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 Seika Robinson (in-training) Austin Jepsky (in-training)	Time In	12:07 PM	Start Date	October 20, 2022
		Time Out	1:30 PM	End Date	October 20, 2022
Inspector's Organization	U.S. EPA Region 2				
Organization Requesting Inspection (if different)					
Inspection Type	CWA Section 404 Inspection	Inspection Status	Original		
Site Name	Lawngevity Landscape and Garden Gate Nursery				
Site Address*	Southern portion of 20 Trestle Tree Lane (54-1-43), across the street from 1147 NY-17M (54-1-24.22)				
City*	Chester	County*	Orange	State* NY	Zip Code* 10918
Latitude/Longitude*	41.34520, -74.21931	Estimated Size of Site (acres)	1.7 acres		

Is there a home on the site? ☐ Yes ☒ No

Inspector Signature	Stephanie Andreescu Digitally signed by STEPHANIE ANDREESCU Date: 2022.12.01 14:19:56 -05'00'	Date	12/1/22
Supervisor Signature	Finocchiaro, Marco Digitally signed by Finocchiaro, Marco Date: 2022.12.05 12:30:14 -05'00'	Date	12/5/22

Clean Water Act Section 404: Site Visit/Case Develoment

United States Environmental Protection Agency

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Site Name	Lawngevity Landscape and Garden Gate Nursery	Start Date	October 20, 2022
		End Date	October 20, 2022
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 presented to Mr. Paul Elfers (president of Lawngevity)

☒ Opening Conference

Name of person authorizing access if applicable

I spoke with a representative of Lawngevity over the phone to arrange the inspection and authorize access. Representatives of Lawngevity met EPA for the inspection.

Notes from Opening Conference

We explained the reason for the inspection and the pointed out the area that we were interested in inspecting.

☒ Access Issues if Any

Describe

Note: At the start of the inspection, EPA was unaware the that property was not owned by Lawngevity/Mr. Elfers. Lawngevity representatives informed EPA that they were leasing the property.

It is possible that disturbance at the Site has encroached into property owned by the State of New York for US Hwy 6.

Inspection Observations and Sample Collection

Site Owner* (Name, title and contact information)

Lazar Schvimmer, U.S. FOIA (b)(6), info@bloomingrealty.com

Additional Persons Present at Inspection

Paul Elfers (Lawngevity), Jackie Elfers (Lawngevity), Don Serotta

General Site Characteristics (layout of property, etc.)

The Site is comprised of a 1.7-acre area located south of US Hwy 6. It is a part of a larger 26.5-acre parcel (54-1-43), most of which is located north of US Hwy 6 and owned by Mr. Schvimmer. The Site has frontage and access along NY-17M on the south side of the property. It is bordered on the north by US Hwy 6, on the east by a church parcel, and on the west by a Con Edison/NY Transco right-of-way. Access to the right-of-way is through the Site.

The Site is currently owned by Mr. Lazar Schvimmer and used by Lawngevity for heavy machinery storage, tree inventory storage, and parking.

Youngs Brook, a perennial stream, runs south to north through the eastern half of the Site and then under US Hwy 6 via a culvert.

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

The storage/parking area is unpaved and located centrally within the Site. To the west of this area is a forested area (to the south) and a common reed (*Phragmites australis)* dominated emergent wetland (to the north). To the east of the area is a forested/

Site Name	Lawngevity Landscape and Garden Gate Nursery	Start Date	October 20, 2022
		End Date	October 20, 2022

presumed wetland area associated with Youngs Brook.

EPA's Wetland Protection Section had not visited the site prior to this inspection.

Scope of Inspection (Areas inspected or not inspected)

EPA's inspected most of the Site, but primarily the edges of the storage/parking area.

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

Sunny, low 50's

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Field Work Conducted

Data recorded during the inspection included GPS data, photographs, handwritten notes, and a soil sample.

EPA met with representatives from Lawngevity at their property located at 1147 NY Route 17M and then proceeded across Route 17M to the Site. EPA observed that fill material had recently been spread to expand the storage/parking area to the west. Fill material consisted of dirt, rock, and concrete; and measured one- to two-feet high near the edge of disturbance. EPA took a GPS line recording of the limit of disturbance. Mr. Elfers stated that Transco had arrived that morning to flag/stake their access route to their transmission lines through the property.

EPA then walked to the east side of the property to observe Youngs Brook, a USGS-mapped perennial stream which flows from south to north through the eastern half of the property. At the time of the inspection, the stream was flowing, approximately 4-5 feet wide and several inches deep. EPA observed a defined bed and banks, and substrate sorting in the stream channel and cattails (*Typha* sp.) adjacent to the stream channel.

EPA took a soil sample west of and adjacent to the recent fill material and confirmed that the area was an emergent wetland due to the presence of hydrophytic (wetland) vegetation, hydric soils, and wetland hydrology. This area had 100% absolute areal coverage of common reed (*Phragmites australis*). Shovel refusal was at 5" due to common reed rhizomes; auger refusal was at 10". Vegetation in other areas included purple loosestrife (*Lythrum salicaria*) and Canada goldenrod (*Solidago canadensis*). See attached wetland datasheet.

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

N/A

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

N/A

Potential Issues of Concern Including Regulatory Citations

Fill material has been potentially discharged to wetlands at the Site without prior authorization.

Attachments*

- ☒ Maps and Sketches
- ☒ Photographs (including location) and Photo Log
- ☐ Other

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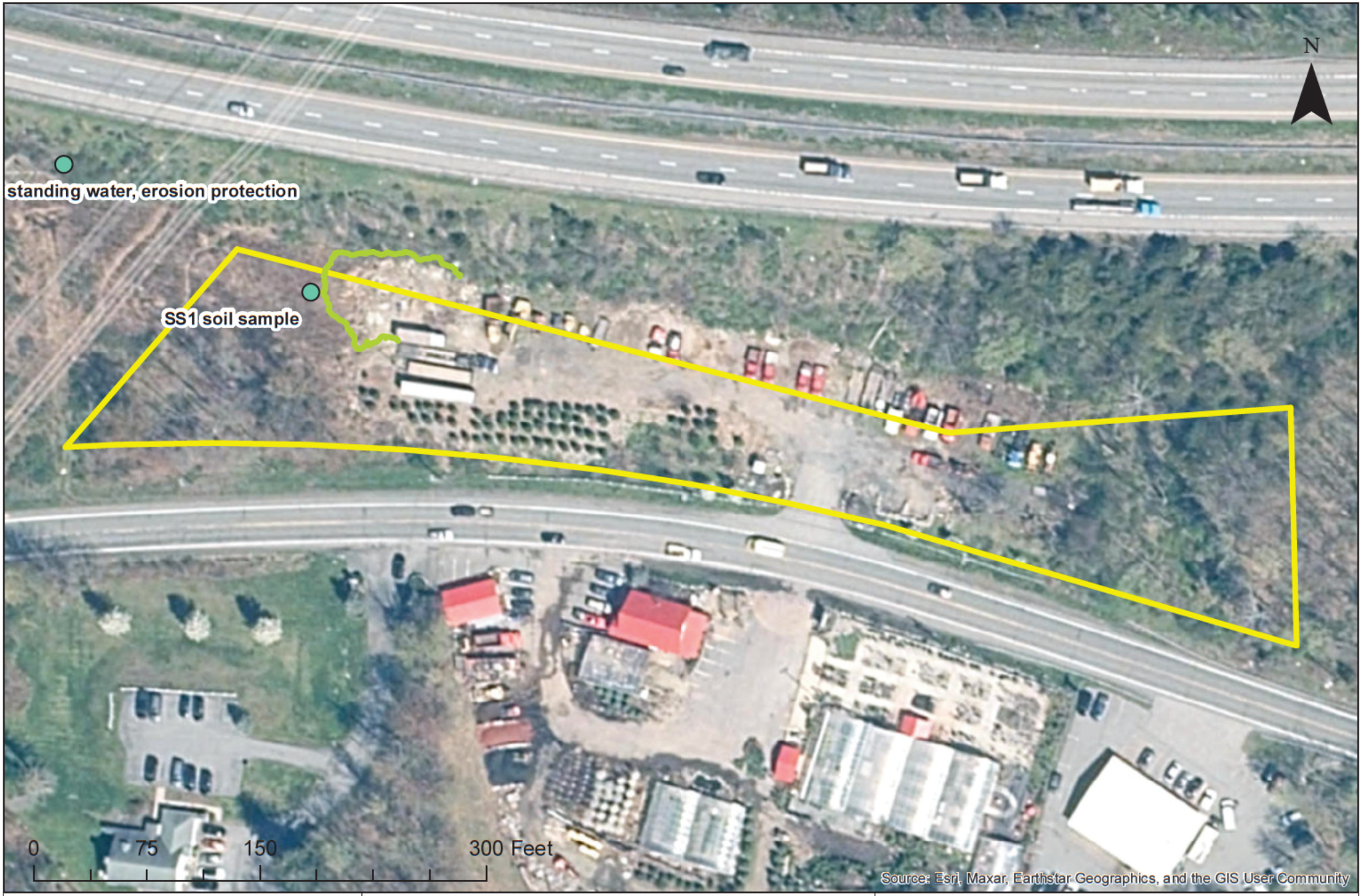
Additional Notes



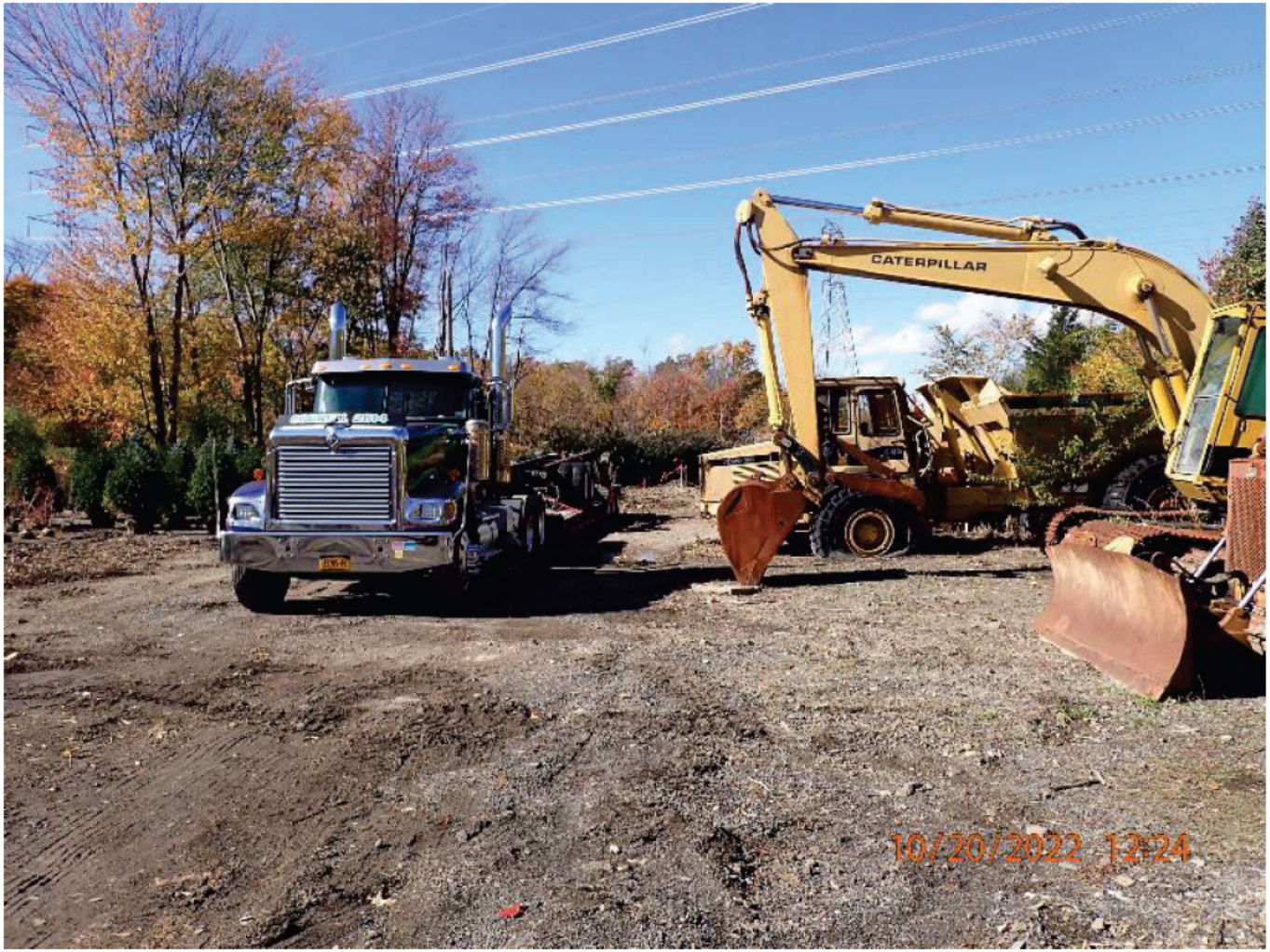
EPA

Lawgevity Landscaping Site
Chester, Orange County, NY

- EPA 10/20/2022 GPS Point
- EPA 10/20/2022 GPS Disturbance Limit
- Approximate Parcel Boundary

CWA 404 Inspection Photolog
Lawngevity Landscaping and Garden Gate Nursery
Route 17M, Chester
Orange County, NY

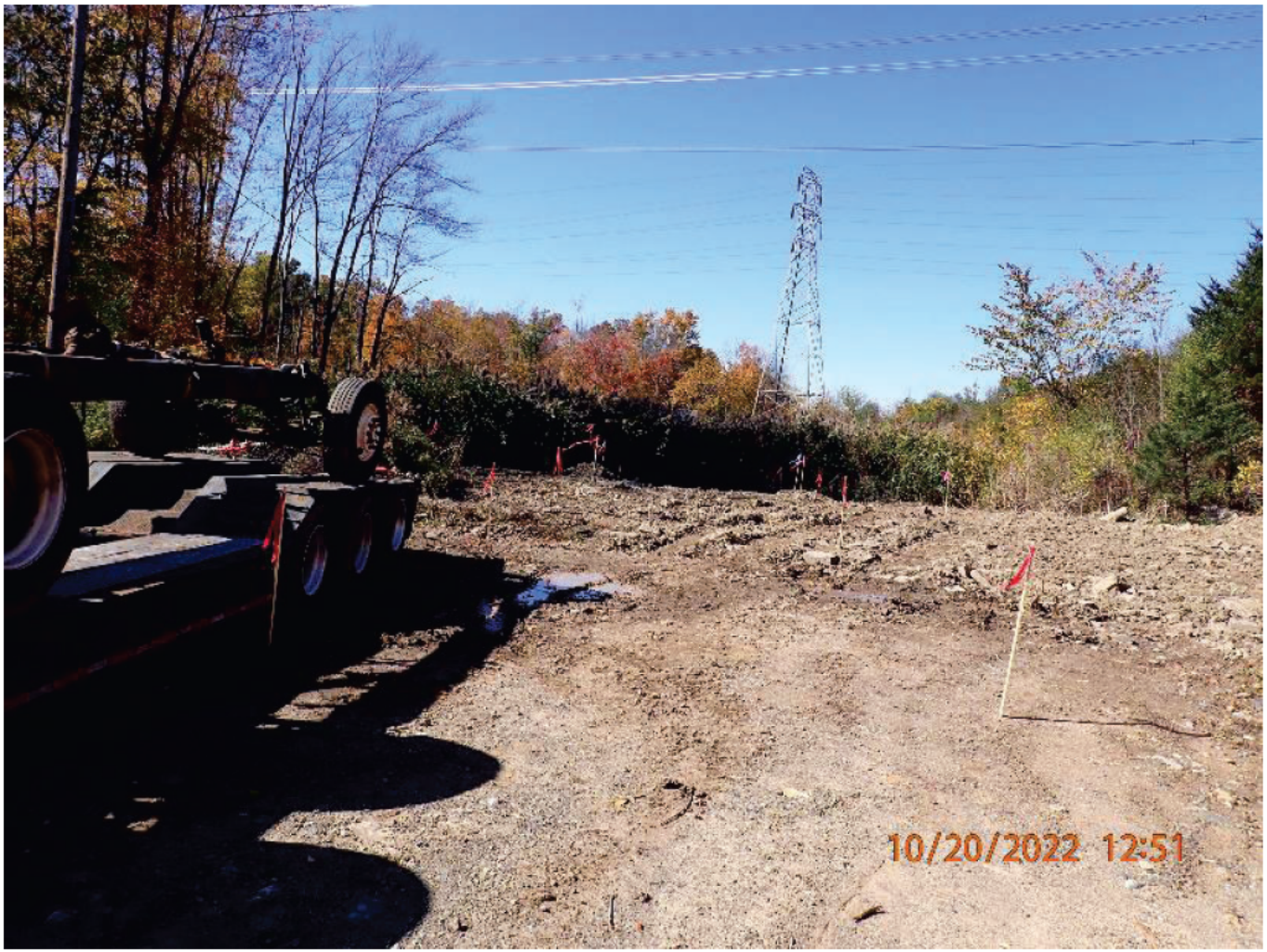
October 20, 2022



Date: 10/20/2022
Time: 12:24 PM
Photographer: S. Robinson
Photo ID: 1 – PA200506

Description:

Machinery parking near recent fill area



Date: 10/20/2022
Time: 12:51 PM
Photographer: S. Robinson
Photo ID: 12 – PA200517

Description:

Machinery and Transco flag markers adjacent to and within recent fill area

Date: 10/20/2022
Time: 12:26 PM
Photographer: S. Robinson
Photo ID: 3 – PA200508

Description:

Recent fill area with Transco flagging and stakes indicating access route through property

Date: 10/20/2022
Time: 12:24 PM
Photographer: S. Robinson
Photo ID: 2 – PA200507

Description:

Transco flagging within recent fill area indicating access route through property

Date: 10/20/2022
Time: 12:36 PM
Photographer: S. Robinson
Photo ID: 5 – PA200510

Description:

Soil pit showing water table 6 inches below surface

Date: 10/20/2022
Time: 12:54 PM
Photographer: S. Robinson
Photo ID: 13 – PA200518

Description:

Portion of soil profile dug via shovel – shovel refusal due to rhizomes

Date: 10/20/2022
Time: 12:39 PM
Photographer: S. Robinson
Photo ID: 6 – PA200511

Description:

Soil pit – observation of saturated soil, high water table, depleted soils, and redox features

Date: 10/20/2022
Time: 12:36 PM
Photographer: S. Robinson
Photo ID: 4 – PA200509

Description:

Soil pit – observation of saturated soil, high water table, depleted soils, and redox features

Date: 10/20/2022
Time: 12:43 PM
Photographer: S. Robinson
Photo ID: 7 – PA200511

Description:

Actively flowing stream, Youngs Brook, located east of the disturbed portion of the parcel

Date: 10/20/2022
Time: 12:43 PM
Photographer: S. Robinson
Photo ID: 8 – PA200513

Description:

Actively flowing stream, Youngs Brook, located east of the disturbed portion of the parcel

Date: 10/20/2022
Time: 12:43 PM
Photographer: S. Robinson
Photo ID: 9 – PA200514

Description:

Actively flowing stream, Youngs Brook, located east of the disturbed portion of the parcel

Date: 10/20/2022
Time: 12:47 PM
Photographer: S. Robinson
Photo ID: 11 – PA200516

Description:

Actively flowing stream, Youngs Brook, located east of the disturbed portion of the parcel

Date: 10/20/2022
Time: 12:46 PM
Photographer: S. Robinson
Photo ID: 10 – PA200515

Description:

Cattail vegetation adjacent to Youngs Brook

Date: 10/20/2022
Time: 1:00 PM
Photographer: S. Robinson
Photo ID: 14 – PA200519

Description:

Panorama of the *Phragmites* located in the northwest corner of the site

Date: 10/20/2022
Time: 1:01 PM
Photographer: SSA
Photo ID: 15 – PA200520

Description:

Panorama of the *Phragmites* located in the northwest corner of the site

Date: 10/20/2022
Time: 1:02 PM
Photographer: SSA
Photo ID: 16 – PA200521

Description:

Transco right-of-way flag marker found within the *Phragmites* on the site

Date: 10/20/2022
Time: 1:03 PM
Photographer: S. Robinson
Photo ID: 17 – PA200522

Description:

Transco flags, including one labeled “wetland”, was found in the northwest corner of the property

Date: 10/20/2022
Time: 1:06 PM
Photographer: S. Robinson
Photo ID: 18 – PA200523

Description:

Low profile bulkhead and standing surface water found near the base of the utility line structure

Date: 10/20/2022
Time: 1:06 PM
Photographer: S. Robinson
Photo ID: 19 – PA200524

Description:

Low profile bulkhead found near the base of the utility line structure.

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: Lawngevity Landscaping and Garden Gate Nursery City/County: Chester/Orange Sampling Date: 10/20/2022

Applicant/Owner: Lawngevity Landscaping and Garden Gate Nursery / Property Owner: Schvimmer State: NY Sampling Point: 1

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

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

Subregion (LRR or MLRA): LRR R Lat: 41.34519 Long: -74.21931 Datum:

Soil Map Unit Name: Raynham silt loam and Mardin gravelly silt loam NWI classification: PEM1C

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.)

HYDROLOGY

Wetland Hydrology Indicators:

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

- Surface Water (A1)
- X High Water Table (A2)
- 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)
- 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)
- 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	No X	Depth (inches):
Water Table Present?	Yes X	No	Depth (inches): 6
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: 1

Tree Stratum (Plot size:)	Absolute % Cover	Dominant Species?	Indicator Status
1.			
2.			
3.			
4.			
5.			
6.			
7.			
		=Total Cover	
Sapling/Shrub Stratum (Plot size:)			
1.			
2.			
3.			
4.			
5.			
6.			
7.			
		=Total Cover	
Herb Stratum (Plot size: 30)			
1. *Phragmites australis*	100	Yes	FACW
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
	100	=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: 1 (A)

Total Number of Dominant Species Across All Strata: 1 (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	0	x 1 =	0
FACW species	100	x 2 =	200
FAC species	0	x 3 =	0
FACU species	0	x 4 =	0
UPL species	0	x 5 =	0
Column Totals:	100 (A)		200 (B)

Prevalence Index = B/A = 2.00

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.)

SOIL

Sampling Point: 1

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

Depth	Matrix		Redox Features					
(inches)	Color (moist)	%	Color (moist)	%	Type[1]	Loc[2]	Texture	Remarks
0-5	7.5YR 3/1	99	7.5YR 5/6	1	C	PL	Loamy/Clayey	Prominent redox concentrations
5-10	7.5YR 3/1	85	7.5YR 5/8	15	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)
- ___ 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)
- ___ 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:

Shovel refusal at 5" due to common reed (Phragmites australis) rhizomes; auger refusal at 10". Despite this, enough information exists for the F6 hydric soil indicator to be applicable.