

June 30, 2016 NYSDEC Letter to Town of Rush Supervisor
NYSDEC letters (March 18, 2014 & February 24, 2016) were not included in the Final Environmental Impact Statement (FEIS). Copies of all three NYSDEC letters are included herein. The June 30th letter references and summarizes the potential State Environmental Quality Review (SEQR) issues presented in the two previous letters, which include wetlands and archaeological resources.

March 18, 2014 NYSDEC to Town of Rush Supervisor

Federal Wetlands

As indicated in the NYSDEC letter, the United States Army Corps of Engineers (USACOE) regulates federal wetlands. Federal wetlands include identified bodies of water (streams, creeks, ponds, etc.) as well as areas containing all three parameters of regulated wetlands (hydric soils, wetland vegetation, and hydrology). The development plan contained in the FEIS reflects regulated wetlands and does not propose any disturbance of wetlands. Therefore, USACOE wetland permits will not be required.

Stormwater General Permit

The noted general permit (GP-0-10-001) has been superseded by GP-0-15-002. However, the implications remain the same. That is, if at least 1-acre of soil is disturbed as part of the development, coverage under the NYSDEC permit (GP-0-15-002) is required. The required permit is part of the standard Site Plan approval process and includes substantial fees and specific details of the development and designed stormwater management system. Should the rezoning occur, the stormwater permit will be obtained as part of any future Site Plan application submitted to the Town of Rush.

State Pollutant Discharge Elimination System (SPDES)

The development proposal included in the FEIS suggests that certain wastewater discharges will require a SPDES permit. The permit application requires specific details of the development and designed wastewater treatment system. Like the Stormwater Permit, it is a part of the standard Site Plan process that will be pursued if the rezoning occurs and when any future Rush applications are submitted for development.

Historic, Architectural, Archaeological, and Cultural Resources

The archaeological sensitivity is presumably due to the proximity of the site to 1426 Rush Scottsville Road, which contains an historic home. The historic structure was discussed during the public hearings and the development proposal was completed with specific effort to avoid any impacts to it. The development proposal avoids placing any development in close proximity to the historic home and provides a vegetative buffer.

If the archaeological sensitivity extends beyond historic home, it's worth noting that the southern half of the proposed development has irrefutable extensive disturbance associated with previous development of the site and therefore likely does not require any further investigation. Regardless, the archaeological assessment is most appropriately completed as part of any future Site Plan applications submitted to the Town of Rush.

Stream Protection Recommendations

The proposal contained in the FEIS contains development in the southwest quadrant of the overall property. It neither crosses nor disturbs the on-site stream. Furthermore, it includes the listed NYSDEC recommendations (vegetated streamside buffer, control water flow through buffer and prevent contaminants from entering the stream corridor). The water flow control and contaminant prevention are addressed in the stormwater management system, which will be designed in accordance with NYSDEC stormwater management regulations and recommendations that have been proven to provide the required protection.

February 24, 2016 NYSDEC to Town of Rush Supervisor

Federal Wetlands

Wetlands were not included in the issues identified in the Scoping Process, indicating the proposal does not pose a potentially significant threat to them. This is supported by the development proposal contained in the FEIS, which shows no disturbance of them. In fact, a significant buffer is maintained between the development boundary and limits of wetlands, which were delineated by a highly qualified and experienced Wetland Biologist. If necessary, a jurisdictional determination may be requested from USACOE. However, that is most appropriately obtained as part of any future Site Plan applications, as USACOE requires design specifics that cannot be provided at this time. Regardless, the current proposal does not include any activities requiring federal wetland permitting.

1) Archaeological Sensitivity

The archaeological sensitivity is presumably the proximity of the site to 1426 Rush Scottsville Road, which contains an historic home. The historic structure was discussed during the public hearings and the development proposal was completed with specific effort to avoid any impacts to it. The development proposal avoids placing any development in close proximity to the historic home and provides a vegetative buffer.

If the archaeological sensitivity extends beyond historic home, it's worth noting that the southern half of the proposed development has irrefutable extensive disturbance associated with previous development of the site and therefore likely does not require any further investigation. Regardless, the archaeological assessment is most appropriately completed as part of any future Site Plan applications submitted to the Town of Rush. As noted in the February 24th letter, any future GP-0-15-002 Permit coverage will require an archaeological determination. Therefore, the integrity of archaeological assessment is preserved and most appropriately provided as part of any future Site Plan application processes.

June 30, 2016 NYSDEC to Town of Rush Supervisor

The letter reiterates the wetland and archaeological issues described above and notes that they were not included in the items identified as part of the Scoping Process. Therefore, detailed addressing of these issues at this time is not warranted. While further steps are likely warranted (jurisdictional determination by USACOE and archaeological determination), they are not required at this time. Any future Site Plan applications made to the Town of Rush will require these items. Therefore, the integrity of a full review is preserved without unnecessary cost and time delay to the applicant for items not identified in the Scoping Process.

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 8
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June 30, 2016

Cathleen M. Frank
Supervisor, Town of Rush
5977 East Henrietta Rd
Rush, NY 14543

RE: SEQR Coordination
Rush Associates, LLC Environmental Impact Statement, Rezoning of 5.8 acres of an existing 25 acre parcel at 7262 West Henrietta Rd

Dear Supervisor Frank:

The NYS Department of Environmental Conservation (Department) has reviewed the 7262 W. Henrietta Rd Final Environmental Impact Statement (FEIS), prepared by LandTech Planning & Surveying, dated March 30, 2016, which we received on May 16, 2016. It appears that the Department's comments provided in our Lead Agency response letter March 18, 2014 and again on February 24, 2016 were not included or addressed in the FEIS. I have attached a copy of both letters.

Although the Department's comments do not apply to some of the local issues considered by the Town (e.g. Traffic, Site Lighting and Noise), they are relevant to the DEC permits that would be required for construction of the proposed development. More importantly, if the Town or project sponsor have not yet addressed the comments related to wetlands and archeological resources, the SEQR record will not be adequate to support the Department's required SEQR Findings if any Individual Permits are required (see SNYCRR Part 617.11).

Also, as previously indicated, the project is located within an of known archeological sensitivity and therefore is not eligible for coverage under the SPDES General Permit for Stormwater Discharges from Construction Activity (GP-0-15-002) until the process identified in the Letter of Resolution (LOR) between the Department and NYS Office of Parks Recreation and Historic Preservation for GP 0-12-002 has been completed. For additional information on GP-0-15-002 and LOR, please visit: <http://www.dec.ny.gov/chemical/43133.html>

If you have any questions or like to contact me to discuss these comments, I can be reached at (585) 226-5469 or matthew.griffiths@dec.ny.gov

Sincerely,



Matthew J. Griffiths
Environmental Analyst

C.C. Rush Town Planning Board
Todd Ewell, Town Engineer



Department of
Environmental
Conservation

Edmund Martin, Land Tech Planning & Surveying
Rush Associates LLC
Steve Metivier, Buffalo District USACE

Griffiths, Matthew J (DEC)

From: Griffiths, Matthew J (DEC)
Sent: Wednesday, February 24, 2016 4:26 PM
To: 'supervisor@townofrush.com'; 'Pam@townofrush.com'
Cc: 'Metivier, Steven V LRB'
Subject: 7262 W Henrietta Rd - DRAFT EIS
Attachments: LA Response Letter 3-18-14.pdf

Dear Ms. Frank,

I have reviewed the Draft Environmental Impact Statement for 7262 W Henrietta Rd, prepared by LandTech Surveying & Planning PLLC, which we received on January 19, 2016.

The attached letter dated March 18, 2014 was provided to the Town during Lead Agency Coordination, but not included in the "Correspondence to / from Interested & Involved Agencies" appendix. Please have the LandTech include this letter in this appendix.

Based on my review of the Draft EIS, it appears that two comments in the March 18, 2014 letter have not yet been addressed:

- 1) Federal Wetlands - Part 2 of the EAF does not acknowledge the presence of the federally regulated wetlands shown on the rezoning plan map prepared by LandTech, last revised 10/16/13. Has the project sponsor provided any documentation of correspondence with the Buffalo District US Army Corps of Engineers (USACE) in regards to these wetlands? Without supporting documentation from the USACE indicating that the boundary to this wetland as shown on the rezoning map has been accepted, it should not yet be concluded that the project will not have any impacts on wetlands.
- 2) Archeological Sensitivity – Part 1 of the EAF indicates the project is located in an archeological sensitive area. The related question in Part 2 (question #10) is answered "yes" however no explanation as to why there is no potential for impacts to archaeology in Part 3. Has the NYS Office of Parks Recreation & Historic Preservation made a determination of potential for impacts to historic resources? If so, please provide a copy of this determination and include it in the EIS. If not, I strongly encourage the Town, as SEQR lead agency to request their review without any further delay. It is likely that a Phase 1 archeological survey will be required if one has not already been done. Because the project is located in an archeological sensitive area, it is NOT eligible for coverage under the SPDES General Permit for Discharges from Construction Activity General Permit (GP 0-15-002) until a determination on potential for impacts to historic resources (including archaeological sites) has been made. See the following page on our website for additional information: <http://www.dec.ny.gov/chemical/43133.html>

My apologies for not responding within the requested 30-day deadline. If you have any questions about the Department's outstanding comments please do not hesitate to contact me. A response to these comments will help avoid delays in processing the required DEC permits.

Thank you.
Matt

Matthew J. Griffiths

Environmental Analyst 1, Division of Environmental Permits

New York State Department of Environmental Conservation

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NYS Department of Environmental Conservation

3/18/2014

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Joe Martens
Commissioner

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RUSH (T)
RICHARD ANDERSON, SUPERVISOR
5977 E HENRIETTA RD
RUSH, NY 14543-

Re: SEQR REVIEW

Dear RICHARD ANDERSON,

The following comments are based upon the location information provided in your inquiry of:
REZONING OF 7262 E HENRIETTA RD

SEQR Coordination & Establishment of Lead Agency

The NYS Department of Environmental Conservation (DEC) has no objection to the Town Of Rush being established as the SEQR lead agency for the environmental review of this action.

Federal Wetlands

While the Department asserts jurisdiction over NYS regulated freshwater wetlands, the U. S. Army Corps of Engineers regulates federally protected wetlands. For questions regarding federal wetlands, and the federal permitting process, contact the U. S. Army Corps of Engineers at: Chief, Regulatory Branch, U. S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo, NY 14207 or (716) 879-4330.

401 Water Certification

Work in certain waters and wetlands of the United States may require a permit from the U. S. Army Corps of Engineers (Corps). If a Corp permit is required, the Corps may request that the DEC make a determination (Water Quality Certification, pursuant to Section 401 of the Federal Clean Water Act) that discharges from the proposed activities, for which an applicant is seeking a Corps permit approval, will comply with the applicable effluent limitations, water quality standards, and any other applicable conditions of the State Law. The Buffalo Office of the Corps should be contacted regarding permit jurisdictions. Their address is Chief Regulatory Branch, U. S. Army Corps of Engineers, Buffalo District, 1776 Niagara Street, Buffalo NY 14207. Their phone number is (716) 879-4330. Documentation in support of a 401 Water Quality Certification would include demonstration of compliance with either the Department's State Pollutant Discharge Elimination System (SPDES) General Permit for Storm Water Discharges from Construction Activities (GP-0-10-001) or the MS4 (Municipal Separate Storm Sewer Systems). This documentation would include submission of a completed Notice of Intent and, in an MS4 area, a copy of the local municipality's approved MS4 Stormwater Pollution Prevention Plan (SWPPP) Acceptance Form as part of a complete application. The actual SWPPP could also be required depending on the project.

Stormwater General Permit - Construction

This project will need to be in compliance with either the State Pollutant Discharge Elimination System (SPDES) General Permit for Storm Water Discharges from Construction Activities (GP-0-10-001) or the MS4 (Municipal Separate Storm Sewer Systems) General SPDES Permit (GP-0-10-002) (if located within an MS4's jurisdiction). Operators of construction activities that involve one acre or more of land disturbance (or may be less in an MS4's area) must obtain SPDES permit coverage through either an individual permit or either GP-0-10-001 or GP-0-10-002. To obtain coverage under a General Permit, all conditions of the permit must be met, including preparation and implementation of an appropriate Storm Water Pollution Prevention Plan (SWPPP) and the filing of a completed Notice of Intent (NOI) form with the NYSDEC. For further information and required forms, see the NYSDEC website at: <http://www.dec.ny.gov/chemical/8468.html>. If you believe your project would be covered under one or more of the General Permits and would NOT require any other DEC permits, you may apply for coverage by filing a Notice of Intent with NYSDEC Division of Water, 625 Broadway, Albany NY 12233-3505. If your project involves other DEC permits, please contact this office.

State Pollution Discharge Elimination System (SPDES)

This project may require a SPDES permit for discharge of process wastewater, and/or sanitary wastewater to surface waters or ground water. Please provide additional details about any proposed discharges from this facility including the amount of the discharge, the type of wastewater proposed to be discharged (sanitary, industrial process water, etc.) and the receiving water. SPDES permit requirements are found in 6 NYCRR Part 750 and on our website at <http://www.dec.ny.gov/regs/4585.html> and <http://www.dec.ny.gov/permits/6054.html>.

Historic, Architectural, Archeological, and Cultural Resources

A review of the NYS Archaeological Site Map (circles & squares map) indicates that the project site is located within an archaeologically sensitive area. It is suggested that recommendations be sought from NYS OPRHP regarding the potential impacts on historic and archeological resources from the development of this area. Additional information can be found on NYS OPRHP's website (use Internet Explorer rather than Netscape) at <http://www.oprhp.state.ny.us/nr/> or by calling them at (518) 237-8643. Potential impacts to these resources must be considered in the State Environmental Quality Review (SEQR) documentation. For example, previous disturbance should be described to indicate whether future project components will have the potential to further affect archeological resources.

Stream Protection Recommendations

A portion of a stream is located on the subject property. Streambanks, sometimes called riparian zones or stream corridors, are the link between land and water, and the health of streams depends in large part on the condition of the streambank. Over the past two decades, research has shown that naturally vegetated corridors along streams perform numerous services essential for human health and welfare. Healthy stream corridors can reduce floods; trap sediment; remove dissolved contaminants; provide shade; contribute leaf matter (important for insect food and fish habitat); provide wildlife habitat; offer recreational opportunities; and increase aesthetic value and desirability of a property.

In order to protect the stream corridor consider the following:

- Maintain a healthy, vegetated streambank buffer by preserving trees and shrubs along the stream edge and limiting logging to removing large branches that fall into the stream and divert streamflow and cause erosion.
- Control water flow through the streambank buffer to filter contaminants and reduce erosion by managing stormwater runoff from dwellings to prevent channelized flow; minimizing impervious areas near the streambank by using stone or brick instead of pavement for driveways and walkways; and excluding vehicles, livestock, or excessive pedestrian traffic.
- Prevent contaminants from entering the stream corridor by minimizing or eliminating buffer area exposure to fertilizer, herbicides, pesticide, animal waste, household and automotive chemicals, trash, debris, and piles of leaf litter and by maintaining septic systems.

Thank you for the opportunity to review this project. If you have questions regarding the information provided in this letter, please don't hesitate to contact me at (585) 226-5469.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Griffiths". The signature is fluid and cursive, with the first name "Matt" being more prominent than the last name "Griffiths".

Matt Griffiths
Division of Environmental Permits