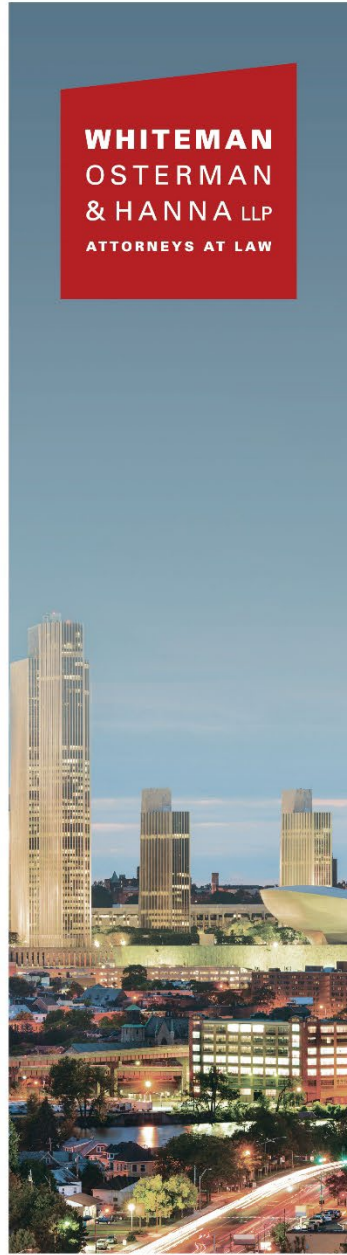




Recent Changes in State Freshwater Wetlands Laws and Regulations

Terresa Bakner
Whiteman Osterman & Hanna LLP

September 3, 2025

DISCLAIMER: This is an outline of issues and potential issues and is not intended as legal advice; this presentation is no substitute for legal advice and analysis from experienced counsel.



Unlike the federal program for protection of wetlands (i.e. Waters of the US), the State program found in Environmental Conservation Law Article 24 for the protection of Freshwater Wetlands has been remarkably consistent and unchangeable since the regulations were adopted in the 1980s.

-----Only officially mapped wetlands 12.4 acres in size or larger were regulated. In very rare cases wetlands of unusual local importance were also mapped.

In 2022, however, the State Legislature and the Governor adopted some major changes to the State Freshwater Wetlands Law as part of the budget bill.



These changes are as follows:

- As of January 1, 2023 – Increasing permit application fees;
- As of January 1, 2025—Eliminating the NYS Freshwater Wetlands Mapping procedures and regulatory jurisdiction, i.e. no longer limiting DEC jurisdiction to mapped wetlands;
- As of January 1, 2025—Small wetlands (of any size) considered of “unusual importance” will be regulated if they meet one of 11 newly-established criteria in the law;
- As of January 1, 2028—The default size threshold from regulated wetlands will be 7.4 acres (not 12.4 acres).



Rebuttable Presumption—the Legislature has decided not to provide advanced regulatory notice of the boundaries of NYSDEC wetlands, i.e. regulatory maps with notice mailed to landowners when the map is created or amended. Instead, the program will be more similar to the federal wetlands program.

If you have a “wetland” on your property that may be regulated by the State the presumption is rebuttable.

No future regulatory mapping of wetlands-no advanced notice to landowners.

The landowner has to prove to the NYSDEC that the wetland on or near their property is NOT regulated by NYSDEC.



Practically speaking if you have a freshwater wetlands on your property or adjacent to your property you will be required to obtain a delineation from a wetlands biologist and to have NYSDEC wetlands staff confirm that the wetland is or is not regulated by the State in a new two-step process.

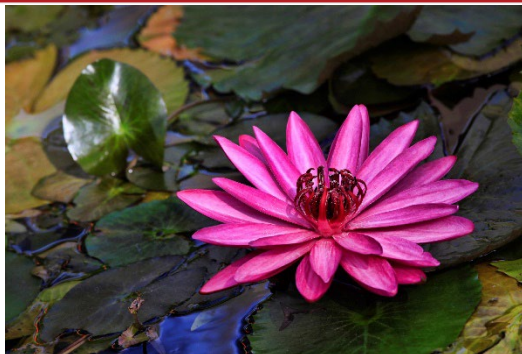
Remember NYS also regulates the 100-foot upland adjacent area surrounding the wetland—not just the wetlands itself.



What are wetlands of “unusual importance”, i.e. wetlands of **any size** below 12.4 acres that may be regulated by NYSDEC?

Remember all of these wetlands of any size also have at least a 100-foot regulated adjacent area surrounding the wetlands.

They are freshwater wetlands that have at least ONE of the following characteristics as determined by NYSDEC staff.



- The freshwater wetland is located in a watershed that has experienced significant flooding in the past, or is expected to experience significant flooding in the future from severe storm events related to climate change;
- It is located within or adjacent to an urban area, as defined by the United States Census Bureau;
- It contains a plant species occurring in fewer than thirty-five sites statewide or having fewer than five thousand individuals statewide;



- It contains habitat that is utilized for an essential behavior of an endangered or threatened species or a species of special concern as defined under section 11-0535 of this chapter or listed as a species of greatest conservation need in New York's wildlife action plan;
- It is classified by the department as a Class I wetlands;
- It was previously classified and mapped by the department as a wetlands of unusual local importance;
- It is a vernal pool that is known to be productive for amphibian breeding;



- It is located in an area designated as a floodway on the most current Digital Flood Insurance Rate Map (DFIRM) produced by the Federal Emergency Management Agency;
- It was previously mapped by the department as a wetlands on or before December thirty-first, two thousand twenty-four;
- It has wetlands functions and values that are of local or regional significance; or
- It is determined by the commissioner to be of significant importance to protecting the state's water quality.

New FWW Regulations

- The preceding slides relate to the legislation amending ECL Article 24
- The new FWW regulations were published in the State Register on 12/31/24 and were posted on the DEC website with supporting materials.
- Overall few changes were made in response to public comments.

New FWW Regulations WUI

- VERNAL POOLS
- Vernal Pools—now no proscribed buffer beyond 100 feet but up to discretion of DEC staff to impose larger buffer.
- Vernal Pools are defined as known to be productive for amphibian breeding—Egg Mass criteria remains the same as in the proposed regulations.

New FWW Wetlands-WUI

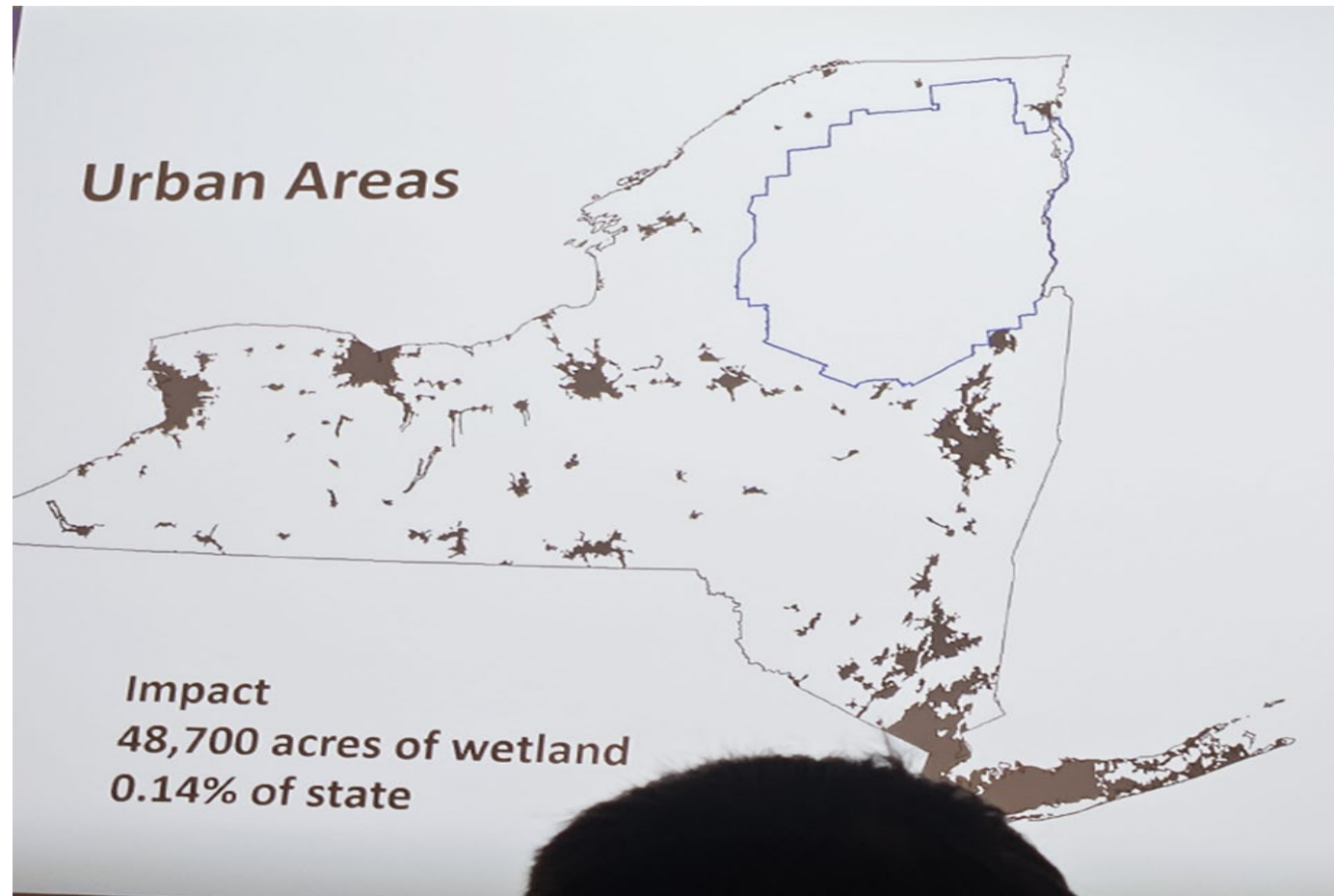
- Significant Flooding. The FWW is in a 12-digit HUC meeting all 3 criteria—2% or more impervious surface, less than 5% of surface area is lakes, ponds, reservoirs or wetlands, and it is within an urban area or within 2.48 miles of one.
- Within or adjacent to an Urban area as defined and identified by the US Census Bureau.
- Wetlands of Unusual Local Importance—Previously Designated by Local Municipalities.

WUI--HUCs with Flooding Concerns



New FWW Wetlands-WUI

**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW



New FWW Regulation-WUI

- Rare Plants. It contains a plant species occurring in fewer than 35 sites statewide or having fewer than 5000 individuals statewide as documented by DEC
- Rare Animals. Containing habitat **utilized** for an essential behavior of Threatened and Endangered Species, Species of special concern, species of greatest conservation need. Lists found in Part 182 and in the CFR Part 17—EAF Mapper.
- NO LIST HOWEVER

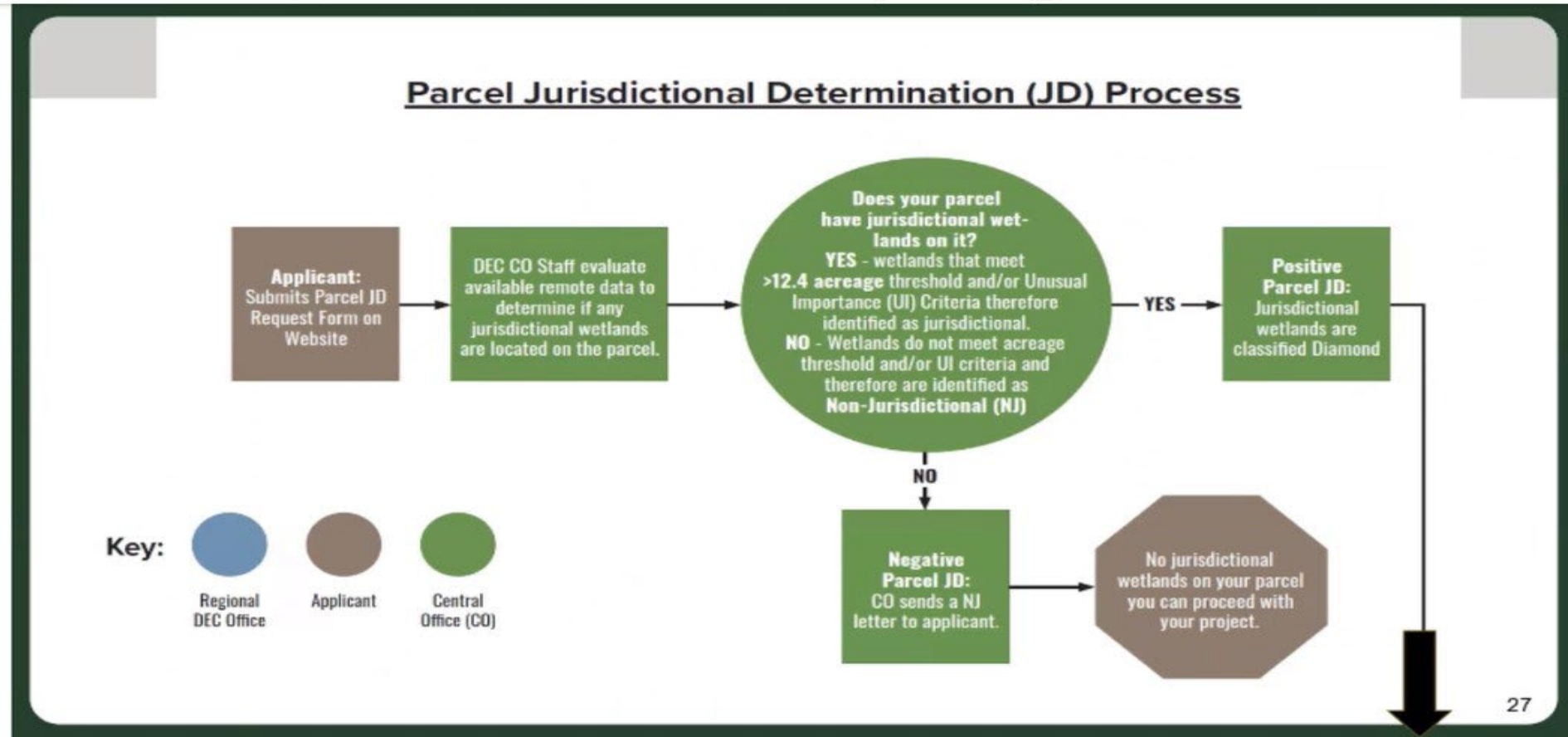
New FWW Regulations-ULI

- Floodways as shown on the FEMA maps
- Previously mapped wetlands on or before December 31, 2024 and which contain wetlands characteristics described in section 24-0107(a) of the FWW Act.
- Wetlands determined to be of local or regional significance because they are within a Critical Environmental Area or within the APA boundaries.
- Important for the Protection of NYS's water quality-based on substantial evidence decided by DEC Commissioner.

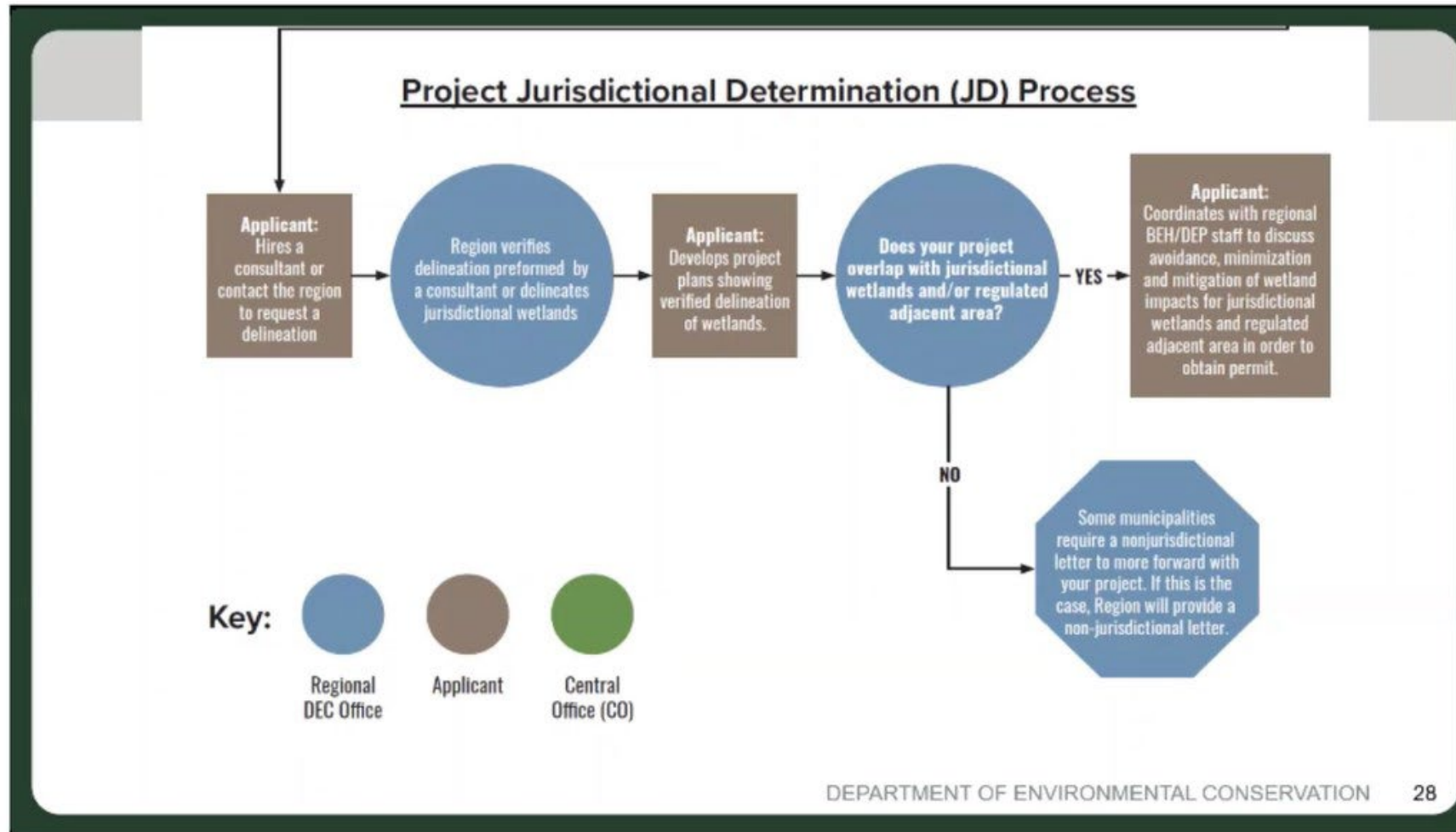
New FWW Regulations-JD

- New Procedures for JDs—burden is on property owner. All requests go to DEC central office initially to evaluate new mapping produced by Cornell and other documentation of criteria. Parcel JD and Project JD. **All but CONSULTANT OPTION.**
- If you receive a positive determination then you request DEC Regional staff to go to site.
- DEC Regional staff has at least 90 days to confirm a JD or provide notification of an extension—if no response then further 10 day letter may result in waiver.
- A JD is good for 5 years.

JD Process-Parcel



JD Process Project





New FWW Regulations

- A positive JD determination can be appealed by the landowner. It stays in place while the appeal occurs.
- First step is initial consultation, then submission of a complete appeal within 120 days of initial consultation.
- DEC is required to decide appeal within 60 days if another field visit is necessary they can extend for an additional 30 days. Very limited, technical grounds for appeal.



Grandfathered or Transitional Projects:

The Law provides that only projects that have **a building permit** or, if no building permit is required for a project, **have commenced construction or the use**, in order to avoid the need to obtain a Freshwater Wetlands permit where the wetlands on site have become “regulated”.

The regulations provide for a more expanded grandfathering of certain projects and do not repeat the provisions in the law.

New FWW Regulations--Grandfathering

- The regulations provide for an extension of time to complete a project under certain limited circumstances:
- Where a property owner or applicant received, prior to January 1, 2025, either a FWW permit or a letter from DEC notifying them that their application was complete, the project may proceed under the FWW jurisdictional determination issued by the department prior to January 1, 2025, until expiration of the FWW permit.

New FWW Regulations

- Second way to have more time to complete project:
- Where a property owner has commenced or plans to commence a project on a parcel that did not previously require a FWW permit prior to 1/1/25 and
 - 1) has a FEIS which has been accepted by the lead agency; or 2) has received a negative declaration for a Type 1 or **unlisted** action; or 3) has received written site plan approval from a local government for the project;
- THEN.....

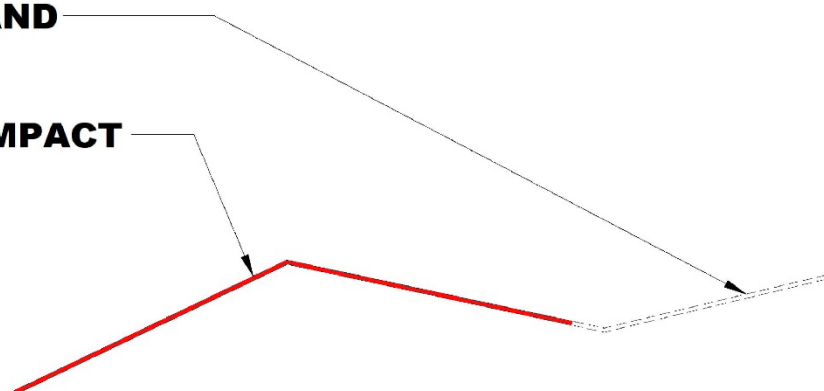
New FWW Regulations

- THEN the regulations do not apply until—
- July 1, 2028 for projects determined to be Major projects pursuant to 6 NYCRR section 621.4;
- OR
- January 1, 2027, for projects determined to be Minor Projects pursuant to 6 NYCRR section 621.4.

LINEAR WETLAND

**LINEAR ACOE WETLAND
(4' WIDE)**

**PROPOSED DIRECT IMPACT
570' LINEAR FEET
0.05 ACRES**



LINEAR WETLAND

**LINEAR NYSDEC WETLAND
(4' WIDE)**

**PROPOSED DIRECT IMPACT
570' LINEAR FEET
0.05 ACRES**

**PROPOSED
BUFFER IMPACT
3 ACRES**

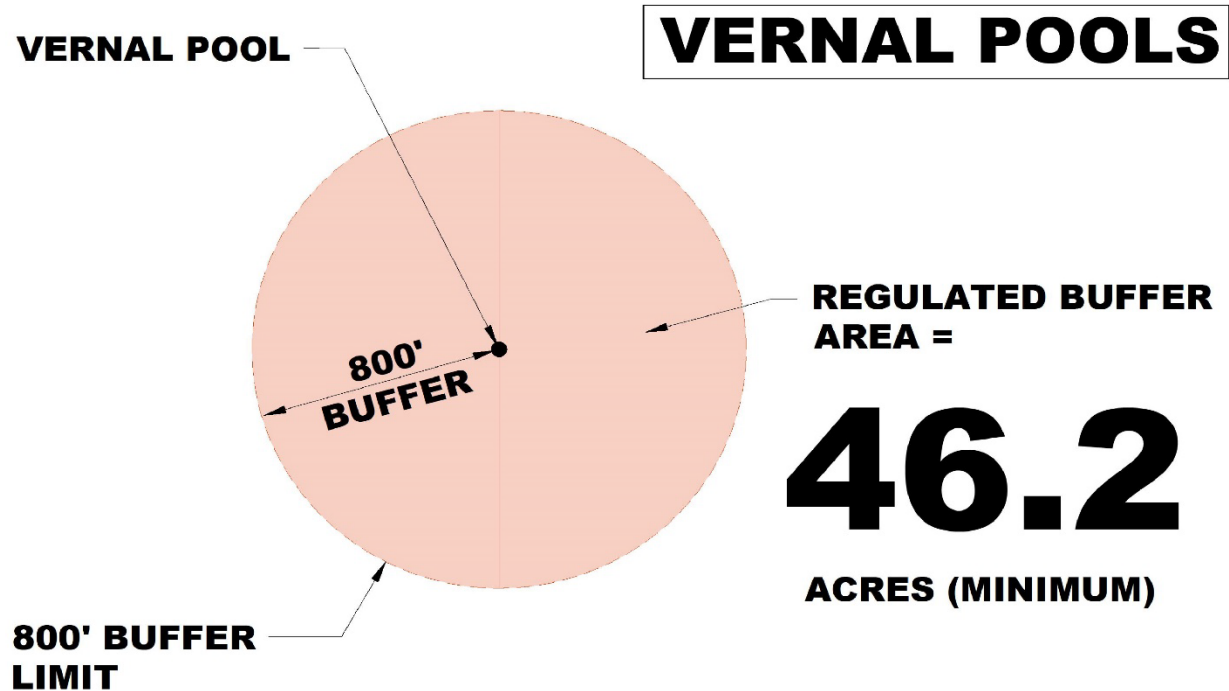
1_{Ac} / 220_{LF}
(MINIMUM)

**NYSDEC 100'
BUFFER LIMITS**



LINEAR WETLAND



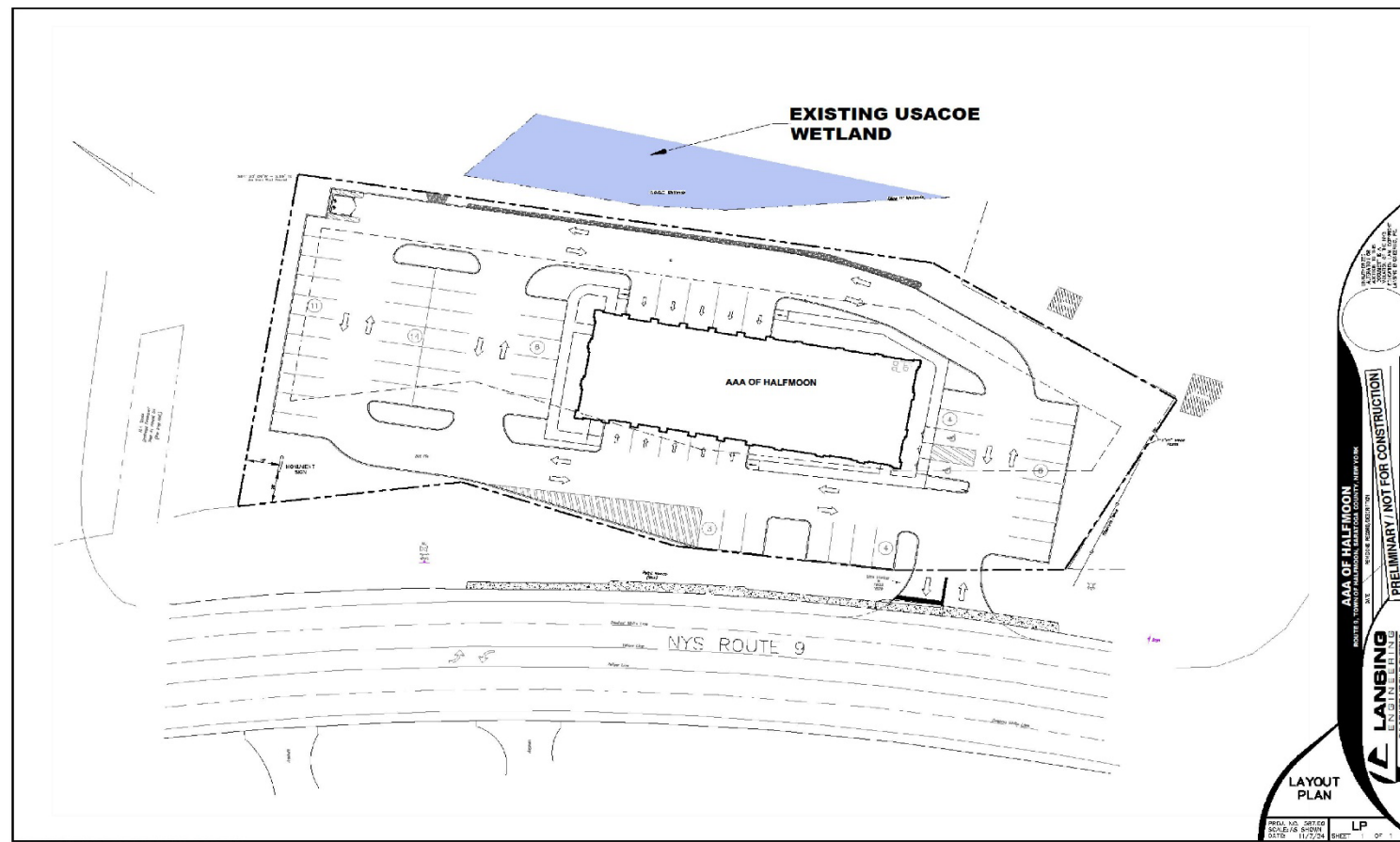


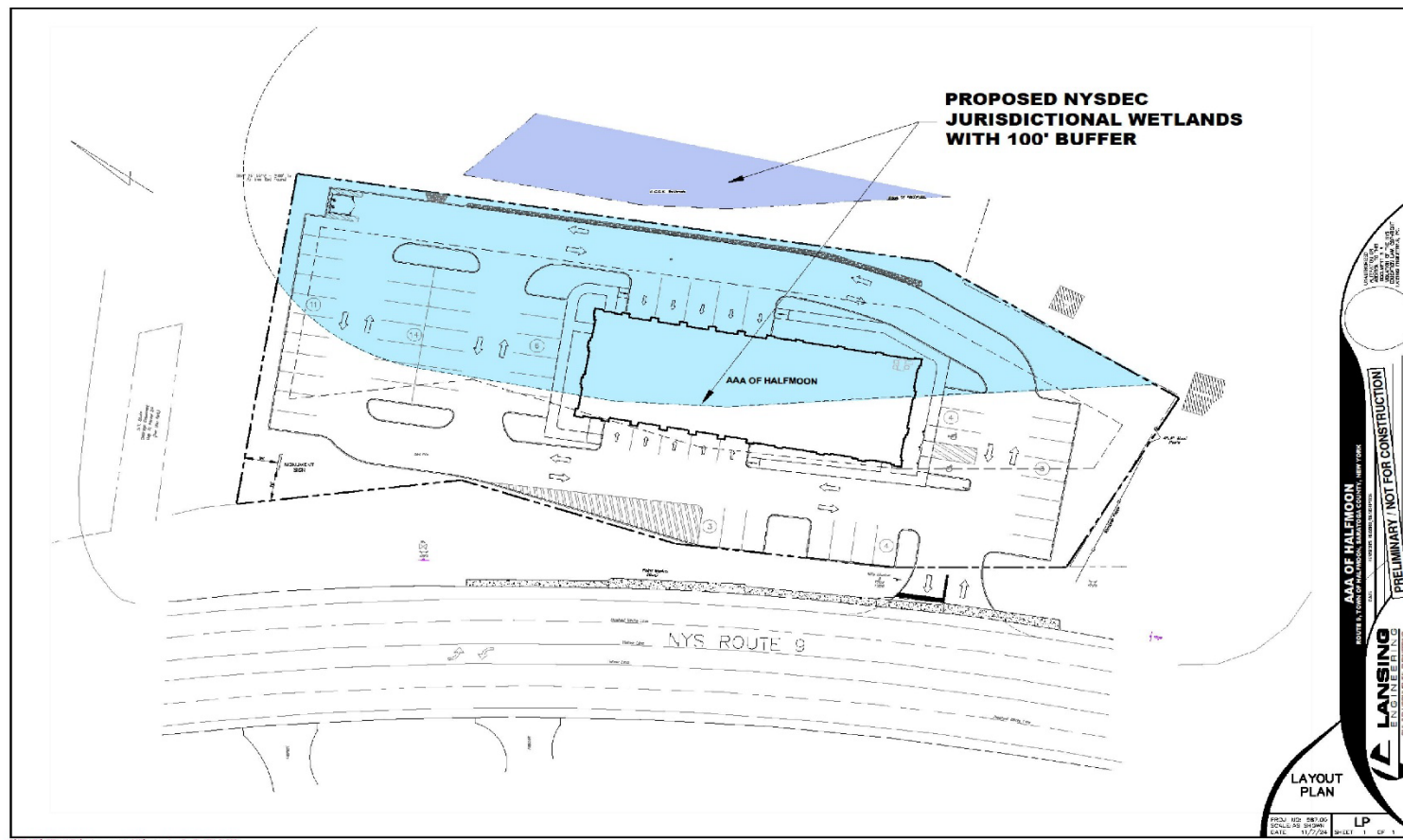
VERNAL POOLS

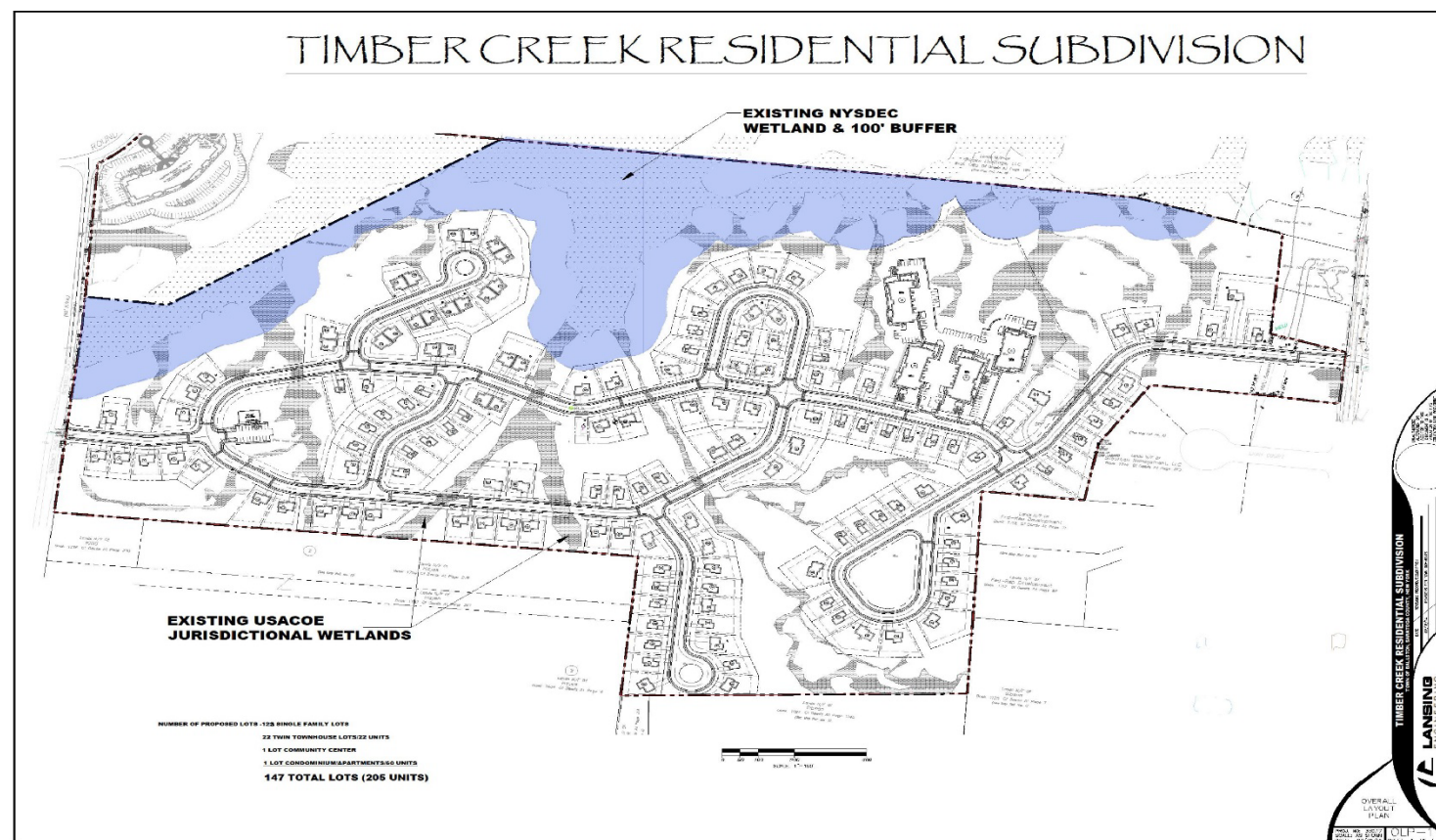


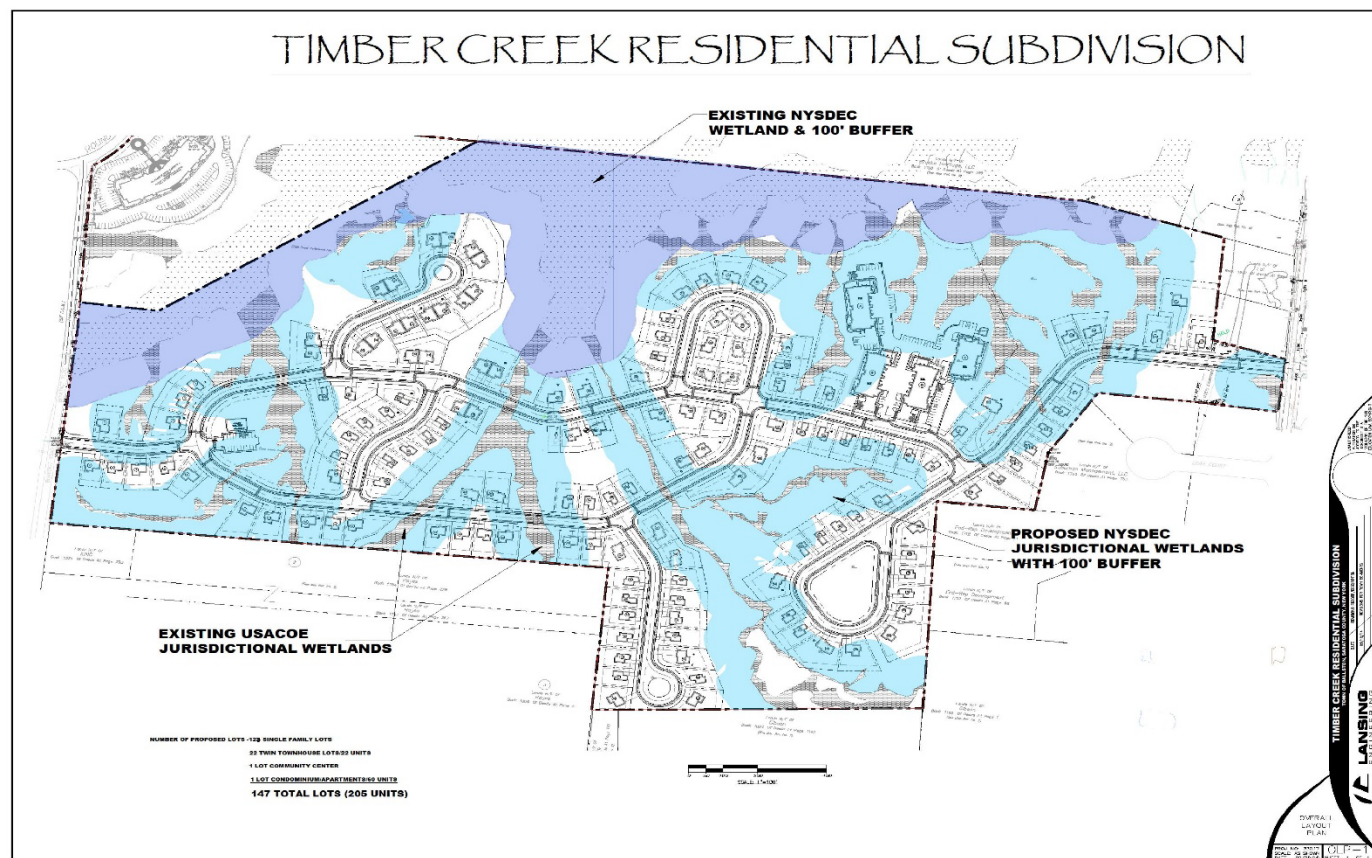
VERNAL POOLS











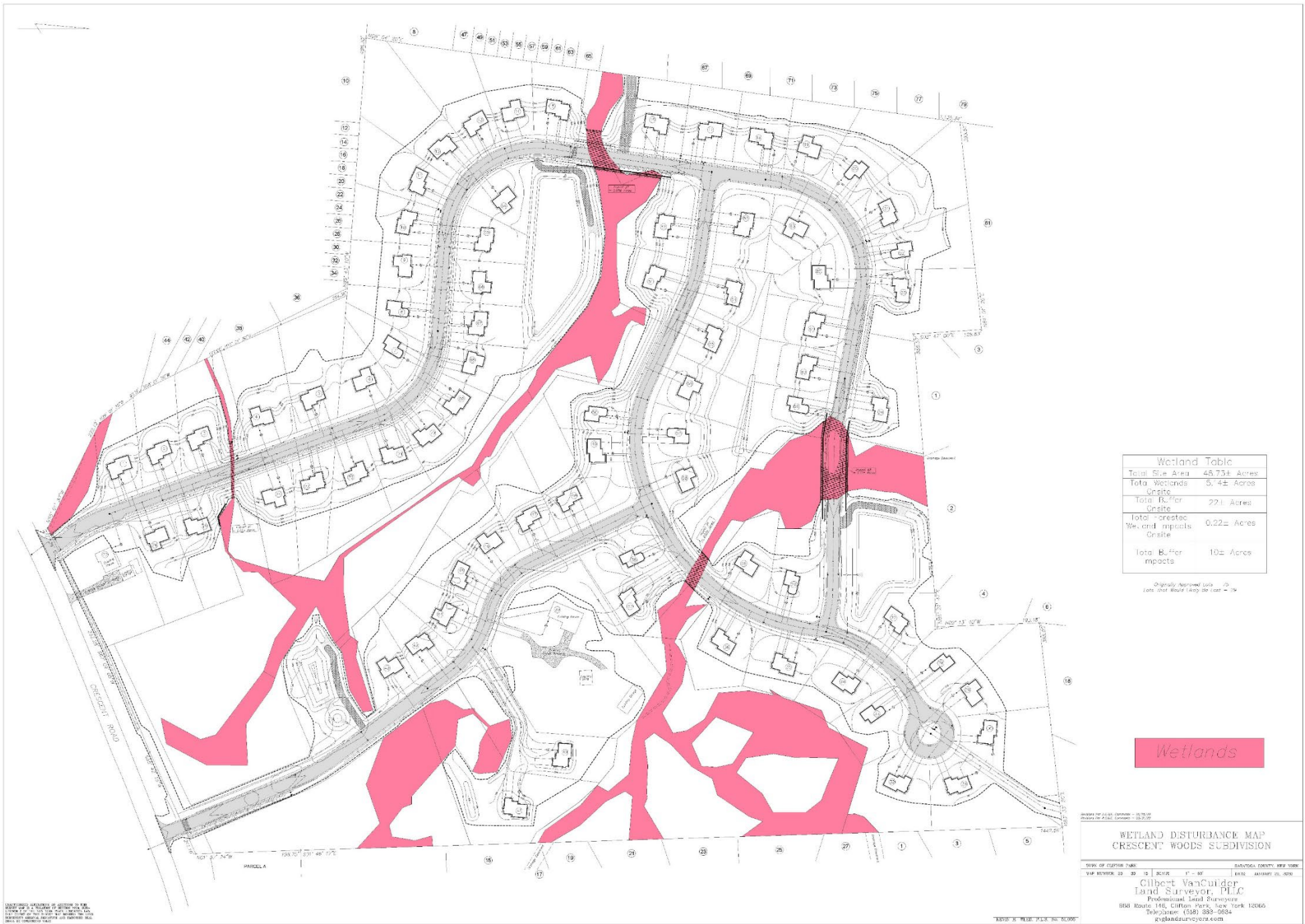


By January 1, 2028,

The threshold for wetlands regulated by ECL Article 24 will decrease from 12.4 acres to 7.4 acres for all wetlands—even those that do not qualify as “wetlands of unusual importance.”

Post New Wetlands Regulations

- Status of Challenge to Regulations
- Status of DEC's Adoption of General Permits
- Seeking Freshwater Wetlands Permits from DEC—Old Part 663
- Transitional Projects—Problems of implementation





Wetland Table	
Total Site Area	48.73± Acres
Total Wetlands	5.14± Acres
Onsite	
Total Buffer	22± Acres
Onsite	
Total Forested Wetland Impacts	0.22± Acres
Onsite	
Total Buffer Impacts	10± Acres

Originally Approved Lots - 75
Lots That Would Likely Be Lost - 29

100' Adjacent Area

Wetlands

WETLAND DISTURBANCE MAP
CRESCENT WOODS SUBDIVISION

TOWN OF CLIFTON PARK

MAP NUMBER: 20 - 30 - 15

Scale: 1" = 50'

DATE: JANUARY 28, 2020

SARATOGA COUNTY, NEW YORK

Gilbert VanGuilder
Land Surveyor, PLLC
Professional Land Surveyors
808 Route 148, Clifton Park, New York 12065
Telephone: (518) 363-0634
gvglandsurveyors.com

Reviewed For AEGIS Compliance - 02/26/20
Reviewed For AEGIS Compliance - 02/27/20

REVISIONS: SEE P.L.S. NO. 10,005

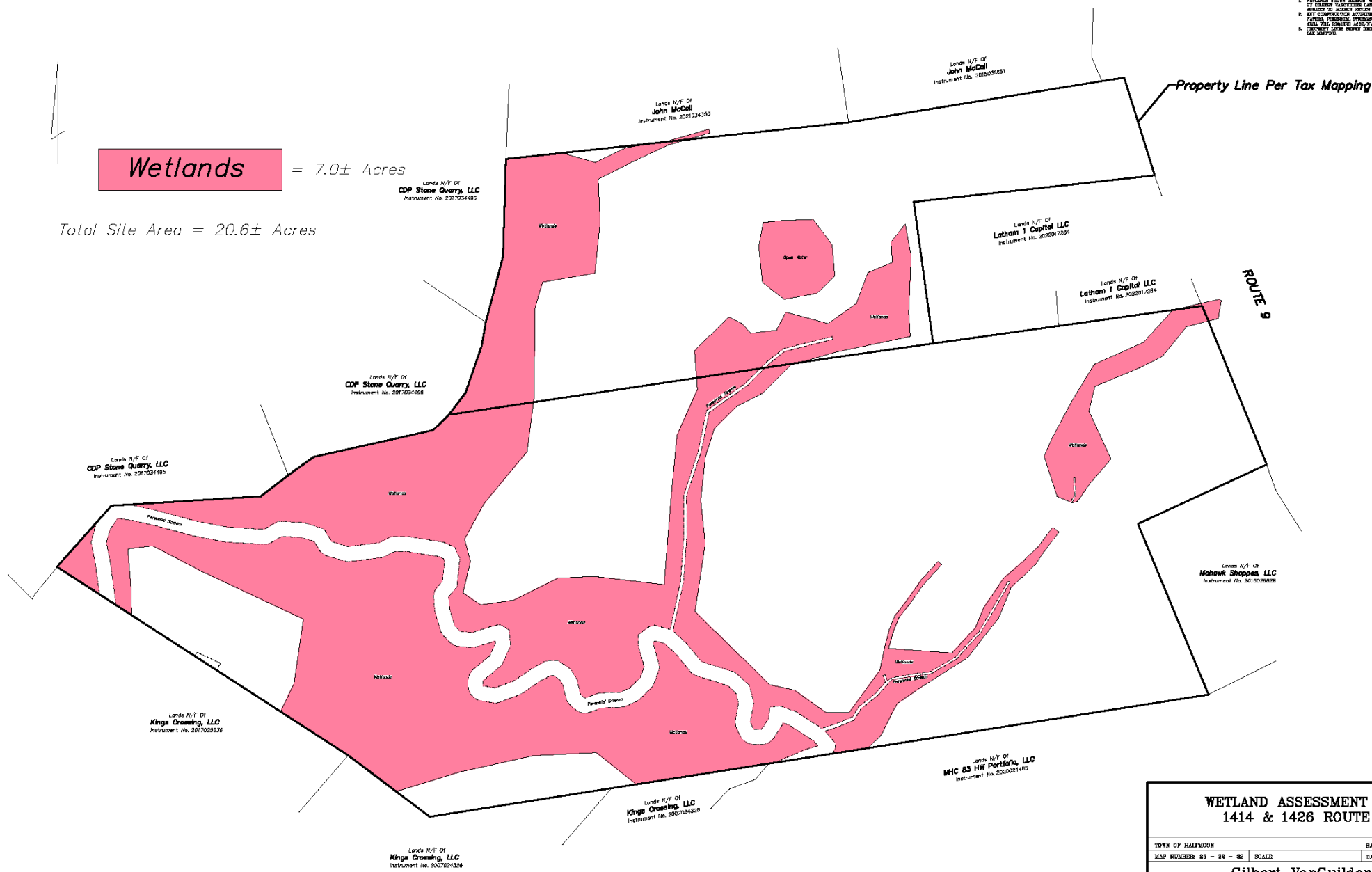
THIS MAP IS A PRELIMINARY DESIGN. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS FOUND NO OBVIOUS DISCREPANCIES. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS FOUND NO OBVIOUS DISCREPANCIES. THE SURVEYOR HAS CONDUCTED A VISUAL INSPECTION OF THE SITE AND HAS FOUND NO OBVIOUS DISCREPANCIES.

NOTES:
 1. WETLANDS SURVEY RESULTS WERE OBTAINED BY WALKING A GRID OF CLUSTERS SAMPLES AND IDENTIFYING PLANTS AND SOILS ASSOCIATED TO WETLANDS.
 2. ANY CORRECTIONS TO THE SURVEY RESULTS WILL BE NOTED ON THE SURVEY MAP.
 3. ANY CORRECTIONS TO THE SURVEY RESULTS WILL BE NOTED ON THE SURVEY MAP.
 4. ANY CORRECTIONS TO THE SURVEY RESULTS WILL BE NOTED ON THE SURVEY MAP.
 5. PROPERTY LINES WERE DETERMINED BY PERMANENT SURVEY DATA.



Wetlands = 7.0± Acres

Total Site Area = 20.6± Acres



UNAUTHORIZED ALTERATIONS OR ADDITIONS TO THIS MAP MAY BE A VIOLATION OF FEDERAL AND STATE LAWS. ANY SUCH VIOLATION MAY BE SUBJECT TO CIVIL AND CRIMINAL PENALTIES. ANY SUCH VIOLATION MAY BE SUBJECT TO CIVIL AND CRIMINAL PENALTIES. ANY SUCH VIOLATION MAY BE SUBJECT TO CIVIL AND CRIMINAL PENALTIES.

KEVIN H. WEAVER, P.L.S. No. 01,005

WETLAND ASSESSMENT MAP
1414 & 1426 ROUTE 9

TOWN OF HALFMOON	SARATOGA COUNTY, NEW YORK
MAP NUMBER: 85 - 82 - 82	DATE: MARCH 6, 2025

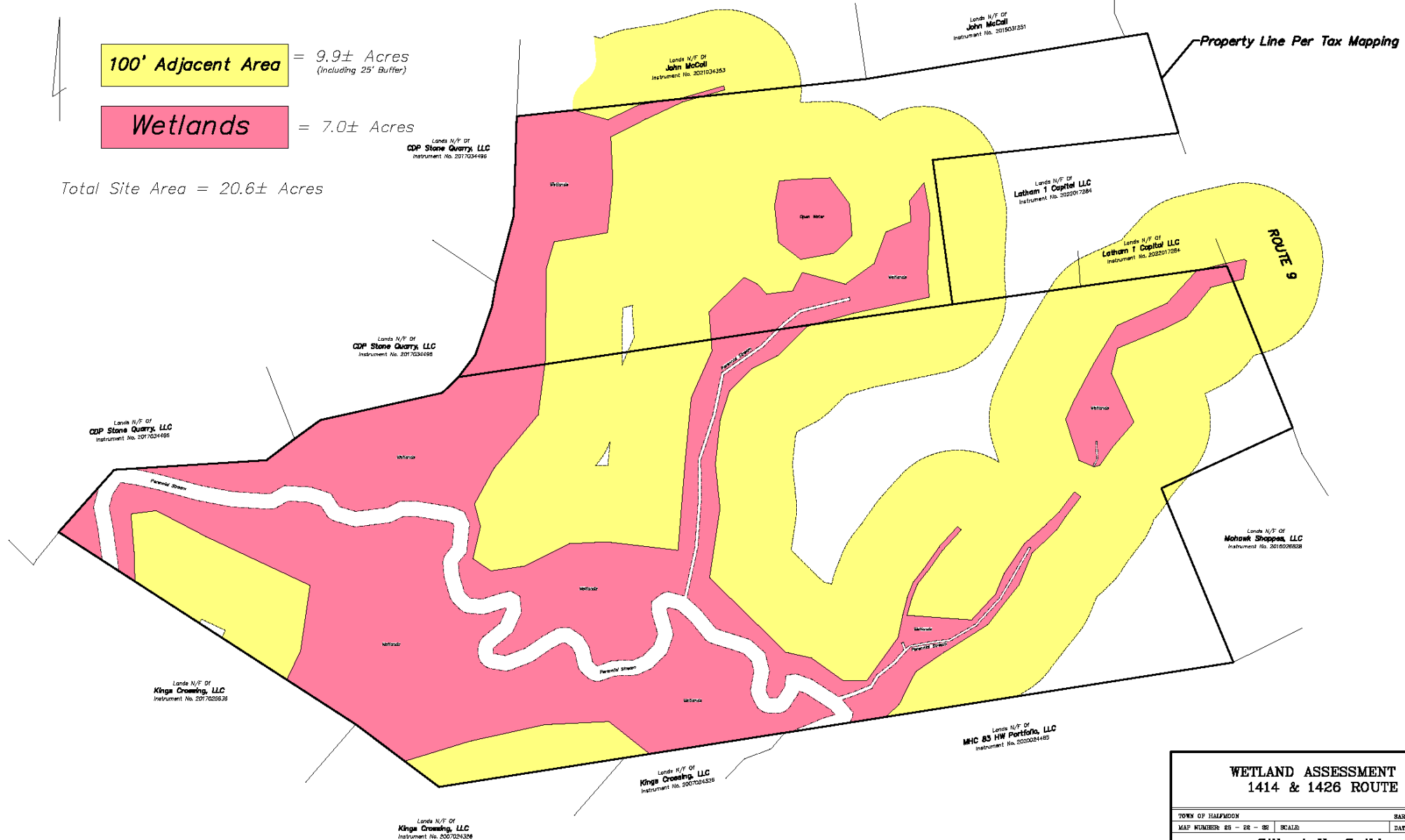
Gilbert VanGuilder
Land Surveyor, PLLC
 Professional Land Surveyors
 988 Route 146, Clifton Park, New York 12065
 Telephone: (516) 383-0634
 gvglandsurveyors.com

NOTES:
 1. WETLANDS SHOWN HEREIN WERE ASSSESSED BY SURVEY & DATA OF GILBERT VAN GUILDER LAND SURVEYOR, PLLC AND ARE SUBJECT TO ACTUAL SURVEY.
 2. ANY CONSTRUCTION ACTIVITIES WITHIN THE WETLANDS OPEN WATERS, PERMANENT SWAMP AND/OR PERMANENT UPLAND AREAS WILL BE SUBJECT TO THE NYS DECISIONAL PROCESS.
 3. PROPERTY LINES SHOWN HEREIN ARE PER SARATOGA COUNTY TAX MAPS.

100' Adjacent Area = 9.9± Acres
 (Including 25' Buffer)

Wetlands = 7.0± Acres

Total Site Area = 20.6± Acres



WETLAND ASSESSMENT MAP 1414 & 1426 ROUTE 9

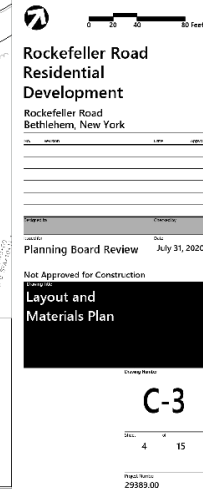
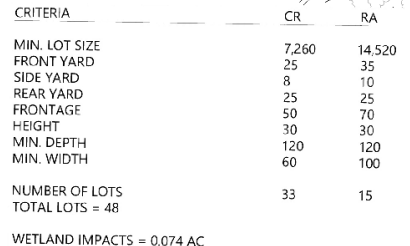
TOWN OF HALFMOON SARATOGA COUNTY, NEW YORK
 MAP NUMBER 85 - DE - 02 SCALE: DATE: MARCH 6, 2025

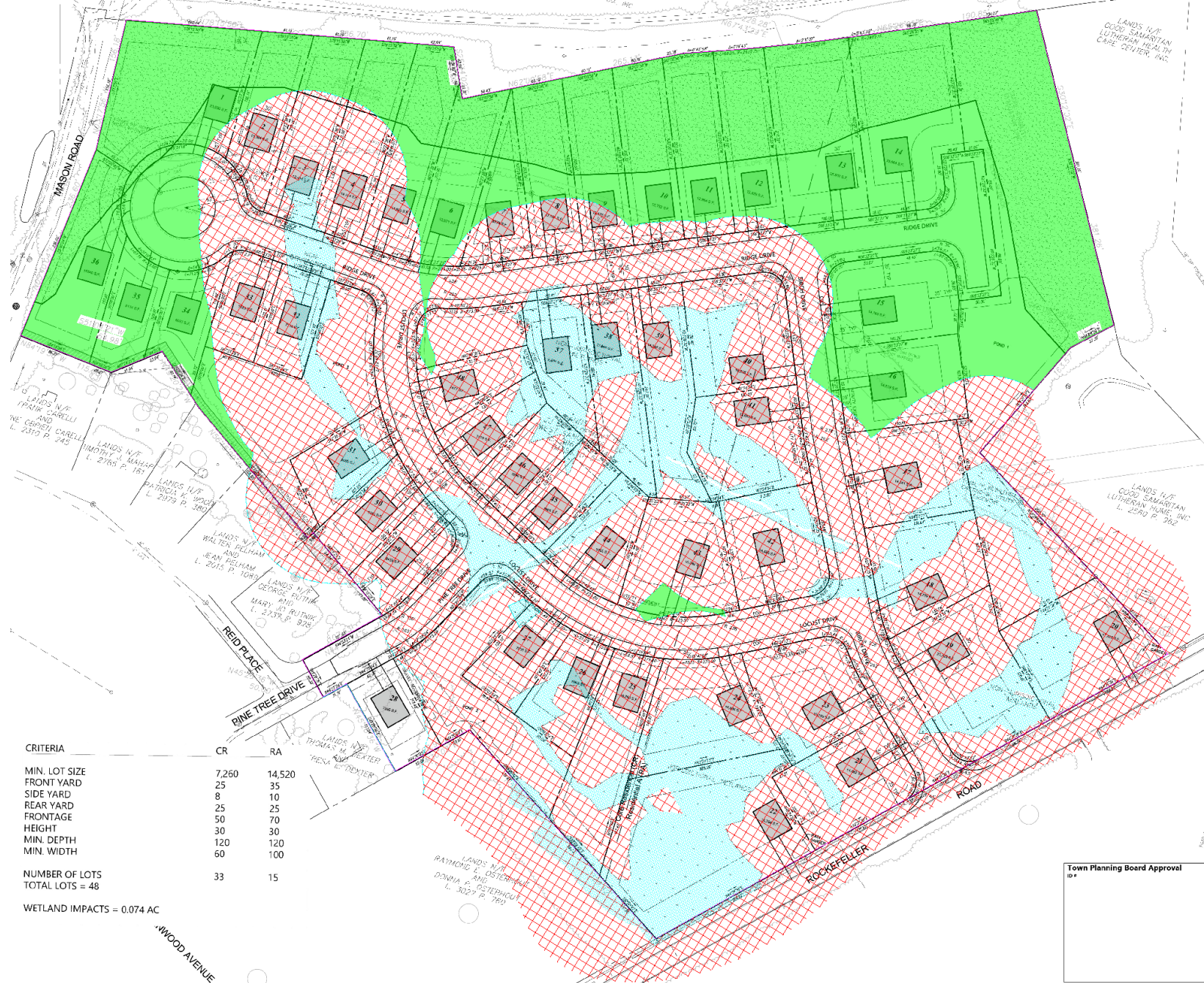
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 gyglandsurveyors.com

KEVIN H. WERN, P.L.S. No. 61,505

UNAUTHORIZED ALTERATIONS OR ADDITIONS TO THIS MAP MAY BE A VIOLATION OF NYS DECISIONAL PROCESS. ANY CONSTRUCTION ACTIVITIES WITHIN THE WETLANDS OPEN WATERS, PERMANENT SWAMP AND/OR PERMANENT UPLAND AREAS WILL BE SUBJECT TO THE NYS DECISIONAL PROCESS. PROPERTY LINES SHOWN HEREIN ARE PER SARATOGA COUNTY TAX MAPS.





TOWN OF BETHLEHEM * ALBANY COUNTY * NEW YORK



WETLAND DISTURBANCE	
WETLAND DISTURBANCE =	
TOTAL = 0.26 ACRES	

 SLOPES 160% - 1:64 AD
 WETLANDS
 WETLAND DISTURBANCE
 WETLAND MITIGATION

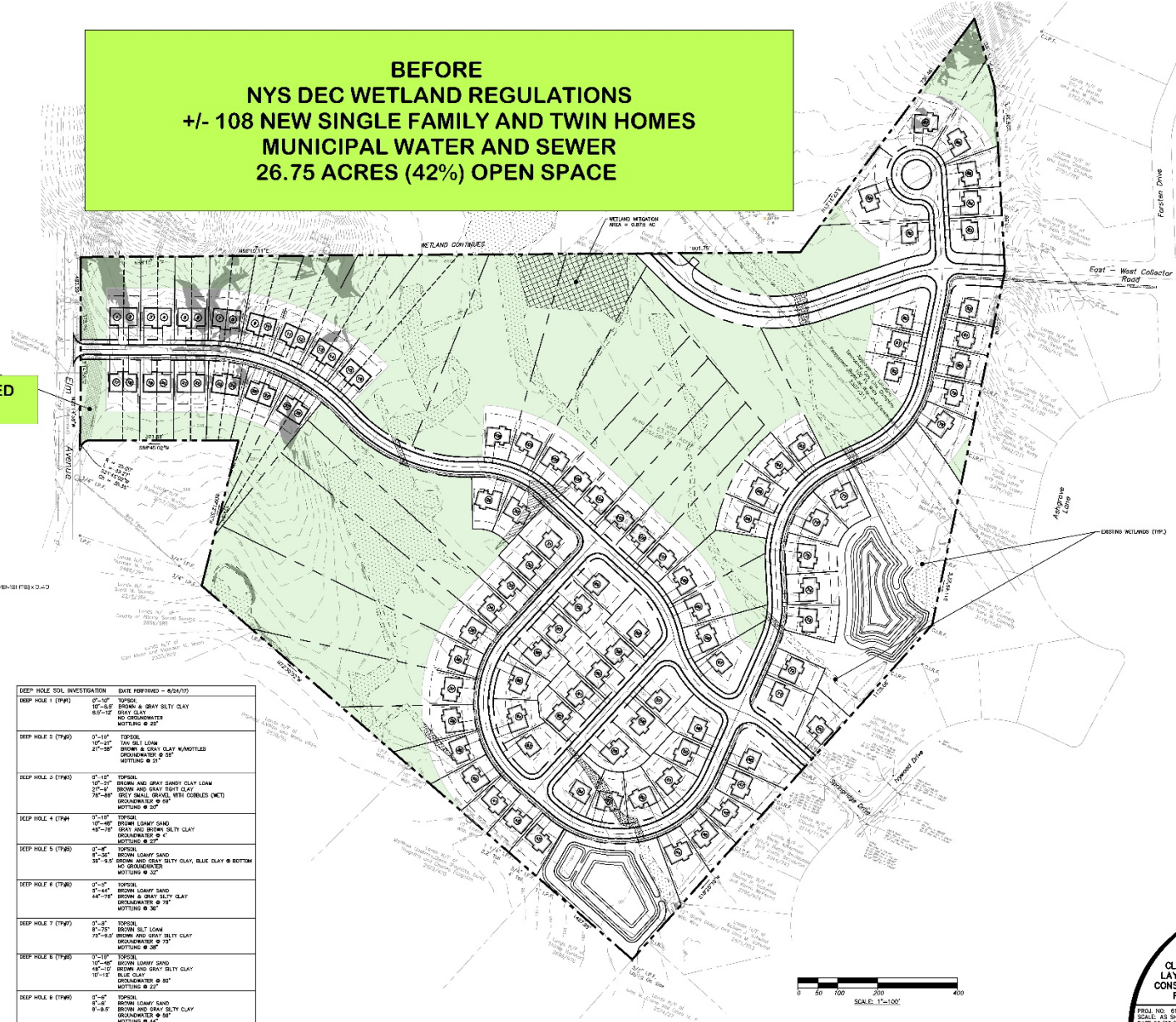
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DEEP HOLE SIZE INVESTIGATION	DATA FORWARDED - ADVISORY
	0'-10" TOPSOIL
	10'-15" BROWN & GRAY SILT CLAY
	15'-17" GRAY CLAY
	17'-20" SAND AND GRAVEL
	MOTTLED @ 25'
DEEP HOLE 2 (7'9")	10" TOPSOIL
	10'-21" TAN SILT LOAM
	BROWN & GRAY CLAY MOTTLED
	GRAVEL @ 20'
	MOTTLED @ 21'
DEEP HOLE 3 (7'8")	10" TOPSOIL
	10'-21" BROWN AND GRAY SILTY CLAY LOAM
	21'-4' BROWN AND GRAY SILT CLAY
	4'-7' SMALL BROWN & GRAY COBBLES (MCT)
	GRAVEL @ 20'
	MOTTLED @ 20'
DEEP HOLE 4 (7'9")	10" TOPSOIL
	10'-15" BROWN LOAMY SAND
	15'-17" GRAY & BROWN SILT CLAY
	MOTTLED @ 20'
DEEP HOLE 5 (7'8")	10" TOPSOIL
	10'-20" BROWN LOAMY SAND
	20'-25" BROWN & GRAY SILTY CLAY, BLUE CLAY @ BOTTOM
	NO GRADUATIONS
	MOTTLED @ 30'
DEEP HOLE 6 (7'8")	10" TOPSOIL
	10'-20" BROWN LOAMY SAND
	20'-24" BROWN & GRAY SILTY CLAY
	GRAVEL @ 20'
	MOTTLED @ 30'
DEEP HOLE 7 (7'9")	10" TOPSOIL
	10'-20" BROWN SILT LOAM
	20'-24" BROWN AND GRAY SILTY CLAY
	GRAVEL @ 20'
	MOTTLED @ 30'
DEEP HOLE 8 (7'9")	10" TOPSOIL
	10'-15" BROWN LOAMY SAND
	15'-18" BROWN AND GRAY SILTY CLAY
	18'-12" BLUE CLAY
	GRAVEL @ 20'
	MOTTLED @ 22'
DEEP HOLE 9 (7'9")	10" TOPSOIL
	10'-20" BROWN LOAMY SAND
	20'-25" BROWN & GRAY SILTY CLAY
	GRAVEL @ 20'
	MOTTLED @ 30'

NOTES

1. CONTACT INFORMATION: THE INFORMATION PROVIDED HEREIN IS UNCLASSIFIED FROM PERSONAL RECORDS OF THE NATIONAL ARCHIVES AND RECORDS ADMINISTRATION. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM.

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KIMMEY POINTE RESIDENTIAL SUBDIVISION
ELM AVE. TOWN OF BETHLEHEM, ALBANY COUNTY, NEW YORK

LANSING
ENGINEERING

CLUSTER LAYOUT & CONSTRAINTS PLAN

PROJ. NO: 616.14 SCALE: AS SHOWN DATE: 09/23/2024	CLP-1 SHEET 1 OF 1
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TOWN OF BETHLEHEM * ALBANY COUNTY * NEW YORK

4.89 +/- acres of wetlands
26.29 +/- acres of buffer zone



LEGEND

BUFFER ZONE

SITE STATISTICS

[illegible]

DEEP HOLE SLO INVESTIGATION	DATE FORWARDED - 8/20/70
DEEP HOLE 2 (7/65)	0'-10" TOPSOIL 10'-12" BROWN AND GRAY SILT CLAY 15'-17" MC CRACKED 18" MOTTLED & 21"
DEEP HOLE 2 (7/65)	0'-10" TOPSOIL 10'-12" TAN SILT LOAM 12" BROWN & GRAY CLAY MOTTLED 15" GRANULATED & 21" MOTTLED & 21"
DEEP HOLE 3 (7/65)	0'-10" TOPSOIL 10'-12" BROWN AND GRAY SANDY CLAY LOAM 12" BROWN AND GRAY SILT CLAY 15" 1/2" BROWN GRAY SANDY COBBLES (MC) 18" CRACKED 21" MOTTLED & 27"
DEEP HOLE 4 (7/64)	0'-10" TOPSOIL 10'-12" BROWN & GRAY SAND 15" BROWN AND GRAY SILT CLAY 18" GRANULATED & 27"
DEEP HOLE 5 (7/65)	0'-10" TOPSOIL 10'-12" BROWN LOAMY SAND 15" BROWN & GRAY SILT CLAY 18" BLUE CLAY & BUTT 21" MC CRACKED 24" MOTTLED & 32"
DEEP HOLE 6 (7/60)	0'-10" TOPSOIL 10'-12" BROWN SILT LOAM 15" BROWN & GRAY SILT CLAY 18" GRANULATED & 27" MOTTLED & 36"
DEEP HOLE 7 (7/67)	0'-10" TOPSOIL 10'-12" BROWN SILT LOAM 15" BROWN AND GRAY SILT CLAY 18" GRANULATED & 27" MOTTLED & 36"
DEEP HOLE 8 (7/65)	0'-10" TOPSOIL 10'-12" BROWN LOAMY SAND 15" BROWN & GRAY SILT CLAY 18" BLUE CLAY 21" GRANULATED & 36" MOTTLED & 27"
DEEP HOLE 9 (7/66)	0'-10" TOPSOIL 10'-12" BROWN LOAMY SAND 15" BROWN & GRAY SILT CLAY 18" GRANULATED & 36" MOTTLED & 36"

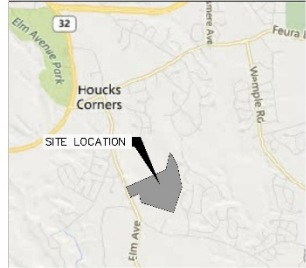


CLUSTER LAYOUT & CONSTRAINTS PLAN	
PROJ. NO: 618.14 SCALE: AS SHOWN DATE: 08/26/2024	CLP-1 SHEET 1 OF 1

KIMMEY POINTE RESIDENTIAL SUBDIVISION
 154 AC VACANT LAND IN KIMMEY POINT COMMUNITY
LANSING ENGINEERING
 400 W. 12TH AVE., SUITE 1000, DETROIT MI 48226
 TEL: 313.224.2400 FAX: 313.224.2401
 WWW.LANSINGENGINEERING.COM
 PRELIMINARY / NOT FOR CONSTRUCTION

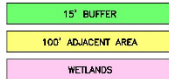
KIMMEY POINTE CONVENTIONAL LAYOUT & CONSTRAINTS PLAN

TOWN OF BETHLEHEM * ALBANY COUNTY * NEW YORK



SITE LOCATION MAP
SCALE: 1"=2,000'

WETLAND DISTURBANCE	
TOTAL R.O.W. DIRECT IMPACTS	= 0.319 ACRES (5.52%)
TOTAL R.O.W. 15' BUFFER IMPACTS	= 0.590 ACRES
TOTAL R.O.W. 100' ADJACENT AREA IMPACTS	= 4.307 ACRES
TOTAL WETLANDS ONSITE	= 4.899 ACRES



SITE STATISTICS

FACTORS	SS 50 ACRES
ADJACENT AREA	1000000.0
15' BUFFER	1000000.0
100' ADJACENT AREA	1000000.0
WETLANDS	1000000.0

WETLANDS	SS 50 ACRES
WETLANDS	1000000.0
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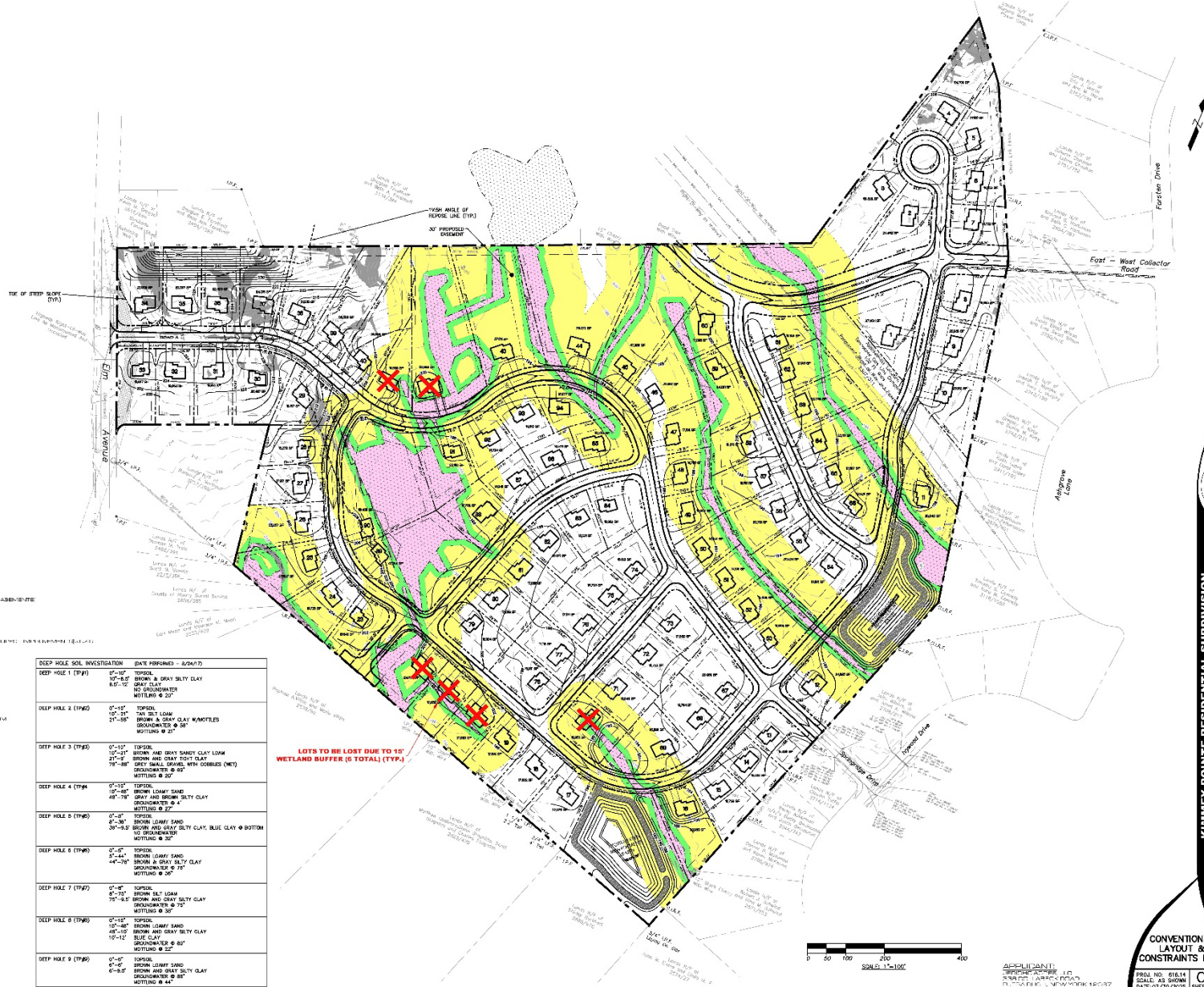
WETLANDS	SS 50 ACRES
WETLANDS	1000000.0
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WETLANDS	1000000.0

WETLANDS	SS 50 ACRES
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KIMMEY POINTE RESIDENTIAL SUBDIVISION
ELB AND TOWN OF BETHLEHEM, ALBANY COUNTY, NEW YORK



CONVENTIONAL LAYOUT & CONSTRAINTS PLAN
CLP-1

DATE: 07/20/2025 SHEET: 1 OF 4

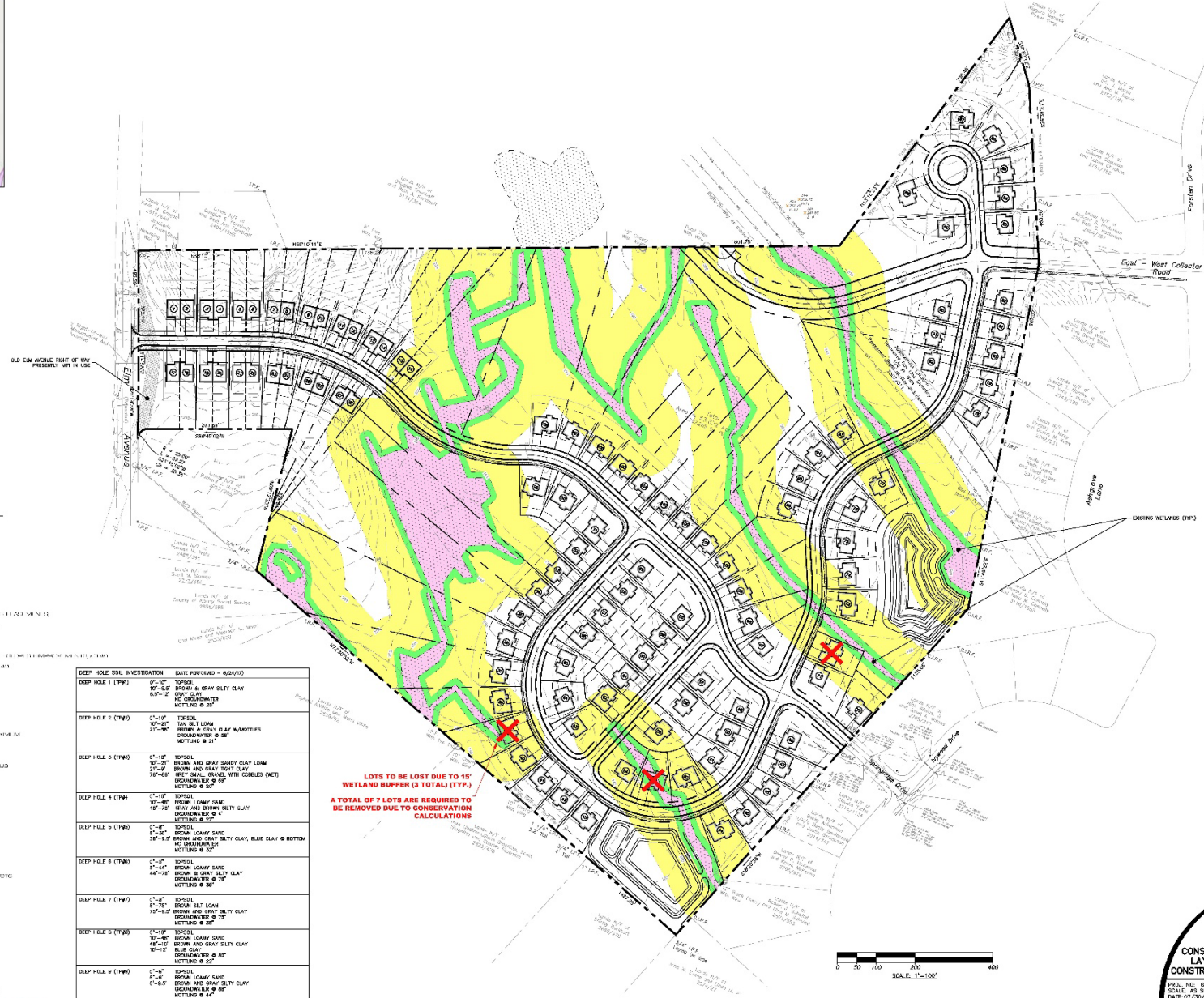
TOWN OF BETHLEHEM * ALBANY COUNTY * NEW YORK

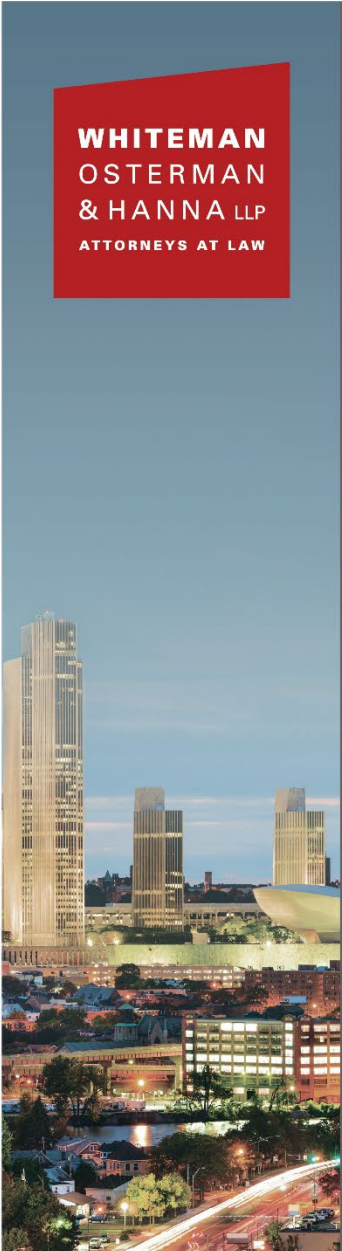


15' BUFFER

100' ADJACENT AREA

WETLANDS

[illegible][illegible]



**WHITEMAN
OSTERMAN
& HANNA LLP**
ATTORNEYS AT LAW

Comments or Questions?

Contact:

Terresa Bakner (tbakner@woh.com)

**Whiteman Osterman & Hanna LLP
One Commerce Plaza, Suite 1900
Albany, N.Y. 12260
518-487-7600
www.woh.com**

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