

TECTONIC

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Fax: (718) 391-0607 | <input type="checkbox"/> 955 Little Britain Road
New Windsor, NY 12553
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Northborough, MA 01532
Phone: (508) 393-7411
Fax: (508) 393-4740 | <input type="checkbox"/> 9100 Centre Pointe Drive
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West Chester, OH 45069
Phone: (513) 942-8530
Fax: (513) 942-9331 | <input type="checkbox"/> 804 Moorefield Park Drive
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Richmond, VA 23236
Phone: (804) 330-7203
Fax: (804) 330-7213 | <input type="checkbox"/> 1344 Silas Deane Highway
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Rocky Hill, CT 06067
Phone: (860) 563-2341
Fax: (860) 257-4882 | <input type="checkbox"/> 20 New Plant Court
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COMPANY: Town of New Windsor FAX #: 563-4695

TO: Miya NUMBER OF PAGES (including this page): 6

FROM: Jane Samuelson If you do not receive all pages please call sender at the location checked above

DATE: 7-15-02

W.O. #: _____

Hard Copy to Follow:
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Including those Copied:
 YES NO

Comments: For Your Information!

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PLANNING ENGINEERING SURVEYING CONSTRUCTION MANAGEMENT

cc: M.E.



DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
JACOB K. JAVITS FEDERAL BUILDING
NEW YORK, N.Y. 10278-0090

JUL 03 2002

REPLY TO
ATTENTION OF:

Regulatory Branch

SUBJECT: Permit Application Number 2001-01502-YS
by Land Master Harp, LLC

Catherine Geysen
Tectonic Engineering Consultants P.C.
557 Blooming Grove Turnpike
New Windsor, New York 12553

Dear Ms. Geysen:

On October 20, 2001, the New York District Corps of Engineers received a request for a Department of the Army jurisdictional determination for the above referenced project. This request was made by Tectonic Engineering Consultants P.C., as consultant for Land Master Harp, LLC. The site consists of approximately 21.66 acres, in the Hudson River Basin, located on Temple Hill Road in the Town of New Windsor, Orange County, New York.

In the letter received on October 20, 2001, your office submitted a proposed delineation of the extent of waters of the United States within the subject property. A site inspection was conducted by a representative of this office on November 28, 2001, in which it was agreed that changes would be made to the delineation and that the modified delineation would be submitted to this office. On June 24, 2002, this office received the modified delineation.

Based on the material submitted and the observations of the representative of this office during the site visit, 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 either adjacent to or part of a tributary system; the presence of a defined water body (e.g. stream channel, lake, pond, river, etc.) which is part of a tributary system; and the fact that the location includes property below the ordinary high water mark, high tide line or mean high water mark of a water body as determined by known gage data or by the presence of physical markings including, but not limited to, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter or debris or other characteristics of the surrounding area.

These jurisdictional waters of the United States are shown on the drawings entitled "Boundary/Topographic Survey Harp Property Temple Hill Road Town of New Windsor Orange County, New York", Drawing Nos. SU-101 and SU-102, prepared by Tectonic Engineering Consultants P.C., dated July 16, 2001, and last revised June 21, 2002. These drawings indicate that there is one (1) principal wetland area on the project site which is part of a tributary system, and is considered to be waters of the United States. The wetland includes a portion of Silver Stream, is located in the southern-most corner of the property and is approximately 1.34 acres within the subject property. These wetlands are considered to be below the headwaters.

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 drawings (wetland flag numbers WLF#I1 through WLF#I11) 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.

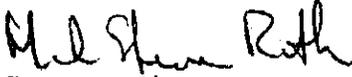
This determination regarding the delineation shall be considered valid for a period of five years from the date of this letter. Enclosed is a Notification of Administrative Appeal Options which provides information on your acceptance of this approved jurisdictional determination.

This delineation/determination has been conducted to identify the limits of the Corps Clean Water Act jurisdiction for the particular site identified in this request. This delineation/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 Brian A. Orzel, of my staff, at (212) 264-0183.

Sincerely,


George Nieves
Chief, Western Permits Section

Enclosure

of: NYSDEC - Region 3
Town of New Windsor

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Land Master Harp, LLC		File Number: 2001-01502	Date: July 3, 2002
Attached is:		See Section Below	
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A	
	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B	
	PERMIT DENIAL	C	
X	APPROVED JURISDICTIONAL DETERMINATION	D	
	PRELIMINARY JURISDICTIONAL DETERMINATION	E	

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usacc.army.mil/inet/functions/cw/cecwa/reg> or Corps regulations at 33 CFR Part 131.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the New York District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the New York District Engineer. Your objections must be received by the New York District Engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the New York District Engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the New York District Engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the New York District Engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the Division Engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the North Atlantic Division Engineer, ATTN: CENAD-ET-O, Fort Hamilton Military Community, Building 301, General Lee Avenue, Brooklyn, NY 11252-6700. This form must be received by the Division Engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the North Atlantic Division Engineer within 60 days of the date of this notice with a copy furnished to the New York District Engineer.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:
Richard L. Tomer
U.S. Army Corps of Engineers, New York District
Jacob K. Javits Federal Building
New York, NY 10278-0090
(212) 254-9053 or 3996

If you only have questions regarding the appeal process you may also contact:
James W. Haggerty, Regulatory Appeals Review Officer
North Atlantic Division, U.S. Army Engineer Division
Fort Hamilton Military Community
General Lee Avenue, Building 301
Brooklyn, NY 11252-6700
(718) 765-7150
E-mail: James.W.Haggerty@nad02.usace.army.mil

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Signature of appellant or agent.	Date:	Telephone number:
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