

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 7  
1285 Fisher Avenue, Cortland, NY 13045-1012  
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[www.dec.ny.gov](http://www.dec.ny.gov)

April 28, 2017

Pat Green, Ecological Services Manager  
Tetra Tech  
301 Ellicott Street  
Buffalo, New York 14203  
[pat.green@tetratech.com](mailto:pat.green@tetratech.com)

**RE: JURISDICTIONAL DETERMINATION**  
SUN8 PDC, LLC Ellis Tracts and 2150 Dryden Road Projects  
Town of Dryden, County of Tompkins

Dear Mr. Green:

The New York State Department of Environmental Conservation (NYSDEC) is in receipt of your request for environmental review of the above-referenced projects. Based on the information you have provided, NYSDEC would like to provide the following comments:

## **SUN8 PDC, LLC - 2150 Dryden Road Project**

Virgil Creek is a Class C(T) protected stream and considered navigable in this location – Under 6 NYCRR Part 608 Use and Protection of Waters; ECL Article 15, Section 608.2 Disturbance of protected streams; a permit is required to change, modify or disturb any protected stream, its bed or banks, or remove from its bed or banks sand, gravel or other material. Under Section 608.5 Excavation or placement of fill in navigable waters; a permit is required to excavate from or place fill, either directly or indirectly, in any of the navigable waters of the state or in marshes, estuaries, tidal marshes and wetlands that are adjacent to and contiguous at any point to any of the navigable waters of the state, and that are inundated at mean high water level or tide. This project may require an Article 15 Stream Disturbance Permit and/or Excavation or Placement of Fill in Navigable Waters Permit depending on the impacts you are proposing to Virgil Creek.

A Class C Tributary to Virgil Creek is located at this site, but because it is a Class C stream and not considered protected, it will not require an Article 15 permit for disturbance of a protected stream. However, if you are applying to perform work under any US Army Corps of Engineers Nationwide Permit, and the Corps requires that you must obtain a Section 401 Water Quality Certification (WCQ) from NYSDEC, then you may end up applying for a WQC for the Class C stream disturbance. In New York, the Department of Environmental Conservation is responsible

for issuing WQCs and the Department's authority to issue a WQC is set forth in 6 NYCRR Section 608.9 (a).

No Official NYSDEC Freshwater Wetlands are mapped at this location. Therefore, no NYS Freshwater Wetlands permit will be required.

There are Federal Wetlands on this property. The US Army Corps of Engineers protects wetlands under Section 404 of the Clean Water Act. You will need to contact the US Army Corps of Engineers to determine what regulatory requirements will apply to this project. For NYSDEC Region 7, your contact for the Corps will Be: US Army Corps of Engineers, Buffalo District, Attn: Regulatory Branch, 1776 Niagara Street, Buffalo, NY 14207-3199; (716) 879-4330 or [LRB.Regulatory@usace.army.mil](mailto:LRB.Regulatory@usace.army.mil).

This project lies within habitat that has endangered, threatened, or protected species. According to our GIS animal screening layer, Henslow's Sparrow and Northern Harrier are known to exist in this project area; and the US Fish and Wildlife Service indicates that your project lies within Northern long-eared Bat habitat. Plans for this location should be reviewed by the NYSDEC Fish, Wildlife, and Marine Resources biologists here in the Cortland DEC office, to determine if this project will impact or remove valuable habitat for the species found near this site. NYSDEC Division of Environmental Permits will coordinate review with the NYSDEC Cortland Wildlife staff. If after reviewing your proposed plans the biologist determines that this activity will impact or remove valuable habitat, you may be required to apply for a NYSDEC Part 182 Incidental Take Permit.

This site is located within an archeologically-sensitive area. For information on archeological/historical/cultural resources, you should contact the New York State Office of Parks Recreation and Historic Preservation or visit their website at <http://nysparks.state.ny.us/shpo/archeology>.

Soil disturbance of one or more acres of land from construction activities require permit coverage under the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity.

### **SUN8 PDC, LLC – Ellis Tract**

#### **Arrays N-1, 2, 3, 4, 5**

Fall Creek, a Class A protected stream lies to the immediate west in this location – Under 6 NYCRR Part 608 Use and Protection of Waters; ECL Article 15, Section 608.2 Disturbance of protected streams; a permit is required to change, modify or disturb any protected stream, its bed or banks, or remove from its bed or banks sand, gravel or other material. This project may require an Article 15 Stream Disturbance Permit depending on the impacts you are proposing.

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No Official NYSDEC Freshwater Wetlands are mapped at this location. Therefore, no NYS Freshwater Wetlands permit will be required.

There are Federal Wetlands on this property. The US Army Corps of Engineers protects wetlands under Section 404 of the Clean Water Act. You will need to contact the US Army Corps of Engineers to determine what regulatory requirements will apply to this project. For NYSDEC Region 7, your contact for the Corps will Be: US Army Corps of Engineers, Buffalo District, Attn: Regulatory Branch, 1776 Niagara Street, Buffalo, NY 14207-3199; (716) 879-4330 or [LRB.Regulatory@usace.army.mil](mailto:LRB.Regulatory@usace.army.mil).

This project lies within habitat that has endangered, threatened, or protected species. According to our GIS animal screening layer, Sedge Wren are known to exist in this project area; and the US Fish and Wildlife Service indicates that your project lies within Northern long-eared Bat habitat. The project plans for this location should be reviewed by the NYSDEC Fish, Wildlife, and Marine Resources biologists here in the Cortland DEC office, to determine if this project will impact or remove valuable habitat for the species found near this site. NYSDEC Division of Environmental Permits will coordinate review with the NYSDEC Cortland Wildlife staff. If after reviewing your proposed plans the biologist determines that this activity will impact or remove valuable habitat, you may be required to apply for a NYSDEC Part 182 Incidental Take Permit.

Soil disturbance of one or more acres of land from construction activities require permit coverage under the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity.

### **Arrays S-1, 2, 3, 4, 5**

Class C Tributaries to Cascadilla Creek are located at these sites, but because they are Class C streams, an Article 15 permit for disturbance of a protected stream will not be required. However, if you are applying to perform work under any US Army Corps of Engineers Nationwide Permit, and the Corps requires that you must obtain a Section 401 Water Quality Certification (WCQ) from NYSDEC, then you may end up applying for a WQC for the Class C stream disturbance. In New York, the Department of Environmental Conservation is responsible for issuing WQCs and the Department's authority to issue a WQC is set forth in 6 NYCRR Section 608.9 (a).

No Official NYSDEC Freshwater Wetlands are mapped at this location. Therefore, no NYS Freshwater Wetlands permit will be required.

There are Federal Wetlands on these properties. The US Army Corps of Engineers protects wetlands under Section 404 of the Clean Water Act. You will need to contact the US Army Corps of Engineers to determine what regulatory requirements will apply to this project. For NYSDEC Region 7, your contact for the Corps will Be: US Army Corps of Engineers, Buffalo

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District, Attn: Regulatory Branch, 1776 Niagara Street, Buffalo, NY 14207-3199; (716) 879-4330 or [LRB.Regulatory@usace.army.mil](mailto:LRB.Regulatory@usace.army.mil).

**Arrays S-1, 2, 3** are located within an archeologically-sensitive area. For information on archeological/historical/cultural resources, you should contact the New York State Office of Parks Recreation and Historic Preservation or visit their website at <http://nysparks.state.ny.us/shpo/archeology>.

Soil disturbance of one or more acres of land from construction activities require permit coverage under the NYSDEC SPDES General Permit for Stormwater Discharges from Construction Activity.

Thank you for your inquiry.

Sincerely,

Teri Phelps, Environmental Analyst 1  
Division of Environmental Permits-Cortland  
607-753-3095, ext. 294  
[teresa.phelps@dec.ny.gov](mailto:teresa.phelps@dec.ny.gov)

cc: David Sprout, (T) Dryden Code Enforcement Officer  
Ray Burger, (T) Dryden Director of Planning  
Judy Robinson, US Army Corps of Engineers  
David Herrick, T. G. Miller, P.C.  
Region 7 DFWMR-Cortland  
DEP Cortland