

**LETTER OF RESOLUTION**  
**between the**  
**NYS Department of Environmental Conservation**  
**and the**  
**NYS Office of Parks, Recreation and Historic Preservation**  
**regarding compliance with PRHPL § 14.09 for the**  
**State Pollution Discharge Elimination System**  
**General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002)**

**WHEREAS**, the New York State Department of Environmental Conservation (Department), having offices at 625 Broadway, Albany, NY 12233 is authorized to issue a State Pollutant Discharge Elimination System (SPDES) general permit for Stormwater Discharges from Construction Activity (CGP), pursuant to 33 U.S.C. 1342, New York State Environmental Conservation Law (ECL) §§17-0701, 70-0117(6), and 6 NYCRR 750-1.21(b)(2); and

**WHEREAS**, pursuant to Parks Recreation and Historic Preservation Law (PRHPL) §14.09, the State Historic Preservation Act (SHPA), and 9 NYCRR Part 428, the Department is required to consult with the Office of Parks, Recreation and Historic Preservation (OPRHP), located at Peebles Island State Park, Delaware Avenue, Cohoes NY 12238, concerning the impact of a construction activity if it appears that any aspect of the construction activity may or will cause any change, beneficial or adverse, in the quality of an historic property, which is any building, structure, site, object or district that is listed on the state or national register of historic places or is determined to be eligible for listing on the state or national register; and

**WHEREAS**, the Department and the OPRHP declare that it is to their mutual advantage to develop this Letter of Resolution (LOR); and

**WHEREAS**, this approach simultaneously maintains the efficiencies of the general permitting process for owners/operators engaged in construction activities, and allows the process of obtaining coverage under the CGP to be considered a ministerial action under the State Environmental Quality Review Act; and

**WHEREAS**, the Department and the OPRHP agree that adherence to the procedures outlined in the Attachment 1 to this LOR will satisfy the SHPA for both the issuance and implementation of the CGP; and

**WHEREAS**, 9 NYCRR § 428.12 allows the Commissioner of the OPRHP to designate certain categories of projects as exempt from the SHPA review and 9 NYCRR § 428.13 allows the Commissioner of the OPRHP to establish standards for the implementation of the SHPA for a series of similar undertakings. A list of projects meeting the regulatory criteria is in Attachment 2 to this LOR.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

- 1) The Department and the OPRHP will make use of the procedures and owner/operator consultation described in Attachment 1 to implement the terms of this LOR.
- 2) Construction activities falling into the categories listed in Attachment 2 will not require review under the SHPA.
- 3) The Department and the OPRHP commit to meeting, as needed, to review the implementation of the LOR
- 4) The Department will make use of the Project Cover Form (Attachment 3 to this LOR) to identify projects for the OPRHP and to initiate project review and consultation.

## **ARTICLE I. Responsibilities**

### Department Responsibilities:

The Department will condition the CGP such that a construction activity is ineligible for coverage under the CGP if the construction activity has the potential to affect a historic property, and such effects have not been resolved.

The Department acknowledges that where the OPRHP determines that a historic property may be affected, the OPRHP will recommend steps to the Department that would resolve those effects and the Department's Agency Preservation Officer (APO) may be involved in the development of a Letter of No Adverse Impact or a signatory to a Letter of Resolution for the particular construction activity.

The Department has determined that significant outreach and training for design engineers, project sponsors, planning boards and other review authorities on requirements of the SHPA will assist the Department in complying with the SHPA by addressing potential impacts to a historic property early on in the planning stages of a construction activity.

The Department is planning on providing this outreach and training across the state as part of roll-out of the renewed CGP (anticipated January 29, 2015).

The Department anticipates enhancing its enforcement of the eligibility of construction activities under the CGP by requiring documentation that demonstrates eligibility under the SHPA be maintained at the construction site.

The Department will develop a Standard Operation Procedure (SOP) to set forth the roles and responsibilities of Department staff to assure compliance with this LOR. The SOP will detail the process to be followed during the inspection of sites and in the event that human or archaeological remains are encountered during land disturbance authorized under the CGP.

The Department will update the Compliance Strategy for the CGP to reflect the enforcement protocol for projects that fail to maintain documentation demonstrating SHPA compliance and for projects that operate in contravention to the conditions of any Letters of No Adverse Impact

or Letter or Resolution for a particular construction activity, if such conditions are also related to land disturbance and/or water quality.

OPRHP Responsibilities:

OPRHP will make best efforts to respond to owner/operator consultation requests for a specific construction activity within the thirty (30) day review period in accordance with the SHPA once all required materials have been provided. Where that timeframe is not feasible, the OPRHP will advise the Department's APO and seek to resolve any issues with the consultation in a timeframe that will not unduly delay an owner/operator submitting a NOI for coverage under the CGP.

**ARTICLE II. Representations**

The Department's authorized representative for the administration of this LOR is:

Name: Charles Vandrei (or designated successor)  
Title: Agency Historic Preservation Officer  
Address: 625 Broadway Albany, NY 12233  
Phone #: (518) 402-9428  
Email: [Charles.Vandrei@dec.ny.gov](mailto:Charles.Vandrei@dec.ny.gov)

The OPRHP's representative for the implementation and administration of this LOR:

Name: John A. Bonafide (or designated successor)  
Title: Director  
Address: Peebles Island  
1 Delaware Avenue  
\*Mailing: P.O. Box 189  
Waterford, NY 12188  
Phone #: (518) 268-2166  
Email: [John.Bonafide@parks.ny.gov](mailto:John.Bonafide@parks.ny.gov)

Should either of the named contacts be changed by their respective agency, the agency will notify the other within 30 days.

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**ARTICLE III. Duration**

This LOR shall be effective from the date the last party signifies their acceptance below.

**ARTICLE IV. Modification**

Notwithstanding any other provisions of this LOR, this agreement may be amended when such an amendment is agreed to in writing by both agencies.

**ARTICLE V. Termination**

This LOR may be terminated by either party giving the other party 30 days advanced written notice of such intent and the reasons thereof. Both parties agree to enter into good faith negotiations to resolve any differences and provide for an orderly closure of this LOR if agreement cannot be reached.

In **WITNESS WHEREOF**, the individuals listed below are authorized to sign and execute this LOR between their respective Executive Department Agencies, on the date appearing below their respective signatures.

New York State Department  
of Environmental Conservation

By 

Charles Vandrei

Agency Preservation Officer

Dated 1/9/15

Office of Parks, Recreation and  
Historic Preservation

By 

Ruth L. Pierpont

Deputy Commissioner  
for Historic Preservation

Dated 1/9/15

## **Procedures-Attachment 1 to Letter of Resolution**

Applicability: All construction activities seeking CGP coverage are subject to the following procedures unless they fall into one of the following exemptions:

1. Is on the list of exempt activities found in Attachment 2; or
2. It requires a federal permit or approval or is receiving federal funds and has been reviewed under Section 106 of the National Historic Preservation Act for the full coterminous project area; or
3. It requires a state agency permit, approval or funding from the DEC or another state agency, and has been reviewed under Section 14.09 of the New York State Historic Preservation Act.

### **Definitions:**

***Immediately Adjacent***-shared property line, excluding construction activities that are located across a public highway

#### ***Historic Preservation Commission of a Certified Local Government-***

A municipal government which is authorized to make certain historic preservation decisions. CLG's have a local preservation ordinance and an historic preservation board or commission which has been approved by OPRHP and certified by the National Park Service. For additional information see <http://nysparks.com/shpo/certified-local-governments/>

***Qualified Preservation Professional***-professionals that meet the qualification standards as set forth in 36 CFR Part 61.

***Historic Property***- Any building, structure, site, object or district that is listed on the State or National Registers of Historic Places or has been determined to be eligible for

listing on the State or National Registers of Historic Places or is locally designated as historic.

***Unevaluated Property*** – Buildings, structures or objects that are greater than 50 years of age that have not been evaluated for eligibility for listing on the State or National Registers of Historic Places.

***Archaeologically Sensitive Area*** – A location as defined by OPRHP as having the potential to contain unidentified and unevaluated archaeological resources.

**Screening Process:**

1: The owner/operator shall check the archeological sensitivity map and the National and State Registers of Historic Places (by either using DEC's EAF Mapper and OPRHP's CRIS website) to determine if the construction activity is located:

- a) in an *archeological sensitive area*, or
- b) on an *historic property*, or
- c) *immediately adjacent* to an *historic property*.

2: The owner /operator shall also determine if the construction activity will include the construction of a new permanent building on the construction site within the following distances of an *Unevaluated Property*<sup>1</sup>.

- 1-5 acres of disturbance - 20 feet
- 5-20 acres of disturbance - 50 feet
- 20+ acres of disturbance - 100 feet,

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<sup>1</sup> The building, structure, or object that is more than 50 years old could be on the construction site or adjacent to the construction site.

**Eligibility Determination/Resolution of Impacts:**

1. If the construction activity:

- a. is not within an *archeologically sensitive area* as indicated on the sensitivity map, and,
- b. is not on an *historic property*, and
- c. is not *immediately adjacent* to an *historic property*, and
- d. does not include the construction of a new permanent building on the construction site within the following distances of an *Unevaluated Property*<sup>2</sup> :
  - 1-5 acres of disturbance - 20 feet
  - 5-20 acres of disturbance - 50 feet
  - 20+ acres of disturbance - 100 feet, or
- e. does include the construction of a new permanent building on the construction site within the following distances from *Unevaluated Property*<sup>3</sup> but OPRHP, a *Historic Preservation Commission of a Certified Local Government*, or a *qualified preservation professional* has determined it is not a historically significant building, structure or object:
  - 1-5 acres of disturbance - 20 feet
  - 5-20 acres of disturbance - 50 feet
  - 20+ acres of disturbance - 100 feet

**the construction activity is eligible for coverage under the General Permit**

provided all other eligibility requirements have been met.

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<sup>2</sup> The building, structure, or object that is more than 50 years old could be on the construction site or adjacent to the construction site.

<sup>3</sup> The building, structure, or object that is more than 50 years old could be on the construction site or adjacent to the construction site.

2. If the construction activity:

- a. is within an *archeologically sensitive area* as indicated on the archeological sensitivity map, or
- b. is on an *historic property*, or
- c. is located *immediately adjacent* to an *historic property*, or
- d. includes the construction of a new permanent building on the construction site within the following distances from a building, structure, or object that is more than 50 years old<sup>4</sup> and which OPRHP, a *Historic Preservation Commission of a Certified Local Government*, or a *qualified preservation professional* has determined is a historically/archeologically significant building, structure, or object:
  - 1-5 acres of disturbance - 20 feet
  - 5-20 acres of disturbance - 50 feet
  - 20+ acres of disturbance - 100 feet

Then:

- 1) Impacts to *historic properties* shall be resolved through the SEQR process, with documentation of OPRHP's agreement with such resolution, and the owner/operator shall submit the DEC consultation form (Attachment 3 to the LOR, preferably the digital version using OPRHP's CRIS system) to OPRHP, with a copy to the DEC APO. The

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<sup>4</sup> The building, structure, or object that is more than 50 years old could be on the construction site or adjacent to the construction site.



construction activity will be eligible for coverage under the CGP, provided all other CGP eligibility requirements are met, or

2) The owner/operator shall initiate a consultation with OPRHP on behalf of DEC prior to the construction activity being deemed eligible for coverage under the CGP. Under this consultation process:

- The owner/operator shall submit the DEC consultation form (Attachment 3 to the LOR, preferably the digital version using OPRHP's CRIS system) to OPRHP, with a copy to the DEC APO, to commence the 30 day period for OPRHP review. The owner/operator shall also submit the DEC consultation form to OPRHP on behalf of DEC as an initial request for OPRHP consultation on the specific construction activity.

-If OPRHP concurs that *historic properties* will not be affected, and issues a letter of No Impact, consultation with OPRHP is complete. The construction activity is eligible for coverage under the CGP, provided all other CGP eligibility requirements are met.

-If OPRHP determines that *historic properties* may be affected, OPRHP will, after all necessary surveys and consultations have been performed, recommend steps to the DEC APO that would

resolve those effects and will copy the owner/operator. The construction activity is not eligible for the CGP unless a Letter of No Adverse Impact is issued from OPRHP or a Letter of Resolution is executed, that specifically allows the action to proceed under the CGP.

- The DEC APO shall decide if any of the above determinations warrant consultation with any potentially interested Indian Nations under CP-42, and will initiate such consultation on behalf of the DEC.

## Changes to the Notice of Intent and CGP

DEC will amend the NOI to include the following questions:

14. Is the construction activity designated by the Commissioner of the Office of Parks, Recreation and Historic Preservation (OPRHP), pursuant to 9 NYCRR §§428.12 or 428.13 as exempt from the State Historic Preservation Act (SHPA) review (see Attachment 2 of the Letter of Resolution between the NYSDEC and OPRHP, dated ???)

Yes No

**If Yes, go to question 18.**

**If No, go to question 15.**

15. Will the construction activity:

- a) occur within an *archeologically sensitive area* indicated on the sensitivity map, or
- b) have the potential to affect a property that is listed or determined to be eligible for listing on the National or State Registers of Historic Places, or
- c) include a new permanent building on the construction site within the following distances from a building, structure, or object that is more than 50 years old and OPRHP, a *Historic Preservation Commission of a Certified Local Government*, or a *qualified preservation professional* has determined is a historically/archeologically significant building, structure, or object:
  - 1-5 acres of disturbance - 20 feet
  - 5-20 acres of disturbance - 50 feet
  - 20+ acres of disturbance - 100 feet

Yes No

**If Yes, go to question 17.**

**If No, go to question 16.**

16. Is there documentation at the construction site demonstrating:

- a) that the construction activity is not within an *archeologically sensitive area* indicated on the sensitivity map, and that the construction activity is not *immediately adjacent* to a property listed or determined to be eligible for listing on the National or State Registers of Historic Places, and
- b) that there is no new permanent building to be built on the construction site within the following distances from a building, structure, or object that is more than 50 years old, or if there is such a new permanent building on the construction site within those parameters that OPRHP, a *Historic Preservation Commission of a Certified Local Government*, or a *qualified preservation professional* has determined that the building, structure, or object more than 50 years old is not historically/archeologically significant:

- 1-5 acres of disturbance - 20 feet
- 5-20 acres of disturbance - 50 feet
- 20+ acres of disturbance - 100 feet?

Yes      No

**If Yes, go to question 18.**

**If No, the construction activity is not eligible for coverage under the General Permit so NOI cannot be processed.**

17. Have the impacts to historic properties been resolved.    Yes      No

**If Yes, which of the following documentation is at the construction site:**

a. DEC consultation form sent to OPRHP, and copied to the NYS DEC Agency Historic Preservation Officer (APO), and

- \_\_\_\_\_ the State Environmental Quality Review (SEQR) Environmental Assessment Form (EAF) with a negative declaration or the Findings Statement, with documentation of OPRHP's agreement with the resolution; or
- \_\_\_\_\_ documentation from OPRHP that the construction activity will result in No Impact; or
- \_\_\_\_\_ documentation from OPRHP providing a determination of No Adverse Impact; or
- \_\_\_\_\_ a Letter of Resolution signed by the owner/operator, OPRHP and the DEC which allows for this construction activity to be eligible for coverage under the general permit under SHPA; or

b. Documentation of satisfactory compliance with Section 106 of the National Historic Preservation Act for a coterminous project area:

- \_\_\_\_\_ No Effect/No Historic Properties Affected
- \_\_\_\_\_ No Adverse Effect
- \_\_\_\_\_ Executed Memorandum of Agreement

c. Documentation that

- \_\_\_\_\_ SHPA Section 14.09 has been completed by NYS DEC or another state agency.

**If No, the construction activity is not eligible for coverage under the General Permit and the NOI cannot be processed.**

**General Construction Permit Categorical Exclusions**

**Under 9 NYCRR Sections 428.12/ 428.13**

1. A single family house to be constructed on a single lot.
2. Installation of utility lines (water, sewer, electrical, gas and the like) which are located between the existing edge of pavement and the far edge of an existing excavated drainage ditch or existing utility lines. Exceptions include:
  - a. In alluvial settings. Information on alluvial soils may be obtained from USDA Soil Surveys.
  - b. Within known archaeological site boundaries found on the NYS Archaeological Sensitivity map (Using either the NYS OPRHP CRIS system or NYS DEC Environmental Mapper Tool).
  - c. Within the boundaries of known cemeteries.
3. Repair or replacement of utilities in the same trench where proposed excavation will not exceed width, and depth of existing work.
4. Installation of lighting (including new underground conduit and conductors) and minor drainage work where no other new excavation work is needed outside of previously disturbed areas.
5. Excavation or other ground disturbance impacting areas 10 feet or less from existing c.1900 or later structures.

New York State Office of Parks, Recreation and Historic Preservation  
Field Services Bureau  
Pebbles Island State Park  
Waterford, NY 12188-0189

Copy to:  
New York State Department of Environmental Conservation  
Agency Historic Preservation Officer  
Division of Lands and Forests  
625 Broadway  
Albany, NY 12233-4255

Attachment 3  
**STORMWATER CONSTRUCTION GENERAL PERMIT  
REQUEST FOR STATE HISTORIC PRESERVATION ACT REVIEW**

This form is being submitted to OPRHP to request consultation on historic properties or archeological resources or both in accordance with the Letter of Resolution between NYS Department of Environmental Conservation and the NYS Office of Parks, Recreation and Historic Preservation regarding compliance with PRHPL § 14.09 for the State Pollution Discharge Elimination System General Permit For Stormwater Discharges From Construction Activity (GP-0-15-002) dated \_\_\_\_\_.

DATE: \_\_\_\_\_

COUNTY \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_

NAME OF OWNER / OPERATOR OF PROPOSED CONSTRUCTION ACTIVITY \_\_\_\_\_

PROJECT LOCATION \_\_\_\_\_

TELEPHONE \_\_\_\_\_

CITY/TOWN/VILLAGE \_\_\_\_\_

E-MAIL \_\_\_\_\_

CONSULTATION WITH OPRHP CRIS WEB SITE AT <http://cris.parks.ny.gov> or the DEC EAF Mapper <http://www.dec.ny.gov/eafmapper> indicates the Project Site:

- is within an archeologically sensitive area as indicated on the sensitivity map
- is immediately adjacent to or contains an historic property
- OTHER \_\_\_\_\_

PLEASE ADVISE ON:

- G Need for Survey / Scope of Survey Needed
- G Adequacy of Survey To-Date
- G Significance of Identified Unevaluated Property<sup>1</sup>
- G Significance of Identified Archeological Resources
- G Impact on Significant Cultural Resources
- G Project Alternatives (As Described)
- G Need for Mitigation
- G Other \_\_\_\_\_

ENCLOSURES .  
DESCRIPTIONS, MAPS, STUDIES, ETC. AS APPROPRIATE ARE ENCLOSED \_\_\_\_\_

AGREEMENT REACHED WITH OPRHP THROUGH THE STATE ENVIRONMENTAL QUALITY REVIEW ACT OR OTHER DOCUMENTATION THAT IMPACTS TO HISTORIC PROPERTIES OR ARCHEOLOGICAL RESOURCES OR BOTH HAVE BEEN ADDRESSED (attach) \_\_\_\_\_ OPRHP PROJECT NUMBER (Assigned by OPRHP): PR# \_\_\_\_\_

<sup>1</sup> Buildings, structures or objects that are greater than 50 years of age that have not been evaluated for eligibility for listing on the State or National Registers of Historic Places.