

CNY Raceway Park, Hastings NY

Final EIS

APPENDIX I

FINAL EIS AGENCY CORRESPONDENCE

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Division of Fish, Wildlife & Marine Resources
New York Natural Heritage Program
625 Broadway, 5th Floor, Albany, New York 12233-4757
Phone: (518) 402-8935 • **Fax:** (518) 402-8925
Website: www.dec.ny.gov



Joe Martens
Commissioner

March 17, 2014

Andy Steiner
Earth Dimensions
1091 Jamison Road
Elma, NY 14059

Re: Central New York Raceway Park
Town/City: Hastings. County: Oswego.

Dear Andy Steiner :

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to the above project

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

For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our databases. We cannot provide a definitive statement as to the presence or absence of all rare or state-listed species or significant natural communities. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

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

The presence of the plants and animals identified in the enclosed report may result in this project requiring additional review or permit conditions. For further guidance, and for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the appropriate NYS DEC Regional Office, Division of Environmental Permits, as listed at www.dec.ny.gov/about/39381.html.

Sincerely,

Nicholas Conrad
Information Resources Coordinator
New York Natural Heritage Program



**The following state-listed animals have been documented
at your project site, or in its vicinity.**

The following list includes animals that are listed by NYS as Endangered, Threatened, or Special Concern; and/or that are federally listed or are candidates for federal listing. The list may also include significant natural communities that can serve as habitat for Endangered or Threatened animals, and/or other rare animals and rare plants found at these habitats.

For information about potential impacts of your project on these populations, how to avoid, minimize, or mitigate any impacts, and any permit considerations, contact the Wildlife Manager or the Fisheries Manager at the NYSDEC Regional Office for the region where the project is located. A listing of Regional Offices is at <http://www.dec.ny.gov/about/558.html>.

The following species have been documented within 2.5 mi. Individual animals may travel 2.5 mi from documented locations.

COMMON NAME	SCIENTIFIC NAME	NY STATE LISTING	FEDERAL LISTING	
Mammals				
Indiana Bat <i>Maternity colony</i>	<i>Myotis sodalis</i>	Endangered	Endangered	13852

This report only includes records from the NY Natural Heritage databases. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

Information about many of the listed animals in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, and from NYSDEC at <http://www.dec.ny.gov/animals/7494.html>.

Information about many of the rare plants and animals, and natural community types, in New York are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, and from NatureServe Explorer at <http://www.natureserve.org/explorer>.



**The following rare plants, rare animals, and significant natural communities
have been documented at your project site, or in its vicinity.**

We recommend that potential onsite and offsite impacts of the proposed project on these species or communities be addressed as part of any environmental assessment or review conducted as part of the planning, permitting and approval process, such as reviews conducted under SEQR. Field surveys of the project site may be necessary to determine the status of a species at the site, particularly for sites that are currently undeveloped and may still contain suitable habitat. Final requirements of the project to avoid, minimize, or mitigate potential impacts are determined by the lead permitting agency or the government body approving the project.

The following significant natural communities are considered significant from a statewide perspective by the NY Natural Heritage Program. They are either occurrences of a community type that is rare in the state, or a high quality example of a more common community type. By meeting specific, documented criteria, the NY Natural Heritage Program considers these community occurrences to have high ecological and conservation value.

COMMON NAME	SCIENTIFIC NAME	NY STATE LISTING	HERITAGE CONSERVATION STATUS
-------------	-----------------	------------------	------------------------------

Wetland/Aquatic Communities

Silver Maple-Ash Swamp

High Quality Occurrence of Uncommon Community Type

Big Bay Swamp: This is a large swamp in fair to good condition, bordered by areas impounded by beaver dams, exotic plant species present at periphery.

1191

This report only includes records from the NY Natural Heritage databases. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

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

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



**The following rare plants and rare animals have
historical records
at your project site, or in its vicinity.**

The following rare plants and animals were documented in the vicinity of the project site at one time, but have not been documented there since 1979 or earlier, and/or there is uncertainty regarding their continued presence. There is no recent information on these plants and animals in the vicinity of the project site and their current status there is unknown. In most cases the precise location of the plant or animal in this vicinity at the time it was last documented is also unknown.

If suitable habitat for these plants or animals is present in the vicinity of the project site, it is possible that they may still occur there. We recommend that any field surveys to the site include a search for these species, particularly at sites that are currently undeveloped and may still contain suitable habitat.

<i>COMMON NAME</i>	<i>SCIENTIFIC NAME</i>	<i>NYS LISTING</i>	<i>HERITAGE CONSERVATION STATUS</i>
Vascular Plants			
Swamp Smartweed	<i>Persicaria setacea</i>	Endangered	Critically Imperiled in NYS
no date: Brewerton.			

4929

This report only includes records from the NY Natural Heritage databases. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

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



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

RECEIVED
MAR 21 2014
EARTH/ENR

REPLY TO
ATTENTION OF:

March 19, 2014

Regulatory Branch

SUBJECT: Preliminary Jurisdictional Determination and Approved Jurisdictional Determination for CNY Raceway Park, Department of the Army Processing No. 2012-00022

Glenn Donnelly
Central New York Raceway Park, Inc.
100 Limestone Plaza
Fayetteville, New York 13066

Dear Mr. Donnelly:

I am writing to you in regard to your request for a Department of the Army jurisdictional determination on a 143.5 acre parcel located off of Route 11, in the Town of Hastings, Oswego County, New York.

Section 404 of the Clean Water Act establishes Corps of Engineers jurisdiction over the discharge of dredged or fill material into waters of the United States, including wetlands, as defined in 33 CFR Part 328.3.

I have evaluated your submitted delineation map and have determined that the wetland and water boundaries shown on the map accurately represent on-site conditions. I am hereby verifying the wetland and water boundaries depicted on Sheets 2 and 3 with a preliminary and an approved jurisdictional determination.

1. Approved Jurisdictional Determination, Attachment A, for Wetlands 5-19

Based upon our evaluation of the subject project site, we have determined that there is no clear surface water connection or ecological continuum between Wetlands 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 (totaling 7.26 acres) on the parcel and a surface tributary system to a navigable water of the United States. Therefore, these waters are considered isolated, non-navigable, intrastate waters and not regulated under Section 404 of the Clean Water Act. Accordingly, you do not need Department of the Army authorization to commence work in these areas.

This determination for wetlands 5-19 will remain valid for a period of 5 years from the date of this correspondence unless new information warrants revision of the delineation before the expiration. At the end of this period, a new delineation may be required. If you object to this determination, you may request an administrative appeal under Corps regulations at 33 CFR Part

Regulatory Branch

SUBJECT: Preliminary Jurisdictional Determination and Approved Jurisdictional Determination for CNY Raceway Park, Department of the Army Processing No. 2012-00022

331. Enclosed you will find a Notification of Appeal Process (NAP) fact sheet and Request for Appeal (RFA) form. If you request to appeal the above determination, you must submit a completed RFA form within 60 days of the date on this letter to the Great Lakes/Ohio River Division Office at the following address:

Review Officer
Great Lakes and Ohio River Division
CELRD-PDS-O
550 Main Street, Room 10032
Cincinnati, OH 45202-3222
Phone: 513-684-6212; FAX(513) 684-2460

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 19, 2014.

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

2. Preliminary Jurisdictional Determination. Attachment B, for Wetlands 1-4 and Streams 1-6

Please note that this is a Preliminary Jurisdictional Determination (JD) for Wetlands 1-4 and Streams 1-6. Preliminary JDs are non-binding written indications that there may be waters of the United States on your parcel and approximate locations of those waters. Preliminary JDs are advisory in nature and may not be appealed.

Pursuant to Regulatory Guidance Letter 08-02, any permit application made in reliance on this Preliminary JD will be evaluated as though all wetlands or waters outlined on Attachment B are regulated by the Corps. Further, all waters, including wetlands on Attachment B will be used for purposes of assessing the area of project related impacts and compensatory mitigation. If you require a definitive response regarding Department of the Army jurisdiction for any or all of the waters identified on Attachment B, you may request an approved jurisdictional determination from this office. If an approved jurisdictional determination is requested, please be aware that this is often a lengthy process and we may require the submittal of additional information.

I have enclosed the Preliminary JD Form, Attachment B, with this letter. The form and attached table identifies the extent of waters on the site and specific terms and conditions of the Preliminary JD. Please sign and return a copy of this form to my attention so that I may complete my evaluation of your file. If you do not respond within fifteen days of this letter, I will assume you no longer wish to pursue the jurisdictional determination and will withdraw your application.

Regulatory Branch

SUBJECT: Preliminary Jurisdictional Determination and Approved Jurisdictional Determination for CNY Raceway Park, Department of the Army Processing No. 2012-00022

In accordance with Regulatory Guidance Letter 05-02, "Preliminary jurisdictional determinations are not definitive determinations of areas within regulatory jurisdiction and do not have expirations dates." However, I strongly recommend that the boundaries of waters of the United States identified on Attachment B be re-evaluated by a qualified wetland biologist after five years of the date of this letter. This will ensure that any changes are appropriately identified and you do not inadvertently incur a violation of Federal law while constructing your project or working on your project site.

Lastly, the Preliminary and Approved Jurisdictional Determinations have been conducted only to identify the limits of waters that may be subject to Corps Clean Water Act or Rivers and Harbors Act jurisdiction. This delineation/determination may not be valid for the wetland conservation provisions of the Food Security Act of 1985, as amended. If you or your tenant are USDA program participants, or anticipate participation in USDA programs, you should request a certified wetland determination from the local office of the Natural Resource Conservation Service prior to starting work.

A copy of this letter has been sent to Mr. Scott Livingstone of Earth Dimensions.

Questions pertaining to this matter should be directed to me by calling (315) 704-0256, by writing to the following address: U.S. Army Corps of Engineers, 7413 County House Road, Auburn, New York 13021, or by e-mail at: margaret.a.crawford@usace.army.mil

Sincerely,

SIGNED

Margaret Crawford
Biologist

Enclosures

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: CNY Raceway		File Number: 2012-00022	Date: 3/19/14
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of permission)	B	
	PERMIT DENIAL	C	
x	APPROVED JURISDICTIONAL DETERMINATION	D	
x	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at http://www.usace.army.mil/CECW/Pages/reg_materials.aspx 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. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

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

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

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

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

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

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

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

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

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

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

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

Margaret Crawford
U.S. Army Corps of Engineers
7413 County House Road
Auburn, New York 13021
315-255-8090 x3
margaret.a.crawford@usace.army.m

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

Attn: Appeal Review Officer
Great Lakes and Ohio River Division
CELRD-PD-REG
550 Main Street, Room 10524
Cincinnati, OH 45202-3222
513-684-6212; FAX 513-684-2460

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.

<div data-bbox="53 1757 399 1789" data-label="Text">Signature of appellant or agent.</div>	<div data-bbox="777 1633 844 1663" data-label="Text">Date:</div>	<div data-bbox="1135 1633 1351 1663" data-label="Text">Telephone number:</div>
--	--	--

Attachment A
2012-00022

APPROVED JURISDICTIONAL DETERMINATION FORM
U.S. Army Corps of Engineers

This form should be completed by following the instructions provided in Section IV of the JD Form Instructional Guidebook.

SECTION I: BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR APPROVED JURISDICTIONAL DETERMINATION (JD): *Click here to enter a date.*

B. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, CNY Raceway Park, 2012-00022

C. PROJECT LOCATION AND BACKGROUND INFORMATION: The CNY Raceway Park, Inc. submitted a request for a jurisdictional determination for a 143.5 acre site located on the east side of Route 11 and on the west side of NYS Route 81, north of the Village of Brewerton. Nineteen wetlands and six streams were delineated on the site. This Approved JD pertains only to a portion of the site totalling 59.5 acres, containing Wetlands 5-19. See the attached table for a list of the wetlands for this Approved JD review area. Note: a preliminary JD has been completed for the remainder of the site and includes Wetlands 1-4 and Streams 1-6.

State: New York County/parish/borough: Oswego Town: Hastings
Center coordinates of site (lat/long in degree decimal format): Lat. 43.25099 °, Long. -76.13757 °
Universal Transverse Mercator: Zone 18, Y 4789315.11276728, X 407656.347533678
Name of nearest waterbody: unnamed tributary to Oneida Lake
Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Oneida Lake
Name of watershed or Hydrologic Unit Code (HUC): 4140202

- ☒ Check if map/diagram of review area and/or potential jurisdictional areas is/are available upon request.
☒ Check if other sites (e.g., offsite mitigation sites, disposal sites, etc...) are associated with this action and are recorded on a different JD form (A Preliminary JD has been completed for the remainder of the site and includes Wetlands 1-5 and Streams 1-6.)

D. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

- ☒ Office (Desk) Determination. Date: December 30, 2013
☒ Field Determination. Date(s): November 15, 2013, *Click here to enter a date.*

SECTION II: SUMMARY OF FINDINGS

A. RHA SECTION 10 DETERMINATION OF JURISDICTION.

There are no "navigable waters of the U.S." within Rivers and Harbors Act (RHA) jurisdiction (as defined by 33 CFR part 329) in the review area. **[Required]**

- ☐ Waters subject to the ebb and flow of the tide.
☐ Waters are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.
Explain: *Click here to enter text.*

B. CWA SECTION 404 DETERMINATION OF JURISDICTION.

There are no "waters of the U.S." within Clean Water Act (CWA) jurisdiction (as defined by 33 CFR part 328) in the review area. **[Required]**

1. Waters of the U.S.

a. Indicate presence of waters of U.S. in review area (check all that apply):¹

- ☐ TNWs, including territorial seas
☐ Wetlands adjacent to TNWs
☐ Relatively permanent waters² (RPWs) that flow directly or indirectly into TNWs
☐ Non-RPWs that flow directly or indirectly into TNWs
☐ Wetlands directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to but not directly abutting RPWs that flow directly or indirectly into TNWs
☐ Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs
☐ Impoundments of jurisdictional waters
☐ Isolated (interstate or intrastate) waters, including isolated wetlands

b. Identify (estimate) size of waters of the U.S. in the review area:

Non-wetland waters: # linear feet: # width (ft) and/or # acres.
Wetlands: # acres.

c. Limits (boundaries) of jurisdiction based on: 1987 Delineation Manual

Elevation of established OHWM (if known): *Click here to enter text.*

2. Non-regulated waters/wetlands (check if applicable):³

- ☒ Potentially jurisdictional waters and/or wetlands were assessed within the review area and determined to be not jurisdictional.

¹ Boxes checked below shall be supported by completing the appropriate sections in Section III below.

² For purposes of this form, an RPW is defined as a tributary that is not a TNW and that typically flows year-round or has continuous flow at least "seasonally" (e.g., typically 3 months).

³ Supporting documentation is presented in Section III.F.

Explain: Wetlands 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 (totaling 7.26 acres) are outside Department of the Army jurisdiction and do not meet the criteria for a jurisdictional water of the United States according to 33 CFR Part 328.3(a)(1-7) as follows:

1. do not/has not supported interstate or foreign commerce; These wetlands do not provide any ecological interconnect to downstream waters and are not confined by a berm, dam, or obstruction other than topography.
2. are not an interstate water/wetland; these wetlands do not cross state boundaries
3. the degradation or destruction of which would not affect interstate or foreign commerce and do not include such waters:
 - (i) which are or could be used by interstate or foreign travelers for recreational or other purposes; or
 - (ii) from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or
 - (iii) which are used or could be used for industrial purpose by industries in interstate commerce

These wetlands cannot be used by interstate or foreign travelers for recreational or other purposes, fish or shellfish cannot be taken and sold in interstate or foreign commerce, and the wetlands could not be used for industrial purposes by industries in interstate commerce.

4. are not impoundments of water otherwise defined as WOUS under the definition;
5. are not tributaries of waters identified in paragraphs (a)(1)-(4) of this section;
6. are not territorial seas;
7. are not wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a)(1)-(6) of this section;

The nearest wetland (Wetland 11) is located over 400 feet from the nearest stream (Stream 4). These wetlands do not provide any ecological/hydrologic interconnect to downstream waters and are not confined by a berm, dam, or obstruction other than topography. The area between Wetland 11 and Stream 4 is a cleared portion of the site, and appears to likely be cut for hay.

Wetlands: Wetland 5 is 0.71 acres, Wetland 6 is 1.07 acres, Wetland 7 is 1.17 acres, Wetland 8 is 1.22 acres, Wetland 9 is 0.02 acres, Wetland 10 is 0.59 acres, Wetland 11 is 1.33 acres, Wetland 12 is 0.10 acres, Wetland 13 is 0.02 acres, Wetland 14 is 0.02 acres, Wetland 15 is 0.07 acres, Wetland 16 is 0.26 acres, Wetland 17 is 0.25 acres, Wetland 18 is 0.39 acres and Wetland 19 is 0.04 acres, for a total 7.26 acres. The applicant recently cleared the area in which these wetlands are located in a non-jurisdictional manner, which could have made them more wet than they were prior. Based upon aerial photographs, it appears that all of the wetlands were early successional forest with the exception of Wetlands 5 and 6 which appear as wet meadow. The wetlands now resemble wet meadow with stump sprouting from cut trees.

Limited functional attributes for all features described above include: 1) collection of surface water runoff that may contain pollutants such as petroleum products, herbicides, from the adjacent roadway and track; 2) storm water retention; and 3) marginal wildlife habitat for mammals, amphibians and migratory birds (since clearing). The source of hydrology is precipitation and surface water run-off and the potential for groundwater influence is not apparent. Collected water infiltrates or evaporates and does not enter a WOUS. As noted above, the waters identified above are all at least several hundred feet from the nearest tributary WOUS. Given the extreme distances, it is highly unlikely that there are any shallow subsurface connections between any of the above waters and a surface water tributary to a navigable WOUS. Further, given both the lack of hydrologic connection and very limited habitat functions provided by these waters, the above-described wetlands do not comprise a component of an ecological continuum and do not contribute to characteristics that would influence the physical, chemical, and biological integrity of downstream waters.

SECTION III: CWA ANALYSIS

A. TNWs AND WETLANDS ADJACENT TO TNWs

The agencies will assert jurisdiction over TNWs and wetlands adjacent to TNWs. If the aquatic resource is a TNW, complete Section III.A.1 and Section III.D.1. only; if the aquatic resource is a wetland adjacent to a TNW, complete Sections III.A.1 and 2 and Section III.D.1.; otherwise, see Section III.B below.

1. TNW

Identify TNW: *Click here to enter text.*

Summarize rationale supporting determination: *Click here to enter text.*

2. Wetland adjacent to TNW

Summarize rationale supporting conclusion that wetland is "adjacent": *Click here to enter text.*

B. CHARACTERISTICS OF TRIBUTARY (THAT IS NOT A TNW) AND ITS ADJACENT WETLANDS (IF ANY):

This section summarizes information regarding characteristics of the tributary and its adjacent wetlands, if any, and it helps determine whether or not the standards for jurisdiction established under *Rapanos* have been met.

The agencies will assert jurisdiction over non-navigable tributaries of TNWs where the tributaries are "relatively permanent waters" (RPWs), i.e. tributaries that typically flow year-round or have continuous flow at least seasonally (e.g., typically 3 months). A wetland

that directly abuts an RPW is also jurisdictional. If the aquatic resource is not a TNW, but has year-round (perennial) flow, skip to Section III.D.2. If the aquatic resource is a wetland directly abutting a tributary with perennial flow, skip to Section III.D.4.

A wetland that is adjacent to but that does not directly abut an RPW requires a significant nexus evaluation. Corps districts and EPA regions will include in the record any available information that documents the existence of a significant nexus between a relatively permanent tributary that is not perennial (and its adjacent wetlands if any) and a traditional navigable water, even though a significant nexus finding is not required as a matter of law.

If the waterbody⁴ is not an RPW, or a wetland directly abutting an RPW, a JD will require additional data to determine if the waterbody has a significant nexus with a TNW. If the tributary has adjacent wetlands, the significant nexus evaluation must consider the tributary in combination with all of its adjacent wetlands. This significant nexus evaluation that combines, for analytical purposes, the tributary and all of its adjacent wetlands is used whether the review area identified in the JD request is the tributary, or its adjacent wetlands, or both. If the JD covers a tributary with adjacent wetlands, complete Section III.B.1 for the tributary, Section III.B.2 for any onsite wetlands, and Section III.B.3 for all wetlands adjacent to that tributary, both onsite and offsite. The determination whether a significant nexus exists is determined in Section III.C below.

1. Characteristics of non-TNWs that flow directly or indirectly into TNW

(i) General Area Conditions:

Watershed size: *Choose an item.*

Drainage area: *Choose an item.*

Average annual rainfall: *inches*

Average annual snowfall: *inches*

(ii) Physical Characteristics:

(a) Relationship with TNW:

☐ Tributary flows directly into TNW.

☐ Tributary flows through *Choose an item.* tributaries before entering TNW.

Project waters are *Choose an item.* river miles from TNW.

Project waters are *Choose an item.* river miles from RPW.

Project waters are *Choose an item.* aerial (straight) miles from TNW.

Project waters are *Choose an item.* aerial (straight) miles from RPW.

Project waters cross or serve as state boundaries. Explain: *Click here to enter text.*

Identify flow route to TNW⁵: *Click here to enter text.*

Tributary stream order, if known: *Click here to enter text.*

(b) General Tributary Characteristics (check all that apply):

Tributary is: ☐ Natural

☐ Artificial (man-made). Explain: *Click here to enter text.*

☐ Manipulated (man-altered). Explain: *Click here to enter text.*

Tributary properties with respect to top of bank (estimate):

Average width: *feet*

Average depth: *feet*

Average side slopes: *Choose an item.*

Primary tributary substrate composition (check all that apply):

☐ Silts

☐ Sands

☐ Concrete

☐ Cobbles

☐ Gravel

☐ Muck

☐ Bedrock

☐ Vegetation. Type/% cover: *Click here to enter text.*

☐ Other. Explain: *Click here to enter text.*

Tributary condition/stability [e.g., highly eroding, sloughing banks]. Explain: *Click here to enter text.*

Presence of run/riffle/pool complexes. Explain: *Click here to enter text.*

Tributary geometry: *Choose an item.*

Tributary gradient (approximate average slope): *%*

(c) Flow:

Tributary provides for: *Choose an item.*

Estimate average number of flow events in review area/year: *Choose an item.*

Describe flow regime: *Click here to enter text.*

Other information on duration and volume: *Click here to enter text.*

Surface flow is: *Choose an item.* Characteristics: *Click here to enter text.*

⁴ Note that the Instructional Guidebook contains additional information regarding swales, ditches, washes, and erosional features generally and in the arid West.

⁵ Flow route can be described by identifying, e.g., tributary a, which flows through the review area, to flow into tributary b, which then flows into TNW.

Subsurface flow: *Choose an item. Explain findings: Click here to enter text.*

☐ Dye (or other) test performed: *Click here to enter text.*

Tributary has (check all that apply):

☐ Bed and banks

☐ OHWM⁶ (check all indicators that apply):

☐ clear, natural line impressed on the bank ☐ the presence of litter and debris

☐ changes in the character of soil ☐ destruction of terrestrial vegetation

☐ shelving ☐ the presence of wrack line

☐ vegetation matted down, bent, or absent ☐ sediment sorting

☐ leaf litter disturbed or washed away ☐ scour

☐ sediment deposition ☐ multiple observed or predicted flow events

☐ water staining ☐ abrupt change in plant community *Click here to enter text.*

☐ other (list): *Click here to enter text.*

☐ Discontinuous OHWM.⁷ Explain: *Click here to enter text.*

If factors other than the OHWM were used to determine lateral extent of CWA jurisdiction (check all that apply):

☐ High Tide Line indicated by:

☐ Mean High Water Mark indicated by:

☐ oil or scum line along shore objects ☐ survey to available datum;

☐ fine shell or debris deposits (foreshore) ☐ physical markings;

☐ physical markings/characteristics ☐ vegetation lines/changes in vegetation types.

☐ tidal gauges

☐ other (list): *Click here to enter text.*

(iii) Chemical Characteristics:

Characterize tributary (e.g., water color is clear, discolored, oily film; water quality; general watershed characteristics, etc.). Explain: *Click here to enter text.*

Identify specific pollutants, if known: *Click here to enter text.*

(iv) Biological Characteristics. Channel supports (check all that apply):

☐ Riparian corridor. Characteristics (type, average width): *Click here to enter text.*

☐ Wetland fringe. Characteristics: *Click here to enter text.*

☐ Habitat for:

☐ Federally Listed species. Explain findings: *Click here to enter text.*

☐ Fish/spawn areas. Explain findings: *Click here to enter text.*

☐ Other environmentally-sensitive species. Explain findings: *Click here to enter text.*

☐ Aquatic/wildlife diversity. Explain findings: *Click here to enter text.*

2. Characteristics of wetlands adjacent to non-TNW that flow directly or indirectly into TNW

(i) Physical Characteristics:

(a) General Wetland Characteristics:

Properties:

Wetland size: acres

Wetland type. Explain: *Click here to enter text.*

Wetland quality. Explain: *Click here to enter text.*

Project wetlands cross or serve as state boundaries. Explain: *Click here to enter text.*

(b) General Flow Relationship with Non-TNW:

Flow is: *Choose an item. Explain: Click here to enter text.*

Surface flow is: *Choose an item.*

Characteristics: *Click here to enter text.*

Subsurface flow: *Choose an item. Explain findings: Click here to enter text.*

☐ Dye (or other) test performed: *Click here to enter text.*

(c) Wetland Adjacency Determination with Non-TNW:

⁶A natural or man-made discontinuity in the OHWM does not necessarily sever jurisdiction (e.g., where the stream temporarily flows underground, or where the OHWM has been removed by development or agricultural practices). Where there is a break in the OHWM that is unrelated to the waterbody's flow regime (e.g., flow over a rock outcrop or through a culvert), the agencies will look for indicators of flow above and below the break.

⁷Ibid.

- ☐ Directly abutting
- ☐ Not directly abutting
- ☐ Discrete wetland hydrologic connection. Explain: [Click here to enter text.](#)
- ☐ Ecological connection. Explain: [Click here to enter text.](#)
- ☐ Separated by berm/barrier. Explain: [Click here to enter text.](#)

(d) Proximity (Relationship) to TNW

Project wetlands are [Choose an item.](#) river miles from TNW.

Project waters are [Choose an item.](#) aerial (straight) miles from TNW.

Flow is from: [Choose an item.](#)

Estimate approximate location of wetland as within the [Choose an item.](#) floodplain.

(ii) **Chemical Characteristics:**

Characterize wetland system (e.g., water color is clear, brown, oil film on surface; water quality; general watershed characteristics; etc.). Explain: [Click here to enter text.](#)

Identify specific pollutants, if known: [Click here to enter text.](#)

(iii) **Biological Characteristics. Wetland supports (check all that apply):**

☐ Riparian buffer. Characteristics (type, average width): [Click here to enter text.](#)

☐ Vegetation type/percent cover. Explain: [Click here to enter text.](#)

☐ Habitat for:

☐ Federally Listed species. Explain findings: [Click here to enter text.](#)

☐ Fish/spawn areas. Explain findings: [Click here to enter text.](#)

☐ Other environmentally-sensitive species. Explain findings: [Click here to enter text.](#)

☐ Aquatic/wildlife diversity. Explain findings: [Click here to enter text.](#)

3. **Characteristics of all wetlands adjacent to the tributary (if any)**

All wetland(s) being considered in the cumulative analysis: [Choose an item.](#)

Approximately () acres in total are being considered in the cumulative analysis.

For each wetland, specify the following:

<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>	<u>Directly abuts? (Y/N)</u>	<u>Size (in acres)</u>
Y/N	-	Y/N	-
Y/N	-	Y/N	-
Y/N	-	Y/N	-

Summarize overall biological, chemical and physical functions being performed: [Click here to enter text.](#)

C. SIGNIFICANT NEXUS DETERMINATION

A significant nexus analysis will assess the flow characteristics and functions of the tributary itself and the functions performed by any wetlands adjacent to the tributary to determine if they significantly affect the chemical, physical, and biological integrity of a TNW. For each of the following situations, a significant nexus exists if the tributary, in combination with all of its adjacent wetlands, has more than a speculative or insubstantial effect on the chemical, physical and/or biological integrity of a TNW. Considerations when evaluating significant nexus include, but are not limited to the volume, duration, and frequency of the flow of water in the tributary and its proximity to a TNW, and the functions performed by the tributary and all its adjacent wetlands. It is not appropriate to determine significant nexus based solely on any specific threshold of distance (e.g. between a tributary and its adjacent wetland or between a tributary and the TNW). Similarly, the fact an adjacent wetland lies within or outside of a floodplain is not solely determinative of significant nexus.

Draw connections between the features documented and the effects on the TNW, as identified in the *Rapanos* Guidance and discussed in the Instructional Guidebook. Factors to consider include, for example:

- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to carry pollutants or flood waters to TNWs, or to reduce the amount of pollutants or flood waters reaching a TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), provide habitat and lifecycle support functions for fish and other species, such as feeding, nesting, spawning, or rearing young for species that are present in the TNW?
- Does the tributary, in combination with its adjacent wetlands (if any), have the capacity to transfer nutrients and organic carbon that support downstream foodwebs?
- Does the tributary, in combination with its adjacent wetlands (if any), have other relationships to the physical, chemical, or biological integrity of the TNW?

Note: the above list of considerations is not inclusive and other functions observed or known to occur should be documented below:

1. **Significant nexus findings for non-RPW that has no adjacent wetlands and flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary itself, then go to Section III.D: [Click here to enter text.](#)

2. **Significant nexus findings for non-RPW and its adjacent wetlands, where the non-RPW flows directly or indirectly into TNWs.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: *Click here to enter text.*
3. **Significant nexus findings for wetlands adjacent to an RPW but that do not directly abut the RPW.** Explain findings of presence or absence of significant nexus below, based on the tributary in combination with all of its adjacent wetlands, then go to Section III.D: *Click here to enter text.*

D. DETERMINATIONS OF JURISDICTIONAL FINDINGS. THE SUBJECT WATERS/WETLANDS ARE (CHECK ALL THAT APPLY):

1. **TNWs and Adjacent Wetlands.** Check all that apply and provide size estimates in review area:
 - ☐ TNWs: linear feet width (ft), Or, acres.
 - ☐ Wetlands adjacent to TNWs: acres.
2. **RPWs that flow directly or indirectly into TNWs.**
 - ☐ Tributaries of TNWs where tributaries typically flow year-round are jurisdictional. Provide data and rationale indicating that tributary is perennial: *Click here to enter text.*
 - ☐ Tributaries of TNW where tributaries have continuous flow "seasonally" (e.g., typically three months each year) are jurisdictional. Data supporting this conclusion is provided at Section III.B. Provide rationale indicating that tributary flows seasonally: *Click here to enter text.*

Provide estimates for jurisdictional waters in the review area (check all that apply):

 - ☐ Tributary waters: linear feet width (ft).
 - ☐ Other non-wetland waters: acres.

Identify type(s) of waters: *Click here to enter text.*
3. **Non-RPWs⁸ that flow directly or indirectly into TNWs.**
 - ☐ Waterbody that is not a TNW or an RPW, but flows directly or indirectly into a TNW, and it has a significant nexus with a TNW is jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional waters within the review area (check all that apply):

 - ☐ Tributary waters: linear feet width (ft).
 - ☐ Other non-wetland waters: acres.

Identify type(s) of waters: *Click here to enter text.*
4. **Wetlands directly abutting an RPW that flow directly or indirectly into TNWs.**
 - ☐ Wetlands directly abut RPW and thus are jurisdictional as adjacent wetlands.
 - ☐ Wetlands directly abutting an RPW where tributaries typically flow year-round. Provide data and rationale indicating that tributary is perennial in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: *Click here to enter text.*
 - ☐ Wetlands directly abutting an RPW where tributaries typically flow "seasonally." Provide data indicating that tributary is seasonal in Section III.B and rationale in Section III.D.2, above. Provide rationale indicating that wetland is directly abutting an RPW: *Click here to enter text.*

Provide acreage estimates for jurisdictional wetlands in the review area: acres.
5. **Wetlands adjacent to but not directly abutting an RPW that flow directly or indirectly into TNWs.**
 - ☐ Wetlands that do not directly abut an RPW, but when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide acreage estimates for jurisdictional wetlands in the review area: acres.
6. **Wetlands adjacent to non-RPWs that flow directly or indirectly into TNWs.**
 - ☐ Wetlands adjacent to such waters, and have when considered in combination with the tributary to which they are adjacent and with similarly situated adjacent wetlands, have a significant nexus with a TNW are jurisdictional. Data supporting this conclusion is provided at Section III.C.

Provide estimates for jurisdictional wetlands in the review area: acres.
7. **Impoundments of jurisdictional waters.⁹**

As a general rule, the impoundment of a jurisdictional tributary remains jurisdictional.

 - ☐ Demonstrate that impoundment was created from "waters of the U.S.," or
 - ☐ Demonstrate that water meets the criteria for one of the categories presented above (1-6), or
 - ☐ Demonstrate that water is isolated with a nexus to commerce (see E below).

⁸See Footnote # 3.

⁹ To complete the analysis refer to the key in Section III.D.6 of the Instructional Guidebook.

E. ISOLATED [INTERSTATE OR INTRA-STATE] WATERS, INCLUDING ISOLATED WETLANDS, THE USE, DEGRADATION OR DESTRUCTION OF WHICH COULD AFFECT INTERSTATE COMMERCE, INCLUDING ANY SUCH WATERS (CHECK ALL THAT APPLY):¹⁰

- ☐ which are or could be used by interstate or foreign travelers for recreational or other purposes.
- ☐ from which fish or shellfish are or could be taken and sold in interstate or foreign commerce.
- ☐ which are or could be used for industrial purposes by industries in interstate commerce.
- ☐ Interstate isolated waters. Explain: *Click here to enter text.*
- ☐ Other factors. Explain: *Click here to enter text.*

Identify water body and summarize rationale supporting determination: *Click here to enter text.*

Provide estimates for jurisdictional waters in the review area (check all that apply):

- ☐ Tributary waters: linear feet = width (ft).
- ☐ Other non-wetland waters: = acres.
Identify type(s) of waters: *Click here to enter text.*
- ☐ Wetlands: = acres.

F. NON-JURISDICTIONAL WATERS, INCLUDING WETLANDS (CHECK ALL THAT APPLY):

- ☐ If potential wetlands were assessed within the review area, these areas did not meet the criteria in the 1987 Corps of Engineers Wetland Delineation Manual and/or appropriate Regional Supplements.
- ☒ Review area included isolated waters with no substantial nexus to interstate (or foreign) commerce.
 - ☒ Prior to the Jan 2001 Supreme Court decision in "SWANCC," the review area would have been regulated based solely on the "Migratory Bird Rule" (MBR).
- ☐ Waters do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction. Explain: *Click here to enter text.*
- ☐ Other: (explain, if not covered above): *Click here to enter text.*

Provide acreage estimates for non-jurisdictional waters in the review area, where the sole potential basis of jurisdiction is the MBR factors (i.e., presence of migratory birds, presence of endangered species, use of water for irrigated agriculture), using best professional judgment (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet = width (ft).
- ☐ Lakes/ponds: = acres.
- ☐ Other non-wetland waters: = acres. List type of aquatic resource: *Click here to enter text.*
- ☒ Wetlands: Wetland 5 is 0.71 acres, Wetland 6 is 1.07 acres, Wetland 7 is 1.17 acres, Wetland 8 is 1.22 acres, Wetland 9 is 0.02 acres, Wetland 10 is 0.59 acres, Wetland 11 is 1.33 acres, Wetland 12 is 0.10 acres, Wetland 13 is 0.02 acres, Wetland 14 is 0.02 acres, Wetland 15 is 0.07 acres, Wetland 16 is 0.26 acres, Wetland 17 is 0.25 acres, Wetland 18 is 0.39 acres and Wetland 19 is 0.04 acres. Total 7.26 acres.

Provide acreage estimates for non-jurisdictional waters in the review area that do not meet the "Significant Nexus" standard, where such a finding is required for jurisdiction (check all that apply):

- ☐ Non-wetland waters (i.e., rivers, streams): linear feet = width (ft).
- ☐ Lakes/ponds: = acres.
- ☐ Other non-wetland waters: = acres. List type of aquatic resource: *Click here to enter text.*
- ☐ Wetlands: = acres.

SECTION IV: DATA SOURCES.

A. SUPPORTING DATA. Data reviewed for JD (check all that apply - checked items shall be included in case file and, where checked and requested, appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Original delineation conducted by Earth Dimensions, Inc. (EDI), dated November 11, 2013. Revised delineation submitted by EDI, dated November 25, 2013 based upon changes requested as a result of Corps' site inspection.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☒ Office concurs with data sheets/delineation report dated November 25, 2013.
 - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: *Click here to enter text.*
- ☐ Corps navigable waters' study: *Click here to enter text.*
- ☐ U.S. Geological Survey Hydrologic Atlas: *Click here to enter text.*
- ☐ USGS NHD data.

¹⁰ Prior to asserting or declining CWA jurisdiction based solely on this category, Corps Districts will elevate the action to Corps and EPA HQ for review consistent with the process described in the Corps/EPA Memorandum Regarding CWA Act Jurisdiction Following Rapanos.

- ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: Central Square Quadrangle. The site ranges in topography from 380 to 400 feet amsl. Two perennial streams are identified on the Approved JD review area, one of which flows into the other, and subsequently flows under Interstate 81 and into Oneida Lake.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Oswego County Soil Survey (web soil survey). Mapped soils include HuB (Hudson silt loam), IrB (Ira gravelly fine sandy loam), Ma (Madalin silt loam), RhA and B (Rhinebeck silt loam), ScB (Scriba gravelly fine sandy loam), and SgB and C (Sodus gravelly fine sandy loam). Of these, Madalin silt loam is predominately hydric, and is primarily located within a strip in the center of the property, within areas mapped as Wetlands 1/4 discussed on the preliminary JD. The soils on the Approved JD portion of the site are identified as predominately non-hydric or non-hydric, with the exception of a small portion of Madaline silt loam, which is a predominately hydric soil. This is mapped near and within areas mapped as Wetlands 7 and 8. Although the soil series continues off-site, the wetlands did not continue to the property line.
- ☒ National wetlands inventory map(s). Cite name: Central Square Quadrangle. No wetlands are mapped on the project site.
- ☒ State/Local wetland inventory map(s): Central Square Quadrangle. No wetlands are mapped on the project site.
- ☐ FEMA/FIRM maps: *Click here to enter text.*
- ☐ 100-year Floodplain Elevation is: *Click here to enter text.* (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Various aerial photographs were inspected, including the 2011, 2006, 2003, and 1994 NYSGIS Clearinghouse aerial photos as well as the aerial photo from bing.com/maps. Clearing of the review area has occurred since the most recent photographs, but this was done in a non-jurisdictional manner as trees were cut by hand and stumps were not removed.
- ☐ or ☒ Other (Name & Date): On-site photos provided with delineation report.
- ☐ Previous determination(s). File no. and date of response letter: *Click here to enter text.*
- ☐ Applicable/supporting case law: *Click here to enter text.*
- ☐ Applicable/supporting scientific literature: *Click here to enter text.*
- ☒ Other information (please specify): Site inspection conducted on November 15, 2013. At this time, the Corps confirmed that Wetlands 5-19 are isolated as there is no surface water connection from any of these wetlands to a tributary system. The Corps requested that the consultant provide data on the northeast sides of Wetlands 5 and 6, which were delineated to the property line, to determine if the wetlands extend into the NYSDOT right-of-way (ROW). The consultant provided the Corps with data that the wetland boundaries end at the property line and do not extend into the ROW. The ditch line along the NYSDOT ROW at this location is very small and did not appear to contain relatively permanent water and would likely not be deemed a regulated feature. Further, the area between the wetlands and the ditch was an upland mowed field.

B. ADDITIONAL COMMENTS TO SUPPORT JD: NA

SIGNED

Margaret A. Crawford
Project Manager

March 19, 2014

Date

Isolated Wetlands:

Wetland/Stream Identification #	Geographic Center (NAD83)		Boundary Flags	Total Acreage On-Site/Linear feet	Wetland/Stream Type	Jurisdictional Determination
	Longitude	Latitude				
Wetland 5	76.13411	43.25583	W5-1 through W5-16	0.71±	Emergent Marsh (PEM)	Isolated
Wetland 6	76.13304	43.25501	W6-1 through W6-19	1.07±	Emergent Marsh (PEM)	Isolated
Wetland 7	76.13339	43.25260	W7-1 through W7-36	1.17±	Emergent Marsh (PEM)	Isolated
Wetland 8	76.13260	43.25296	W8-1 through W8-38	1.22±	Emergent Marsh (PEM)	Isolated
Wetland 9	76.13283	43.25270	W9-1 through W9-4	0.02±	Emergent Marsh (PEM)	Isolated
Wetland 10	76.13432	43.25325	W10-1 through W10-39	0.59±	Emergent Marsh (PEM)	Isolated
Wetland 11	76.13495	43.25213	W11-1 through W11-50	1.33±	Emergent Marsh (PEM)	Isolated
Wetland 12	76.13509	43.25367	W12-1 through W12-7	0.10±	Emergent Marsh (PEM)	Isolated
Wetland 13	76.13513	43.25392	W13-1 through W13-4	0.02±	Emergent Marsh (PEM)	Isolated
Wetland 14	76.13531	43.25417	W14-1 through W14-4	0.02±	Emergent Marsh (PEM)	Isolated
Wetland 15	76.13534	43.25476	W15-1 through W15-5	0.07±	Emergent Marsh (PEM)	Isolated
Wetland 16	76.13617	43.25508	W16-1 through W16-13	0.26±	Emergent Marsh (PEM)	Isolated
Wetland 17	76.13681	43.25566	W17-1 through W17-11	0.25±	Emergent Marsh (PEM)	Isolated
Wetland 18	76.13751	43.25542	W18-1 through W18-13	0.39±	Emergent Marsh (PEM)	Isolated
Wetland 19	76.13753	43.25422	W19-1 through W19-4	0.04±	Emergent Marsh (PEM)	Isolated
Total Wetland Acreage:				7.26±		

ATTACHMENT

PRELIMINARY JURISDICTIONAL DETERMINATION FORM

BACKGROUND INFORMATION

A. REPORT COMPLETION DATE FOR PRELIMINARY JURISDICTIONAL DETERMINATION (JD): 3/19/14

B. NAME AND ADDRESS OF PERSON REQUESTING PRELIMINARY JD:

Glenn Donnelly
Central New York Raceway Park, Inc.
100 Limestone Plaza
Fayetteville, New York 13066

C. DISTRICT OFFICE, FILE NAME, AND NUMBER: Buffalo District, CNY Raceway Park, 2012-00022

D. PROJECT LOCATION(S) AND BACKGROUND INFORMATION: The CNY Raceway Park, Inc. submitted a request for a jurisdictional determination for a 143.5 acre site located on the east side of Route 11 and on the west side of NYS Route 81, north of the Village of Brewerton. Nineteen wetlands and six streams were delineated on the site. This preliminary JD pertains only to a portion of the site totalling 84 acres, containing Wetlands 1-4 and Streams 1-6. See the attached table for a list of the wetlands and streams for this Preliminary JD review area. Note: an approved JD has been completed for the remainder of the site and includes Wetlands 5-19.

State: New York County/parish/borough: Oswego Town: Hastings

Center coordinates of site (lat/long in degree decimal format):

Lat. 43.25099 °, Long. -76.13757 °

Universal Transverse Mercator:

Zone 18, Y 4789315.11276728, X 407656.347533678

Name of nearest waterbody: Oneida Lake

Name of nearest Traditional Navigable Water (TNW) into which the aquatic resource flows: Oneida Lake

Name of watershed or Hydrologic Unit Code (HUC): 4140202

Identify (estimate) amount of waters in the review area: see attached table

Non-wetland waters: total of 6098 linear feet in 6 streams; varied width (ft)

Cowardin Class: Palustrine

Stream Flow: see attached table

Wetlands: total of 17.589 acres in three wetlands.

Cowardin Class: see attached table

Name of any water bodies on the site that have been identified as Section 10 waters: NA

Tidal:

Non-Tidal:

E. REVIEW PERFORMED FOR SITE EVALUATION (CHECK ALL THAT APPLY):

☒ Office (Desk) Determination. Date: December 30, 2013

☒ Field Determination. Date(s): November 15, 2013

FILE NAME, AND NUMBER: Buffalo District, CNY Raceway Park, 2012-00022

1. The Corps of Engineers believes that there may be jurisdictional waters of the United States on the subject site, and the permit applicant or other affected party who requested this preliminary JD is hereby advised of his or her option to request and obtain an approved jurisdictional determination (JD) for that site. Nevertheless, the permit applicant or other person who requested this preliminary JD has declined to exercise the option to obtain an approved JD in this instance and at this time.

2. In any circumstance where a permit applicant obtains an individual permit, or a Nationwide General Permit (NWP) or other general permit verification requiring "pre-construction notification" (PCN), or requests verification for a non-reporting NWP or other general permit, and the permit applicant has not requested an approved JD for the activity, the permit applicant is hereby made aware of the following: (1) the permit applicant has elected to seek a permit authorization based on a preliminary JD, which does not make an official determination of jurisdictional waters; (2) that the applicant has the option to request an approved JD before accepting the terms and conditions of the permit authorization, and that basing a permit authorization on an approved JD could possibly result in less compensatory mitigation being required or different special conditions; (3) that the applicant has the right to request an individual permit rather than accepting the terms and conditions of the NWP or other general permit authorization; (4) that the applicant can accept a permit authorization and thereby agree to comply with all the terms and conditions of that permit, including whatever mitigation requirements the Corps has determined to be necessary; (5) that undertaking any activity in reliance upon the subject permit authorization without requesting an approved JD constitutes the applicant's acceptance of the use of the preliminary JD, but that either form of JD will be processed as soon as is practicable; (6) accepting a permit authorization (e.g., signing a proffered individual permit) or undertaking any activity in reliance on any form of Corps permit authorization based on a preliminary JD constitutes agreement that all wetlands and other water bodies on the site affected in any way by that activity are jurisdictional waters of the United States, and precludes any challenge to such jurisdiction in any administrative or judicial compliance or enforcement action, or in any administrative appeal or in any Federal court; and (7) whether the applicant elects to use either an approved JD or a preliminary JD, that JD will be processed as soon as is practicable. Further, an approved JD, a proffered individual permit (and all terms and conditions contained therein), or individual permit denial can be administratively appealed pursuant to 33 C.F.R. Part 331, and that in any administrative appeal, jurisdictional issues can be raised (see 33 C.F.R. 331.5(a)(2)). If, during that administrative appeal, it becomes necessary to make an official determination whether CWA jurisdiction exists over a site, or to provide an official delineation of jurisdictional waters on the site, the Corps will provide an approved JD to accomplish that result, as soon as is practicable.

This preliminary JD finds that there "may be" waters of the United States on the subject project site, and identifies all aquatic features on the site that could be affected by the proposed activity, based on the following information:

FILE NAME, AND NUMBER: Buffalo District, CNY Raceway Park, 2012-00022

SUPPORTING DATA. Data reviewed for preliminary JD (check all that apply -
checked items should be included in case file and, where checked and requested,
appropriately reference sources below):

- ☒ Maps, plans, plots or plat submitted by or on behalf of the applicant/consultant: Original delineation conducted by Earth Dimensions, Inc. (EDI), dated November 11, 2013. Revised delineation submitted by EDI, dated November 25, 2013 based upon changes requested as a result of Corps' site inspection.
- ☒ Data sheets prepared/submitted by or on behalf of the applicant/consultant.
 - ☒ Office concurs with data sheets/delineation report dated November 25, 2013.
 - ☐ Office does not concur with data sheets/delineation report.
- ☐ Data sheets prepared by the Corps: *Click here to enter text.*
- ☐ Corps navigable waters' study: *Click here to enter text.*
- ☐ U.S. Geological Survey Hydrologic Atlas: *Click here to enter text.*
 - ☐ USGS NHD data.
 - ☐ USGS 8 and 12 digit HUC maps.
- ☒ U.S. Geological Survey map(s). Cite scale & quad name: Central Square Quadrangle. The site ranges in topography from 380 to 400 feet amsl. Two perennial streams are identified, one of which flows into the other, and subsequently flows into Oneida Lake, off-site.
- ☒ USDA Natural Resources Conservation Service Soil Survey. Citation: Oswego County Soil Survey (web soil survey). Mapped soils include HuB (Hudson silt loam), IrB (Ira gravelly fine sandy loam), Ma (Madalin silt loam), RhA and B (Rhinebeck silt loam), ScB (Scriba gravelly fine sandy loam), and SgB and C (Sodus gravelly fine sandy loam). Of these, Madalin silt loam is predominately hydric, and is primarily located within a strip in the center of the property, within areas mapped as Wetlands 1/4. The remainder of the soils are either identified as predominately non-hydric or non-hydric.
- ☒ National wetlands inventory map(s). Cite name: Central Square Quadrangle. No wetlands are mapped on the project site.
- ☒ State/Local wetland inventory map(s): Central Square Quadrangle. No wetlands are mapped on the project site.
- ☐ FEMA/FIRM maps: *Click here to enter text.*
- ☐ 100-year Floodplain Elevation is: *Click here to enter text.* (National Geodetic Vertical Datum of 1929)
- ☒ Photographs: ☒ Aerial (Name & Date): Various aerial photographs were inspected, including the 2011, 2006, 2003, and 1994 NYSGIS Clearinghouse aerial photos as well as the aerial photo from bing.com/maps. Note that the site has seen considerable change over the years, and the primary perennial stream (Stream 1) through the site has been moved. Based upon the photographs, it appears that this occurred in approximately 2003. The Corps does not have records of a permit for this action. Clearing of the site has occurred since the most recent photographs, but this was done in a non-jurisdictional manner as trees were cut by hand and stumps were not removed. The site appeared to have been used as a race track in the 1994 photograph.
- ☐ or ☒ Other (Name & Date): On-site photos provided with delineation report.
- ☐ Previous determination(s). File no. and date of response letter: *Click here to enter text.*
- ☐ Applicable/supporting case law: Site inspection conducted on November 15, 2013.
- ☐ Applicable/supporting scientific literature: *Click here to enter text.*
- ☐ Other information (please specify): *Click here to enter text.*

FILE NAME, AND NUMBER: Buffalo District, CNY Raceway Park, 2012-00022

IMPORTANT NOTE: The information recorded on this form has not necessarily been verified by the Corps and should not be relied upon for later jurisdictional determinations.

SIGNED

Signature and date of
Regulatory Project Manager
(REQUIRED)

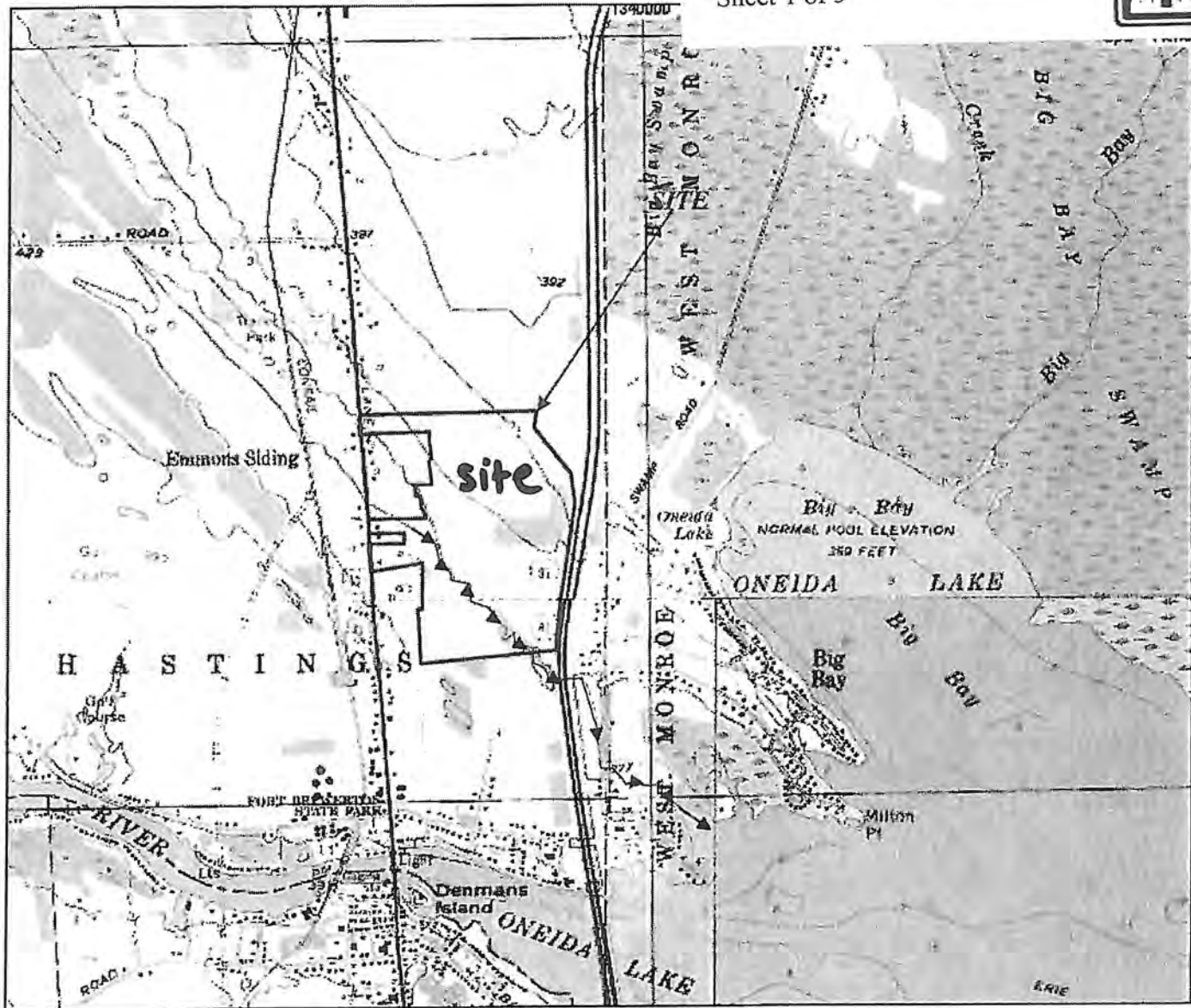
Signature and date of
person requesting preliminary JD
(REQUIRED)

WETLANDS:

Wetland/Stream Identification #	Geographic Center (NAD83)		Boundary Flags	Total Acreage On-Site/Linear feet	Wetland/Stream Type	Jurisdictional Determination
	Longitude	Latitude				
Wetland 1/4	76.13945	43.25184	W1-1 through W1-212, W4-1 through W4-40	16.10±	Emergent Marsh (PEM)	Section 404
Wetland 2	76.13517	43.25077	W2-1 through W2-3	0.07±	Emergent Marsh (PEM)	Section 404
Wetland 3	76.14183	43.25639	W3-1 through W3-18	1.31±	Emergent Marsh (PEM)	Section 404
Total Wetland Acreage:				17.48		

STREAMS:

Stream Identification #	Geographic Center (NAD83)		Total Acreage On-Site/Linear feet	Wetland/Stream Type	Jurisdictional Determination
	Longitude	Latitude			
Stream 1	76.1373	43.25026	3234 linear feet	Intermittent	Section 404
Stream 2	76.14053	43.25493	689 linear feet	Intermittent	Section 404
Stream 3	76.13531	43.24933	1135 linear feet	Intermittent	Section 404
Stream 4	76.13544	43.25060	463 linear feet	Intermittent	Section 404
Stream 5	76.13701	43.25200	329 linear feet	Intermittent	Section 404
Stream 6	76.14232	43.25642	248 linear feet	Intermittent	Section 404
Total Stream Linear Feet			6098 linear ft		



EARTH DIMENSIONS, INC.

• Soil & Hydrogeologic Investigations • Wetland Delineations
 1091 Jamison Road, Elma NY 14059
 (716) 655-1717 • Fax (716) 655-2915 www.earthdimensions.com

Figure 7: Drainage Map
 Central Square Quadrangle/ GPS Expert



CNY Raceway Park
 Town of Hastings, Oswego County, New York



APPROVED AND PRELIMINARY
JURISDICTIONAL MAP
Town of Hadley
Oswego County, New York

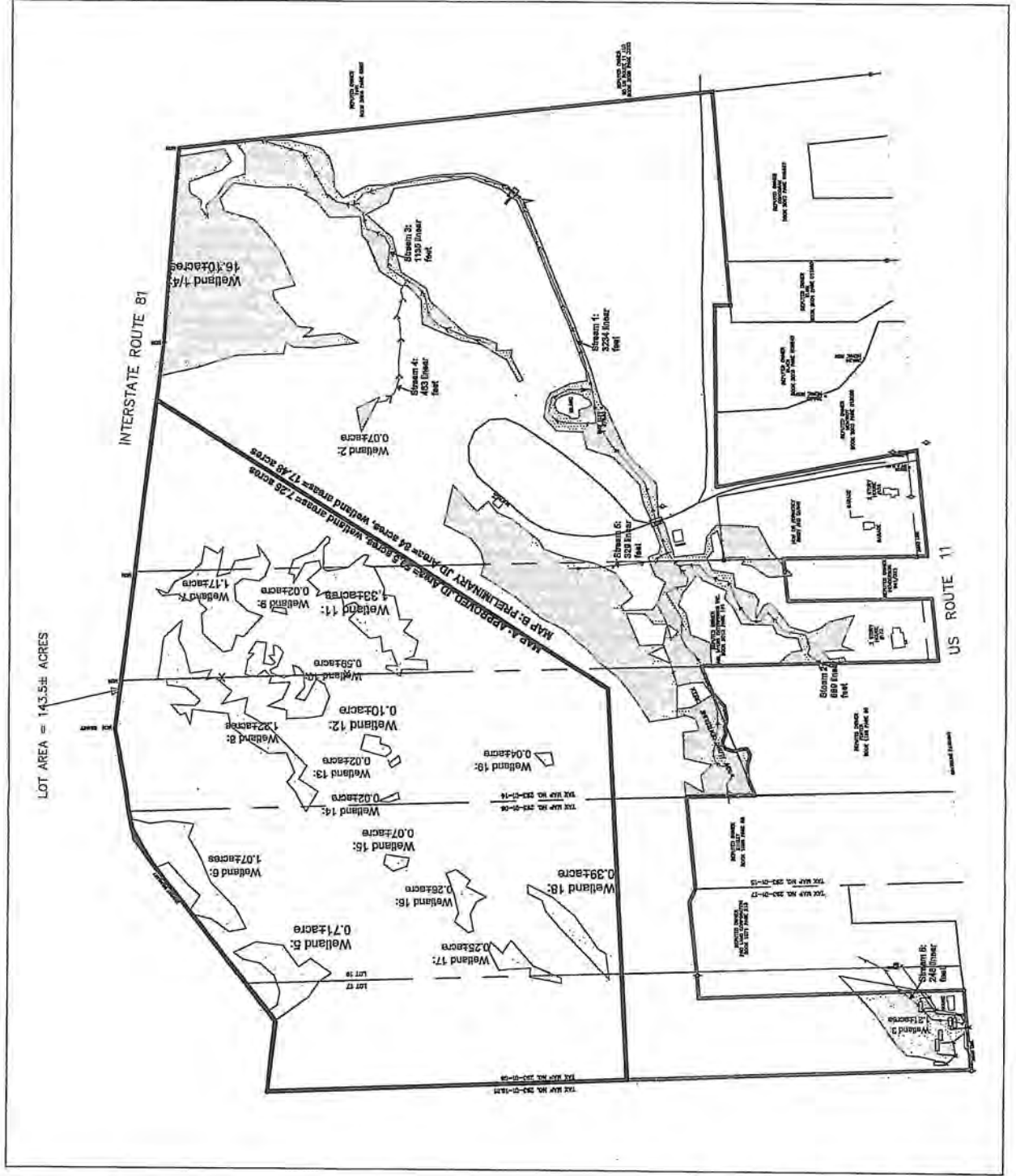


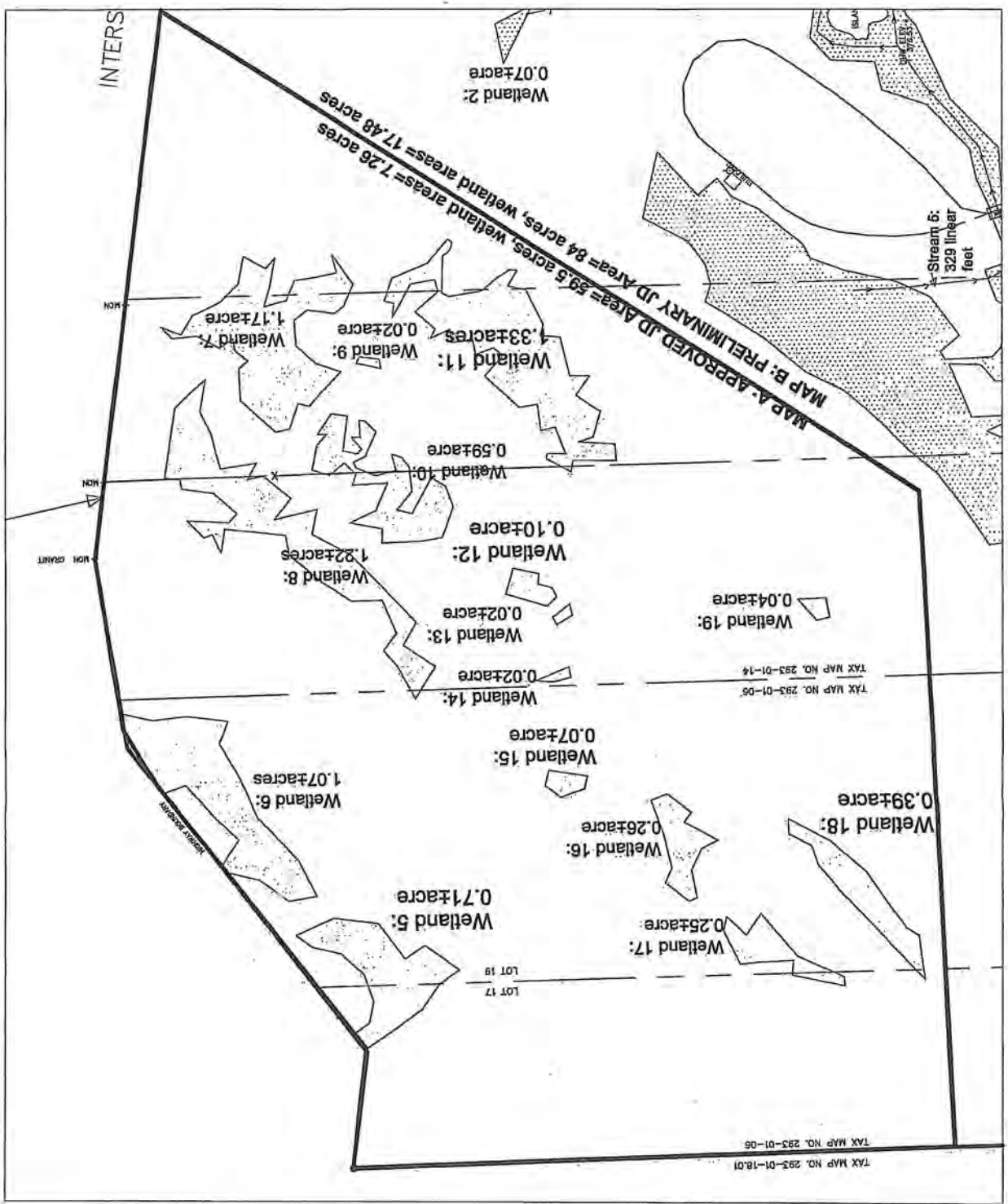
MASTER MAP

LEGEND

- community line
- Data Location
- Jurisdictional Wetland Area
- Non-Jurisdictional Wetland Area
- ditches/ drainages

Scale: Not To Scale
Map Date: November 11, 2013 JMC/EDI
Revised: January 29, 2014 JMC/EDI
Base Map Provided By: Paul James Olszewski, P.L.S., PLLC
File Name: JDMAP.DWG
EDI Project Code: W10313





APPROVED AND PRELIMINARY
JURISDICTIONAL MAP
TOWN OF HADSDALE
Oswego County, New York



MAP A: ISOLATED WETLANDS

LEGEND

- community line
- Data Location
- Jurisdictional Wetland Area
- Non-Jurisdictional Wetland Area
- ditches/ drainages

Scale: Not To Scale

Map Date: November 11, 2013 JMC/EDI
Revised: January 29, 2014 JMC/EDI

Base Map Provided By: Paul James Oliszewski,
P.L.S., PLLC

File Name: JDMAP.DWG






EDI Project Code: W10J13



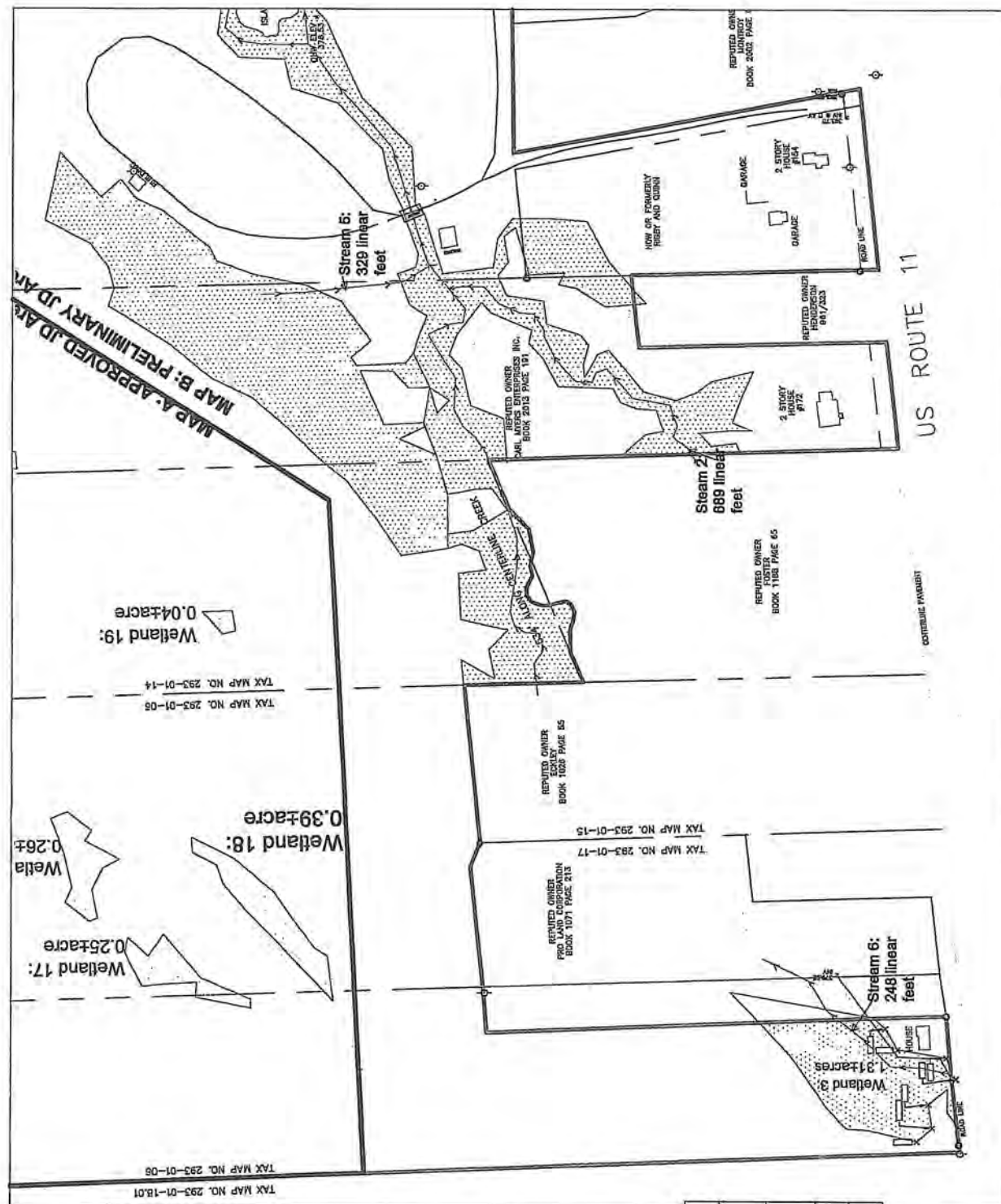
Town of Hagans
Oswego County, New York

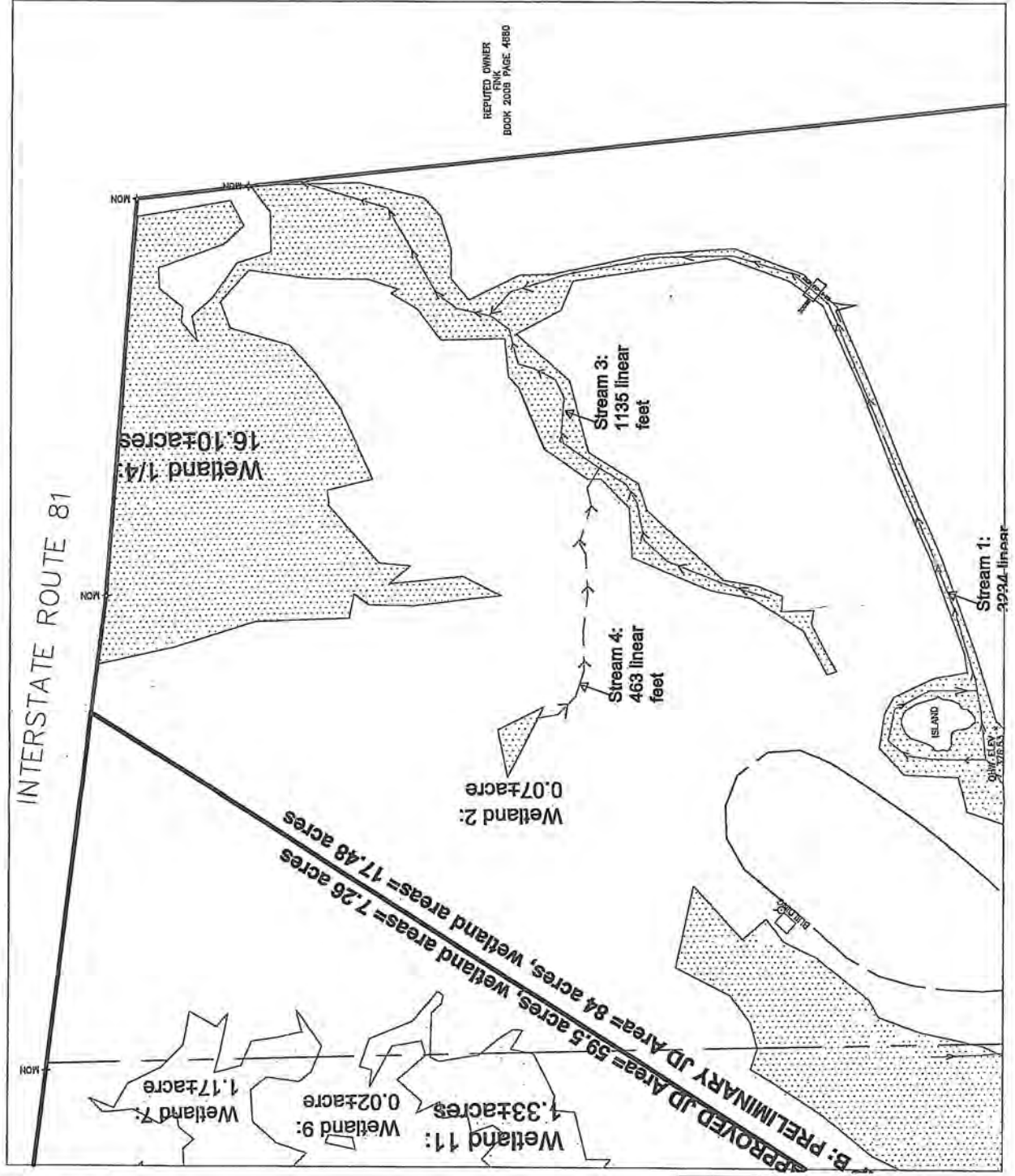


LEGEND

- | | |
|---|---------------------------------|
|  | community line |
|  | Data Location |
|  | Jurisdictional Wetland Area |
|  | Non-Jurisdictional Wetland Area |
|  | ditches/ drainages |

EARTH DIMENSIONS, INC.





REPUTED OWNER
CNY RACEWAY PARK
BOOK 2003 PAGE 4880

APPROVED AND PRELIMINARY
JURISDICTIONAL MAP
Town of Ticonderoga
Oswego County, New York



MAP B-2: JURISDICTIONAL WETLANDS

LEGEND

- community line
- Data Location
- Jurisdictional Wetland Area
- Non-Jurisdictional Wetland Area
- ditches/ drainages

Scale: Not To Scale
Map Date: November 11, 2013 JMC/EDI
Revised: January 29, 2014 JMC/EDI
Base Map Provided By: Paul James Olszewski, P.L.S., PLLC
File Name: JDMAP.DWG
EDI Project Code: W10113





New York State Office of Parks, Recreation and Historic Preservation

Division for Historic Preservation
P.O. Box 189, Waterford, New York 12188-0189
518-237-8643

Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

March 28, 2014

Greg Rigby
CNY Raceway
PO Box 564
Central Square, NY 13036
(via email only)

Re: DEC
Central NY Raceway Park
Between Interstate 81 & US Route 11
Town of Hastings, Oswego County
12PR04367

Dear Mr. Rigby:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP). *We have reviewed the Gemorphological Study and Ground Penetrating Radar Investigations for the Central New York Raceway Park Project*, prepared by Powers and Teremy and dated February 5, 2014, in accordance with the New York State Historic Preservation Act of 1980 (Section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources.

Based on our review, we offer the following recommendations.

1. The OPRHP concurs that approximately 12 acres of the project area lack the potential for archaeological sites and no archaeological testing is recommended for these areas. The areas for which the OPRHP has no further concerns are noted as "Areas of Confirmed Disturbance" in Appendix I.
2. The ORHPH concurs that the three mounds are likely debris piles. To confirm this finding, the OPRHP recommends shovel testing around the three mounds utilizing 5-m (3.3-ft) transects. If no Native American artifacts are identified in the area surrounding the mound, one 50 by 50 cm shovel test should be placed within each mound to confirm their recent nature.
3. The OPRHP recommends that the contents of this letter report are included in the Phase IB Report as supporting documentation.
4. Please be aware that additional input from the Onondaga Nation and the Oneida Indian Nation should be considered for incorporation into the Phase IB testing protocol, and that the Nations may request to monitor the Phase IB archaeological testing.

The OPRHP looks forward to reviewing the results of the Phase IB archaeological testing. Please telephone me at ext. 3280 with any questions you may have.

cc. Anthony Gonyea, Onondaga Nation *(via email only)*
Thane Joyal, Esq. Onondaga Nation *(via email only)*
Joe Heath, Esq. Onondaga Nation *(via email only)*
Paul Powers, Powers & Teremy *(via email only)*
David Bimber, DEC *(via email only)*
Margaret Crawford, CORPS *(via email only)*
William Eimick, CNY Raceway *(via email only)*

Sincerely,

A handwritten signature in cursive script that reads "Nancy Herter".

Nancy Herter
Historic Preservation Program Analyst



New York State Office of Parks, Recreation and Historic Preservation

Division for Historic Preservation
P.O. Box 189, Waterford, New York 12188-0189
518-237-8643

Andrew M. Cuomo
Governor

Rose Harvey
Commissioner

December 5, 2013

Greg Rigby
CNY Raceway
PO Box 564
Central Square, NY 13036
(via email only)

Re: DEC
Central NY Raceway Park
Between Interstate 81 & US Route 11
Town of Hastings, Oswego County
12PR04367

Dear Mr. Rigby:

Thank you for requesting the comments of the Office of Parks, Recreation and Historic Preservation (OPRHP). *We have reviewed the Phase IA Archaeological Background and Literature Review and Preliminary Disturbance Assessment*, prepared by Alliance Archaeological Services and dated December 14, 2012, in accordance with the New York State Historic Preservation Act of 1980 (Section 14.09 of the New York Parks, Recreation and Historic Preservation Law). These comments are those of the Division for Historic Preservation and relate only to Historic/Cultural resources.

Based on our review, we offer the following comments.

1. The OPRHP recommends that a Phase IB investigation is completed for the entire Area of Potential Effect (APE) since there is no evidence for large scale, previous ground disturbance.
2. In areas of Cut and Fill Land, the OPRHP recommends either soil augers or mechanical excavated trenches to determine if original topsoil remains and to what depth. If original topsoil remains, a Phase IB testing strategy will need to be devised to test these locations for the presence of archaeological sites.
3. In the area of the three potential burial mounds, the OPRHP recommends a minimum of two 5 m (3.3 ft) shovel test transects with the first transect of shovel tests placed 5 m (3.3 ft) or less from the base of the mound.
4. To answer the question of whether these earthen structures are burial mounds, the OPRHP recommends exploring the use of ground penetrating radar with the consulting archaeologist and a ground penetrating radar specialist.
5. If the use of ground penetrating radar is not appropriate, the OPRHP recommends the hand excavation of a 0.5 m by 1 m trench centered on the edge of each potential

mound. Mounds often include rocks, clay, lenses of dark soil, charcoal and Native American artifacts (flakes, broken stone tools, pot sherds and animal bone) in their matrix. The mound floor may be prepared with a layer of sand or clay.

6. The ORPHP recommends that the Phase IB report include an overview of what is known about burial mounds in New York State.
7. The ORPHP recommends that a monitor from the Onondaga Nation be invited to participate in the Phase IB fieldwork.

I can be reached at (518) 674-8214 with any questions you may have.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Herter".

Nancy Herter
Historic Preservation Program Analyst,
Archaeology

cc. Anthony Gonyea, Onondaga Nation *(via email only)*
Thane Joyal, Esq. Onondaga Nation *(via email only)*
Joe Heath, Esq. Onondaga Nation *(via email only)*
Paul Powers, Powers & Teremy *(via email only)*
David Bimber, DEC *(via email only)*



Central New York's Water Authority
www.ocwa.org

200 NORTHERN CONCOURSE
P.O. BOX 4949
SYRACUSE, NY 13221-4949

PHONE: (315) 455-7061
FAX: (315) 455-8510

May 5, 2014

RECEIVED
MAY 6 2014

Mr. Jeff Williams
CHA Companies
The Galleries of Syracuse
441 South Salina Street
Syracuse, NY 13202-4712

Re: OCWA Project No. 5004386
Central New York Raceway Park
Water Availability

Dear Mr. Williams:

We have reviewed your request for information on the availability of water for the Central New York Raceway proposed to be constructed between Route 11 and Route 81 in the Town Hastings just south of the Central Square Middle School. OCWA has an 8" watermain along Route 11. Based upon the projected water usage provided, OCWA can supply the needed water for the facility. Normal water pressure will range from 50 to 65 psi depending upon exact location of the proposed water service and due to normal fluctuations in the water system pressures.

Regarding fireflow capabilities, our latest test information in the area is a test conducted in 2008 near the Middle School. That test indicated 1,700 gpm available at 20psi. As you move forward with design, please provide more detailed information and we can provide you with the requirements and cost for installing a water service to serve the facility.

Yours very truly,

OCWA

A blue ink signature of Patrick Sherlock, P.E., is written over the OCWA text.

Patrick Sherlock, P.E.
Engineering Manager

PS:sa
Cc: 5004386

Williams, Jeff

From: Powell, Mark <powellm@oswegocounty.com>
Sent: Friday, April 25, 2014 1:54 PM
To: Williams, Jeff
Subject: Waste Disposal in Oswego County

Jeff,

Oswego County Solid Waste has more than ample capacity to handle solid waste disposal and recycling needs that will be generated as a result of venues at the raceway.

Mark Powell
Operations Manager