FINAL RESTORATION PLAN ADDENDUM for the LOVE CANAL, 102nd STREET, and FOREST GLEN MOBILE HOME SUBDIVISION SUPERFUND SITE SETTLEMENTS, ERIE and NIAGARA COUNTIES, NEW YORK

Prepared by:

U.S. Department of the Interior, Fish and Wildlife Service, on behalf of the U.S. Department of Commerce, National Oceanic and Atmospheric Administration and New York State Department of Environmental Conservation

April 2016

Contact: Anne Secord
U.S. Fish and Wildlife Service
3817 Luker Road
Cortland, NY 13045
607-753-9334
anne_secord@fws.gov

TABLE OF CONTENTS

A. Introduction 3

B. Site Background 3

C. Natural Resource Damage Settlement and Restoration 4

D. Additional Restoration Projects Submitted in 2015 5

E. Selection of Preferred Alternative 6

The Preferred Alternative 7

Projects Not Selected 8

No Action Alternative 8

F. Compliance with NEPA and Other Potentially Applicable Laws 8

G. Monitoring and Site Protection 9

H. Public Review 9

Figure 1. Location of Restoration Projects Evaluated for Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Settlement Funding 10

I. Approvals 11

Attachment A. Environmental Action Statement 12

A. Introduction

This Final Restoration Plan Addendum (RPA) has been prepared by State and Federal natural resource Trustees to address restoration for the Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Superfund Sites (Sites). The Department of the Interior (DOI), including the U.S. Fish and Wildlife Service (USFWS), along with State, Tribal, and other Federal partners, act as Trustees for natural resources. The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Clean Water Act (CWA) provide that natural resource Trustees may assess damages to natural resources resulting from a release of a hazardous substance covered under the CERCLA or the CWA and may seek to recover damages from the parties responsible for the releases. This RPA proposes a preferred alternative for the use of remaining settlement funds for restoration projects intended to restore, replace, or acquire the equivalent of resources impacted by releases from the three Sites. The original Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Superfund Site Restoration Plan, date May 2005, may be found at the website: http://www.fws.gov/northeast/nyfo/ec/nrda.htm.

B. Site Background

During the period of March 1996 through December 2000, natural resource damage settlements were achieved for the Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Superfund Sites, all located within the City of Niagara Falls, Niagara County, New York. All settlements were sought as compensation for impacts to natural resources as a result of contamination or subsequent remedial activities at the Sites. Such monies recovered by Trustees must be used to restore, replace, or acquire natural resources or services equivalent to those lost (42 U.S.C. 9607(f)(l)).

The three Superfund Sites adversely affected fish and wildlife resources in Erie and Niagara Counties, New York, and potentially affected resources downstream in Lake Ontario and the St. Lawrence River. Specifically:

- Fish, birds, and sediment-dwelling organisms in East Gill Creek, Gill Creek, and the Niagara River were adversely affected, as a result of exposure to metals such as chromium, copper, lead, mercury, nickel, and zinc from the Forest Glen Site.

- Approximately 8.5 acres of wetland were lost as a result of remediation at the Forest Gen Site, resulting in lost habitat for birds and other wildlife.

- Fish, birds, and sediment-dwelling organisms were impacted by mercury, lindane, hexachlorobenzene, polycyclic aromatic hydrocarbons, polychlorinated biphenyls, and 2,3,7,8-tetrachlorodibenzo-p-dioxin (2,3,7,8-TCDD) from the 102nd Street Site.

- Organochlorine contamination from the 102nd Street Site was believed to be contributing to the reproductive impairment and suppressed immune function in the St. Lawrence beluga whale population.

- Fish, birds, and sediment-dwelling organisms in Black, Bergholtz, and Cayuga Creeks were impacted as a result of releases of 2,3,7,8-TCDD from the Love Canal Site.

- The dredging of Black and Bergholtz Creeks to remediate contamination adversely affected natural resources. Remediation eliminated all vegetation within and along the creeks and caused downstream turbidity .

- Human use of fish resources has been adversely impacted by contaminants from the three Sites. Various fish consumption advisories have existed for Cayuga Creek and the Niagara River, including an " eat no fish species" in Cayuga Creek due to dioxin contamination.

C. Natural Resource Damage Settlement and Restoration

The natural resource damage settlements for the three Superfund Sites resulted in approximately $1,340,000 available for restoration projects (see 2005 Restoration Plan for detailed information, http://www.fws.gov/northeast /nyfo/ec/nrda.htm). Restoration projects intended to address injuries to natural resources were solicited, and the following restoration projects were selected as the preferred alternative (Table 1):

Table 1. Summary of Restoration Projects Funded in 2005 - Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Restoration Plan

Project	Project Proponent	Amount Funded
Audubon Wetland Acquisition	Audubon	$60,000
Grassland Restoration	Niagara County Soil and Water Conservation District	$ 103,000
Grassland Restoration	Tuscarora Nation	$94,000
Common Tern Restoration - Niagara River	Riveredge Associates	$74,000
Wetland and Grassland Restoration - JDSP	USFWS	$ 11 8,000
Wetland Enhancement and Boardwalk	Joseph Davis State Park	$102,000
Niagara Escarpment Habitat Restoration and Protection	Western New York Land Conservancy	$ 119,000
Buffalo River Walleye Management	Erie County	$115,000
Cayuga Creek Restoration	City of Niagara Falls	$ 220,000
Fish Creek Restoration	USFWS & Tuscarora Nation	$ 130,000
Beluga Whale Restoration	National Oceanic and Atmospheric Administration (NOAA)	$ 55,000
East Gill & Gill Creek Characterization	NOAA	$150,000

All projects in Table 1, except for Buffalo River Walleye Management and Cayuga Creek Restoration, are completed or anticipated for completion in 2016.

D. Additional Restoration Projects Submitted in 2015

As a result of projects not completed, projects completed under budget, and accrued interest on remaining funds, there is $470,000 available for additional restoration projects. In November on 2015, the Trustees solicited restoration project proposals from the following agencies or organizations:

- City of Niagara Falls
- Erie County
- Buffalo/Niagara Riverkeeper
- Western New York (WNY) Land Conservancy
- New York State Parks

We requested information on projects that restore or acquire/protect habitat or enhance recreational or other human use of Niagara River/Buffalo River natural resources. Pursuant to the original 2005 Restoration Plan, we determined that projects would be evaluated based on how the project provides restoration for resources that were injured (fish, birds, wetlands, grasslands, riparian habitat), proximity to resources that were injured at the above three Sites, cost effectiveness, likelihood of success, and extent to which the project enhances public use of natural resources.

Project proposals submitted to the Trustees and approximate costs are as summarized in Table 2.

Table 2. Restoration Projects Submitted in 2015 to Address Injuries Associated with the Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Superfund Sites

Project	Project Proponent	Funding Requested
Seneca Bluffs Acquisition	Erie County	$325,000
Mothers Falls Acquisition	WNY Land Conservancy	$150,000*
Niagara Gorge Enhancement	WNY Land Conservancy	$380,910
Scajaquada Creek Restoration	Buffalo Niagara Riverkeeper	$100,000*
Weber Property Restoration	Buffalo Niagara Riverkeeper	$100,000*
Outer Harbor Pier Slip Fish Restoration	**Buffalo Niagara Riverkeeper**	$100 ,000*
Artpark Fishing Dock & Gangway	New York State Parks	$45,000
Beaver Island State Park Knotweed Control	New York State Parks	$48,000
* funding requested is part of a greater total project cost		

The proposed projects are briefly described below:

- **Seneca Bluffs Acquisition** - Erie County proposes to purchase 10.88 acres of land at Seneca Bluffs along the Buffalo River, City of Buffalo, Erie County. This land adjoins and would complement the Seneca Bluffs Natural Habitat Park already owned by Erie

County, providing over 20 acres of county-owned land that will be maintained as parkland.

- **Mothers Falls Acquisition** - The WNY Land Conservancy proposes to purchase 57 acres at Mothers Falls, in the Town of Aurora, Erie County. The property supports forest, wetland, and 2,000 feet of Mann Creek, a tributary to Cazenovia Creek. The project proponent is requesting $150,000 to apply to the total estimated land cost of $580,000.

- **Niagara Gorge Enhancement** - The WNY Land Conservancy proposes to conduct invasive species management at approximately 125 acres along the Niagara River Gorge from Whirlpool State Park to Devils Hole State Park, City of Niagara Falls , Niagara County. The total project cost is $380,910.

- **Scajaquada Creek Restoration** - The Buffalo/Niagara Riverkeeper proposes to restore an open water wetland system along Scajaquada Creek, City of Buffalo, Erie County. $100,000 is being requested toward a full project cost of $450,000 - $500,000.

- **Weber Property Restoration** - The Buffalo/Niagara Riverkeeper proposes to restore the 36.9 acre Weber property by reconnecting the creek to its floodplain, creating habitat diversity, and conducting invasive species control. An environmental site assessment is ongoing and property acquisition funds are in place. It is anticipated that the full restoration costs are $350,000 - $500,000. Funds ($100,000) are being requested to complete site designs and perform stream restoration work. The project is located in the Town of Niagara, Niagara County.

- **Outer Harbor Pier Slip Fish Restoration** - The Buffalo/Niagara Riverkeeper proposes to create fish spawning habitat in the Buffalo Outer Harbor , specifically in the slip located between Wilkeson Point and the Seaway Pier. The project is located in the City of Buffalo, Erie County. $100,000 is requested to help with planning and design for a project with an as yet undetermined cost.

- **Artpark Fishing Dock and Gangway** - The New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP), Niagara Region, proposes to install a fishing access dock and gangway at Artpark State Park, City of Lewiston, Niagara County, at a cost of $45,000.

- **Beaver Island State Park Knotweed Control** - The NYSOPRHP, Niagara Region, proposes to use mechanical and chemical methods to control Japanese knotweed on approximately 2.39 acres at Beaver Island State Park, Grand Island, Erie County, at a cost of $48,000.

E. Selection of Preferred Alternative

According to the guidance provided by the Federal Natural Resource Damage Assessment and Restoration (NRDAR) regulations (43 CFR § 11.82(d)), the selected alternative is to be feasible,

safe, cost-effective, address injured natural resources, consider actual and anticipated condition), have a reasonable likelihood of success, and be consistent with applicable laws and policies. Pursuant to the original 2005 Restoration Plan , we determined that projects would be evaluated based on how the project provides restoration for resources that were injured (fish, birds, wetlands, grasslands, riparian habitat) , proximity to resources that were injured at the above three Sites , cost effectiveness, likelihood of success, and extent to which the project enhances public use of natural resources.

The Preferred Alternative

The Trustees selected the following projects as the preferred alternative (Figure 1):

Table 3. Preferred Alternative

Project	Project Proponent	Cost
Seneca Bluffs Acquisition	Erie County	$ 325,000
Weber Property Restoration	Buffalo/Niagara Riverkeeper	$ 100,000
Artpark Fishing Dock & Gangway	New York State Parks	$ 45,000

The Seneca Bluffs Acquisition project protects Buffalo River habitat that is imminently at risk for commercial or residential development. Erie County will protect the area as parkland and seek funding for restoration activities, including invasive species management. The property will serve as part of a wildlife corridor along the Buffalo River and will buffer impacts to the river from upland activities, thereby protecting habitat for fish and wildlife resources injured by releases from the three Superfund Sites. There is public interest in maintaining this land as open space and opportunities for partnerships with local , State, and Federal entities to maintain and enhance the habitat. The funding provided fully funds acquisition, making the success of the project highly likely.

The Weber Property Restoration project restores habitat along Cayuga Creek, a stream that was directly impacted by discharges from the Love Canal and 102nd Street Superfund Sites. It will enhance habitat by reconnecting Cayuga Creek to its floodplain and restoring vernal pool and other habitat. It is consistent with the Niagara River Greenway Habitat Conservation strategy. Funding has already been received to conduct an environmental site assessment and complete the acquisition of the property, making the success of the project likely.

The Artpark Fishing Dock and Gangway will directly enhance public access to and use of fish resources of the Niagara River. Human use of fish resources has been adversely impacted by contaminants from the three Superfund Sites. Only one project completed with restoration fun s(Joseph Davis State Park Wetland Enhancement and Boardwalk) has directly enhanced public use of fish and wildlife resources.

Should any of the selected projects prove in feasible, the Trustees reserve the right to substitute an equivalent project that complies with the evaluation criteria presented in Section E of this document.

Projects Not Selected

The following projects were not selected:

The Mothers Falls Acquisition Project entails acquiring and protecting wetland, upland, and riparian habitat along a tributary to Cazenovia Creek. It was not selected as part of the preferred alternative because, by virtue of its location in the watershed, it has a less direct link to injured natural resources than the selected projects. Additionally, the funds requested would be a small percentage of total property costs, introducing greater risk into the project's ultimate likelihood of success.

The Niagara Gorge Enhancement Project was not selected because it has less of a direct connection to the injuries to fish and wildlife resources, as described above. Also, its long-term success may be limited by the challenges of dealing with invasive species in the difficult terrain of the Niagara River Gorge.

The Scajaquada Creek Restoration Project was not selected because of the high project cost with respect to benefits afforded to fish and wildlife resources that were injured by releases from the Superfund Sites. Additionally, the funding requested would be a small percentage of total project costs, introducing greater risk into the project's ultimate likelihood of success.

The Outer Harbor Pier Slip Fish Restoration Project was not selected because it is early in the design phase, with consequently limited details on how the requested funding would be applied to the project cost.

The Beaver Island State Park Knotweed Control Project was not selected because it has less of a link to injured resources and less likelihood of success than the selected projects. Its likelihood of success might be limited if additional funds are not found for continued invasive species control.

No Action Alternative

As required under the National Environmental Policy Act (NEPA), the Trustees considered a restoration alternative of no action. Under this alternative, the Trustees would rely on natural recovery and would take no direct action to restore injured natural resources or compensate for interim lost natural resource services. This alternative was not selected because it would not adequately restore fish and wildlife resources injured by releases from the three Sites. The Preferred Alternative protects 10.88 acres of riparian habitat along the Buffalo River, restores up to 36.9 acres of habitat along Cayuga Creek, and improves fishing access to the Niagara River.

F. Compliance with NEPA and Other Potentially Applicable Laws

Coordination and evaluation of required compliance with specific Federal acts, executive orders, and other policies for the preferred restoration plan is achieved, in part, through the dissemination of this document to, and review by, appropriate agencies and the public. All ecological restoration projects will be in compliance with applicable Federal statutes, executive

orders, and policies, including NEPA, 42 USC Section 4321 et seq.; the Endangered Species A t, 16 USC 1531, et seq.; the National Historic Preservation Act of 1966, 16 USC Section 470 et seq.; the Fish and Wildlife Coordination Act, 16 USC Section 661 et seq.; the Rivers and Harbors Act of 1899, 33 USC Section 403 et seq.; the Federal Water Pollution Control Act, 33 USC Section 1251 et seq.; Executive Order 11990, Protection of Wetlands; and Executive Orde 11988, Flood Plain Management. Compliance with the laws cited above, and any necessary permitting, will be undertaken during the planning stages of specific restoration projects.

Implementation of the preferred restoration projects are expected to generate long term benefits to fish and wildlife resources that are substantially greater than any potential short-term adverse impacts that may occur. For example, short-term impacts arising from the Weber habitat restoration and Artpark dock/gangway installation could include minor disruption of riverine a streambank habitats during project implementation (e.g., streambank enhancement activities may result in a decrease in vegetative cover prior to restoration planting activities or a slight increase in soil runoff). Activities proposed as part of the preferred alternative qualify as a categorical exclusion under NEPA (40 CFR 1508.4). They are a category of actions that do not individual! or cumulatively have a significant effect on the human environment.

The Federal Trustees are also required, under Executive Order Number 12898, 59 Fed. Reg. 7629, to identify and address any policy or planning impacts that disproportionately affect the health and environment in low income and minority populations. Since the restoration alternatives will result in changes that benefit fish and wildlife resources in the Buffalo River a d Cayuga Creek and enhance recreational use of the Niagara River, the Trustees have concluded that there would be no adverse impacts on low-income or minority communities due to implementation of the restoration alternatives.

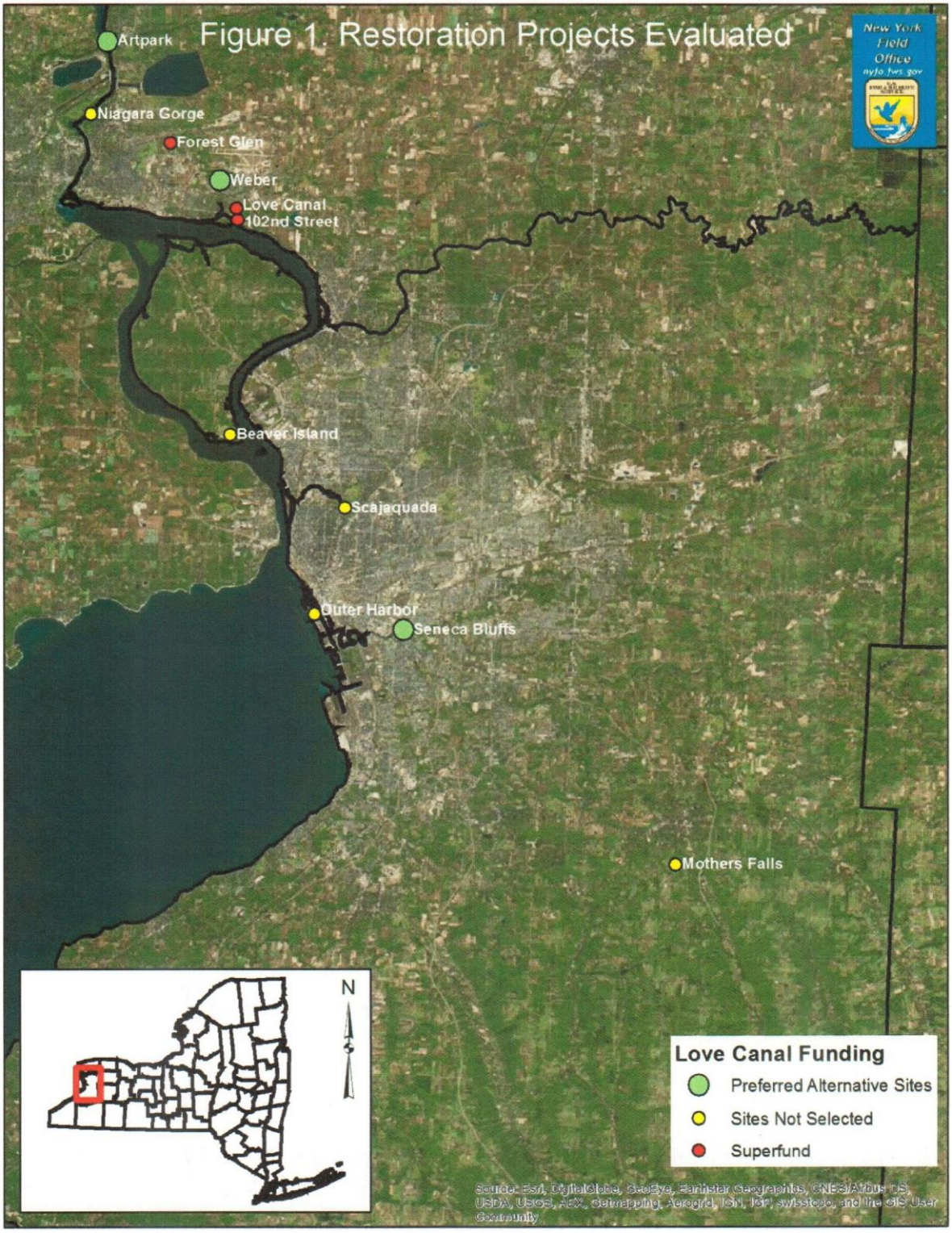
G. Monitoring and Site Protection

Each project proponent is responsible for developing monitoring plans and performing monitoring to record the status of their project. The specific performance criteria, monitoring period, frequency of monitoring, and associated reports will vary depending on the type of project, and will be determined on a case-by-case basis. Monitoring reports will be submitted t the USFWS, as Lead Administrative Trustee, upon completion of the project or various components of the project. Prior to receiving funding, each project proponent must ensure that the restoration project will be maintained and protected for a length of time commensurate with the funding and project purpose. For example, the Trustees anticipate that land acquisition and restoration projects will be placed under a protective land covenant (e.g., conservation easement, deed restriction) in perpetuity. Lesser terms of maintenance and protection may be appropriate for other projects and will be determined on a case by case basis.

H. Public Review

Notice of the Draft Restoration Plan Addendum for the Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Superfund Sites Settlement was published in the Buffalo New on March 14, 2016, for a period of 14 days. Notice was given that the Draft Plan was available for review, with comments accepted until April 14, 2016. No comments were received.

Figure 1. Location of Restoration Projects Evaluated for Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Settlement Funding



Attachment A. Environmental Action Statement

Final Restoration Plan Addendum for the Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Superfund Site Settlements, Erie and Niagara Counties New York

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 Environmental Assessment for the Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Natural Resource Damage Settlements, Erie and Niagara Counties, 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 d Wildlife Service mandates, policy, regulations, or procedures.

is an emergency action within the context of 40 CPR 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 Addendum, including public comments.

Regional Director / DOI designated Authorized Official

5/14/16
Date

I. Approvals

Final Restoration Plan Addendum for the Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Superfund Site Settlements, Erie and Niagara Counties, New York

In accordance with the U.S. Department of the Interior (DOI) policy regarding documentation for natural resource damage assessment and restoration projects (521 DM 3), the Authorized Official for the DOI must demonstrate approval of Final Restoration Plans and the associated National Environmental Policy Act documentation, with concurrence from the DOI Office of the Solicitor.

The Authorized Official for the Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Natural Resource Damage Settlements, Erie and Niagara Counties, New York, is the Regional Director for the U.S. Fish and Wildlife Service's Northeast Region.

By the signatures below, the Love Canal, 102nd Street, and Forest Glen Mobile Home Subdivision Final Restoration Plan Addendum is hereby approved.

Approved:		Concurred:	
	5/14/16		5/6/2016
Wendi Weber Regional Director Northeast Region U.S. Fish and Wildlife Service	Date	Mark Barash Senior Attorney Northeast Region Office of the Solicitor	Date