



**US Army Corps
of Engineers®**

Pittsburgh District

Planning and Environmental Branch
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Pittsburgh, Pennsylvania 15222

Public Notice Date: 7 August 2017
Expiration Date: 22 August 2017

NOTICE OF AVAILABILITY

Draft Environmental Assessment

Section 408 Request to Alter the Olean Local Protection Project for Remediation of Spill Number 0650800 in Cattaragus County, NY

The U.S. Army Corps of Engineers, Pittsburgh District (USACE) is evaluating a proposed alteration to the Olean Local Protection Project in accordance with Section 14 of the Rivers and Harbors Act of 1899, 33 USC 408 (Section 408).

The USACE invites submission of comments on the environmental impacts associated with approving the Section 408 request. The USACE will consider all submissions received on or before the expiration date of the public comment period prior to finalizing this Environmental Assessment. The nature or scope of the proposal may be changed upon consideration of the comments received.

The draft Environmental Assessment and draft Finding of No Significant Impact are available electronically at:

<http://www.lrp.usace.army.mil/Missions/Planning-Programs-Project-Management/>

Comments can be submitted to the address posted at the top of this notice or to bobbi.j.mcclain@usace.army.mil. Comments must be received by 22 August 2017 to ensure consideration.

Draft ENVIRONMENTAL ASSESSMENT

Section 408 Request to Alter the Olean Local Protection Project for Remediation of Spill Number 0650800 in Cattaraugus County, NY August 7, 2017

Prepared By: Environmental and Cultural Resources Section, Planning and Environmental Branch,
U.S. Army Corps of Engineers Pittsburgh District

1) Name of Requestor: ExxonMobil Environmental Services Company (ExxonMobil)

2) Authority: Proposed alterations to U.S. Army Corps of Engineers (USACE) federally-authorized civil works projects require USACE permission. USACE authority to grant permission for temporary or permanent alterations is contained in Section 14 of the Rivers and Harbors Act of 1899, (Taking possession of, use of, or injury to harbor or river improvements) which states: *“It shall not be lawful for any person or persons to take possession of or make use of for any purpose, or build upon, alter, deface, destroy, move, injure, obstruct by fastening vessels thereto or otherwise, or in any manner whatever impair the usefulness of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States, or any piece of plant, floating or otherwise, used in the construction of such work under the control of the United States, in whole or in part, for the preservation and improvement of any of its navigable waters or to prevent floods, or as boundary marks, tide gauges, surveying stations, buoys, or other established marks, nor remove for ballast or other purposes any stone or other material composing such works: Provided, That the Secretary of the Army may, on the recommendation of the Chief of Engineers, grant permission for the temporary occupation or use of any of the aforementioned public works when in his judgment such occupation or use will not be injurious to the public interest: Provided further, That the Secretary may, on the recommendation of the Chief of Engineers, grant permission for the alteration or permanent occupation or use of any of the aforementioned public works when in the judgment of the Secretary such occupation or use will not be injurious to the public interest and will not impair the usefulness of such work.”* 33 USC 408.

3) Location of Proposed Alteration: near the intersection of South 7th Street and West Green Street in Olean, NY.

4) Federal Project Proposed to be Altered: The Olean Local Protection Project (LPP) was authorized by Section 10 of the Flood Control Act of 1946. The LPP was constructed between 1948 and 1952 on the banks of Olean Creek and the Allegheny River. It consists of 7,856 feet of levee and about 32,400 feet of subsequent levee enlargement, 2,735 feet of floodwalls, 3,500 feet of channel improvements, the increased elevation of several stretches of highway and one bridge, pump installation at the mouth of King’s Brook, the installation three closure structures, and provisions for internal drainage. See Figure 1 for the as-built design in the area of interest. The LPP is owned and operated by the New York State Department of Environmental Conservation, Bureau of Flood Protection and Dam Safety (NYS DEC)

Requested Alteration: ExxonMobil, via its contractor Remedial Engineering, P.C. (Remedial Engineering), is proposing to dredge about 1,000 cubic yards of petroleum material and impacted sediments from the Allegheny River adjacent to the LPP with possible dredging/excavation into the toe of the LPP (Figure 2).

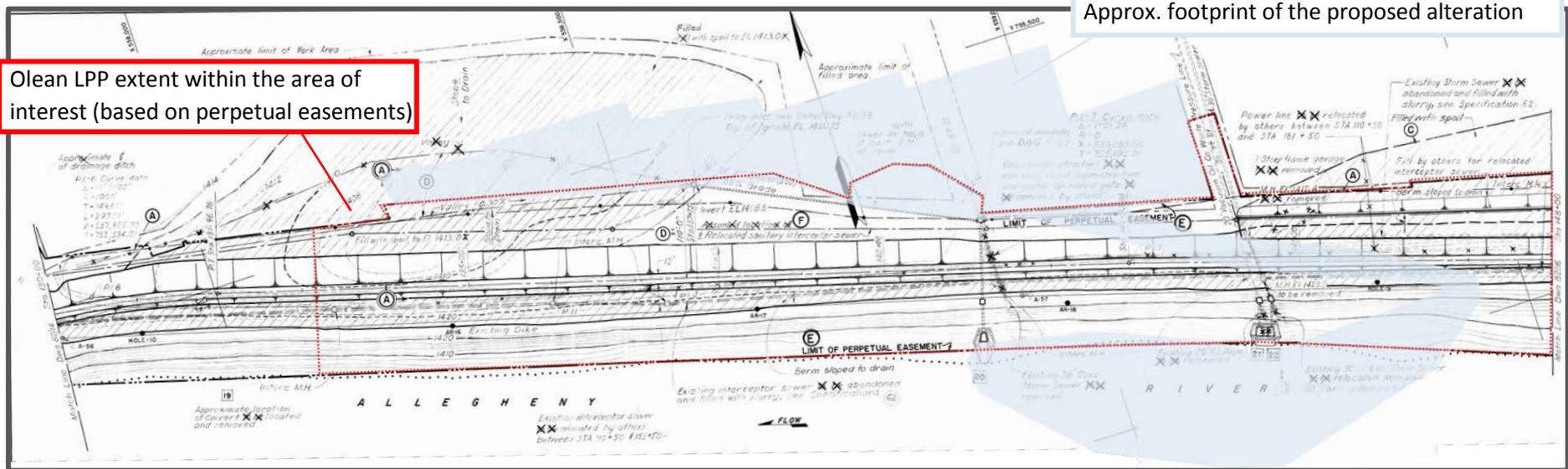
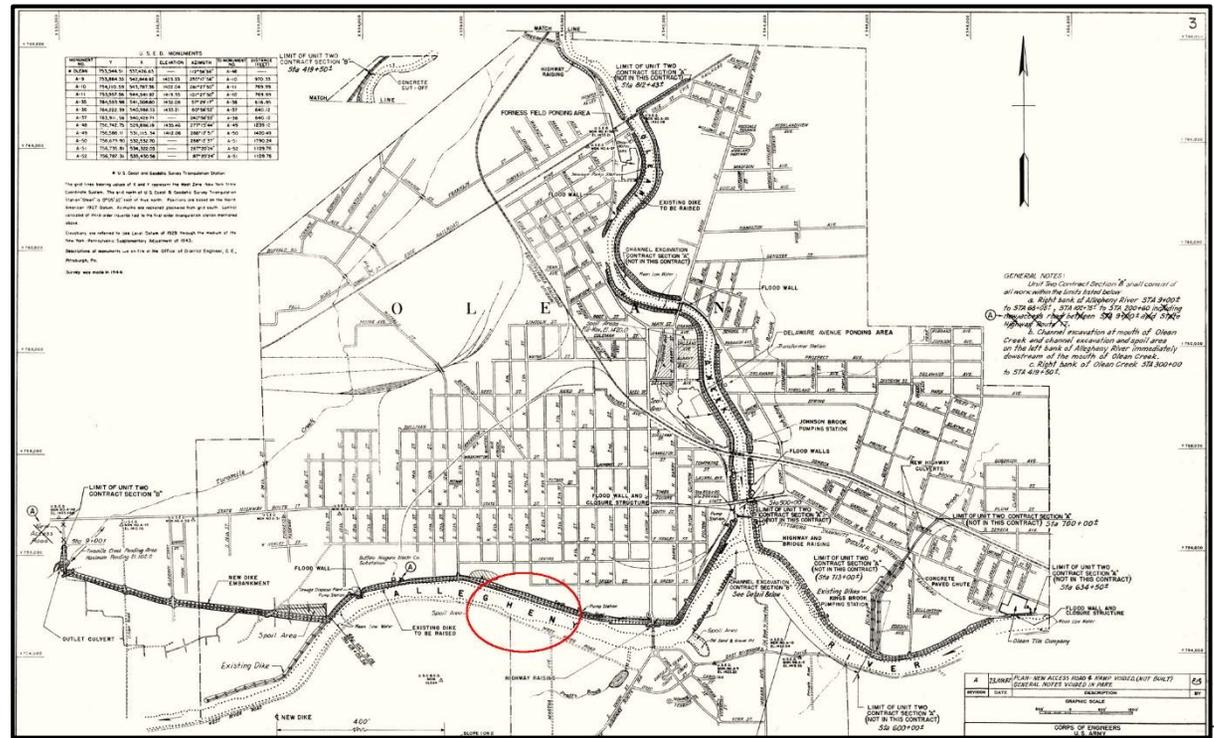


Figure 1. As-built design of the Olean LPP with the approximate footprint of the proposed alteration work shown.

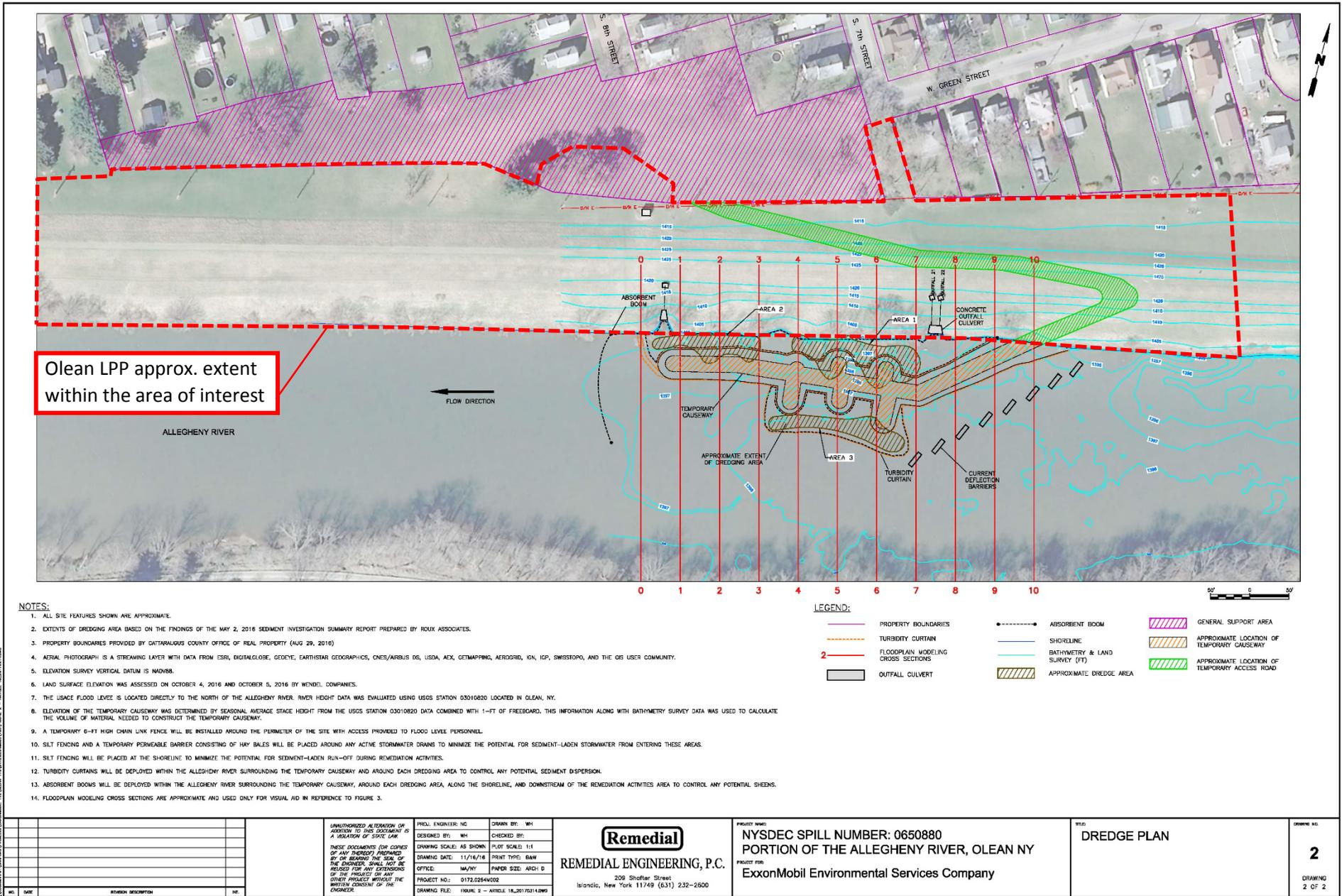


Figure 2. Remedial Engineering dredge plan with the approximate LPP extent within the alteration area shown (based on as-built perpetual easement extents).

According to the New York State Department of Environmental Conservation (NYSDEC) Spill Incidents Database, Spill Number 0650800 was identified on August 14, 2006. The spill was identified by an individual fishing from the north bank of the Allegheny River. Surveys found that petroleum material and impacted sediments extend approximately 350-feet downstream from the eastern outfall culvert and approximately 150-feet into the center of the river. The petroleum material is within sediments 0.5 to 3.8 feet deep. Removal is proposed to occur through mechanical dredging of the petroleum material and any impacted sediments located in the general area of Spill Number 06509800. Although dredge limits are estimated (see Figure 2), Remedial Engineering has stated that dredging activities will continue until all petroleum material and impacted sediments within the dredge area are visually removed to the extent technically practical and feasible. This dredging may extend into the toe of the LPP in order to remove contaminated sediments.

Access to the site over the LPP is proposed to facilitate Exxon's in-water remediation work. Exxon proposed to construct a temporary access road on the LPP which will be approximately 15-feet wide and originate from the property located at 318 South 8th Street in Olean, NY. The temporary access road will extend south over the levee between South 7 and South 6th Streets (Figure 1). Construction of the temporary access road will include a separation layer consisting of load displacement matting, geofabric and geogrid material, and a layer of coarse aggregate to prevent damage to the levee. All temporary access road materials will be removed upon completion of the alteration. The construction of the temporary access route will not involve any soil removal, permanent addition of material, or otherwise cause permanent changes to the existing LPP.

Additionally, a portion of the general support area is proposed to occupy a portion of the LPP (as defined by perpetual easement extents shown on the as-built design; see Figure 2). This area is expected to include equipment and material storage during the construction, as well as provide an emergency muster zone. Exxon will collect, store, and dispose of any and all contaminated media (e.g., soil, water, equipment, etc.) associated with the remediation, at an off-site facility in accordance with applicable laws and regulations. Upon completion of the remediation, all hazardous wastes would be removed from the cleanup site and LPP, the alteration materials would be removed and the LPP would be restored.

5) Alternatives:

- a. No Action: The No Action alternative would be the denial of the Section 408 request. Denial of the request would not allow access to the cleanup site over the Federal Olean LPP, requiring access via the river.

Remedial Engineering considered this alternative, including deploying a small excavator on a barge from a nearby public boat launch. Bathymetric surveys suggest that no navigable path exists within the river. This alternative would potentially require 2,200 feet of navigational dredging to allow the barge to reach the site.

- b. Alternative 1: Requester's Preferred Alternative would approve the Section 408 request and allow the modification of the Federal Olean LPP for the cleanup effort.

6) Environmental Setting: The Olean LPP in the area of the proposed alteration is located along the Allegheny River in the city of Olean in Cattaraugus County, New York. At the proposed alteration site,

the LPP includes a grass-covered levee with scattered woody vegetation at the waterline. The levee is about 13.5 ft tall from the landward side. Two concrete outfall structures exist within the LPP in this area (Figure 1). The river in the vicinity is 3.4 to 7.7 ft deep and about 300 ft wide (Figure 3).

The surrounding area is urban residential. Franchot Park, a city park that includes a bathhouse, wading pool, ball fields, jogging trails, etc, is approximately 0.25 miles east (upstream) along the Allegheny River from the proposed alteration site.

Several freshwater mussels that are protected under the Endangered Species Act are known to exist within this reach of the Allegheny River. These include the clubshell (*Pleurobema clava*), the dwarf wedgemussel (*Alasmidonta heterodon*), and the rayed bean mussel (*Villosa fabalis*), all listed as endangered. No mussels were noted in the alteration area during the many sediment surveys (2013-2016) conducted to characterize the contamination. Northern long-eared bat (*Myotis septentrionalis*) is also known in the area.



Figure 3. Photos of the proposed alteration site.

7) Environmental Effects of the Proposed Action: Per EC 1165-2-216, *Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects*, the U.S. Army Corps of Engineers (USACE) has jurisdiction under Section 408 only over the specific activities or portions of

activities that have the potential to alter the USACE project. Therefore, if a proposed alteration is part of a larger project (and/or its associated features) that extends beyond the USACE project boundaries, only those portions or features of the larger project over which USACE has sufficient control and responsibility are to be included in the USACE environmental review (Table 1). The scope of analysis for the NEPA and environmental compliance evaluations for the Section 408 review are limited to the area of the alteration and those adjacent areas that are directly or indirectly affected by the alteration.

ExxonMobil, or their agent, must acquire all other necessary permissions or authorizations required by federal, state, and local laws or regulations, including required permits from the USACE Regulatory Program (Section 10/404 permits). These permits will consider impacts beyond the proposed alteration to the Olean LPP footprint. In addition, an approval under Section 408 does not grant any property rights or exclusive privileges.

Table 1. Anticipated impacts of the proposed Section 408 activity.

Environmental Parameter	No-Action Alternative	Alternative 1
Land Use & Socio-Economic Conditions	Minor Effect. Denial of the Section 408 request would not allow access to the cleanup site over the Federal Olean LPP, requiring access via the river.	Minor Effect. The current land use patterns would not be significantly affected by this alteration. The local socio-economic conditions may even improve slightly during construction and possibly after construction.
Vegetation and Wildlife Habitat	No Effect. Denial of the request would maintain the status quo.	Minor Effect. The site is predominantly grass which is expected to recolonize quickly after construction. No tree removal is expected, though some pruning will be performed.
Water Quality and Fisheries	Moderate Effect. Denial of the request would require the use of a barge or similar transport vessel deployed from a nearby public boat launch. Bathymetric surveys show that no navigable path exists. This alternative would potentially require navigational dredging, spanning 2,200 ft from the launch to the site.	Minor Effect. Temporary impacts would occur riverwards of the LPP for the cleanup, to include sediment disturbance, increased turbidity, noise, and vibration. Best management practices, including deployment of absorbent booms, turbidity curtains, and current deflectors are expected to minimize these impacts. Post-construction, the site is to be restored to the original, pre-spill condition. The long-term benefit of the cleanup will be the removal of contaminated sediments.
Floodplains	No Effect. Denial of the request would maintain the status quo.	Minor Effect. The alteration is proposed to be located within the floodplain. There will be temporary placement of fills within the floodplain to conduct the work, with the site

		restored to the original condition post-construction.
Noise	Minor Effect. Denial of the request, resulting in the need for 2,200 ft of navigational dredging for access to the site would increase construction duration and associated noise. This would occur adjacent to noise receptors, including residences and parks. Mt. View Cemetery could also be impacted.	Minor Effect. Cleanup activities would temporarily increase noise in the area during construction. However, this alternative minimizes the distance that equipment has to travel, thereby minimizing the area of disturbance, including the reduced potential to impact the nearby park and cemetery.
Aesthetics	Minor Effect. The presence of construction equipment and supplies during construction will have a temporary impact on aesthetics. Denial of the request, resulting in the need for extensive navigational dredging for access to the site would increase construction duration and area impacted	Minor Effect. The presence of construction equipment and supplies during construction will have a temporary impact on aesthetics. Once complete, the site will be restored to the original condition.
Recreation	Minor Effect. Denial of the request, resulting in access from a nearby boat launch and associated navigational dredging, would increase construction duration and have a greater noise and visual disturbance for those using the river and the nearby Franchot Park.	Minor Effect. The levee is used for passive recreation, as shown by the presence of the fisherman that originally located the spill. The construction area would not be accessible during construction, though the area would be reopened upon completion of the work.
Endangered Species	Minor Effect. Denial of the request, resulting in access from a nearby boat launch and associated navigational dredging, would increase riverbed disturbance. Prior to any dredging, surveys would be done and mussels would be relocated outside the area of disturbance.	No Effect. USACE has made a no effect determination under the ESA for the work proposed to be authorized under Section 408. within the LPP footprint. No tree removal will occur, therefore no impacts to northern long-eared bats are expected. No mussels are expected to be present within the LPP footprint as this is largely above the ordinary high water mark. Additionally, Remedial Engineering will work with USACE’s Regulatory Branch to complete Section 7 ESA consultation for their work. They have indicated within their permit application for the dredging (including their work outside the LPP footprint) that, if needed, a pre-dredging survey will be performed in the proposed dredging area. If

		found, freshwater mussel individuals will be moved outside of the proposed dredging area. During sediment removal, silt curtains and absorbent booms will be deployed to contain disturbed sediment in the water column and minimize turbidity that may affect downstream populations.
Historic and Archaeological Resources	No Effect. Although the area of potential effect would be larger due to the need for navigational dredging, due diligence would be undertaken to ensure that no impacts to historic or archaeological resources would occur.	No Effect. Remedial Engineering provided information regarding their proposed action to the NY State Historic Preservation Office (SHPO). IN a letter dated 1 Dec 2016, SHPO determined that no historic properties will be affected by this undertaking.
Traffic	Minor Effect. Movement of equipment, personnel, and materials to and from the site would have a minor impact on local traffic. Flaggers and signage would be used to ensure public safety and limit traffic impacts.	Minor Effect. Movement of equipment, personnel, and materials to and from the site would have a minor impact on local traffic. Flaggers and signage would be used to ensure public safety and limit traffic impacts.
Public Safety	No Effect. Denial of the request would not be expected to impact public safety.	No Effect. The Section 408 engineering review will ensure the continued stability of the LPP; no change to the level of protection of the LPP is anticipated.
Hazardous Wastes	Minor Effect. The objective of the action is to remove about 1,000 cubic yards of petroleum material and impacted sediments from the Allegheny River. The material would be removed and disposed of off-site in accordance with applicable laws and regulations. Clean fill would be used to restore the pre-construction bathymetry of the area upon completion of the cleanup. Decontamination areas would be established for equipment leaving the site.	Minor Effect. ExxonMobil, via its contractor Remedial Engineering, P.C. , proposes to remove about 1,000 cubic yards of petroleum material and impacted sediments from the Allegheny River. Exxon will collect, store, and dispose of any and all contaminated media (e.g., soil, water, equipment, etc.) associated with the remediation, at an off-site facility in accordance with applicable laws and regulations. Clean fill will be used to restore the pre-spill bathymetry of the area upon completion of the cleanup. Decontamination facilities will be established in the general support area, potentially on the LPP footprint. . Upon completion of the remediation, all hazardous wastes would be removed from the cleanup site and LPP, the alteration materials would be

		removed and the LPP would be restored..
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8) Cumulative Effects: Routine operation and maintenance of the LPP by the NYS DEC is anticipated. The USACE 2015 inspection report of the LPP noted several maintenance and repair items, including some unwanted vegetation, animal burrows, and isolated areas of erosion and rutting. A shed in the proposed alteration area was noted as an encroachment in the 2015 inspection.

Cumulative impacts result from the incremental impacts of an action, when added to other past, present, and reasonably foreseeable future actions - regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. Following review of the proposed Project's scale, the resources considered in Table 1, and information made available to the agency, no cumulative effects of the proposed alteration within the Section 408 authority are anticipated. This is because of the short duration of any negative impacts from the proposed alteration and in light of the urban setting of the action as well as the long-term benefit of the proposed cleanup. Temporary construction-related increases in noise and emissions, and temporary, minor impacts to vegetation, aesthetics, recreation, and traffic would not be significant, even if they occur simultaneous to expected repairs/maintenance of the LPP.

9) Coordination: USACE will provide a copy of this report to the appropriate agencies during the public comment period. A 15-day public comment period will occur from **7 August 2017 to 22 August 2017.**

10) Principal Environmental Laws and Executive Orders considered, as applicable, in conjunction with NEPA review.

Public Laws:

- American Indian Religious Freedom Act, 42 U.S.C. 1996 et seq.
- Archeological and Historic Preservation Act, 16 U.S.C. 469 et seq.
- Archeological Resources Protection Act, 16 U.S.C. 470aa-11, et seq.
- Bald and Golden Eagle Protection Act, 16 U.S.C. 668, et seq
- Clean Air Act, as amended, 42 U.S.C. 1857h-7, et seq.
- Clean Water Act, 33 U.S.C 1251 et seq.
- Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 – 9675.
- Endangered Species Act, 16 U.S.C. 1531 et seq.
- Farmland Protection Policy Act, 7 U.S.C. 4201, et seq.
- Fish and Wildlife Conservation Act, 16 U.S.C. 2901-2911, et seq.
- Fish and Wildlife Coordination Act, 16 U.S.C. 661, et seq.
- Historic Sites Act, 16 U.S.C. 461-467, et seq.
- Land and Water Conservation Fund Act, 16 U.S.C. 460/-460/-11, et seq.
- National Environmental Policy Act, 42 U.S.C. 4321, et seq.
- National Historic Preservation Act, 16 U.S.C. 470a, et seq.
- Native American Graves Protection and Repatriation Act, 25 U.S.C. 3001 et seq.
- Noise Control Act of 1972, 42 U.S.C. 4901-4918.
- Resource Conservation and Recovery Act, 42 U.S.C. 6901 et seq.
- Rivers and Harbors Act 33, U.S.C. 401 et seq.
- Safe Drinking Water Act 42 U.S.C. 300 et seq.
- Toxic Substances Control Act, 15 U.S.C. 2601 – 2671.
- Wild and Scenic Rivers Act, 16 U.S.C. 1271, et seq.

Executive Orders (EO):

- 11514 Protection and Enhancement of Environmental Quality
- 11593 Protection and Enhancement of the Cultural Environment
- 11988 Floodplain Management
- 11990 Protection of Wetlands
- 12088 Federal Compliance with Pollution Control Standards
- 12114, Environmental Effects Abroad of Major Federal Actions
- 12898 Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Regulations:

- Advisory Council on Historic Properties, Protection of Historic and Cultural Properties (36 CFR Part 800 et seq.).
- Council on Environmental Quality, Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR Parts 1500-1508).
- U.S. Army Corps of Engineers, ER 200-2-2, Procedures for Implementing NEPA (33 CFR 230).
- U.S. Army Corps of Engineers, EC 1165-2-216, Water Resources Policies and Authorities, Policy and Procedural Guidance for Processing Requests to Alter US Army Corps of Engineers Civil Works Projects, Pursuant to 33 USC 408.
- U.S. Department of Agriculture, Regulations for Implementing the Farmland Protection Policy Act (7 CFR 658).
- U.S. Environmental Protection Agency, Clean Air Act Implementing Regulations (40 CFR Part 50 et seq.).
- U.S. Environmental Protection Agency, Criteria and Standards for the National Pollutant Discharge Elimination System (40 CFR Part 125).

11) Summary/Conclusion: Based on the above analysis, Federal permission for the alteration of the Olean LPP by ExxonMobil, in the manner described above, is not expected to constitute a major Federal action significantly affecting the quality of the human or natural environment, and therefore is not expected to require preparation of an environmental impact statement.

The Corps invites submission of comments of the environmental impact of the approval the Section 408 request. Comments will be considered in determining whether it would be in the best public interest to proceed with the approval. The Corps will consider all submissions received before the expiration date of the public comment period. The nature or scope of the proposal may be changed upon consideration of the comments received. If significant effects on the quality of the human environment are identified, which cannot be mitigated, the Corps will initiate an Environmental Impact Statement, and afford all of the appropriate public participation opportunities attendant to an EIS.

DRAFT FINDING OF NO SIGNIFICANT IMPACT

Section 408 Request to Alter the Olean Local Protection Project for Remediation of Spill Number 0650800 in Cattaragus County, NY

In accordance with the National Environmental Policy Act (NEPA) and implementing regulations, a draft Environmental Assessment (EA) has been developed for proposed permission to alter the federal Olean Local Protection Project (LPP) along the Allegheny River in Olean, New York. The Olean LPP was authorized by Section 10 of the Flood Control Act of 1946. It was constructed by the U.S. Army Corps of Engineers (Corps) between 1948 and 1952. The LPP includes about 7.5 miles of levees, 0.5 miles of floodwalls, 0.6 miles of channel improvements and various appurtenances along Olean Creek and the Allegheny River to reduce the risk of flood damage to the local community.

ExxonMobil Environmental Services Company (ExxonMobil), via its contractor Remedial Engineering, P.C. (Remedial Engineering), proposes to dredge about 1,000 cubic yards of petroleum material and impacted sediments from the Allegheny River adjacent to the LPP to remediate a 2006 spill. Access to the site requires an alteration of the Olean LPP. Additionally, a portion of the cleanup may require excavation into the levee toe and a portion of the general support or staging area may occur on the LPP. The authority to grant permission for temporary or permanent alterations to a federal project is contained in Section 14 of the Rivers & Harbors Act of 1899 and codified in 33 USC 408 (Section 408). Corps reviews ensure that proposed alterations are neither injurious to the public interest nor would they affect the federal project's ability to meet its authorized purpose.

Per Corps guidance, the study analyzed two alternatives including a "No Action" alternative (denial of the Section 408 request) and Alternative 1, the Requester's Preferred Alternative (granting of the Section 408 request). Outside of the 408 process, ExxonMobil or their agent must acquire all other necessary permissions or authorizations required by federal, state, and local laws or regulations, including any required permits from the Corps' Regulatory Program.

The EA determined that the proposed federal action (granting of the Section 408 request) will not result in significant impacts to the natural or human environment. All environmental, social, and economic factors that are relevant to the proposal were considered in this assessment. Anticipated impacts include temporary construction-related increases in noise and emissions, and temporary, minor impacts to vegetation, aesthetics, recreation, and traffic. Best management practices would be used to minimize effects, including use of absorbent booms, turbidity curtains, and decontamination areas. No effects to public safety or to threatened or endangered species are expected. Minor permanent benefits to water quality and the aquatic environment would occur with the completion of the cleanup effort. Overall, effects are expected to be non-significant.

A 15-day public comment period will occur from 7 August 2017 to 22 August 2017. The Corps will consider all submissions received on or before the expiration date of the public comment period. The nature or scope of the proposal may be changed upon consideration of the comments received. If

significant effects on the quality of the human environment are identified during public comment, and cannot be mitigated, the Corps will initiate an Environmental Impact Statement, and afford all of the appropriate public participation opportunities attendant to an EIS.

After having carefully evaluated and balanced all aspects of the Proposed Action, any input received from agencies, organizations, and the interested public, I have reasonably concluded that the proposed project does not constitute a major Federal action significantly affecting the quality of the human environment. Consequently, the preparation of an EIS under the National Environmental Policy Act for this action is not warranted. This Draft Finding of No Significant Impact (FONSI) precedes the Corps of Engineers' final decision on the proposed action.

John P. Lloyd
Colonel, Corps of Engineers
Pittsburgh District Commander

Date