

APPENDIX O
CONSULTATION LETTERS



New York State Office of Parks, Recreation and Historic Preservation
Historic Preservation Field Services Bureau
Pebbles Island, PO Box 189, Waterford, New York 12188-0189

518-237-8643

~~Joan M. Davidson~~
Commissioner
Bernadette Castro
Commissioner

June 15, 1995

Paul L. Piciulo, Ph.D.
Program Director
Radioactive Waste Management Program
Department of Energy
P.O. Box 191
West Valley, NY 14171

Dear Dr. Piciulo:

Re: DOE
West Valley Demonstration Project
Ashford, Cattaraugus County
95PR1233

Thank you for requesting the comments of the State Historic Preservation Office (SHPO). We have reviewed the materials submitted in accordance with Section 106 of the National Historic Preservation Act of 1966 and the relevant implementing regulations.

Based upon this review, it is the SHPO's opinion that the West Valley Demonstration Project Site (the site of the former Nuclear Fuels Service Irradiated Fuels Processing Plant) is not eligible for inclusion in the National Register of Historic Places.

When responding, please be sure to refer to the SHPO project review (PR) number noted above. If you have any questions, please feel free to call me at (518) 237-8643 ext. 255.

Sincerely,

Robert D. Kuhn, Ph.D.
Historic Preservation Coordinator
Field Services Bureau

RDK:cm



DEPARTMENT OF THE ARMY
BUFFALO DISTRICT, CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207-3199

REPLY TO
ATTENTION OF:

March 21, 2006

Regulatory Branch

SUBJECT: Acceptance of Wetland Delineation, Application No. 98-973-0092(2), New York State Department of Environmental Conservation No. 9-0422-00005/00100

Mr. John H. Swailes
Director, West Valley Demonstration Project
U.S. Department of Energy
10282 Rock Springs Road
West Valley, New York 14171

Dear Mr. Swailes:

This pertains to your submission of an October 2004 wetlands delineation report (URS Group, Inc.) regarding wetlands adjacent to a tributary of Buttermilk Creek, located at the West Valley Demonstration Site, Town of Ashford, Cattaraugus County, New York.

The Corps of Engineers regulatory responsibilities under Section 404 of the Clean Water Act establishes jurisdiction over the discharge of dredged or fill material into waters of the United States, including wetlands.

The wetland delineation you submitted confirms that wetlands under Federal Jurisdiction exist on the property. Based on a field visit conducted November 2, 2005 as well as a review of applicable topographic and wetland maps of the area, I have determined that 34.09-acres of wetland are waters of the United States subject to regulation under Section 404 of the Clean Water Act. These waters are part of an ecological continuum constituting a surface water tributary system of Buttermilk Creek, Cattaraugus Creek, and Lake Erie. Accordingly, Department of the Army authorization is required to commence work in these areas.

On the contrary, no clear surface water connection exists between W19, W20, W21, W22, W23, W36, W55, W56, W59, W60, W61, and W65 (totaling 2.43-acres), as labeled on the attached drawings, and a water of the United States. Therefore, these wetlands are considered to be isolated, non-navigable, intrastate water that is not subject to regulation under Section 404 of the Clean Water Act. Accordingly, you do not need Department of the Army authorization to commence work in these areas.

The wetland delineation you submitted confirms that wetlands

Regulatory Branch

SUBJECT: Acceptance of Wetland Delineation, Application No. 98-973-0092(2), New York State Department of Environmental Conservation No. 9-0422-00005/00100

under Federal jurisdiction exist on the property, but I understand that you do not intend to impact them at this time. In this regard, I would like to point out that the Federal wetland boundaries located on your property, as shown on the attached drawings, was confirmed on January 26, 2006 and will remain valid for a period of five (5) years from the date of this correspondence unless new information warrants revision of the delineation before the expiration. Further, this delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.

Based upon my review of the submitted delineation and on-site observations, I have determined that the wetlands on the subject parcel are part of a surface water tributary system to a navigable water of the United States as noted on the attached Jurisdictional Determination form. Therefore, the wetlands are regulated under Section 404 of the Clean Water Act. Department of the Army authorization is required if you propose a discharge of dredged or fill material in this area.

Finally, this letter contains an approved jurisdictional determination for the subject parcel. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part 331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal the above determination, you must submit a completed RFA form within 60 days of the date on this letter to the Great Lakes/Ohio River Division Office at the following address:

Mr. Mike Montone, Regulatory Review Officer
Great Lakes and Ohio River Division
CELRD-PDS-O
550 Main Street
Cincinnati, Ohio 45201-1159
Phone: 513-684-6212

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete, that it meets the criteria

Regulatory Branch

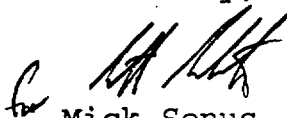
SUBJECT: Acceptance of Wetland Delineation, Application No. 98-973-0092(2), New York State Department of Environmental Conservation No. 9-0422-00005/00100

for appeal under 33 C.F.R. part 331.5, and that it has been received by the Division Office within 60 days of the date of the NAP. Should you decide to submit an RFA form, it must be received at the above address by **May 20, 2006**.

It is not necessary to submit an RFA to the Division office if you do not object to the determination in this letter.

Questions pertaining to this matter should be directed to me at (716) 879-4309, by writing to the following address: U.S. Army Corps of Engineers, 1776 Niagara Street, Buffalo, New York 14207, or by e-mail at: michael.p.senus@usace.army.mil

Sincerely,



Mick Senus
Hydrologist

Enclosures

**NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND
REQUEST FOR APPEAL**

Applicant: West Valley Demonstration Project		File Number: 98-973-0092(2)	Date: 3/21/06
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
X	APPROVED JURISDICTIONAL DETERMINATION		D
	PRELIMINARY JURISDICTIONAL DETERMINATION		E

SECTION I: The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://usace.army.mil/inf/permissions/cw/cccvo/03_06_Corp_Regulations_at_33_CFR_Par_59.51.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

Mick Senus
U.S. Army Corps of Engineers
1776 Niagara Street
Buffalo, New York 14207
(716) 879-4309
michael.p.senus@usace.army.mil

If you only have questions regarding the appeal process you may also contact:

Mr. Michael Montone
U.S. Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street
Cincinnati, OH 45201-1159
(513) 684-6212; FAX(513) 684-2460
michael.g.montone@lrdor.usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.	Date:	Telephone number:
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JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers

Revised 8/13/04

DISTRICT OFFICE: BUFFALO (CELRB)
FILE NUMBER: 98-973-0092(2)

PROJECT LOCATION INFORMATION:

State: New York
County: Cattaraugus
Center coordinates of site (latitude/longitude): ASHFORD HOLLOW 7.5 Minute Quad Map lat:42-26-12.7680 lon:78-38-11.4000
Approximate size of area (parcel) reviewed, including uplands: 375-acres.
Name of nearest waterway: Buttermilk Creek
Name of watershed: CATTARAUGUS

JURISDICTIONAL DETERMINATION

Completed: Desktop determination [x] Date: January 23, 2006
Site visit(s) [x] Date(s): November 2, 2005

Jurisdictional Determination (JD):

[] Preliminary JD - Based on available information, [] *there appear to be* (or) [] *there appear to be no* "waters of the United States" and/or "navigable waters of the United States" on the project site. A preliminary JD is not appealable (Reference 33 CFR part 331).

[X] Approved JD - An approved JD is an appealable action (Reference 33 CFR part 331).

Check all that apply:

[] *There are* "navigable waters of the United States" (as defined by 33 CFR part 329 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

[x] *There are* "waters of the United States" (as defined by 33 CFR part 328 and associated guidance) within the reviewed area. Approximate size of jurisdictional area: .

[x] *There are* "isolated, non-navigable, intra-state waters or wetlands" within the reviewed area.

[x] Decision supported by SWANCC/Migratory Bird Rule Information Sheet for Determination of No Jurisdiction.

BASIS OF JURISDICTIONAL DETERMINATION:

A. Waters defined under 33 CFR part 329 as "navigable waters of the United States":

[] The presence of waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

B. Waters defined under 33 CFR part 328.3(a) as "waters of the United States":

[] (1) The presence of waters, which are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide.

[] (2) The presence of interstate waters including interstate wetlands¹.

[] (3) The presence of other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate commerce including any such waters (check all that apply):

[] (i) which are or could be used by interstate or foreign travelers for recreational or other purposes.

[] (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

[] (iii) which are or could be used for industrial purposes by industries in interstate commerce.

[] (4) Impoundments of waters otherwise defined as waters of the US.

[x] (5) The presence of a tributary to a water identified in (1) - (4) above.

[] (6) The presence of territorial seas.

[x] (7) The presence of wetlands adjacent² to other waters of the US, except for those wetlands adjacent to other wetlands.

Rationale for the Basis of Jurisdictional Determination (applies to any boxes checked above). *If the jurisdictional water or wetland is not itself a navigable water of the United States, describe connection(s) to the downstream navigable waters. If B(1) or B(3) is used as the Basis of Jurisdiction, document navigability and/or interstate commerce connection (i.e., discuss site conditions, including why the waterbody is navigable and/or how the destruction of the waterbody could affect interstate or foreign commerce). If B(2, 4, 5 or 6) is used as the Basis of Jurisdiction, document the rationale used to make the determination. If B(7) is used as the Basis of Jurisdiction, document the rationale used to make adjacency determination:* Wetlands adjacent to Buttermilk Creek are present on the 375-acre parcel of property that was submitted for jurisdictional determination. Buttermilk Creek is connected to Cattaraugus Creek, which flows into Lake Erie (a navigable water). There are total of 34.09-acres of federally jurisdictional wetlands.

Lateral Extent of Jurisdiction: (Reference: 33 CFR parts 328 and 329)

- Ordinary High Water Mark indicated by: High Tide Line indicated by:
- clear, natural line impressed on the bank oil or scum line along shore objects
- the presence of litter and debris fine shell or debris deposits (foreshore)
- changes in the character of soil physical markings/characteristics
- destruction of terrestrial vegetation tidal gages
- shelving other:
- other:

- Mean High Water Mark indicated by:
- survey to available datum; physical markings; vegetation lines/changes in vegetation types.

Wetland boundaries, as shown on the attached wetland delineation map and/or in a delineation report prepared by:

Basis For Not Asserting Jurisdiction:

- The reviewed area consists entirely of uplands.
- Unable to confirm the presence of waters in 33 CFR part 328(a)(1, 2, or 4-7).
- Headquarters declined to approve jurisdiction on the basis of 33 CFR part 328.3(a)(3).
- The Corps has made a case-specific determination that the following waters present on the site are not Waters of the United States:
- Waste treatment systems, including treatment ponds or lagoons, pursuant to 33 CFR part 328.3.
- Artificially irrigated areas, which would revert to upland if the irrigation ceased.
- Artificial lakes and ponds created by excavating and/or diking dry land to collect and retain water and which are used exclusively for such purposes as stock watering, irrigation, settling basins, or rice growing.
- Artificial reflecting or swimming pools or other small ornamental bodies of water created by excavating and/or diking dry land to retain water for primarily aesthetic reasons.
- Water-filled depressions created in dry land incidental to construction activity and pits excavated in dry land for the purpose of obtaining fill, sand, or gravel unless and until the construction or excavation operation is abandoned and the resulting body of water meets the definition of waters of the United States found at 33 CFR 328.3(a).
- Isolated, intrastate wetland with no nexus to interstate commerce.
- Prior converted cropland, as determined by the Natural Resources Conservation Service. Explain rationale:
- Non-tidal drainage or irrigation ditches excavated on dry land. Explain rationale:
- Other (explain):

DATA REVIEWED FOR JURISDICTIONAL DETERMINATION (mark all that apply):

- Maps, plans, plots or plat submitted by or on behalf of the applicant.
- Data sheets prepared/submitted by or on behalf of the applicant.
- This office concurs with the delineation report, dated October 2004, prepared by (company): URS Group, Inc.
- This office does not concur with the delineation report, dated _____, prepared by (company): _____
- Data sheets prepared by the Corps.
- Corps' navigable waters' studies:
- U.S. Geological Survey Hydrologic Atlas:
- U.S. Geological Survey 7.5 Minute Topographic maps: ASHFORD HOLLOW
- U.S. Geological Survey 7.5 Minute Historic quadrangles:
- U.S. Geological Survey 15 Minute Historic quadrangles:
- USDA Natural Resources Conservation Service Soil Survey: CATTARAUGUS COUNTY
- National wetlands inventory maps:
- State/Local wetland inventory maps: NYS DEC wetland map
- FEMA/FIRM maps (Map Name & Date):
- 100-year Floodplain Elevation is: _____ (NGVD)
- Aerial Photographs (Name & Date):
- Other photographs (Date): October 2004 wetland delineation report (URS Group, Inc.)
- Advanced Identification Wetland maps:
- Site visit/determination conducted on: November 2, 2005
- Applicable/supporting case law:
- Other information (please specify):

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual) (i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology).

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

INFORMATION SHEET

DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Buffalo District

FILE NUMBER: 98-973-0092(2)

REGULATORY PROJECT MANAGER: Mick Senus **Date:** January 25, 2006

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** **Y** **Date:** January 23, 2006

At the project site (Y/N) **Y** **Date:** November 2, 2005

PROJECT LOCATION INFORMATION:

State: NY

County: Cattaraugus

Center coordinates of site by latitude & longitude coordinates:
LAT:42.4505 LON:78.6455

Approximate size of site/property (including uplands): 375 acres

Name of waterway or watershed: Buttermilk Creek

Type of Aquatic Resource ¹ :	0-1 ac	1-3 ac	3-5 ac	5-10 ac	10-25 ac	25-50 ac	> 50 ac	Linear Feet	Unknown
Lake									
River									
Stream									
Mudflat									
Sandflat									
Wetlands		X							
Slough									
Prairie Pothole									
Wet Meadow									
Playa Lake									
Vernal Pool									
Natural Pond									
Other Water (identify type)									

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

Migratory Bird Rule Factors ¹	If Known		If Unknown Use Best Professional Judgment		
	Yes	No	Predicted to Occur	Not Expected to Occur	Not Able to Make Determination
Is or would be used as habitat for birds protected by Migratory Bird Treaties?	X				
Is or would be used as habitat by other migratory birds that cross state lines?			X		
Is or would be used as habitat for endangered species?				X	
Is used to irrigate crops sold in interstate commerce?		X			

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

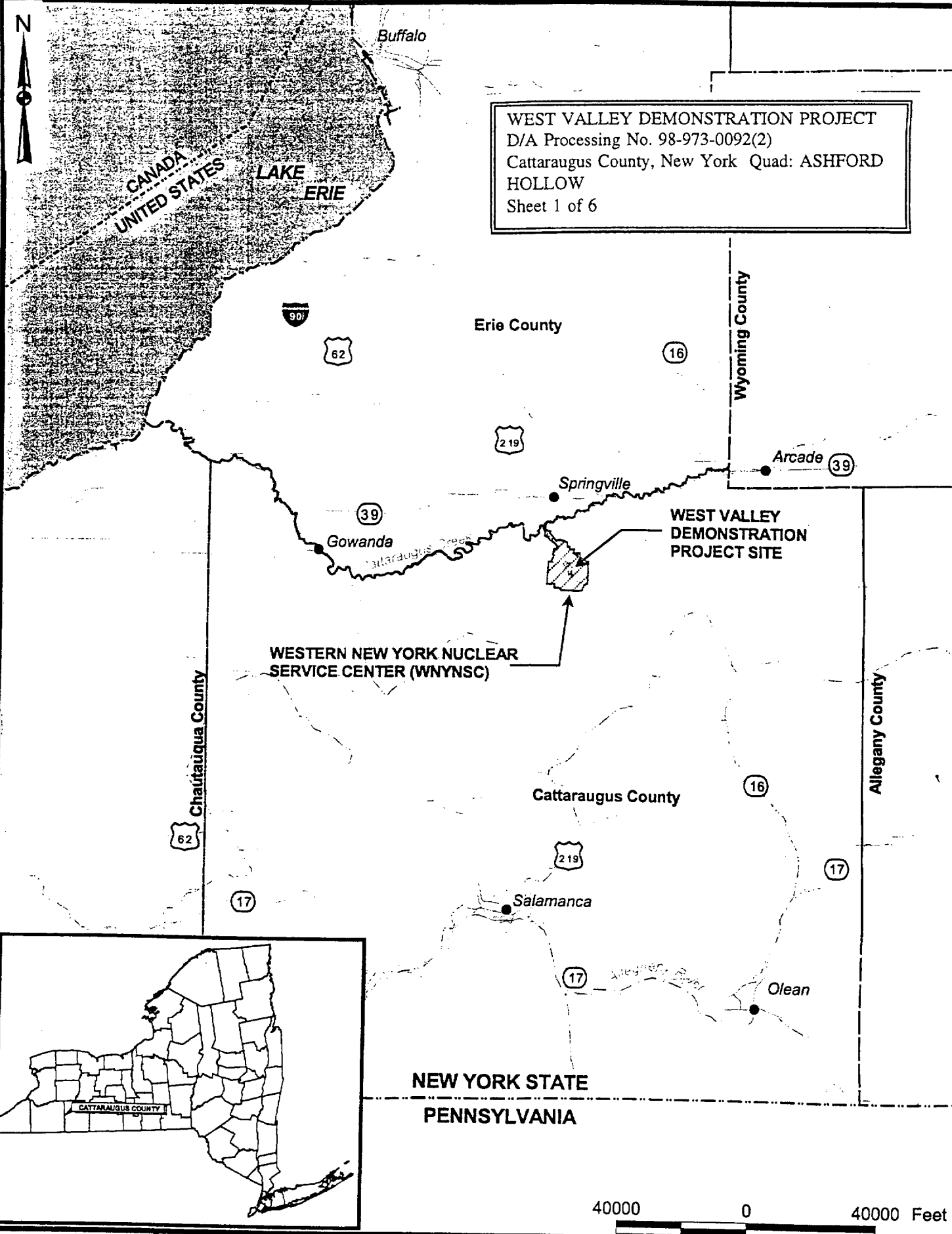
TYPE OF DETERMINATION: Preliminary Or Approved **X**

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

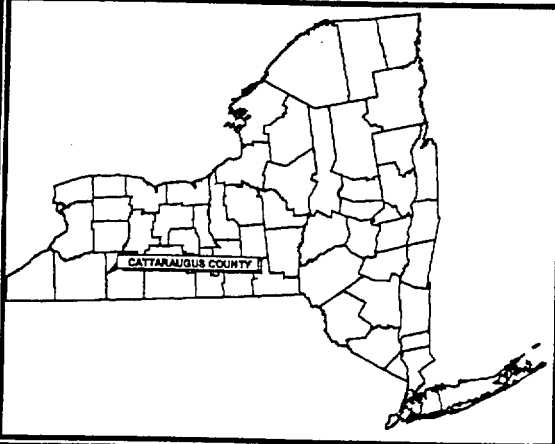
The project manager visited the site on November 2, 2005 and observed a wetland area totaling 36.52 acres of a 375-acre parcel. Twelve (12) distinct wetlands exhibited no surface water connection to a water of the U.S (WOUS). The total combined area of these isolated wetlands is 2.426-acres. These wetlands are isolated, intrastate, and nonnavigable wetlands. This determination is based upon field observations and office evaluation. The project manager was not able to determine a nexus to interstate commerce.

Adjacent wetlands and wetlands associated with unnamed tributaries of Buttermilk Creek are connected to Cattaraugus Creek which flows into Lake Erie (a navigable water).

The total acreage of jurisdictional wetlands is 34.09-acres.



WEST VALLEY DEMONSTRATION PROJECT
 D/A Processing No. 98-973-0092(2)
 Cattaraugus County, New York Quad: ASHFORD
 HOLLOW
 Sheet 1 of 6



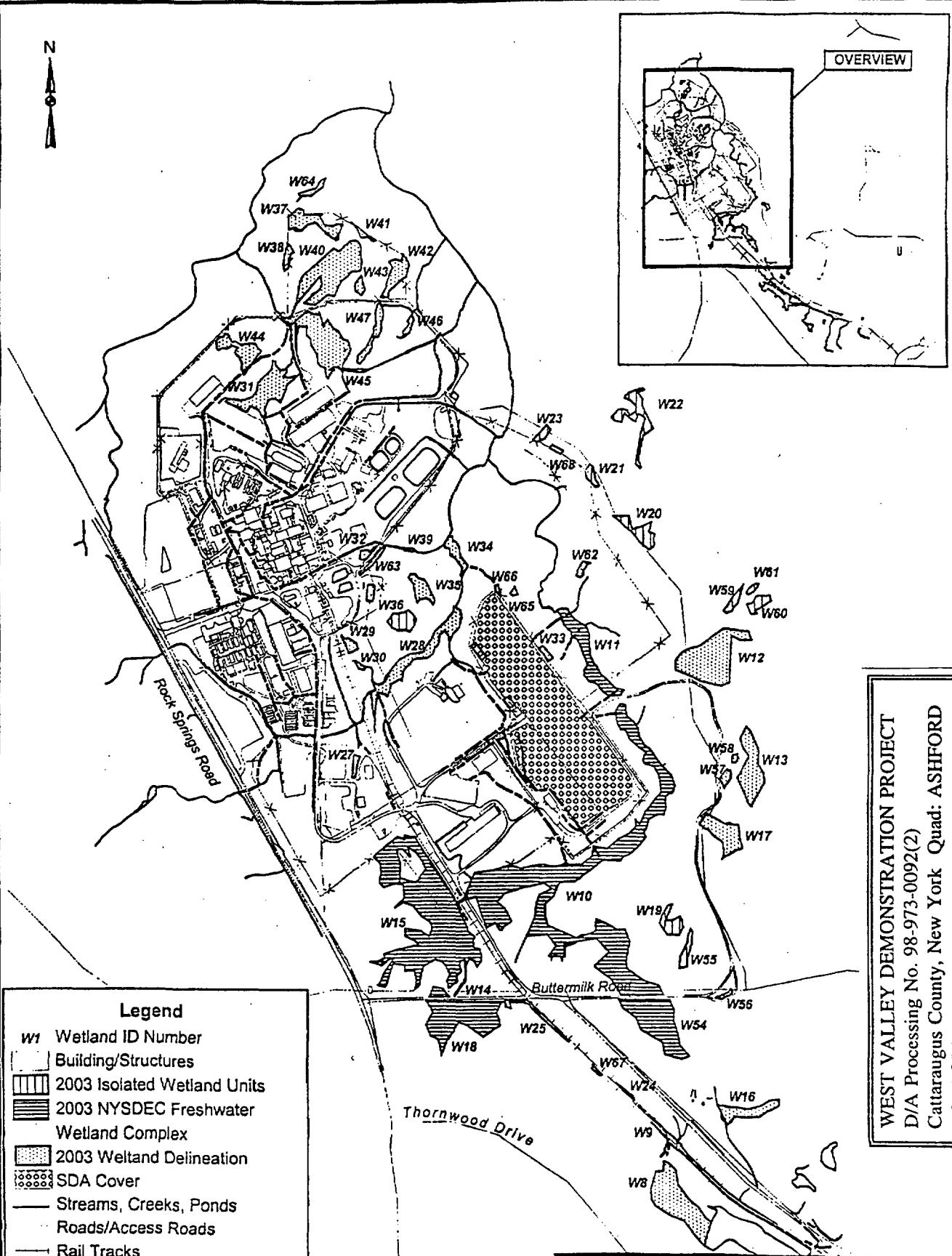
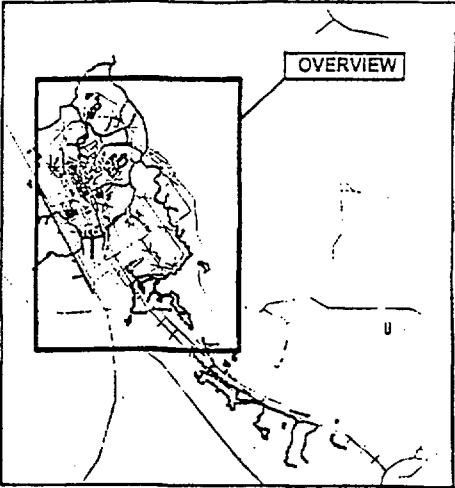
J:\GIS\2003 Wetlands Delineation REGIONAL SITE LOCATION MAP 2/8/2004

URS

REGIONAL SITE LOCATION MAP

WEST VALLEY NUCLEAR SERVICES COMPANY
 TOWN OF ASHFORD, CATTARAUGUS COUNTY, NY

FIGURE 1



Legend

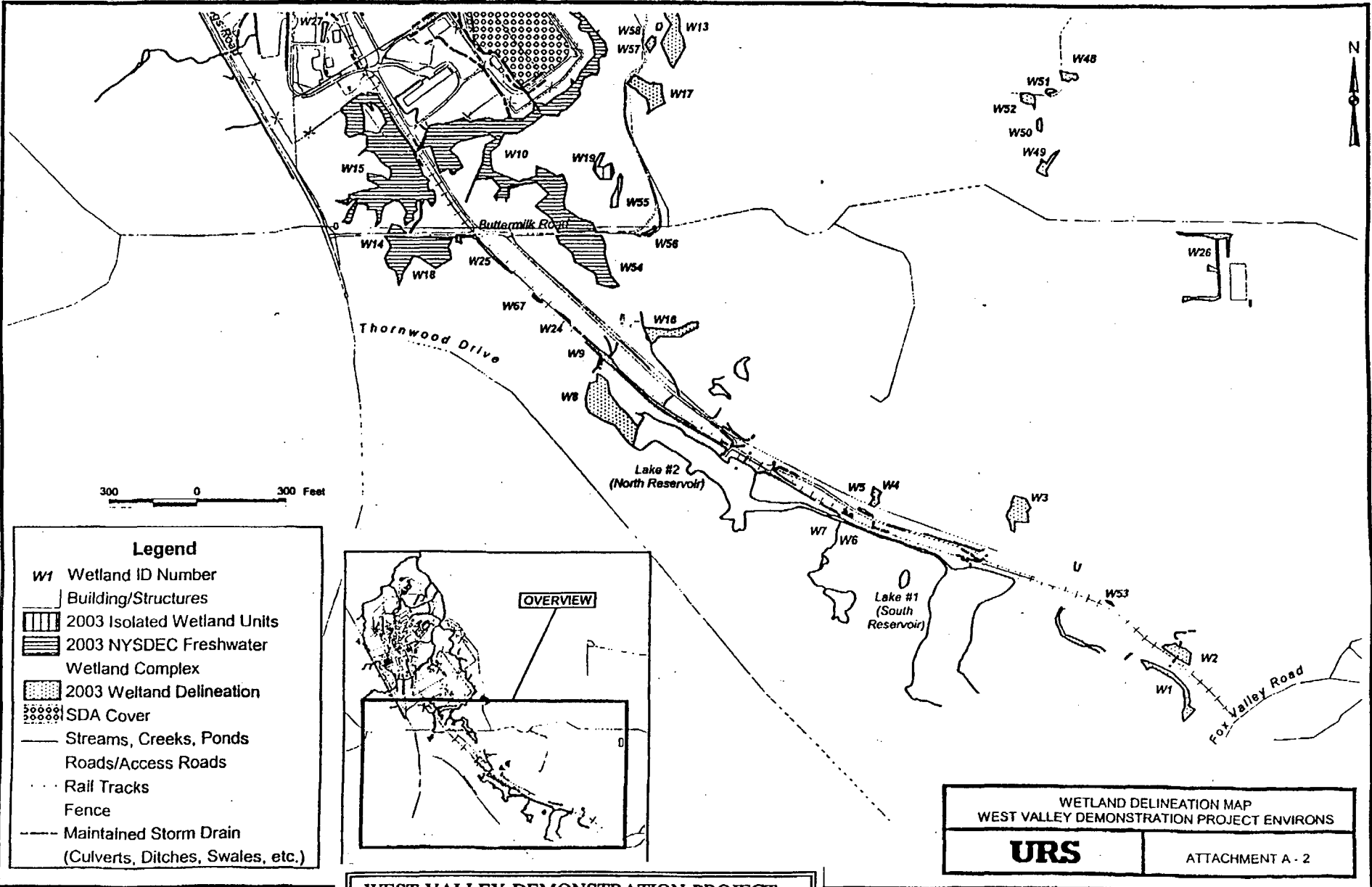
- W1 Wetland ID Number
- Building/Structures
- 2003 Isolated Wetland Units
- 2003 NYSDEC Freshwater Wetland Complex
- 2003 Wetland Delineation
- SDA Cover
- Streams, Creeks, Ponds
- Roads/Access Roads
- Rail Tracks
- Fence
- Maintained Storm Drain (Culverts, Ditches, Swales, etc.)



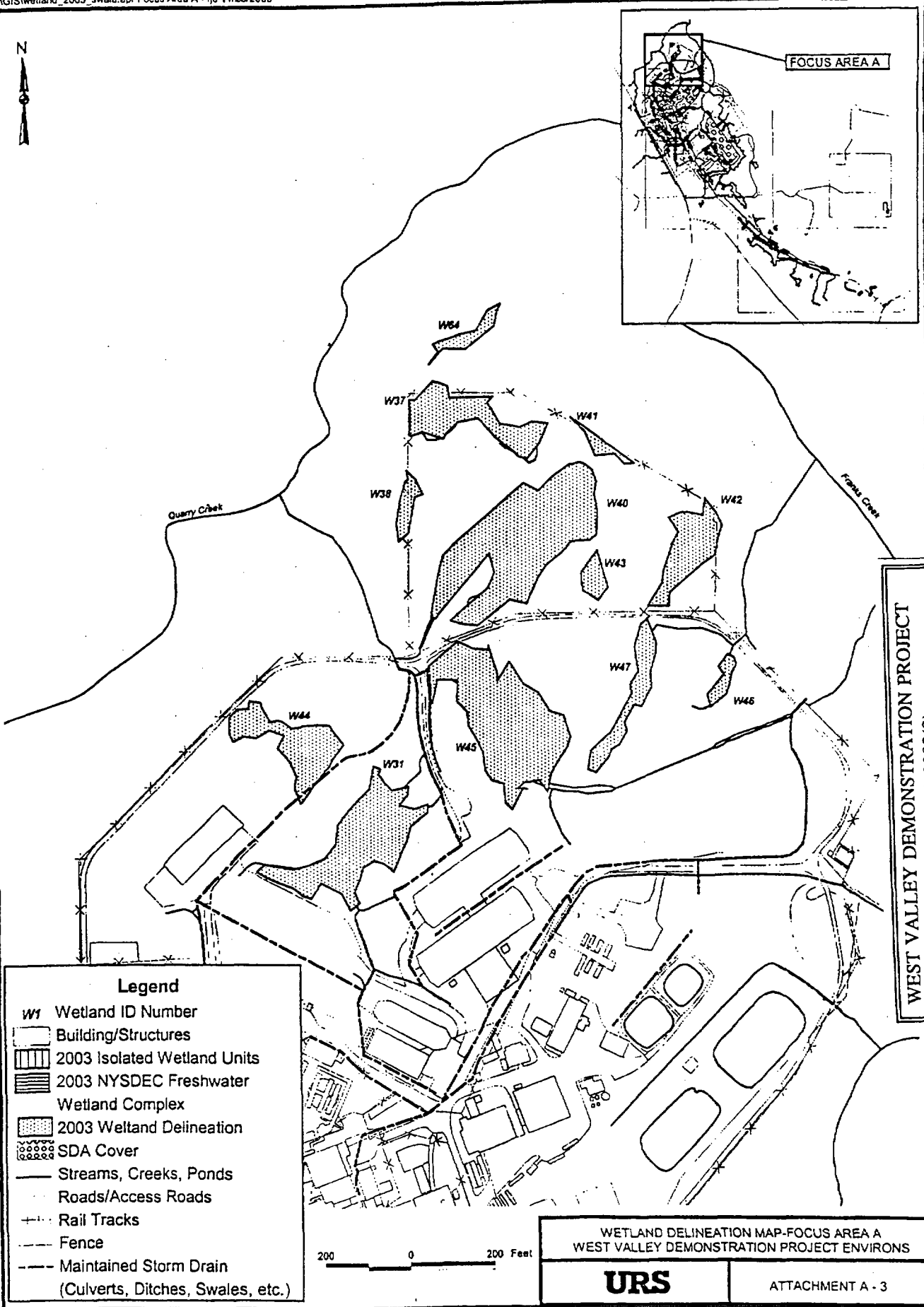
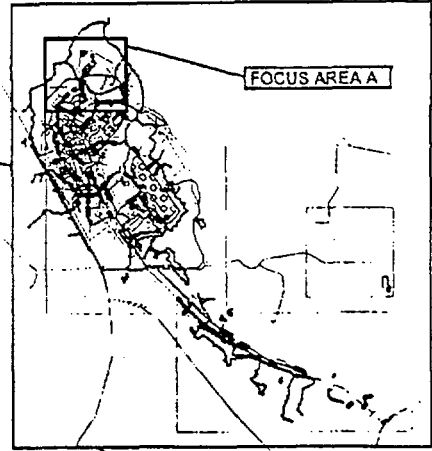
WEST VALLEY DEMONSTRATION PROJECT
 D/A Processing No. 98-973-0092(2)
 Cattaraugus County, New York Quad: ASHFORD
 HOLLOW
 Sheet 2 of 6

WETLAND DELINEATION MAP
 WEST VALLEY DEMONSTRATION PROJECT ENVIRONS

URS ATTACHMENT A - 1



WEST VALLEY DEMONSTRATION PROJECT
 D/A Processing No. 98-973-0092(2)
 Cattaraugus County, New York Quad: ASHFORD
 HOLLOW
 Sheet 3 of 6



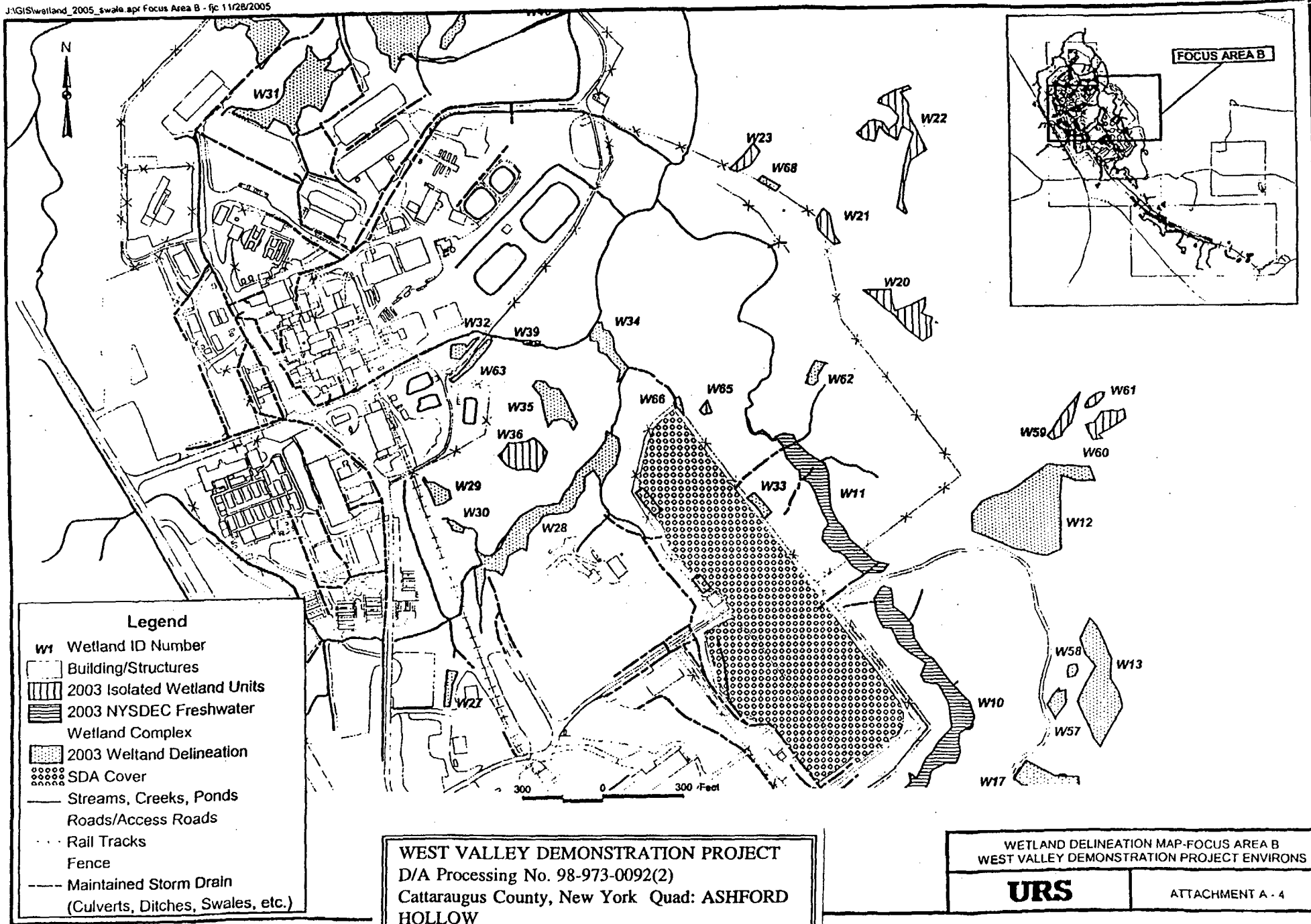
Legend

- W# Wetland ID Number
- [Outline] Building/Structures
- [Vertical Lines] 2003 Isolated Wetland Units
- [Horizontal Lines] 2003 NYSDEC Freshwater Wetland Complex
- [Stippled] 2003 Wetland Delineation
- [Dotted] SDA Cover
- [Solid Line] Streams, Creeks, Ponds
- [Dashed Line] Roads/Access Roads
- [Cross-hatched] Rail Tracks
- [Dash-dot Line] Fence
- [Long-dashed Line] Maintained Storm Drain (Culverts, Ditches, Swales, etc.)

WEST VALLEY DEMONSTRATION PROJECT
 D/A Processing No. 98-973-0092(2)
 Cattaraugus County, New York Quad: ASHFORD
 HOLLOW
 Sheet 4 of 6

WETLAND DELINEATION MAP-FOCUS AREA A
WEST VALLEY DEMONSTRATION PROJECT ENVIRONS

URS	ATTACHMENT A - 3
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Legend

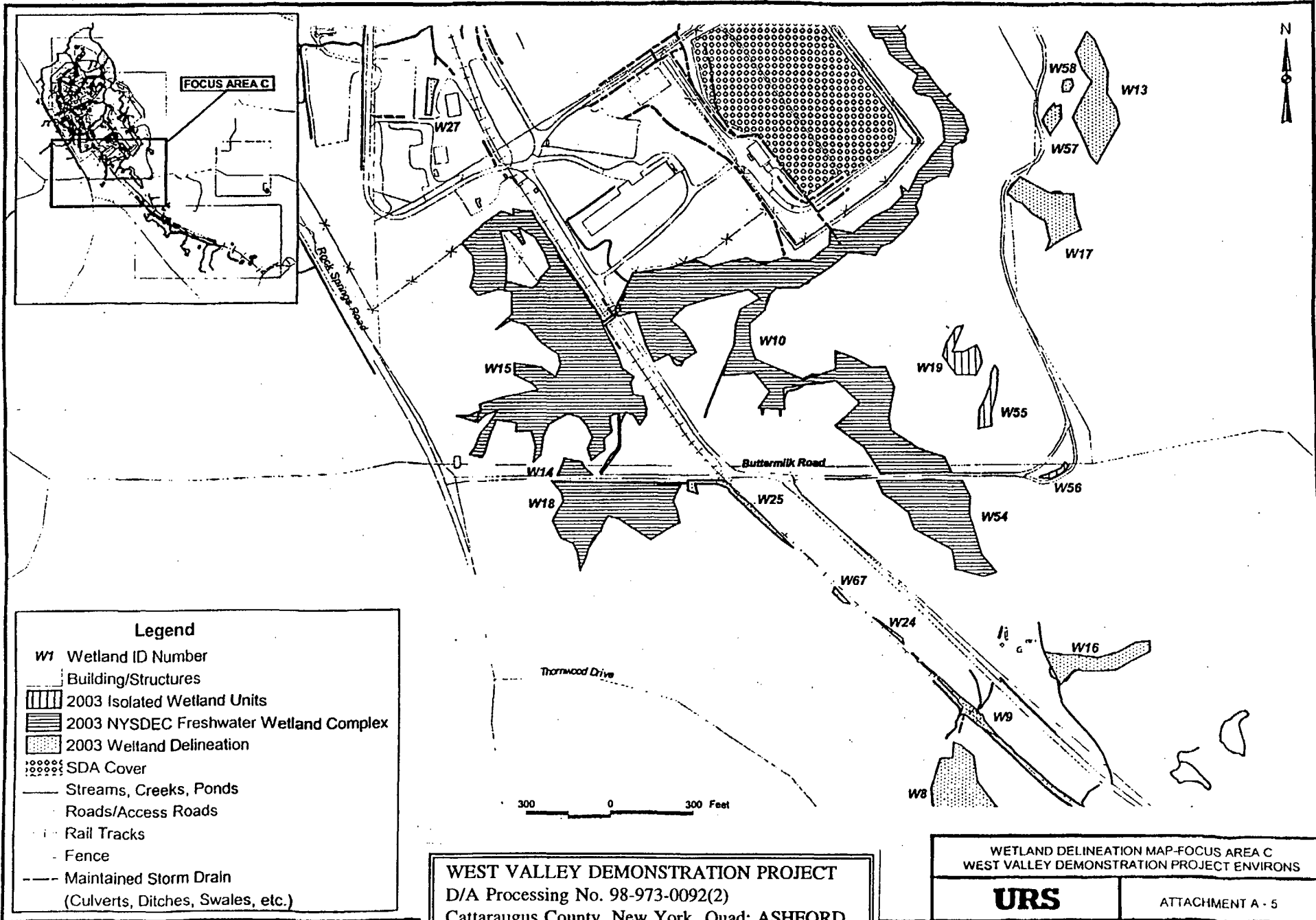
- W1 Wetland ID Number
- [Solid Line] Building/Structures
- [Diagonal Lines] 2003 Isolated Wetland Units
- [Horizontal Lines] 2003 NYSDEC Freshwater Wetland Complex
- [Dotted Pattern] 2003 Wetland Delineation
- [Grid of Circles] SDA Cover
- [Wavy Line] Streams, Creeks, Ponds
- [Dashed Line] Roads/Access Roads
- [Dotted Line] Rail Tracks
- [Dashed Line] Fence
- [Dashed Line] Maintained Storm Drain (Culverts, Ditches, Swales, etc.)

WEST VALLEY DEMONSTRATION PROJECT
 D/A Processing No. 98-973-0092(2)
 Cattaraugus County, New York Quad: ASHFORD HOLLOW
 Sheet 5 of 6

WETLAND DELINEATION MAP-FOCUS AREA B
 WEST VALLEY DEMONSTRATION PROJECT ENVIRONS

URS

ATTACHMENT A - 4



DW:2006:0065

bcc: J. P. Bleech AC-EA
 J. R. Gerber AC-ESHQ
 W. M. Wierzbicki AC-EA



Department of Energy
West Valley Demonstration Project
10282 Rock Springs Road
West Valley, NY 14171-9799

June 12, 2007

Migratory Bird Permit Office
U.S. Fish and Wildlife Service
P.O. Box 779
Hadley, MA 01035-0779

New York State Department of Environmental Conservation
Division of Fish, Wildlife, and Marine Resources
Special Licenses Unit
625 Broadway
Albany, New York 12233-4752

SUBJECT: Request for Renewal of Federal Bird Depredation Permit No. MB747595-0 and New York State Fish and Wildlife Depredation License No. 32, U.S. Department of Energy (DOE) - West Valley Demonstration Project (WVDP)

REFERENCE: Letter (97257), U.S. Department of the Interior Fish and Wildlife Service to West Valley Demonstration Project, U.S. Department of Energy, "Renewal of Your Federal Migratory Bird Depredation Permit," dated April 26, 2007

Dear Madam or Sir:

Enclosed is the completed application package (Attachments A-1 through A-5) requesting renewal of the Federal Migratory Bird Depredation Permit No. MB747595-0 and New York State Fish and Wildlife Depredation License No. 32 for the WVDP.

The enclosed application, which was prepared in accordance with the recent referenced letter from the U.S. Fish and Wildlife Service and the terms and conditions of the existing depredation permit and license, consists of the following:

1. The completed renewal application form, including signed renewal certification statement (Attachment A-1);
2. Supplemental Information Sheets addressing information requested under Items A through Item C on the renewal application form (Attachment A-2);
3. A copy of the current New York State Fish and Wildlife Depredation License (Attachment A-3);
4. A copy of the current Federal Migratory Bird Depredation permit (Attachment A-4); and
5. The Annual Report of the activities conducted under the Federal Permit (Attachment A-5).



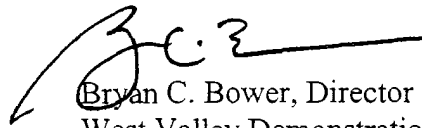
June 12, 2007

Please note that the reporting period for the Annual Report (Attachment A-5) begins May 1, 2006, which corresponds with the period end date on the previous Annual Report submission.

Please note that since the WVDP is a Federal agency (DOE) project, it is our understanding the \$100 processing fee is not required per 50 CFR 13.11(d)(3).

If you have any questions or require additional information, please do not hesitate to contact Jennifer M. Dundas of my staff at (716) 942-4287.

Sincerely,



Bryan C. Bower, Director
West Valley Demonstration Project

- Enclosures:
- 1) Attachment A-1 - Completed Application with Signed Certification for Renewal of Federal Migratory Bird Depredation Permit and New York State Fish and Wildlife Depredation License
 - 2) Attachment A-2 – Supplemental Information Sheets for Renewal of Federal Migratory Bird Depredation Permit and New York State Depredation License
 - 3) Attachment A-3 – Copy of New York State Fish and Wildlife Depredation License No. 32
 - 4) Attachment A-4 – Copy of Federal Bird Depredation Permit No. MB747595-0
 - 5) Attachment A-5 – Completed Depredation Annual Report

cc: Wildlife Services, U.S. Department of Agriculture APHIS, Wildlife Services,
1930 Route 9, Castleton, NY 12033, w/enc.

M. N. Maloney, DOE-WVDP, AC-DOE, w/enc.

H. R. Moore, DOE-WVDP, AC-DOE, w/enc.

L. J. Chilson, WVNSCO, AC-NSQA, w/enc.

J. R. Gerber, WVNSCO, AC-ESHQ, w/enc.

J. J. Hoch, WVNSCO, WV-MP3, w/enc.

JMD:97449 – 457.2

ATTACHMENT A-1

**COMPLETED APPLICATION WITH SIGNED CERTIFICATION
FOR RENEWAL OF FEDERAL MIGRATORY BIRD DEPREDATION PERMIT
AND NEW YORK STATE DEPREDATION LICENSE**

**West Valley Demonstration Project
Permit No. MB747595-0/License No. 32**



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Post Office Box 779
Hadley, Massachusetts 01035-0779
Migratory Bird Permit Office
413-253-8643

April 26, 2007

WEST VALLEY DEMONSTRATION PROJECT
U.S. DEPARTMENT OF ENERGY
10282 ROCK SPRINGS ROAD
WEST VALLEY, NY 14171-9799 U.S.A.

Re: RENEWAL OF YOUR FEDERAL MIGRATORY BIRD DEPREDATION PERMIT

Your Federal Migratory Bird DEPREDATION (DPRD), Permit MB747595-0, expires on June 30, 2007.

Please indicate if you wish to renew your permit: YES NO

If you do not wish to renew your permit, return this form along with your annual report of activities conducted under your permit. You must submit an annual report even if you are not requesting renewal of your permit.

If you do wish to renew your permit, please provide the information requested in section A below, and sign and date the renewal certification statement (section B). Mail the completed form and any necessary supporting information to our office at the address above, attention Migratory Bird Permit Office.

A. If you are renewing your permit, please attach:

1. A specific description of the damage or other interests harmed over the past year, an estimate of the economic loss suffered as a result, and an estimate of the number of each species involved.
2. A description of the nonlethal control techniques you have used to alleviate or eliminate the problem over the past year, including how long and how often they have been conducted.
3. A copy of your current State permit/license (if applicable).
4. Application processing fee: Enclose a check or money order payable to the US Fish & Wildlife Service in the amount of \$100. If you are a private homeowner requesting a permit for damage to your personal residence or property, enclose \$50. Federal, tribal, state, and local government agencies, and individuals and institutions acting on behalf of such agencies, are exempt from the processing fee. (Processing fees increased effective May 11, 2005. 50 CFR 13.11(d))
5. Your annual report of the activities conducted under the permit you wish to renew.
6. If this is checked, a completed USDA/APHIS Wildlife Services Migratory Bird Damage Project Report (WS form 37).

See Attachments A-2 through A-5

B. Renewal Certification Statement.

I certify that I have read and am familiar with the regulations contained in Title 50, Part 13, of the Code of Federal Regulations and the applicable parts in subchapter B of chapter I of title 50, Code of Federal Regulations. I further certify that the information submitted in support of my original application for the permit indicated above is still current and correct except for the changes, if any, indicated below, and I hereby request renewal of that permit. I understand that any false statement may subject me to criminal penalties of 18 U.S.C. 1001.

Permittee's signature: *Bryan C. Bower*

Date: 06-12-2007

C. Changes in your Permit Information.

Review your current permit and permit files carefully. Provide a description of any changes (e.g., change in Principal Officer, address, phone number, email address, subpermittees, species or quantity, project, activity or location of activity, facilities or location of facilities, etc.) Attach a separate sheet if necessary.

Phone No.: (716) 942-4368 Email: Bryan.C.Bower@w.doe.gov Fax: (716) 942-4703

Species/Quantity: _____

Other: See attached

C. Changes in your Permit information.

Please change information on the Federal Fish and Wildlife Permit as follows:

Box 8: BRYAN C. BOWER,
 DIRECTOR

Please change information on the New York State Fish and Wildlife License as follows:

Licensee: BRYAN C. BOWER
 U.S. DEPARTMENT OF ENERGY
 WVDP
 10282 ROCK SPRINGS ROAD
 WEST VALLEY, NY 14171-9799

DOB: N/A

Business Phone Number: (716) 942-4368

ATTACHMENT A-2

**SUPPLEMENTAL INFORMATION SHEETS
FOR RENEWAL OF FEDERAL MIGRATORY BIRD DEPREDATION PERMIT
AND NEW YORK STATE DEPREDATION LICENSE
West Valley Demonstration Project
Permit No. MB747595-0/License No. 32**

ATTACHMENT A-2
SUPPLEMENTAL INFORMATION SHEETS FOR RENEWAL
OF FEDERAL MIGRATORY BIRD DEPREDATION PERMIT
AND NEW YORK STATE DEPREDATION LICENSE
West Valley Demonstration Project
Depredation Permit No. MB747595-0/Depredation License No. 32

1. Item A.1.: Provide a specific description of the damage or other interests harmed over the past year.

Bird nesting activities have resulted in the transport and spread of radiological contamination and asbestos from delineated, controlled areas, such as the wastewater treatment lagoon system and encapsulated insulated piping, to areas free of radiological contamination or asbestos. Transport and spread of radiological contamination and asbestos poses potential human health and safety concerns and disrupts clean-up operations at the West Valley Demonstration Project (WVDP) site.

The WVDP is a radiological waste demonstration project, under the operational control of the U.S. Department of Energy (DOE) as authorized by act of U.S. Congress (Public Law 96-368)). The approximate 200-acre DOE-controlled WVDP premises are located within the approximately 3300-acre Western New York Nuclear Services Center in West Valley, New York. Figures 1 and 2 show the location of the WVDP premises within Western New York.

Bird nest removal is a required measure to protect health and safety of site employees and visitors.

2. Item A.1: Provide an estimate of the economic loss suffered as a result.

In the last year, the cost impact from transport/spread of radioactive contamination from migratory bird nesting activities and implementing bird problem prevention, including non-lethal control techniques, was estimated at roughly \$ 280,000. If the spread of radioactive contamination is not prevented, the costs associated with work delays and/or decontamination of humans or work spaces can range from minimal to extensive. The cost of time expended in decontamination can be overtaken by additional costs associated with maintaining and disposing of radioactive wastes generated during the decontamination effort. Depending on the work activity impacted, lost time, schedule delays, etc., costs could range from \$ 10,000 to well over \$ 1,000,000.

3. Item A.1.: Give an estimate (quantity) of each species (common name) involved.

Estimated numbers of migratory birds causing damage are listed by species in Table 1 below.

TABLE 1

Species	Estimated Number Causing Damage
American Robin (<i>Turdus migratorius</i>)	15 or less
Barn Swallow (<i>Hirundus rustica</i>)	15 or less
Eastern Phoebe (<i>Sayornis phoebe</i>)	10 or less
Canada Goose (<i>Branta Canadensis</i>)	6 or less

ATTACHMENT A-2
**SUPPLEMENTAL INFORMATION SHEETS FOR RENEWAL
OF FEDERAL MIGRATORY BIRD DEPREDATION PERMIT
AND NEW YORK STATE DEPREDATION LICENSE (Cont'd)**
West Valley Demonstration Project
Depredation Permit No. MB747595-0/Depredation License No. 32

4. Item A.2: Describe the non-lethal control techniques you have used to alleviate or eliminate the problem over the past year, including how long and how often they have been conducted.

The WVDP implements an Environmental Management System (EMS) as required by U.S. Department of Energy Order 450.1. Site policies that implement this EMS include WV-980, "WVNS Environmental Management System," and WV-921, "Hazards Identification and Analysis." As part of site policy WV-921, proposed work activities and instructions must be reviewed by environmental professionals, prior to initiating such work, to identify potential environmental issues, including those associated with migratory bird nesting at inappropriate locations. Where potential issues, including those associated with migratory bird nesting are identified, measures to prevent or minimize environmental consequences are specified and implemented as conditions for work authorization. Existing structure retrofit work and repairs incorporate wildlife exclusion features (e.g., closed soffitts, sealed or screened pipeways, and tightly fitted door and window enclosures). In 2005 office trailers and other temporary structures, such as tents, which are prone to bird nesting, were removed from the WVDP site. Removal of other structures continued in 2006 and 2007. This is expected to reduce safety concerns reported by workers.

A sound-making and amplification system was installed near the wastewater lagoons and used to discourage Canada Geese from nesting in a radiological controlled area. In addition general harassment during the day, night time harassment with lights, wildlife exclusion features, and employee education were used to control and prevent migratory bird nesting activities in radiologically controlled areas. In past years, other bird scare devices, such as balloons with eyes and reflective tape marketed by suppliers as targeting nuisance birds, were used. These devices were found to be basically ineffective. For the last ten (10) years, the WVDP has employed an education program for employees on methods to prevent unwanted entry by birds to indoor areas.

Operational practices for the wastewater lagoons have been modified. These procedures require that, during migratory bird nesting season, water levels in the lagoon be kept high to cover as much exposed embankment mud as possible. Bird netting was also purchased for application to existing buildings. In addition, the pH of the radioactive wastewater in the lagoon is adjusted to control, and minimize to the extent practicable, the population of radiologically contaminated insects, a potential food source for avians.

Other approaches are unsuitable to the type of operation at the WVDP or present their own human health and safety concerns.

5. Item A.3: Copy of current State Permit/License:

The corollary license, issued by the New York State Department of Environmental Conservation is provided as Attachment A-3.

ATTACHMENT A-2
**SUPPLEMENTAL INFORMATION SHEETS FOR RENEWAL
OF FEDERAL MIGRATORY BIRD DEPREDATION PERMIT
AND NEW YORK STATE DEPREDATION LICENSE (Cont'd)**
West Valley Demonstration Project
Depredation Permit No. MB747595-0/Depredation License No. 32

6. **Item A.4: Application processing fee (\$100 check or money order payable to U.S. Fish and Wildlife Service), if applicable. Federal agencies are exempt from the processing fee:**

Since, the WVDP is a U.S. Department of Energy project, the processing fee is not required per 50 CFR Part 13.11(d)(3).

7. **Item A.5: Your annual report of activities conducted under the permit you wish to renew:**

Attached is the annual report (U.S. F&WS form 3-202-9 (Rev 03/2004)) of activities conducted under the Federal permit and State depredation license for the WVDP. Note that the annual report includes the depredation activities associated with both active and abandoned/inactive migratory bird nests that occurred during the period beginning May 1, 2006, which is end date for the annual report submitted last year, through May 1, 2007, the date for which this report was prepared.

8. **Item A.6: If this is checked a completed USDA/APHIS Wildlife Services Migratory Bird Damage Project Report (WS Form 37):**

This form was not requested.

9. **Item B: Renewal Certification**

See signed form, provided as Attachment A-1.

10. **Item C: Changes in your Federal Permit and New York State License information:**

Phone No.: 716-942-4368
Email: Bryan.C.Bower@wv.doe.gov
Fax: 716-942-4703

Please change information on the Federal Fish and Wildlife Permit as follows:

Box 8: BRYAN C. BOWER
DIRECTOR

Please change information on the New York State Fish and Wildlife License as follows:

Licensee: BRYAN C. BOWER
U.S. DEPARTMENT OF ENERGY
WVDP
10282 ROCK SPRINGS ROAD
WEST VALLEY, NY 14171-9799

DOB: N/A Business Phone Number: (716) 942-4368

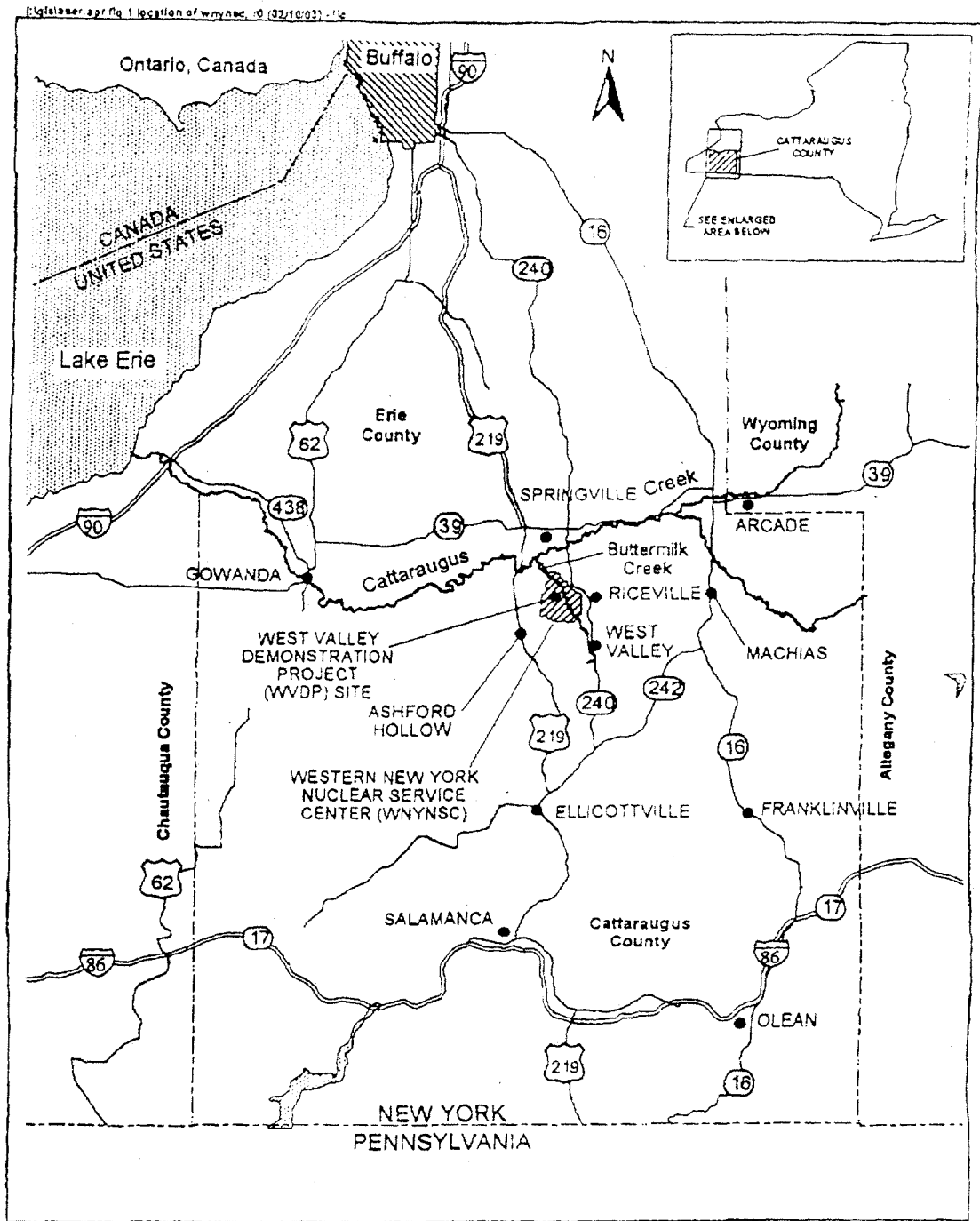


Figure 1. Location of the West Valley Demonstration Project

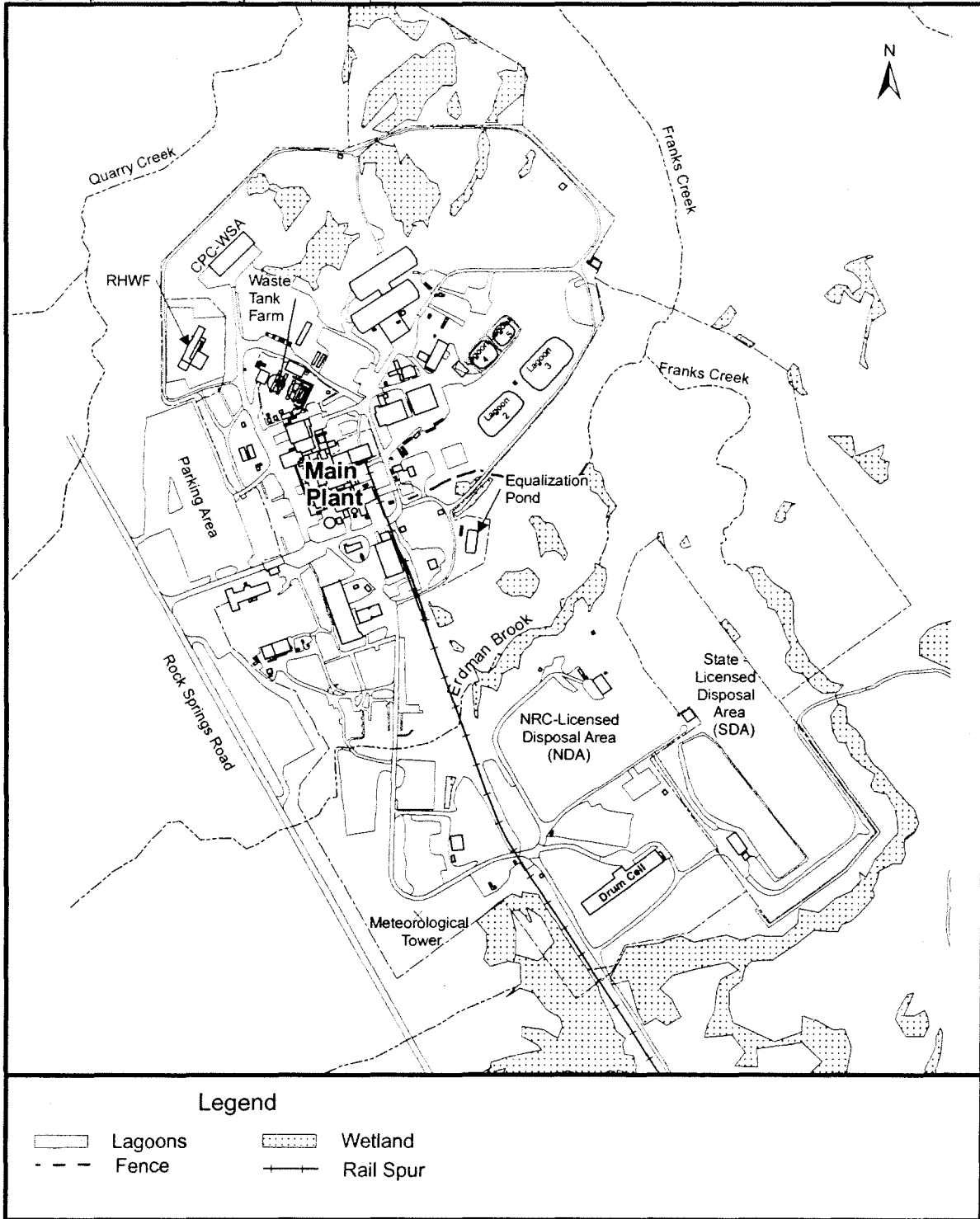


Figure 2. WWDP Project Premises

ATTACHMENT A-3
COPY OF NEW YORK STATE FISH AND WILDLIFE DEPREDATION LICENSE NO. 32
Effective June 30, 2006
U.S. Department of Energy - West Valley Demonstration Project



New York State Department of Environmental Conservation
 Division of Fish, Wildlife and Marine Resources - Special Licenses Unit
 625 Broadway
 Albany, NY 12233-4752
 Phone Number (518) 402-8985
 Fax Number: (518) 402-8925

NEW YORK STATE FISH AND WILDLIFE LICENSE

License Type: Depredation: General

License Number: 32

Licensee:

MOIRA N MALONEY
 U. S. DEPARTMENT OF ENERGY
 WVDP 10282 ROCK SPRINGS ROAD
 WEST VALLEY, NY 14171-9799

Fee Amount: \$0.00

Effective Date: 06/30/2006

Expiration Date: 06/30/2007

Region: 9 County: CATTARAUGUS

Home Phone Number:

DOB: 3/26/1901

Business Phone Number: (716) 942-4255

Statutory Authority:

Federal 16 USC 703-712

Federal 50 CFR Part 21.41

Federal 50 CFR Part 13

ECL 11-0505(5)

ECL 11-0521

6NYCRR Part 175

Conditions:

1. A. Please read all license conditions BEFORE conducting any activity pursuant to this license.
 B. The licensee assumes all liability and responsibility for any activities conducted under the authority of this license or any actions resulting from activities authorized by the license.
 C. This license may be revoked for any of the following reasons:
 i. licensee provided materially false or inaccurate statements in his or her application, supporting documentation or on required reports;
 ii. failure by the licensee to comply with any terms or conditions of this license;
 iii. licensee exceeds the scope of the purpose or activities described in his or her application for this license;
 iv. licensee fails to comply with any provisions of the NYS Environmental Conservation Law, any other State or Federal laws or regulations of the Department directly related to the licensed activity;
 v. licensee submits a check, money order or voucher for this license or application for this license that is subsequently returned to the Department for insufficient funds or nonpayment after the license has been issued.
 D. The renewal of this license is the responsibility of the licensee. This license is deemed expired on the date of expiration listed on the license unless otherwise notified by the Department.
 E. Direct all questions concerning this license to the Special Licenses Unit (518) 402-8985.
2. A. This license is NOT VALID without a corresponding Federal Permit from the US Fish and Wildlife Service.
 B. The licensee MUST submit a duplicate set of all reports required under their Federal Permit to the NYS DEC Special Licenses Unit, 625 Broadway, Albany, NY 12233-4752 within 30 days of the expiration of this license (Original reports must be sent to the Federal Permit Office - send ONLY copies to NYS DEC).
3. A. The licensee and/or designated agents are authorized to remove and destroy 15 active Barn Swallow nests, 15 active American Robin nests, 5 active Canada goose nests and 5 active Eastern Phoebe nests at the West Valley Demonstration Project Site, West Valley, NY, pursuant to Federal Permit MB747595-0.
 B. All carcasses collected under this license MUST be promptly buried or incinerated.
 C. No endangered or threatened species or species of special concern may be collected or possessed pursuant to this license.
 D. The licensee and/or designated agents MUST carry a copy of this license when conducting activities authorized by this license and MUST display a copy of this license when requested.
 E. The licensee may designate agents to conduct activities authorized by this license. Such designations MUST be made in writing to the NYS DEC Special Licenses Unit by sending a list with the name and address of the person(s) the licensee wishes to designate as an agent. This list MUST be on file at the NYS DEC Special Licenses Unit. The licensee is responsible for all actions take by designated agents under this license.



Department of
Environmental Conservation

Division of Fish, Wildlife & Marine Resources
625 Broadway, Albany, NY 12233-4750
Phone: (518) 402-8924
Fax: (518) 402-9027
Website: www.dec.state.ny.us

General Depredation Permit for Canada Geese and Gulls

(Effective January 1, 2002)

Section 11-0521 of the Environmental Conservation Law (ECL) authorizes the New York State Department of Environmental Conservation (DEC) to "... issue a permit to any person, to take any wildlife at anytime whenever it becomes a nuisance, destructive to public or private property or a threat to public health or welfare...". In the case of migratory birds, the U.S. Fish and Wildlife Service must also issue a permit before any person can take species protected by federal law. The federal permit process, with DEC input, provides adequate protection of the resource and makes review and issuance of individual State permits unnecessary in most cases.

DEC hereby authorizes any person to take Canada geese or gulls **in accordance with a valid federal migratory bird depredation permit, federal depredation order or other federal regulation** permitting the taking of migratory birds in accordance with Title 50, Code of Federal Regulations, Part 21, Subpart D (50 CFR 21D: Control of Depredating Birds), **subject to the following conditions:**

A. Activities carried out under this general permit must be done in accordance with all terms and conditions specified in the federal permit, depredation order or other regulation in 50 CFR 21D.

B. Only the following species may be taken pursuant to this general permit: **Canada goose (*Branta canadensis*), ring-billed gull (*Larus delawarensis*), herring gull (*L. argentatus*), and great black-backed gull (*L. marinus*), within limits specified below.** In this permit, the term "gulls" refers only to these three species.

C. **Scaring/herding:** Any person may scare or herd Canada geese or gulls by any means, including pyrotechnics and dogs, as long as Canada geese or gulls are not physically harmed.

D. **Nests and eggs:** Any person may take any number of **nests or eggs of Canada geese found in any place**, and any number of **nests or eggs of gulls found on rooftops or other man-made structures** or along public walkways, in accordance with a valid federal permit, depredation order or other regulation under 50 CFR 21D. Nests or eggs of these species may be disturbed, destroyed, or treated to prevent hatching. This general permit also satisfies the permit requirements of ECL 11-0505(5).

E. **Shooting and euthanasia:** No more than the following numbers of birds may be taken by shooting, live-trapping and euthanasia, or hand capture and euthanasia, from any single property or location:

Canada geese - no more than **2/day** and no more than **20** in any calendar year; and

Gulls - no more than **15/day** of each species (45 in all) and no more than 250 ring-billed gulls, 250 herring gulls, or 50 great black-backed gulls in any calendar year; **taking of gulls permitted at landfills only.**

F. **Relocation:** No Canada geese or gulls may be relocated (live-trapped and released at a different location) under this general permit.

G. Activities carried out under this general permit must be done in accordance with all applicable local laws and regulations.

H. **Activities not covered by this general permit may be allowed pursuant to an individual permit from DEC, after the corresponding federal permit or authorization is obtained.** For information about federal migratory bird depredation permits, contact: Permit Office, U.S. Fish and Wildlife Service, P.O. Box 779, Hadley, MA 01035-0779, phone (413) 253-8643, fax (413) 253-8424.

ATTACHMENT A-4
COPY OF FEDERAL BIRD DEPREDATION PERMIT
NO. MB747595-0
Effective July 1, 2006
U.S. Department of Energy - West Valley Demonstration Project



FEDERAL FISH AND WILDLIFE PERMIT

2. AUTHORITY-STATUTES
16 USC 703-712

REGULATIONS (Attached)
50 CFR Part 13
50 CFR 21.41

1. PERMITTEE

WEST VALLEY DEMONSTRATION PROJECT
U.S. DEPARTMENT OF ENERGY
10282 ROCK SPRINGS ROAD
WEST VALLEY, NY 14171-9799
U.S.A.

3. NUMBER
MB747595-0

4. RENEWABLE
 YES
 NO

5. MAY COPY
 YES
 NO

6. EFFECTIVE
07/01/2006

7. EXPIRES
06/30/2007

8. NAME AND TITLE OF PRINCIPAL OFFICER (If #1 is a business)
MOIRA N. MALONEY
ENGINEER/SCIENTIST

9. TYPE OF PERMIT
DEPREDAATION

10. LOCATION WHERE AUTHORIZED ACTIVITY MAY BE CONDUCTED
200 ACRE PREMISES OF WEST VALLEY DEMONSTRATION PROJECT, WEST VALLEY, NY
TEL: 716-942-4255

11. CONDITIONS AND AUTHORIZATIONS:

A. GENERAL CONDITIONS SET OUT IN SUBPART D OF 50 CFR 13, AND SPECIFIC CONDITIONS CONTAINED IN FEDERAL REGULATIONS CITED IN BLOCK #2 ABOVE, ARE HEREBY MADE A PART OF THIS PERMIT. ALL ACTIVITIES AUTHORIZED HEREIN MUST BE CARRIED OUT IN ACCORD WITH AND FOR THE PURPOSES DESCRIBED IN THE APPLICATION SUBMITTED. CONTINUED VALIDITY, OR RENEWAL, OF THIS PERMIT IS SUBJECT TO COMPLETE AND TIMELY COMPLIANCE WITH ALL APPLICABLE CONDITIONS, INCLUDING THE FILING OF ALL REQUIRED INFORMATION AND REPORTS.

B. THE VALIDITY OF THIS PERMIT IS ALSO CONDITIONED UPON STRICT OBSERVANCE OF ALL APPLICABLE FOREIGN, STATE, LOCAL OR OTHER FEDERAL LAW.

C. VALID FOR USE BY PERMITTEE NAMED ABOVE.

D. Authorized to remove and destroy all eggs in up to:

(a) 15 active Barn swallow nests and 15 active American robin nests and

(b) 5 active Canada goose nests and 5 active Eastern phoebe nests, containing eggs and/or young. Nestlings must be humanely destroyed.

E. Authorized Subpermittees: (1) Employees of the U.S. Dept. of Energy assigned to the WVDP; (2) employees of the West Valley Nuclear Services Company (contractor to DOE for WVDP); and, (3) employees of URS (subcontractor to WVNS at WVDP)

F. Permittee **MUST** also comply with the attached Depredation Permit Standard Conditions.

ADDITIONAL CONDITIONS AND AUTHORIZATIONS ALSO APPLY

12. REPORTING REQUIREMENTS

ANNUAL REPORT DUE WITH NEXT RENEWAL FORM

ISSUED BY

TITLE

ARD, MIGRATORY BIRDS & STATE PROGRAMS

DATE

06/23/2006



Standard Conditions Migratory Bird Depredation Permits 50 CFR 21.41

Standard conditions for depredation permits are below. These conditions are in addition to the conditions listed on the face of your permit. All of the governing regulations at 50 CFR Part 13 are also conditions of your permit. Failure to comply with the conditions of your permit could be cause for suspension of the permit. If you have questions regarding the conditions of your permit, refer to the regulations or contact the migratory bird permit office that issued your permit. Regulations and contact information are available on the Internet at: <http://www.permits.fws.gov/mbpermits/birdbasics.html>

1. You, and any subpermittees, must carry a legible copy of this permit, and display it upon request whenever you are exercising its authority.
2. You may not exercise the authorization granted by this permit contrary to the laws of the applicable state, county, municipal, or tribal government, or any other applicable law.
3. You are not authorized to take, capture, or harass bald or golden eagles or federally listed threatened or endangered species.
4. You may not use blinds, pits, or other means of concealment, decoys, duck calls, or other devices to lure or entice birds into gun range.
5. Shotguns used to take birds can be no larger than 10 gauge and must be fired from the shoulder. You must use nontoxic shot listed in 50 CFR 20.21(j).
6. To minimize the lethal take of birds, you are required to continually apply non-lethal methods of harassment alternately with lethal control.
7. You are not authorized to take any birds, nests, or eggs, or to release birds on federal or state lands or other public or private property without additional written authorization, permission, or permits from the applicable federal or state agency, landowner, or custodian.
8. Unless otherwise specified on the face of the permit, birds, nests, or eggs taken under this permit must be (1) turned over to the U.S. Department of Agriculture for official purposes, (2) donated to a public educational or scientific institution as defined by 50 CFR 10, or (3) completely destroyed by burial or incineration.
9. You must maintain records of the activities conducted under your permit for a period of 5 years from the date of expiration of the permit (50 CFR 13.46), including the following information: species (common name); date taken; location where taken; number of birds killed or relocated; number of eggs, or nests with eggs, taken or relocated; name of person taking birds; and the final disposition of the birds or eggs.
10. You must keep all records relating to the permitted activities at the location(s) identified in writing by you to the issuing office.
11. Acceptance of this permit authorizes the Fish and Wildlife Service to inspect any wildlife held, and to audit or copy any permits, books, or records required to be kept by the permit and governing regulations.

ATTACHMENT A-5
COMPLETED DEPREDATION ANNUAL REPORT
(FWS Form 3-202-9 (Rev 03/2004))
U.S. Department of Energy - West Valley Demonstration Project

U.S. FISH & WILDLIFE SERVICE - MIGRATORY BIRD PERMIT OFFICE

P.O. Box 779, Hadley, MA 01035
413-253-8642



DEPREDAATION - ANNUAL REPORT

PERMITTEE: West Valley Demonstration Project

PERMIT NUMBER: MB747595-0

ADDRESS: 10282 Rock Springs Road

REPORT FOR CALENDAR YEAR: May 1, 2006 through May 1, 2007

West Valley NY 14171-9799
City State Zip Code

REPORT DUE DATE: June 30, 2007

PHONE: (716) 942-4368 Email: Bryan.C.Bower@wv.doe.gov


Check here if reporting a change of name, address, or contact information

INSTRUCTIONS: Type or print the information requested below for all activities conducted under your permit during the year covered by this report, and return the completed report to the above address by the due date. Use of this form is not mandatory, but the same information must be submitted. A supplemental sheet is available if needed. Filing an annual report is a condition of your permit. Failure to file a timely report can result in permit suspension. If you had no activity under your permit during the report year state "No activity" on the form. **MAKE SURE YOU SIGN & DATE THE CERTIFICATION STATEMENT BELOW BEFORE YOU SUBMIT YOUR REPORT.** (50 CFR parts 13, 21, & 22)
 Please provide a total quantity for each species reported. For instance, if 2 Canada geese were killed during each of 5 months, insert a Total of 10 in Killed column for Canada geese.

Species (Common Name)	Month Taken	Location (Town, county, State)	Number of Birds		Numbers of		FINAL DISPOSITION (What you did with the birds, eggs, carcasses, e.g., destroyed, released, transferred to whom)
			Killed	Relocated*	Eggs Taken**	Nests Affected	
Canada Goose	05/2006	Ashford, Cattaraugus, NY	0	0	3	1	Nest and eggs destroyed
Barn Swallow	06/2006	Ashford, Cattaraugus, NY	0	0	8	4	Nest and eggs destroyed

* Relocated in the wild. ** Taken = destroyed, addled, oiled, removed from wild.

CERTIFICATION: I certify that the information in this report is true and correct to the best of my knowledge. I understand that any false statement herein may subject me to the criminal penalties of 18 U.S.C. 1001.

Signature:  Date: 06-12-2007

SUPPLEMENTAL SHEET - DEPREDAATION ANNUAL REPORT

PERMITTEE: _____ PERMIT NUMBER: _____ REPORT YEAR: _____ SUPPLEMENTAL PAGE NO: _____

Species (Common Name)	Month Taken	Location (Town, county, State)	Number of Birds		Numbers of		FINAL DISPOSITION (What you did with the birds, eggs, carcasses, e.g., destroyed, released, transferred to whom)
			Killed	Relocated*	Eggs Taken**	Nests Affected	

* Relocated in the wild ** Taken = destroyed, addled, oiled, removed from wild. (FWS form 3-202-9(Rev 03/2004))



Department of Energy
West Valley Demonstration Project
10282 Rock Springs Road
West Valley, NY 14171-9799

July 18, 2008

U.S. Fish and Wildlife Service
3817 Luker Road
Cortland, NY 13045

SUBJECT: Rare Species Consultation for the *Draft Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center*

Dear Sir or Madam:

The purpose of this letter is to notify you that the U.S. Department of Energy (DOE) and New York State Energy Research and Development Authority (NYSERDA) are in the process of preparing a revised *Draft Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center* (see Enclosure 1). NYSEDA is serving as the lead agency for purposes of State Environmental Quality Review Act (SEQR). In support of this effort DOE is requesting information on rare species and significant natural communities that may be impacted by the proposed project.

The West Valley Demonstration Project (WVDP) is a radioactive waste management demonstration site currently operated by the DOE under Act of the U.S. Congress. The WVDP, a largely industrialized area, is located on approximately 63 hectares within the boundaries of the Western New York Nuclear Service Center (WNYNSC), a 1,335-hectare reserve area of fields and woodlands owned by New York State. The WNYNSC is situated partly in the Town of Concord on the southern border of Erie County and mostly in the Town of Ashford on the northern border of Cattaraugus County. A 7.5 minute U.S. Geological Survey topographical map showing the site is presented in Enclosure 2.

While there has been no change in the project impact area since publication of the Notice of Intent in 2003, there has been a change in the alternatives being considered. Following scoping meetings, the alternatives were revised to include: a Site-wide Removal Alternative, Site-wide Close-In-Place Alternative, Phased Decision-making Alternative (the Preferred Alternative), and No-Action Alternative. Each alternative is summarized below.

Under the Site-wide Removal Alternative, all site facilities would be removed, environmental media decontaminated, and waste characterized, packaged, as necessary, and shipped off site for disposal. Under this alternative, the entire WNYNSC could be available for unrestricted release.

Under the Site-wide Close-In-Place Alternative, key site facilities would be closed in place; however, residual radioactivity in facilities with larger inventories of long-lived radionuclides would be isolated by specially-designed closure structures and engineered barriers. Thus, under this alternative, a sizable portion, but not all of the WNYNSC, could be available for unrestricted release.



July 18, 2008

Under the Phased Decision-making Alternative, a two-phased approach would be undertaken. Phase 1 would entail the removal of a number of key facilities, but would delay a decision on other facilities pending the undertaking of additional studies and evaluations to clarify and possibly reduce uncertainties related to final decommissioning and long-term management. Phase 2 would complete decommissioning, following the approach determined in Phase 1. The amount of land that could be available for unrestricted release would not be fully known until the approach to Phase 2 is determined.

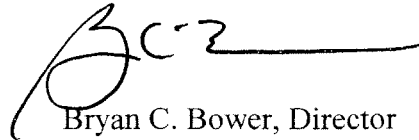
Under the No-Action Alternative, no actions toward decommissioning would be taken; however, a limited portion of the site could be available for unrestricted release.

Please send the requested information to:

Ms. Jennifer M. Dundas
U. S. Department of Energy
10282 Rock Springs Road
West Valley, NY 14171-9799

If you have any questions regarding this inquiry, Jennifer Dundas of my staff may be reached at (716) 942-4287.

Sincerely,



Bryan C. Bower, Director
West Valley Demonstration Project

- Enclosures: 1) Notice of Intent to Prepare an *Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center*
- 2) 7.5 Minute U.S. Geological Survey Topographical Map for Ashford Hollow Quadrangle

cc: J. E. Loving, DOE-HQ, GC-20/FORS, w/o enc.
J. M. Dundas, DOE-WVDP, AC-DOE, w/o enc.
M. N. Maloney, DOE-WVDP, AC-DOE, w/o enc.
P. J. Bembia, NYSERDA, w/o enc.

CMB:99492 - 451.1

CMB/cmb



Department of Energy
West Valley Demonstration Project
10282 Rock Springs Road
West Valley, NY 14171-9799

July 18, 2008

NYSDEC-DFWMR
New York Natural Heritage Program-Information Services
625 Broadway, 5th Floor
Albany, NY 12233-4757

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July 18, 2008

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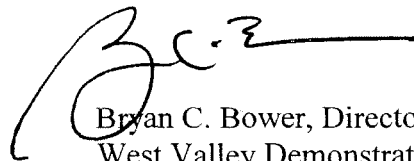
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U. S. Department of Energy
10282 Rock Springs Road
West Valley, NY 14171-9799

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P. J. Bembia, NYSERDA, w/o enc.

CMB:99493 - 451.1

CMB/cmb



Department of Energy
West Valley Demonstration Project
10282 Rock Springs Road
West Valley, NY 14171-9799

July 21, 2008

Mr. Maurice A. John
President
The Seneca Nation of Indians
P.O. Box 231
Salamanca, New York 14779

ATTENTION: Sylvia Patterson, Environmental Protection Director

SUBJECT: Consultation for the *Draft Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center* and Public Meeting

Dear President John:

The U.S. Department of Energy (DOE) and the New York State Energy Research and Development Authority (NYSERDA) are jointly preparing a *Draft Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center*. The U.S. Nuclear Regulatory Commission (NRC), the U.S. Environmental Protection Agency (EPA), and the New York State Department of Environmental Conservation (NYSDEC) are participating as cooperating agencies.

This Environmental Impact Statement (EIS) will revise the Draft EIS for Completion of the West Valley Demonstration Project and Closure of Long-Term Management of Facilities at the Western New York Nuclear Service Center (DOE/EIS-0226-D), which was issued in 1996. This EIS will evaluate the range of reasonable alternatives for decommissioning and long-term stewardship of the Western New York Nuclear Service Center (WNYNSC).

While there has been no change in the project impact area since publication of the Notice of Intent in 2003, there has been a change in the alternatives being considered. Following scoping meetings, the alternatives were revised to include: a Site-wide Removal Alternative, Site-wide Close-In-Place Alternative, Phased Decision-making Alternative (the Preferred Alternative), and No-Action Alternative. Each alternative is summarized below.

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Mr. Maurice A. John

- 2 -

July 21, 2008

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Under the No-Action Alternative, no actions toward decommissioning would be taken; however, a limited portion of the site could be available for unrestricted release.

Issuance of a draft EIS is planned for the fall of 2008. We would like to meet with you and/or members of your staff to discuss current planning for the EIS and to hear your issues and concerns.

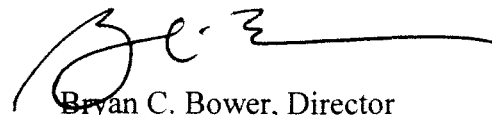
In 1996, DOE held public meetings on two of your reservations. We would again like to extend an offer to hold public meetings on the two main territories, Cattaraugus and Allegany. Public meetings will likely be held in the March or April 2009 timeframe, during the six-month public comment period, to listen to the views of and gather information from Tribal Governments, regulators, elected officials, stakeholders, and the public, to allow the lead agencies to make effective decisions in regards to this EIS.

If you have any questions regarding this information or to schedule a meeting, please contact:

Ms. Catherine M. Bohan, NEPA Compliance Officer and Tribal Point of Contact
U.S. Department of Energy
West Valley Demonstration Project
10282 Rock Springs Road
West Valley, NY 14171-9799
Phone: (716) 942-4159, E-mail: Catherine.M.Bohan@wv.doe.gov

I look forward to working with you as we move toward completion of this important process.

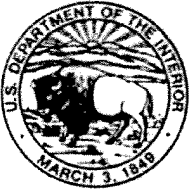
Sincerely,



Bryan C. Bower, Director
West Valley Demonstration Project

cc: J. E. Loving, DOE-HQ, GC-2/FORS
A. Wickham, DOE-EMCBC
M. N. Maloney, DOE-WVDP, AC-DOE
P. J. Bemba, NYSERDA, AC-NYS
S. C. Crede, SAIC
S. E. Robinson, SAIC

CMB:99524 - 451.1



United States Department of the Interior

FISH AND WILDLIFE SERVICE

New York Field Office

3817 Luker Road

Cortland, NY 13045

Phone: (607) 753-9334 Fax: (607) 753-9699

<http://www.fws.gov/northeast/nyfo>



Project Number: 80643

To: Bryan Bower

Date: Jul 29, 2008

Regarding: DEIS for decommissioning West Valley Demonstration Site

Town/County: Town of Ashford / Cattaraugus County

We have received your request for information regarding occurrences of Federally-listed threatened and endangered species within the vicinity of the above-referenced project/property. Due to increasing workload and reduction of staff, we are no longer able to reply to endangered species list requests in a timely manner. In an effort to streamline project reviews, we are shifting the majority of species list requests to our website at <http://www.fws.gov/northeast/nyfo/es/section7.htm>. Please go to our website and print the appropriate portions of our county list of endangered, threatened, proposed, and candidate species, and the official list request response. Step-by-step instructions are found on our website.

As a reminder, Section 9 of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) prohibits unauthorized taking* of listed species and applies to Federal and non-Federal activities. Additionally, endangered species and their habitats are protected by Section 7(a)(2) of the ESA, which requires Federal agencies, in consultation with the U.S. Fish and Wildlife Service (Service), to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. An assessment of the potential direct, indirect, and cumulative impacts is required for all Federal actions that may affect listed species. For projects not authorized, funded, or carried out by a Federal agency, consultation with the Service pursuant to Section 7(a)(2) of the ESA is not required. However, no person is authorized to "take"* any listed species without appropriate authorizations from the Service. Therefore, we provide technical assistance to individuals and agencies to assist with project planning to avoid the potential for "take," or when appropriate, to provide assistance with their application for an incidental take permit pursuant to Section 10(a)(1)(B) of the ESA.

Project construction or implementation should not commence until all requirements of the ESA have been fulfilled. If you have any questions or require further assistance regarding threatened or endangered species, please contact the Endangered Species Program at (607) 753-9334. Please refer to the above document control number in any future correspondence.

Endangered Species Biologist: Sandra Doran *Sandra Doran*

*Under the Act and regulations, it is illegal for any person subject to the jurisdiction of the United States to *take* (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species and most threatened fish and wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. "Harm" includes any act which actually kills or injures fish or wildlife, and case law has clarified that such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.

New York State Department of Environmental Conservation

Division of Fish, Wildlife & Marine Resources

New York Natural Heritage Program

625 Broadway, Albany, New York 12233-4757

Phone: (518) 402-8935 • FAX: (518) 402-8925

www.dec.state.ny.us



Alexander B. Grannis
Commissioner

August 6, 2008

Jennifer Dundas
U S Department of Energy
10282 Rock Springs Road
West Valley, NY 14171-9799

Dear Ms. Dundas:

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to an Environmental Assessment for the proposed Decommissioning and/or Stewardship at West Valley Demo/Project and Western NY Nuclear Service Center, area as indicated on the map you provided, located partly in the Town of Concord, Erie County; and mostly in the Town of Ashford, Cattaraugus County, New York State.

Enclosed is a report of rare or state-listed animals and plants, significant natural communities, and other significant habitats, which our databases indicate occur, or may occur, on your site or in the immediate vicinity of your site.

The presence of the plants and animals identified in the enclosed report may result in this project requiring additional review or permit conditions. For further guidance, and for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the appropriate NYS DEC Regional Office, Division of Environmental Permits, at the enclosed address.

For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our databases. We cannot provide a definitive statement on the presence or absence of all rare or state-listed species or significant natural communities. This information should not be substituted for on-site surveys that may be required for environment impact assessment.

Our databases are continually growing as records are added and updated. If this proposed project is still under development one year from now, we recommend that you contact us again so that we may update this response with the most current information.

Sincerely,


Tara Seoane, Information Services
New York Natural Heritage Program

cc: Reg. 9, Wildlife Mgr.
Reg. 9, Fisheries Mgr.

Natural Heritage Report on Rare Species and Ecological Communities



NY Natural Heritage Program, NYS DEC, 625 Broadway, 5th Floor, Albany, NY
12233-4757
(518) 402-8935

- This report contains **SENSITIVE** information that should not be released to the public without permission from the NY Natural Heritage Program.
-Refer to the User's Guide for explanations of codes, ranks and fields.
-Location maps for certain species and communities may not be provided 1) if the species is vulnerable to disturbance, 2) if the location and/or extent is not precisely known, 3) if the location and/or extent is too large to display, and/or 4) if the animal is listed as Endangered or Threatened by New York State.

Natural Heritage Report on Rare Species and Ecological Communities



BEETLES

Cicindela ancocisconensis

Office Use
9083

Appalachian Tiger Beetle

NY Legal Status: Unlisted

NYS Rank: S2 - Imperiled

Federal Listing:

Global Rank: G3 - Vulnerable

Last Report: 2000-08-28

EO Rank: Excellent or Good

County: Erie, Cattaraugus

Town: Collins, East Otto, Yorkshire, Otto, Persia, Sardinia, Concord, Ashford

Location: Cattaraugus Creek

Directions: The tiger beetle population occurs along a 25 mile stretch of the Cattaraugus Creek from Gowanda east to the area of Hake Road, approximately 3 miles west of Sillimans Corners. The beetles were found on at least 21 cobble bars and sandy terraces scattered throughout this stretch. Most locations where they have been observed are in the vicinity of the bridges which cross the creek and provide access. A number of locations can be accessed from the Gowanda-Zoar Valley Road and the Zoar Valley Multiple Use Area.

**General Quality
and Habitat:**

There are no global rank specifications for this species. All locations are combined as one occurrence based on element occurrence specifications from riparian cicindelidae of 2001-12-06. The "AB" rank is based on the fact that the beetles were found at no less than 17 separate cobble bars or sand/cobble terraces along a 25 mile stretch of a large creek with only one small dam and intact hydrological flow which maintains the high quality and quantity of habitat present. They undoubtedly occur at many ad The Cattaraugus Creek is a large creek which flows through a rural, agricultural setting and a large steep gorge area known as Zoar Valley. The flow is fast in spring with annual spring flooding. In the eastern portion, the creek has many twists and bends and sand and cobble are deposited at bends in the creek forming large cobble bars and sand/cobble terraces. To the west, where the creek flows through Zoar Valley the creek is bordered by steep, high walls and there are fewer bends in the creek and fewer cobble bars. There is a single small (less than 20 foot in height) dam just west of Route 219 which does not effectively alter the creeks hydrological regime.

Cicindela marginipennis

Office Use
10212

Cobblestone Tiger Beetle

NY Legal Status: Unlisted

NYS Rank: S1 - Critically imperiled

Federal Listing:

Global Rank: G2 - Imperiled

Last Report: 1999-08-10

EO Rank: Excellent or Good

County: Erie, Cattaraugus

Town: Otto, Concord, Collins, Ashford, East Otto

Location: At, or in the vicinity of, the project site.

Directions: **

**General Quality
and Habitat:**

**For information on the population at this location and management considerations, please contact the NY Natural Heritage Program Zoologist at 518-402-8939.

*Spizella pallida*Clay-colored
Sparrow
Breeding**NY Legal Status:** Protected**NYS Rank:** S2 - ImperiledOffice Use
12458**Federal Listing:****Global Rank:** G5 - Demonstrably secure**Last Report:** 2003-06-09**EO Rank:** Extant**County:** Cattaraugus**Town:** Ashford**Location:** Bond Road Plantation**Directions:** From the intersection of Route 82 and Cattaraugus Street in Springville, travel south on Route 82 (Buffalo Street) for 2.0 mi and turn left onto Thomas Corners Road. Travel east on Thomas Corners Road for 1.3 mi and turn left onto Bond Road. The birds were seen in lilac bushes on the west side of the road.**General Quality and Habitat:** The birds were observed in lilac (*Syringa* sp.) bushes in an ornamental shrub plantation.**COMMUNITIES****Hemlock-northern hardwood forest**

This occurrence of Hemlock-Northern Hardwood Forest is considered significant from a statewide perspective by the NY Natural Heritage Program. It is either an occurrence of a community type that is rare in the state or a high quality example of a more common community type. By meeting specific, documented significance criteria, the NY Natural Heritage Program considers this occurrence to have high ecological and conservation value.

Office Use

NY Legal Status: Unlisted**NYS Rank:** S4

8473

Federal Listing:**Global Rank:** G4G5**Last Report:** 2001-09-01**EO Rank:****County:** Erie, Cattaraugus**Town:** East Otto, Collins, Concord, Persia, Ashford, Dayton, Otto**Location:** Cattaraugus Creek Zoar Valley**Directions:** Take I-90 west past Buffalo and exit to the south on Highway 219. This highway crosses the Cattaraugus River just south of Springville and about 12 miles east of Gowanda. The community occupies the steep slopes and some of the uplands around Zoar Valley which surrounds Cattaraugus Creek and the South Branch of Cattaraugus Creek as well as valleys of tributaries including Thatcher Brook, Point Peter Brook, Connoissarauley Creek, Waterman Brook, Utley Brook, Coon Brook, Derby Brook, and Spooner Creek.**General Quality and Habitat:** The community is a very large, diverse complex of multiple patches, with many mature forest to old-growth patches within a landscape that is moderately large and intact, especially for the High Allegheny Plateau. A hemlock dominated to co-dominated forest primarily on the upper slopes of a deep 12.6-mile long gorge and ravines of the adjacent plateau along the Cattaraugus Creek, a major drainage of Lake Erie. The forest occurs above Cattaraugus Creek with its lining of shale cliff and talus community and shale talus slope woodland and forest forms part of a mature forest complex with beech-maple mesic forest, maple-basswood rich mesic forest, rich mesophytic forest and local, very small patches of Appalachian oak-pine forest. Further upland is an abrupt change to successional hardwood forests, successional old fields, maintained and recovering agricultural land and plantations (mostly pine). Scattered residences and roads are interspersed within the forest.

4 Records Processed

More detailed information about many of the rare and listed animals and plants in New York, including biology, identification, habitat, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.acris.nynhp.org, from NatureServe Explorer at <http://www.natureserve.org/explorer>, from NYSDEC at <http://www.dec.ny.gov/animals/7494.html> (for animals), and from USDA's Plants Database at <http://plants.usda.gov/index.html> (for plants).

More detailed information about many of the natural community types in New York, including identification, dominant and characteristic vegetation, distribution, conservation, and management, is available online in Natural Heritage's Conservation Guides at www.acris.nynhp.org. For descriptions of all community types, go to <http://www.dec.ny.gov/animals/29384.html> and click on DRAFT—Ecological Communities of New York State.

USERS GUIDE TO NY NATURAL HERITAGE DATA

New York Natural Heritage Program, 625 Broadway, 5th Floor, Albany, NY 12233-4757 phone: (518) 402-8935



NATURAL HERITAGE PROGRAM: The NY Natural Heritage Program is a partnership between the NYS Department of Environmental Conservation (NYS DEC) and The Nature Conservancy. Our mission is to enable and enhance conservation of rare animals, rare plants, and significant communities. We accomplish this mission by combining thorough field inventories, scientific analyses, expert interpretation, and the most comprehensive database on New York's distinctive biodiversity to deliver the highest quality information for natural resource planning, protection, and management.

DATA SENSITIVITY: The data provided in the report are ecologically sensitive and should be treated in a sensitive manner. The report is for your in-house use and should **not** be released, distributed or incorporated in a public document without prior permission from the Natural Heritage Program.

EO RANK: A letter code for the quality of the occurrence of the rare species or significant natural community, based on population size or area, condition, and landscape context.

- A-E = Extant: A=Excellent, B=Good, C=Fair, D=Poor, E=Extant but with insufficient data to assign a rank of A-D.
- F = Failed to find. Did not locate species during a limited search, but habitat is still there and further field work is justified.
- H = Historical. Historical occurrence without any recent field information.
- X = Extirpated. Field/other data indicates element/habitat is destroyed and the element no longer exists at this location.
- U = Extant/Historical status uncertain.
- Blank = Not assigned.

LAST REPORT: The date that the rare species or significant natural community was last observed at this location, as documented in the Natural Heritage databases. The format is most often YYYY-MM-DD.

NY LEGAL STATUS – Animals:

Categories of Endangered and Threatened species are defined in New York State Environmental Conservation Law section 11-0535. Endangered, Threatened, and Special Concern species are listed in regulation 6NYCRR 182.5.

E - Endangered Species: any species which meet one of the following criteria:

- Any native species in imminent danger of extirpation or extinction in New York.
- Any species listed as endangered by the United States Department of the Interior, as enumerated in the Code of Federal Regulations 50 CFR 17.11.

T - Threatened Species: any species which meet one of the following criteria:

- Any native species likely to become an endangered species within the foreseeable future in NY.
- Any species listed as threatened by the U.S. Department of the Interior, as enumerated in the Code of the Federal Regulations 50 CFR 17.11.

SC - Special Concern Species: those species which are not yet recognized as endangered or threatened, but for which documented concern exists for their continued welfare in New York. Unlike the first two categories, species of special concern receive no additional legal protection under Environmental Conservation Law section 11-0535 (Endangered and Threatened Species).

P - Protected Wildlife (defined in Environmental Conservation Law section 11-0103): wild game, protected wild birds, and endangered species of wildlife.

U - Unprotected (defined in Environmental Conservation Law section 11-0103): the species may be taken at any time without limit; however a license to take may be required.

G - Game (defined in Environmental Conservation Law section 11-0103): any of a variety of big game or small game species as stated in the Environmental Conservation Law; many normally have an open season for at least part of the year, and are protected at other times.

NY LEGAL STATUS – Plants:

The following categories are defined in regulation 6NYCRR part 193.3 and apply to NYS Environmental Conservation Law section 9-1503.

E - Endangered Species: listed species are those with:

- 5 or fewer extant sites, or
- fewer than 1,000 individuals, or
- restricted to fewer than 4 U.S.G.S. 7 ½ minute topographical maps, or
- species listed as endangered by U.S. Dept. of Interior, as enumerated in Code of Federal Regulations 50 CFR 17.11.

T - Threatened: listed species are those with:

- 6 to fewer than 20 extant sites, or
- 1,000 to fewer than 3,000 individuals, or
- restricted to not less than 4 or more than 7 U.S.G.S. 7 and ½ minute topographical maps, or
- listed as threatened by U.S. Department of Interior, as enumerated in Code of Federal Regulations 50 CFR 17.11.

R - Rare: listed species have:

- 20 to 35 extant sites, or
- 3,000 to 5,000 individuals statewide.

V - Exploitably vulnerable: listed species are likely to become threatened in the near future throughout all or a significant portion of their range within the state if causal factors continue unchecked.

U - Unprotected; no state status.

FEDERAL STATUS (PLANTS and ANIMALS): The categories of federal status are defined by the United States Department of the Interior as part of the 1974 Endangered Species Act (see Code of Federal Regulations 50 CFR 17). The species listed under this law are enumerated in the Federal Register vol. 50, no. 188, pp. 39526 - 39527. The codes below without parentheses are those used in the Federal Register. The codes below in parentheses are created by Heritage to deal with species which have different listings in different parts of their range, and/or different listings for different subspecies or varieties.

(blank) = No Federal Endangered Species Act status.

LE = Formally listed as endangered.

LT = Formally listed as threatened.

C = Candidate for listing.

LE,LT = Formally listed as endangered in part of its range, and as threatened in the other part; or, one or more subspecies or varieties is listed as endangered, and the others are listed as threatened.

LT,PDL = Populations of the species in New York are formally listed as threatened, and proposed for delisting.

GLOBAL AND STATE RANKS (animals, plants, ecological communities and others): Each element has a global and state rank as determined by the NY Natural Heritage Program. These ranks carry no legal weight. The global rank reflects the rarity of the element throughout the world and the state rank reflects the rarity within New York State. Intraspecific taxa are also assigned a taxon rank to reflect the infraspecific taxon's rank throughout the world. ? = Indicates a question exists about the rank. Range ranks, e.g. S1S2, indicate not enough information is available to distinguish between two ranks.

GLOBAL RANK:

G1 - Critically imperiled globally because of extreme rarity (5 or fewer occurrences), or very few remaining acres, or miles of stream) or especially vulnerable to extinction because of some factor of its biology.

G2 - Imperiled globally because of rarity (6 - 20 occurrences, or few remaining acres, or miles of stream) or very vulnerable to extinction throughout its range because of other factors.

G3 - Vulnerable: Either rare and local throughout its range (21 to 100 occurrences), or found locally (even abundantly at some of its locations) in a restricted range (e.g. a physiographic region), or vulnerable to extinction throughout its range because of other factors.

G4 - Apparently secure globally, though it may be quite rare in parts of its range, especially at the periphery.

G5 - Demonstrably secure globally, though it may be quite rare in parts of its range, especially at the periphery.

GH - Historically known, with the expectation that it might be rediscovered.

GX - Species believed to be extinct.

NYS RANK:

S1 - Critically imperiled: Typically 5 or fewer occurrences, very few remaining individuals, acres, or miles of stream, or some factor of its biology making it especially vulnerable in New York State.

S2 - Imperiled: Typically 6 to 20 occurrences, few remaining individuals, acres, or miles of stream, or factors demonstrably making it very vulnerable in New York State.

S3 - Vulnerable: Typically 21 to 100 occurrences, limited acreage, or miles of stream in New York State.

S4 - Apparently secure in New York State.

S5 - Demonstrably secure in New York State.

SH - Historically known from New York State, but not seen in the past 15 years.

SX - Apparently extirpated from New York State.

SxB and SxN, where Sx is one of the codes above, are used for migratory animals, and refer to the rarity within New York State of the breeding (B)populations and the non-breeding populations (N), respectively, of the species.

TAXON (T) RANK: The T-ranks (T1 - T5) are defined the same way as the Global ranks (G1 - G5), but the T-rank refers only to the rarity of the subspecific taxon.

T1 through T5 - See Global Rank definitions above.

Q - Indicates a question exists whether or not the taxon is a good taxonomic entity.



Department of Energy
West Valley Demonstration Project
10282 Rock Springs Road
West Valley, NY 14171-9799
August 26, 2009

Ms. Sandra Doran
U.S. Fish and Wildlife Service
New York Field Office
3817 Luker Road
Cortland, NY 13045

SUBJECT: Request to Complete Endangered Species Act Section 7 Consultation Process

REFERENCE: Letter (101186), A. L. Raddant to C. M. Bohan, "Draft Decommissioning and/or Long-Term Stewardship EIS Comments West Valley Demonstration Project and Western New York Nuclear Service Center Town of Ashford, Cattaraugus County, New York," dated June 8, 2009

Dear Ms. Doran:

The U.S. Department of Energy (DOE) has reviewed the referenced letter which includes comments from both the U.S. Geological Survey and the U.S. Fish and Wildlife Service. While these comments will be addressed in the *Final Environmental Impact Statement for Decommissioning and/or Long-Term Stewardship at the West Valley Demonstration Project and Western New York Nuclear Service Center (Decommissioning and Long-Term Stewardship Draft EIS)*, specific comments regarding the need to continue the Endangered Species Act Section 7 consultation process for the clubshell (*Pleurobema clava*) and rayed bean (*Villosa fabalis*) are being addressed in this letter in order to come to timely closure on the process. Two comments in the referenced letter are directed at the following paragraph from the *Decommissioning and Long-Term Stewardship Draft EIS* (page 3-79):

The clubshell and rayed bean, although reported in Cattaraugus County, were not found in Buttermilk or Cattaraugus Creeks when those streams were surveyed in 1991 (Doran 2008, WVNS 1992b). Additionally, they were not reported by the New York Natural Heritage Program when that organization was consulted concerning state-listed species potentially present in the vicinity of the site (Seoane 2008).

Comments received in the referenced letter indicate that the Fish and Wildlife Service (1) is not aware of the referenced West Valley Nuclear Services Company's (WVNS) survey, and (2) suggest that the site should be evaluated for the presence of these two species as the next step in the Section 7 Endangered Species Act consultation process.

The referenced survey (WVNS 1992b) is part of a comprehensive study undertaken in the early 1990s to determine the presence of both vegetation and wildlife, including macrobenthos, present on the West Valley site. This study was issued as *Ecological Resources of the Western New York Nuclear Service Center, West Valley Demonstration Project Environmental Information Document Volume XI*. A copy was transmitted to you electronically on July 8, 2009.



In response to the recommendation that the site be evaluated for suitable habitat for the clubshell and rayed bean, and as described in the following paragraphs, DOE has determined that information from the 1991 survey combined with recent efforts to update that information during preparation of the *Decommissioning and Long-Term Stewardship Draft EIS* have demonstrated the absence of suitable habitat for these species.

Pages 41 and 42 of the study (WVNS 1992) indicate that no mussel species were found in either Buttermilk or Cattaraugus Creeks. The methods used to sample macrobenthos are provided in Appendix A3, Section 4.1 (pages A3-1 – A3-2), and a complete listing of benthic invertebrates sampled during the site surveys is provided in Table.B6 (pages B6-1 through B6-2).

During preparation of the *Decommissioning and Long-Term Stewardship Draft EIS*, DOE requested information on rare species and significant natural communities from both the Fish and Wildlife Service and the New York State Heritage Program. The Natural Heritage Program did not indicate that either the clubshell or rayed bean are known to occur in the site area. However, Ms. Kathy O'Brien of the New York Department of Environmental Conservation, Endangered Species Unit was also contacted with regard to the possibility of the two mussel species being present. She is the state biologist who deals with threatened and endangered mussels. Ms. O'Brien reiterated that the state has no information on locations for the clubshell or rayed bean within the state beyond the Allegheny River basin. She did note that since these species are known from western tributaries to Lake Erie it is not impossible that they could be discovered in New York tributaries to the lake sometime in the future.

Mr. Michael McGarry was also contacted regarding the possible presence of either the clubshell or rayed bean in Buttermilk or Cattaraugus Creeks. Mr. McGarry was a member of the team that conducted the site surveys in the early 1990s (see page 57 of WVNS 1992b). He is a local biologist who has spent much time working in the two creeks and has been involved in mussel surveys himself and through the use of a professional malacologist. He specifically remembered that there were no mussel populations encountered in either creek. He also noted that watersheds within New York such as West Valley's that flow into the Great Lakes do not provide a large reservoir for mussels. Based on the results of the comprehensive site survey and his local knowledge, he did not feel that any additional field work was necessary to conclude that these mussels do not exist in Buttermilk and Cattaraugus Creeks.

Based on the results of the site-specific surveys conducted for macrobenthos in the early 1990s, including the work of Mr. McGarry, and the responses from the Natural Heritage Program and Ms. O'Brien, DOE has determined that activities proposed in the *Decommissioning and Long-Term Stewardship Draft EIS* would have no effect on either the clubshell or rayed bean and, therefore, additional studies are not necessary. Accordingly, DOE is requesting acknowledgement from the Fish and Wildlife Service that no further consultation under Section 7 of the Endangered Species Act is required on this matter.

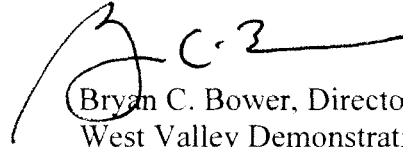
Ms. Sandra Doran

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August 26, 2009

If you have any questions regarding this request, please contact Catherine M. Bohan of my staff at (716) 942-4159.

Sincerely,

A handwritten signature in black ink, appearing to read "B.C.B.", is written over a circular stamp.

Bryan C. Bower, Director
West Valley Demonstration Project

cc: J. T. Dorman, DOE-HQ, GC-20, FORS
M. A. Pearson-Hurley, DOE-HQ, EM-3.3, FORS
C. M. Bohan, DOE-WVDP, AC-DOE
M. N. Maloney, DOE-WVDP, AC-DOE
A. L. Raddant, DOI
K. O'Brien, NYSDEC
P. J. Bembia, NYSERDA, AC-NYS
M. McGarry, Biologist

CMB:101187 - 451.1

CMB/cmb