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**Via Email**

January 14, 2025

Matthew Brown  
Environmental Program Specialist  
Adirondack Park Agency  
P.O. Box 99  
Ray Brook, NY. 12977

**Re: Jurisdictional Determination J2023-0446A: Luzerne Woods  
Subdivision  
Tax Map Parcel: 299.16-3-50.1, 298.20-1-34, 299.13-1-3, 4, and 5  
Land Use Area: Hamlet  
Town of Lake Luzerne, Warren County**

Dear Mr. Brown:

Protect the Adirondacks (“PROTECT”) is writing to request that the Adirondack Park Agency (“APA” or “Agency”) reconsider and re-evaluate its October 7, 2024 determination that the Agency has no jurisdiction over the above-referenced project. APA must revisit its prior determination because (i) its October 2024 determination was based on demonstrably incorrect statements that are contradicted by information contained in submissions by the applicant; and (ii) amendments to the Freshwater Wetlands Act (“FWA”) that significantly alter and expand the definition of jurisdictional wetlands took effect on January 1, 2025, and the proposed project is not exempt from those provisions.

**The October 2024 Jurisdictional Determination is Factually Incorrect**

The Luzerne Woods project consists of a 21-lot subdivision and construction of 18 single family dwellings and an accessory structure. The October 2024 jurisdictional determination states that APA does not have permit or variance jurisdiction over the project because “[b]ased on wetland maps available for Warren County, there do not appear to be any wetlands on the property.” This is incorrect. Both the Environmental Assessment Form submitted by the applicant and the Conservation Analysis Report prepared by the applicant’s consultant, Environmental Design Partnership, LLP, acknowledge the presence of wetlands on the project site. A copy of the figure from the applicant’s

**Protect the Adirondacks**

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[www.protectadks.org](http://www.protectadks.org) [info@protectadks.org](mailto:info@protectadks.org)

*Like Us on Facebook and on Instagram/Threads @ProtectAdkPark*

Conservation Analysis Report, showing the existing site conditions including the two wetlands areas on the project site, is enclosed for your reference. The jurisdictional determination is therefore based on the false assumption that there are no wetlands present on the project site. Although the October 2024 determination states that a “field inspection by Agency staff is the only to confirm the presence of any wetlands,” as far we can determine APA staff has failed to conduct an inspection of the project site. Agency staff should conduct a site visit to inspect the wetlands that the applicant has acknowledged exist on the project site and re-evaluate its prior jurisdictional determination that was based on the incorrect assumption that there are no wetlands on-site.

### **The FWA Amendments Require a New Jurisdictional Determination**

The FWA amendments, which took effect on January 1, 2025, significantly expand the definition of jurisdictional wetlands by eliminating the requirement that wetlands be mapped as a prerequisite to asserting regulatory jurisdiction and by providing that wetlands of “unusual importance” are now subject to permitting requirements regardless of size. *See* Environmental Conservation Law (“ECL”) §§ 24-0107(9), 24-0301. Thus, the presence of a wetland on the Warren County freshwater wetlands maps is no longer the sole criterion for determining jurisdiction, and APA must therefore revisit its prior determination (which was also clearly erroneous because it failed to consider the wetlands information submitted by the applicant). *See* ECL § 24-0301(4) (stating that “[t]here is a rebuttable presumption that mapped and unmapped areas meeting the definition of a freshwater wetland in this article are regulated and subject to permit requirements”).

APA’s prior jurisdictional determination must also be re-evaluated to assess whether wetlands on the project site meet any of the eleven criteria for being of “unusual importance,” which would render them jurisdictional regardless of size. ECL § 24-0107(1). The eleven newly effective criteria include whether:

- (a) it is located in a watershed that has experienced significant flooding in the past, or is expected to experience significant flooding in the future from severe storm events related to climate change;
- (b) it is located within or adjacent to an urban area, as defined by the United States census bureau;
- (c) it contains a plant species occurring in fewer than thirty-five sites statewide or having fewer than five thousand individuals statewide;
- (d) it contains habitat for an essential behavior of an endangered or threatened species or a species of special concern as defined under ECL § 11-0535 or listed as a species of greatest conservation need in New York’s wildlife action plan (notably, the Department of Environmental Conservation’s Environmental Assessment Mapper tool shows that the Pygmy Snaketail, a species of special concern that is also listed as a species of greatest conservation need is located on the project site);
- (e) it is classified as a Class I wetland;
- (f) it was previously classified and mapped as a wetland of unusual local importance;
- (g) it is a vernal pool that is known to be productive for amphibian breeding;

- (h) it is located in an area designated as a floodway on the most current Digital Flood Insurance Rate Map produced by the Federal Emergency Management Agency;
- (i) it was previously mapped as a wetland on or before December 31, 2024;
- (j) it has wetland functions and values that are of local or regional significance; or
- (k) it is determined to be of significant importance to protecting the state's water quality.

ECL § 24-0107(9).

### **Conclusion**

For the reasons stated above, APA must fulfill its statutory obligation to conduct a thorough review of wetlands on the Luzerne Woods subdivision project site, including an on-site inspection of those wetlands, and issue a new jurisdictional determination that includes consideration of the “unusual importance” criteria set forth in the FWA amendments.

Sincerely,

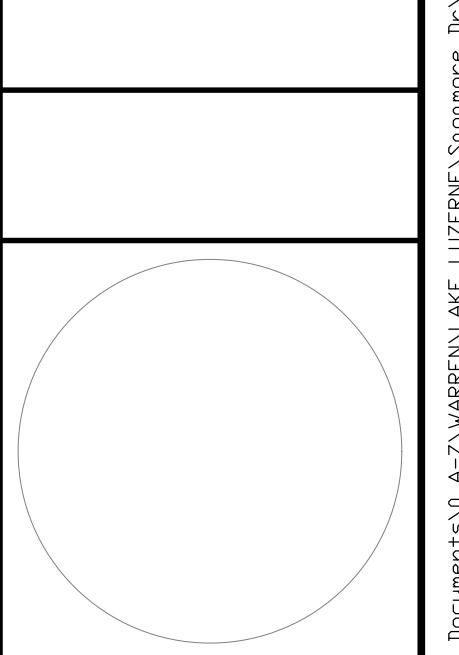


Christopher Amato  
Conservation Director and Counsel

enc.

C: Barbara Rice, Executive Director  
Damion Stodola, Counsel

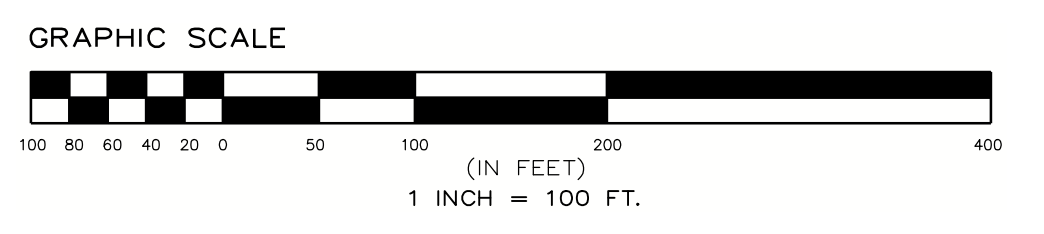
DRAWN BY	
CHECK BY	
ETIP PROJECT NUMBER	
REVISION	DATE BY



SCALE:  
**1" = 100'**

**NOT FOR CONSTRUCTION**

SHEET TITLE:  
**FIGURE 1:  
 EXISTING SITE CONDITIONS**



MAP REFERENCE:  
 EXISTING SITE BOUNDARY, TOPOGRAPHY AND SITE FEATURES WERE OBTAINED FROM THE MAP ENTITLED "MAP OF A TOPOGRAPHIC SURVEY, LANDS NOW OR FORMALLY OF LUZERNE WOODS, LLC, BY DARRAH LAND SURVEYING, PLLC AND DATED DECEMBER 15, 2023.

**SITE DATA:**

TOTAL PROPERTY AREA: 33± ACRES  
 AREA OF LIMITS OF JURISDICTION: 26± ACRES  
 SITE COORDINATES: 43° 19' 3" N , 73D 49' 28" W

PROJECT APPLICANT:  
 LUZERNE WOODS, LLC  
 P.O. BOX 9266  
 SCHENECTADY, NY 12039  
 (518) 810-6052

PROPERTY OWNER (TAX PARCELS 298.16-3-50.1, 298.16-3-55, 298.2-1-34):  
 LUZERNE WOODS, LLC  
 P.O. BOX 9266  
 SCHENECTADY, NY 12039  
 (518) 810-6052

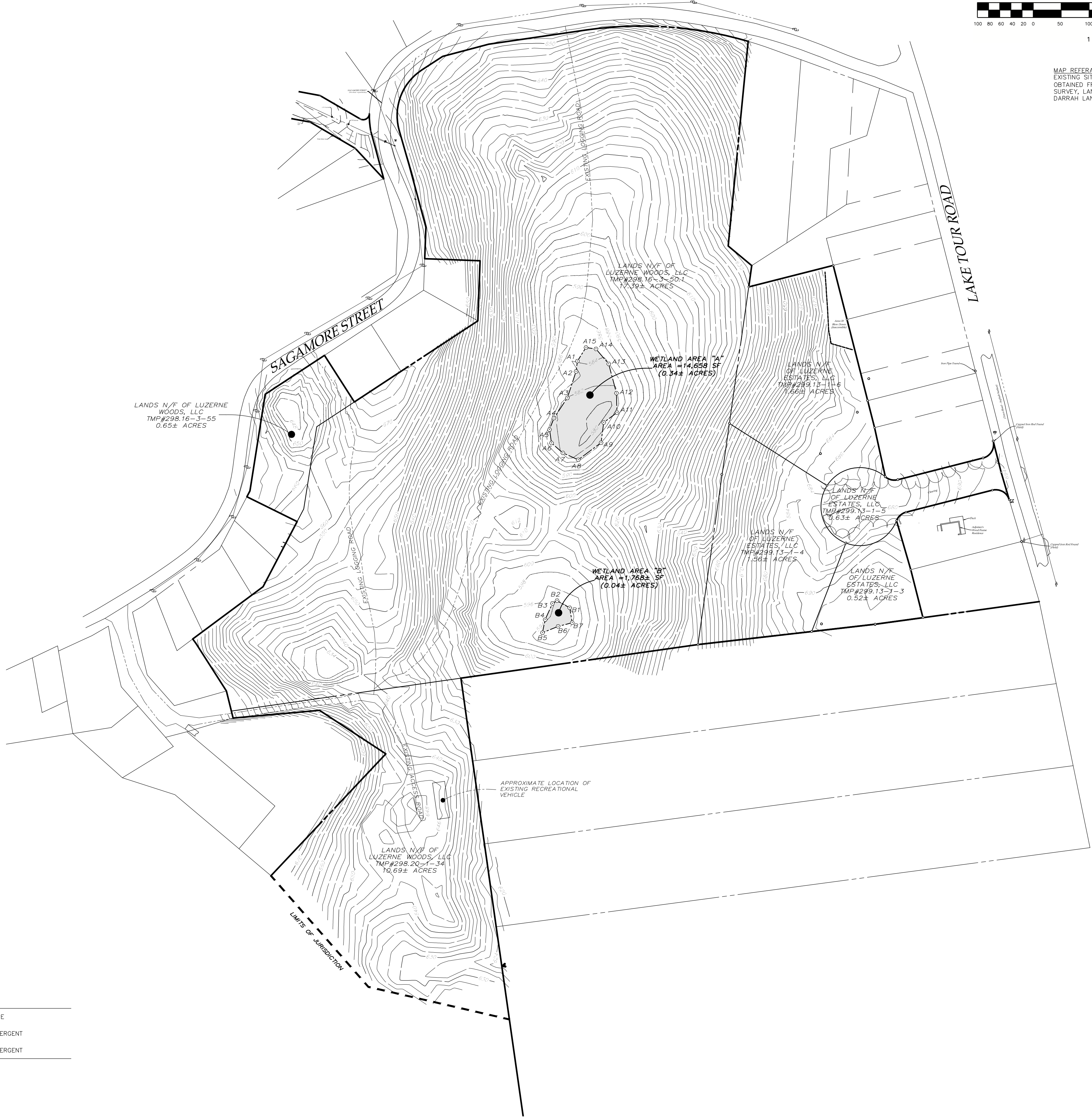
PROPERTY OWNER (TAX PARCELS 299.13-1-3 THRU 6):  
 LUZERNE WOODS, LLC  
 P.O. BOX 9266  
 SCHENECTADY, NY 12039  
 (518) 810-6052



**SITE PLAN LEGEND:**

- DELINEATED WETLAND AREA
- WETLAND FLAG PLACED IN FIELD
- EXISTING ELEVATION CONTOUR

NOTE:  
 WETLAND DETERMINATION WAS COMPLETED BY THOMAS M. WARD, CWB/PWS OF THE ENVIRONMENTAL DESIGN PARTNERSHIP, LLP ON JANUARY 3, 2024



**WETLAND SUMMARY TABLE**

AREA	ACREAGE	COVERTYPE
A	0.34± ACRES	PALUSTRINE EMERGENT
B	0.04± ACRES	PALUSTRINE EMERGENT
TOTAL	0.38± ACRES	