2022".

By letter dated April 15, 2020, this office confirmed the extent of waters of the United States on the subject property. These waters of the United States consist of approximately 10.631-acres of jurisdictional wetlands. A subsequent submittal entitled "New Jersey Department of Transportation USACE Permit Plans Plan Sheet Index, Route 7 Kearny Drainage Improvements, MP 1.7 to MP 3.8", Sheets 1 through 26", prepared by McCormick Taylor, Inc., and dated May 15, 2022 and updated September 16, 2022", indicates that the total impacts to waters of the United States would involve the discharge of fill material into a maximum of 0.970-acres of wetlands, with the purchase of mitigation credits through an approved bank.

Based on the information submitted to this office, [and accomplishment of notification in accordance with the applicable federal requirements,] our review of the project indicates that an individual permit is not required. It appears that the activities within the jurisdiction of this office could be accomplished under Department of the Army Nationwide General Permit Number(s) 23, Categorical Exclusions. The nationwide permits are prescribed as a Reissuance of Nationwide Permits in the Federal Register dated December 27, 2021 (86 FR 73522). The work may be performed without further authorization from this office provided the activity complies with the permit conditions listed in Section B, No(s). 12 and 1, 15 and 18 Section C, any applicable New York District regional conditions, the following special condition(s), and any applicable regional conditions added by the State of New Jersey, copies enclosed.

Special Conditions

(A) The permittee understands and agrees that, if future operations by the United States require the removal, relocation, or other alteration, of the structure or work herein authorized, or if, in the opinion of the Secretary of the Army or his authorized representative, said structure or work shall cause unreasonable obstruction to the free navigation of the navigable waters, the permittee will be required, upon due notice from the Corps of Engineers, to remove, relocate, or alter the structural work or obstructions caused thereby, without expense to the United States. No claim shall be made against the United States on account of any such removal or alteration.

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(B) The permittee will adhere to the seasonal restriction for anadromous fish for work in the Hackensack River and shall avoid removing or installing sheet piles from March 1 to June 30 of any calendar year to minimize impacts to migrating anadromous species.

(C) At least 60 days prior to the initiation of construction or ground surface disturbing activities, NJDOT will submit an Archaeological Work Plan (AWP) for the Phase I/II archaeological investigations to the NJHPO for review and comment. NJDOT will conduct archaeological monitoring during construction, along with appropriate testing and data recovery. A Programmatic Agreement (PA) between the Federal Highway Administration (FHWA), NJDOT, and the NJHPO was developed to detail how the archaeological undertakings shall be implemented. Please refer to the attached PA, dated June 13, 2017 and Appendix A, entitled, "The Archaeological Work Plan for the Route 7 Kearny".

(D) Pursuant to 36 C.F.R. section 800.13, in the event of any discoveries during construction of either human remains, archeological deposits, or any other type of historic property, the Permittee shall notify the Corps' Archeology Staff within 24 hours. Please contact Carissa Scarpa at 917-790-8612 or Carissa.A.Scarpa@usace.army.mil. The Permittee shall immediately suspend all work in any area(s) where potential cultural resources are discovered. The Permittee shall not resume construction in the area surrounding the potential cultural resources until the Corps re-authorizes project construction, per 36 C.F.R. section 800.13.

(E) Prior to initiating construction in waters of the U.S., and to mitigate for impacts to 10.631-acres of waters of the U.S., the Permittee shall provide documentation verifying purchase of mitigation credit from a Corps-approved mitigation bank or payment through an in-lieu fee program ("ILFP") approved by the Corps for [restoration/creation/enhancement] of 10.631-acres of waters of the U.S. The Permittee shall not initiate work in waters of the U.S. prior to receiving written confirmation (by letter or e-mail) from the Corps as to compliance with this special condition.

(F) The permittee shall ensure all temporarily disturbed waters of the United States, including wetlands, are restored to preconstruction conditions.

(G) The permittee shall implement "Best Management Practices" (BMPs) to minimize turbidity impacts to the water way, and efforts should be made to ensure no construction materials or debris enter the waterway. The permittee

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shall undertake the authorized activities in a manner aimed at reducing impacts upon the general environment. In addition, the permittee shall not stockpile fill or other materials in a manner conducive to erosion, or in areas likely to cause high turbidity runoff during storm events. The permittee shall use all practicable measures during construction (e.g. silt fences, hay bales, erosion control netting, vegetative stabilization) to stabilize all exposed soils immediately upon the completion of each phase of the grading activities in all areas, and appropriate temporary fencing shall be installed around all on-site wetlands and waters of the United States not authorized herein to be impacted and other sensitive ecological areas during construction periods, to prevent equipment and personnel from entering these areas.

This determination covers only the work described in the submitted material. Any major changes in the project may require additional authorizations from the New York District.

Care should be taken so that construction materials, including debris, do not enter any waterway to become drift or pollution hazards. You are to contact the appropriate state and local government officials to ensure that the subject work is performed in compliance with their requirements.

This verification is valid until March 14, 2026, unless the nationwide permit is modified, reissued, or revoked. This verification will remain valid until March 14, 2026, if the activity complies with the terms of any subsequent modifications of the nationwide permit authorization. If the nationwide permits are suspended, revoked, or modified in such a way that the activity would no longer comply with the terms and conditions of a nationwide permit, and the proposed activity has commenced, or is under contract to commence, the permittee shall have 12 months from the date of such action to complete the activity.

The permittees and their designated contractors shall be responsible for, and shall comply with, all of the conditions and stipulations contained within the attached New Jersey Department of Environmental Protection Water Quality Certification dated October 6, 2022 (Permit No. 0000-22-0018.1 LUP220001), and all amendments, thereto.

Within 30-days of the completion of the activity authorized by this permit and any mitigation required by this permit, you are to sign and submit the attached compliance certification form to this office.

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In order for us to better serve you, please complete our Customer Service Survey located at <http://www.nan.usace.army.mil/Missions/Regulatory/CustomerSurvey.aspx>.

If any questions should arise concerning this matter, please contact Danielle Courtois, of my staff, at (347)439-9343 or Danielle.R.Courtois@usace.army.mil

Sincerely,

 Date: 2022.11.08
17:10:27 -05'00'

Danielle Courtois
Senior Project Manager, Western Section

Enclosures

1. Dated Permit Drawings
2. SHPO Programmatic Agreement and Appendix A
3. Completion Form

cc: NJ DEP
NJSEA
Town of Kearny
Hudson County

**PROGRAMMATIC AGREEMENT
BETWEEN THE
NEW JERSEY DIVISION, FEDERAL HIGHWAY ADMINISTRATION
AND THE
NEW JERSEY STATE HISTORIC PRESERVATION OFFICE
REGARDING THE ROUTE 7 KEARNY, DRAINAGE PROJECT
LOCATED IN KEARNY TOWN, HUDSON COUNTY**

WHEREAS, the New Jersey Department of Transportation (NJDOT), using Federal Highway Administration (FHWA) funding, proposes to improve the highway drainage system along Route 7 in Kearny Town by installing three pumping stations, sheet piling to prevent tidal floods and raising the roadway profile approximately three feet above the existing roadway elevation. Nine new storm drainage system outfalls with discharge points to marshlands along the roadway are proposed to be installed, three of which discharge from pump stations; and three existing drainage system outfalls will be extended, modified or reconstructed. The undertaking begins at M.P. 1.70 and ends at M.P. 3.80; and

WHEREAS, the NJDOT is preparing a NEPA [National Environmental Policy Act] document that includes Section 106 [of the National Historic Preservation Act of 1966, as amended] consultation; and

WHEREAS, the FHWA, the New Jersey State Historic Preservation Office (NJHPO), the Advisory Council on Historic Preservation (ACHP) and the NJDOT executed a Programmatic Agreement in November of 1996, which stipulates how FHWA's Section 106 responsibilities for NJDOT-administered federal aid projects will be satisfied; and

WHEREAS, in accordance with that agreement, and using primarily information provided by McCormick Taylor, Inc., the NJDOT initiated Section 106 consultation with the NJHPO on 06/19/14 in order to identify consulting parties, discuss the public outreach plan and determine the Area of Potential Effects (APE) [concurrence 6/8/15]; and

WHEREAS, NJDOT continued consultation with the NJHPO in order to identify National Register eligible and listed properties and to assess the effects of the project on both eligible and listed properties within the APE pursuant to the requirements of 36 CFR § 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. 470f); and

WHEREAS, on 10/26/15, the NJDOT submitted to the NJHPO a Cultural Resource Report, no authors [*NJ Route 7 (MP 1.70-3.80) Drainage Improvements Project, Cultural Resources Survey Eligibility and Effect, Town of Kearny, Hudson County, New Jersey*], prepared for NJDOT by McCormick Taylor, Mt. Laurel, NJ for review and comment and upon review, the NJHPO in a letter dated 01/06/16, concurred that the following identified historic architectural properties are located within the undertaking's APE:

- WMCA 570 Radio Station Relay/Transmitter Building (SHPO Opinion 12/23/03)
- Old Main Delaware, Lackawanna and Western Railroad Historic District (SHPO Opinion 09/24/96)

- Pennsylvania Railroad New York to Philadelphia Historic District (SHPO Opinion 10/02/02)
- Jersey City Water Works Historic District (SHPO Opinion 04/02/13)
- Edison Battery Company Property (SHPO Opinion 04/08/08); and

WHEREAS, based on the results of the Cultural Resources Report and subsequent coordination with the NJHPO, the NJDOT anticipates that the undertaking will have *No Effect* to Architectural historic properties as long as the appearance and size of the roadway barrier walls that are proposed adjacent to the abutments of the bridge contributing to the Pennsylvania Railroad, New York to Philadelphia Historic District (HD) are developed in consultation with the NJHPO; and

WHEREAS, on 02/04/16, the NJDOT submitted to the NJHPO a revised Cultural Resource Report [Macon H. Coleman IV, Jerry Clouse, Charles Richmond and Steve Barry, February 2016 (Revised) Cultural Resources Report, *NJ Route 7 (MP 1.70-3.80) Drainage Improvements Project, Town of Kearny, Hudson County, New Jersey*]; prepared for NJDOT by McCormick Taylor, Mt. Laurel, NJ; with supporting documentation for review and comment; HPO accessioned report HUD F 927; and

WHEREAS, upon review of the cultural resource report referenced above, the HPO finds that the submitted supporting documentation demonstrates that there is a strong possibility that the culturally sensitive sand layer identified at the National Register eligible Standard Chlorine Chemical Company Site (28-Hd-44) may exist within the project's area of potential effects (APE); and

WHEREAS, a geomorphological study was conducted in August 2016 at the request of the NJHPO in the area of two of the three proposed pump stations. The geomorphological study identified intact alluvial sands below historic fills and marsh deposits, which are considered archaeologically sensitive based on the recovery of lithic materials and a possible tool at the NJ and National Registers of Historic Places (SR/NR)-eligible Standard Chlorine Chemical Company Site (28-Hd-44) (NJHPO Opinion 05/22/12) discovered during excavation at an adjacent construction project east of the undertaking. It is hypothesized that the source material for these remains originated in the Snake Hill diabase intrusion located on the east side of the Hackensack River, in Secaucus. The alluvial sand layer is suspected to be associated with a landform once exposed to the air and attractive for habitation during the last ice age when sea levels were hundreds of feet lower than they are today. The Passaic and Hackensack drainages would have been lower as well and would have provided a variety of natural resources important to regional Pre-Contact period settlement. Based on recent soil borings, this sand layer is located within the water table at depths ranging from seven feet to 15 feet below the ground surface at the APE and extends to over 30 feet below ground surface in at least one location. In a letter dated 10/26/16, the NJHPO in response to the above geomorphology report concurred with the interpretation that the approximately 8 to 10-foot thick sandy alluvium layer could be part of the same landform containing site 28-Hd-44. The NJHPO also concurs with the assessment that there is a high likelihood that this landform's surface was stable and available for resource exploitation and habitation throughout much of the Holocene period. It is anticipated that the sand layer will be

impacted by the undertaking at three pump station locations each containing an area of approximately 50 feet by 70 feet; and

WHEREAS, the FHWA has determined in consultation with the NJHPO that the construction of this project may adversely affect the archeological resources should they exist; and

WHEREAS, due to cost, subsurface and site conditions, the NJDOT proposes to conduct archeological survey during construction, along with appropriate archeological and geomorphological testing and data recovery as needed. The costs to conduct archeological testing ahead of construction are extremely high due in part to the depth of the potential remains, the hazardous conditions of the site, the need to dewater due to a high water table, and managing contaminated waters; and

WHEREAS, the NJHPO has agreed that the performance of archeological survey and testing during the undertaking's construction phase is an appropriate means to investigate the archeological potential of each site; and

WHEREAS, the results of the limited sampling event concluded that low levels of soil and groundwater contamination consisting of VOCs, PAHs, PCBs, Pesticides and Metals are present within the first ten feet of overburdened soils at each of the pump station locations. Due to the extensive historic fill in the project area, soil and groundwater contamination levels are anticipated to be present within the APE; and

WHEREAS, further investigation and additional soil/groundwater sampling and analyses are proposed during the undertaking's Final Design stage; and

WHEREAS, contamination levels and/or access may be such that physical archaeological survey and/or excavation to gain information may not be prudent and feasible when considering the effort to be expended and, therefore, would require consultation on alternative analysis and commensurate alternative mitigation methods; and

WHEREAS, because impacts to any potential deeply-buried archaeological site within the undertaking's Archeological APE cannot be fully determined in advance of construction, this Programmatic Agreement (PA) is being developed between the NJDOT, FHWA, and the NJHPO for the undertaking; and

WHEREAS, the Advisory Council on Historic Preservation (ACHP) was invited to participate in the development of the PA and declined to participate in a letter dated 11/16/16; and

WHEREAS, the NJDOT, FHWA, and NJHPO have agreed to develop and implement archeological investigations with FHWA and NJHPO approved work plan(s) for archaeological and geomorphological investigations and implementation, to identify archeological historic properties within the undertaking's APE in accordance with CFR § 800.4(a); and

WHEREAS, the identification of Historic Properties, as well as the process for assessment and resolution of adverse effects through consultation (36 CFR § 800.4 through 800.5) for this undertaking will be addressed through the implementation of this PA; and

WHEREAS, the NJDOT, on behalf of the FHWA, has provided several opportunities for consulting parties to provide input and to learn about the proposed project throughout the Section 106 process; and

WHEREAS, on 01/10/17, the NJHPO requested that the NJDOT notify the five federally-recognized tribes with an interest in NJ because of the potential archeological site. On 01/12/17, the FHWA notified the Delaware Tribe of Indians; Delaware Nation, Oklahoma; Shawnee Tribe of Indians of Oklahoma; Stockbridge Munsee Community, Wisconsin; and Shawnee Tribe of the proposed project and invited them to participate in the development of the PA; and

WHEREAS, on 01/19/2017, the Delaware Tribe responded requesting to be informed of any inadvertent discovery of a concentration of artifacts or human remains and for the NJDOT to halt construction until a qualified archeologist evaluates the find. On 03/23/17, the Shawnee Tribe requested re-notification if any archaeological materials were encountered during the undertaking. On 04/13/17, the Delaware Tribe requested to be informed in advance of construction, who would be monitoring the work site and provided a suggested Inadvertent Discovery Plan to follow in the event human remains are found; and

WHEREAS, a Resolution of Support has been obtained from the Kearny Town Council;

NOW, THEREFORE, the FHWA and the NJHPO agree that the undertaking shall be implemented in accordance with the following stipulations in order to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The NJDOT will ensure the following tasks are carried out:

1. Archaeological Investigation

The signatories to this PA agree that further archaeological investigation is needed to identify archaeological historic properties within the APE in accordance with 36 CFR § 800.4(a). Identification of Historic Properties, as well as the process for assessment and resolution of adverse effects (36 CFR § 800.4 through 800.5) for this undertaking, will be addressed through the implementation of this PA as outlined below:

- A. NJDOT shall conduct archaeological survey of the APE to identify and evaluate deeply buried archaeological properties consistent with the Secretary of the Interior's Standards and Guidelines for Identification (46 FR 44720-23) and the NJHPO's *Guidelines for Preparing Cultural Resources Management Archaeological Reports Submitted to the Historic Preservation Office* (NJHPO 2000)(Guidelines). The prior geomorphological technical consultation with the NJHPO concerning the undertaking will be used as a guide

in conducting additional Phase I surveys, Phase II field investigations, and site analysis or other identification-SR/NR evaluation methods developed in consultation with the signatories. Plans and procedures shall be in place for a combined Phase I/II archaeological/geomorphological investigations due to deeply buried soils and access issues. The Phase II surveys shall be conducted in consultation with the NJHPO, a report of the survey forwarded to the NJHPO, and any Tribes that have interest in the undertaking for review and comment. Any Phase II archaeological/geomorphological report will contain location information, descriptions of fieldwork, methods employed, results of fieldwork, analysis, pertinent recommendations and scope(s) of work for Phase III investigations, as warranted.

- B. At least 60 days prior to the initiation of construction or ground surface disturbing activities, NJDOT will submit an Archaeological Work Plan (AWP) for the Phase I/II archaeological investigations to the NJHPO for review and comment. The AWP shall contain anticipated Phase I archaeological/geomorphological identification methodology and combined Phase II archaeological SR/NR evaluation levels of effort as needed based on existing information to identify and evaluate any deeply buried archaeological deposits within the APE. The AWP will include a research design, a detailed description of the field and analytical methods to be followed, a description of the roles and qualifications of all key project personnel, and a schedule for the completion of all field and lab work, specialized soil, feature and/or artifact analysis, any public outreach initiative, and the submission of draft and final reports. The AWP will outline survey methodologies to identify archaeological historic properties within the project area in accordance with 36 CFR § 800.4(a) and shall conform to the provisions in Appendix A. The AWP will also provide provisions for assessing adverse effects to identified archaeological historic properties in accordance with 36 CFR § 800.5.
- C. The AWP will be submitted to consulting parties for review and comment. Any comments on the Archeological Work Plan shall be provided to NJDOT by consulting parties within fifteen (15) days of receipt of the Archeological Work Plan. Comments will be resolved and a revised plan submitted to all consulting parties within seven (7) days.
- D. NJDOT shall provide recommendations to the FHWA, and the FHWA will evaluate properties identified through the archaeological survey in accordance with 36 CFR part 800.4(c) and in consultation with the NJHPO, and any Tribe that has interest in the undertaking. If it is agreed that a property is not eligible for the NRHP, then no further cultural resource investigation of that property will be conducted. If Phase II archaeological/geomorphological testing results in the identification of an archaeological historic property eligible for the NRHP, the FHWA shall comply with 36 CFR § 800.5. If FHWA, NJDOT, and the NJHPO agree that the property is eligible for the NRHP, the FHWA will ensure that the property is treated in accordance with Stipulations E and F.
- E. If it is determined by the FHWA in consultation with the NJHPO, and any Tribe that has interest in the undertaking and the NJDOT, as appropriate, that avoidance of a NRHP eligible archaeological site is impractical, the NJDOT shall develop a data recovery mitigation plan or other appropriate mitigation technique(s) pursuant to with 36 CFR §

800.6. The NJDOT shall ensure that if a data recovery mitigation plan is required, it will be developed in consultation with the NJHPO, and any Tribe that has interest in the project. The mitigation plan will be consistent with the Secretary of the Interior's Standards and Guidelines for Archaeological Documentation (48 FR 44734-37), and take into account the ACHP's publication *Recommended Approach for Consultation on Recovery of Significant Information from Archaeological Sites* (ACHP 1999), subject to any revisions prior to the completion of the plan, and in accordance with the NJHPO Guidelines.

- F. If SR/NR eligible archaeological properties are encountered and it is determined in consultation to be impracticable to implement the Data Recovery Mitigation Plan due to the field conditions encountered during implementation of the AWP, an Alternative Mitigation Plan shall be developed in accordance with 36 CFR § 800.6 and implemented. The Alternative Mitigation Plan will provide a rationale for the decision to implement the alternative mitigation plan in consultation with the NJHPO and the consulting parties. The Alternative Mitigation Plan will describe the alternative methods proposed to mitigate the unavoidable adverse effects of the Project on SR/NR eligible archaeological resources. The Alternative Mitigation Plan will be developed in consultation with all consulting parties. The Alternative Mitigation Plan shall be submitted to FHWA, NJDOT, and the NJSHPO for review and approval.

- G. Fieldwork and construction activities will be initiated only upon approval of the AWP and/or mitigation plans by FHWA, NJDOT, and NJHPO.

2. Curation

All records and artifacts resulting from the archeological investigations will be curated in accordance with 36 CFR § 79. All materials will be offered to the NJ State Museum's Department of Anthropology and Archaeology for permanent donation. If feasible, a local repository for permanent storage of the data and materials will be identified, and a long term loan agreement executed with the NJ State Museum. In the event the NJ State Museum cannot take the material, NJDOT will identify another appropriate, permanent curation facility meeting the standards.

3. Reporting

All reports shall be prepared in accordance with the NJ SHPO's *Guidelines for Preparing Cultural Resources Management Archeological Report Submitted to the Historic Preservation Office* and the Secretary of Interior's *Standards and Guidelines for Archaeology and Historic Preservation*. A single final report of all phases of investigations pursuant to this agreement will be prepared and provided to all the signatories and, upon request, to consulting parties. Unless directed otherwise, the signatories will receive a single paper copy of the report and a CD containing the report. Copies for consulting parties may be provided in a CD format.

4. Unanticipated Discovery of Human Remains

Human remains are not anticipated at the APE. However, in the event that human remains and associated funerary objects are encountered during construction, NJDOT will immediately consult with NJHPO, New Jersey State Museum (NJSM), federally recognized Native American tribes and groups, other consulting parties, and appropriate legal officials. Consultation may be required under the separate regulations contained in the Native American Graves Protection and Repatriation Act (NAGRPA) of 1990 (43 CFR § 10, as amended) and New Jersey Cemetery Law. Any human remains and funerary objects discovered during the implementation of the terms of this PA will be treated in accordance with the guidance adopted by the Advisory Council on Historic Preservation (ACHP) (Treatment of Burial Sites, Human Remains, and Funerary Objects, ACHP 2007) and relevant state laws and guidelines.

ADMINISTRATIVE CONDITIONS

1. Professional Qualifications

NJDOT, on behalf of FHWA, will ensure that all archaeological survey work is carried out by/under the direct supervision of a person or persons meeting the Secretary of the Interior's Professional Qualifications Standards for archeology [48 FR 44738-44739]. Geomorphological and other related work shall be undertaken by a person(s) possessing the appropriate professional qualifications/certifications and demonstrated work experience in their respective disciplines.

2. Unanticipated Discoveries

An unanticipated archaeological discovery plan will be included in the Archaeological Work Plan.

3. Dispute Resolutions

At any time during the implementation of the measures stipulated in this PA, should an objection to any such measure or its manner of implementation be raised, FHWA will notify all signatories to the agreement, take the objection into account and consult as needed to resolve the objection.

Disputes regarding the completion of the terms of this agreement, as necessary, shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, the FHWA shall initiate appropriate actions in accordance with provisions of 36 CFR § 800.6 (a) or (b), and § 800.7, as appropriate.

Modification, amendment, or termination of this agreement as necessary shall be accomplished by the signatories in the same manner as the original agreement.

4. Design Changes

If any major changes to the proposed design occur, the FHWA shall consult with the NJHPO in accordance with the provisions of 36 CFR § 800. For any such changes, the NJDOT shall submit a plan sheet or design sketch showing the proposed change; a written description of why the change

is needed; and a description of alternatives considered to achieve the same goals. If formal consultation is initiated, the NJHPO will provide written comments to the NJDOT and FHWA within five working days of receipt of the documents or according to an alternative schedule as agreed to by the consulting parties.

5. Project Completion Requirements

Work required by the Stipulations of this agreement will be completed in accordance with the time frames described in the document. The final archeological report(s) will be submitted to all signatories prior to the end of construction or in accordance with a schedule agreed to by all consulting parties. Any alternative survey(s) or mitigation activities shall also be completed and documentation submitted to the signatories prior to the end of construction or in accordance with a schedule agreed to by all consulting parties.

6. Review of Implementation

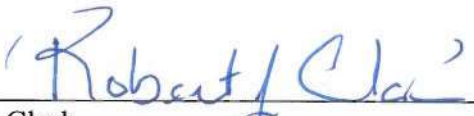
This agreement shall become null and void if construction is not initiated within ten (10) years from the date of execution, unless the signatories agree in writing to an extension. If, after ten (10) years without action the FHWA chooses to continue with the undertaking, it shall re-initiate its review in accordance with the provisions of 36 CFR § 800.

Execution of this PA and implementation of its terms is evidence that FHWA has afforded the ACHP an opportunity to comment on the Route 7 Kearny, Drainage Improvement Project and its effects on historic properties, and that FWHA has taken into account the effects of the project on historic properties.

Rt. 7 Kearny, Drainage
Kearny Town, Hudson County
Programmatic Agreement Signatories

SIGNATORIES


FEDERAL HIGHWAY ADMINISTRATION



Robert Clark
Division Administrator, NJ Division Office

6/13/17
Date

NEW JERSEY HISTORIC PRESERVATION OFFICE




Katherine J. Marcopul
Deputy State Historic Preservation Officer

6/1/2017
Date

INVITED SIGNATORY

NEW JERSEY DEPARTMENT OF TRANSPORTATION



Paul F. Schneider
Director, Capital Program Support

5/16/17
Date

APPENDIX A.

The Archaeological Work Plan for the Route 7 Kearny, Drainage project shall include, but not be limited to, the following project-specific provisions:

- i. All archaeological work shall be conducted in accordance with the *Secretary of the Interior's Standards and Guidelines for Archaeology and Historic preservation* (48 FR 44716-44742);
- ii. Key project personnel shall meet the requisite minimum disciplinary qualifications defined in the Secretary of Interior's *Professional Qualification Standards* for their specialty (36 CFR § 61);
- iii. Health and safety considerations;
- iv. The expected location, both horizontal and vertical, of the area of archaeological sensitivity;
- v. The specific archaeological field methods and monitoring protocols proposed for examining and sampling the sensitive buried sand horizon;
- vi. The size, number, and interval of shovel test pits and/or test units to be excavated into an exposed level of the sensitive sand layer and their spacing. Whether or not shovel test pits will be excavated into multiple sand levels.
- vii. The proposed methods of documenting the site's stratigraphy;
- viii. Any special methods for processing soil samples and artifacts due to the presence of soil contamination;
- ix. Methods for any specialized analyses such as Carbon 14 dating or lithic sourcing;
- x. A geomorphologist with demonstrated experience in geo-archaeology will be included in the project team;
- xi. The geomorphologist will provide in-field guidance during the performance of field activities and conduct a geomorphological investigation of the encountered soil profile;
- xii. The geomorphological investigation shall be undertaken in consultation with an archeologist having experience in both prehistory and dynamic riverine settings;
- xiii. An explicit description of the decision-making process that will occur in consultation with the NJHPO and other consulting parties to determine whether or not archaeological resources encountered during implementation of the work plan are SR/NR eligible;

- xiv. A description of proposed methods to document the decision-making process regarding the SR/NR eligibility of encountered archaeological resources and the need for Data Recovery mitigation;
- xv. An explicit description of the decision-making process that will occur in consultation with the NJHPO and other consulting parties to determine whether the project will have an adverse effect on potential SR/NR eligible archaeological resources during implementation of the work plan;
- xvi. An explicit description of the decision-making process that will occur in consultation with the NJHPO and other consulting parties to determine whether the project will have an adverse effect on potential SR/NR eligible archaeological resources and the need for Data Recovery mitigation.



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, NEW YORK DISTRICT
JACOB K. JAVITS FEDERAL BUILDING
26 FEDERAL PLAZA
NEW YORK NY 10278-0090

CENAN-OP-RW

NATIONWIDE PERMIT COMPLIANCE CERTIFICATION AND REPORT FORM

Permittee: Ms. Amber Cheney, New Jersey Department of Transportation

Permit No.: NAN-2020-00296-WCO

Date Permit Issued: November 8, 2022

Location: Hackensack River waterway, in the Town of Kearny, Hudson County, New Jersey

Within 30 days of the **COMPLETION** of the activity authorized by this permit and any mitigation required by the permit, sign this certification and return it to the address at the bottom of this form.

Please note that your permitted activity is subject to a compliance inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with this permit you are subject to permit suspension, modification or revocation.

I hereby certify that the work authorized by the above referenced permit has been completed in accordance with the terms and conditions of said permit, and required mitigation was completed in accordance with the permit conditions.

Signature of Permittee

Date

Email to **CENAN-R-Permit-App@usace.army.mil**