

Proposed Wetland Mitigation Plan

for

SHELBY CRUSHED STONE

Town of Barre
Orleans County, New York

for

Shelby Crushed Stone



January 11, 2023

EDI Project Code: **W9D12d**

PROPOSED WETLAND MITIGATION PLAN
FOR
SHELBY CRUSHED STONE

Prepared for Submission to:

U.S. ARMY CORPS OF ENGINEERS
1776 NIAGARA STREET
BUFFALO, NEW YORK 14207

AND

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
6274 EAST AVON-LIMA ROAD
AVON, NEW YORK 14414-9519

Prepared By:

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Prepared For:

SHELBY CRUSHED STONE
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SHELBY, NEW YORK 14103

REPORT DATE: January 11, 2023

EDI PROJECT CODE: W9D12b

PROJECT INFORMATION

Project Site Information

Project Name..... Shelby Crushed Stone
 Street Address 10830 Blair Road
 SBL Number 101.-1-2; 101.-1-3
 Town Shelby
 County..... Orleans
 State New York
 Latitude/Longitude (NAD83) 43.182625°N, -78.420389°W
 Investigation Area..... 95.48± Acres
 Hydrologic Unit Code..... 04130001

Mitigation Site Information

Street Address 0 Pask Road
 SBL Number 104.-1-3.1
 Town Barre
 County..... Orleans
 State New York
 Latitude/Longitude (NAD83) 43.17807°N, -78.29959°W

General Information

Property Owner (Mitigation and Project Site) Shelby Crushed Stone
 10830 Blair Road
 Shelby, New York 14103
 Waterway Oak Orchard Creek
 Previous NYSDEC & Army Corps of Engineers Actions NYSDEC# 8-3436-00007/00001
 Permit(s) Being Requested..... Article 24, Section 404, Section 401 WQC

Responsible Parties

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 Engineer N/A
 Construction Company NA
 Mitigation Site Protection & Maintenance..... Earth Dimensions, Inc.
 Mitigation Monitoring N/A

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EXECUTIVE SUMMARY

Shelby Crushed Stone has proposed the expansion of a quarry on a 95.48± acre site located on the south side of Blair Road in the Town of Shelby, County of Orleans, and State of New York. The applicant is proposing the impact of 8.69± acres of state and federal jurisdictional wetland and 6.11 acres of state jurisdictional 100-foot upland adjacent area. To compensate for the total loss of 8.69± acres of jurisdictional wetland, Shelby Crushed Stone is proposing the off-site creation of 17.81± acres of shallow emergent marsh and hardwood swamp communities, off-site restoration of 6.66 acres of shallow emergent marsh wetland, off-site preservation of 2.04 acres of existing wetland, and on-site preservation of 73.3 acres of existing wetland to be avoided. To compensate for the impact to 6.11 acres of state regulated 100-foot adjacent area, the applicant is proposing the off-site creation of 11.09 acres of upland adjacent area and the preservation of 1.22 acres of upland woods. The off-site mitigation is proposed at a site on Pask Road in the Town of Barre. Please refer to Appendix B for the Overall Site Plan & Wetland Impact Map.

The proposed 8.69± acres of wetland impact at the Shelby Crushed Stone site consists of shallow emergent marsh (PEM) and hardwood swamp (PFO). The principal functions of the wetlands include Floodflow Alteration, Nutrient Removal and Wildlife Habitat. The proposed wetland mitigation is intended to compensate for these impacts through the creation of 17.81± acres of shallow emergent marsh and hardwood swamp and restoration of 6.66 acres of emergent marsh by creating mitigation basins that will be seeded with an approved wetland seed mix and planted with wetland trees. The created and restored wetland is intended to compensate for and enhance the functions lost at the impact site. The impact site and the mitigation site are located within the Oak Orchard Creek/Lake Ontario Watershed.

SECTION I: OVERALL MITIGATION GOALS & OBJECTIVES

The goal of this mitigation project is to create a sustainable shallow emergent marsh and hardwood swamp community that will replace the wetlands to be impacted at the proposed Shelby Crushed Stone project site. Replacing the functions lost by the impact to the existing wetlands is critical to the success of the wetland creation area.

The objective of the wetland creation is to replace the functions and values lost at the impact site. The determination of credits was determined based on the creation to impact ratio of 3:1 for shallow emergent marsh and 4:1 for hardwood swamp and was determined to be appropriate given the average quality of the wetland impact area (invasive species, location proximate to Pask Road). These ratios are based on the recommended ratios contained in the final mitigation rule (2008). In addition to the wetland creation, there will be 6.66± acres of shallow emergent wetland restoration, and 2.04 acres± of off-site forested wetland preservation, and 73.3 acres of on-site wetland preservation. Along with the wetland creation, restoration, and preservation, there will be an additional 11.04± acres of buffer creation and 1.22± acre of upland buffer preservation.

The project design will rely on using the appropriate seed mix and supplemental plantings. Please refer to Section 4 for specific seeding and planting details. The Mitigation Plan details (Appendix D) includes: a map showing the existing topography within the mitigation area, an overview of the proposed mitigation area location, details of the proposed wetland creation area, proposed monitoring Benchmark Location Map and a series of cross-sectional drawings.

It is anticipated that the creation area will attract a wide variety of wildlife species and increase the diversity of wildlife utilizing the area. The proposed mitigation design will allow for contrasting diversified habitats for mammals, amphibians, reptiles, and bird species. The newly created wetland will serve as refuge for many of the smaller and more ubiquitous members of the desired wetland community, namely invertebrates.

SECTION II: BASELINE INFORMATION

Appendix A contains Figures that depict the wetland mitigation site. The proposed mitigation site is located on the south side of Pask Road and east side of Townline Road in the Town of Barre, County of Orleans, and State of New York. The proposed impact site is located on the south side of Blair Road in the Town of Shelby, County of Orleans, and State of New York. The proposed mitigation site is approximately six miles east of the proposed impact area.

2.1 IMPACT SITE CONDITIONS

2.1.1 *RESOURCE TO BE IMPACTED*

The project will impact 8.69± acres of federally and state jurisdictional wetland area consisting of shallow emergent marsh and hardwood swamp communities.

2.1.2 *FUNCTIONAL ASSESSMENT*

Appendix C includes the Functions and Values Assessment form prepared by EDI. The primary function and values provided by the wetland area proposed for impact include floodflow alteration, nutrient removal and wildlife habitat.

2.1.3 *UPLAND BUFFERS AND ADJACENT LAND USES*

The upland buffer area adjacent to the proposed impact site consists of successional northern hardwoods and successional old field communities on the east, west, and south sides. The existing quarry borders to the north.

2.2 MITIGATION SITE CONDITIONS

2.2.1 *EXISTING RESOURCES*

The mitigation site consists mostly of active agricultural fields with areas of successional northern hardwoods and successional old communities interspersed. The published Soil Survey of Orleans County identifies soils within the proposed wetland creation areas as Niagara silt loam, Lakemont silty clay loam, and Odessa silt loam.

2.2.2 *ADJACENT LAND USES*

The proposed mitigation creation areas is proposed within active agricultural fields with areas of forest and successional old field interspersed. The surrounding lands have similar land uses.

2.2.3 PRESENCE OF INVASIVE PLANT SPECIES

A habitat assessment was done on the proposed mitigation site, and it was found to contain scattered occurrences of European buckthorn (*Rhamnus cathartica*), common reed (*Phragmites australis*), hybrid cattail (*Typhya x glauca*) reed canary grass (*Phalaris arundinacea*), and purple loosestrife (*Lythrum salicaria*) throughout the existing wetland areas. In the existing upland areas, multiflora rose (*Rosa multiflora*), European buckthorn (*Rhamnus cathartica*), and Tartarian honeysuckle (*Lonicera tatarica*) were found.

2.2.4 CONTRIBUTIONS OF MITIGATION TO WATERSHED AND/OR REGIONAL FUNCTION

Functions and values to be gained by the watershed include floodflow alteration, nutrient removal and wildlife habitat. The wetland creation area will provide additional area for retention of flood waters and nutrients from adjacent development. These functions will be performed by the ability of the mitigation area and adjacent preserved wetland to hold excess storm water, and in turn, remove nutrients and sediment by settling as well as provide quality wildlife habitat.

SECTION III: MITIGATION SITE SELECTION & JUSTIFICATION

3.1 SITE SELECTION

The mitigation site was chosen based on the proximity to the impact site and availability. Per mitigation requirements, the mitigation location must be within the same watershed that is proposed for impact. The mitigation site has suitable soil characteristics for successful hydrology. The on-site mitigation site is owned by Shelby Crushed Stone (the Applicant) and is therefore available for carrying out the proposed mitigation.

3.2 SITE RESTRICTIONS

Restrictions to the development of the site and the creation of the wetland mitigation include existing federally regulated wetlands, ditches and streams. There are no other known site restrictions (utility right-of-way, etc.).

SECTION IV: MITIGATION CONSTRUCTION PLAN

EDI recommends that a Pre-Construction meeting take place between the project design team, the earthwork contractor(s) and the project sponsor in order to ensure design specifications are understood.

4.1 TIMING OF WORK AUTHORIZED BY THE PERMIT(S)

4.1.1 *REQUIRED DOCUMENTATION*

Prior to conducting any work authorized by the USACE and NYSDEC Permits, the permittee must comply with any pre-construction Permit requirements including but not limited to any required financial assurances, deed restrictions and pre-notification requirements. In addition, the wetland mitigation must be constructed prior to or concurrently with the construction of the proposed project, unless otherwise specified in the permits.

4.1.2 *SWPPP*

A Stormwater Pollution Prevention Control Plan will be prepared in accordance with NYS blue book standards by the project engineer.

Silt fencing or other approved siltation control measures should be installed where necessary per NYS bluebook standards to prevent siltation. Silt fence should be installed to prevent inadvertent disturbance to adjacent wetlands. When required, any Permits and/or SWPPP approvals must be posted on-site.

4.2. SITE PREPARATION

4.2.1 *SURVEY CONTROL*

A licensed land surveyor should locate the footprint of the proposed creation areas based on the Mitigation Plans (Appendix D). The perimeter of the work area is to be outlined, using wooden stakes marked with cut and fill information. All contractors should be fully aware of work limits, as well as adjacent wetlands and buffer areas to be avoided. This also includes areas off limits for storage of equipment. Survey control measures must be

implemented during construction of the mitigation area to ensure the wetland is built according to the proposed specifications.

4.2.2 INVASIVE PLANT SPECIES CONTROL PLAN

A wetland delineation was conducted within the mitigation site and invasive plant species were identified at that time. There are known scattered populations of invasive plant species within the adjacent wetland and upland communities. To reduce the potential for introduction of invasive plant species to the mitigation area, it is critical that soils encumbered with invasive species propagules not be re-applied to the mitigation area.

To prevent the unintentional introduction or spread of invasive species, the applicant must ensure that all construction equipment be cleaned of mud, seeds, vegetation and other debris before entering either the project or mitigation site. The construction contractor should guarantee that all equipment and vehicles will be cleaned prior to entering the mitigation area. Loose plant and soil material shall be removed from clothing and boots of any persons entering the mitigation area.

The mitigation area was designed to limit the spread of invasive species. The monitoring protocol calls for close monitoring of invasive species. If invasive species are found, at any time, removal methods will include, but are not limited to manual removal. Contingent on the extent of potential invasions, other methods may be employed.

4.2.3 SOILS

It is recommended that the wetland be constructed during a drier time of the year in order to aid in the ease of construction and to minimize the disturbance of the surrounding areas and the destruction of the granular soil structure of the topsoil. Soil compaction and destruction of the subsoil /substratum soil structure will inhibit proper drainage and desired plant growth as well as encourage invasive plant establishment. The project will be constructed using on-site soils. The excavated subsoil from the construction of the wetland mitigation area will be utilized within the development footprint. Excess soils will not be placed in any regulated wetlands.

The following Earthwork protocols are being recommended:

(1) Strip the topsoil from the creation area and stockpile in a separate staging area for re-use as a seed bed in the appropriate zone and as fill for future construction. (No stockpiling of topsoil or subsoil will occur within any regulated wetlands or buffers).

(2) Excavate as per specifications shown on the Mitigation Plans included in Appendix D. It is recommended that low impact and or tracked equipment is utilized in the construction of the mitigation area. Rough finish grading should create rough surfaces on all side slopes and a ragged shoreline. It is important that survey control be established in order to assure that the final planned elevations are obtained. The wetland mitigation area should be over-excavated by six (6) inches to allow for the reapplication of topsoil.

(3) Place a minimum of six inches of topsoil within the wetland creation area and bring the creation area to the proposed elevations. This soil should come from the topsoil excavated from this area unless the soil contains invasive species propagules, in which case the topsoil should be sourced from an area that does not contain invasive plant parts or seeds.

(4) It is critical if heavy equipment and or untracked equipment is utilized within the mitigation areas that the soils are decompacted prior to planting. The soils should be fluffed-ripped using a disc, chisel plow or other means prior to planting. Disc the surface to an approximate depth of six (6) inches after topsoil has been replaced within ALL creation areas. While performing decompacting efforts, avoid mixing subsoil and topsoil to the maximum extent possible. After disking, a hand operated cone penetrometer or other method should be used to confirm acceptable compaction levels and planting can commence.

4.2.4 HYDROLOGY

The success of mitigation relies primarily on attaining wetland hydrology. The creation areas are underlain by Odessa, Lakemont, and Niagara soils.

Hydrology is expected to imitate the adjacent wetland areas. The wetland creation areas are connected to the wetlands to remain, and elevations will be matched. The design will rely heavily on seasonal saturation and inundation from the adjacent wetland communities.

As shown on the wetland cross-sectional drawings included in Appendix D, EDI is proposing one hydrologic zone for each cell to correspond with the proposed vegetation. The creation area is proposed to have 6 inches or less of inundation. The side slopes to the mitigation basins are proposed at a 4:1 slope. It is anticipated that the creation areas will have periods of fluctuation and will likely have decreased water levels and/or draw down during dry summer months or increased amounts in certain cases of high precipitation or runoff.

4.2.5 PLANTING/SEEDING

Immediately following mitigation construction, all areas including wetland creation areas, berms and disturbed upland areas should be seeded with the respective seed mixtures and rates specified in Section 5. The upland areas and side slopes to the creation areas should be seeded and mulched with clean straw to reduce soil erosion and to keep the soil moist for germination. Planting of the proposed wetland trees should take place concurrent with seeding or during the fall after seeding.

The following Seeding/Planting protocols are being recommended:

- (1) It is recommended that an appropriate cover crop be added to seeded areas to promote the proper moisture and shade levels for optimal plant growth. Annual rye germinates rather quickly and provides a nursery crop for wetland seed as well as adding to the organic layer when it dies back. In addition, straw mulch is recommended to further optimize germination and growth. Hay is not to be used as mulch as it may contain many seeds of undesirable invasive species that may spread throughout the mitigation areas.
- (2) It is recommended that seeding be completed prior to June 15th or after September 15th. Seeding during drier times may require some type of irrigation to promote

germination. It is also recommended that hydro-seeding techniques be avoided due to the light requirements required for the germination of many wetland species. Hydro-seeding fibers can block the solar rays and deter the wetland seed mixture from proper germination and ultimately affect the success of the mitigation.

(3) Upon completion of seeding the mitigation area, the shrub plantings are to be installed as per specifications outlined in Section 5.2.1.

(4) Branches and logs will be placed opportunistically throughout the wetland creation area. The additional woody material will not only increase the habitat diversity within the area, but also deter potential anthropogenic impacts (e.g., all-terrain vehicle damage).

SECTION V: PLANTING AND ENHANCEMENT PLAN

5.1 SPECIFICATIONS AND CHARACTERISTICS

The wetland creation areas are proposed as a both shallow emergent marsh and hardwood swamp communities. Trees will be scattered throughout the hardwood swamp mitigation area at a rate of 200 trees per acre (1360 trees total), along with a forested wetland seed mix. An emergent seed mix will be utilized within the shallow emergent marsh creation area. The purpose is to create a diverse habitat, maximizing the variety of species to inhabit this area. The project design relies on natural colonization and growth of existing propagules as well as the appropriate seed mix.

It is anticipated that the water levels in the hardwood swamp will fluctuate between 0 and 6 inches and emergent marsh creation areas will fluctuate between 6- and 12-inches during portions of the growing season. The proposed bottom elevations of the creation areas is set for the Hardwood swamp: 642-644.5 feet, and Emergent Swamp: 641-644 feet. The area is anticipated to remain moist to saturated during the summer months during average precipitation years, although standing water may not be present.

5.2 PLANTING PLAN

As outlined below, the wetland creation area is proposed to have tree plantings and a forested wetland/shallow emergent seed mix.

5.2.1 WETLAND CREATION AREA

HARDWOOD SWAMP TREE PLANTING

One-thousand three hundred and sixty (1360) #2 size tree plantings are proposed for the hardwood swamp wetland creation area. The trees proposed for planting within the mitigation area were selected by considering soil conditions, climate, hydrology, inundation tolerance, shade tolerance, wildlife benefit and other factors in determining suitable species for planting. The following species and amounts were selected:

Common Name	Latin Name	Indicator Status	Number of Plantings
Swamp White Oak	<i>Quercus bicolor</i>	FACW	340
Pin Oak	<i>Quercus palustris</i>	FACW	340
American Sycamore	<i>Platanus occidentalis</i>	FACW	340
Red Maple	<i>Acer rubrum</i>	FAC	340

The wetland creation is designed to be a hardwood swamp community with several trees for increased diversity and habitat. The plan utilizes the expectation that volunteer species will establish in addition to the planted trees. The planting scheme is random to mimic what occurs naturally.

WETLAND SEEDING

Wetland seeding with a cover crop is scheduled for this area followed immediately by straw mulch to retain moisture. It is expected that ground water and precipitation will allow for proper hydrology within the basin. Vegetation is expected to be supplemented by existing native species as well as the seed mixes. The seed mix can take up to a year to germinate as some species wetland seeds need to cold stratify before emerging. The applicant is proposing the following seed mix for the mitigation basin:

COVER CROP*			
<i>*Annual Rye as a cover crop is recommended at 10 lbs. per acre</i>			
Common Name	Latin Name	Indicator Status	Percent by Number of seeds (not weight)
Annual Rye Grass	<i>Lolium multiflorum</i>	NI	100%

NORTHEAST WETLAND DIVERSITY MIX			
<i>Recommended rate is 2lbs. per acre; project requires 22lbs.</i>			
Common Name	Latin Name	Indicator Status	Percent by Number of seeds (not weight)
Green Bulrush	<i>Scirpus atrovirens</i>	OBL	28.82%
Soft Rush	<i>Juncus effusus</i>	OBL	13.05%
Monkey Flower	<i>Mimulus ringens</i>	OBL	12.01%
Fox Sedge	<i>Carex vulpinoidea</i>	OBL	8.35%
Ditch Stone Crop	<i>Penthorum sedoides</i>	OBL	7.83%
Reed Meadowgrass	<i>Glyceria grandis</i>	OBL	6.68%
Wool Grass	<i>Scirpus cyperinus</i>	OBL	5.22%
Blue Vervain	<i>Verbena hastata</i>	FACW	4.18%
Boneset	<i>Eupatorium perfoliatum</i>	FACW	2.09%
Rice Cut Grass	<i>Leersia oryzoides</i>	OBL	1.57%
Common Sneezeweed	<i>Helenium autumnale</i>	FACW	1.48%
Canada Mannagrass	<i>Glyceria canadensis</i>	OBL	1.36%
Joe Pye Weed	<i>Eupatorium maculatum</i>	OBL	0.89%
New England Aster	<i>Aster novae-angliae</i>	FACW	0.73%
Water Plantain	<i>Alisma plantago-aquatica</i>	OBL	0.52%
Grassleaf Goldenrod	<i>Euthamia graminifolia</i>	FAC	0.47%
Wrinkled Goldenrod	<i>Solidago rugosa</i>	FAC	0.47%
Straw Colored Flatsedge	<i>Cyperus strigosus</i>	FACW	0.47%
Purple Stemmed Aster	<i>Aster puniceus</i>	FACW	0.42%
Buttonbush	<i>Cephalanthus occidentalis</i>	OBL	0.38%
Soft Stem Bulrush	<i>Scirpus tabernaemontanii</i>	OBL	0.36%
Flat Top White Aster	<i>Aster umbellatus</i>	FACW	0.35%
Bearded Sedge	<i>Carex comosa</i>	OBL	0.31%
Fringed Sedge	<i>Carex crinita</i>	OBL	0.26%

Giant Goldenrod	<i>Solidago gigantea</i>	FACW	0.24%
Deertongue	<i>Panicum clandestinum</i>	FACW	0.24%
Nodding Beggar-Ticks	<i>Bidens cerunua</i>	OBL	0.22%
Water Parsnip	<i>Sium suave</i>	OBL	0.21%
Small Fruited Bulrush	<i>Scirpus microcarpus</i>	OBL	0.18%
Water Hemlock	<i>Cicuta maculata</i>	OBL	0.16%
Wild Rye	<i>Elymus canadensis</i>	FACU	0.10%
Devils-Beggar-Ticks	<i>Bidens frondosa</i>	FACW	0.08%
Purple-Stem Angelica	<i>Angelica atropurpurea</i>	OBL	0.06%
Water Dock	<i>Rumex verticillatus</i>	OBL	0.05%
Shallow Sedge	<i>Carex lurida</i>	OBL	0.05%
Pennsylvania Smartweed	<i>Polygonum pensylvanicum</i>	FACW	0.04%
Swamp Milkweed	<i>Asclepias incarnata</i>	OBL	0.04%
Riverbank Wild Rye	<i>Elymus riparius</i>	FACW	0.03%
Hop Sedge	<i>Carex lupulina</i>	OBL	0.02%
Blue Flag	<i>Iris versicolor</i>	OBL	0.01%

NORTHEAST WETLAND FOREST HERB MIX			
<i>Recommended rate is 3lbs. per acre; project requires 20lbs.</i>			
Common Name	Latin Name	Indicator Status	Percent by Number of seeds (not weight)
Green Bulrush	<i>Scirpus atrovirens</i>	OBL	25.96%
Wool Grass	<i>Scirpus cyperinus</i>	OBL	25.41%
Fox Sedge	<i>Carex vulpinoidea</i>	OBL	8.33%
Canada Mannagrass	<i>Glyceria canadensis</i>	OBL	7.68%
Blue Vervain	<i>Verbena hastata</i>	FACW	7.63%
Reed Meadowgrass	<i>Glyceria grandis</i>	OBL	6.02%
Fowl Mannagrass	<i>Glyceria striata</i>	OBL	5.70%
Deertongue	<i>Panicum clandestinum</i>	FACW	2.12%
White Vervain	<i>Verbena urticifolia</i>	FAC	1.53%
Melic Mannagrass	<i>Glyceria melicaria</i>	OBL	1.51%
False Nettle	<i>Boehmeria cylindrica</i>	OBL	0.94%
Stinging Nettle	<i>Urtica dioica</i>	FAC	0.94%
Giant Goldenrod	<i>Solidago gigantea</i>	FACW	0.85%
Wrinkled Goldenrod	<i>Solidago rugosa</i>	FAC	0.85%
Wood Reed	<i>Cinna arundinacea</i>	FACW	0.75%
Whitegrass	<i>Leersia virginica</i>	FACW	0.62%
Buttonbush	<i>Cephalanthus occidentalis</i>	OBL	0.57%
Wild Rye	<i>Elymus canadensis</i>	FACU	0.45%
Water Parsnip	<i>Sium suave</i>	OBL	0.38%
Virginia Wild Rye	<i>Elymus virginicus</i>	FACW	0.32%
Pennsylvania Smartweed	<i>Polygonum pensylvanicum</i>	FACW	0.29%
Large-Leaf Avena	<i>Geum macrophyllum</i>	FACW	0.24%
Riverbank Wild Rye	<i>Elymus riparius</i>	FACW	0.22%
Water Dock	<i>Rumex verticillatus</i>	OBL	0.19%

Swamp Milkweed	<i>Asclepias incarnata</i>	OBL	0.16%
Shallow Sedge	<i>Carex lurida</i>	OBL	0.09%
Turk's Cap Lily	<i>Lilium superbum</i>	FACW	0.09%
Blackberry	<i>Rubus allegheniensis</i>	FACU	0.09%
Hop Sedge	<i>Carex lupulina</i>	OBL	0.07%

5.2.2 UPLAND AREAS DISTURBED BY CONSTRUCTION, UPLAND BERMS AND/OR BUFFERS

UPLAND TREE PLANTING

One-thousand one hundred (1100) #2 size tree plantings are proposed for the upland creation area. The trees proposed for planting within the upland creation area were selected by considering soil conditions, climate, hydrology, inundation tolerance, shade tolerance, wildlife benefit and other factors in determining suitable species for planting. The following species and amounts were selected:

Common Name	Latin Name	Indicator Status	Number of Plantings
White Oak	<i>Quercus alba</i>	FACU	220
Red Oak	<i>Quercus rubra</i>	FACU	220
Eastern Cottonwood	<i>Populus deltoides</i>	FAC	220
Red Maple	<i>Acer rubrum</i>	FAC	220
Eastern Redbud	<i>Cercis canadensis</i>	FACU	220

UPLAND SEEDING

Upland areas disturbed by the construction of the wetland creation areas will need to be seeded and mulched immediately after the earthwork has been completed in order to stabilize these areas and minimize the risk of soil erosion. The Applicant is proposing the following seed mixes for all disturbed upland areas:

COVER CROP*			
<i>*Annual Rye as a cover crop is recommended at 10 lbs. per acre</i>			
Common Name	Latin Name	Indicator Status	Percent by Number of seeds (not weight)
Annual Rye Grass	<i>Lolium multiflorum</i>	NI	100%
Eastern Native Habitat & CREP Mix - ERNMX-173			
Recommended per acre rate is 11lbs with 30lbs of cover crop; project requires 135lbs.			
Common Name	Latin Name	Indicator Status	Percent by Number of seeds (not weight)
Big Bluestem	<i>Andropogon gerardii</i>	FACU	40.0%
Virginia Wildrye	<i>Elmyus virginicus</i>	FACW	26.8%
Switchgrass	<i>Panicum virgatum</i>	FAC	15.0%
Partridge Pea	<i>Chamaecrista fasciculata</i>	FACU	6.0%
Indiangrass	<i>Sorghastrum nutans</i>	FACU	5.0%
Purple Coneflower	<i>Echinacea purpurea</i>	NI	3.0%
Blackeyed Susan	<i>Rudbeckia hirta</i>	FACU	3.0%
Oxeye Sunflower	<i>Heliopsis helianthoides</i>	FACU	1.0%
Common Milkweed	<i>Asclepias syriaca</i>	UPL	0.1%
Wild Bergamot	<i>Monarda fistulosa</i>	FACU	0.1%

5.3 HABITAT ENHANCEMENT EFFORTS

5.3.1 NATURAL HABITAT ENHANCEMENTS

The existing wetlands to remain and the proposed mitigation area will promote increased habitat and diversity. In addition to the proposed tree plantings, the remaining wetlands will not be mowed.

5.3.2 BUFFERS

The mitigation areas will be buffered from the adjacent development by existing wetlands that will remain. These natural buffers are sufficient to protect the natural resources of the wetland and creation area.

5.3.3 EXPECTED VOLUNTEER SPECIES

It is expected that existing native volunteer species will also establish in the proposed mitigation area. Most of these will come from adjacent seed sources. The species in the vicinity of the mitigation area which are anticipated to establish include sensitive fern (*Onoclea sensibilis*), red osier dogwood (*Cornus sericea*), red maple (*Acer rubrum*), black willow (*Salix nigra*), soft rush (*Juncus effusus*) and fowl manna grass (*Glyceria striata*).

SECTION VI: PERFORMANCE STANDARDS

6.1 CREATION ACREAGE

The project will include at a minimum, the creation of 17.81 acres of shallow emergent marsh and hardwood swamp and restoration of 6.66 acres of emergent marsh to compensate for the loss of 8.696 acres of federal and state regulated wetlands.

6.2 VEGETATION STRUCTURE

Establish and maintain 85% coverage of beneficial FAC, FACW, and OBL species; total coverage shall meet or exceed 80%, with no more than 50% coverage of one species. Less than 5% of the wetland vegetative composition will include invasive species (i.e., *Lythrum salicaria* and *Phragmites australis*).

6.3 HYDROLOGY/ WATER LEVELS

Establish and maintain seasonal inundation/saturation of between 0 and 6 inches of water, for at least 12.5% of the growing season for 80% of the monitoring years.

6.4 HABITAT ATTRIBUTES

The wetland creation area will provide adequate protection and habitat for an array of nesting birds, amphibians and reptiles.

SECTION VII: CONSTRUCTION MONITORING & POST CONSTRUCTION MONITORING REQUIREMENTS

7.1 BASELINE POST CONSTRUCTION REPORT

A Baseline Post-Construction report must be submitted to the U.S. Army Corps of Engineers by December 31 of the year of construction completion (including all site grading, seeding and/or planting activities).

This baseline report must include the following:

1. An as-built topographic survey of the mitigation area including all as-built elevations completed by a licensed land surveyor at 0.5' (1/2') contour intervals.
2. Photographs from fixed locations including a photo-location map.
3. A list of plants introduced through seeding and/or planting including approximate planting and/ or seeding dates.
4. Water depth and date of measurement from representative locations within the mitigation area. The sample points will be fixed locations and shall be plotted on a map.
5. A detailed description of all time-of-construction field design modifications to the original design plans.

7.2 ANNUAL MONITORING REQUIREMENTS

The permittee is required to submit annual monitoring reports to the USACE for the first ten (10) years following completion of construction and initial planting efforts. Please see Appendix E for the proposed Maintenance and Inspection Schedule. The report must include a summary of the data collected between May and October for that monitoring year.

These reports must include the following:

1. Comparison of site conditions to an as-built survey.
2. Wetland Delineation including a map of the wetland boundary.
3. Photographs (minimum of 12) from fixed locations including a photo-location map.
4. A plants species list including wetland indicator status, strata, dominant plants and aerial coverage.
5. A list of plants introduced through seeding and/or planting.

6. Water depth and date of measurement from representative locations within the mitigation area during the growing season. The sample points will be fixed locations and shall be plotted on a map.
7. Fish and wildlife observations at the mitigation site.
8. A summary statement regarding the perceived success of the wetland creation project. The report will evaluate the goals/performance standards as set forth in the permit or mitigation plan as well as current wetland functions. These reports must also address any potential problem areas and include suggestions and a timetable for correction if it is anticipated that projected goals may not be met.
9. Date(s) of field inspection(s).

SECTION VIII: LONG-TERM SITE MANAGEMENT

8.1 FUTURE LAND USE PLANS

There are no future planned uses for the mitigation site. It is anticipated that the mitigation site will be utilized for aesthetics, recreation and educational purposes by nearby residents. It is EDI's opinion that these future land use plans are compatible with the mitigation project.

8.2 REAL ESTATE RESTRICTIONS

There are no known existing deed restrictions or right-of-way agreements which would prevent or restrict the development of the mitigation area.

8.3 MITIGATION SUSTAINABILITY

The project has been designed to be sustainable and self-maintaining. Once the wetland hydrology and hydrophytic vegetation has been established, it is anticipated that the wetland will continue to function without human intervention.

8.4 FINANCIAL ASSURANCES

The Applicant proposes to obtain a performance bond in the amount of \$XXX based on the following cost break down:

Line item	Cost (Actual)	Cost (Estimated)	Performance Bond Amt.
Land Acquisition	NA		\$0
Planning/Engineering	NA		\$0
Legal Fees		\$1500	\$1500
Construction (includes earthwork & seed/plant materials and labor)		\$25,000	\$25,000
Monitoring & Maintenance (5 years)		\$25,000	\$25,000
TOTAL BOND AMT.			\$51,500

8.5 LEGAL PROTECTION INSTRUMENT

After the performance standards have been achieved, the mitigation site will be managed by the Permittee. Ensured long term sustainability will be achieved through a deed restrictive covenant. The draft deed restriction is included in this plan as Appendix F.

8.6 ADAPTIVE MANAGEMENT PLAN

The Applicant will be responsible for first successfully meeting the short-term requirements of the permit, including any necessary adaptive management measures. If invasive species control measures are required, the Applicant will develop a plan to control the species that establish and present a plan to USACE for approval. Minor occurrences of invasive species will be manually removed during scheduled monitoring visits. Should hydrology not properly establish, the Applicant will develop a plan to attain planned hydrology.

SHELBY CRUSHED STONE

Appendix A - Figures

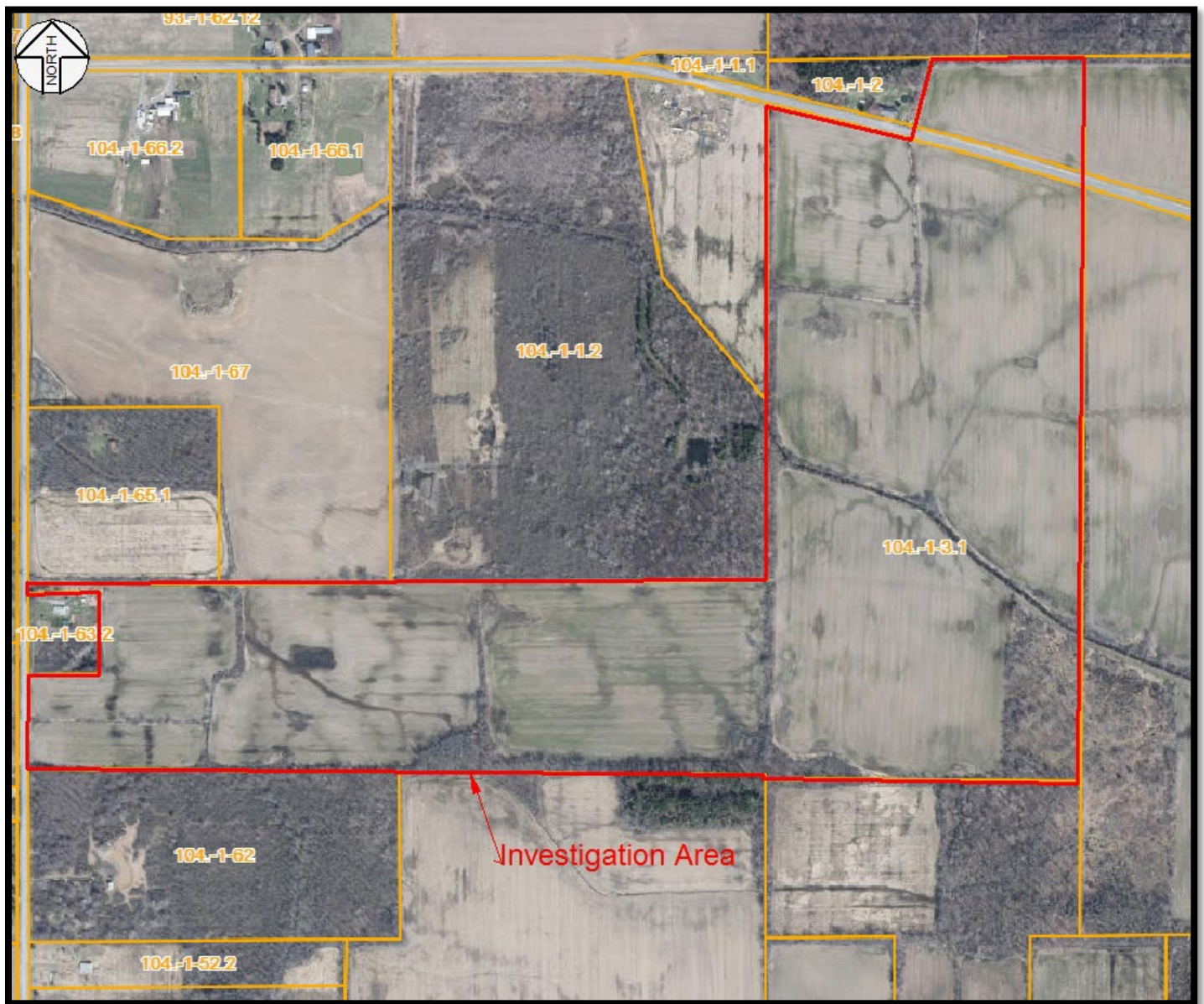


Figure 1: Aerial Photograph

<http://gis2.erie.gov/HTML5/ErieCountyNY/PublicLaunchPage.aspx>

Shelby Crushed Stone

Town of Barre, Orleans County, New York

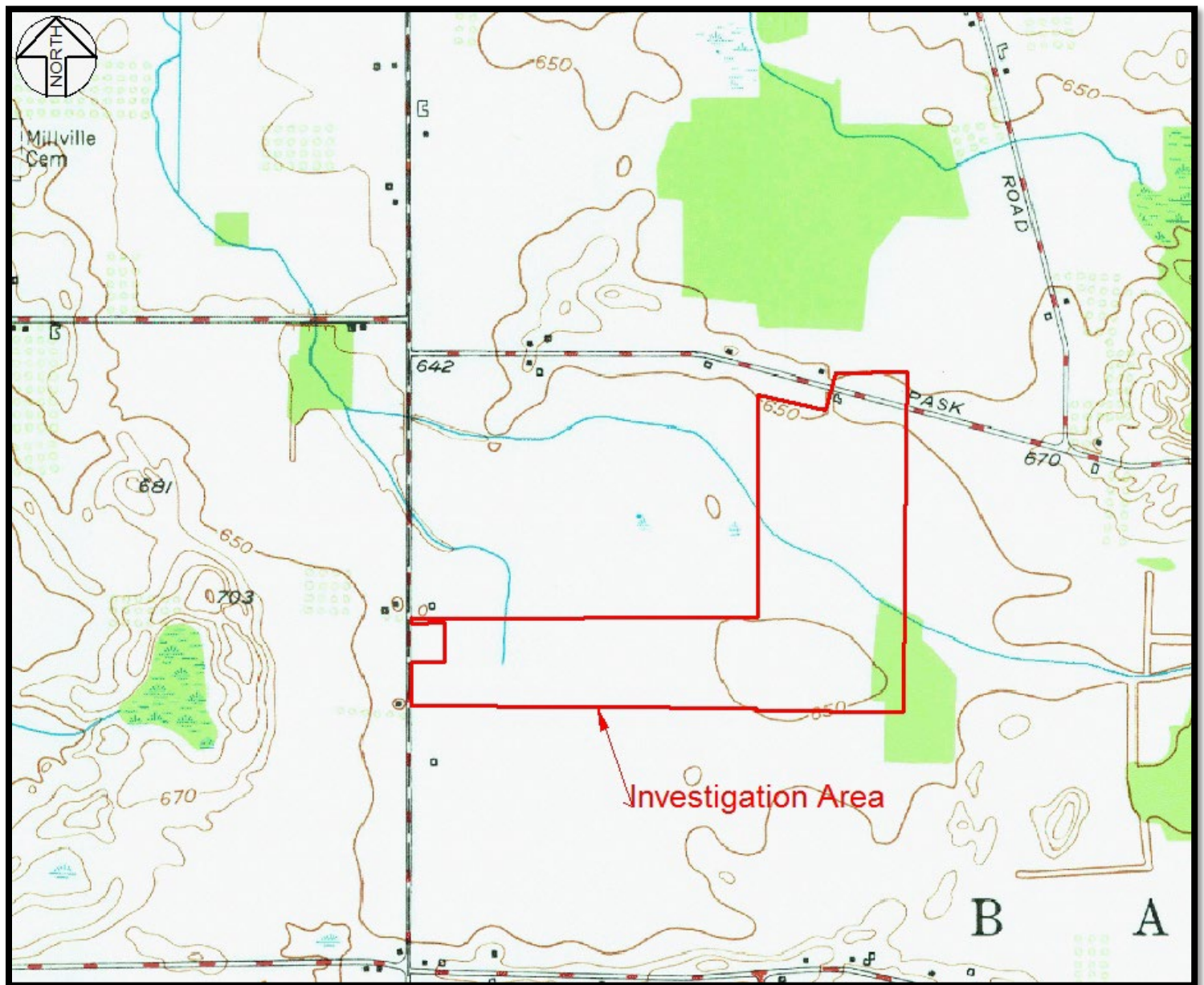


Figure 2: USGS 7.5 Minute Topographical Map
Medina Quadrangle / U.S. Geological Survey
Shelby Crushed Stone
Town of Barre, Orleans County, New York

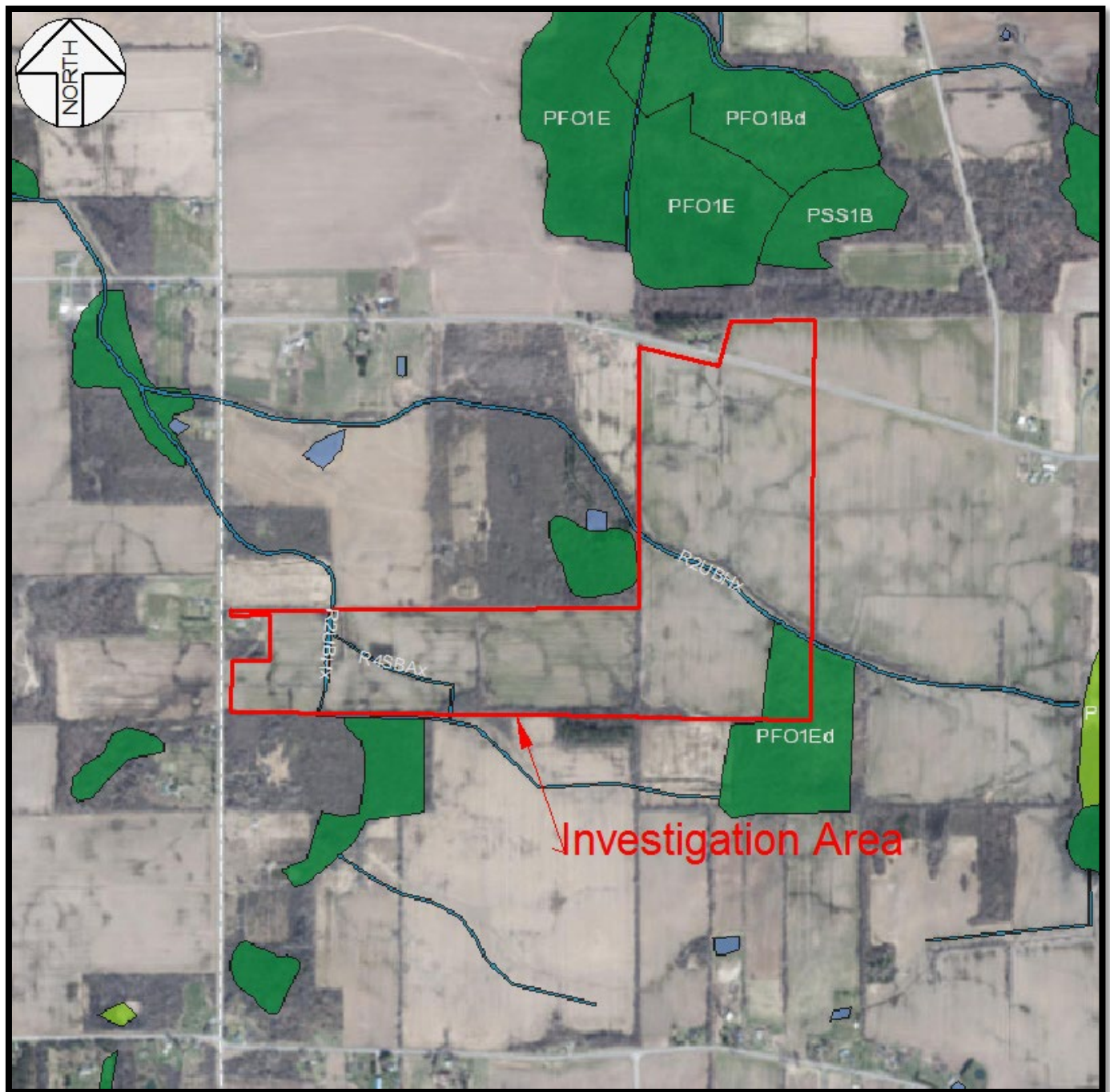


Figure 3: National Wetlands Inventory Map

<http://www.fws.gov/wetlands/data/mapper.HTML>

Shelby Crushed Stone

Town of Barre, Orleans County, New York

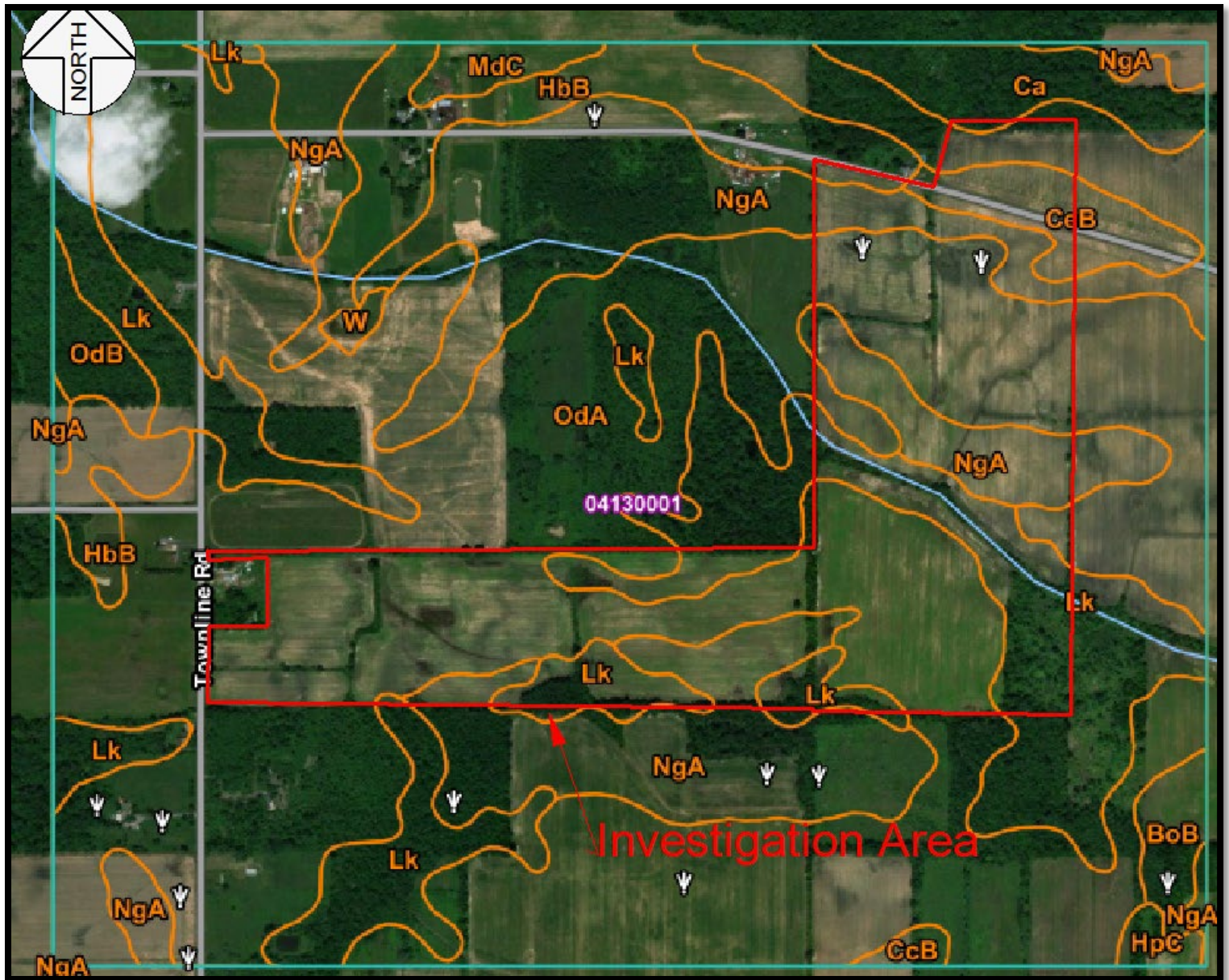


Figure 4: NRCS Erie County Soil Survey Map

<http://websoilsurvey.sc.egov.usda.gov/App/WebSoilSurvey.aspx>

Shelby Crushed Stone

Town of Barre, Orleans County, New York



Figure 5: NYSDEC Environmental Resource Mapper

<http://www.dec.ny.gov/ismaps/ERM/viewer.htm>

Shelby Crushed Stone

Town of Barre, Orleans County, New York

SHELBY CRUSHED STONE

Appendix B - Overall Site Plan & Wetland Impact Map

SHELBY CRUSHED STONE

Appendix C - Functional Assessment Data Form

Wetland Function-Value Evaluation Form

Total area of wetland 81.93 ac Human made? no Is wetland part of a wildlife corridor? no or a "habitat island"? no

Adjacent land use Limestone Quarry & Agricultural Fields Distance to nearest roadway or other development 2220 ft

Dominant wetland systems present Shallow Emergent Marsh Contiguous undeveloped buffer zone present no

Is the wetland a separate hydraulic system? no If not, where does the wetland lie in the drainage basin? Upper

How many tributaries contribute to the wetland? 1 Wildlife & vegetation diversity/abundance (see attached list)

Wetland I.D. W2

Latitude 43.18129 Longitude -78.41818













Prepared by: AMM Date 12/21/2022

Wetland Impact:
Type PEM Area 7.0 ac

Evaluation based on: Field

Corps manual wetland delineation
completed? Y X N

Suitability Rationale Principal

Function/Value	Y	N	(Reference #)*	Function(s)/Value(s)	Comments
 Groundwater Recharge/Discharge		X	5, 7, 9, 15		Large wetland associated with an intermittent stream that lacks a defined outlet
 Floodflow Alteration	X		1, 2, 5, 6, 7, 8, 9, 10, 13, 14, 18	X	Very high floodflow storage for the areas within the wetland boundary.
 Fish and Shellfish Habitat		X	1		No fish or potential fish habitat are present
 Sediment/Toxicant Retention	X		1, 3, 5, 7, 10, 12, 13, 14, 15, 16	X	Sources of sediment may exist from flood events within the wetland.
 Nutrient Removal	X		1, 2, 3, 4, 5, 8, 9, 12, 13, 14	X	Intermittent stream on site flows past multiple agricultural fields which can cause an excess of nutrients being present.
 Production Export	X		1, 2, 4, 5, 7, 8, 9, 12, 14	X	Production export high throughout the community. High density of plants and animals within the wetland.
 Sediment/Shoreline Stabilization	X		1, 3, 6, 7, 12, 13, 15		Wetland not directly associated with a water course.
 Wildlife Habitat	X		1, 3, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21	X	Suitable habitat for abundant wildlife is present throughout the wetland.
 Recreation		X	3, 4, 5		Wetland is on private property and can be used for private recreation.
 Educational/Scientific Value		X	2, 5		Site is not an educational area
 Uniqueness/Heritage		X	4, 5, 6		Large wetland dominated by PFO and PEM communities but contains some areas of PSS.
 Visual Quality/Aesthetics		X	4, 8		Valuable wildlife throughout the wetland area, flowering plants during different seasons.
ES Endangered Species Habitat		X			No T&E habitat present
Other					

Wetland Function-Value Evaluation Form

Total area of wetland 81.93 ac Human made? no Is wetland part of a wildlife corridor? no or a "habitat island"? no

Adjacent land use Limestone Quarry & Agricultural Fields Distance to nearest roadway or other development 2220 ft

Dominant wetland systems present Hardwood Swamp Contiguous undeveloped buffer zone present no

Is the wetland a separate hydraulic system? no If not, where does the wetland lie in the drainage basin? Upper

How many tributaries contribute to the wetland? 1 Wildlife & vegetation diversity/abundance (see attached list)

Wetland I.D. W2

Latitude 43.18129 Longitude -78.41818













Prepared by: AMM Date 12/21/2022

Wetland Impact:
Type PFO Area 1.69 ac

Evaluation based on: Field

Corps manual wetland delineation
completed? Y X N _____

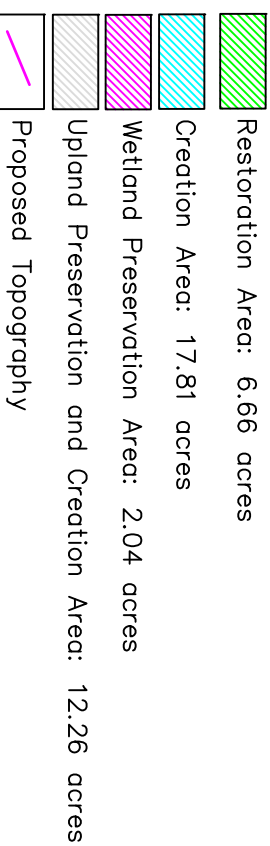
Suitability Rationale Principal

Function/Value	Y	N	(Reference #)*	Function(s)/Value(s)	Comments
 Groundwater Recharge/Discharge		X	5, 7, 9, 15		Large wetland associated with an intermittent stream that lacks a defined outlet
 Floodflow Alteration	X		1, 2, 5, 6, 7, 8, 9, 10, 13, 14, 18	X	Very high floodflow storage for the areas within the wetland boundary.
 Fish and Shellfish Habitat		X	1		No fish or potential fish habitat are present
 Sediment/Toxicant Retention	X		1, 3, 5, 7, 10, 12, 13, 14, 15, 16	X	Sources of sediment may exist from flood events within the wetland.
 Nutrient Removal	X		1, 2, 3, 4, 5, 8, 9, 12, 13, 14	X	Intermittent stream on site flows past multiple agricultural fields which can cause an excess of nutrients being present.
 Production Export	X		1, 2, 4, 5, 7, 8, 9, 12, 14	X	Production export high throughout the community. High density of plants and animals within the wetland.
 Sediment/Shoreline Stabilization	X		1, 3, 6, 7, 12, 13, 14, 15		Wetland not directly associated with a water course.
 Wildlife Habitat	X		1, 3, 5, 6, 7, 8, 9, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21	X	Suitable habitat for abundant wildlife is present throughout the wetland.
 Recreation		X	3, 4, 5		Wetland is on private property and can be used for private recreation.
 Educational/Scientific Value		X	2, 5		Site is not an educational area
 Uniqueness/Heritage		X	4, 5, 6		Large wetland dominated by PFO and PEM communities but contains some areas of PSS.
 Visual Quality/Aesthetics		X	8		Valuable wildlife throughout the wetland area.
ES Endangered Species Habitat		X			No T&E habitat present
Other					

SHELBY CRUSHED STONE

Appendix D - Mitigation Plans

REVISED ORDER
ROBIN L. ROOT &
RANDALL SCOTT ROOT
1-800-8-1000

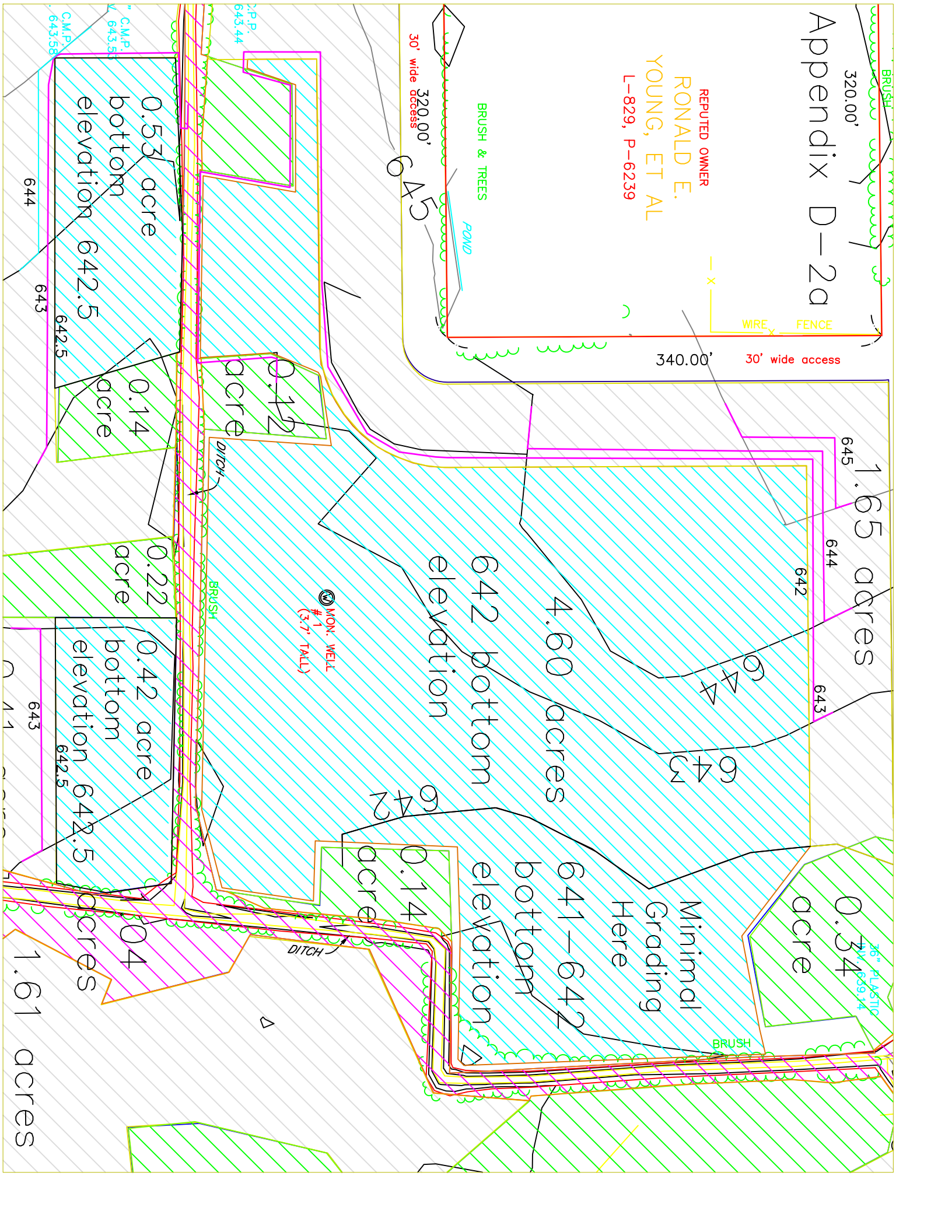
Town of Barre
Orleans County, New York

Orleans County, New York



Appendix D-2a

REPUTED OWNER
RONALD E.
YOUNG, ET AL
L-829, P-6239



Appendix D-2b

BRUSH & TREES

N. WELL

30' wide access

3104.47'

30' wide access

1.30 acres

643

644

642 bottom elevation

3.74 acres

642.5

bottom elevation

4.72 acres

642

Minimal Grading Here

Minimal Grading Here

642

642

bottom elevation

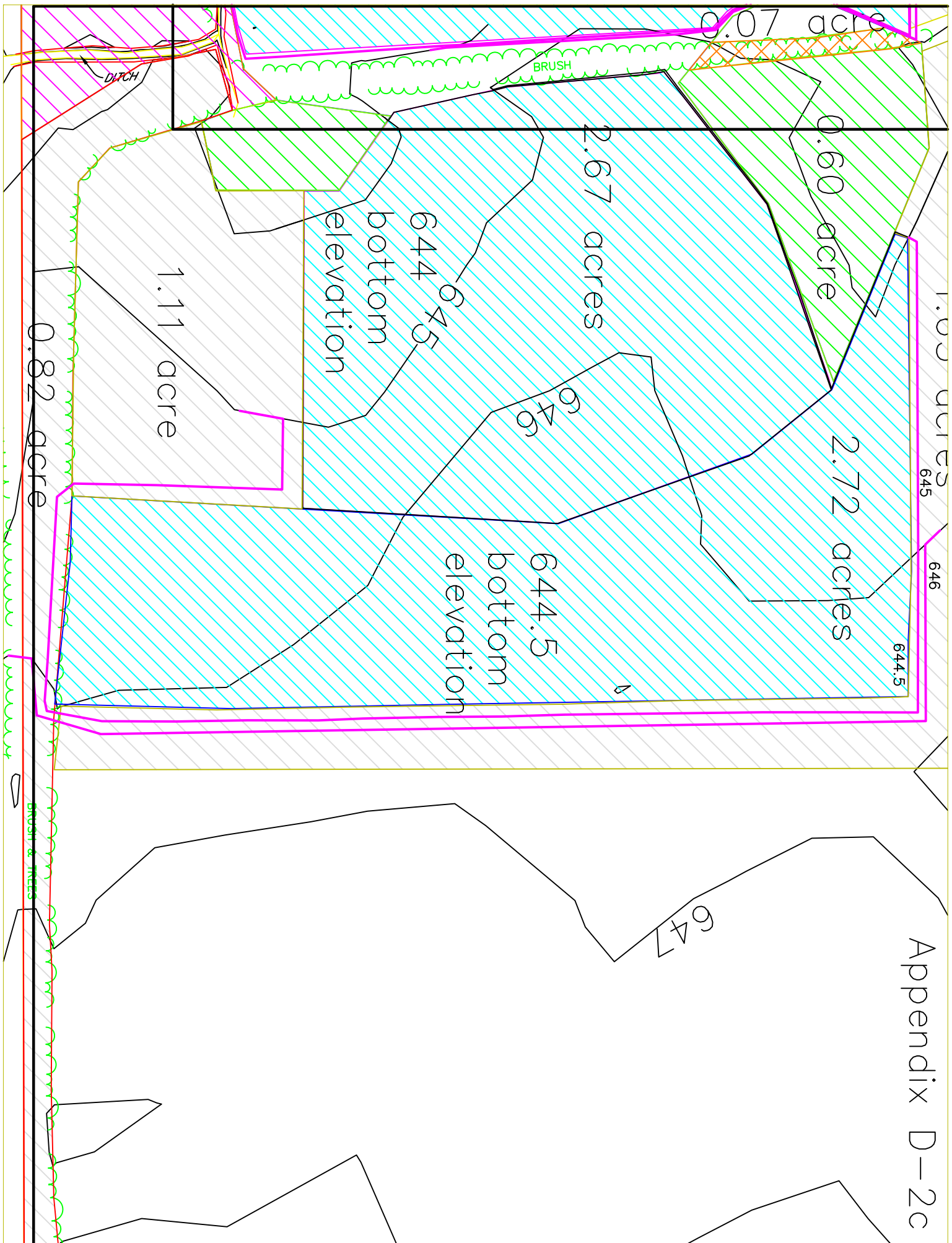
3.13 acres

644

0.07 acre

BRUSH

2.08 acres



ROBIN L. ROOT &
BARBARA J. ROOT
L-188, P-107

DAVID KITTLE, ET AL.
L-188, P-104-11

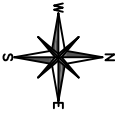
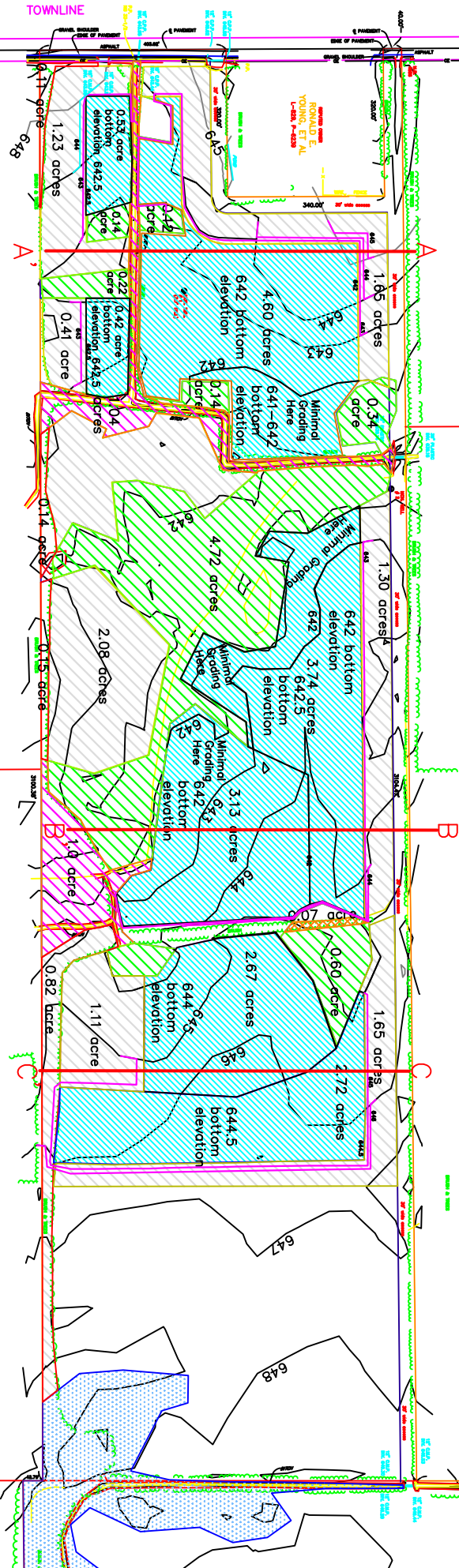
RONALD E.
YOUNG, ET AL.
L-188, P-103-10

Appendix D-3 - Cross Sections
Town of Barre Orleans County, New York



EARTH DIMENSIONS, INC.
1091 Jamison Road | Elma New York 14059
(716) 655-1717 | Fax (716) 655-2915

- Restoration Area: 6.66 acres
- Creation Area: 17.81 acres
- Wetland Preservation Area: 2.04 acres
- Upland Buffer and Creation Area: 12.26 acres
- Cross Section Location

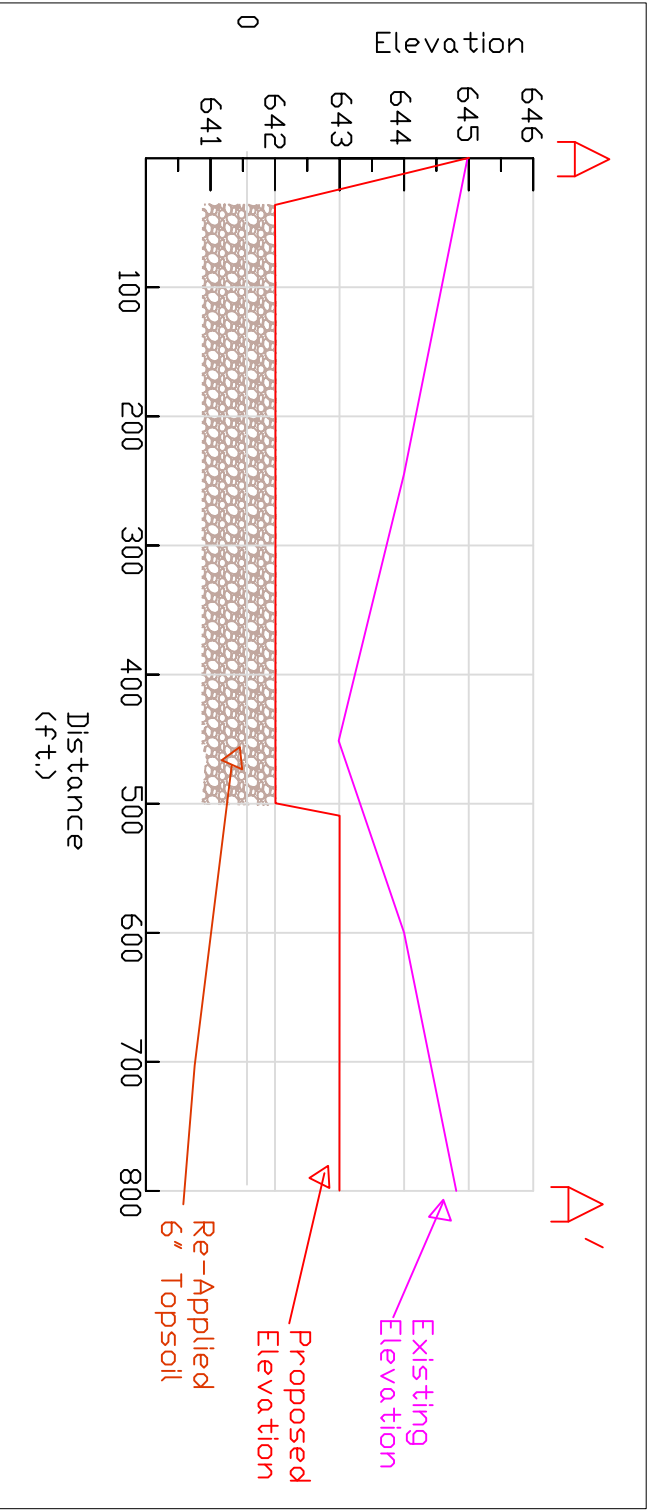


Scale: As Shown
Map Date: January 4, 2023/ AMM for EDI
Revised:
Base Map Provided By: McIntosh & McIntosh, P.C.
File Name: Appendix D-3.dwg
EDI Project Code: W9D12d

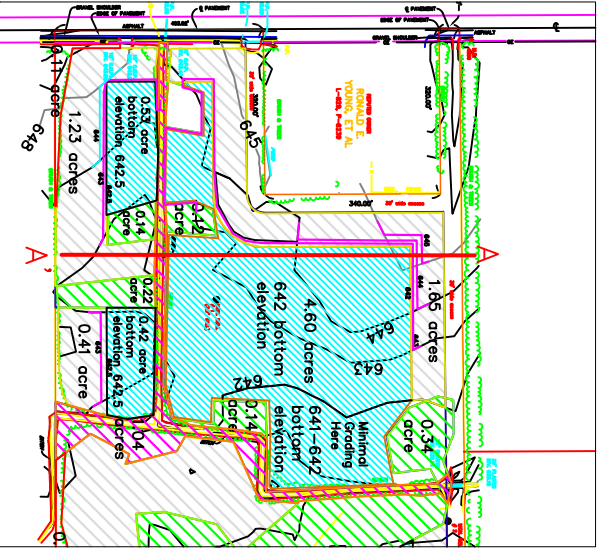
ZELANY FAMILY FARMS, L.P.
L-188, P-103-10

Appendix D-3 Cross-Section Location
Shelby Crushed Stone

Town of Barre
Orleans County, New York



Scale: As Shown
Map Date: January 5, 2022/ AMM Revised:
Base Map Provided By: McIntosh & McIntosh, P.C
File Name: Appendix D-3.dwg
EDI Project Code: W9D12d

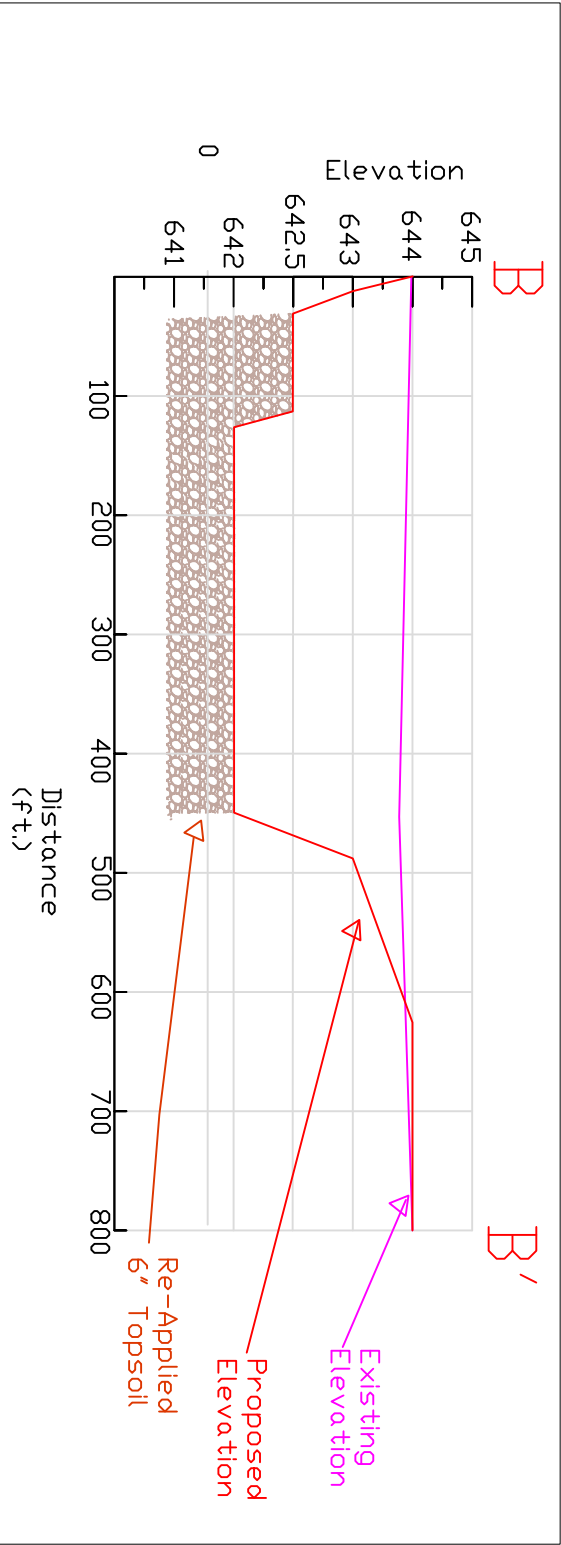


Appendix D-3 Cross-Section Location

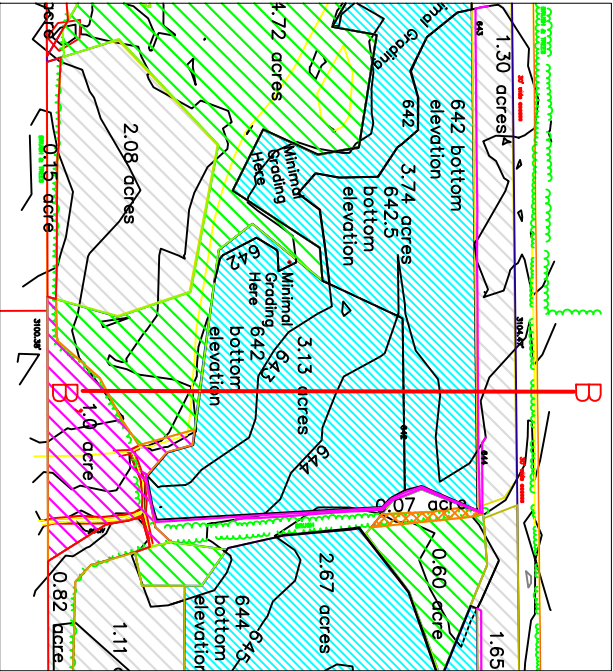
Shelly Crushed Stone

Town of Barre

Orleans County, New York

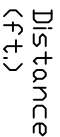


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Base Map Provided By: McIntosh & McIntosh, P.C
File Name: Appendix D-3.dwg
EDI Project Code: W9D12d



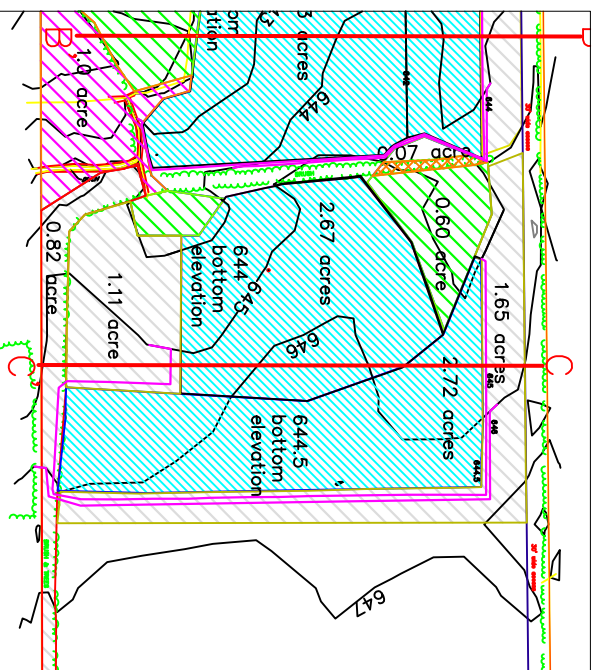
Shelby Crushed Stone



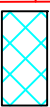

Orleans County, New York

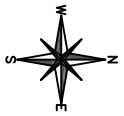
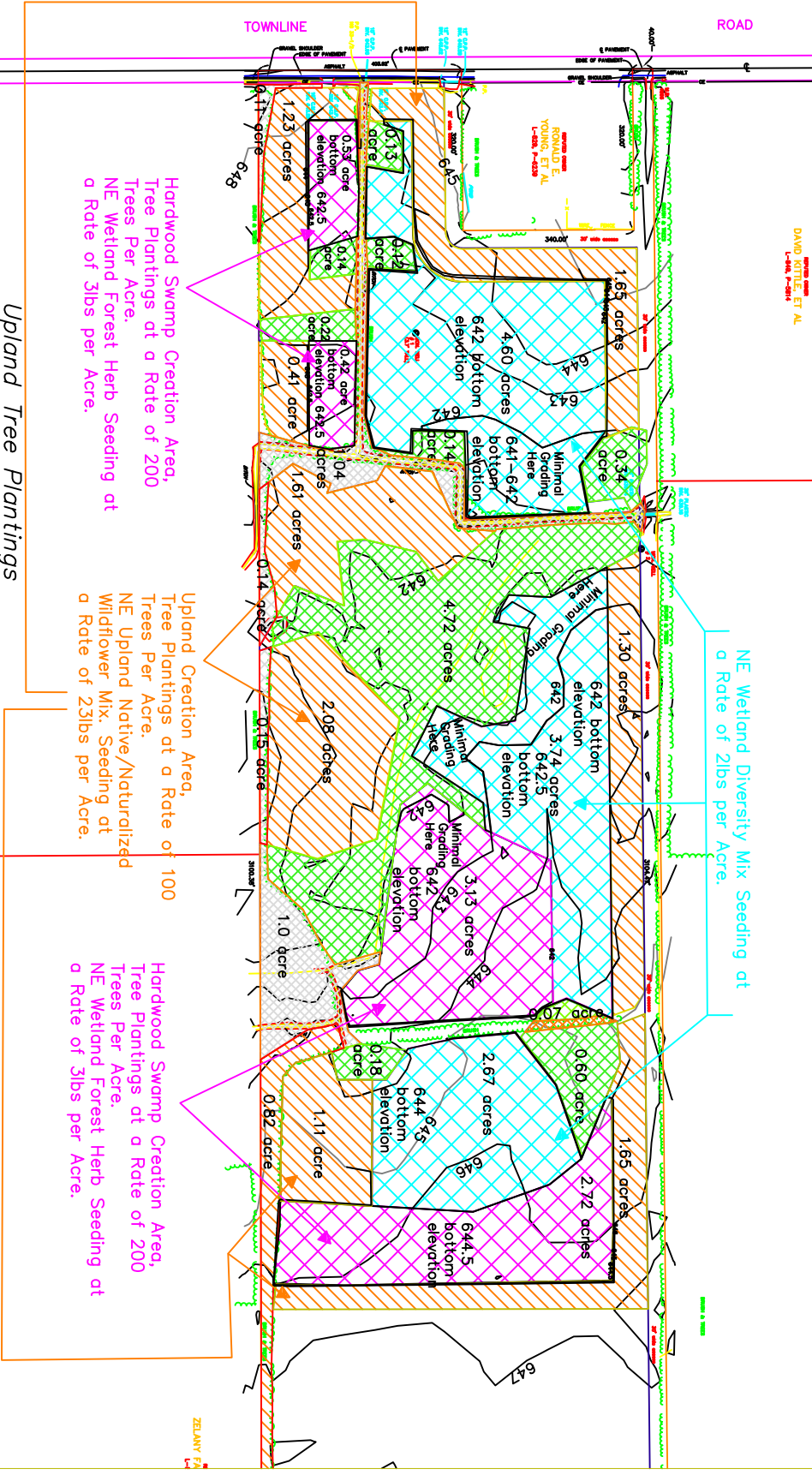
Map Date: January 5, 2022/ AMM Revised:

File Name: Appendix D-3.dwg

EDI Project Code: W9D12d



-  Hardwood Swamp Creation Area
-  Upland Buffer and Creation Area
-  Emergent Marsh Creation Area
-  Emergent Marsh Restoration Area



Scale: As Shown

Map Date: January 5, 2023/ AMM for EPI

Revised:

Base Map Provided By: McIntosh & McIntosh, P.C

File Name: Appendix D-4.dwg

EDI Project Code: W9D12d

- Upland Tree Plantings**
- Red Oak –220
 - White Oak –220
 - Eastern Cottonwood –220
 - Red Maple –220
 - Eastern Redbud –220

- Wetland Tree Plantings**
- Swamp White Oak –340
 - Pin Oak –340
 - American Sycamore –340
 - Red Maple –340


Seed Mix for Emergent Marsh
Wetland Area: Northeast Wetland Diversity Mix & Cover Crop

Seed Mix for Hardwood Swamp
Wetland Area: Northeast Forest Herb Mix & Cover Crop

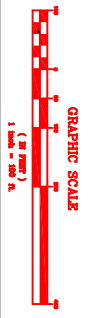
Seed Mix for Upland Creation Area: Northeast Upland Native/Naturalized Wildflower Mix & Cover Crop

Appendix D-4 - Planting Plan

Town of Barre Orleans County, New York



EARTH DIMENSIONS, INC.
1091 Jamison Road | Elma, New York 14059
(716) 655-1717 | Fax (716) 655-2915



SHELBY CRUSHED STONE

Appendix E - Maintenance & Inspection Schedule

Appendix E: Maintenance & Inspection Schedule

Activity	Timeframe
CONSTRUCTION	
Receive Authorization from NYSDEC & USACE	Spring 2023
Mitigation Site Construction	Spring 2023
Mitigation site planting & seeding	Spring 2024
Post Construction Report	December 31, 2024
MONITORING	
Year of Construction (For Remaining Months During the Growing Season)	Monthly Visits (July to October) 2024
1st Year Monitoring Field Visits	Monthly Visits (April to October) 2025
1st Year Monitoring Report	December 31, 2025
2nd Year Monitoring Field Visits	Two Site Visits (May & August) 2026
2nd Year Monitoring Report	December 31, 2026
3rd Year Monitoring Field Visits	Two Site Visits (May & August) 2027
3rd Year Monitoring Report	December 31, 2027
4th Year Monitoring Field Visits	Two Site Visits (May & August) 2028
4th Year Monitoring Report	December 31, 2028
5th Year Monitoring Field Visits	Two Site Visits (May & August) 2029
5th Year Monitoring Report	December 31, 2029
6th Year Monitoring Field Visits	Two Site Visits (May & August) 2030
6th Year Monitoring Report	December 31, 2030
7th Year Monitoring Field Visits	Two Site Visits (May & August) 2031
7th Year Monitoring Report	December 31, 2031
8th Year Monitoring Field Visits	Two Site Visits (May & August) 2032
8th Year Monitoring Report	December 31, 2032
9th Year Monitoring Field Visits	Two Site Visits (May & August) 2033
9th Year Monitoring Report	December 31, 2033
10th Year Monitoring Field Visits	Two Site Visits (May & August) 2034
10th Year Monitoring Report	December 31, 2034
USACE & NYSDEC Sign-off	Spring 2035

SHELBY CRUSHED STONE

Appendix F – Legal Protection Instrument

WHEREAS, the description of the Property described in **Exhibit "A"** shall be referred to and identified as, in its entirety, as the "Mitigation Area"; and

WHEREAS, the protection of the Wetlands and the Mitigation Area from destruction or degradation constitutes the "Conservation Purpose" of this Deed Restriction; and

WHEREAS, "Owner" desire to perpetually conserve the natural, benefits and functions of the Mitigation Area to accomplish the Conservation Purpose.

NOW, THEREFORE, for and in consideration of the mutual covenants, terms, conditions, restrictions, and promises contained in this Deed Restriction, and intending to be legally bound hereby, "Owner" hereby voluntarily, unconditionally and absolutely grants the easements, covenants, prohibitions and restrictions set forth in this Deed Restriction, in perpetuity, to accomplish the Conservation Purpose.

ARTICLE 1. GRANT OF EASEMENTS

Owner hereby grants and conveys unto NYSDEC, its successors and assigns, the right of the NYSDEC and its agents to access, enter upon and inspect the Mitigation Area, with access over and across the Property if necessary, for the purpose of enforcement and compliance with this Deed Restriction at any time and from time to time, provided that Owner is first given notice of any such visit, at least seven (7) days *in* advance, except in cases of suspected or known violations of this Deed Restriction.

ARTICLE 2. OWNER'S DECLARATION OF COVENANTS AND RESTRICTIONS

Owner, for Owner and Owner's successors and assigns, covenants and declares that the Mitigation Area shall be, and hereby is, bound by and made subject to the following covenants and restrictions in perpetuity, subject to and excepting only the Reserved Rights set forth in Article 3 of this Deed Restriction:

- 2.1. Use Restrictions. The Mitigation Area shall not be used for a residence or for any residential, commercial, institutional, industrial or agricultural purpose or purposes. Among the uses prohibited by the preceding sentence are, without limiting the meaning or interpretation of the preceding sentence, any of the following: (1) construction or occupancy of any dwellings; (2) manufacture or assembly of any products, goods, equipment, chemicals, materials or substances of any kind or nature whatsoever; (3) sale of any products, goods equipment, chemicals, materials, substances or services of any kind or nature whatsoever; (4) storage of any products, goods, equipment, chemicals, materials or substances of any kind or nature, except if stored for use upon the Property in connection with activities not prohibited by this Deed Restriction; and (5) offices for persons involved in the sale, manufacture or assembly of goods or services or for the performance of services.
- 2.2. Structures Prohibited. No Structure (hereinafter defined) of any kind shall be built, erected, installed, placed, affixed or assembled within or upon the Mitigation Area or upon any trees or other natural features upon the Mitigation Area. "Structure" shall mean any assembly of material forming a construction for occupancy or use for any purpose and erected upon or attached to the ground including, for example but not to

limit the foregoing definition, the following: building, platform, shed, bin, shelter, dam, dike, tower, tank, antenna, and bulkhead.

- 2.3. Avoidance of Sensitive Habitats. Without limitation of the requirements of Article 3, Owner shall present to NYSDEC for review and approval, prior to undertaking any of the following activities, any plans for mowing, plant removal, planting of trees or other vegetation, land disturbance activity, or trail or other construction pursuant to Article 3 so that the Department may advise and instruct Owner to prevent damage to or endangerment of sensitive natural habitat, including but not limited to plant species located on the Mitigation Area that are classified as endangered or threatened by the federal or state government.
- 2.4. Limitation on Recreational Activities. No recreational activities shall occur within the Mitigation Area. Owner will prohibit use of off-road vehicles on Mitigation Area and undertake efforts to prevent any such vehicles from traversing same.
- 2.5. Wetland Protection Area. There shall be no clearing, cutting or removal of live or dead trees, other clearing or removal of vegetation, clearing or removal of leaf litter or other natural detritus, or digging, earth movement or other alteration of the earth surface or topography within the banks of any permanent or intermittent watercourse within the Mitigation Area (excluding manmade storm water swales not fed by a spring, natural pond or other natural source).
- 2.6. Removal of Ground or Surface Water from Mitigation Area. No ground or surface water from the Mitigation Area shall be removed, collected, impounded, stored, transported, diverted or otherwise used for any purpose or use outside the boundaries of the Mitigation Area nor for any purpose or use within the boundaries of the Mitigation Area that is prohibited by this Deed Restriction.
- 2.7. Roads. Driveways. Etc. There shall not be constructed, cut, created or placed on the Mitigation Area any road, driveway, cartway, path or other means of right of passage across or upon the Mitigation Area nor may any road, driveway, cartway, path or other means or right of passage located on the Mitigation Area be used, for access to any use (whether or not upon the Mitigation Area) which is prohibited by this Deed Restriction.
- 2.8. Live or Dead Trees. No cutting, removal or destruction of live or dead trees shall be permitted upon or within the Mitigation Area. Dead trees that have fallen shall be allowed to remain where they have fallen unless a dead tree blocks a path or trail or threatens the safety of persons or property, in which case it may be moved to the extent necessary to prevent such blockage or threat.
- 2.9. Signs and Similar Structures. No signs, billboards or outdoor advertising structures shall be placed, erected or maintained within the Mitigation Area.
- 2.10. Land Disturbance. There shall be no filling, excavating, dredging, surface mining, drilling, or any removal of topsoil, sand, gravel, rock, peat, minerals or other materials, upon or from the Mitigation Area.
- 2.11. Dumping. There shall be no-dumping of ashes, trash, garbage, or any other unsightly or offensive materials at any place on, under or within the Mitigation Area.
- 2.12. Change of Topography. There shall be no material change in the topography of the Mitigation Area in any manner that is inconsistent with the NYSDEC approved mitigation plan

- 2.13. Water Courses. There shall be no dredging, channelizing or other manipulation of natural water courses or any water courses existing within the Mitigation Area as of the date of this Deed Restriction. There shall be no discharge of chemicals, waste water or other pollutants into any permanent or intermittent water course.
- 2.14. INTENTIONALLY OMITTED.
- 2.15. Soil Erosion and Sedimentation Control. All activity on the Mitigation Area shall be conducted so as to avoid the occurrence of soil erosion and sedimentation of streams or other water courses. Without limitation of the foregoing, Owner and Department shall, in identifying practices that will prevent soil erosion and sedimentation, refer to the soil conservation practices as then established or recommended by the Natural Resources Conservation Service of the United States Department of Agriculture or any successor governmental office or organization performing the same function within the United States government, as approved by the Department.
- 2.16. Livestock. There shall be no livestock grazing in the Mitigation Area.
- 2.17. Non-Native Plant Species. There shall be no introduction of plant species within the Mitigation Area except those that are native to the area in which the Mitigation Area is located or that are recognized as non-invasive horticultural specimens or fruit orchard trees.
- 2.18. Transfers of Development Rights or Development Density Credits. Except as previously approved, the Mitigation Area may not be used as open space for purposes of obtaining or qualifying for governmental approval of any subdivision or development on lands outside the boundaries of the Mitigation Area nor, without limitation of the foregoing, may the Mitigation Area be used in the calculation of the amount or density of housing units or other construction for development on lands outside the boundaries of the Mitigation Area or for sale by Owner. The foregoing shall not prohibit the use of created wetlands as a mitigation credit as approved by the Department.
- 2.19. Notice of Exercise of Reserved Rights. Owner shall give reasonable notice to the Department before exercising any Reserved Right that may impair the conservation interests associated with the Mitigation Area.
- 2.21. Preservation of Mitigation Area. The parties recognize that this Deed Restriction cannot address every circumstance that may arise in the future, and the parties agree that the purpose of this Deed Restriction is to preserve the Mitigation Area predominantly in its natural condition, protect or enhance the Mitigation Area's rare, threatened, or exemplary natural communities, usefulness to rare or threatened species, and contributions to improved water quality. Without limiting the preceding covenants and restrictions, any use or activity which is not reserved in Article 3 of this Deed Restriction and which conflicts with the Conservation Purpose or which materially threatens the Conservation Purpose is prohibited.
- 2.22. Restrictions Cumulative. The prohibitions and restrictions in this Deed Restriction shall be considered cumulative. No prohibition or restriction contained herein shall be

interpreted as a limitation on the meaning, effect, interpretation or enforceability of another prohibitive or restrictive provision.

ARTICLE 3. RESERVED RIGHTS

Owner reserves for Owner and Owner's, successors and assigns who may now or hereafter be owner of all or part of the Mitigation Area the rights set forth in this Article 3 (the "Reserved Rights"). Owner intends that these Reserved Rights and the activities and uses which are described below as the Reserved Rights are narrow exceptions to the prohibitions and restrictions set forth in Article 2 and, hence, may be conducted as described below notwithstanding the prohibitions and restrictions of Article 2 without having a materially adverse effect on the Conservation Purpose.

- 3.1. Pond. may construct and maintain a pond or other impoundment of water only if:
 - 3.1.1. in accordance with any work performed and approved by permit issued by the Department.
- 3.2. Mitigation Area. Discharging of fill, damming, diking, draining, filling or alteration of springs, streams, ponds or wetlands as would otherwise be prohibited by this Deed Restriction may occur as approved by permit issued by the Department. Disturbed wetlands and waterways pursuant to such permit shall be restored to their original condition within 30 days of completion of the work permitted by such permit.
- 3.3. Fence and Markers. Owner reserves the right to install and thereafter maintain a fence and markers on and around the boundary of the Mitigation Area.
- 3.4. Signs. Owner may install a reasonable number of signs of the following types:
 - 3.4.1. regulatory or directional signs including, for example but not for limitation of the foregoing, "no trespassing" signs, "no gunning" signs, or "no hunting" signs;
 - 3.4.2. signs identifying the interest of Owner in the Conservation Area; and
 - 3.4.3. signs educating the public as to the ecology of the area.
- 3.5. Wetlands Plant Removal. Owner shall have the right to remove non-native, invasive plant species from the wetlands, such as *Phragmites australis*, in accordance with a revegetation plan, which plan shall include the replacement of the removed species with native wetland plant or tree species, prepared by an experienced botanist or wetlands biologist and approved in advance by the Department. Owner shall be responsible for obtaining all necessary government permits and approvals for such activity and Department shall have the right, but not the obligation, to require that such permits and approvals be produced for inspection by Department before approval is granted. Without limitation of the foregoing, Owner is advised that removal of plant species by means other than hand equipment may be regulated and require a permit.
- 3.6. Maintenance of Roads, Trails, Etc.. Owner may maintain in passable condition the paths, trails, roads or walkways existing within the Mitigation Area at the date of this Deed Restriction if they are required to maintain the proper functioning of the Mitigation Area. Included within this right of maintenance, without limitation, are: the right to hand prune trees or other vegetation which threaten the safety of persons or property who may use or maintain the road, trail or walkway; the right to install or apply materials necessary to correct or impede erosion; non-mechanical grading of earth to maintain a passable condition or to control or impede erosion; replacement

of existing culverts, water control structures and bridges; and maintenance of roadside ditches.

- 3.7. Notice of Exercise of Reserved Rights. Owner shall notify NYSDEC in writing before exercising the Reserved Rights described in 3.1, 3.2 and 3.6.

ARTICLE 4. REMEDIES AND ENFORCEMENT

- 4.1. Remedies Generally. The Department shall have the right to enforce by proceedings at law or in equity each and every one of the covenants and restrictions set forth in this Deed Restriction. The foregoing shall not limit any of the rights or remedies available to the NYSDEC as specifically set forth in any law or in this Deed Restriction. NYSDEC's remedies described in this Article shall be cumulative and concurrent and shall be in addition to all remedies now or hereafter available or existing at law or in equity.
- 4.2. Remedy of Specific Performance. Without limitation of any other rights of the NYSDEC in this Deed Restriction, the Department's right of enforcement of this Deed Restriction shall include the right to seek specific performance by Owner of the restoration of the Mitigation Area to a functioning condition Deed Restriction or to its condition prior to any activity that violates this Deed Restriction or as otherwise may be necessary to remedy any violation of any easement, covenant, prohibition or restriction in this Deed Restriction, as the NYSDEC may elect.
- 4.3. Remedy of Damages. If Owner violates this Deed Restriction in such a manner as to cause damage to, extract or remove any trees, mineral resources, pond, wetland, stream, or other natural resource protected by this Deed Restriction, including violation resulting from failure to obtain the Department's approval, the Department shall be entitled to payment of damages as provided for under the Environmental Conservation Law, or payment in the amount of the value of the protected natural resource; provided, however, that if the natural resource affected by Owner's violation of this Deed Restriction can be restored to its condition prior to the violation and if Owner does restore the natural resource to its condition prior to the violation within 90 days after notice of violation from the Department then the Department shall accept such restoration in lieu of damages. The Department may seek payment and recovery of such damages by any means available at law. The value of the protected natural resource shall be the greater of (a) the market value of the resource or, (b) the cost of immediate restoration of the Mitigation Area and all resources to its condition prior to the violation. If such immediate restoration is not reasonably possible then the market value of the resource shall be the amount of damages. If the resource does not have a readily determinable market value then the amount of damages shall be the amount which a court having jurisdiction may determine, taking into account the importance of the resource to the fulfillment of the Conservation Purpose.
- 4.4. Rights and Remedies in Relation to Persons Other than Owner. NYSDEC shall have the right, without limitation of any rights herein as against Owner, to assert and enforce any of the rights and remedies in this Deed Restriction against any person or entity other than Owner that engages in any action upon the Mitigation Area that

constitutes a violation of any of the covenants or restrictions of this Deed Restriction, whether such person or entity enters upon the Mitigation Area as a tenant, guest or invitee of Owner, an act of trespass or by any claim of right and Owner shall reasonably cooperate with the Department by joining in any action or proceeding commenced by the Department for such purpose.

- 4.5. Certain Events Not a Violation. Notwithstanding anything herein to the contrary, the Department shall not bring any action seeking to enforce this Deed Restriction against Owner nor shall this Deed Restriction be considered to have been violated by Owner, as a result of any damage to the Mitigation Area if such damage was solely the result of: (a) a natural event such as an earthquake or flood, wind, lightning or other storm event, including those events commonly referred to as "acts of God"; (13) damage by persons trespassing upon the Mitigation Area that could not have been prevented by reasonable on-going efforts to prevent trespass; or (c) any emergency measures reasonably and prudently taken by Owner to abate or mitigate significant injury to the Mitigation Area as a result of any such natural event or trespass.
- 4.6. No Third Party Right of Enforcement. This Deed Restriction may only be enforced by the Owner or the Department, and their respective successors and assigns, and no third party beneficiary rights, including but not limited to third party rights of enforcement, are created hereby.
- 4.7. No Waiver of Rights of Enforcement. The failure of the NYSDEC to exercise any of its rights under this Deed Restriction on any occasion shall not be deemed a waiver of said rights and the Department retains the right in perpetuity to require full compliance by Owner of the covenants and restrictions in this Deed Restriction.

ARTICLE 5. GENERAL PROVISIONS

- 5.1. Owner and NYSDEC Further Defined. The term "Owner" used in this Deed Restriction shall mean Dockside and any of Dockside's successors or assigns, whether one or more, that are the legal owners of the Mitigation Area or any part thereof. The term "NYSDEC" used in this Deed Restriction shall mean and include the above-named Department and its successors and assigns.
- 5.2. Rules of Construction and Interpretation. The Owner recognizes the environmental, scenic, and natural values of the Mitigation Area and the purpose of preserving these values. Any general rule of construction to the contrary notwithstanding, this Deed Restriction shall be liberally construed to promote, protect and fulfill the Conservation Purpose. If any provision in this Deed Restriction is found to be ambiguous, an interpretation consistent with the Conservation Purpose that would render the provision valid should be favored over any interpretation that would render it invalid. If any provision of this Deed Restriction is determined by final judgment of a court having competent jurisdiction to be invalid, such determination shall not have the effect of rendering the remaining provisions of this Deed Restriction invalid. The Owner intends that this Deed Restriction, which is by nature and character primarily prohibitive (in

that Owner has restricted and limited the rights inherent in ownership of the Mitigation Area), shall be construed at all times and by all parties to promote, protect and fulfill the Conservation Purpose.

- 5.3. Responsibilities and Liabilities of Owner. Without limitation of anything herein to the contrary, Owner shall (a) retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operations, upkeep, and maintenance of the Mitigation Area, including the general liability insurance coverage and obligation to comply with applicable law and (b) pay all taxes, levies and assessments and other governmental or municipal charges which may become a lien on the Mitigation Area or upon this Deed Restriction or the rights it represents or that it grants to the NYSDEC.
- 5.3. Amendment or Modification of Deed Restriction. Owner and NYSDEC recognize that circumstances could arise which may justify the modification of certain of the restrictions contained in this Deed Restriction. To this end, NYSDEC and the legal owner or owners of the Mitigation Area or, if the Mitigation Area has been legally subdivided, the Owner of that portion of the Mitigation Area affected by such amendment at the time of amendment shall mutually have the right, in their sole discretion, to agree to amendments to this Deed Restriction which are not inconsistent with the Conservation Purpose.
- 5.5. Covenants, Etc. Run With The Land. This Deed Restriction and all of the covenants, indemnifications, releases, easements and restrictions set forth in this Deed Restriction shall run with the land and be binding upon Dockside and Dockside's successors and assigns, unless otherwise expressly provided in this Deed Restriction.
- 5.6. Owner Liable for Establishment of Wetland. Owner is responsible for the establishment of a functioning wetland; and the ongoing functionality of the Mitigation Area. This liability shall run with the land and shall continue to be binding upon Dockside in the event Dockside sells, grants or conveys the Mitigation Area or any part of it to another entity.
- 5.7. Limitation on Owner Liability. With the exception of Paragraph 5.6, Dockside shall be and remain liable for any breach or violation of this Deed Restriction only if such breach or violation occurs during such time as Dockside is the legal or equitable owner of the Mitigation Area or any part thereof or is in possession of the Mitigation Area or any part thereof.
- 5.8. Effect On Mortgages and Other Liens. All mortgages, deeds of trust and other liens or encumbrances upon all or any part of the Mitigation Area which either come into existence or are recorded in the place for the recording of such liens or encumbrances after the date of this Deed Restriction will be subject to and subordinate to this Deed Restriction.

- 5.9. Right of Conveyance Retained: Notice Required. Nothing in this Deed Restriction shall limit the right of Dockside, its successors or assigns to grant or convey the Mitigation Area, provided that any such grant or conveyance shall be under and subject to this Deed Restriction. Dockside shall notify the Department in writing of any sale, transfer; lease or other disposition of the Mitigation Area or any part thereof, whether by operation of law or otherwise, not later than 30 days after such disposition and such notice shall include a copy of the deed, lease, or other declaration of transfer, the date of transfer, and the name or names and addresses for notices of the transferee.
- 5.10. Managerial Control Retained by Owner. Nothing in this Deed Restriction shall be construed as giving rise to any right or ability of the NYSDEC to exercise physical or managerial control over day-to-day operations of the Mitigation Area, or any of Owner's activities on the Mitigation Area.
- 5.11. Compliance With Law. Notwithstanding provisions hereof to the contrary, if any, Owner shall be solely responsible for complying with the NYSDEC Order and Permit, and all federal, state and local laws and regulations in connection with the conduct of any use or activity on the Mitigation Area, and Owner shall be solely responsible for obtaining any required permits, approvals and consents from the relevant governmental authorities in connection therewith.
- 5.12. Public Access Not Created. Nothing in this Deed Restriction shall be construed to create any right of access to the Mitigation Area by the public.
- 5.13. Notices. All notices required of Owner under the terms of this Deed Restriction, and all requests for the consent or approval of the Department, shall be in Writing and shall be deemed to have been given when either served personally or sent by certified mail, with return receipt requested and postage prepaid, addressed to the Department at such address provided by notice from the Department or Owner to the other for this purpose. Notices by the Department to an Owner need only be given to the Owner of the portion of the Mitigation Area that is the subject of the notice.
- 5.14. Headings: The underlined headings preceding the Sections in this Deed Restriction are intended for convenience of reference only and shall not be applied in the construction or interpretation of the substance of this Deed Restriction nor shall any such headings be construed to add to, detract from or otherwise alter the substance, meaning, force or effect of any of the Sections in this Deed Restriction.
- 5.15. Governing Law. This Deed Restriction shall be governed by and construed under the law of the State of New York.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, and intending to be legally bound hereby, Owner has executed this Deed Restriction as of the day and year first above written:

IN THE PRESENCE OF:

“Owner” Declarant

By: _____

Printed Name: _____

Printed Name:

Title: _____

STATE OF NEW YORK)

) ss.:

COUNTY OF ERIE)

On this ____ day of _____ in the year Two Thousand Twenty, before me personally appeared “Owner” personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed in the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

NOTARY PUBLIC – STATE OF NEW YORK