

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Division of Environmental Permits

625 Broadway, 4th Floor, Albany, New York 12233-1750

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[www.dec.ny.gov](http://www.dec.ny.gov)

November 10, 2022

## VIA EMAIL

Richard Hendrick  
Albany Port District Commission  
106 Smith Boulevard  
Albany, NY 12202  
[rhendrick@portofalbany.us](mailto:rhendrick@portofalbany.us)

**RE: NYSDEC Article 11 and Article 15 Permits**  
Port of Albany Expansion Project  
Marmen-Welcon Tower Manufacturing Plant  
Beacon Island Parcel, Bethlehem NY, Albany County  
DEC # 4-0122-00322

Dear Mr. Hendrick:

Enclosed is the Excavation and Fill in Navigable Waters Permit (ECL Article 15; 6 NYCRR Part 608) and Incidental Take Permit (ECL Article 11 and 6 NYCRR Part 182) for the Port of Albany Expansion Project. These permits are effective November 10, 2022 and will expire November 9, 2032. These permits are valid only for the Authorized Activities expressly authorized therein. Work beyond the scope of this permit and the approved documents is a violation of the law and may be subject to appropriate enforcement action.

A Compliance Checklist is enclosed for tracking the necessary notifications and plan/document submissions required by the permit conditions. Additionally enclosed is the required Implementation Agreement which was prepared pursuant to 6 NYCRR Part 182 for the take of habitat that is essential to the state and federally endangered Shortnose and Atlantic Sturgeon.

Be advised, the Uniform Procedures Regulations (6 NYCRR Part 621), provide that an applicant may request a hearing if a permit contains conditions which are unacceptable to them. Any such request must be made in writing within 30 calendar days of the date of this transmittal and must be addressed to the Chief Permit Administrator at the letterhead address. A copy should also be sent to the Chief Administrative Law Judge at the New York State Department of Environmental Conservation, 625 Broadway, 1st Floor, Albany, NY 12233-1550.

Please feel free to contact me at [karen.gaidasz@dec.ny.gov](mailto:karen.gaidasz@dec.ny.gov) if you have any questions about your obligations under these permits.

Sincerely,

A handwritten signature in black ink that reads "Karen M. Gaidasz". The signature is written in a cursive, flowing style.

Karen M. Gaidasz, Chief  
Offshore Wind & Hydroelectric Section  
Energy Project Management Bureau

Enclosures: NYSDEC Article 11 and 15 Permits  
Compliance Checklist  
Part 182 Implementation Agreement

ecc: McFarland-Johnson, Inc. – Steve Boisvert  
USACE – Andrew Dangler (NAN-2021-00948-UDA)  
DOS – David Newman (F-2021-0757)  
OGS – Tom Laliberte  
DEC Review Team



**PERMIT**  
**Under the Environmental Conservation Law (ECL)**

**Permittee and Facility Information**

**Permit Issued To:**

ALBANY PORT DISTRICT COMMISSION  
PORT OF ALBANY  
106 SMITH BLVD  
ALBANY, NY 12202  
(518) 463-8763

**Facility:**

BEACON ISLAND  
Beacon Island  
Bethlehem, NY

**Facility Location:** in BETHLEHEM in ALBANY COUNTY **Village:** Town of Bethlehem

**Facility Principal Reference Point:** NYTM-E: 601.36 NYTM-N: 4717.582

Latitude: 42°36'14.4" Longitude: 73°45'51.7"

**Project Location:** 81.6-acre Beacon Island site located at Hudson River Mile 142

**Authorized Activity:**

Excavation and fill below mean high water (MHW) including construction of a 500-foot-long by 93-foot-wide wharf and associated dredging; and a new 3-span bridge over the Normans Kill.

Approximately 75,100 cubic yards (CY) of sediment will be dredged from the Hudson River to a depth of 32 feet below the plane of mean low water (MLW), with approximately two (2) feet of allowable over-dredge, to 34 feet MLW. The area of dredging in the Hudson River will be approximately 2.72 acres (114,127 SF).

The dredging and wharf construction will result in the permanent loss of 0.76 acre of essential sturgeon habitat through habitat conversion and 0.21 acre of submerged aquatic vegetation. Additionally, there will be a temporary disturbance of 1.96 acres of essential sturgeon habitat from the dredging of previously unimpacted river bottom. This habitat impact will be offset through completion of the Net Conservation Benefit Project (NCBP) which will satisfy the requirements of ECL § 11-0535 and 6 NYCRR Part 182. The NCBP will create 1.0 acres of benthic habitat at Schodack Island State Park by converting habitat that is currently upland into habitat that can be used by sturgeon.

**Permit Authorizations**

**Excavation & Fill in Navigable Waters - Under Article 15, Title 5**

Permit ID 4-0122-00322/00002

New Permit

Effective Date: 11/10/2022

Expiration Date: 11/9/2032

**Endangered/Threatened Species (Incidental Take) - Under Article 11**

Permit ID 4-0122-00322/00005

New Permit

Effective Date: 11/10/2022

Expiration Date: 11/9/2032



**NYSDEC Approval**

**By acceptance of this permit, the permittee agrees that the permit is contingent upon strict compliance with the ECL, all applicable regulations, and all conditions included as part of this permit.**

Permit Administrator: KAREN M GAIDASZ, Deputy Chief Permit Administrator  
Address: NYSDEC Headquarters  
625 Broadway  
Albany, NY 12233

Authorized Signature: \_\_\_\_\_

Date 11 / 10 / 2022

**Permit Components**

NATURAL RESOURCE PERMIT CONDITIONS

GENERAL CONDITIONS, APPLY TO ALL AUTHORIZED PERMITS

NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

**NATURAL RESOURCE PERMIT CONDITIONS - Apply to the Following Permits: EXCAVATION & FILL IN NAVIGABLE WATERS; ENDANGERED/THREATENED SPECIES (INCIDENTAL TAKE)**

**GENERAL REQUIREMENTS**

**1. Conformance With Plans** All activities authorized by this permit must be in strict conformance with the approved plans submitted by the applicant or applicant's agent as part of the permit application. Such approved plans were prepared by McFarland-Johnson, Inc., as further described in Condition #2, Approved Plans.

**2. Approved Plans** "Port of Albany Expansion Project - Joint Permit Application" package, submitted by the Albany Port District Commission, prepared by McFarland-Johnson, Inc., originally received on August 06, 2021, with subsequent revisions as listed below:

- Joint Permit Application Package (last revised May 12, 2022)
- Joint Permit Application Forms
- Appendix 1: Permit Sketches (Project Drawings) (last revised May 2022)
- Appendix 2: Interagency Pre-Application Meetings Documentation
- Appendix 3: Agency Correspondence
- Appendix 4: Rare Plant Species Investigation (June 11, 2019)
- Appendix 5: Supplemental Rare Plan Species Investigation (May 19, 2021)
- Appendix 6: Wetland Delineation Report (May 2019)



- Appendix 7: Supplemental Wetland Delineation Report (May 2021)
- Appendix 8: Submerged Aquatic Vegetation Survey (July 2020)
- Appendix 9: Freshwater Mussels Survey (July 2, 2020)
- Appendix 10: Soil Management Plan (last revised October 20, 2022)
- Appendix 11: Environmental Subsurface Investigation and Soil Sampling Report (October 22, 2020)
- Appendix 12 - Sediment Sampling and Analysis Report (September 24, 2020)
- Appendix 13 - Vegetation Management Plan for Vegetated Buffer at the Marmen-Welcon Offshore Wind Tower Manufacturing Plant (May 12, 2022)
- Appendix 14 - Port of Albany Marmen-Welcon Manufacturing Facility: 309 River Road Fire Flow (February 23, 2022)

“6 CRR-NY Part 182 Incidental Take Permit Application” package, submitted by the Albany Port District Commission, prepared by McFarland-Johnson, Inc., originally received on November 11, 2021, with subsequent revisions as listed below:

- 6 CRR-NY Part 182 Incidental Take Permit Application Package, last revised December 12, 2021
- Appendix 1: Permit Sketches (Project Drawings) (last revised December 12, 2021)
- Appendix 2: Submerged Aquatic Vegetation Survey (July 2020)
- Appendix 3: Freshwater Mussels Survey (July 2, 2020)
- Appendix 4: Sediment Sampling and Analysis Report (September 24, 2020)

**3. Approved Plans Discrepancies** If there is a discrepancy in the Approved Plans, the most recent document or plan takes precedence. If there is a discrepancy between the Approved Plans and any permit condition, the permit conditions take precedence.

**4. Revised, Modified, or New Plans** The Permittee must notify NYSDEC of material alterations to any Authorized Activity at least two weeks prior to starting that Activity. NYSDEC reserves the right to modify permit conditions upon review of revised, modified, or new plans.

**5. Excavation and Fill Activities** Excavation and fill below MHW includes construction of a 500-foot-long by 93-foot-wide wharf and associated dredging; and a new 3-span bridge over the Normans Kill. Final dredge volumes and areas were included in correspondence from McFarland-Johnson on October 31, 2022. Approximately 75,100 cubic yards (CY) of sediment will be dredged from the Hudson River to a depth of 32 feet below the plane of mean low water (MLW), with approximately two (2) feet of allowable over-dredge, to 34 feet MLW, within an approximately 2.72 acres (114,127 SF) area in the Hudson River.

**6. Normans Kill Bridge Work Plan** The installation of the new 3-span bridge across the Normans Kill will involve work below the MHW elevation, including the installation of temporary construction access and removal of remnant structures and material from the old railroad bridge. The removal of remnant structures and the installation of new structures shall be with vibratory or rotary methods only, no pile driving is authorized. Nets, tarps, and/or pans during construction of the bridge deck shall be implemented to prevent debris falling into the water. Remnant material from the previous railroad bridge shall be removed to at least 2 feet below the bed of the Normans Kill. The Permittee shall submit a detailed work plan for the Normans Kill bridge work to NYSDEC by February 1, 2023, for review and approval. The Normans Kill Bridge Work Plan must include finalized design plans and methods; procedures for removal of remnant materials and piers; construction access means and methods; and a dewatering plan.



**7. Stormwater SPDES** The Permittee must fully comply with the State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity (GP-0-20-001).

**8. Groundwater Monitoring Wells** The Permittee shall prepare a Groundwater Monitoring Well Plan which specifies the installation of multiple groundwater wells along the banks of the Hudson River to monitor for potential contaminant migration resulting from construction activities over the coal ash landfill. The Plan shall outline the number of wells, location of wells and contaminants of concern. The wells shall be installed prior to soil surcharging activities so that baseline conditions can be established. Once soil surcharging commences, groundwater monitoring shall be conducted monthly until construction activities are completed. Monitoring shall continue post-construction every six (6) months until NYSDEC determines it can be discontinued based on review of sampling results. The Groundwater Monitoring Well Plan shall be submitted to NYSDEC by November 30, 2022, for review and approval.

**9. State Not Liable for Damage** The State of New York shall in no case be liable for any damage or injury to the structure or work herein authorized which may be caused by or result from future operations undertaken by the State for the conservation or improvement of navigation, or for other purposes, and no claim or right to compensation shall accrue from any such damage.

**10. State May Require Site Restoration** If upon the expiration or revocation of this permit, the project hereby authorized has not been completed, the applicant shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may lawfully require, remove all or any portion of the uncompleted structure or fill and restore the site to its former condition. No claim shall be made against the State of New York on account of any such removal or alteration.

**11. State May Order Removal or Alteration of Work** If future operations by the State of New York require an alteration in the position of the structure or work herein authorized, or if, in the opinion of the Department of Environmental Conservation it shall cause unreasonable obstruction to the free navigation of said waters or flood flows or endanger the health, safety or welfare of the people of the State, or cause loss or destruction of the natural resources of the State, the owner may be ordered by the Department to remove or alter the structural work, obstructions, or hazards caused thereby without expense to the State, and if, upon the expiration or revocation of this permit, the structure, fill, excavation, or other modification of the watercourse hereby authorized shall not be completed, the owners, shall, without expense to the State, and to such extent and in such time and manner as the Department of Environmental Conservation may require, remove all or any portion of the uncompleted structure or fill and restore to its former condition the navigable and flood capacity of the watercourse. No claim shall be made against the State of New York on account of any such removal or alteration.

#### NOTIFICATIONS AND POSTINGS

**12. Notifications and Submissions** All notifications and submissions required by this permit must be provided by email at: [DEPEnergy@dec.ny.gov](mailto:DEPEnergy@dec.ny.gov).

**13. Notification of Commencement of Authorized Activities** At least forty-eight (48) hours prior to commencement of any Authorized Activities, the Permittee must notify the NYSDEC.





**14. Notification of Exceedance of Water Quality Standard** In the event of exceedance of a water quality standard, NYSDEC must be notified immediately, with the Permittee taking all necessary steps to return to compliance, including but not limited to, the cessation of any non-compliant discharges.

**15. Notification of Completion of Authorized Activities** Within ten (10) days of the completion of the Authorized Activities, the Permittee must notify the NYSDEC.

**16. Provide Project Status Reports Every Two Weeks** During construction phases involving work authorized by this permit, the Permittee shall provide project status reports via email to [DEPEnergy@dec.ny.gov](mailto:DEPEnergy@dec.ny.gov). The Project Status Reports shall include a description of the work undertaken during the preceding two-week period; representative photographs; and summary of any non-compliance.

## WATER QUALITY

**17. Precautions Against Contamination of Waters** All necessary precautions shall be taken to preclude contamination of any wetland or waterway by suspended solids, sediments, fuels, solvents, lubricants, epoxy coatings, paints, concrete, leachate or any other environmentally deleterious materials associated with the project.

**18. Water Quality Standards** Authorized Activities shall comply with Section 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act, as amended and as implemented by the limitations, standards, and criteria of state statutory and regulatory requirements set forth in 6 NYCRR Section 608.9(a). Authorized Activities, as conditioned, shall also comply with applicable New York State water quality standards, including but not limited to effluent limitations, best usages, and thermal discharge criteria, as applicable, as set forth in 6 NYCRR Parts 701, 702, 703, and 704.

**19. No Leachate or Drilling Fluid Discharge** There shall be no leachate or discharge of drilling fluid into the water column.

**20. Isolate In-Water Work Areas** All dredging must take place within the confines of a weighted full-depth Type II or III turbidity curtain. The turbidity curtain(s) must be in place prior to commencement of dredging activities and remain in place for at least 24 hours after dredging is completed. The Permittee must prevent both the discharge of sediment and a discharge that could cause a substantial visible contrast in ambient river water conditions outside the turbidity curtain(s). If a plume is observed outside the confines of the turbidity curtain, the turbidity curtain containment area must be examined for breaches. Any identified breaches in the curtain must be immediately repaired. Consultation with NYSDEC staff must commence immediately to determine whether additional best management practices for dredging should be implemented.

**21. Visual Monitoring Outside Turbidity Curtain Containment Area(s)** Visual monitoring for turbidity outside turbidity curtain containment area(s) must be conducted hourly during all in-water work. If a plume is observed to have migrated outside the turbidity curtain containment area, water column samples shall be collected to represent the entire depth of the water column within the plume and must be analyzed for TSS and PCBs. TSS must not exceed 100 ppm over ambient and PCBs must not exceed 0.2 ug/l per Aroclor in any plume identified emanating from the confines of the turbidity curtain.



**22. Water Quality Monitoring Outside Turbidity Curtain Containment Area(s)** Daily water column monitoring for PCBs shall be conducted just outside the confines of the turbidity curtain during dredging of areas with Class C concentrations of PCBs. Samples shall be collected downstream of the dredge area (based on the direction of flow) and represent the entire depth of the water column. If the results of the daily monitoring conclude that the concentration of PCBs exceeds the water quality standard (0.2 ug/l per Aroclor), then BMPs shall be implemented, such as slowing the rate of dredging. If the concentration (of PCBs) is consistently below the water quality standard, then water monitoring for PCBs outside the turbidity curtain containment area may be reduced to once per week. Any reduction in monitoring frequency must be approved in advance by NYSDEC staff.

#### CONSTRUCTION REQUIREMENTS

**23. No Interference With Navigation** There shall be no unreasonable interference with navigation by the work herein authorized.

**24. Seasonal Time of Year Restriction for Sturgeon** To minimize the risk for impacts to Atlantic and shortnose sturgeon, in-water work is only authorized from September 1 through December 31, or until river ice-in, whichever end date is earlier for any year in which this permit is in effect. In-water work is only authorized between the hours of 6 a.m. to 6 p.m.

**25. Entangled, Injured, or Dead Protected Species** If an entangled, injured, or dead protected species is encountered during the Authorized Activities, all work must immediately cease (allowing for retrieval of equipment, if necessary), and the Permittee must notify NYSDEC immediately. Protected species include species protected under the Marine Mammal Protection Act, and federal and state listed threatened and endangered species. Authorized Activities must not recommence until NYSDEC provides authorization to do so. A report including the following information must be prepared and provided to NYSDEC within 24 hours:

- a. species identification (if known) or description of the animal;
- b. time, date, and location (latitude/longitude) of the discovery;
- c. condition of the animal (discoveries of injured or dead animals);
- d. observed behaviors of the animal, if alive;
- e. name(s) and contact information of the person(s) involved with the discovery;
- f. weather conditions at the site for the previous forty-eight (48) hours;
- g. if available, photographs or video footage of the animal; and
- h. general circumstances under which the animal was discovered (discoveries of injured or dead animals).

**26. Certified Laboratory** All laboratory analyses required by this permit must be conducted by a laboratory certified by the New York State Department of Health (NYSDOH) Environmental Lab Approval Program (ELAP).

**27. Send Analytical Results to NYSDEC** All analytical results required by this permit must be sent to NYSDEC by email within forty-eight (48) hours of receipt of data results. Exceedances must be highlighted.





**28. Provide Sediment Data in Electronic Digital Format** All existing and future sediment data must be provided in an electronic digital format (EDD) file. Existing sediment data shall be provided in an EDD file to NYSDEC by December 15, 2022. Sediment data collected during the term of this permit shall be provided in an EDD file to NYSDEC within sixty (60) days of collecting the data.

**29. Report Spills** All spills must be reported through the NYSDEC Spills Hotline (1 800 457-7362) in accordance with the regulations.

**30. Flocculant Use Requires NYSDEC Approval** A flocculant may be added to enhance settling. If a flocculant is proposed to be used, the form "Water Treatment Chemical Usage Notification Requirements for SPDES Permittees" (WTC Form) must be submitted and approved by NYSDEC prior to its use. Additional information on submission and review of WTC Forms can be found at: <http://www.dec.ny.gov/permits/93245>.

**31. Beneficial Use Determination** Any material that is proposed for upland beneficial use within New York State must receive a NYSDEC Beneficial Use Determination (BUD).

## DREDGING

**32. Dredging Operations** The following conditions apply to all dredging operations:

- a. A closed environmental (clamshell) bucket with sealing gaskets or an overlapping sealed design at the jaws with seals or flaps positioned at locations of vent openings must be used to minimize sediment re-suspension during dredging.
- b. Seals or flaps designed or installed at the jaws and locations of vent openings must tightly cover these openings while the bucket is lifted through the water column and into the barge.
- c. The closed environmental (clamshell) bucket dredge must be equipped with sensors to ensure complete closure of the bucket before lifting through the water.
- d. Dredged material must be placed in the barge in a controlled manner.
- e. Excessive loss of material from the bucket must be investigated and repaired.
- f. Bucket retrieval rates must be controlled to minimize turbidity.
- g. Dredged material must be transferred directly from the barge to the disposal/processing site.
- h. No barge overflow is authorized during dredging operations or transportation of dredge material to the disposal/processing site.
- i. Bucket decanting and loss of dredged material into the Hudson River during barge loading must be controlled to minimize turbidity.
- j. Wet dumping or sidecasting of the dredged material into the Hudson River or any associated waterbody is prohibited.
- k. Washing of the gunwales must be avoided except to the extent necessary to ensure the safety of workers.
- l. The use of a dragline for dredging is strictly prohibited.
- m. All side slopes of the dredge channel shall have a maximum of 1:3 slope.
- n. All dredging shall be conducted to leave a uniform bottom elevation free of mounds or holes.

**33. Transporting Barges to be Inspected** All sediment transporting barges must be inspected daily and certified by the Permittee as properly sealed. Only barges in good operating condition and appropriately designed to contain sediments are authorized. Loss of material during transport is prohibited.



**34. Submit a Plan to NYSDEC for Barge Decanting** Any proposed decanting of barges must be approved by NYSDEC prior to implementation. If decanting of barges is necessary, a detailed plan must be submitted to NYSDEC for review and approval at least thirty (30) days prior to commencing barge decanting.

**35. Final Dewatering Plan Must be Approved by NYSDEC** The final dewatering plan must be submitted to NYSDEC by December 15, 2022, for review and approval.

**36. Monitor Overlying Water Prior to Discharge** The Permittee shall monitor the overlying barge water for PCBs, TSS, and turbidity prior to discharge. If the overlying water meets the PCB, TSS, and turbidity limits in Table 1 in Condition 37, it can then be discharged back to the water column. If PCB, TSS, and turbidity limits are not met, then the permittee shall employ additional measures to achieve the limits prior to discharge.

**37. Dewatering and Return Water Monitoring Requirements** Transfer operations between barges must not cause discharges of sediment or turbid water causing a substantial visible contrast to receiving waters. Return water monitoring must commence upon discharge. Discharge limits and monitoring for return flow are in Table 1 below. The return water discharge must be configured so that water with the lowest possible turbidity is returned to the Hudson River.

**Table 1: Return Water Discharge Limits, Monitoring and Reporting Requirements.**

Parameter	Daily Maximum	Units	Sample Frequency	Sample Type	Method
Turbidity Visual Observation	No substantial visible contrast from receiving water		1 per hour while discharging	visual	
Turbidity (meter)	250	NTU	Report every 4 hours while discharging	in-situ	
Turbidity (laboratory)	250	NTU	Daily while discharging	grab	USEPA 180.1
Total Suspended Solids	100	mg/l	Daily while discharging	grab	Standard Methods 2540D
PCBs	0.2 per Aroclor	ug/l	Daily while discharging	grab	USEPA 608

**38. Conduct Laboratory Analysis Within 24 to 48 Hours** Laboratory analysis of the return flow from dewatering must be conducted within 24 to 48 hours of the initial discharge.

**39. Operational Controls for Return Water Discharge** Operational controls must be implemented if TSS, turbidity, PCB limits are not met in the return water. Additional engineering controls can include, but are not limited to, the following: controlling the flow rate, increasing the detention time, and/or use of chemical additives to accelerate solids settling.



**40. Corrective Actions for Return Water Discharge Limit Exceedances** If two consecutive monitoring results of the return water exceed the 100 mg/l suspended solids limit, the 250 NTU turbidity limit, the 0.2 ug/l per Aroclor PCB limit, or a visual plume is observed, the Permittee must take immediate corrective actions to restore the discharge to acceptable levels and report the exceedance and the corrective actions to the NYSDEC. If corrective actions do not bring the effluent into compliance within 48 hours, then the Permittee must cease discharge and present a plan to the NYSDEC for approval prior to resuming the discharge. During implementation of corrective actions, NYSDEC may specify additional monitoring until compliance with permit levels is demonstrated. Samples must be collected until there is no longer a discharge of effluent from the site or until NYSDEC approves resumption of routine monitoring. If implementation of the corrective action does not return discharge water quality to an acceptable level, discharge must cease until a solution acceptable to NYSDEC.

**41. Post-Dredging Final Report** Within thirty (30) days of completion of the dredging operation, the Permittee must submit a report to NYSDEC summarizing the results of dredging, water quality monitoring, and dredged material management operations. The report must include:

- a. Location and extent of dredging;
- b. Total amount of material dredged;
- c. Ultimate placement location of dredged material;
- d. Description of problems or difficulties encountered during dredging;
- e. Water quality monitoring results and corrective actions (when needed) taken; and
- f. Return flow discharge monitoring results and corrective actions (when needed) taken.

**42. Maintenance Dredging** The Permittee must submit a Maintenance Dredging Plan to NYSDEC for review and approval at least ninety (90) days prior to maintenance dredging being conducted.

## MITIGATION

**43. Implementation Agreement Funding Obligations** The Permittee is responsible for complying with the Funding Obligations contained in Section 4.0 of the "Port of Albany Expansion Project Implementation Agreement Pursuant to 6 NYCRR 182" signed by NYSDEC, New York State Office of Parks, Recreation and Historic Preservation and APDC on June 6, 2022. The Implementation Agreement was developed to mitigate for the temporary and permanent loss of sturgeon habitat. The habitat impact will be offset through completion of the Net Conservation Benefit Project (NCBP) which will satisfy the requirements of ECL § 11-0535 and 6 NYCRR Part 182. The NCBP will create 1.0 acres of benthic habitat at Schodack Island State Park by converting habitat that is currently upland into habitat that can be used by sturgeon.

**44. Hudson River Vegetated Buffer** A vegetated buffer within three (3) deed restricted areas along the Hudson River, totaling 2.87 acres, as shown on the Proposed Deed Restricted Area Boundary Map prepared by Colliers Engineering & Design, dated May 2, 2022, shall be protected in perpetuity by Restrictive Covenants. The Restrictive Covenants shall be filed with the Albany County Clerk's Office within 60 days of receipt of permits from the U.S. Army Corps of Engineers (USACE), or by June 1, 2023, whichever is sooner.



**GENERAL CONDITIONS - Apply to ALL Authorized Permits:**

**1. Facility Inspection by The Department** The permitted site or facility, including relevant records, is subject to inspection at reasonable hours and intervals by an authorized representative of the Department of Environmental Conservation (the Department) to determine whether the permittee is complying with this permit and the ECL. Such representative may order the work suspended pursuant to ECL 71- 0301 and SAPA 401(3).

The permittee shall provide a person to accompany the Department's representative during an inspection to the permit area when requested by the Department.

A copy of this permit, including all referenced maps, drawings and special conditions, must be available for inspection by the Department at all times at the project site or facility. Failure to produce a copy of the permit upon request by a Department representative is a violation of this permit.

**2. Relationship of this Permit to Other Department Orders and Determinations** Unless expressly provided for by the Department, issuance of this permit does not modify, supersede or rescind any order or determination previously issued by the Department or any of the terms, conditions or requirements contained in such order or determination.

**3. Applications For Permit Renewals, Modifications or Transfers** The permittee must submit a separate written application to the Department for permit renewal, modification or transfer of this permit. Such application must include any forms or supplemental information the Department requires. Any renewal, modification or transfer granted by the Department must be in writing. Submission of applications for permit renewal, modification or transfer are to be submitted to:

Deputy Chief Permit Administrator  
NYSDEC Headquarters  
625 Broadway  
Albany, NY12233

**4. Submission of Renewal Application** The permittee must submit a renewal application at least 30 days before permit expiration for the following permit authorizations: Excavation & Fill in Navigable Waters, Endangered/Threatened Species (Incidental Take).

**5. Permit Modifications, Suspensions and Revocations by the Department** The Department reserves the right to exercise all available authority to modify, suspend or revoke this permit. The grounds for modification, suspension or revocation include:

- a. materially false or inaccurate statements in the permit application or supporting papers;
- b. failure by the permittee to comply with any terms or conditions of the permit;
- c. exceeding the scope of the project as described in the permit application;



- d. newly discovered material information or a material change in environmental conditions, relevant technology or applicable law or regulations since the issuance of the existing permit;
- e. noncompliance with previously issued permit conditions, orders of the commissioner, any provisions of the Environmental Conservation Law or regulations of the Department related to the permitted activity.

**6. Permit Transfer** Permits are transferrable unless specifically prohibited by statute, regulation or another permit condition. Applications for permit transfer should be submitted prior to actual transfer of ownership.

## NOTIFICATION OF OTHER PERMITTEE OBLIGATIONS

### **Item A: Permittee Accepts Legal Responsibility and Agrees to Indemnification**

The permittee, excepting state or federal agencies, expressly agrees to indemnify and hold harmless the Department of Environmental Conservation of the State of New York, its representatives, employees, and agents ("DEC") for all claims, suits, actions, and damages, to the extent attributable to the permittee's acts or omissions in connection with the permittee's undertaking of activities in connection with, or operation and maintenance of, the facility or facilities authorized by the permit whether in compliance or not in compliance with the terms and conditions of the permit. This indemnification does not extend to any claims, suits, actions, or damages to the extent attributable to DEC's own negligent or intentional acts or omissions, or to any claims, suits, or actions naming the DEC and arising under Article 78 of the New York Civil Practice Laws and Rules or any citizen suit or civil rights provision under federal or state laws.

### **Item B: Permittee's Contractors to Comply with Permit**

The permittee is responsible for informing its independent contractors, employees, agents and assigns of their responsibility to comply with this permit, including all special conditions while acting as the permittee's agent with respect to the permitted activities, and such persons shall be subject to the same sanctions for violations of the Environmental Conservation Law as those prescribed for the permittee.

### **Item C: Permittee Responsible for Obtaining Other Required Permits**

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

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

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

**COMPLIANCE CHECKLIST**  
**Port of Albany Expansion Project - Marmen-Welcon Tower**  
**Manufacturing Plant**  
 Town of Bethlehem, Albany County  
 DEC# 4-0122-00322

**Notification Requirements**

<b>Required Submission (Natural Resource Condition #)</b>	<b>NYSDEC Notification Timeframe</b>	<b>Date Completed</b>
Submit Revised, Modified or New Plans (#4)	At least 2 weeks prior to commencing activity.	If needed.
Notification of Commencement of Authorized Activities (#13)	At least 48 hours prior.	
Notification of Exceedance of Water Quality Standard (#14)	Immediately.	If needed.
Notification of Completion of Authorized Activities (#15)	Within 10 days.	
Project Status Reports (#16)	Every 2 weeks during construction activities.	Recurring Reports.
Observation of plume outside of turbidity curtain (#20)	Immediate repair and consultation.	If needed.
Entangled, Injured, or Dead Protected Species (#25)	Immediate notification and send report within 24 hours.	If needed.
Send Analytical Results (#26)	Within 48 hours of receipt of data results.	As necessary.
WTC Form (#30)	Prior to use of Water Treatment Chemical	If needed.
Corrective Actions for Return Water Discharge Limit Exceedances (#40)	Immediate notification and consultation with NYSDEC.	If needed.

**Plan/Document Submission Requirements**

<b>Required Submission (Natural Resource Condition #)</b>	<b>NYSDEC Submission Timeframe</b>	<b>Date Completed</b>
Normans Kill Bridge Work Plan (#6)	Submit Plan for review and approval by February 1, 2023.	
Groundwater Monitoring Well Plan (#8)	Submit Plan for review and approval by November 30, 2022.	
Sediment Data in EDD Format (#27)	Existing data by December 15, 2022. Future data within 60 days of collection.	
Barge Decanting Plan (#34)	At least 30 days prior to commencing barge decanting.	
Final Dewatering Plan (#35)	Submit Plan for review and approval by December 15, 2022.	
Post-Dredging Final Report (#41)	Submit Plan within 30 days of completion of dredging operations.	
Maintenance Dredging Plan (#42)	Submit Plan for review and approval at least 90 days prior to maintenance dredging.	
Implementation Agreement Funding Obligations (#43)	Submit payments to OPRHP per Section 4.0 of the signed Implementation Agreement.	
File Deed Restrictions with Albany County Clerk's Office (#44)	Within 60 days of receipt of USACE Permits or by June 1, 2023, whichever is sooner.	



## **Port of Albany Expansion Project Implementation Agreement Pursuant to 6 NYCRR 182**

By: Albany Port District Commission

Re: Port of Albany Expansion Project, Town of Bethlehem, Albany County, New York  
Part 182/Incidental Take Permit Application (January 2022)  
DEC #4-0122-00322

### **1.0 Introduction**

This Implementation Agreement ("Agreement") has been prepared in accordance with the New York State Environmental Conservation Law ("ECL") § 11-0535 and the accompanying regulations found at Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York ("NYCRR") Part 182. It sets forth the roles and responsibilities of each party that will be involved in the creation of one acre of new benthic<sup>1</sup> area at Schodack Island State Park ("Net Conservation Benefit Project") which is associated with an Incidental Take Permit to be issued by the New York State Department of Environmental Conservation ("NYSDEC") to the Albany Port District Commission ("Commission") for the Port of Albany Expansion Project ("Expansion Project") in the Town of Bethlehem, Albany County, New York.

The Expansion Project will modify an undeveloped industrially zoned property into an active marine terminal with specialized infrastructure capable of supporting a new manufacturing operation that would produce tower components for offshore wind developments. The Expansion Project will facilitate the marine-based import and export of materials and manufactured components to be used in the development of offshore wind projects. Site improvements include the construction of associated site utilities, roads and infrastructure; installation of a new bridge over Normans Kill; and a new wharf which requires dredging and associated shoreline improvements.

The proposed in-water work activities (e.g., wharf and dredging) would occur along the western bank of the Hudson River in an area of approximately 740 feet in length by 167 feet in width. The general layout of the proposed wharf places the riverside face of structure coincident with the face of the existing timber revetment. The proposed wharf consists of a deep foundation-supported concrete-framed open-type wharf structure that provides overall dimensions of approximately 500 feet in length by 93 feet in width. The total area of the wharf is approximately 45,500 SF. The area of the wharf provided over water (outboard of the sheet pile cutoff wall), where shade will occur, is approximately 27,500 SF. Shade would vary and subject to time of the day and season of the year. The existing width of the Hudson River at this location is over 700 feet.

The Expansion Project will result in a take of habitat that is essential to the state and federally endangered Shortnose and Atlantic Sturgeon. This habitat impact will be offset through completion of the Net Conservation Benefit Project. The Net Conservation Benefit Project is one element of the larger Schodack Island Restoration Project ("Restoration Project") proposed by the New York State Office of Parks, Recreation and Historic Recreation ("OPRHP"). NYSDEC staff have determined that the Net Conservation Benefit Project will satisfy the requirements of ECL § 11-0535 and 6 NYCRR Part 182.

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<sup>1</sup> Benthic area will be inundated at mean high water.

## **2.0 Responsibilities of the Parties**

The Commission shall be responsible for contributing funds to the Net Conservation Benefit Project as part of the larger Restoration Project. OPRHP shall use the funding received from the Commission for the Net Conservation Benefit Project. OPRHP shall be responsible for implementing the Net Conservation Benefit Project.

The Net Conservation Benefit Project will be implemented on lands owned and/or controlled by OPRHP at the Schodack Island State Park. The Net Conservation Benefit Project will be designed and permitted after a feasibility study is conducted. The feasibility study is being conducted by NYSDEC and will be completed by December 31, 2022.

### **2.1 Albany Port District Commission**

- The Commission shall provide funding to OPRHP for the Net Conservation Benefit Project in accordance with the payment schedule and payment method set forth in Section 4 below.

### **2.2 OPRHP**

- OPRHP shall administer the Net Conservation Benefit Project design that will create at least 1.0 area of benthic area at Schodack Island State Park, as identified in the Incidental Take Permit;
- OPRHP shall prepare and apply for the permits and approvals necessary to implement the Net Conservation Benefit Project;
- OPRHP shall administer the construction of the Net Conservation Benefit Project when sufficient funding is acquired and received;
- OPRHP shall consult NYSDEC staff to ensure the Net Conservation Benefit Project results in a net conservation benefit as required by the Commission's Incidental Take Permit; and
- OPRHP shall provide NYSDEC staff annual reports on progress of the design and construction of the Net Conservation Benefit Project, including three years post-construction monitoring, and other information as requested by NYSDEC staff to determine if the requirements of this Agreement and the Incidental Take Permit are met.

### **2.3 NYSDEC**

- NYSDEC shall participate with OPRHP on the design review of the Net Conservation Benefit Project;
- NYSDEC shall assist OPRHP in obtaining all necessary NYSDEC and other permits/approvals for the Net Conservation Benefit Project;
- NYSDEC shall assist OPRHP with the oversight of the Net Conservation Benefit Project; and
- NYSDEC shall assist OPRHP with the three (3)-year post construction monitoring of the Net Conservation Benefit Project in accordance with 6 NYCRR Part 182.

### 3.0 Net Conservation Benefit Project Scope

The Expansion Project includes a wharf that is within the general vicinity of known Shortnose Sturgeon spawning habitat<sup>2</sup> and within essential foraging, rearing and migration habitat for both Shortnose and Atlantic Sturgeon. Both Sturgeon species are bottom feeders and have been documented to forage on benthic organisms found in the Hudson River. Habitat alteration is a key threat to Sturgeon populations.<sup>3</sup> The impacts on site will detrimentally impact these essential habitats for the species. Therefore, a restoration project must be completed that provides more benefit than the harm caused by the incidental take of Sturgeon to create a net conservation benefit to the species.

The Expansion Project will result in the permanent loss of 0.76 acres of essential Sturgeon habitat through permanent habitat conversion associated with the construction of the wharf. This area consists of the areas currently less than 10-feet in depth that will be converted to riprap or permanently shaded by wharf construction.

In addition to the permanent habitat loss, the Expansion Project will also result in an initial temporary disturbance of 1.96 acres of essential Sturgeon habitat through the dredging of previously unimpacted river bottom. Maintenance dredging at the site will likely be required once every 10 years to maintain the area, resulting in an annualized Sturgeon impact of approximately 0.20 acres. Temporary impacts will be confined to September 1 through October 31, to minimize both habitat impacts and the potential for direct impacts on feeding sturgeon. Habitat studies in other portions of the Hudson River indicate that the benthic fauna that Sturgeon feed on will recolonize the site within one year of dredging.<sup>4</sup>

The adverse habitat impacts to Sturgeon described above will be offset and improved by the Net Conservation Benefit Project. The area where Schodack Island State Park is located was historically several small islands separated by side channels. The side channels were filled in with spoils from dredging the Hudson River for commercial navigation. The Net Conservation Benefit Project will create 1.0 acres of benthic habitat at Schodack Island State Park by converting habitat that is currently upland into habitat that can be used by Sturgeon. The goal of this project is to return the area to habitat that is more similar to what existed before the dredge and fill operations, and ultimately create a self-sustaining habitat that is beneficial to Sturgeon. The benthic habitat creation will provide new foraging habitat for Shortnose Sturgeon and new refuge area for several fish species, including Atlantic Sturgeon. The Net Conservation Benefit Project shall be incorporated into the larger Schodack Island Restoration Project that will be developed by OPRHP and NYSDEC. The Net Conservation Benefit Project shall include:

- New benthic area created by the excavation of previously deposited dredge spoils to a depth that is inundated at Mean High Water;
- Benthic area will be inundated with Hudson River water to deliver river sediment and benthic organisms appropriate to enhance the food supply of Shortnose Sturgeon;
- Increased refuge area for fish species that increases diversity of habitat and survival of predation and hanging water flows;

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<sup>2</sup> Pendleton 2018 Acoustic Telemetry and Benthic Habitat Mapping Inform the Spatial Ecology of Shortnose Sturgeon in the Hudson River, New York.

<sup>3</sup> Title: Biological Assessment of shortnose sturgeon *Acipenser periosteum*, Published Date: 2010.

<sup>4</sup> Newell 1998 The Impact of Dredging works in coastal Waters: A Review of the sensitivity to disturbance and subsequent recovery of biological resources on the seabed.

- Stabilized restoration area to assure long-term benefit of benthic areas; and
- Monitoring for at least three years to document stability, water flows, and establishment of benthic organisms. Monitoring methodology will be consistent with other dredged areas to increase the understanding of Hudson River restoration.

**4.0 The Commission’s Funding Obligations and Method of Payment**

The Commission shall provide OPRHP with a total of \$700,000 for the Net Conservation Benefit Project in accordance with the payment schedule set forth in section 4.2. OPRHP shall dedicate these funds to be used for the Net Conservation Benefit Project. The total amount of \$700,000 is estimated to be sufficient to fund the creation of 1.0 acres of benthic area identified as requiring restoration.

ORPHP shall submit invoices to the Commission requesting payment. All invoices shall be prepared in a standard invoice format and accompanied by a New York State Standard Voucher and Documentation Requirements. All invoices will be processed in accordance with established procedures of OPRHP and the New York State Office of the State Comptroller (OSC). The Commission shall transfer the funds to OPRHP through electronic payment. Such electronic payment shall be made in accordance with ordinary OPRHP and OSC procedures and practices.

4.1 Funding Source: The Albany Port District Commission shall provide the funding to OPRHP. Upon OPRHP’s receipt of the final payment, in accordance with the funding schedule in 4.2, the obligation of the Albany Port District Commission for the Net Conservation Benefit Project will be complete.

4.2 Funding Schedule: To meet the obligations under the Incidental Take Permit, the Commission shall pay OPRHP a total of \$700,000 in accordance with the following schedule:

<b>Payment Amount</b>	<b>Received by OPRHP on or before</b>	<b>Allocation of Funds</b>
\$150,000	August 31, 2022	Design and Permitting of The Net Conservation Benefit Project
\$137,500	January 1, 2023	Construction and Monitoring
\$137,500	January 1, 2024	Construction and Monitoring
\$137,500	January 1, 2025	Construction and Monitoring
\$137,500	January 1, 2026	Construction and Monitoring



Thomas Berkman  
Deputy Commissioner and General Counsel  
New York State Department of Environmental  
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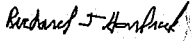
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Date

Mindy Scott

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Melinda Scott  
Deputy Commissioner for Finance and  
Administration  
New York State Office of Parks, Recreation,  
and Historic Preservation  
625 Broadway  
Albany, New York 12233

05/20/2022  
Date



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Richard J. Hendrick  
Chief Executive Officer  
Albany Port District Commission  
106 Smith Blvd  
Albany, New York 12202

05/17/2022  
Date

