

INFORMATION SHEET
DETERMINATIONS OF NO JURISDICTION FOR ISOLATED, NON-NAVIGABLE, INTRA-STATE WATERS RESULTING FROM U.S. SUPREME COURT DECISION IN SOLID WASTE AGENCY OF NORTHERN COOK COUNTY V. U.S. ARMY CORPS OF ENGINEERS

DISTRICT OFFICE: Buffalo District

FILE NUMBER: 1999-01440(2)

REGULATORY PROJECT MANAGER: Joseph W. Krawczyk **Date:** June 2, 2004

PROJECT REVIEW/DETERMINATION COMPLETED: **In the office (Y/N)** **Y** **Date:** May 25, 2004

At the project site (Y/N) **Y** **Date:** April 28, 2004

PROJECT LOCATION INFORMATION:

State: NY

County: Monroe

Center coordinates of site by latitude & longitude coordinates:
43-12-47.9880, 77-27-0.000

Approximate size of site/property (including uplands) in acres: 92

Name of waterway or watershed: Mill Creek

| Type of Aquatic Resource ¹ : | 0-1 ac | 1-3 ac | 3-5 ac | 5-10 ac | 10-25 ac | 25-50 ac | > 50 ac | Linear Feet | Unknown |
|---|--------|--------|--------|---------|----------|----------|---------|-------------|---------|
| Lake | | | | | | | | | |
| River | | | | | | | | | |
| Stream | | | | | | | | | |
| Mudflat | | | | | | | | | |
| Sandflat | | | | | | | | | |
| Wetlands | | X | | | | | | | |
| Slough | | | | | | | | | |
| Prairie Pothole | | | | | | | | | |
| Wet Meadow | | | | | | | | | |
| Playa Lake | | | | | | | | | |
| Vernal Pool | | | | | | | | | |
| Natural Pond | | | | | | | | | |
| Other Water (identify type) | | | | | | | | | |

¹Check appropriate boxes that best describe type of isolated, non-navigable, intra-state water present and best estimate for size of non-jurisdictional aquatic resource area.

| Migratory Bird Rule Factors ¹ | If Known | | If Unknown Use Best Professional Judgment | | |
|---|----------|----|--|-----------------------|--------------------------------|
| | Yes | No | Predicted to Occur | Not Expected to Occur | Not Able to Make Determination |
| Is or would be used as habitat for birds protected by Migratory Bird Treaties? | | | X | | |
| Is or would be used as habitat by other migratory birds that cross state lines? | | | X | | |
| Is or would be used as habitat for endangered species? | | | | X | |
| Is used to irrigate crops sold in interstate commerce? | | X | | | |

¹Check appropriate boxes that best describe potential for applicability of the Migratory Bird Rule to apply to onsite, non-jurisdictional, isolated, non-navigable, intra-state aquatic resource area.

TYPE OF DETERMINATION: Preliminary Or Approved **X**

ADDITIONAL INFORMATION SUPPORTING NJD (e.g., paragraph 1 site conditions; paragraphs 2-3 rationale used to determine NJD, including information reviewed to assess potential navigation or interstate commerce connections; and paragraph 4 site information on waters of the U.S. occurring onsite):

There are four wetlands on the 92 acre project site. Three of the four wetlands are contained on-site, with the linear/riparian wetland continuing off-site to the north toward Lake Ontario. The 92 acre site is proposed to be constructed as a shopping center. The previous wetland verification was complete in 1999 prior to SWANCC. The project applicant requested a site visit. Regulators went to the site to verify the current wetland boundaries. Based on evaluation of office resources and the field visit, it was determined that four wetlands were present on the parcel totaling 1.916 acres. Of this total 0.488 was a linear wetland connected to a water of the United States. The remaining three wetland areas were individual wetland depressions consisting of scrub/shrub and forested wetlands.

Upon looking at the remaining wetlands, it was determined that one wetland of 0.360 acre was connected via a conveyance to a tributary of a water of the United States. The remaining two wetland areas totaling 1.06 acres were determined to be intra-state, isolated, with no surface water connection, and non-navigable with no nexus to interstate commerce. Both of these isolated wetland areas will be filled during construction of the proposed shopping center.