

Instructions for Completing Part 1

Part 1 is to be completed by the applicant or project sponsor. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification.

Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information; indicate whether missing information does not exist, or is not reasonably available to the sponsor; and, when possible, generally describe work or studies which would be necessary to update or fully develop that information.

Applicants/sponsors must complete all items in Sections A & B. In Sections C, D & E, most items contain an initial question that must be answered either “Yes” or “No”. If the answer to the initial question is “Yes”, complete the sub-questions that follow. If the answer to the initial question is “No”, proceed to the next question. Section F allows the project sponsor to identify and attach any additional information. Section G requires the name and signature of the applicant or project sponsor to verify that the information contained in Part 1 is accurate and complete.

A. Project and Applicant/Sponsor Information.

Name of Action or Project:		
Project Location (describe, and attach a general location map):		
Brief Description of Proposed Action (include purpose or need):		
Name of Applicant/Sponsor:		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:
Project Contact (if not same as sponsor; give name and title/role):		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:
Property Owner (if not same as sponsor):		Telephone:
		E-Mail:
Address:		
City/PO:	State:	Zip Code:

B. Government Approvals

B. Government Approvals, Funding, or Sponsorship. (“Funding” includes grants, loans, tax relief, and any other forms of financial assistance.)

Government Entity	If Yes: Identify Agency and Approval(s) Required	Application Date (Actual or projected)
a. City Counsel, Town Board, or Village Board of Trustees <input type="checkbox"/> Yes <input type="checkbox"/> No		
b. City, Town or Village Planning Board or Commission <input type="checkbox"/> Yes <input type="checkbox"/> No		
c. City, Town or Village Zoning Board of Appeals <input type="checkbox"/> Yes <input type="checkbox"/> No		
d. Other local agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
e. County agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
f. Regional agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
g. State agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
h. Federal agencies <input type="checkbox"/> Yes <input type="checkbox"/> No		
<p>i. Coastal Resources.</p> <p><i>i.</i> Is the project site within a Coastal Area, or the waterfront area of a Designated Inland Waterway? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>ii.</i> Is the project site located in a community with an approved Local Waterfront Revitalization Program? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><i>iii.</i> Is the project site within a Coastal Erosion Hazard Area? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>		

C. Planning and Zoning

C.1. Planning and zoning actions.

Will administrative or legislative adoption, or amendment of a plan, local law, ordinance, rule or regulation be the only approval(s) which must be granted to enable the proposed action to proceed? Yes No

- **If Yes**, complete sections C, F and G.
- **If No**, proceed to question C.2 and complete all remaining sections and questions in Part 1

C.2. Adopted land use plans.

a. Do any municipally- adopted (city, town, village or county) comprehensive land use plan(s) include the site where the proposed action would be located? Yes No

If Yes, does the comprehensive plan include specific recommendations for the site where the proposed action would be located? Yes No

b. Is the site of the proposed action within any local or regional special planning district (for example: Greenway; Brownfield Opportunity Area (BOA); designated State or Federal heritage area; watershed management plan; or other?) Yes No

If Yes, identify the plan(s):

c. Is the proposed action located wholly or partially within an area listed in an adopted municipal open space plan, or an adopted municipal farmland protection plan? Yes No

If Yes, identify the plan(s):

C.3. Zoning

a. Is the site of the proposed action located in a municipality with an adopted zoning law or ordinance. Yes No
If Yes, what is the zoning classification(s) including any applicable overlay district?

b. Is the use permitted or allowed by a special or conditional use permit? Yes No

c. Is a zoning change requested as part of the proposed action? Yes No

If Yes,

i. What is the proposed new zoning for the site? _____

C.4. Existing community services.

a. In what school district is the project site located? _____

b. What police or other public protection forces serve the project site?

c. Which fire protection and emergency medical services serve the project site?

d. What parks serve the project site?

D. Project Details

D.1. Proposed and Potential Development

a. What is the general nature of the proposed action (e.g., residential, industrial, commercial, recreational; if mixed, include all components)?

b. a. Total acreage of the site of the proposed action? _____ acres
b. Total acreage to be physically disturbed? _____ acres
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres

c. Is the proposed action an expansion of an existing project or use? Yes No
i. If Yes, what is the approximate percentage of the proposed expansion and identify the units (e.g., acres, miles, housing units, square feet)? % _____ Units: _____

d. Is the proposed action a subdivision, or does it include a subdivision? Yes No
If Yes,

i. Purpose or type of subdivision? (e.g., residential, industrial, commercial; if mixed, specify types)

ii. Is a cluster/conservation layout proposed? Yes No

iii. Number of lots proposed? _____

iv. Minimum and maximum proposed lot sizes? Minimum _____ Maximum _____

e. Will the proposed action be constructed in multiple phases? Yes No

i. If No, anticipated period of construction: _____ months

ii. If Yes:

- Total number of phases anticipated _____
- Anticipated commencement date of phase 1 (including demolition) _____ month _____ year
- Anticipated completion date of final phase _____ month _____ year

• Generally describe connections or relationships among phases, including any contingencies where progress of one phase may determine timing or duration of future phases: _____

f. Does the project include new residential uses? Yes No
 If Yes, show numbers of units proposed.

	<u>One Family</u>	<u>Two Family</u>	<u>Three Family</u>	<u>Multiple Family (four or more)</u>
Initial Phase	_____	_____	_____	_____
At completion	_____	_____	_____	_____
of all phases	_____	_____	_____	_____

g. Does the proposed action include new non-residential construction (including expansions)? Yes No
 If Yes,

i. Total number of structures _____

ii. Dimensions (in feet) of largest proposed structure: _____ height; _____ width; and _____ length

iii. Approximate extent of building space to be heated or cooled: _____ square feet

h. Does the proposed action include construction or other activities that will result in the impoundment of any liquids, such as creation of a water supply, reservoir, pond, lake, waste lagoon or other storage? Yes No
 If Yes,

i. Purpose of the impoundment: _____

ii. If a water impoundment, the principal source of the water: Ground water Surface water streams Other specify: _____

iii. If other than water, identify the type of impounded/contained liquids and their source.

iv. Approximate size of the proposed impoundment. Volume: _____ million gallons; surface area: _____ acres

v. Dimensions of the proposed dam or impounding structure: _____ height; _____ length

vi. Construction method/materials for the proposed dam or impounding structure (e.g., earth fill, rock, wood, concrete):

D.2. Project Operations

a. Does the proposed action include any excavation, mining, or dredging, during construction, operations, or both? Yes No
 (Not including general site preparation, grading or installation of utilities or foundations where all excavated materials will remain onsite)
 If Yes:

i. What is the purpose of the excavation or dredging? _____

ii. How much material (including rock, earth, sediments, etc.) is proposed to be removed from the site?

- Volume (specify tons or cubic yards): _____
- Over what duration of time? _____

iii. Describe nature and characteristics of materials to be excavated or dredged, and plans to use, manage or dispose of them.

iv. Will there be onsite dewatering or processing of excavated materials? Yes No
 If yes, describe. _____

v. What is the total area to be dredged or excavated? _____ acres

vi. What is the maximum area to be worked at any one time? _____ acres

vii. What would be the maximum depth of excavation or dredging? _____ feet

viii. Will the excavation require blasting? Yes No

ix. Summarize site reclamation goals and plan: _____

b. Would the proposed action cause or result in alteration of, increase or decrease in size of, or encroachment into any existing wetland, waterbody, shoreline, beach or adjacent area? Yes No
 If Yes:

i. Identify the wetland or waterbody which would be affected (by name, water index number, wetland map number or geographic description): _____

[A copy of the Wetland Delineation Verification Letter issued by Charles P. Rosenburg of the NYS Dept. of Environmental Conservation on January 22, 2022 is provided at Attachment "B". A copy of the Jurisdictional Determination issued by the U.S. Army Corps of Engineers for 1920 North French Road dated March 14, 2023 is provided at Attachment "C".]

ii. Describe how the proposed action would affect that waterbody or wetland, e.g. excavation, fill, placement of structures, or alteration of channels, banks and shorelines. Indicate extent of activities, alterations and additions in square feet or acres:

iii. Will the proposed action cause or result in disturbance to bottom sediments? Yes No

If Yes, describe: _____

iv. Will the proposed action cause or result in the destruction or removal of aquatic vegetation? Yes No

If Yes:

- acres of aquatic vegetation proposed to be removed: _____
- expected acreage of aquatic vegetation remaining after project completion: _____
- purpose of proposed removal (e.g. beach clearing, invasive species control, boat access): _____
- proposed method of plant removal: _____
- if chemical/herbicide treatment will be used, specify product(s): _____

v. Describe any proposed reclamation/mitigation following disturbance: _____

c. Will the proposed action use, or create a new demand for water? Yes No

If Yes:

i. Total anticipated water usage/demand per day: _____ gallons/day

ii. Will the proposed action obtain water from an existing public water supply? Yes No

If Yes:

- Name of district or service area: _____
- Does the existing public water supply have capacity to serve the proposal? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No
- Do existing lines serve the project site? Yes No

iii. Will line extension within an existing district be necessary to supply the project? Yes No

If Yes:

- Describe extensions or capacity expansions proposed to serve this project: _____
- Source(s) of supply for the district: _____

iv. Is a new water supply district or service area proposed to be formed to serve the project site? Yes No

If Yes:

- Applicant/sponsor for new district: _____
- Date application submitted or anticipated: _____
- Proposed source(s) of supply for new district: _____

v. If a public water supply will not be used, describe plans to provide water supply for the project: _____

vi. If water supply will be from wells (public or private), what is the maximum pumping capacity: _____ gallons/minute.

d. Will the proposed action generate liquid wastes? Yes No

If Yes:

i. Total anticipated liquid waste generation per day: _____ gallons/day

ii. Nature of liquid wastes to be generated (e.g., sanitary wastewater, industrial; if combination, describe all components and approximate volumes or proportions of each): _____

iii. Will the proposed action use any existing public wastewater treatment facilities? Yes No

If Yes:

- Name of wastewater treatment plant to be used: _____
- Name of district: _____
- Does the existing wastewater treatment plant have capacity to serve the project? Yes No
- Is the project site in the existing district? Yes No
- Is expansion of the district needed? Yes No

• Do existing sewer lines serve the project site? Yes No
 • Will a line extension within an existing district be necessary to serve the project? Yes No
 If Yes:
 • Describe extensions or capacity expansions proposed to serve this project: _____

iv. Will a new wastewater (sewage) treatment district be formed to serve the project site? Yes No
 If Yes:
 • Applicant/sponsor for new district: _____
 • Date application submitted or anticipated: _____
 • What is the receiving water for the wastewater discharge? _____

v. If public facilities will not be used, describe plans to provide wastewater treatment for the project, including specifying proposed receiving water (name and classification if surface discharge or describe subsurface disposal plans):

vi. Describe any plans or designs to capture, recycle or reuse liquid waste: _____

e. Will the proposed action disturb more than one acre and create stormwater runoff, either from new point sources (i.e. ditches, pipes, swales, curbs, gutters or other concentrated flows of stormwater) or non-point source (i.e. sheet flow) during construction or post construction? Yes No
 If Yes:
 i. How much impervious surface will the project create in relation to total size of project parcel?
 _____ Square feet or _____ acres (impervious surface)
 _____ Square feet or _____ acres (parcel size)
 ii. Describe types of new point sources. _____

iii. Where will the stormwater runoff be directed (i.e. on-site stormwater management facility/structures, adjacent properties, groundwater, on-site surface water or off-site surface waters)?

 • If to surface waters, identify receiving water bodies or wetlands: _____

 • Will stormwater runoff flow to adjacent properties? Yes No

iv. Does the proposed plan minimize impervious surfaces, use pervious materials or collect and re-use stormwater? Yes No

f. Does the proposed action include, or will it use on-site, one or more sources of air emissions, including fuel combustion, waste incineration, or other processes or operations? Yes No
 If Yes, identify:
 i. Mobile sources during project operations (e.g., heavy equipment, fleet or delivery vehicles)

 ii. Stationary sources during construction (e.g., power generation, structural heating, batch plant, crushers)

 iii. Stationary sources during operations (e.g., process emissions, large boilers, electric generation)

g. Will any air emission sources named in D.2.f (above), require a NY State Air Registration, Air Facility Permit, or Federal Clean Air Act Title IV or Title V Permit? Yes No
 If Yes:
 i. Is the project site located in an Air quality non-attainment area? (Area routinely or periodically fails to meet ambient air quality standards for all or some parts of the year) Yes No
 ii. In addition to emissions as calculated in the application, the project will generate:
 • _____ Tons/year (short tons) of Carbon Dioxide (CO₂)
 • _____ Tons/year (short tons) of Nitrous Oxide (N₂O)
 • _____ Tons/year (short tons) of Perfluorocarbons (PFCs)
 • _____ Tons/year (short tons) of Sulfur Hexafluoride (SF₆)
 • _____ Tons/year (short tons) of Carbon Dioxide equivalent of Hydroflouorocarbons (HFCs)
 • _____ Tons/year (short tons) of Hazardous Air Pollutants (HAPs)

h. Will the proposed action generate or emit methane (including, but not limited to, sewage treatment plants, landfills, composting facilities)? Yes No
 If Yes:
 i. Estimate methane generation in tons/year (metric): _____
 ii. Describe any methane capture, control or elimination measures included in project design (e.g., combustion to generate heat or electricity, flaring): _____

i. Will the proposed action result in the release of air pollutants from open-air operations or processes, such as quarry or landfill operations? Yes No
 If Yes: Describe operations and nature of emissions (e.g., diesel exhaust, rock particulates/dust):

j. Will the proposed action result in a substantial increase in traffic above present levels or generate substantial new demand for transportation facilities or services? [A Traffic Impact Study prepared by Passero Associates dated April 4, 2024 has been submitted with this Amended Part 1 of the Full EAF.] Yes No
 If Yes:
 i. When is the peak traffic expected (Check all that apply): Morning Evening Weekend
 Randomly between hours of _____ to _____.
 ii. For commercial activities only, projected number of truck trips/day and type (e.g., semi trailers and dump trucks): _____

 iii. Parking spaces: Existing _____ Proposed _____ Net increase/decrease _____
 iv. Does the proposed action include any shared use parking? Yes No
 v. If the proposed action includes any modification of existing roads, creation of new roads or change in existing access, describe:

 vi. Are public/private transportation service(s) or facilities available within 1/2 mile of the proposed site? Yes No
 vii. Will the proposed action include access to public transportation or accommodations for use of hybrid, electric or other alternative fueled vehicles? Yes No
 viii. Will the proposed action include plans for pedestrian or bicycle accommodations for connections to existing pedestrian or bicycle routes? Yes No

k. Will the proposed action (for commercial or industrial projects only) generate new or additional demand for energy? Yes No
 If Yes:
 i. Estimate annual electricity demand during operation of the proposed action: _____

 ii. Anticipated sources/suppliers of electricity for the project (e.g., on-site combustion, on-site renewable, via grid/local utility, or other):

 iii. Will the proposed action require a new, or an upgrade, to an existing substation? Yes No

l. Hours of operation. Answer all items which apply.

<p>i. During Construction:</p> <ul style="list-style-type: none"> • Monday - Friday: _____ • Saturday: _____ • Sunday: _____ • Holidays: _____ 	<p>ii. During Operations:</p> <ul style="list-style-type: none"> • Monday - Friday: _____ • Saturday: _____ • Sunday: _____ • Holidays: _____
--	---

m. Will the proposed action produce noise that will exceed existing ambient noise levels during construction, operation, or both? Yes No
 If yes:
 i. Provide details including sources, time of day and duration:

ii. Will the proposed action remove existing natural barriers that could act as a noise barrier or screen? Yes No
 Describe: _____

n. Will the proposed action have outdoor lighting? Yes No
 If yes:
 i. Describe source(s), location(s), height of fixture(s), direction/aim, and proximity to nearest occupied structures:

ii. Will proposed action remove existing natural barriers that could act as a light barrier or screen? Yes No
 Describe: _____

o. Does the proposed action have the potential to produce odors for more than one hour per day? Yes No
 If Yes, describe possible sources, potential frequency and duration of odor emissions, and proximity to nearest occupied structures: _____

p. Will the proposed action include any bulk storage of petroleum (combined capacity of over 1,100 gallons) or chemical products 185 gallons in above ground storage or any amount in underground storage? Yes No
 If Yes:
 i. Product(s) to be stored _____
 ii. Volume(s) _____ per unit time _____ (e.g., month, year)
 iii. Generally, describe the proposed storage facilities: _____

q. Will the proposed action (commercial, industrial and recreational projects only) use pesticides (i.e., herbicides, insecticides) during construction or operation? Yes No
 If Yes:
 i. Describe proposed treatment(s):

ii. Will the proposed action use Integrated Pest Management Practices? Yes No

r. Will the proposed action (commercial or industrial projects only) involve or require the management or disposal of solid waste (excluding hazardous materials)? Yes No
 If Yes:
 i. Describe any solid waste(s) to be generated during construction or operation of the facility:
 • Construction: _____ tons per _____ (unit of time)
 • Operation : _____ tons per _____ (unit of time)
 ii. Describe any proposals for on-site minimization, recycling or reuse of materials to avoid disposal as solid waste:
 • Construction: _____

 • Operation: _____

 iii. Proposed disposal methods/facilities for solid waste generated on-site:
 • Construction: _____

 • Operation: _____

s. Does the proposed action include construction or modification of a solid waste management facility? Yes No
 If Yes:
 i. Type of management or handling of waste proposed for the site (e.g., recycling or transfer station, composting, landfill, or other disposal activities): _____
 ii. Anticipated rate of disposal/processing:
 • _____ Tons/month, if transfer or other non-combustion/thermal treatment, or
 • _____ Tons/hour, if combustion or thermal treatment
 iii. If landfill, anticipated site life: _____ years

t. Will the proposed action at the site involve the commercial generation, treatment, storage, or disposal of hazardous waste? Yes No
 If Yes:
 i. Name(s) of all hazardous wastes or constituents to be generated, handled or managed at facility: _____

 ii. Generally describe processes or activities involving hazardous wastes or constituents: _____

 iii. Specify amount to be handled or generated _____ tons/month
 iv. Describe any proposals for on-site minimization, recycling or reuse of hazardous constituents: _____

 v. Will any hazardous wastes be disposed at an existing offsite hazardous waste facility? Yes No
 If Yes: provide name and location of facility: _____

 If No: describe proposed management of any hazardous wastes which will not be sent to a hazardous waste facility:

E. Site and Setting of Proposed Action

E.1. Land uses on and surrounding the project site

a. Existing land uses.
 i. Check all uses that occur on, adjoining and near the project site.
 Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Aquatic Other (specify): _____
 ii. If mix of uses, generally describe:

b. Land uses and covertypes on the project site.

Land use or Covertypes	Current Acreage	Acreage After Project Completion	Change (Acres +/-)
• Roads, buildings, and other paved or impervious surfaces			
• Forested			
• Meadows, grasslands or brushlands (non-agricultural, including abandoned agricultural)			
• Agricultural (includes active orchards, field, greenhouse etc.)			
• Surface water features (lakes, ponds, streams, rivers, etc.)			
• Wetlands (freshwater or tidal)			
• Non-vegetated (bare rock, earth or fill)			
• Other Describe: _____ _____			

c. Is the project site presently used by members of the community for public recreation? Yes No
i. If Yes: explain: _____

d. Are there any facilities serving children, the elderly, people with disabilities (e.g., schools, hospitals, licensed day care centers, or group homes) within 1500 feet of the project site? Yes No
If Yes,
i. Identify Facilities:

e. Does the project site contain an existing dam? Yes No
If Yes:
i. Dimensions of the dam and impoundment:

- Dam height: _____ feet
- Dam length: _____ feet
- Surface area: _____ acres
- Volume impounded: _____ gallons OR acre-feet

ii. Dam's existing hazard classification: _____
iii. Provide date and summarize results of last inspection:

f. Has the project site ever been used as a municipal, commercial or industrial solid waste management facility, or does the project site adjoin property which is now, or was at one time, used as a solid waste management facility? Yes No
If Yes:
i. Has the facility been formally closed? Yes No

- If yes, cite sources/documentation: _____

ii. Describe the location of the project site relative to the boundaries of the solid waste management facility:

g. Have hazardous wastes been generated, treated and/or disposed of at the site, or does the project site adjoin property which is now or was at one time used to commercially treat, store and/or dispose of hazardous waste? Yes No
If Yes:
i. Describe waste(s) handled and waste management activities, including approximate time when activities occurred:

h. Potential contamination history. Has there been a reported spill at the proposed project site, or have any remedial actions been conducted at or adjacent to the proposed site? Yes No
If Yes:
i. Is any portion of the site listed on the NYSDEC Spills Incidents database or Environmental Site Remediation database? Check all that apply: Yes No
 Yes – Spills Incidents database Provide DEC ID number(s): _____
 Yes – Environmental Site Remediation database Provide DEC ID number(s): _____
 Neither database
ii. If site has been subject of RCRA corrective activities, describe control measures: _____

iii. Is the project within 2000 feet of any site in the NYSDEC Environmental Site Remediation database? Yes No
If yes, provide DEC ID number(s): _____
iv. If yes to (i), (ii) or (iii) above, describe current status of site(s):

v. Is the project site subject to an institutional control limiting property uses? Yes No

- If yes, DEC site ID number: _____
- Describe the type of institutional control (e.g., deed restriction or easement): _____
- Describe any use limitations: _____
- Describe any engineering controls: _____
- Will the project affect the institutional or engineering controls in place? Yes No
- Explain: _____

E.2. Natural Resources On or Near Project Site

a. What is the average depth to bedrock on the project site? _____ feet

b. Are there bedrock outcroppings on the project site? Yes No
 If Yes, what proportion of the site is comprised of bedrock outcroppings? _____%

c. Predominant soil type(s) present on project site: _____ %
 _____ %
 _____ %

d. What is the average depth to the water table on the project site? Average: _____ feet

e. Drainage status of project site soils: Well Drained: _____ % of site
 Moderately Well Drained: _____ % of site
 Poorly Drained _____ % of site

f. Approximate proportion of proposed action site with slopes: 0-10%: _____ % of site
 10-15%: _____ % of site
 15% or greater: _____ % of site

g. Are there any unique geologic features on the project site? Yes No
 If Yes, describe: _____

h. Surface water features.

i. Does any portion of the project site contain wetlands or other waterbodies (including streams, rivers, ponds or lakes)? Yes No

ii. Do any wetlands or other waterbodies adjoin the project site? Yes No
 If Yes to either *i* or *ii*, continue. If No, skip to E.2.i.

iii. Are any of the wetlands or waterbodies within or adjoining the project site regulated by any federal, state or local agency? Yes No

iv. For each identified regulated wetland and waterbody on the project site, provide the following information:

- Streams: Name _____ Classification _____
- Lakes or Ponds: Name _____ Classification _____
- Wetlands: Name _____ Approximate Size _____
- Wetland No. (if regulated by DEC) _____

v. Are any of the above water bodies listed in the most recent compilation of NYS water quality-impaired waterbodies? Yes No
 If yes, name of impaired water body/bodies and basis for listing as impaired: _____

i. Is the project site in a designated Floodway? Yes No

j. Is the project site in the 100-year Floodplain? Yes No

k. Is the project site in the 500-year Floodplain? Yes No

l. Is the project site located over, or immediately adjoining, a primary, principal or sole source aquifer? Yes No
 If Yes:
 i. Name of aquifer: _____

m. Identify the predominant wildlife species that occupy or use the project site: _____ _____ _____	
n. Does the project site contain a designated significant natural community? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Describe the habitat/community (composition, function, and basis for designation): _____ _____ <i>ii.</i> Source(s) of description or evaluation: _____ <i>iii.</i> Extent of community/habitat: <ul style="list-style-type: none"> • Currently: _____ acres • Following completion of project as proposed: _____ acres • Gain or loss (indicate + or -): _____ acres 	
o. Does project site contain any species of plant or animal that is listed by the federal government or NYS as endangered or threatened, or does it contain any areas identified as habitat for an endangered or threatened species? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Species and listing (endangered or threatened): _____ _____ _____	
p. Does the project site contain any species of plant or animal that is listed by NYS as rare, or as a species of special concern? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Species and listing: _____ _____	
q. Is the project site or adjoining area currently used for hunting, trapping, fishing or shell fishing? <input type="checkbox"/> Yes <input type="checkbox"/> No If yes, give a brief description of how the proposed action may affect that use: _____ _____	
E.3. Designated Public Resources On or Near Project Site	
a. Is the project site, or any portion of it, located in a designated agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, provide county plus district name/number: _____	
b. Are agricultural lands consisting of highly productive soils present? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>i.</i> If Yes: acreage(s) on project site? _____ <i>ii.</i> Source(s) of soil rating(s): _____	
c. Does the project site contain all or part of, or is it substantially contiguous to, a registered National Natural Landmark? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> Nature of the natural landmark: <input type="checkbox"/> Biological Community <input type="checkbox"/> Geological Feature <i>ii.</i> Provide brief description of landmark, including values behind designation and approximate size/extent: _____ _____ _____	
d. Is the project site located in or does it adjoin a state listed Critical Environmental Area? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes: <i>i.</i> CEA name: _____ <i>ii.</i> Basis for designation: _____ <i>iii.</i> Designating agency and date: _____	

<p>e. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Nature of historic/archaeological resource: <input type="checkbox"/> Archaeological Site <input type="checkbox"/> Historic Building or District</p> <p style="margin-left: 20px;">ii. Name: _____</p> <p style="margin-left: 20px;">iii. Brief description of attributes on which listing is based: _____</p>
<p>f. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>g. Have additional archaeological or historic site(s) or resources been identified on the project site? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Describe possible resource(s): _____</p> <p style="margin-left: 20px;">ii. Basis for identification: _____</p>
<p>h. Is the project site within five miles of any officially designated and publicly accessible federal, state, or local scenic or aesthetic resource? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Identify resource: _____</p> <p style="margin-left: 20px;">ii. Nature of, or basis for, designation (e.g., established highway overlook, state or local park, state historic trail or scenic byway, etc.): _____</p> <p style="margin-left: 20px;">iii. Distance between project and resource: _____ miles.</p>
<p>i. Is the project site located within a designated river corridor under the Wild, Scenic and Recreational Rivers Program 6 NYCRR 666? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes:</p> <p style="margin-left: 20px;">i. Identify the name of the river and its designation: _____</p> <p style="margin-left: 20px;">ii. Is the activity consistent with development restrictions contained in 6NYCRR Part 666? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>

F. Additional Information

Attach any additional information which may be needed to clarify your project.

If you have identified any adverse impacts which could be associated with your proposal, please describe those impacts plus any measures which you propose to avoid or minimize them.

G. Verification

I certify that the information provided is true to the best of my knowledge.

Applicant/Sponsor Name _____ Date _____

Signature Sean Hopkins _____ Title _____



Disclaimer: The EAF Mapper is a screening tool intended to assist project sponsors and reviewing agencies in preparing an environmental assessment form (EAF). Not all questions asked in the EAF are answered by the EAF Mapper. Additional information on any EAF question can be obtained by consulting the EAF Workbooks. Although the EAF Mapper provides the most up-to-date digital data available to DEC, you may also need to contact local or other data sources in order to obtain data not provided by the Mapper. Digital data is not a substitute for agency determinations.



B.i.i [Coastal or Waterfront Area]	No
B.i.ii [Local Waterfront Revitalization Area]	No
C.2.b. [Special Planning District]	Yes - Digital mapping data are not available for all Special Planning Districts. Refer to EAF Workbook.
C.2.b. [Special Planning District - Name]	NYS Heritage Areas:West Erie Canal Corridor
E.1.h [DEC Spills or Remediation Site - Potential Contamination History]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Listed]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.i [DEC Spills or Remediation Site - Environmental Site Remediation Database]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.1.h.iii [Within 2,000' of DEC Remediation Site]	No
E.2.g [Unique Geologic Features]	No
E.2.h.i [Surface Water Features]	Yes
E.2.h.ii [Surface Water Features]	Yes
E.2.h.iii [Surface Water Features]	Yes - Digital mapping information on local and federal wetlands and waterbodies is known to be incomplete. Refer to EAF Workbook.
E.2.h.iv [Surface Water Features - Stream Name]	837-44
E.2.h.iv [Surface Water Features - Stream Classification]	C
E.2.h.iv [Surface Water Features - Wetlands Name]	Federal Waters, NYS Wetland
E.2.h.iv [Surface Water Features - Wetlands Size]	NYS Wetland (in acres):103.0, NYS Wetland (in acres):38.7
E.2.h.iv [Surface Water Features - DEC Wetlands Number]	TE-18, TE-19

E.2.h.v [Impaired Water Bodies]	No
E.2.i. [Floodway]	No
E.2.j. [100 Year Floodplain]	Yes
E.2.k. [500 Year Floodplain]	Yes
E.2.l. [Aquifers]	No
E.2.n. [Natural Communities]	No
E.2.o. [Endangered or Threatened Species]	No
E.2.p. [Rare Plants or Animals]	No
E.3.a. [Agricultural District]	No
E.3.c. [National Natural Landmark]	No
E.3.d [Critical Environmental Area]	No
E.3.e. [National or State Register of Historic Places or State Eligible Sites]	Digital mapping data are not available or are incomplete. Refer to EAF Workbook.
E.3.f. [Archeological Sites]	No
E.3.i. [Designated River Corridor]	No

TOWN OF AMHERST
 State Environmental Quality Review
ENVIRONMENTAL ASSESSMENT FORM
-- ADDENDUM --

1. For each applicable category of proposed new structures, including additions to existing structures, provide the following information for all soil types on the project site (*according to Soil Survey of Erie County, NY; Table 11, Building Site Development, pp 294-305*):

Soil Name	Shallow excavations	Dwellings without basements	Dwellings with basements	Small commercial buildings	Local roads and streets
Getzville silt loam	X	X	X	X	X
Swormville clay loam	X	X	X	X	X
Wayland soils complex	X	X	X	X	X

2. Is your property located: On Youngs Road between Dodge and Klein Roads? Yes No
 On Wehrle Dr. between Spindrift Dr. and Oakwood Rd? Yes No

If so, the property may be within an area of the Town that is affected by a moratorium on connections to the sanitary sewer system.

3. Are there alternative locations on the site for this project? Yes No

4. Location and size of real property owned by petitioner within one (1) mile of subject proposal:
1790 & 1920 North French Road and a portion of 999 Campbell Boulevard - 62.0 +/- acres total

5. Are you aware of current or future plans or intentions by others in the Town of Amherst to develop property within 1000± ft. of the present project request: Yes No

Describe _____

(Potential environmental impacts from adjacent or nearby projects undergoing the approval process will receive a coordinated environmental review to determine cumulative effects on common receivers (e.g. traffic and drainage corridors) and other relevant environmental concerns.)

6. Maximum number of vehicular trips to be generated per peak hour upon completion of project 152
 Source: Traffic Impact Study performed by Passero Associates

7. Will blasting occur during construction? Yes No

8. Does the project propose to connect and be tributary to the public sanitary sewer system? Yes No

9. Proposed net additional gallons per day (gpd) of sanitary sewer discharge upon completion of project:
72,450 average flow 281,533 peak flow.

(Average flows of 2,500 gpd or greater will require an Engineer's Report that includes a detailed downstream sewer capacity analysis and the identification of and commitment to required I/I offset work during peak wastewater flow conditions.)

10. Based on the Town's 2011 Reconnaissance Level Survey of Historic Resources, is your property 'blue-rated' for historic significance? Yes No

**Attachment A of Part 1 of Full EAF -
List of Parcels Comprising the
Project Site**

**ATTACHMENT “A” OF PART 1 OF FULL ENVIRONMENTAL ASSESSMENT
FORM – LIST OF PARCELS COMPRISING THE PROJECT SITE AND
OWNERSHIP INFORMATION**

1. 1790 North French Road [SBL No. 27.04-1-12] – Owner: Anthony Cimato
2. 1920 North French Road [SBL No. 27.04-1-20] – Owner: North Forest Development Corp.
3. Portion of 999 Campbell Boulevard [SBL No. 27.00-2-29] – Owner: SBLC Development Corp.

**Attachment B of Part 1 of Full EAF -
Wetland Delineation Verification Letter
issued by Charles P. Rosenberg of the
NYS Dept. of Environmental
Conservation on January 22, 2022**

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, Region 9
700 Delaware Avenue, Buffalo, NY 14209
P: (716) 851-7010 | F: (716) 851-7005
www.dec.ny.gov

January 22, 2024

Fred Cimato
Cimato Enterprises
9220 Transit Road
East Amherst, New York 14051

Dear Fred Cimato:

Wetland TE-18 Delineation Verification SBLC Property Town of Amherst, Erie County

This letter serves as notification that I verified the wetland delineation performed by Earth Dimensions, Inc. (EDI) of Freshwater Wetland TE-18 within the SBLC property (1790 & 1860 North French Road, 999 Campbell Blvd; Parcels 27.00-2-29; 27.04-1-16.1; & 27.04-1-12) in the Town of Amherst, Erie County. I field inspected EDI's delineated wetland boundaries on July 26, 2023. I verified a portion of EDI-delineated wetland W2, from delineation flags W2-1 to W2-40 and W2-99 to W2-143, is part of State-jurisdictional Freshwater Wetland TE-18 and that the location of this wetland is accurately depicted in EDI's delineation map (Figure 6, enclosed here) of their April 20, 2023 wetland delineation report. A 100-foot wide regulated adjacent area surrounds Wetland TE-18.

My field inspection also determined the following areas are not part of Wetland TE-18 since they are located greater than 50 meters from the field-delineated boundary of wetland W2/Wetland TE-18: the remaining portion of EDI-delineated wetland W2 (north of delineation flags W2-40 and W2-99), EDI-delineated wetlands W1 and W3, and wetlands observed within the adjoining 1920 North French Road parcel.

Please note that Wetland TE-19 is no longer a State-regulated freshwater wetland following a November 2016 field inspection that determined the total area of its associated wetlands is less than the 12.4-acre size threshold for state wetlands jurisdiction and the wetlands do not qualify for state wetlands jurisdiction under the NYSDEC's "unusual local importance" designation.

Please be aware that wetland boundaries may change over time and this letter does not fix wetland boundaries indefinitely. If you would like to document the precise boundaries of the wetlands that comprise Wetland TE-18 relative to the property boundaries, it is your responsibility to have the wetland boundaries surveyed. If you choose to complete a survey, the wetland boundary survey map should be submitted to me for verification. A copy of this Department's *Requirements for Wetland Survey and Mapping* is enclosed. Please note that a surveyed wetland boundary that has been verified by this Department will be considered valid for five years.



Fred Cimato
January 22, 2024
Page 2

In 1975, the New York State Legislature passed the Freshwater Wetlands Act to preserve and protect wetlands and their functions, such as flood protection and fish and wildlife habitat. The New York State Department of Environmental Conservation is required to map all wetlands protected by this law, and to make those maps available for inspection in all local government clerks' offices. Certain activities within the wetland or its regulated 100-foot adjacent area require a permit from this Department, including but not limited to filling, clearing vegetation, draining, and construction. Contact our Division of Environmental Permits Office for information about permit requirements at:

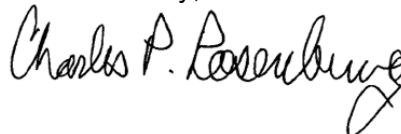
New York State Department of Environmental Conservation
Division of Environmental Permits
700 Delaware Avenue
Buffalo, New York 14209
Telephone: (716) 851-7165

Finally, please be advised that the U.S. Army Corps of Engineers may also have wetland and stream jurisdiction irrespective of the Department of Environmental Conservation. For more information, you may contact the Corps at:

United States Army Corps of Engineers Regulatory Branch
478 Main Street
Buffalo, New York 14202
Telephone: (716) 879-4330

If you have any questions about this wetland delineation verification, feel free to contact me in the Buffalo office at (716) 851-7024 or Charles.Rosenburg@dec.ny.gov.

Sincerely,



Charles P. Rosenberg
Region 9 BEH Habitat Protection Manager

CPR:ck

Encl: Earth Dimensions Wetland Delineation Map (Figure 6)
Requirements for Wetland Survey and Mapping

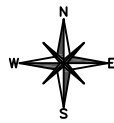
cc: Tom Somerville, Earth Dimensions, Inc.
Wetland TE-18 file

Figure 6 - Wetland Delineation Map

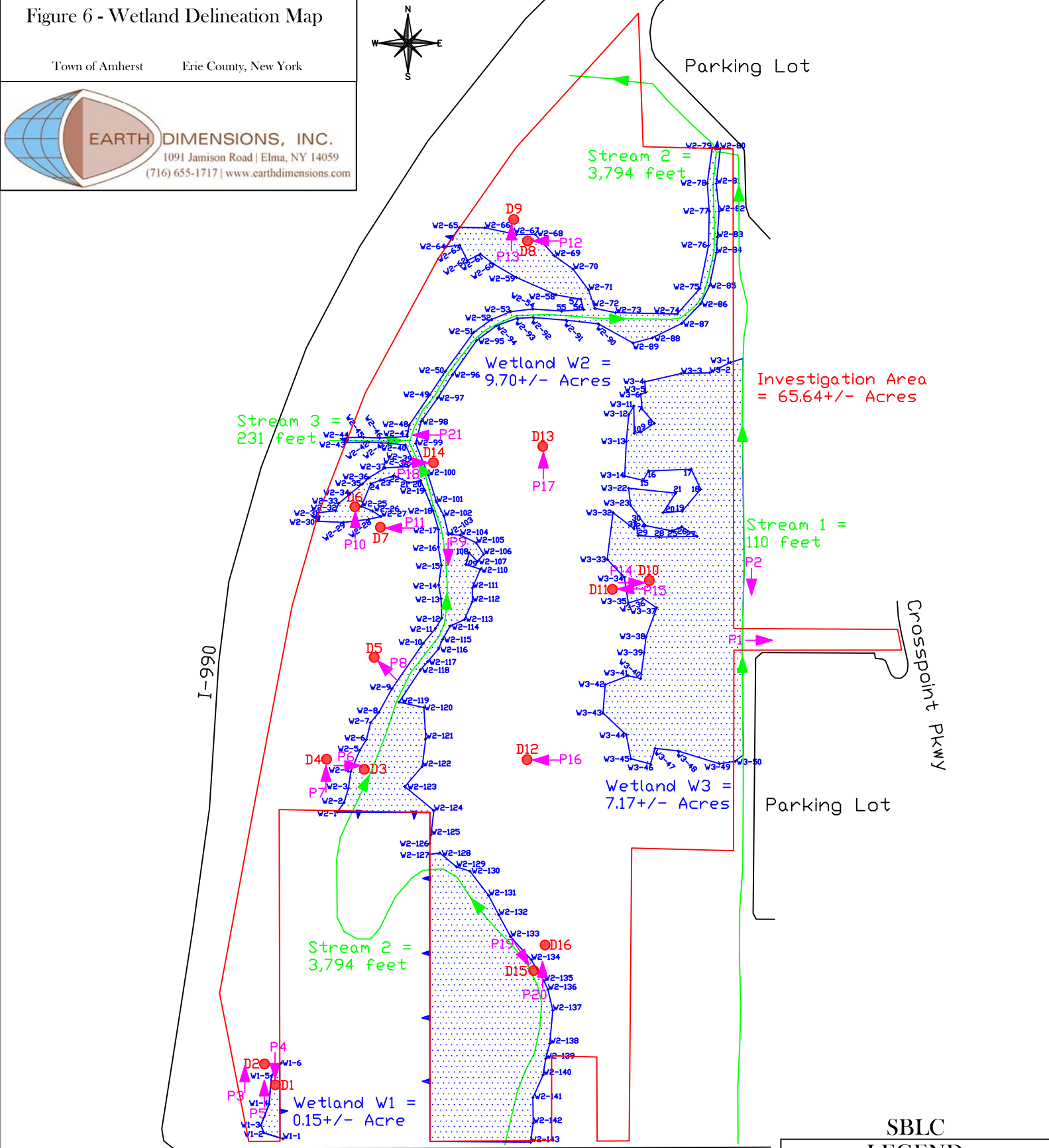
Town of Amherst Erie County, New York



EARTH DIMENSIONS, INC.
 1091 Jamison Road | Elma, NY 14059
 (716) 655-1717 | www.earthdimensions.com



Parking Lot



Investigation Area = 65.64 +/- Acres

Stream 3 = 231 feet

Wetland W2 = 9.70 +/- Acres

Stream 1 = 110 feet

Wetland W3 = 7.17 +/- Acres

Stream 2 = 3,794 feet

Wetland W1 = 0.15 +/- Acre

I-990

Crosspoint Pkwy

North French

Parking Lot

SBLC LEGEND

	Limits of Investigation
	Streams
	Wetland Boundary Flag
	Wetland Area
	Photo Location
	Data Point Location

Scale:
Map Date: April 13, 2023/ TJS for EDI Revised:
Base Map Provided By: Trimble Geo 7X
File Name: Delineation Map.dwg
EDI Project Code: W23E07a

**Attachment C of Part 1 of Full EAF -
Jurisdictional Determination issued
by the U.S. Army Corps of
Engineers for 1920 North French
Road dated March 14, 2023**



DEPARTMENT OF THE ARMY
US ARMY CORPS OF ENGINEERS, BUFFALO DISTRICT
478 MAIN STREET
BUFFALO, NY 14202-3278

March 14, 2024

Regulatory Branch

SUBJECT: Approved Jurisdictional Determination for Department of the Army
Processing No. LRB-2023-00911

Elliot Lasky
PO Box 1454
Williamsville, New York 14231
Email: elasky@forbesdevcorp.com

Dear Mr. Lasky:

I have reviewed the approved jurisdictional determination (JD) request submitted by Earth Dimensions, Inc. for an for the approximate 5.71-acre review area located north and adjacent to North French Road, in the Town of Amherst, Erie County, New York (latitude 43.0351 N, and longitude -78.7532 W), as shown on sheets 1-2 of 2.

I have determined that the review area as depicted on attached Sheets 1-2 of 2 is comprised entirely of dry land and contains no potential aquatic resources regulated under Section 404 of the Clean Water Act or Section 10 of the Rivers and Harbors Act of 1899. Therefore, a Department of Army permit is not required for any activities occurring within the review area.

Enclosed is an approved JD. This approved JD will remain valid for a period of five (5) years from the date of this correspondence unless new information warrants revision of the approved JD before the expiration date. At the end of this period, a new aquatic resource delineation will be required to support any request for a new JD.

Further, the delineation included herein has been conducted to identify the location and extent of the aquatic resource boundaries and/or the jurisdictional status of aquatic resources for purposes of the Clean Water Act for the particular review area identified in this request. This delineation and/or jurisdictional 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 discuss the applicability of a certified wetland determination with the local USDA service center, prior to starting work.

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

Regulatory Branch

SUBJECT: Approved Jurisdictional Determination for Department of the Army Processing No. LRB-2023-00911

Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal the above JD, 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:

Katherine McCafferty
Regulatory Appeals Officer
US Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10780
Cincinnati, Ohio 45202-3222
Phone: 513-684-2699 Fax: 513-684-2460
e-mail: katherine.a.mccafferty@usace.army.mil

In order for an RFA to be accepted by the Corps, the Corps must determine that it is complete; that it meets the criteria 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 12, 2024**.

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

A copy of this letter has been sent to Earth Dimensions, Inc.

Questions pertaining to this matter should be directed to me at (716) 879-4240, by writing to the following address: U.S. Army Corps of Engineers, 478 Main Street, Buffalo, New York 14202, or by e-mail at: Shaina.R.Souder@usace.army.mil

Sincerely,



Shaina Souder
Biologist

Enclosures



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS, BUFFALO DISTRICT
478 MAIN STREET
BUFFALO, NEW YORK 14202-3278

CELRB-TD-R

14 March 2024

MEMORANDUM FOR RECORD

SUBJECT: US Army Corps of Engineers (Corps) Approved Jurisdictional Determination in accordance with the "Revised Definition of 'Waters of the United States'"; (88 FR 3004 (January 18, 2023) as amended by the "Revised Definition of 'Waters of the United States'; Conforming" (8 September 2023) ,¹ *LRB-2023-00911 [MFR 1 of 1]*²

BACKGROUND. An Approved Jurisdictional Determination (AJD) is a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. AJDs are clearly designated appealable actions and will include a basis of JD with the document.³ AJDs are case-specific and are typically made in response to a request. AJDs are valid for a period of five years unless new information warrants revision of the determination before the expiration date or a District Engineer has identified, after public notice and comment, that specific geographic areas with rapidly changing environmental conditions merit re-verification on a more frequent basis.⁴

On January 18, 2023, the Environmental Protection Agency (EPA) and the Department of the Army ("the agencies") published the "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule"). On September 8, 2023, the agencies published the "Revised Definition of 'Waters of the United States'; Conforming", which amended the 2023 Rule to conform to the 2023 Supreme Court decision in *Sackett v. EPA*, 598 U.S., 143 S. Ct. 1322 (2023) ("*Sackett*").

This Memorandum for Record (MFR) constitutes the basis of jurisdiction for a Corps AJD as defined in 33 CFR §331.2. For the purposes of this AJD, we have relied on Section 10 of the Rivers and Harbors Act of 1899 (RHA),⁵ the 2023 Rule as amended,

¹ While the Revised Definition of "Waters of the United States"; Conforming had no effect on some categories of waters covered under the CWA, and no effect on any waters covered under RHA, all categories are included in this Memorandum for Record for efficiency.

² When documenting aquatic resources within the review area that are jurisdictional under the Clean Water Act (CWA), use an additional MFR and group the aquatic resources on each MFR based on the TNW, the territorial seas, or interstate water that they are connected to. Be sure to provide an identifier to indicate when there are multiple MFRs associated with a single AJD request (i.e., number them 1, 2, 3, etc.).

³ 33 CFR 331.2.

⁴ Regulatory Guidance Letter 05-02.

⁵ USACE has authority under both Section 9 and Section 10 of the Rivers and Harbors Act of 1899 but for convenience, in this MFR, jurisdiction under RHA will be referred to as Section 10.

as well as other applicable guidance, relevant case law, and longstanding practice in evaluating jurisdiction.

1. SUMMARY OF CONCLUSIONS.

- a. The review area is comprised entirely of dry land (i.e., there are no waters such as streams, rivers, wetlands, lakes, ponds, tidal waters, ditches, and the like in the entire review area and there are no areas that have previously been determined to be jurisdictional under the Rivers and Harbors Act of 1899 in the review area).

A review of the submitted delineation report, which included wetland data points, showed no evidence of wetland criteria (hydrology, hydrophytic vegetation, and hydric soils) being present, and no evidence of aquatic resources/waters within the 5.71-acre review area, as described in item 3 below and as shown on attached map sheets 1 and 2 of 2.

During a September 18, 2023 site visit, the forested area was walked through from the north. Specifically, I checked the location of Data point 2, due to the mixed vegetation (hydrophytic and upland vegetation) recorded on the data form. The forested area consisted of Facultative and Facultative Wet vegetation with some upland species intermixed; the area seemed remnant or transitional of wetland but lacked hydrology throughout the site. The adjacent property to the west was walked the same day and similar forested and non-forested areas had evidence of hydrology (standing water, saturation, drainage patterns) and none of these things were observed on this site. The observations made during the site visit were consistent with the dry land reported in the submitted delineation report.

An in-office resource review supports that there are no aquatic resources within the review area. The U.S. Geographical Survey topographic map does not show waters within the review area but does show wetland symbols north of the review area and a dotted, blue-line stream feature to the east of the review area starting at the northeast corner (outside the review area). The U.S. Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) web soil survey listed the following soils within the review area: Ge – Getzville silt loam with a hydric rating of 85 within the forested portion of the review area and Sw – Swormville clay loam with a hydric rating of 10 located in the maintained residential portion of the review area. The soils information supports that there is possibility of wetland conditions forming in these soils. The U.S. Fish and Wildlife Service (USFWS) National Wetland Inventory (NWI) maps do shows wetland in the forested area of the review area, labeled as PFO1Bd – [P] Palustrine [FO] Forested [1] Broad-leafed deciduous [B] Seasonally Saturated [d] partially drained/ditched and another water adjacent to the review area to the east consisting of a blue-line labeled R4SBC – [R] Riverine [SB] Streambed, [C]

CELRB-TD-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of Sackett v. EPA, 143 S. Ct. 1322 (2023), LRB-2023-00911

seasonally flooded. A review of aerial imagery suggests some saturation some areas in the forested areas in the April 25,2020 oblique imagery. However, more recent aerial imagery (Google Earth dated November 2021, May 2022, and May 2023 do not show any saturation or evidence of hydrology.

The Antecedent Precipitation Tool (APT) was conducted for the aerial dates, USACE site visit date, and delineation date.

<i>Latitude</i>	<i>Longitude</i>	<i>Date</i>	<i>Date explanation</i>	<i>PDSI Value</i>	<i>PDSI Class</i>	<i>Season</i>	<i>Antecedent Precip Score</i>	<i>Antecedent Precip Condition</i>
43.0351	-78.7532	9/18/2023	Date of USACE site visit	1.47	Mild wetness	Wet Season	15	Wetter than Normal
43.0351	-78.7532	9/1/2020	Date of delineation	-1.32	Mild drought	Wet Season	9	Drier than Normal
43.0351	-78.7532	4/25/2020	Oblique Aerial (Connect Explorer)	-0.17	Normal	Wet Season	13	Normal Conditions
43.0351	-78.7532	5/8/2022	Google Earth aerial	2.04	Moderate wetness	Wet Season	11	Normal Conditions
43.0351	-78.7532	5/17/2023	Google Earth aerial	1.22	Mild wetness	Wet Season	15	Wetter than Normal
43.0351	-78.7532	11/23/2021	Google Earth aerial	3.6	Severe wetness	Wet Season	14	Normal Conditions

The APT indicates a period of minor drought on the date of the delineation, September 1, 2020. No wetland criteria were reported at any of the data points, not just hydrology. The APT report of drought conditions at the date of the site visit, which recorded no wetland conditions, indicates that the area is not wetland during normal conditions. The date of the USACE site visit was reported as wetter than normal conditions and hydrology indicators were not observed, supporting that hydrology is not typical within the review area even with wetter than normal conditions. The aerial/oblique imagery all reported normal conditions except for May 2023. No evidence of hydrology was observed in aerial/oblique

imagery except for the April 25, 2020 oblique, which was reported as normal conditions during the wet season.

Based on a detailed review of the submitted delineation report, a detailed in-office resource analysis, and the observations made during the September 18, 2023 USACE site visit as described above, it has been determined that the 5.71-acre review area is completely comprised of dry land and does not contain any aquatic resources or waters of the United States.

2. REFERENCES.

- a. "Revised Definition of 'Waters of the United States,'" 88 FR 3004 (January 18, 2023) ("2023 Rule")
- b. "Revised Definition of 'Waters of the United States'; Conforming" 88 FR 61964 (September 8, 2023))
- c. *Sackett v. EPA*, 598 U.S. ___, 143 S. Ct. 1322 (2023)

3. REVIEW AREA. *An approximately 5.71-acre review area with relatively flat topography, located north and adjacent to North French Road, in the town of Amherst, Erie County, New York. The northern portion of the review area is forested. The southern portion of the review area is a single-family residential home with maintained (mowed) lawn. (Latitude: 43.0351, Longitude: -78.7532) See map sheets 1 and 2 of 2.*

4. NEAREST TRADITIONAL NAVIGABLE WATER (TNW), THE TERRITORIAL SEAS, OR INTERSTATE WATER TO WHICH THE AQUATIC RESOURCE IS CONNECTED. *N/A.*

5. FLOWPATH FROM THE SUBJECT AQUATIC RESOURCES TO A TNW, THE TERRITORIAL SEAS, OR INTERSTATE WATER. *N/A.*

6. SECTION 10 JURISDICTIONAL WATERS⁶: Describe aquatic resources or other features within the review area determined to be jurisdictional in accordance with Section 10 of the Rivers and Harbors Act of 1899. Include the size of each aquatic

⁶ 33 CFR 329.9(a) A waterbody which was navigable in its natural or improved state, or which was susceptible of reasonable improvement (as discussed in § 329.8(b) of this part) retains its character as "navigable in law" even though it is not presently used for commerce, or is presently incapable of such use because of changed conditions or the presence of obstructions.

resource or other feature within the review area and how it was determined to be jurisdictional in accordance with Section 10.⁷ *N/A*.

7. SECTION 404 JURISDICTIONAL WATERS: Describe the aquatic resources within the review area that were found to meet the definition of waters of the United States in accordance with the 2023 Rule as amended, consistent with the Supreme Court's decision in *Sackett*. List each aquatic resource separately, by name, consistent with the naming convention used in section 1, above. Include a rationale for each aquatic resource, supporting that the aquatic resource meets the relevant category of "waters of the United States" in the 2023 Rule as amended. The rationale should also include a written description of, or reference to a map in the administrative record that shows, the lateral limits of jurisdiction for each aquatic resource, including how that limit was determined, and incorporate relevant references used. Include the size of each aquatic resource in acres or linear feet and attach and reference related figures as needed.
 - a. Traditional Navigable Waters (TNWs) (a)(1)(i): *N/A*.
 - b. The Territorial Seas (a)(1)(ii): *N/A*.
 - c. Interstate Waters (a)(1)(iii): *N/A*.
 - d. Impoundments (a)(2): *N/A*.
 - e. Tributaries (a)(3): *N/A*.
 - f. Adjacent Wetlands (a)(4): *N/A*.
 - g. Additional Waters (a)(5): *N/A*.
8. NON-JURISDICTIONAL AQUATIC RESOURCES AND FEATURES
 - a. Describe aquatic resources and other features within the review area identified in the 2023 Rule as amended as not "waters of the United States" even where they otherwise meet the terms of paragraphs (a)(2) through (5). Include the type of excluded aquatic resource or feature, the size of the aquatic resource or feature

⁷ This MFR is not to be used to make a report of findings to support a determination that the water is a navigable water of the United States. The district must follow the procedures outlined in 33 CFR part 329.14 to make a determination that water is a navigable water of the United States subject to Section 10 of the RHA.

CELRB-TD-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of *Sackett v. EPA*, 143 S. Ct. 1322 (2023), LRB-2023-00911

within the review area and describe how it was determined to meet one of the exclusions listed in 33 CFR 328.3(b).⁸ N/A.

- b. Describe aquatic resources and features within the review area that were determined to be non-jurisdictional because they do not meet one or more categories of waters of the United States under the 2023 Rule as amended (e.g., tributaries that are non-relatively permanent waters; non-tidal wetlands that do not have a continuous surface connection to a jurisdictional water).
N/A.
9. DATA SOURCES. List sources of data/information used in making determination. Include titles and dates of sources used and ensure that information referenced is available in the administrative record.
- a. *Corps of Engineers' site visit: September 18, 2023. In-Office resource evaluation: September 15, 2023, October 2, 2023, and February 27, 2024.*
 - b. *Submitted Aquatic Resource Delineation Report: "Wetland Delineation Report, 1920 North French Road, Town of Amherst, NY," dated November 2, 2020 and includes data forms dated September 1, 2020; prepared for Elliot Lasky; Prepared by Davey Resource Group. Submitted to the USACE by Earth Dimensions, Inc on September 15, 2023.*
 - c. *U.S. Geological Survey Hydrologic Atlas: HA-730.
X USGS NHD data.
X USGS 8 and 12 digit HUC maps.*
 - d. *U.S. Geological Survey map(s). Cite scale & quad name:
<https://ngmdb.usgs.gov/topoview/viewer/> - USGS; Tonawanda East - NY; 2019 – and as provided in the submitted delineation report.*
 - e. *Natural Resources Conservation Service Soil Survey. Citation:
<https://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx> - Erie County, New York; accessed September 15, 2023 and as provided in the submitted delineation report.*
 - f. *National wetlands inventory map(s). Cite name:
<https://www.fws.gov/program/national-wetlandsinventory/wetlands-mapper>, accessed on February 27, 2024 and as provided in the delineation report.*

⁸ 88 FR 3004 (January 18, 2023)

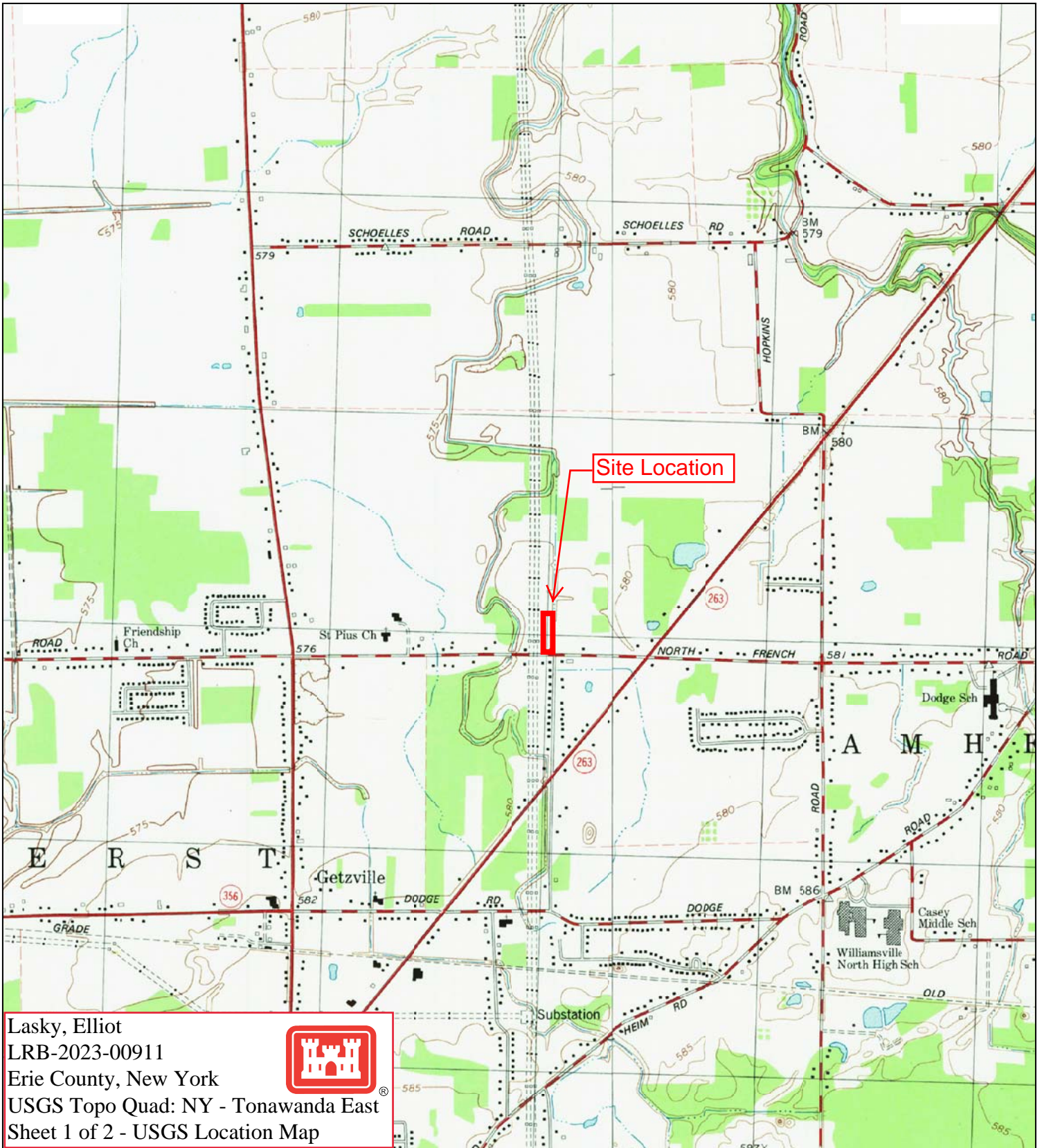
CELRB-TD-R

SUBJECT: 2023 Rule, as amended, Approved Jurisdictional Determination in Light of Sackett v. EPA, 143 S. Ct. 1322 (2023), LRB-2023-00911

- g. *State/local wetland inventory map(s): New York State Department of Environmental Resource Mapper - <https://gisservices.dec.ny.gov/gis/erm/>.*
- h. *Photographs:*
 - *Aerial (Name & Date): Google Earth aerial imagery November 2021, May 2022, May 2023. Connect Explorer Oblique imagery dated April 25, 2020 - <https://explorer.eagleview.com/>.*
 - *Other (Name & Date): Photographs included in the delineation report, dated September 1, 2020.*
- i. *Antecedent Precipitation Tool conducted for dates: September 18, 2023 – date of USACE site visit, 9/1/2020 – date of delineation, April 25, 2020 date of oblique imagery, and dates of Google Earth aerials – November 23, 2021, May 8, 2022, May 17, 2023.*

10. OTHER SUPPORTING INFORMATION. N/A.

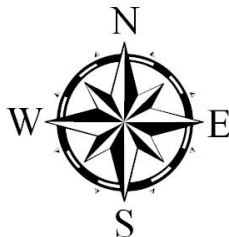
11. NOTE: The structure and format of this MFR were developed in coordination with the EPA and Department of the Army. The MFR's structure and format may be subject to future modification or may be rescinded as needed to implement additional guidance from the agencies; however, the approved jurisdictional determination described herein is a final agency action.



Lasky, Elliot
 LRB-2023-00911
 Erie County, New York
 USGS Topo Quad: NY - Tonawanda East
 Sheet 1 of 2 - USGS Location Map



Figure 1: USGS Quadrangle Map
 Tonawanda East Quadrangle
 Scale 1: 24,000



Town of Amherst
 Erie County, New York
 Prepared for:
 Mr. Elliot Lasky

1920 North French Road Sample Map



Lasky, Elliot
LRB-2023-00911
Erie County, New York
USGS Topo Quad: NY - Tonawanda East
Sheet 2 of 2 -Aquatic Resource Delineation
Map - Dry land determination



50 ft



WILSON
ENVIRONMENTAL
TECHNOLOGIES, INC.

Note: The mapped points were recorded using a Garmin Handheld GPS and are not survey accurate.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Lasky, Elliot	File Number: LRB-2023-00911	Date: March 14, 2024
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 WITHOUT PREJUDICE	C
	PERMIT DENIAL WITH PREJUDICE	D
X	APPROVED JURISDICTIONAL DETERMINATION	E
	PRELIMINARY JURISDICTIONAL DETERMINATION	F

SECTION I

The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <https://www.usace.army.mil/Missions/Civil-Works/Regulatory-Program-and-Permits/appeals/> or Corps regulations at 33 CFR Part 331.

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. 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 WITHOUT PREJUDICE: Not appealable

You received a permit denial without prejudice because a required Federal, state, and/or local authorization and/or certification has been denied for activities which also require a Department of the Army permit before final action has been taken on the Army permit application. The permit denial without prejudice is not appealable. There is no prejudice to the right of the applicant to reinstate processing of the Army permit application if subsequent approval is received from the appropriate Federal, state, and/or local agency on a previously denied authorization and/or certification.

D: PERMIT DENIAL WITH PREJUDICE: You may appeal the 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.

E: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information for reconsideration

- **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.
- **RECONSIDERATION:** You may request that the district engineer reconsider the approved JD by submitting new information or data to the district engineer within 60 days of the date of this notice. The district will determine whether the information submitted qualifies as new information or data that justifies reconsideration of the approved JD. A reconsideration request does not initiate the appeal process. You may submit a request for appeal to the division engineer to preserve your appeal rights while the district is determining whether the submitted information qualifies for a reconsideration.

F: PRELIMINARY JURISDICTIONAL DETERMINATION: Not appealable

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.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision you may contact:

Shaina Souder
U.S. Army Corps of Engineers
478 Main St,
Buffalo, New York 14202
Phone: (716)879-4240
Email: Shaina.R.Souder@usace.army.mil

If you have questions regarding the appeal process, or to submit your request for appeal, you may contact:

Katherine McCafferty
Regulatory Appeals Officer
US Army Corps of Engineers
Great Lakes and Ohio River Division
550 Main Street, Room 10780
Cincinnati, Ohio 45202-3222
Phone: 513-684-2699 Fax: 513-684-2460
e-mail: katherine.a.mccafferty@usace.army.mil

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. Use additional pages as necessary. 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.

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.

<hr/> <p>Signature of appellant or agent.</p>	Date:
Email address of appellant and/or agent:	Telephone number: