

 <p>NEW YORK STATE Adirondack parkagency</p> <p>P.O. Box 99 • Ray Brook, New York 12977 (518) 891-4050 www.apa.ny.gov</p>	<p>Effective Date: December 13, 2010</p>
	<p>APA General Permit 2005G-1R</p> <p>In the Matter of the Issuance of a General Permit for:</p> <p><b>Certain Minor Regulated Activities By NYS DEC on State Land in APA-Jurisdictional Freshwater Wetlands</b></p>

### SUMMARY AND AUTHORIZATION

This general permit is issued pursuant to the Freshwater Wetlands Act (Environmental Conservation Law, Article 24) and the Adirondack Park Agency Act [Executive Law, Article 27, including Section 809(13)(e)] to the New York State Department of Environmental Conservation (Department), on conditions, for certain regulated activities on State land under the care and custody of the Department occurring in wetlands subject to Adirondack Park Agency (Agency) jurisdiction or in adjacent areas where the activities could substantially impair jurisdictional wetlands. Specific written approval must be obtained for each regulated activity pursuant to the process established in this permit.

Use of the "Combined State Land Jurisdictional Inquiry Form/Application and Certification for Certain Minor Regulated Activities by NYSDEC in APA-jurisdictional Freshwater Wetlands" is required in order to authorize activities under this general permit.

This general permit is in effect from the date of reissuance unless otherwise modified or revoked by the Agency.

This general permit only applies where the sole basis of Agency permit jurisdiction over the activity in question is due to involvement of wetlands pursuant to Section 810(1) of the APA

Act and/or the activity constitutes a "regulated activity" pursuant to 9 NYCRR 578.3 (m) in or adjacent to wetlands.

This general permit may only be used if:

- a) included as an approved activity in an approved unit management plan, or
- b) the project activity has been determined by Agency staff through prior consultation with the Department to be consistent with the guidelines and criteria of the "DEC/APA MOU concerning the Implementation of the State Land Master Plan for the Adirondack Park" (the DEC/APA MOU), or
- c) has been determined by Department staff to be ordinary maintenance, rehabilitation or minor relocation of an existing conforming structure or improvement and does not require prior consultation as per the DEC/APA MOU, but is a regulated activity requiring an Article 24 Freshwater Wetlands permit.

This general permit is issued as part of an effort to shorten the time it takes for the Agency to review and the Department to implement certain activities involving wetlands, provide a more comprehensive analysis of individual State land projects, add consistency to Adirondack Park State Land Master Plan (APSLMP) and Unit Management Plan (UMP) compliance review, and provide a comprehensive analysis of the cumulative effects of State land projects on wetlands in the Adirondack Park.

**Regulated Activities Subject to this General Permit**

This general permit authorizes, on conditions, the following regulated activities occurring in APA-regulated wetlands or in adjacent areas where the activities could substantially impair regulated wetlands. Prior to undertaking any of the regulated activities listed below, the Department must receive an Agency signed "Application and Certification" form as described herein.

1. New wetland filling of less than 200 square feet in size associated with any of the trail treatments as described in the document, "Trail Construction and Maintenance Manual,

NYS DEC, Division of Operations", except for cribbing rock tread or trail turnpiking.

2. New wetland filling of less than 100 square feet associated with rock or timber cribbing, rock tread or trail turnpiking as described in the above referenced trail manual.
3. Construction of new or replacement bridges across streams where the new timber and/or rock crib abutments have a combined footprint of less than 150 square feet per bridge located in or adjacent to wetlands and the abutments are located above the mean high water mark.
4. Installation of new culverts or extension of existing culverts where the total amount of new fill in wetlands will be no more than a total of 40 square feet per culvert installation.
5. Construction of ditches, swales or dips disturbing more than 100 square feet and less than 200 square feet of wetlands.
6. Construction of wildlife viewing platforms or fishing piers of less than 100 square feet in size in wetlands, constructed on rock-filled cribbing or piles.
7. Minor modifications to existing fish barrier structures in or affecting contiguous wetlands resulting in less than a 6 inch increase or decrease in water depth upstream of the barrier and undertaken at a time of year that does not adversely affect wildlife or fish resources.
8. Minor trail relocation where presently impacted wetlands will be restored and, in the case where the relocation will occur in another portion of the wetland, will serve as adequate compensatory mitigation resulting in a net reduction in wetland impacts.
9. Maintenance, rehabilitation, or removal of existing conforming shoreline erosion control structures of 200 square feet or less in area in or involving wetlands so long as shoreline integrity is maintained in the case of removal. Bio-engineered techniques shall be favored.

10. Replacement or repair of existing or installation of new conforming underground utilities through wetlands with no permanent fill in or loss of wetlands. Installation activities may include placement of suitable clean soil or stone for backfill or bedding of the utility lines. Authorized utility lines include: pipes or pipelines for the transportation of gaseous, liquid or slurry substances; or any cable, line, fiberoptics or wire for the transmission of electrical energy, telephone or radio communications. This permit only authorizes temporary construction disturbance and restoration of the wetland.
11. Installation of temporary work pads or construction access, or water control structures through wetlands with no permanent fill. This permit only authorizes temporary construction disturbance generally lasting no more than one construction season and restoration of the wetland.
12. Temporary grading and filling in wetlands associated with access for survey and exploratory activities with no permanent fill. This permit only authorizes temporary construction disturbance and restoration of the wetland. Survey and/or exploratory activities include: instrument survey, archaeological and paleontological surveys, seismic operations, soil sampling and other similar exploratory-type activities. The survey and exploratory activities themselves are non-jurisdictional.

**Regulated Wetland Activities Not Requiring Further APA Permitting**

The following activities involving wetlands are jurisdictional and may be undertaken without further Agency permitting provided they are undertaken in conformance with the general conditions found in General Permit "APA Combined DEC State Land Jurisdictional Inquiry Form and Application For General Permit 2005G-1":

- Installation of new conforming elements or less than 25% expansions of existing conforming elements involving less than 100 square feet of new wetland fill at each site:
- water bars, stepping stones, bog bridging, and boardwalks,

- ditches/swales,
- docks 4' or less in width and bottom of dock at least 6" above mean high water mark,
- educational kiosks,
- wildlife nesting platforms.

**Activities in Wetlands Considered Non-Jurisdictional**

The following activities involving wetlands are considered non-jurisdictional and do not require a permit from the Agency:

Ordinary maintenance, rehabilitation, or replacement in-kind and in place of existing conforming facilities with no new wetland fill, as provided by the DEC/APA MOU.

**ADIRONDACK PARK AGENCY JURISDICTION**

Any filling, dredging, or excavation in APA-jurisdictional wetlands or any other activity which substantially impairs the functions of or benefits derived from freshwater wetlands, including activities in areas adjacent to wetlands, within the Adirondack Park is subject to Agency jurisdiction as a "regulated activity" under the Freshwater Wetlands Act and 9 NYCRR Part 578.3(n)(1) and(2) and requires an Agency permit.

**PROCEDURES**

General Permit Application Review Process:

1. To utilize this APA General Permit 2005G-1, the DEC must fully complete the application, entitled "State Land Jurisdictional Inquiry Form and Application for General Permit 2005-G-1." The application will not be accepted for review unless the application is complete, including all of the required attachments. The application materials may be submitted in person to the Agency or by mail at:

Adirondack Park Agency  
Deputy Director, Regulatory Programs Division  
Route 86, P.O. Box 99  
Ray Brook, New York 12977

2. Within ten work days of receipt of the application in the Regulatory Programs Division, the Agency will review it for completeness, confirm Agency jurisdiction, determine whether the proposed activity meets the eligibility criteria described herein and contact the applicant to arrange a meeting, if needed, at the site of the proposed activity. The meeting does not have to take place within the ten day period, but should be scheduled at the earliest mutually agreeable time. If the application is incomplete, the Agency will inform the applicant by mail indicating what specific information is missing. On the day the Agency receives all of the missing information from the applicant, a new 10 work-day review period begins for determining completeness.
3. Within ten business days of the site visit or when the application is deemed complete, whichever is later, the Agency will issue a signed APA General Permit 2005G-1 Application and Certification approving the activity provided it meets all eligibility criteria listed below.
4. Where an application has been determined to be ineligible for treatment under this General Permit, the Agency will send a letter briefly explaining why the activity was ineligible and stating that the activity may be reviewed again upon receipt of a new application for an individual major permit application.
5. Eligibility Criteria:

Upon office and/or field verification, the proposed activity must be determined by APA staff to:

- a. be consistent with the information contained in the application;
- b. be consistent with the guidelines and criteria of the State Land Master Plan and the pertinent Unit Management Plan;
- c. not have been partially or wholly undertaken;
- d. not require additional detailed engineering or environmental studies to more fully demonstrate no undue adverse impacts on important wetland resources of the Park;
- e. not have an undue adverse impact upon the natural,

- scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the economic and social benefits that might be derived therefrom;
- f. not adversely affect historic or archeological resources or rare, threatened or endangered species; and,
  - g. be capable of meeting the conditions contained within this General Permit and as stated in "Section C. - Conditions" of the Application and Certification form.
6. Applicant Certification: By signing the application, the DEC representative:
- a. confirms that the information contained in the application is true, accurate and complete;
  - b. agrees that if a jurisdictional activity has been determined to be ineligible for approval under the APA General Permit Program, the appropriate individual permit application must be submitted to the Agency and a permit issued before that activity can be undertaken;
  - c. agrees that the time period for review for completeness of any subsequent application for an individual permit will not begin to run until the Agency has received the individual permit/order application; and
  - d. agrees that there is no default approval of the Agency General Permit if the time periods specified herein are not complied with by the Agency. The Agency will make every effort to provide timely review, but field visits are weather dependent.

**FINDINGS OF FACT**

1. Freshwater wetland covertypes affected by the activities authorized in this permit include all those found in the NYS Freshwater Wetlands Act (ECL Article 24): wetland trees, wetland shrubs, emergent vegetation, rooted, floating-leaved vegetation, free-floating vegetation, wet meadow vegetation, bog mat vegetation and submergent vegetation. These covertypes form the wetlands found in

the Agency's Rules and Regulations (9 NYCRR Subtitle Q, §578): deciduous swamp, coniferous swamp, shrub swamp, emergent marsh, deep water marsh, wet meadows and bog.

2. The wetlands affected by the regulated activities described herein provide important benefits valued by society such as flood and storm control and abatement, fish and wildlife habitat, surface and subsurface water resource protection, recreation, erosion control, education and scientific research, open space and aesthetics, and nutrient cycling.
3. Where the sole basis of Agency permit jurisdiction is for minor activities involving or affecting jurisdictional wetlands, applicants must currently go through a major permit process even when those activities involve no permanent wetland fills or minor fills with compensatory wetland mitigation. Such activities usually have temporary impacts on existing wetland resources and are routinely approved, on conditions, by the Agency. The simplified process authorized herein will allow applicants to receive more timely permits and will allow Agency staff more time to focus on projects that have potential for significant permanent impacts to Park resources.
4. Temporary (lasting less than one construction season) filling or disturbance of wetlands with restoration in accordance with the conditions of this general permit will not result in undue adverse impacts on Park resources, will not substantially impair the functions served by or the benefits derived from said wetlands, and will provide other social or economic benefits from the activity.
5. Timely implementation and maintenance of standard best management construction practices described in the permit conditions will minimize impacts to the wetlands or restore wetlands.
6. The project as proposed and authorized herein will not cause any change in the quality of "registered," "eligible," or "inventoried" property as those terms are defined in 9 NYCRR 426.2 for the purposes of implementing §14.09 of the New York State Historic Preservation Act of 1980.



**CONCLUSIONS OF LAW**

The Agency has considered all the statutory and regulatory criteria for project approval as set forth in Section 24-0801(2) of the Freshwater Wetlands Act (ECL, Article 24, Title 8) and 9 NYCRR 578.10 and in Section 809(10) of the Adirondack Park Agency Act (Executive Law, Article 27) and 9 NYCRR Part 574.

The Agency hereby finds that those certain minor regulated activities as described herein are approvable provided they are undertaken in compliance with the approved application/certification and required attachments and the terms and conditions herein.

The Agency also hereby finds:

1. The project would not have an undue adverse impact upon the natural, scenic, aesthetic, ecological, wildlife, historic, recreational or open space resources of the Park or upon the ability of the public to provide supporting facilities and services made necessary by the project, taking into account the economic and social benefits that might be derived therefrom.
2. The Agency has considered the public policy of the State set forth in ECL 24-0103, the statement of legislative findings set forth in ECL 24-0105, and the effect of the project upon the public health and welfare, fishing, flood, hurricane and storm dangers, and the protection and enhancement of the several wetland functions and benefits. The applicable findings of 9 NYCRR Part 578 can be made.

