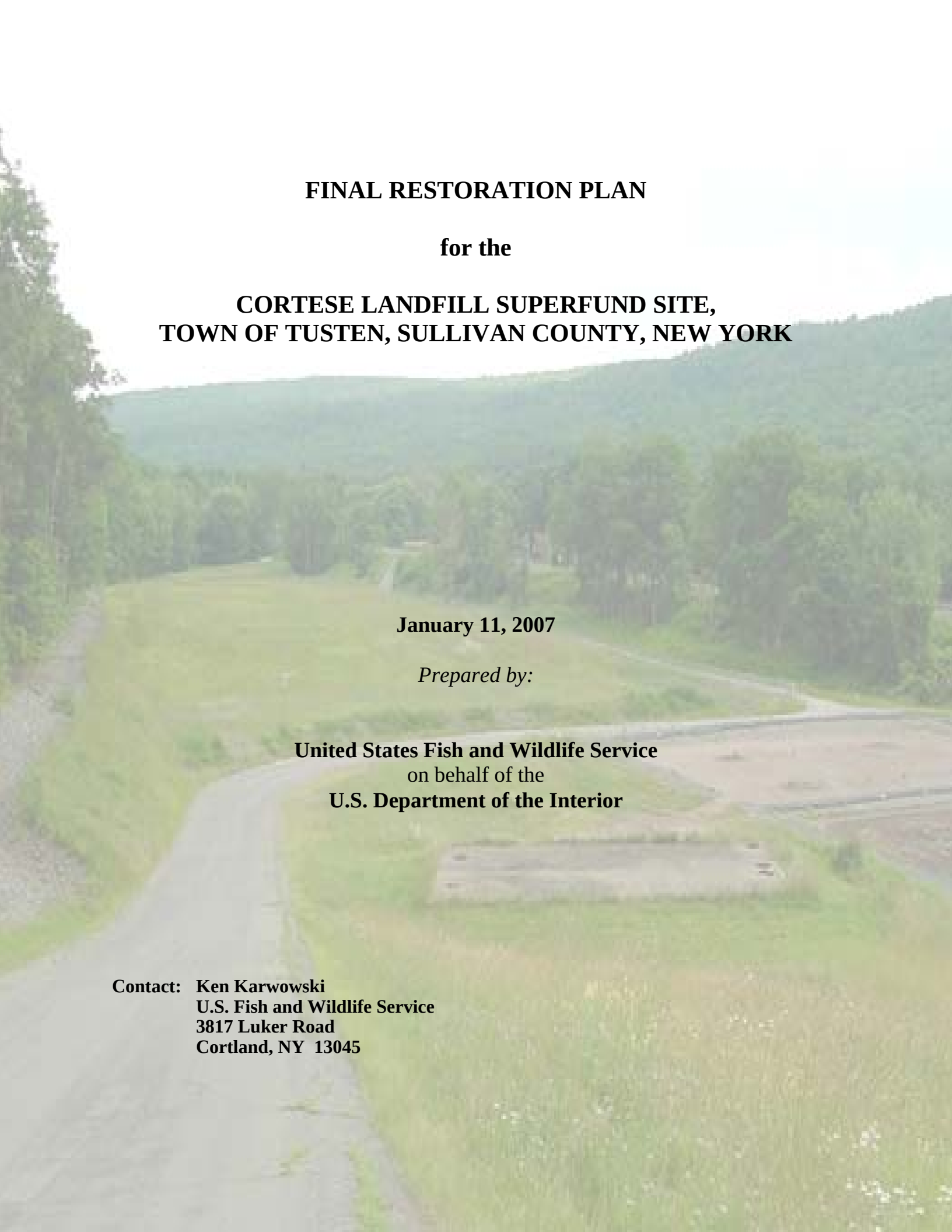

FINAL RESTORATION PLAN

for the

CORTESE LANDFILL SUPERFUND SITE, TOWN OF TUSTEN, SULLIVAN COUNTY, NEW YORK

January 11, 2007

Prepared by:

United States Fish and Wildlife Service
on behalf of the
U.S. Department of the Interior

Contact: Ken Karwowski
U.S. Fish and Wildlife Service
3817 Luker Road
Cortland, NY 13045

A. Introduction

In May 1996, the United States Department of the Interior (DOI), acting through the United States Fish and Wildlife Service (FWS), the sole Trustee, settled a natural resource damage claim with the Responsible Parties (RPs) for the Cortese Landfill Superfund Site (Site) located in Narrowsburg, Town of Tusten, Sullivan County, New York.

This Final Restoration Plan (FRP) was prepared by the FWS pursuant to its authority and responsibilities as a natural resource Trustee under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. § 9601, *et seq*., the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq*. (also known as the Clean Water Act [CWA]), and other applicable Federal laws, including Subpart G of the National Oil and Hazardous Substances Contingency Plan, at 40 C.F.R. §§ 300.600 through 300.615, and DOI's CERCLA natural resource damage assessment regulations at 43 C.F.R. Part 11 (NRDA regulations) which provide guidance for this restoration planning process under the CERCLA.

The FWS sought monetary settlement with the RPs as compensation for the injuries to natural resources due to release of environmental contaminants from the Site. The FWS is required to use settlement funds to compensate for those injuries by restoring natural resources, supporting habitat, and/or services provided by the injured resources. The CERCLA, which designates natural resource trustees, required that before settlement monies can be used for such activities, the FWS must develop and adopt a Restoration Plan, and that in doing so, there must be adequate public notice and opportunity for hearing and consideration of all public comment.

Accordingly, the FWS published and distributed a Draft Restoration Plan and sought public comment on it. The FWS published a Notice of Availability of a Draft Plan for the Site in the Federal Register Vol. 71 No. 117, June 19, 2006, and the Scranton Times-Tribune Newspaper. Comments received on the Draft Plan have been considered and a response has been incorporated into this FRP.

B. Background

The Site, located in Narrowsburg, Town of Tusten, Sullivan County, New York (Fig. 1), is an approximately 5-acre site bordered by wetland to the south, a steep rock escarpment to the northeast, and a railroad embankment to the southwest. Between 1970 and 1981, the Site received municipal wastes at a rate of 3,000 cubic yards each year. Industrial wastes, including waste solvents, paint thinners, paint sludges, and waste oils, were also disposed of at the landfill in 1973. Records indicated that an estimated 5,000 to 8,000 drums containing industrial waste were buried on the Site at that time. The threat to public health and the environment has been significantly reduced by excavation and off-site disposal of materials in the septage lagoons, construction of a storm water management system around the landfill to reduce leachate production, excavation and removal of 5,300 buried drums and 3,200 tons of contaminated soils, removal of 15,000 gallons of hazardous liquid/sludge, and construction of a cap over the 5-acre landfill (EPA 2005).

Figure 1. Cortese Landfill Site Location

C. Natural Resources and Impacts to those Resources

Prior to remedial excavation, the Site consisted of the core landfill area characterized by upland disturbance-tolerant plant species, adjacent wet meadow, and forested wetland habitats. A small pond, "White Pond," and a small backwater area of the Delaware River known as the "embayment" located southwest of the Site received contaminants that migrated from the landfill. As a result of excavation, landfill cap construction, and off-Site migration of Site-related contaminants, 1.6 acres of wetland were destroyed and/or degraded. At least 42 bird species are known to be in the vicinity of the Site. Avian wildlife using the Site are likely to include waterfowl, wading birds, hawks, woodpeckers, swallows, and migratory songbirds. In addition, the section of the Upper Delaware River watershed near the Site hosts the largest population of wintering bald eagles (*Haliaetus leucocephalus*) in the Northeast. The embayment provides feeding and/or spawning habitat for forage fish, American shad (*Alosa sapidissima*), striped bass (*Morone saxatilis*), and American eel (*Anguilla rostrata*).

D. Natural Resource Damage Settlement

In developing our settlement requirements, the FWS focused on the loss of 1.6 acres of wet meadow/wetland habitat used by fish and wildlife populations near the Site, due to remedial activities and off-site migration of Site-related contaminants. To scale our restoration goal, the FWS employed the Habitat Equivalency Analysis (HEA) method described by Unsworth and Bishop (1994), and knowledge of the affected ecosystem to determine how much credit could be realized from a restoration project, such as enhancing a degraded environment or preserving an existing environment. The analysis resulted in a total restoration goal of 2.7 acres of in-kind, in-place wet meadow/wetland habitat, or the equivalent to compensate the Trustee's natural resource damages claim under CERCLA.

A settlement, including compensation for Natural Resource Damages, was formalized in a Consent Decree signed by the United States Government and the RPs in May 1996. DOI received $82,304.50 to compensate for the natural resource injury after the Department of Justice received 3% ($2,545.50) of the settlement as part of their cost recovery. The restoration account for the Site as of May 2005, due to the accrual of interest, contains about $106,572.98, of which $84,000.00 is available for a restoration project. The balance is needed for project planning, restoration implementation, and oversight and monitoring.

On November 14, 2003, the FWS issued a Request for Restoration Project Proposals to identify potential restoration projects. The document described the settlement, provided the format for project proponents to submit project proposals for consideration for funding, and described the criteria and factors to be used by the FWS in evaluating projects. The FWS sent the proposal request to 16 parties, including the Sullivan County Audubon Society, The Nature Conservancy, Sullivan County Soil and Water Conservation District, Ducks Unlimited (DU), Trout Unlimited, New York State Department of Environmental Conservation, and the Town of Tusten. In addition, the FWS consulted the National Park Service and relevant programmatic areas within the FWS regarding potential restoration projects. The FWS received six proposals from three respondents for evaluation and possible selection as the preferred restoration alternative.

E. Proposed Restoration

1. Goals of the Restoration Project

The primary goal of the restoration project is to compensate for natural resources that were injured by Site-related remedial activities and contaminants. Compensation may include restoration, replacement, or acquisition of equivalent resources. The FWS used the following criteria to evaluate restoration projects in order of priority under the following categories:

1. Restoration of in-kind natural resources at the same location, if cleanup or remediation will be sufficient to prevent future contaminant problems;
2. Restoration or replacement of in-kind natural resources in the vicinity of the loss;
3. Replacement or acquisition of similar, out-of-kind resources that are nearby.

An in-kind natural resource refers to the same type of resource that was injured or lost. An out-of-kind natural resource refers to a resource different from that injured or lost, but which provides similar natural resource services. Projects entailing out-of-kind restoration are given lower priority than those entailing in-kind restoration due to the ecological uncertainties associated with replacing one habitat or resource type with a different type. Acquisition entails substituting an injured resource with another resource that provides the same or substantially similar services. The lowest priority is generally given to the acquisition of resources that differ from those that were injured.

2. Specific Projects Considered

We are required to assess a reasonable number of possible restoration projects. A project may consist of a single action or a set of actions. In our initial review, the FWS identified the following as desired characteristics for potential projects:

- Similarity of the restored resource to the injured resource.
- Proximity of the alternative to the injured resource.
- Relative habitat restoration to loss ratio.
- Long-term or perpetual benefits to fish and wildlife resources.
- Little or no potential for adverse effects on human health and public safety.
- Projects that provide the greatest environmental benefit for the least cost.
- A restoration site that is protected from future development activities will be favored over one where future land use is unrestricted or may potentially adversely affect the restoration project.

In addition, project restoration types were ranked from highest to lowest priority in the following progression: Restoration, Enhancement, Active Protection (e.g. conservation easement or deed restriction), and Passive Protection (public outreach).

Furthermore, projects that did not comply with applicable Federal, State, Tribal, and local laws and policies were not considered.

Project Categories and Alternatives

Restoration of In-Kind Natural Resources at the Same Location

No alternatives were identified under this category. As part of the Site remediation, a cap was constructed over the 5-acre landfill and the area fenced. The final remedy component, an on-Site groundwater treatment system, called for in the U.S. Environmental Protection Agency's Record of Decision, was not completed because of lack of adequate remaining space at the Site. Following a Site review, the FWS also determined that inadequate space was available for an on-Site restoration project to meet the minimum 2.7-acre restoration goal. For that reason, this option was not given further consideration.

Restoration or Replacement of In-Kind Natural Resources in the Vicinity of the Loss:

Alternative 1 - Upper Delaware Habitat Restoration Project (Ducks Unlimited [DU])

The Upper Delaware Habitat Restoration Project would involve restoring 30 acres of wetland hydrology on six private land parcels within the Lackawaxen River watershed, Wayne County, Pennsylvania. Wetlands would be restored through a variety of operations including plugging drainage ditches, constructing low-level berms, creating a shallow excavated area, and installing water control structures. An additional 15 acres of native warm season grasses would be established around the restored wetlands to serve as a buffer and dense nesting waterfowl habitat, bringing the total restored habitat to 45 acres. The six sites are to be restored to their natural state of wet meadow/shallow emergent wetlands that will be managed in accordance with a site management plan. Once the sites have been restored, the DU program biologist would conduct site visits at least twice a year to document project success, revise management recommendations, and verify landowners' participation in the management plan.

Management plans would be developed by DU in cooperation with landowners and only revised with the mutual consent of the DU program biologist, landowner, and the FWS. All participating landowners would be required to enter into a DU – Landowner Restoration Agreement that protects the restored wetland areas and adjacent upland buffer areas for a minimum of 15 years. A 2.7-acre wetland portion will be protected with a perpetual conservation easement. In addition, every opportunity would be pursued to ensure conservation of the additional wetlands in perpetuity by selecting properties that are currently enrolled in the Wayne County Agricultural Land Preservation Program that allows agricultural landowners to preserve their land in perpetuity.

The estimated project cost to restore 45 acres is $84,000.00 ($1,867/acre) and would involve project evaluations, design, restoration implementation and oversight, monitoring and management by DU. The Wayne County Conservation District has pledged additional in-kind partnership support, such as recruitment of potential landowner participation, outreach activities, assisting landowners with application for permits, and site visits to validate post-project compliance with project management objectives.

Alternative 2 - Invasive Weed Reduction Project (The Nature Conservancy of Pennsylvania [TNCPA])

Japanese knotweed (*Polygonum cuspidatum*), purple loosestrife (*Lythrum salicaria*), and common reed (*Phragmites australis*) are exotic invasive species commonly found in wetland habitats that exclude and diminish the vigor of native species by altering soil conditions such as nutrient availability, moisture content, and shade and light

conditions. Nationwide, exotic invasive species pose a threat to the functioning of native wetland habitats. According to the TNCPA, about one-third of plant species in Pennsylvania are non-native, and many have become serious invasive weeds.

A number of high-priority TNCPA preserves, including the Mt. Bethel Fens, the Minsi Lake Vernal Pools, Cherry Valley, Butternut Island, and the Long Eddy River Edges Preserve are being negatively impacted by the presence of invasive plant species. TNCPA proposes to develop and implement a two-year invasive species removal effort at a number of select high-quality TNCPA wetlands, vernal pools, and shoreline communities. For the two-year *Invasive Weed Reduction Project (IWRP),* TNCPA would hire small teams of seasonal workers or contractors who would work under the direction of TNCPA staff to reduce invasive plant species populations in selected areas to the point where they no longer threaten the ecosystem.

Three different techniques would be used during a two-year period to reduce the density and vigor of invasive species throughout the selected wetland areas – biological controls, manual and mechanical harvesting, and herbicide application. The initial success of the IWRP would be evaluated by comparing baseline invasive weed distribution and density to post-removal conditions. The techniques used for weed reduction would be evaluated and compared, and future strategies and monitoring dictated according to the results.

The estimated cost for the IWRP for an unspecified number of wetland acres over a two-year period is $84,000. Supervisory staff would be provided and funded by TNCPA.

Replacement or Acquisition of Out-of-Kind or Similar Resources Nearby

Alternative 3 - Protection of Crooked Mud Pond Wetland Complex (The Nature Conservancy of Pennsylvania)

Crooked Mud Pond is a 70-acre acidic glacial peatland complex containing leatherleaf-cranberry and leatherleaf-rosemary peatlands, a red maple-sedge palustrine woodland, and an acidic, glacial lake located in Mt. Pleasant Township, northern Wayne County, Pennsylvania, on Crooked Mud Creek. The primary objective of this project is to secure a conservation easement and an associated management plan for the properties in the complex in partnership with individual landowners. The complex contains several plant and animal species of concern including the lesser-panicled sedge (*Carex diandra*), slender sedge (*Carex lasiocarpa*), bog-rosemary (*Andromeda polifolia*), few-flowered sedge (*Carex pauciflora*), river otter (*Lutra canadensis*), and the bog copper butterfly (*Lycaena epixanthe*). Baseline hydrologic monitoring and documentation would occur and include measuring water chemistry variables involving major cations and anions, along with water level monitoring by staff gage. Determination of baseline biological conditions and monitoring by TNCPA's legal monitoring program would ensure ecological integrity of the site is not compromised by landowner activity.

The landowners have proposed construction of a single airstrip on the property for personal aircraft use only. Site inventory and assessment by TNCPA personnel suggest that the proposed construction activities would be compatible provided careful design, construction, and maintenance considerations are incorporated into airstrip planning and implementation.

The estimated project cost for acquisition of a conservation easement for Crooked Mud Pond is $275,937.00 ($3,942/acre) for one property. The cost of preserving an additional 162 acres in the headwaters area of the complex is estimated at $1,000,000.00 ($6,173/acre) for which no additional funds have been secured.

Alternative 4 - Northeast Pennsylvania Community Outreach Program (TNCPA)

The Northeast Pennsylvania Wetland Community Outreach Program is slated to educate landowners and begin the process of developing a conservation community in an effort to advance regional wetland protection and restoration efforts in Wayne and/or Pike Counties, Pennsylvania. TNCPA would develop a structural program with dedicated staff, resources, and measurable goals. The immediate tasks for program development would include identifying outreach sites, researching ownership information, preparing site evaluation reports, developing a database file structure, data entry, producing and disseminating outreach materials, project evaluation, and preparing a final report documenting accomplishments, lessons learned, and critical planning for future efforts.

The estimated cost to implement the outreach project is $83,983. Project funding would support the first 18 months for program development and implementation for Wayne and/or Pike Counties. TNCPA would ultimately seek to expand the program beyond the start-up period into neighboring counties of Pennsylvania.

Alternative 5 - Wetland Conservation in Northeastern Pennsylvania (TNCPA)

The goal of this project would be to develop a set of reference descriptions for wetland plant communities occurring in Wayne and/or Pike Counties, Pennsylvania. Reference condition descriptions will provide information on the characteristics of high quality stands for each wetland type. TNCPA, as part of this project, would develop a rapid assessment method to determine a quality rank for wetland plant communities based on reference description criteria including size, condition, and landscape context. The criterion, “size”, will address the scale of ecological functions that may occur in a wetland type and the sufficiency of a stand of a given size to accommodate those functions (e.g., wetland riparian breeding bird habitat, nutrient cycling, and removal of anthropogenic nutrient loading). “Condition” would address species composition and stand structure relative to reference conditions. “Landscape Context” would be assessed on the ground through review of resources developed in the course of the investigation including aerial photography, etc. Criteria addressed

within context may include, but not be limited to, fragmentation of surrounding landscape, proximity and extent of human activities, connectivity to intact natural vegetation stands, etc. TNCPA would apply the rapid assessment methodology to select wetland inventories within the region (provided access can be obtained to public and private properties), detailing wetland type, number, relative abundance, spatial distribution, and condition. Conceptual ecological models for regional wetland communities based on inventory data and available scientific literature would be developed. The models would help identify strategies for wetland restoration, conservation, and management. Ecological models would include data used to develop reference condition descriptions as well as a review and synthesis of the available scientific literature. Ecological models would address processes that may alter plant community functions or cause a shift in plant community type. Each model would include a bibliography of sources used in model development. Findings would be summarized into a final report. The estimated cost of the project would be $84,000.00.

Alternative 6 - Lake Erie Restoration Project (Town of Tusten)

Lake Erie is a body of water approximately 3.4 acres in size and located in Narrowsburg, Town of Tusten, Sullivan County, New York. The Town of Tusten owns the lake. It was originally formed for the purpose of manufacturing ice at the turn of the 1900s and has since become filled with silt and overgrown with vegetation around the edges. Neglect and lack of stewardship has lead to the decline of Lake Erie as an open water habitat. The purpose of this project would be to restore and improve fish habitat and habitat immediately surrounding the water.

The project would involve dredging the lake bottom to a depth needed to promote a healthy fish environment. Fish would be re-introduced through a stocking program. Permits from the Corps of Engineers and the New York State Department of Environmental Conservation (NYSDEC) would be required for both the diversion of the water during lake dredging and a stocking permit from the NYSDEC to introduce fish into the lake. The project also includes construction of a common area for a picnic area and to promote lake access for non-motorized boats. The land around the water is currently overgrown with brush and would be reclaimed and maintained in a manner to increase lake access. Additionally, a walking/nature trail to surround the site would be constructed and maintained for recreational use. Completion of the trail would depend on granting easements by north lakeside landowners.

The minimum estimated cost of the project would be $84,000.00 ($24,706/acre).

No Action Alternative

Federal regulations require natural resource trustees to consider a no action restoration option. Under the No Action Alternative, no action would be taken to restore resources injured due to contamination or remedial activities associated with the Site. As a result, potential restoration would be accomplished through natural attenuation.

Alternative 7 - Natural Attenuation

The Trustee would rely entirely on the natural recovery of resources from the sustained injuries. The process would occur over many years and fail to meet restoration goals.

3. Evaluation and Comparison of Feasible Project Alternatives

As the natural resource trustee, the FWS is required to evaluate each of the possible restoration projects based on all relevant considerations including the following factors: technical feasibility; relationship of expected costs of the proposed actions to the expected benefits; cost-effectiveness; results of any actual or planned response actions; potential for additional injury resulting from the proposed actions including long-term and indirect impacts; natural recovery period of the injured resources; ability of the resources to recover with or without alternative actions; potential effects of the action on human health and safety; consistency with relevant Federal, State, and Tribal policies; and compliance with applicable Federal, State, and Tribal laws. We must also consider the feasibility to secure future environmental protection of the restoration site.

Among all of the projects considered for selection as the preferred natural resource restoration, the following project alternatives may be feasibly implemented to meet our stated restoration goal. Attributes of feasible projects are summarized in Table 1.

Alternative 1 - The Upper Delaware Habitat Restoration Project (UDHRP) (DU)

This project would restore 30 acres of wet meadow/shallow emergent wetland habitat from a previously drained wetland and 15 acres of upland warm season grass habitat for use by wildlife resources. It is the only in-kind restoration alternative (as opposed to a habitat enhancement project) and has the lowest restoration cost per acre at $1,867/acre. The restoration goal of 2.7 acres of restored wetland will be protected in perpetuity and actively managed for a minimum 15-year period. The remaining 42.3 acres of restored habitat will be protected by a conservation easement and actively managed for a minimum of 15 years.

Return of natural hydrology would provide increased habitat and restore ecological services for a suite of wildlife species. Benefits to wildlife, especially migratory birds, include enhanced foraging, nesting, brooding, and resting habitat. Strong partnership participation with DU and the Wayne County Conservation District is likely to ensure a timely, high-quality restoration and reduce overall project costs. On

a relative scale, this project will provide substantially more ecological service compared to the habitat enhancement conferred by the Invasive Weed Reduction Project because low productivity pasture habitat will be converted to significantly more productive wetland habitat.

Alternative 2 – Invasive Weed Reduction Project (TNCPA)

The Invasive Weed Reduction Project would result in enhancement of wetland habitat by controlling and/or eliminating invasive plant species thus increasing ecological functioning of affected wetlands. However, the amount of wetland habitat enhanced, and the degree of improved ecological function, would ultimately depend on specific site conditions (e.g. the spatial and temporal distribution of the invasives) and the efficacy of control techniques used at those sites. In addition, the proposed two-year program may not allow sufficient time and effort to fully meet restoration goals. Typically, enhancement and restoration projects involving habitat manipulation require a five-year effort for monitoring and implementation to ensure that performance standards are met.

Alternative 3 - Protection of Crooked Mud Pond Wetland Complex (TNCPA)

The Crooked Mud Pond project as the preferred alternative would not add or enhance habitat or ecological function. The project would afford protection of existing habitat, which ranks as the lowest priority restoration priority (after habitat restoration or enhancement). Implementation of this alternative would protect 70 acres of habitat at a cost of $3,942/acre, which is more than two times greater than the most economical project (UDHRP), which is considered of higher priority and will restore 30 acres of degraded pasture into more productive wetland habitat for a substantial increase in ecological value.

Alternative 4 - Northeast Pennsylvania Community Outreach Program (TNCPA)

The outreach alternative will not result in any direct habitat restoration, enhancement, or protection, so desired environmental benefits would not be realized from the settlement with the RPs for the Site, and the FWS would not fulfill its obligation as a natural resource trustee in accordance with the Consent Decree and the provisions of CERCLA. For these reasons, this option was not given further consideration.

Alternative 5 - Wetland Conservation in Northeastern Pennsylvania (TNCPA)

The wetland conservation alternative would not result in any direct habitat creation or restoration, so desired environmental benefits would not be realized from the settlement with the RPs for the Site, and the FWS would not fulfill its obligation as a natural resource trustees in accordance with the Consent Decree and the provisions of CERCLA. For these reasons, this option was not given further consideration.

Alternative 6 - Lake Erie Restoration Project (Town of Tusten)

Selection of this alternative would result in a 3.4-acre habitat conversion from a shallow water vegetated wetland into an open water habitat. The conversion would alter the current nature and quality of the ecological function of the lake that has developed since it was constructed. Generally, the FWS does not endorse conversion or disturbance of wetland habitats unless there is a compelling reason to do so, such as a need to ensure public health or safety. Furthermore, this project would provide out-of-kind compensation, which has a low priority, and would have the highest implementation cost per acre ($24,706/ac). For these reasons, this option was not given further consideration.

Alternative 7 - No Action

Under the No Action Alternative, injuries to natural resources would be uncompensated. Although wetland function would eventually return to previous levels over time, there would remain a net loss of ecological productivity during the period of natural attenuation and the time frame for such natural recovery has been estimated to be in terms of decades. This alternative would be unacceptable because it fails to restore injured resources in a timely manner. Furthermore, no environmental benefits would be realized from the settlement with the RPs for the Site, and the FWS would not fulfill our obligation as natural resource trustees in accordance with the Consent Decree and the provisions of CERCLA. For these reasons, this option was not given further consideration.

Table 1. Summary of Differences in Feasible Project Alternatives, and the No Action Alternative.

Project	# Restored Acres	Cost per Acre (total project)	Restoration Type	Development Activities*
Alt 7 - No Action	**0**	**0**	**None**	**N**
Alt 1 - Upper Delaware Habitat Restoration	**45**	**1,867** ($84,000)	**Restoration**	**P1 (42.3 ac)** **N (2.7 ac)**
Alt 2 – Invasive Weed Reduction Project	**Indeterminate**	**-** ($84,000)	**Enhancement**	**N**
Alt 3 - Crooked Mud Pond Conservation Easement	**70**	**3,942** ($275,937)	**Active Protection**	**P2**
Alt 4 - Northeast PA Community Outreach	**0**	**-** ($83,983)	**Passive Protection**	**P2**
Alt 5 - Wetland Conservation NE PA	**0**	**-** ($84,000)	**Passive Protection**	**P2**
Alt 6- Lake Erie Restoration Project	**3.4**	**24,706** ($84,000)	**Restoration**	**P2**

*** N - No future development, P1 - Future development possible after 15-year easement, P2 - Future development possible or planned**

4. Project Selected for Implementation

Based on an evaluation and comparison of project alternatives, the FWS has selected Alternative 1, the Upper Delaware Habitat Restoration Project, as the Preferred Project. Among the potential projects evaluated, the Upper Delaware Habitat Restoration Project was the only project to provide an in-kind habitat restoration. The other project alternatives would provide less productive enhancements or out-of-kind restorations. As stated, the FWS gives higher priority to in-kind restoration projects above in-kind enhancement or protection projects and/or out-of-kind projects. Projects entailing out-of-kind restoration are given less priority than those entailing in-kind restoration due to the ecological uncertainties associated with replacing one habitat or resource type with a different type. Additionally, the Preferred Project would provide restored acres at the lowest cost and result in high quality habitat that will be actively managed for a minimum period of 15 years and protected to meet restoration goals.

Prior to implementation of the project, the project proponent will be required to submit detailed plans identifying project specifications including project location(s), acreage, project designs, and entities responsible for restoration activities, timetable for restoration, monitoring plan, and relevant conservation easements, deed restrictions, landowner agreements, or other protective land covenants. The plan shall be submitted to, and approved by, the Trustee prior to fund allocation.

The Upper Delaware Habitat Restoration Project will restore natural resources and make the environment and public "whole" from the loss of such resources due to release of environmental contaminants at the Site.

F. Compliance with the National Environmental Policy Act (NEPA)

The *Final Revised Procedures* for the FWS for implementing NEPA, published in the *Federal Register* on January 16, 1997, provide a categorical exclusion for natural resource damage assessment restoration plans prepared under CERCLA when only minor or negligible change in the use of the affected areas is planned. Categorical exclusions are classes of actions which do not individually or cumulatively have a significant effect on the human environment.

The Upper Delaware Habitat Restoration Project will result in only a minor change in the use of the affected area. Accordingly, this Restoration Plan qualifies for a categorical exclusion under NEPA. We have prepared an Environmental Action Statement documenting this determination. That Environmental Action Statement is attached to this Restoration Plan as Attachment A.

G. Response to Comments Received

We received one comment letter during the 30-day comment period (Attachment B). That commentor expressed support for wetland habitat restoration. However, the commentor recommended the FWS investigate how the proposed wetland restoration may influence support of a cold water fishery in the lower Lackawaxen River.

The FWS has been working in partnership with Ducks Unlimited and the Wayne Conservation District in Honsdale, Pennsylvania, to ensure that high quality wetland restoration projects are planned and implemented for maximum benefit to fish and wildlife resources, and to meet our statutory obligations as a natural resource trustee. Projects involving restoration of moist soil/shallow emergent wetlands within the Lackawaxen River watershed will be implemented within the scope of an emergent vegetation management plan developed for the watershed. The management plan calls for impounded water to be released in six- to eight-inch increments between April 30-May 30. Under the prescribed release regime, no warm water will be released, and the wetland areas will be exposed in preparation for shorebird use at the start of the growing season, and provide an opportunity to serve migratory waterfowl on their spring migration with moist soil plants supported within the impoundments.

The commentor also expressed support of Alternative 5 - Wetland Conservation in Northeastern Pennsylvania (TNCPA). While the FWS agrees that the TNCPA could contribute to enhancing/restoring wetlands within the watershed, the project would not result in any direct habitat creation or restoration, or other quantifiable restoration benefit, so desired environmental benefits would not be realized from the settlement with the RPs for the Site. Therefore, the FWS would not fulfill its obligation as a natural resource trustee in accordance with the Consent Decree and the provisions of CERCLA as intended for a selected restoration for the Cortese Landfill Superfund Site.

Literature Cited

U.S. Environmental Protection Agency. 2005. Cortese Landfill Site Description. Environmental Protection Agency, Region 2. New York, New York. http://www.epa.gov/Region2/superfund/npl/0201867c.pdf

Unsworth, R.E., and R.C. Bishop. 1994. Assessing Natural Resource Damages Using Environmental Annuities. Ecological Economics. 11:35-41.

Attachment A

UNITED STATES FISH & WILDLIFE SERVICE

ENVIRONMENTAL ACTION STATEMENT

Final Restoration Plan for the Cortese Landfill Superfund Site

Within the spirit and intent of the Council on Environmental Quality's regulations for implementing the National Environmental Policy Act (NEPA) and other statutes, orders, and policies that protect fish and wildlife resources, I have established the following administrative record and have determined that the action of the Final Restoration Plan and for the Cortese Landfill Superfund Site in the Town of Tusten, New York:

_XX_ is a categorical exclusion as provided by 516 DM 6 Appendix 1 and 516 DM 6, Appendix 1. No further documentation will therefore be made.

____ is found not to have significant environmental effects as determined by the attached Environmental Assessment and Finding of No Significant Impact.

____ is found to have significant effects, and therefore further consideration of this action will require a notice of intent to be published in the Federal Register announcing the decision to prepare an EIS.

____ is not approved because of unacceptable environmental damage, or violation of Fish and Wildlife Service mandates, policy, regulations, or procedures.

____ is an emergency action within the context of 40 CFR 1506.11. Only those actions necessary to control the immediate impacts of the emergency will be taken. Other related actions remain subject to NEPA review.

Other supporting documents (list):

Final Restoration Plan including public comments.

Region 5 NRDAR Coordinator — Date: 3/6/07

Region 5 NEPA Coordinator — Date: 3/9/07

Regional Director / DOI designated Authorized Official — Date: APR 20 2007

Attachment B

PUBLIC COMMENT ON DRAFT RESTORATION PLAN FOR THE CORTESE LANDFILL SUPERDUND SITE

United States Department of the Interior

NATIONAL PARK SERVICE
Upper Delaware
Scenic and Recreational River
274 River Road, Beach Lake PA 18405

IN REPLY REFER TO:

July 19, 2006

N16 (UPDE-RM/OS)

Ken Karwowski
U.S. Fish and Wildlife Service
3817 Luker Road
Cortland, New York 13045

RE: Comments: Draft Restoration Plans, Cortese Landfill Superfund Site

Dear Mr. Karwowski:

We have reviewed the Draft Restoration Plans presented for the Cortese Landfill Superfund Site, your selection criteria, and your preferred alternative for restoration. While we support the restoration of wetland habitat, one question we have about the preferred alternative **Alternative 1 - Upper Delaware Habitat Restoration Project (Ducks Unlimited [DU]),** is how this ponded water, which will eventually drain into the Lackawaxen River, may affect temperature regimes in that river. Not knowing the exact location of this project or its proximity to the Lackawaxen River, we raise this question to make you aware of a concern. We have recently been involved in a FERC relicensing of PPL's Lake Wallenpaupack hydroelectric facility. PPL has agreed, at the prodding of the Wayne-Pike Chapter of Trout Unlimited, to provide releases conducive to promoting a cold water fishery in the lower Lackawaxen River. We would encourage you to investigate how this wetland restoration may influence that effort.

While **Alternative 5 - Wetland Conservation in Northeastern Pennsylvania (TNCPA),** whose goal is to develop a set of reference descriptions for wetland plant

communities occurring in Wayne and/or Pike Counties, Pennsylvania, does not score as highly in your ranking criteria, we believe this concept has a great deal of merit for evaluating and potentially enhancing/restoring wetlands within this watershed.

Sincerely,

/s/ Sandra S. Schultz for
David C. Forney
Superintendent