

# **APPENDIX A**

## **Jurisdictional Determination Letter**



DEPARTMENT OF THE ARMY  
NEW YORK DISTRICT, CORPS OF ENGINEERS  
ALBANY FIELD OFFICE  
1 BOND ST.  
TROY, N.Y. 12180

DEC 02 2005

REPLY TO  
ATTENTION OF

Regulatory Branch

SUBJECT: Permit Application Number 2004-01029-YN  
by Rosen Development Company, Inc.

Auggie Ruggiero  
Chazen Engineering & Land Surveying Co., P.C.  
100 Glen Street  
Glens Falls, New York 12801

Dear Mr. Ruggiero:

On September 28, 2004, the New York District of the U.S. Army Corps of Engineers received a request for a Department of the Army jurisdictional determination for a site located between Loudon Road and Boght Road in the Town of Colonie, Albany County, New York. The request was submitted by Chazen Engineering & Land Surveying Co., P.C., as consultant for Rosen Development Company, Inc. The site consists of approximately 198 acres, and is currently owned by Mr. Herb Ellis.

The submittal received on September 28, 2004, included a proposed delineation of the extent of waters of the United States within the project boundary. On May 4, May 24, September 7, and October 11, 2005, representatives of this office conducted site inspections, during which it was agreed that changes would be made to the delineation and that a modified delineation would be submitted to this office. These changes included limiting the jurisdictional determination to 98.66 acres of the 198-acre site. On November 4, 2005, this office received the modified delineation.

Based on the material submitted and the observations of the representatives of this office during the site visits, this site has been determined to contain jurisdictional waters of the United States based on the presence of wetlands determined by the occurrence of hydrophytic vegetation, hydric soils and wetland hydrology according to criteria established in the 1987 "Corps of Engineers Wetlands Delineation Manual," Technical Report Y-87-1 that are part of a tributary system, and the presence of defined stream channels which are part of a tributary system.

These jurisdictional waters of the United States are shown on the drawing entitled "Rosen Development Corporation - Wetlands Survey - Planned Residence Development", prepared by Chazen Engineering & Land Surveying Co., P.C., dated June 15, 2005, and last revised on November 1, 2005. This drawing indicates that there are 6.56 acres of waters of the United States on the project site which are part of a tributary system. These waters of the United States include wetlands and two stream channels,

the first of which is an approximately 120-foot long segment of the Salt Kill located within the area marked as "Wetland B", (depicted on the Site Location Plan on the above referenced drawing), and the second is a 40 linear feet segment of an unnamed tributary, which is located near "Wetland JJ" at Boght Road.

It should be noted that, in light of the recent U.S. Supreme Court decision (Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers, No. 99-1178, January 9, 2001), the remainder of the wetlands shown on the above referenced drawing, specifically "Wetland CC", which consists of 0.263 acres, do not meet the current criteria of waters of the United States under Section 404 of the Clean Water Act. The Court ruled that isolated, intrastate waters can no longer be considered waters of the United States, based solely upon their use by migratory birds.

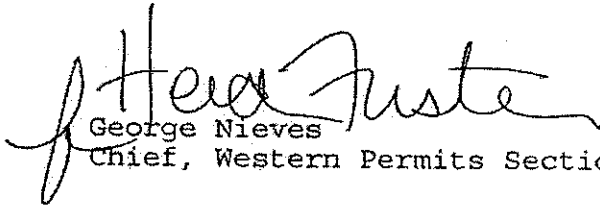
This determination regarding the delineation shall be considered valid for a period of five years from the date of this letter unless new information warrants revision of the determination before the expiration date. Enclosed is a Notification of Administrative Appeal Options which provides information on your acceptance of this approved jurisdictional determination.

This determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This 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 Resources Conservation Service prior to starting work.

It is strongly recommended that the development of the site be carried out in such a manner as to avoid as much as possible the discharge of dredged or fill material into the delineated waters of the United States. If the activities proposed for the site involve such discharges, authorization from this office may be necessary prior to the initiation of the proposed work. The extent of such discharge of fill will determine the level of authorization that would be required.

If any questions should arise concerning this matter, please contact Heidi Firstencel, of my staff, at (518) 273-8593.

Sincerely,

  
George Nieves  
Chief, Western Permits Section

Enclosures

cf: H. Ellis  
NYSDEC - Region 4  
Town of Colonie