

STATE OF NEW YORK
SUPREME COURT : COUNTY OF ALBANY

CHAUTAUQUA LAKE PROPERTY OWNERS
ASSOCIATION, INC.; et al.,

Petitioners-Plaintiffs,

**AFFIDAVIT OF MATTHEW
J. WALTER**

-against-

Index No. 903982-25

THE STATE OF NEW YORK, et al.,

Respondents-Defendants.

In the Matter of the Application of

BUSINESS COUNCIL OF NEW YORK STATE, INC.,
et al.,

Petitioners-Plaintiffs,

Index No. 904423-25

-against-

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION, et al.,

Respondents-Defendants.

In the Matter of the Application of

VILLAGE OF KIRYAS JOEL, et al.,

Petitioners-Plaintiffs,

-against-

Index No. 904424-25

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, et al.,

Respondents-Defendants.

CHAUTAUQUA LAKE PARTNERSHIP, INC., et al.,

Petitioners-Plaintiffs,

-against-

Index No. 905313-25

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL
CONSERVATION, et al.,

Respondents-Defendants.

6. DEC promulgated these freshwater wetlands maps on a county-by-county basis using a base map with a scale of 1:24,000 where one inch on the map represents 2,000 feet on the ground, with residential houses depicted as tiny squares. Those maps were drawn by hand where the width of the pen line on the map is equal to approximately 100 feet on the ground. Thus, it has always been impossible to determine the precise extent of regulated wetland areas in the field based solely on their depiction on the original wetland maps. Even considering the approximate nature of the wetland maps, DEC recognized almost immediately that large inaccuracies in the final maps—which took over a decade to complete—would require amendments.

7. The former Act required extensive notice of tentative regulatory maps and provided public hearing opportunities to the community and affected property owners, including providing written notice in local newspapers and directly to potentially affected landowners and local governments, as well as opportunities for any person to provide testimony at public hearings and propose additions or deletions to the maps. Any amendments to the maps were required to comply with this same process.

8. The regulatory freshwater wetlands maps were created using the best available technology at the time—primarily using 1960s and 1970s aerial photographs—and the maps included wetlands having all of the vegetative cover types listed in the definition of wetlands (ECL 24-0107[1][a]).

9. While wetlands with these vegetation types were depicted on the maps, determining the location of submergent wetlands—those located in shallow lakes—posed a particular challenge when reviewing low resolution aerial photographs of the 1960's and 1970's in that they were especially difficult and often impossible to see due to shading and reflection off of shallow water surfaces. Thus, these wetlands were inconsistently depicted on the regulatory freshwater wetlands maps despite the requirement to map and regulate submergent wetlands that met the minimum size threshold of 12.4 acres.

10. Figures 1 and 2, below, present an original 1968 air photograph from Lewis County displaying the approximate location of wetlands as identified and drawn by DEC staff based on their review and interpretation of that aerial photograph. Figure 3 contains a portion of the regulatory freshwater wetland map depicting wetlands DEC technicians identified that met the minimum 12.4-acre jurisdictional threshold according to their review. In contrast, Figure 4 contains a depiction of the approximate wetland boundaries for the same area of Lewis County based on currently available mapping technologies that include high resolution color air photographs and satellite imagery. Figures 1 through 4 illustrate the substantial inadequacies and inaccuracies of the regulatory freshwater wetlands maps which missed large areas of wetland, a problem that was replicated across the entire state when the maps were promulgated.

Figure 1. Aerial imagery from 21 April 1968 with notes from DEC technician interpreting the approximate location of wetlands within a small portion of Lewis County. A focus area, outlined in red, is presented in Figures 2, 3, and 4 to demonstrate shortfalls in DEC's original wetland mapping.

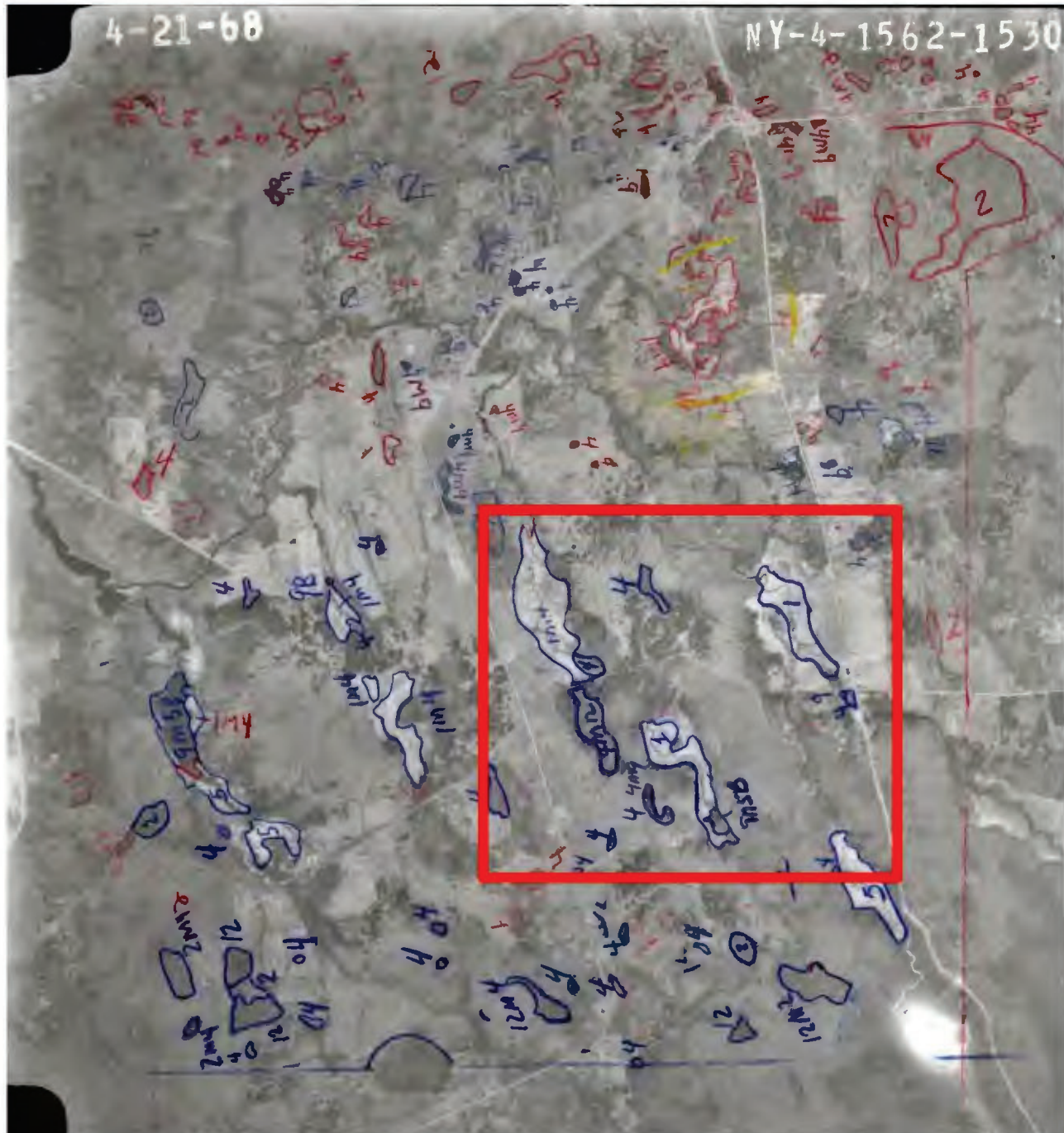


Figure 3. Portion of the regulatory freshwater wetlands mapping within the focus area shown in Figure 2. Approximate wetland boundaries are depicted by the dark black lines. Letters followed by a number was the naming convention for each jurisdictional wetland included in the mapping.

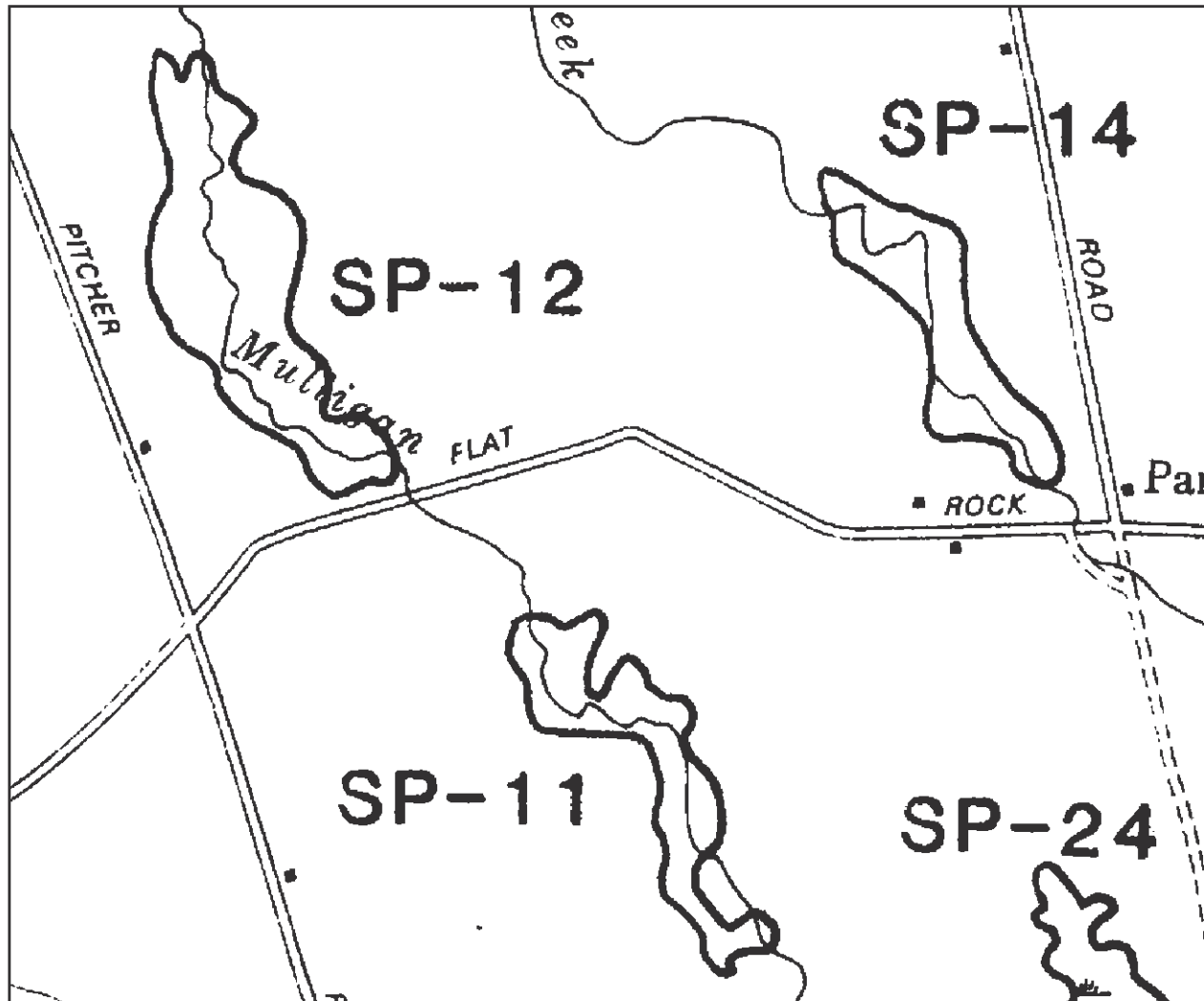


Figure 4. Areas outlined in bright green present the approximate location and extent of freshwater wetlands in the focus area based on review of current air photographs. Green shaded areas outlined in dark green present the original, inaccurately mapped wetlands depicted on the final freshwater wetlands map



presented in Figure 3.

11. As illustrated through comparison of Figures 3 and 4, due to the inadequacies of the mapping technologies, imagery, and techniques used to generate the regulatory freshwater wetland maps, large wetland areas that met the statutory size threshold were not identified on the maps, leaving large areas of

freshwater wetlands across the state unmapped, and consequently unprotected. In the example provided above, the old regulatory freshwater wetland maps left out approximately 100 acres, or 57% of total actual acreage of freshwater wetlands meeting the statutory definition of wetlands greater than 12.4 acres in size.

12. Recognizing the inherent inadequacies and inaccuracies due to technological limitations, the Act stated that the regulatory freshwater wetlands maps would depict the approximate wetland boundary (*see* former ECL 24-0301[3]) and that a field delineation would be necessary to establish the precise boundary of regulated wetlands (former ECL 24-0301[7]). A field delineation of the wetland boundary is an on-site investigation that identifies the precise extent of the regulated wetland and is based on an analysis of hydrology, soils and plants. Field delineations were typically required as part of a complete freshwater wetland permit application in recognition of the fact that the original mapped freshwater wetland boundaries are inaccurate and can't be relied upon to identify and quantify wetland impacts associated with proposed projects.

13. The Act authorized DEC to delineate the precise boundary of a mapped freshwater wetland or a portion thereof, upon its own initiative or at the request of a landowner or an official body whose interests are shown to be affected upon a showing of good cause (former ECL 24-0301[2]).

14. Based on its experiences creating the regulatory maps and conducting field delineations, DEC recognized almost immediately that many wetlands that met the statutory acreage threshold for protection under ECL article 24 were

missed in the original wetland mapping effort and therefore not identified on the regulatory maps. In 2019, DEC estimated there were approximately 1 million acres of wetlands meeting the acreage threshold for protection that were not included on the original freshwater wetland mapping.

15. DEC determined that amending the regulatory maps for the entire State to add the 1 million acres of additional wetlands missed in the original mapping effort would be costly and labor-intensive, costing taxpayers an estimated \$7.5 million dollars. To make matters worse, because of the labor-intensive effort required to develop the maps, and because mapping technologies advance so quickly, by the time DEC could fulfill all the statutory and regulatory procedures required to amend the regulatory maps, the amended maps would be out-of-date and inaccurate almost immediately after they were finalized. These amended maps would require immediate revision, leading to regulatory uncertainty from a never-ending cycle of recurring map amendments.

16. To address this issue, the 2022 statutory amendments require DEC to maintain on its website non-regulatory freshwater wetlands maps that depict the approximate location of freshwater wetlands, regardless of size. These maps are informational, intended to provide the public with a general indication of the potential location and approximate extent of freshwater wetlands. They are not intended to solely depict regulated wetlands as they do not incorporate all of the data sources and review methods that are used by DEC in identifying wetlands and making jurisdictional determinations.

17. Shortly after the 2022 amendments to the Act, DEC contracted with Cornell University to produce informational freshwater wetlands mapping to inform stakeholders of the potential location and approximate extent of freshwater wetlands across New York State. This system was developed using three modeling approaches based on available data on soils, climate characteristics, land cover information, slope, drainage patterns, and elevation.

18. These maps include many smaller wetlands that would not meet the 12.4-acre size threshold for regulation. Furthermore, the maps do not distinguish smaller wetlands that may possess any of the unusual importance criteria for jurisdiction under the statute.

19. Thus, whether wetland areas are or are not depicted on the informational freshwater wetlands mapping has no bearing on whether they are subject to DEC's jurisdiction and regulated under the Act. Cornell's freshwater wetland mapping was developed to identify wetland areas without consideration of the potential positive or negative jurisdictional status of wetlands once mapped. The informational freshwater wetland maps are available for review on the Department's Environmental Resource Mapper (<https://gisservices.dec.ny.gov/gis/erm/>).

Petitioners' Maps Do Not Accurately Reflect Regulated Wetlands

20. The Business Council petitioners provided maps that purportedly show the regulated wetlands prior to January 1, 2025, and regulated wetlands under the statutory and regulatory regime since that time (Pet. at 17-19; Rosborough Aff.,

Exhibit E). According to the letter from David D. Wilson of the Davey Resource Group to Terresa Bakner of Whiteman Osterman & Hanna, LLP those maps were generated using digital representations of the Final Freshwater Wetlands Maps, the Informational Freshwater Wetland Mapping, and the National Wetlands Inventory (NWI).

21. However, as stated in the Jacobson Affidavit (§ 11), while the former regulatory freshwater wetlands maps showed the approximate wetland boundary of all regulated wetlands, the informational freshwater wetlands mapping does not have any bearing on regulation under the Act. The informational freshwater wetlands mapping merely depicts areas that might be wetlands and is not used to determine whether those wetlands fall within DEC's jurisdiction under the Act.

22. Since release of the informational freshwater wetlands mapping, DEC staff have encountered areas where the mapping accurately depicts the extent of wetlands, areas where the mapping underrepresents the extent of wetlands, and areas where the mapping overrepresents the extent of wetlands. As described in the Jacobson Affidavit (§ 59-65), the only definitive way to determine jurisdictional status of an individual parcel or project is to request a jurisdictional determination.

23. Given the likely inaccuracies of the informational freshwater wetlands mapping described above and the known inadequacies and inaccuracies of the former regulatory maps, the Geographic Information System (GIS) exercise conducted by the Davey Resource Group to estimate the amount of DEC jurisdictional wetland and adjacent area on the landscape is overly speculative and

likely inaccurate. Petitioners' estimate of the regulated adjacent area is particularly problematic considering the only way to quantify the acreage within the 100-foot adjacent area of a wetland is using the precise data representing field delineation of the regulated wetland based on findings during an on-site visit. This is why DEC has always avoided providing statewide or regional estimates of the regulated adjacent area, both before and after the changes to the Act in 2022. In addition, this need for precision is one of the reasons why every project jurisdictional determination and ECL article 24 permit application requires a field delineated wetland boundary.

24. Statewide maps produced by the Petitioners are misleading because they provide the visual impression that more jurisdictional wetland areas occur on the landscape than in reality, because of the way wetlands are projected on statewide maps. For example, Figure 5, below, depicts all of the informational freshwater wetlands mapping for the entire state and gives the visual impression that much of the land in the state is wetland. However, by zooming into a county and town level map, the visual impression of wetlands coverage becomes more accurate (Figure 6 for Yates County and Figure 7 for the Town of Italy within Yates County). In addition, filtering out wetlands that do not meet the 12.4-acre threshold or any unusual importance criteria provides a more accurate impression of the areas that might be regulated. Based on the informational freshwater wetlands mapping that is available on the GIS Clearinghouse (<https://gis.ny.gov/>) and the Department's Environmental Resource Mapper, DEC is not aware of any areas

meeting the unusual importance criteria in the Town of Italy, so by filtering out wetlands that do not meet the 12.4-acre threshold, Figure 8 depicts a more accurate representation of wetlands that may be subject to jurisdiction (Compare Map A and Map B within Figure 7).

Figure 5. Statewide map depicting potential wetland areas according to the Informational Freshwater Wetlands Mapping. Green represents the approximate locations of potential wetland areas outside the Adirondack Park.



Figure 6. Informational Freshwater Wetlands Mapping for Yates County, New York. Green represents the approximate locations of potential wetland areas.

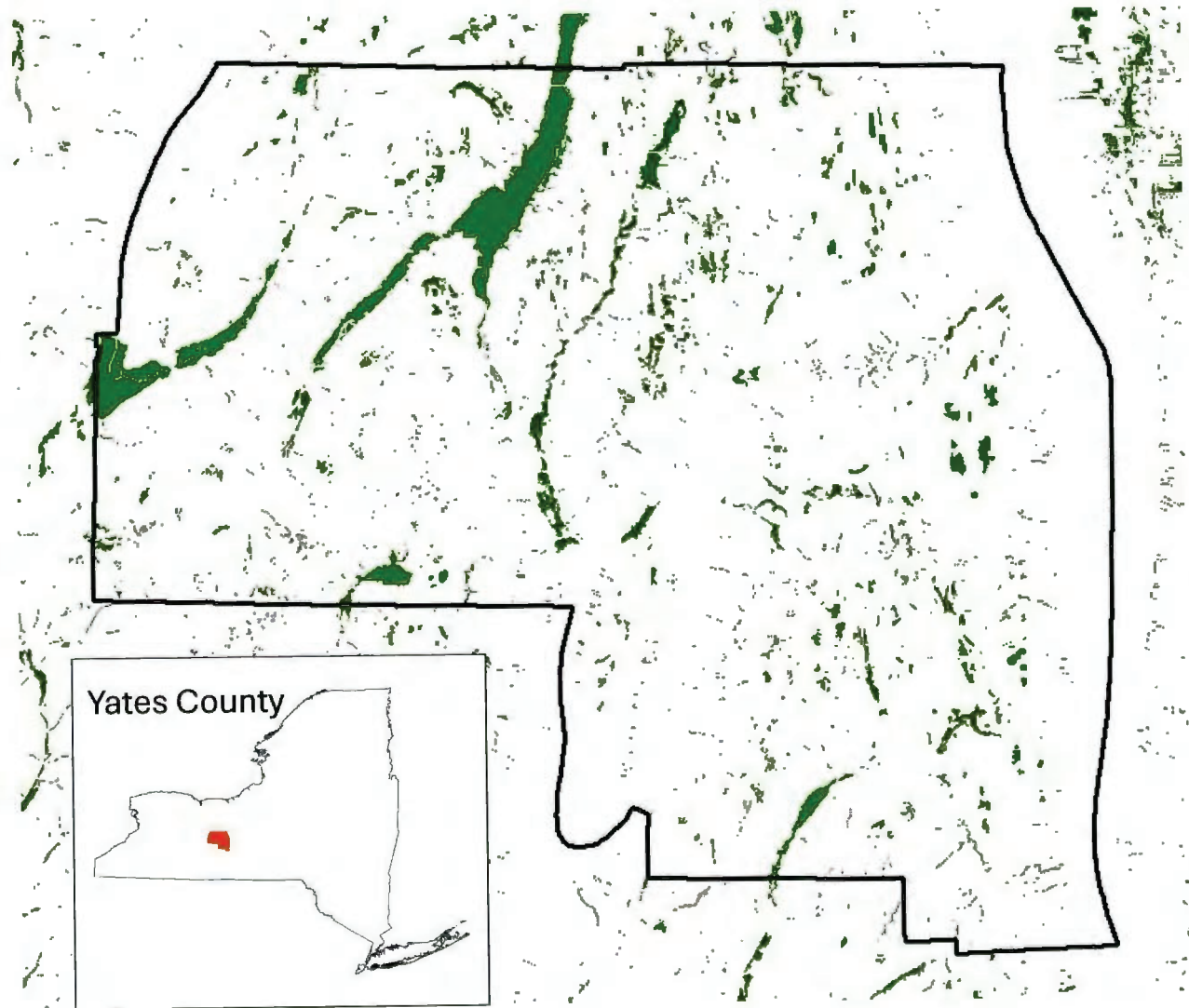
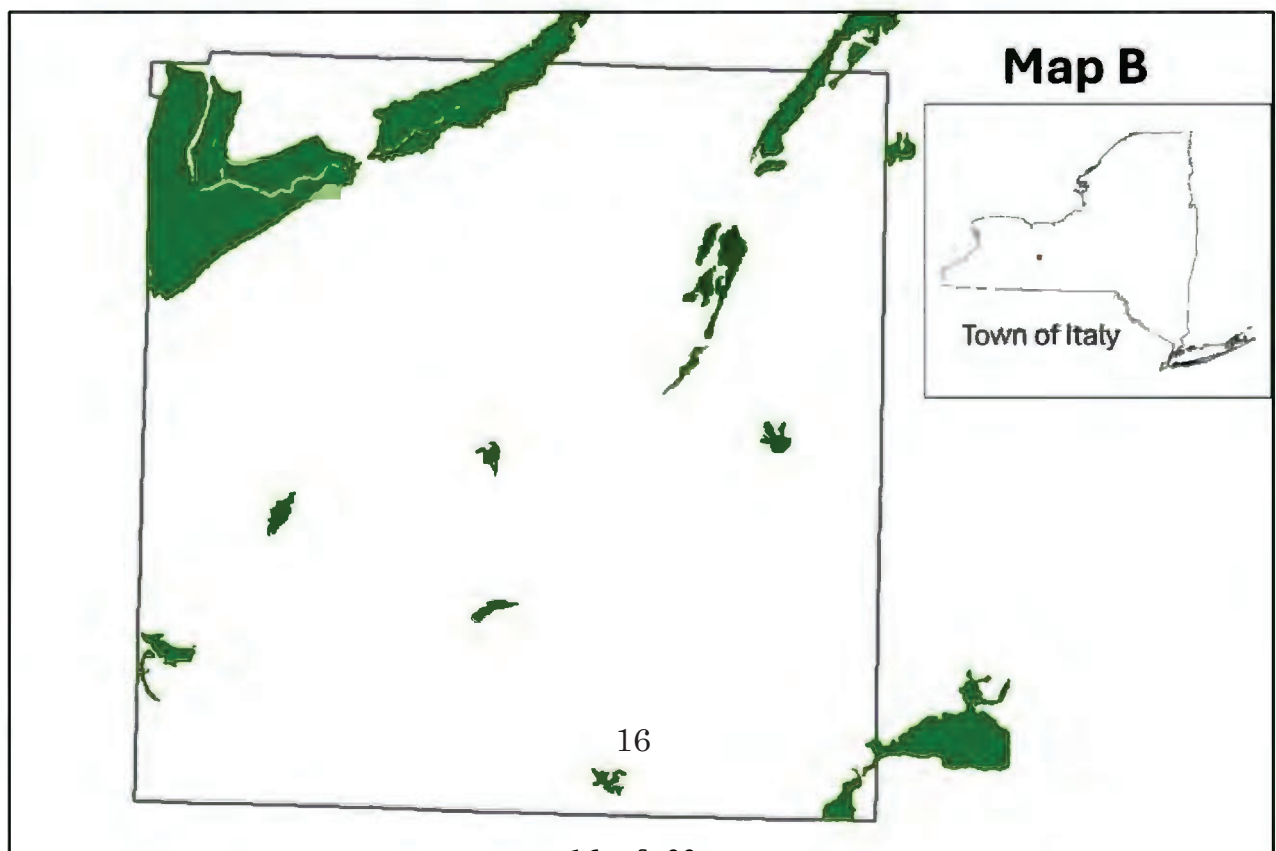
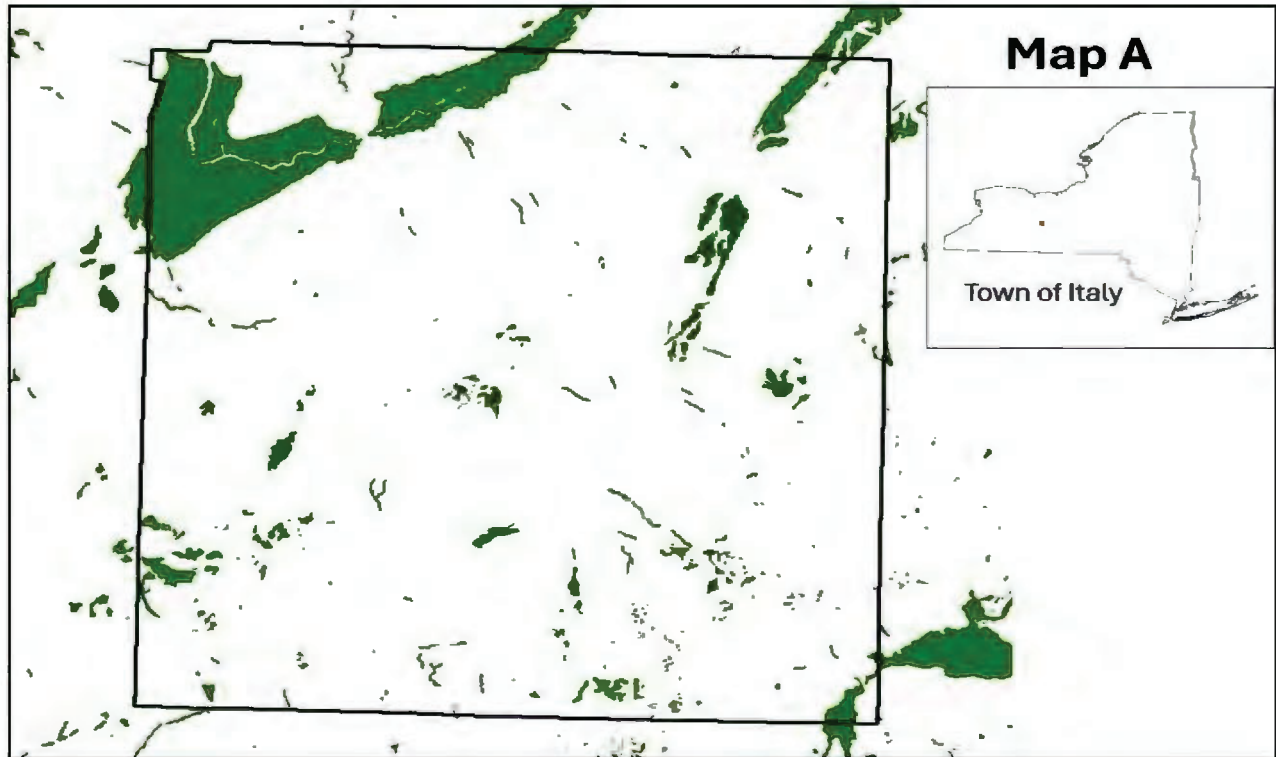


Figure 7. Informational Freshwater Wetlands Mapping for Town of Italy, Yates County. Green represents the approximate locations of potential wetland areas. Map A includes all potential wetlands. Map B only includes actual wetlands greater than 12.4 acres in size and therefore areas that may be regulated.

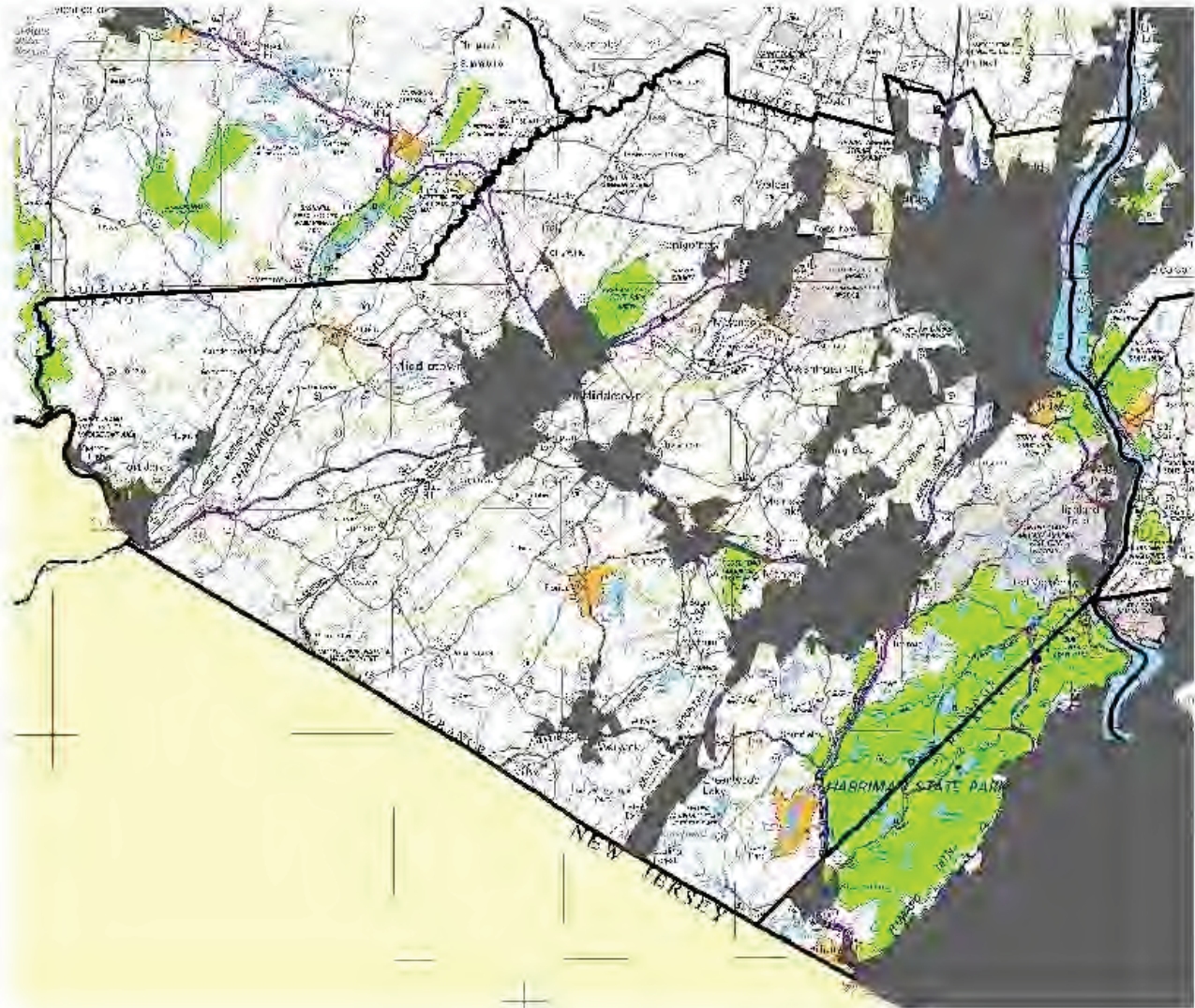


25. Thus, the statewide maps provided by the petitioners do not accurately reflect areas of potential ECL article 24 jurisdiction.

26. The Village of Kiryas Joel et al. provided maps that purportedly show an expansion of DEC's jurisdiction in and around the village using the informational freshwater wetlands mapping (Pet. at 12-16; Roth Affirmation, Exhibit A Wetland Permit Impact Assessment). Given the likely inaccuracies of the informational freshwater wetlands mapping described above, estimating the amount of DEC jurisdictional wetland and adjacent area on the landscape is at least highly speculative and/ or likely inaccurate, for reasons similar to those discussed above in paragraph 22.

27. Petitioners Village of Kiryas Joel and Town of Palm Tree's claim (Pet. ¶ 12) that urban areas encompass all of Orange County is inaccurate. Only 18% of Orange County is located within an urban area as defined by the United States Census Bureau (Figure 8). While the Village of Kiryas Joel is contained completely within an urban area, most of the land within the Village already contains residential and commercial development where the extent of regulated wetlands would be limited.

Figure 8. Extent of urban areas in Orange County, NY as defined by the United States Census Bureau. Urban areas are depicted in dark gray.



28. The affirmation of Gedalye Szegedin discusses the potential limitations for future municipal development projects on property owned by the Village of Kiryas Joel (§§ 17 - 22). However, the Village of Kiryas Joel has not requested a jurisdictional determination for any of the 67 parcels listed on the 2025 Orange County tax rolls as being owned by the Village. Thus, conclusions contained in the affirmation and petition (§ 19) regarding ECL article 24 jurisdiction for these parcels are speculative. Even if the Village had received a positive jurisdictional

determination for any of their parcels, a field delineation would be necessary to determine the precise extent of the wetlands on those parcels and any potential limitations on development.

DEC's Standard Operating Procedures for Mapping

29. Soon after the final rule became effective, DEC published on its website a “Standard Operating Procedures for Remote Jurisdictional Determinations and Classification of Freshwater Wetlands Pursuant to 6 NYCRR Part 664, Freshwater Wetland Jurisdiction and Classification” (Operating Procedures) (<https://dec.ny.gov/sites/default/files/2025-01/sopfwwremotejd.pdf>). The purpose of the Operating Procedures is to provide a consistent approach for DEC staff conducting jurisdictional determinations and to provide transparency to the regulated community.

30. The Operating Procedures outline specific data sets, including geospatial data, used by DEC staff when remotely conducting jurisdictional determinations and classifying wetlands. It does so by identifying GIS data sets and spatial analysis methods DEC staff are to use when conducting remote jurisdictional determinations.

31. Data in GIS includes information on the spatial location and extent of physical entities, and information on their non-spatial properties. Typically, objects depicted in a GIS layer are associated with two distinct types of data: coordinate or geometric data to define the location and shape of the object, and attribute data. Attribute data is collected and associated to each object in the layer and contains a record of non-spatial characteristics that help describe the object. The GIS data sets

selected by DEC when developing the Operating Procedures were chosen because they are consistent with the statutory text and regulatory text and are reliable for identifying unusual importance criteria and wetland classification criteria.

32. To begin the analysis outlined in the Operating Procedures, DEC staff start by identifying wetlands that meet the jurisdictional minimum 12.4-acre threshold. DEC staff are able to do so remotely by relying on various datasets, including but not limited to, National Wetlands Inventory Data, National Land Cover Database, United States Geological Survey Soils Data, remote sensing data and Wetland Delineation Data where available. Although DEC staff would be conducting this analysis remotely using GIS analysis software on their desktops, data used to generate the various GIS data sets DEC relies on are robust. For example, the National Land Cover Database generated by the U.S. Geological Survey contains data on land cover characteristics like impervious surfaces, vegetative cover, and land use.

33. When conducting a remote parcel jurisdictional determination and analyzing for the presence of wetlands of unusual importance in a suspected floodway, DEC staff would assess the National Flood Hazard Layer (<https://hazards-fema.maps.arcgis.com/apps/webappviewer/index.html?id=8b0adb51996444d4879338b5529aa9cd>) developed by the Federal Emergency Management Agency (FEMA) (*see* 6 NYCRR 664.6[h]). When classifying wetlands contiguous to a suspected fresh surface water, DEC staff would assess DEC's water quality classification layer (<https://gisservices.dec.ny.gov/gis/erm/>) to determine the fresh surface water's

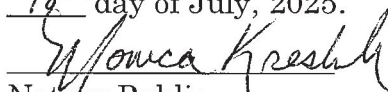
assigned water quality classification and whether the contiguous wetland should be designated Class I or Class II. See 6 NYCRR 664.5 (a)(9) and (b)(10).

34. The Operating Procedures are dynamic, designed to respond to new data as it becomes available and provides transparency for stakeholders regarding how DEC staff identify regulated freshwater wetlands in making a jurisdictional determination. In addition, the Operating Procedures enable environmental consultants working on behalf of clients planning development projects to anticipate which wetlands meet regulatory criteria so that they can advise their clients accordingly. DEC has also offered a streamlined process for environmental consultants that have already determined jurisdiction using the Operating Procedures to seek confirmation from regional DEC staff that their determination is accurate and to validate the field-delineated boundary of the wetland on their client's parcel without having to wait as much as 90 days for a typical parcel jurisdictional determination.

35. For these reasons, as well as those stated in the administrative record, other affidavits, and memorandum of law, DEC's new freshwater wetlands regulations at 6 NYCRR part 664 are rational and consistent with the Act, are constitutional, and DEC complied with all procedural requirements. As such, the Court should dismiss all four petitions in their entities.


 MATTHEW J. WALTER

Sworn to before me this
18th day of July, 2025.


 Notary Public

MONICA KRESHK, ESQ.
 Notary Public, State of New York
 No. 02KR6314859
 Qualified in Rensselaer County
 Commission Expires 11/17/26

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WORD COUNT LIMIT**

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Dated: July 22, 2025



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