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memorandum

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EDR Project No: 20139

From: Samuel Gordon, Senior Project Manager

Date: October 2, 2020

Reference: Marcy Nanocenter Parkway Mixed-Use Master Plan
Preliminary Natural and Cultural Resources Assessment

INTRODUCTION

Environmental Design & Research, Landscape Architecture, Engineering & Environmental Services, D.P.C. (EDR) was retained by Mohawk Valley EDGE (MVEDGE) (the Client) to prepare a micro-masterplan for new development on the Marcy Nanocenter SUNY Polytechnic Institute Campus (MNC Campus) in the Town of Marcy, Oneida County, New York (the Project Site). We understand that MVEDGE is considering potentially expanding the Project Site into two adjacent parcels, to the east (the Project Expansion Area). Figure 1 shows the Regional Project Location and Figure 2 shows the Project Site and Project Expansion Area. In support of the micro-masterplan, EDR completed a desktop assessment of natural and cultural resources to identify key resources/issues that could affect the development and permitting of the proposed Project Site. The desktop assessment was supplemented by a reconnaissance-level field review of the Project Site. The purpose of this memorandum is to document the results of the assessment and field investigation.

DISCUSSION

The desktop assessment focused on the following resource categories:

- A. Water Resources
- B. Threatened and Endangered Species
- C. Cultural Resources
- D. Site Contamination Records

Each of these categories are discussed in detail below.

A. Water Resources

Mapped Wetlands and Surface Waters

EDR reviewed data from the New York State Geographic Information System (GIS) Clearing House and New York State Department of Environmental Conservation (NYSDEC) Environmental Resource Mapper to determine if any mapped surface waters occur in or adjacent to the Project Site. No streams occur within the Project Site. However, Gridley Creek, which is listed as a Class C stream, is located in the Project Expansion Area.

Additionally, EDR consulted the NYSDEC Environmental Resource Mapper and the U.S. Fish and Wildlife Service's (USFWS) National Wetlands Inventory (NWI) to identify state- and federally-mapped wetlands within the Project Site (NYSDEC, 2020a; USFWS, 2020a). Based on existing NYS Freshwater Wetland mapping, no state-regulated wetlands occur in this area. The closest state-regulated wetland is located approximately 2,000 feet to the southeast of the Project Site. According to the NWI mapping database, there are two NWI-mapped wetlands within the Project Site. Both NWI Wetlands are classified as freshwater ponds. One is approximately 0.5 acre and the other is less than 0.1 acre in size. NWI mapping also indicates the presence of a riverine wetland (Gridley Creek) and a freshwater forested/shrub wetland, which is approximately 2 acres in size and adjacent to Gridley Creek, in the eastern portion of the Project Expansion Area.

Figure 3 shows the location of mapped wetlands and streams in the vicinity of the Project Site and Project Expansion Area.

Field Investigation

A field investigation to confirm the presence of mapped wetlands was conducted on the Project Site on August 25, 2020. The Project Expansion Area was not investigated in the field. The boundaries of any identified wetlands were approximated based on visual observations of the criteria set forth in the *1987 Corps of Engineers Wetlands Delineation Manual*, and the *2012 Regional Supplement to the Corps of Engineers Manual: Northcentral and Northeastern Region (Version 2.0)*. However, detailed delineations were not conducted. All approximated boundaries were located using Global Positioning System (GPS) technology. Three wetlands (referred to as Wetlands 001, 003, and 005) were approximated during the field investigation, all of which are less than 0.5 acre in size (see Figure 4). Two of the wetland areas identified, Wetland 001 and 003, are dominated by emergent vegetation and one, Wetland 005, is dominated by scrub-shrub vegetation. Wetlands 001 and 005 are retention ponds with minimal open water. See Appendix A for photographic documentation obtained during the reconnaissance-level boundary identification effort.

Preliminary Jurisdictional Assessment

Article 15 of the New York Environmental Conservation Law (ECL), gives the NYSDEC regulatory jurisdiction over activities that disturb the bed or banks of certain protected streams, and jurisdiction over the excavation or placement of fill in State navigable waters. Protected streams include any stream, or portion of a stream, that has been assigned any of the following classifications or standards: AA, AA(t), AA(ts), A, A(t), A(ts), B, B(t), B(ts), C(t), or C(ts) (6 NYCRR Part 701), with the standard (t) indicating trout streams and (ts) indicating streams that support trout spawning. An Article 15 permit is required from the NYSDEC for any disturbance to the bed and banks of protected streams, with special requirements applied to streams classified C(t) or higher. Navigable waters include lakes, rivers, and other waters on which vessels with a capacity of one or more persons can be operated and can include water bodies of any classification. There is no navigable water in the Project Site. Gridley Creek, the mapped stream in the eastern boundary of the Project Expansion Area, is a Class C stream. The Classification C represents waters that support fisheries and are suitable for non-contact activities and impacts to Classification C streams are not subject to special requirements. It is not anticipated that Gridley Creek would be subject to state jurisdiction under Article 15 of the ECL.

The Freshwater Wetlands Act (Article 24 and Title 23 of Article 71 of the ECL) gives the NYSDEC jurisdiction over state-protected wetlands and adjacent areas. The Freshwater Wetlands Act requires the NYSDEC to map all state-protected wetlands to allow landowners and other interested parties a means of determining where state-jurisdictional wetlands exist (typically over 12.4 acres in size). There are no state-regulated wetlands within or adjacent to the proposed Project Site or the Project Expansion Area. Therefore, on-site wetlands are not anticipated to be subject to state jurisdiction under Article 24 of the ECL.

In accordance with Section 404 of the Clean Water Act (CWA), the United States Army Corps of Engineers (USACE) has regulatory jurisdiction over Waters of the United States (WOUS). As defined by the USACE, WOUS include lakes, ponds, streams (intermittent and perennial), tidal waters, and wetlands.

The Clean Water Rule (the “2015 Rule”), effective August 28, 2015, was adopted to provide a clearer and more consistent approach to defining the scope of the CWA and WOUS. However, in February 2017, an Executive Order was issued directing the USEPA and USACE to review and rescind or revise the 2015 Rule. On April 21, 2020, the USEPA and USACE published The Navigable Waters Protection Rule: Definition of “Waters of the United States”. As of June 22, 2020, the effective date of the Navigable Waters Protection Rule, the agencies define four categories of waters that the USACE will consider to be WOUS. Waters and features that do not meet the characteristics of one of these four categories will not be considered jurisdictional (USACE and USEPA, 2020). The WOUS categories defined in The Navigable Waters Protection Rule are summarized below.

The USACE will assert jurisdiction over the following waters:

- Territorial seas and traditional navigable waters,
- Perennial and intermittent tributaries that contribute surface water flow to such waters,
- Certain lakes ponds and impoundments of traditional navigable waters, and
- Wetlands adjacent to other jurisdictional waters.

A Section 404 permit from the USACE is required for activities that result in the placement of dredged or fill materials in WOUS. The Project Site and/or the Project Expansion Area may contain wetlands adjacent to other jurisdictional waters and impacts to these wetlands would require a Section 404 permit. It is possible that some of the wetlands observed on-site are isolated and therefore would not fall under the jurisdiction of the USACE (e.g., Wetlands 001 and 005).

In addition to Section 404 of the CWA, Section 10 of the Rivers and Harbor Act requires a permit from the USACE to construct any structure in or over any traditional navigable waters of the United States, as well as any proposed action that would alter or disturb these waters (such as excavation/dredging or deposition of materials). The Project Site does not include any navigable waters, and therefore, Section 10 is not applicable to the proposed Project.

Recommendations

A formal wetland and stream delineation will be required to determine the full extent/definitive boundaries of wetlands and streams within the Project Site and the Project Expansion Area, and the results of the formal delineation can be used to further support Project planning efforts (e.g., avoid impacts to sensitive resources). A final jurisdictional determination of wetlands and streams can only be made by the regulatory agencies; however, the need for such consultation can be determined based on the development objectives set forth in the micro-masterplan.

B. Threatened and Endangered Species

Information regarding threatened and endangered species, critical habitat, and other potential permitting issues related to terrestrial ecological resources is provided below.

EDR conducted a web-based review of the United States Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) database to identify any federally listed plant or wildlife species protected under the Endangered Species Act that might be present in the vicinity of the Project Site and Project Expansion Area. According to IPaC, no threatened or endangered species have been documented in the vicinity of the Site.

Additionally, a formal request for information regarding state and federally-listed endangered and threatened species within the Project Site and Project Expansion Area was submitted to New York Natural Heritage Program (NYNHP). The response received from the NYNHP on September 3, 2020 stated that there are no records of rare or state-listed animals or plants, or significant natural communities within the Project Site (see Appendix B). However, the NYHP response also stated that a state-listed threatened bird species, the least bittern (*Ixobrychus exilis*), has been documented as breeding within 0.5 mile of the Project Site and Project Expansion Area.

Least bittern prefers established freshwater and brackish marshes with tall, dense emergent vegetation that are interspersed with clumps of woody shrubs and open water. During the reconnaissance level site visit, potential habitat for the least bittern was not identified within the Project Site; however, as previously stated the Project Expansion Area was not investigated in the field. Therefore, the proposed Project Site is not expected to impact suitable habitat for the state-listed least bittern but further field review will be necessary if MVEDGE chooses to utilize the Project Expansion Area.

C. Cultural Resources

The New York State Office of Parks, Recreation and Historic Preservation (SHPO) Cultural Resources Information System (CRIS) website was reviewed to determine the location of any archaeological resources within or adjacent to the Project Site, as well as any above-ground historic properties listed in or determined eligible for listing in the State and National Register of Historic Places (S/NRHP) within 500 feet of the Project Site. According to the CRIS website, there is one previously identified above-ground historic property within 500 feet of the Project Site:

- The Henry Edic Farmstead, located at 5519 Edic Road in the Town of Marcy, is located approximately 0.1-mile west of the Project Site and has been determined by SHPO to be S/NRHP-eligible. The farmstead includes a two-and-a-half story Italianate residence, a bank barn, silos, and several other outbuildings. The SHPO Resource Evaluation form for the Henry Edic Farmstead notes that the property is significant for its association with an early European-American settler family and the highly decorative Italianate style of the residence.

The closest S/NRHP-listed property is Bridge E-46 (USN 06513.000180), a thru-truss railroad bridge constructed in 1900, located 0.42-mile south-southeast of the Project Site boundary in the Town of Marcy. It was listed on the S/NRHP in 2014 as a contributing structure in the New York State Barge Canal Historic District (which is also a National Historic Landmark).

A review of the SHPO CRIS website also determined that the entire Project Site is located within an archaeologically sensitive area due to the presence of several previously identified archaeological sites in the general vicinity. The review of CRIS determined that the entire Project Site is located within a New York State Museum Area (an area of known Native American archaeological sensitivity based on existing data), while four additional New York State Museum Areas are located within 0.25-mile of the Project boundary. It should be noted, however, that New York State Museum sites depicted in CRIS typically indicate areas of elevated archaeological sensitivity and should not be considered equivalent to formally tested and delineated archaeological sites.

In addition, the review of CRIS determined that three Phase I archaeological surveys have been conducted that partially overlap the current northern, southern, and western boundaries of the Project Site. These surveys did not identify any S/NRHP-eligible cultural resources; however, two of the surveys (PAF, 2002 and 2019) did not recommend further investigation, while one (TRC, 2016) recommended a Phase IB survey.

Based on the review of CRIS, undisturbed portions of the Project Site and immediate vicinity should be considered archaeologically sensitive for previously undiscovered Native American archaeological sites. In most instances, Native American sites are located relatively close to drainages and/or wetlands because of the availability of freshwater and diverse natural resources, and these areas should be considered to have a higher potential for such sites. Previously unidentified historic-period archaeological sites could also potentially occur within the Project Site. Historic-period archaeological sites could include settlements, farms, or early industrial/agricultural sites dating from the nineteenth and early-twentieth centuries. Potential archaeological remains associated with these types of structures may consist of foundations, structural remains, artifact scatters, and/or other features that would constitute an archaeological site.

Due to its location within an area of archaeological sensitivity, consultation with SHPO should be undertaken to determine the need and appropriate level of cultural resources surveys for the Project.

D. Site Contamination Records

NYSDEC's Environmental Remediation Online Database was accessed in August 2020 (NYSDEC. 2020b). The database contains records of the sites being addressed under one of the NYS Division of Environmental Remediation's programs, such as the State Superfund, Brownfield Cleanup, Environmental Restoration, and Voluntary Cleanup program. This database also includes the Registry of Inactive Hazardous Waste Disposal Sites and information on Institutional and Engineering Controls in New York State. The Project Site and Project Expansion Area are not listed on NYSDEC's Environmental Remediation Database.

Attachments:

- Figure 1: Regional Project Location
- Figure 2: Proposed Project Site
- Figure 3: Mapped Wetlands and Streams
- Figure 4: Approximated Wetlands and Streams

Appendices:

- Appendix A: Representative Site Photos
- Appendix B: Biological Resources Documentation

REFERENCES

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