Clean Water Act Section 404: Site Visit/Case Development

United States Environmental Protection Agency

For inspections authorized pursuant to Clean Water Act sections 308 and 404 (33 U.S.C. §§ 1318 and 1344)

This report includes only factual information gained by documentation, onsite observations, and/or onsite interviews.

Inspector Name(s)	Stephanie Andreescu Austin Jepsky	Time In	10:13 AM	Start Date	September 12, 2023
		Time Out	12:25 PM	End Date	September 12, 2023
Inspector's Organization	U.S. EPA Region 2				
Organization Requesting Inspection (if different)					
Inspection Type	Evaluation	Inspection Status	Original		
Site Name	Fair Oaks Road Associates				
Site Address*	Fair Oaks Road (Tax ID: 14-1-68)				
City*	Middletown	County*	Orange	State* NY	Zip Code* 10940
Mailing Address*	U.S. FOIA (b)(6)				
City*	U.S. FOIA (b)(6)	County*	U.S. FOIA (b)(6)	State* U.S. FOIA (b)(6)	Zip Code* U.S. FOIA (b)(6)
Latitude*	41.5015	Longitude*	-74.4140		
Estimated Size of Site (acres)	44.10	Is there a home on the site?	☐ Yes	☒ No	
Inspector Signature	Stephanie Andreescu Digitally signed by STEPHANIE ANDREESCU Date: 2023.10.13 10:52:33 -04'00'	Date	10/13/23		
Supervisor Signature	MARCO FINOCCHIARO Digitally signed by MARCO FINOCCHIARO Date: 2023.10.13 12:34:29 -04'00'	Date	10/13/23		

Clean Water Act Section 404: Site Visit/Case Development

United States Environmental Protection Agency

For inspections authorized pursuant to Clean Water Act sections 308 and 404 (33 U.S.C. §§ 1318 and 1344)

Site Name	Fair Oaks Road Associates	Start Date	September 12, 2023
		End Date	September 12, 2023
Inspection Purpose	Initial site visit		

Opening Conference

☒ Presentation of Inspector Credentials

Name and Title (Use N/A if owner/operator not available to join the inspection)

Credentials were on display during the inspection.

☒ Opening Conference

Name of person authorizing access if applicable

EPA scheduled the inspection with Mr. Josephs.

Notes from Opening Conference

Mr. Josephs stated that he purchased the property approximately two years ago because he wanted a pond for recreation purposes. He stated that he was not planning to develop the property.

Mr. Josephs said that he went to Zahir Equipment to rent an excavator to deepen the pond. Mr. Shamster of Zahir Equipment rented Mr. Josephs the equipment and performed the work with an excavator for two days.

☐ Access Issues if Any

Describe

N/A

Inspection Observations and Sample Collection

Site Owner/Site Operator/Responsible Party (Name, title and contact information)

Site owner: Fair Oaks Road Associates represented by Eli Josephs (manager); U.S. FOIA (b)(6) ; U.S. FOIA (b)(6)

Additional Persons Present at Inspection

Eli Josephs of Fair Oaks Road Associates; Zahir Shamster of Zahir Equipment; Michael Fraatz, NYSDEC Region 3; Paige Lewandowski, NYSDEC Region 3

General Site Characteristics (layout of property, etc.)

The property is a 44.10-acre "L"-shaped parcel bordered by privately-owned parcels and Fair Oaks Road to the northwest. Current or historic railroad lines border the property to its east.

An unnamed NYSDEC Class "B" tributary flows northeast through an in-stream pond and then southeast on the southern portion of the property. The pond is pill-shaped (spherocylinder) and approximately 0.5 acre in size. The tributary flows to Masonic Creek, a tributary of the Wallkill River.

The property is undeveloped. A gravel/dirt road off of Fair Oaks Road leads down to the pond.

Purpose and Need for Discharge of Dredged and/or Fill Material

Fill material was discharged to potential wetland areas from dredging the in-stream pond and clearing vegetation on the property.

Clean Water Act Section 404: Site Visit/Case Development

United States Environmental Protection Agency

For inspections authorized pursuant to Clean Water Act sections 308 and 404 (33 U.S.C. §§ 1318 and 1344)

Site Name	Fair Oaks Road Associates	Start Date	September 12, 2023
		End Date	September 12, 2023

Site Overview (Past inspections, site description, permits, etc.)

EPA's Wetland Protection Section had not previously inspected the property. A NYSDEC Region 3 ECO previously visited the property.

The U.S. Army Corps of Engineers has not issued a permit for activities at the property.

Scope of Inspection (Areas inspected or not inspected)

EPA inspected areas around the pond and near the edges of the fill boundary.

Site Name	Fair Oaks Road Associates	Start Date	September 12, 2023
		End Date	September 12, 2023

Environmental Conditions (e.g., wind, rain, smoke, dust, temperature, snow)

Sunny with clouds, low 70's

Field Work Conducted

The inspection was a joint inspection between NYSDEC Region 3's Bureau of Habitat and EPA Region 2's Wetland Protection Section. NYSDEC was mainly focused on potential impacts to the Class "B" stream, which is protected under Article 15 of New York's Environmental Conservation Law. The purpose of EPA's inspection was to document whether there had been a discharge of dredged/fill material into waters of the United States without proper Corps authorization.

Data recorded during the inspection included GPS data; handwritten notes of observations; and photographs.

EPA started the inspection by walking down to the pond via the gravel/dirt access road and then proceeded clockwise around the pond. EPA observed the unnamed NYSDEC Class "B" tributary flowing into and exiting the pond. No structures were observed in the stream and, upstream and downstream of the pond, the stream channel appeared to be relatively undisturbed.

Near the northeast and southeast sides of the pond, EPA observed an "L"-shaped, 0.20-acre pile of fill material approximately 5-6 feet high and 20-30 feet wide. The edge of the fill material was recorded using a handheld Trimble GeoXT GPS unit. Fill material mostly consisted of material dredged from the bottom and side of the pond (0.12 acre) and piled woody debris (0.08 acre). EPA observed heavy equipment tracks in areas adjacent to the pond and earthen fill material in the shape of a bucket from heavy equipment. EPA also observed fresh cuts into the eastern edge of the pond.

EPA took a soil sample (SS1) north of the fill pile. Based on the presence of hydric soil, hydrophytic vegetation, and wetland hydrology consistent with the 1987 U.S Army Corps of Engineers Wetland Delineation Manual and the Northcentral and Northeast Regional Supplement, EPA concluded that the sampling location was within a wetland. Though mapped as a freshwater forested/shrub wetland by the National Wetlands Inventory, EPA characterized the wetland as a freshwater emergent wetland, though snags were observed throughout the system.

Two excavators were observed on the property along the access road to the pond.

Closing Conference

Documents Received and/or Requested During the Inspection

N/A

Compliance Assistance Provided (If any)

N/A

Observations Relayed to Site Owner/Operator

EPA informed the property owner of potential ways he could come into compliance with the Clean Water Act if fill material was found to have been discharged into wetlands.

Actions Taken by Owner/Operator During the Inspection (If any)

N/A

United States Environmental Protection Agency

Clean Water Act Section 404: Site Visit/Case Development

For inspections authorized pursuant to Clean Water Act sections 308 and 404 (33 U.S.C. §§ 1318 and 1344)

Site Name	Fair Oaks Road Associates	Start Date	September 12, 2023
		End Date	September 12, 2023

Potential Issues of Concern Including Regulatory Citations

Potential issues of concern included the discharge of fill material into wetlands without prior Corps authorization.

Attachments*

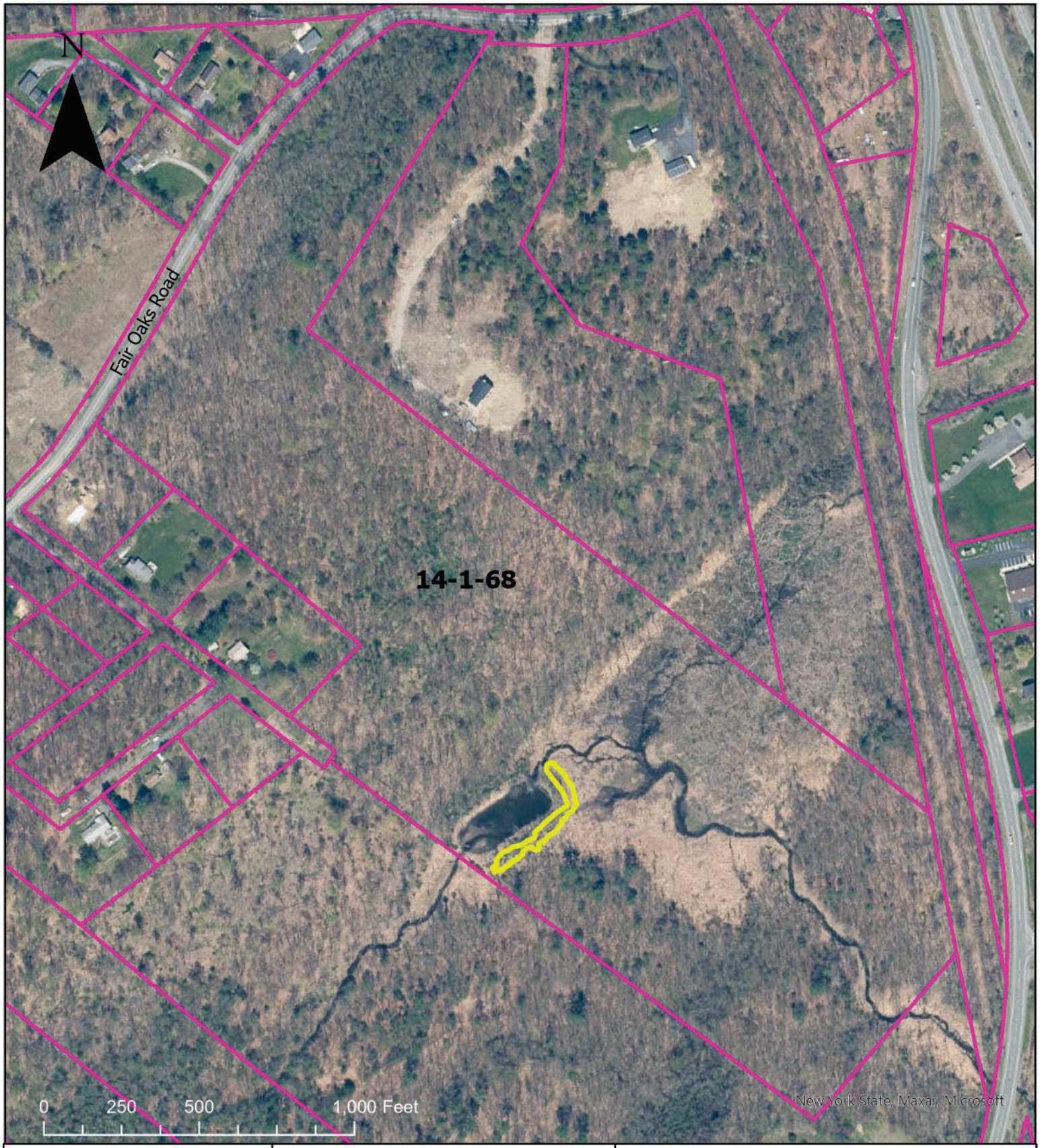
☒ Maps and Sketches

☒ Photographs (including location) and Photo Log

☐ Other (SSIP, Wetlands Delineation Forms, etc.)

Attachments: Map of GPS data; Photograph Log

Additional Notes



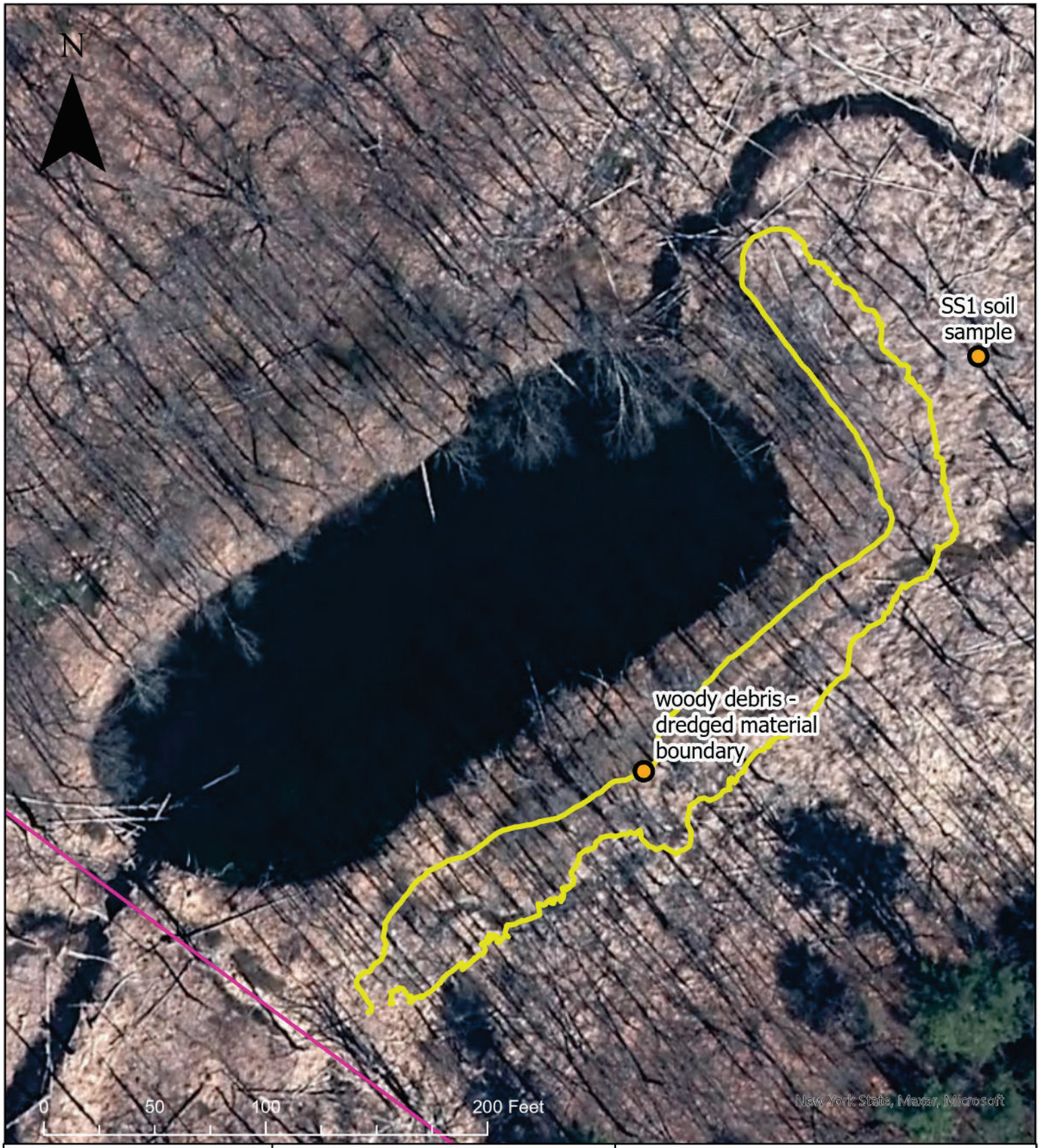
EPA

Clean Water Act Section 404 Inspection
September 12, 2023

Fair Oaks Road Associates Property (Tax ID: 14-1-68)
Fair Oaks Road, Middletown, NY
(41.5015, -74.4140)

9/12/23 EPA GPS Line: Limit of Disturbance

Parcel Boundary



EPA

Clean Water Act Section 404 Inspection
September 12, 2023

Fair Oaks Road Associates Property (Tax ID: 14-1-68)
Fair Oaks Road, Middletown, NY
(41.5015, -74.4140)

- 9/12/23 EPA GPS Point
- 9/12/23 EPA GPS Line: Limit of Disturbance
- Parcel Boundary

EPA CWA 404 Inspection Photolog
Fair Oaks Road Associates, Inc.
Middletown, Orange County, NY

September 12, 2023

Date: 9/12/2023
Time: 10:32 AM
Photographer: S. Andreescu
Photo ID: 1 – P9120152

Description:

(1/5) Panorama of access road to NYS Class "B" Stream

Date: 9/12/2023
Time: 10:32 AM
Photographer: S. Andreescu
Photo ID: 2 – P9120153

Description:

(2/5) Panorama of access road to NYS Class "B" Stream

Date: 9/12/2023
Time: 10:32 AM
Photographer: S. Andreescu
Photo ID: 3 – P9120154

Description:

(3/5) Panorama of access road to NYS Class "B" Stream

Site overview

Date: 9/12/2023
Time: 10:32 AM
Photographer: S. Andreescu
Photo ID: 4 – P9120155

Description:

(4/5) Panorama of access road to NYS Class "B" Stream

Site overview

Date: 9/12/2023
Time: 10:32 AM
Photographer: S. Andreescu
Photo ID: 5 – P9120156

Description:

(5/5) Panorama of access road to NYS Class "B" Stream

Site overview

Date: 9/12/2023
Time: 10:44 AM
Photographer: S. Andreescu
Photo ID: 6 – P9120157

Description:

Deceased organisms (snail and mussel) found in or around fill material

Date: 9/12/2023
Time: 10:47 AM
Photographer: S. Andreescu
Photo ID: 7 – P9120158

Description:

(1/3) Panorama of tree roots indicative of grubbing activities

Date: 9/12/2023
Time: 10:47 AM
Photographer: S. Andreescu
Photo ID: 8 – P9120159

Description:

(2/3) Panorama of tree roots indicative of grubbing activities

Date: 9/12/2023
Time: 10:47 AM
Photographer: S. Andreescu
Photo ID: 9 – P9120160

Description:

(3/3) Panorama of tree roots indicative of grubbing activities

Date: 9/12/2023
Time: 10:58 AM
Photographer: S. Andreescu
Photo ID: 10 – P9120161

Description:

Deceased mussel found in or around fill material

Date: 9/12/2023
Time: 11:21 AM
Photographer: S. Andreescu
Photo ID: 11 – P9120162

Description:

(1/3) Panorama of fill material next to pond

Date: 9/12/2023
Time: 11:21 AM
Photographer: S. Andreescu
Photo ID: 12 – P9120163

Description:

(2/3) Panorama of fill material next to pond

Date: 9/12/2023
Time: 11:21 AM
Photographer: S. Andreescu
Photo ID: 13 – P9120164

Description:

(3/3) Panorama of fill material next to pond

Date: 9/12/2023
Time: 11:36 AM
Photographer: S. Andreescu
Photo ID: 14 – P9120165

Description:

Fill material (bucket-shaped)

Date: 9/12/2023
Time: 11:46 AM
Photographer: S. Andreescu
Photo ID: 15 – P9120166

Description:

Soil sampling location #1 - Soil profile

Date: 9/12/2023
Time: 11:46 AM
Photographer: S. Andreescu
Photo ID: 16 – P9120167

Description:

Soil sampling location #1 - Soil profile

Date: 9/12/2023
Time: 11:46 AM
Photographer: S. Andreescu
Photo ID: 17 – P9120168

Description:

Soil sampling location #1

Date: 9/12/2023
Time: 11:46 AM
Photographer: S. Andreescu
Photo ID: 18 – P9120169

Description:

Soil sampling location #1

Date: 9/12/2023
Time: 11:53 AM
Photographer: S. Andreescu
Photo ID: 19 – P9120170

Description:

Oxidized rhizospheres on living roots (indicator of wetland hydrology)

Date: 9/12/2023
Time: 12:05 PM
Photographer: S. Andreescu
Photo ID: 20 – P9120171

Description:

Crayfish burrow in wetland

Date: 9/12/2023
Time: 12:05 PM
Photographer: S. Andreescu
Photo ID: 21 – P9120172

Description:

(1/6) Panorama of wetland-fill boundary

Date: 9/12/2023
Time: 12:05 PM
Photographer: S. Andreescu
Photo ID: 22 – P9120173

Description:

(2/6) Panorama of wetland-fill boundary

Date: 9/12/2023
Time: 12:05 PM
Photographer: S. Andreescu
Photo ID: 23 – P9120174

Description:

(3/6) Panorama of wetland-fill boundary

Date: 9/12/2023
Time: 12:05 PM
Photographer: S. Andreescu
Photo ID: 24 – P9120175

Description:

(4/6) Panorama of wetland-fill boundary

Date: 9/12/2023
Time: 12:05 PM
Photographer: S. Andreescu
Photo ID: 25 – P9120176

Description:

(5/6) Panorama of wetland-fill boundary

Date: 9/12/2023
Time: 12:05 PM
Photographer: S. Andreescu
Photo ID: 26 – P9120177

Description:

(6/6) Panorama of wetland-fill boundary

Date: 9/12/2023
Time: 12:15 PM
Photographer: S. Andreescu
Photo ID: 27 – P9120178

Description:

Pond outlet to NYS Class "B" Stream

Date: 9/12/2023
Time: 12:18 PM
Photographer: S. Andreescu
Photo ID: 28 – P9120179

Description:

Site overview

Date: 9/12/2023
Time: 12:22 PM
Photographer: S. Andreescu
Photo ID: 29 – P9120180

Description:

Excavator on property

Date: 9/12/2023
Time: 12:23 PM
Photographer: S. Andreescu
Photo ID: 30 – P9120181

Description:

Small excavator on property

U.S. Army Corps of Engineers
WETLAND DETERMINATION DATA SHEET – Northcentral and Northeast Region
See ERDC/EL TR-12-1; the proponent agency is CECW-CO-R

OMB Control #: 0710-0024, Exp: 11/30/2024
Requirement Control Symbol EXEMPT:
(Authority: AR 335-15, paragraph 5-2a)

Project/Site: Fair Oaks Road Associates City/County: Middletown/Orange County Sampling Date: 9/12/2023

Applicant/Owner: Eli Josephs State: NY Sampling Point: SS1

Investigator(s): S. Andreescu; A. Jepsky Section, Township, Range:

Landform (hillside, terrace, etc.): Local relief (concave, convex, none): Slope %:

Subregion (LRR or MLRA): LRR R Lat: 41.5015 Long: -74.4140 Datum:

Soil Map Unit Name: Alden silt loam (Ab) NWI classification: PFO/PSS Wetland

Are climatic / hydrologic conditions on the site typical for this time of year? Yes X No (If no, explain in Remarks.)

Are Vegetation , Soil , or Hydrology significantly disturbed? Are "Normal Circumstances" present? Yes X No

Are Vegetation , Soil , or Hydrology naturally problematic? (If needed, explain any answers in Remarks.)

SUMMARY OF FINDINGS – Attach site map showing sampling point locations, transects, important features, etc.

Hydrophytic Vegetation Present?	Yes X	No	**Is the Sampled Area**
Hydric Soil Present?	Yes X	No	**within a Wetland?** **Yes** X **No**
Wetland Hydrology Present?	Yes X	No	If yes, optional Wetland Site ID:

Remarks: (Explain alternative procedures here or in a separate report.)
Area adjacent to fill pile

HYDROLOGY

Wetland Hydrology Indicators:

Primary Indicators (minimum of one is required; check all that apply)

- X Surface Water (A1)
- X High Water Table (A2)
- X Saturation (A3)
- Water Marks (B1)
- Sediment Deposits (B2)
- Drift Deposits (B3)
- Algal Mat or Crust (B4)
- Iron Deposits (B5)
- Inundation Visible on Aerial Imagery (B7)
- Sparsely Vegetated Concave Surface (B8)
- Water-Stained Leaves (B9)
- X Aquatic Fauna (B13)
- Marl Deposits (B15)
- Hydrogen Sulfide Odor (C1)
- X Oxidized Rhizospheres on Living Roots (C3)
- Presence of Reduced Iron (C4)
- Recent Iron Reduction in Tilled Soils (C6)
- Thin Muck Surface (C7)
- Other (Explain in Remarks)

Secondary Indicators (minimum of two required)

- Surface Soil Cracks (B6)
- X Drainage Patterns (B10)
- Moss Trim Lines (B16)
- Dry-Season Water Table (C2)
- Crayfish Burrows (C8)
- Saturation Visible on Aerial Imagery (C9)
- Stunted or Stressed Plants (D1)
- Geomorphic Position (D2)
- Shallow Aquitard (D3)
- Microtopographic Relief (D4)
- X FAC-Neutral Test (D5)

Field Observations:

Surface Water Present?	Yes X	No	Depth (inches): 2
Water Table Present?	Yes X	No	Depth (inches):
Saturation Present? (includes capillary fringe)	Yes X	No	Depth (inches):

Wetland Hydrology Present? **Yes** X **No**

Describe Recorded Data (stream gauge, monitoring well, aerial photos, previous inspections), if available:

Remarks:

VEGETATION – Use scientific names of plants.

Sampling Point: SS1

Tree Stratum (Plot size: 15)	Absolute % Cover	Dominant Species?	Indicator Status
1. *Fraxinus pennsylvanica*	20	Yes	FACW
2.			
3.			
4.			
5.			
6.			
7.			
	20	=Total Cover	
Sapling/Shrub Stratum (Plot size:)			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
		=Total Cover	
Herb Stratum (Plot size: 5)			
1. *Microstegium vimineum*	60	Yes	FAC
2. *Persicaria sagittata*	60	Yes	OBL
3. *Persicaria punctata*	25	No	OBL
4. *Carex stricta*	10	No	OBL
5. *Carex*	2	No	
6. *Myosotis scorpioides*	1	No	OBL
7.			
8.			
9.			
10.			
11.			
12.			
	158	=Total Cover	
Woody Vine Stratum (Plot size:)			
1.			
2.			
3.			
4.			
		=Total Cover	

Dominance Test worksheet:

Number of Dominant Species That Are OBL, FACW, or FAC: 3 (A)

Total Number of Dominant Species Across All Strata: 3 (B)

Percent of Dominant Species That Are OBL, FACW, or FAC: 100.0% (A/B)

Prevalence Index worksheet:

Total % Cover of:		Multiply by:	
OBL species	96	x 1 =	96
FACW species	20	x 2 =	40
FAC species	60	x 3 =	180
FACU species	0	x 4 =	0
UPL species	0	x 5 =	0
Column Totals:	176 (A)		316 (B)

Prevalence Index = B/A = 1.80

Hydrophytic Vegetation Indicators:

___ 1 - Rapid Test for Hydrophytic Vegetation

X 2 - Dominance Test is >50%

X 3 - Prevalence Index is ≤3.0[1]

___ 4 - Morphological Adaptations[1] (Provide supporting data in Remarks or on a separate sheet)

___ Problematic Hydrophytic Vegetation[1] (Explain)

[1]Indicators of hydric soil and wetland hydrology must be present, unless disturbed or problematic.

Definitions of Vegetation Strata:

Tree – Woody plants 3 in. (7.6 cm) or more in diameter at breast height (DBH), regardless of height.

Sapling/shrub – Woody plants less than 3 in. DBH and greater than or equal to 3.28 ft (1 m) tall.

Herb – All herbaceous (non-woody) plants, regardless of size, and woody plants less than 3.28 ft tall.

Woody vines – All woody vines greater than 3.28 ft in height.

Hydrophytic Vegetation Present? **Yes** X **No** ___

Remarks: (Include photo numbers here or on a separate sheet.)
Phragmites australis and Typha sp. nearby but not in plot

SOIL

Sampling Point SS1

Profile Description: (Describe to the depth needed to document the indicator or confirm the absence of indicators.)

Depth (inches)	Matrix Color (moist)	Matrix %	Redox Features Color (moist)	Redox Features %	Type[1]	Loc[2]	Texture	Remarks
0-6	10YR 3/1	95	10YR 3/6	5	C	M	Loamy/Clayey	Prominent redox concentrations
6-13	10YR 6/1	60	7.5YR 5/8	40	C	PL/M	Loamy/Clayey	Prominent redox concentrations

[1]Type: C=Concentration, D=Depletion, RM=Reduced Matrix, MS=Masked Sand Grains.

[2]Location: PL=Pore Lining, M=Matrix.

Hydric Soil Indicators:

- ___ Histosol (A1)
- ___ Histic Epipedon (A2)
- ___ Black Histic (A3)
- ___ Hydrogen Sulfide (A4)
- ___ Stratified Layers (A5)
- X Depleted Below Dark Surface (A11)
- ___ Thick Dark Surface (A12)
- ___ Mesic Spodic (A17) **(MLRA 144A, 145, 149B)**
- ___ Sandy Mucky Mineral (S1)
- ___ Sandy Gleyed Matrix (S4)
- ___ Sandy Redox (S5)
- ___ Stripped Matrix (S6)
- ___ Dark Surface (S7)
- ___ Polyvalue Below Surface (S8) (**LRR R, MLRA 149B**)
- ___ Thin Dark Surface (S9) (**LRR R, MLRA 149B**)
- ___ High Chroma Sands (S11) (**LRR K, L)**
- ___ Loamy Mucky Mineral (F1) (**LRR K, L**)
- ___ Loamy Gleyed Matrix (F2)
- X Depleted Matrix (F3)
- X Redox Dark Surface (F6)
- ___ Depleted Dark Surface (F7)
- ___ Redox Depressions (F8)
- ___ Marl (F10) (**LRR K, L**)
- ___ Red Parent Material (F21) **(MLRA 145)**

Indicators for Problematic Hydric Soils[3]:

- ___ 2 cm Muck (A10) (**LRR K, L, MLRA 149B**)
- ___ Coast Prairie Redox (A16) (**LRR K, L, R**)
- ___ 5 cm Mucky Peat or Peat (S3) (**LRR K, L, R**)
- ___ Polyvalue Below Surface (S8) (**LRR K, L**)
- ___ Thin Dark Surface (S9) (**LRR K, L**)
- ___ Iron-Manganese Masses (F12) (**LRR K, L, R**)
- ___ Piedmont Floodplain Soils (F19) (**MLRA 149B**)
- ___ Red Parent Material (F21) **(outside MLRA 145)**
- ___ Very Shallow Dark Surface (F22)
- ___ Other (Explain in Remarks)

[3]Indicators of hydrophytic vegetation and wetland hydrology must be present, unless disturbed or problematic.

Restrictive Layer (if observed):

Type: _____

Depth (inches): _____

Hydric Soil Present? **Yes** X **No** ___

Remarks:

Auger refusal @ 13"