



Department of
Environmental
Conservation

Wetlands and Habitat Protection

Environmental Informational Conference
October 25, 2019

Saving the World One Wetland at a Time



Roy “JR” Jacobson
Habitat Protection Section
Division of Fish and Wildlife

25 October 2019

Outline

Regulatory Structure

DEC Structure

DEC Bureaucratic Feats

Challenges

Legal Fun

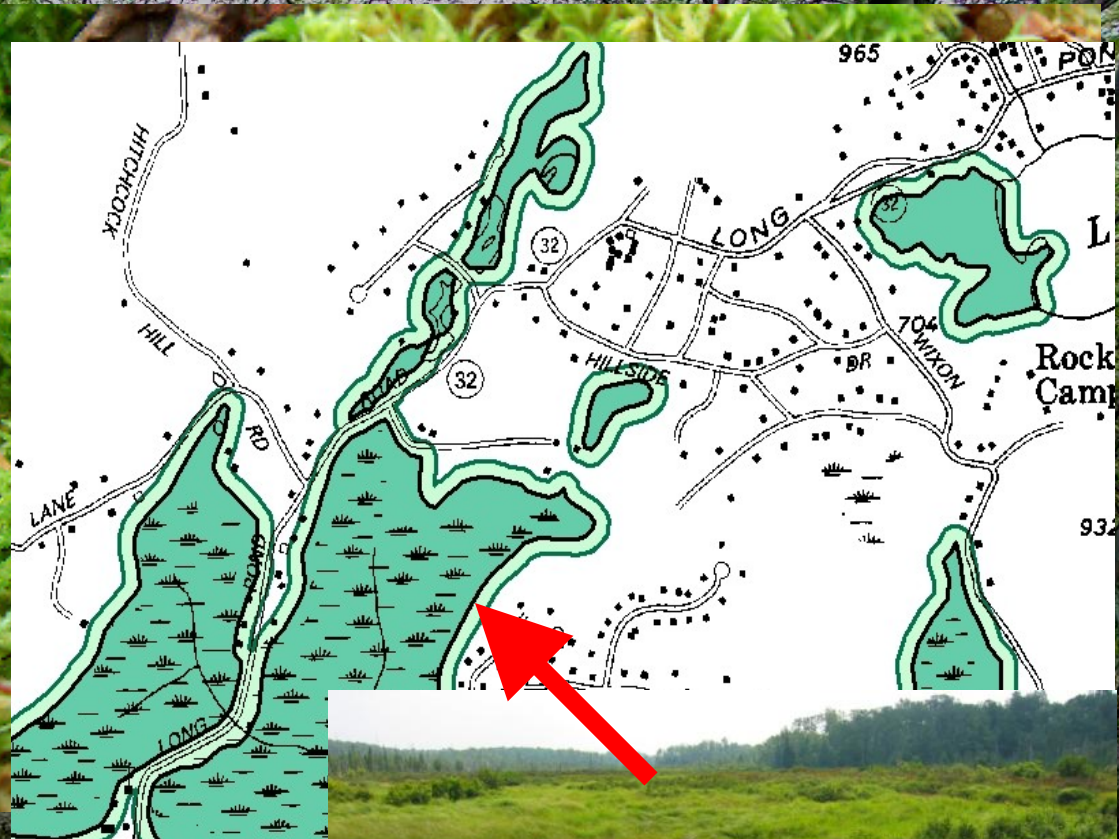


Freshwater Article 24

- Mapped V
Acres

- Un

- 100



Tidal Wetlands - Article 25



Vegetated ~ 28,000+ acres

Unvegetated ~ 275,000+ acres

Up To 300 Adjacent Area

Protection of Waters

Article 15

- **Excavation and Fill in Navigable Waters**
- **Disturbance to Protected Streams**

Water Quality Certification

Section 401 of CWA



Who Administers the Wetlands Program at DEC?



Wetland Conservation at DEC

Division
of
Environmental Permits

Division of Fish and
Wildlife

Office
of
General Counsel

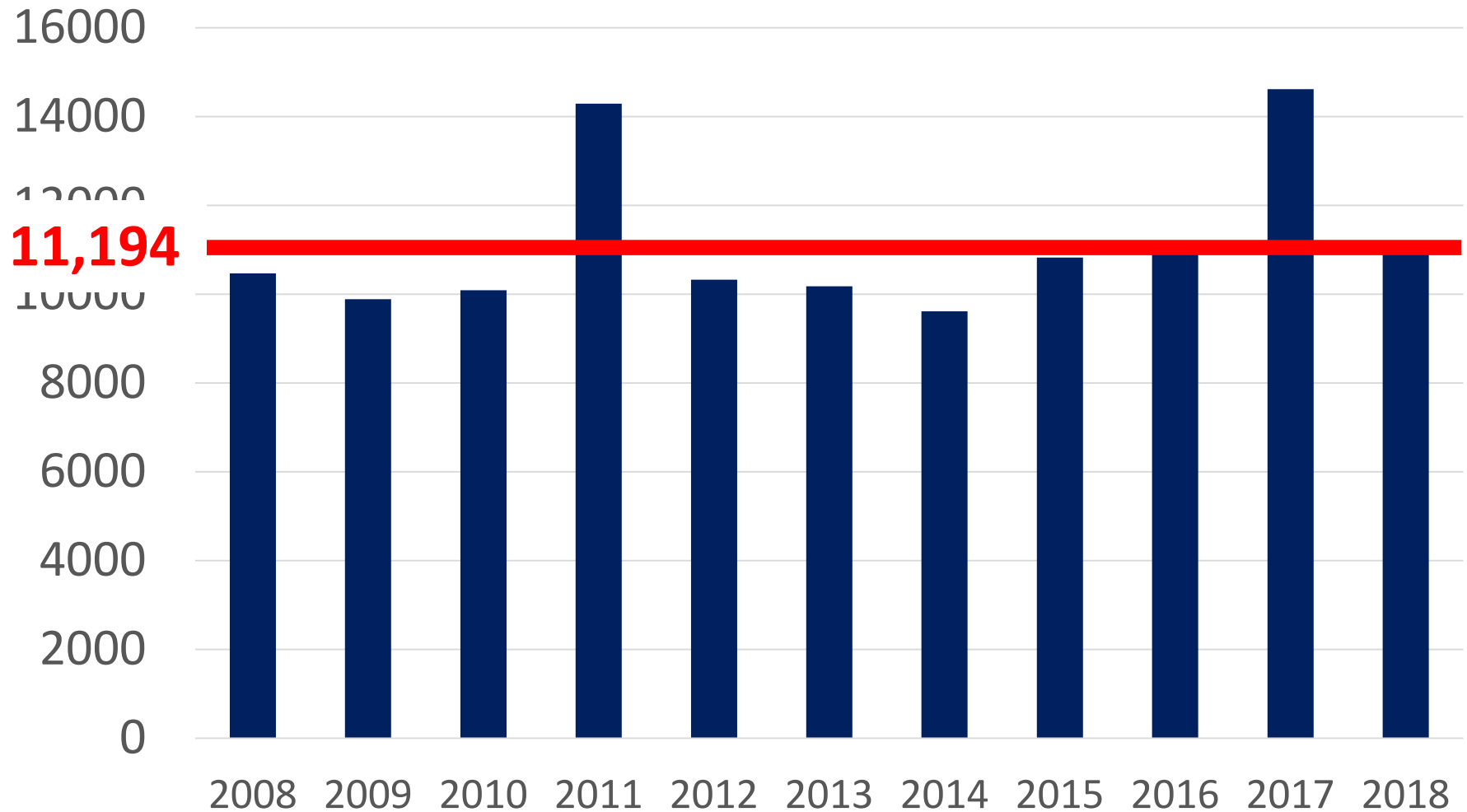
Division of Marine
Resources

Division
of
Water

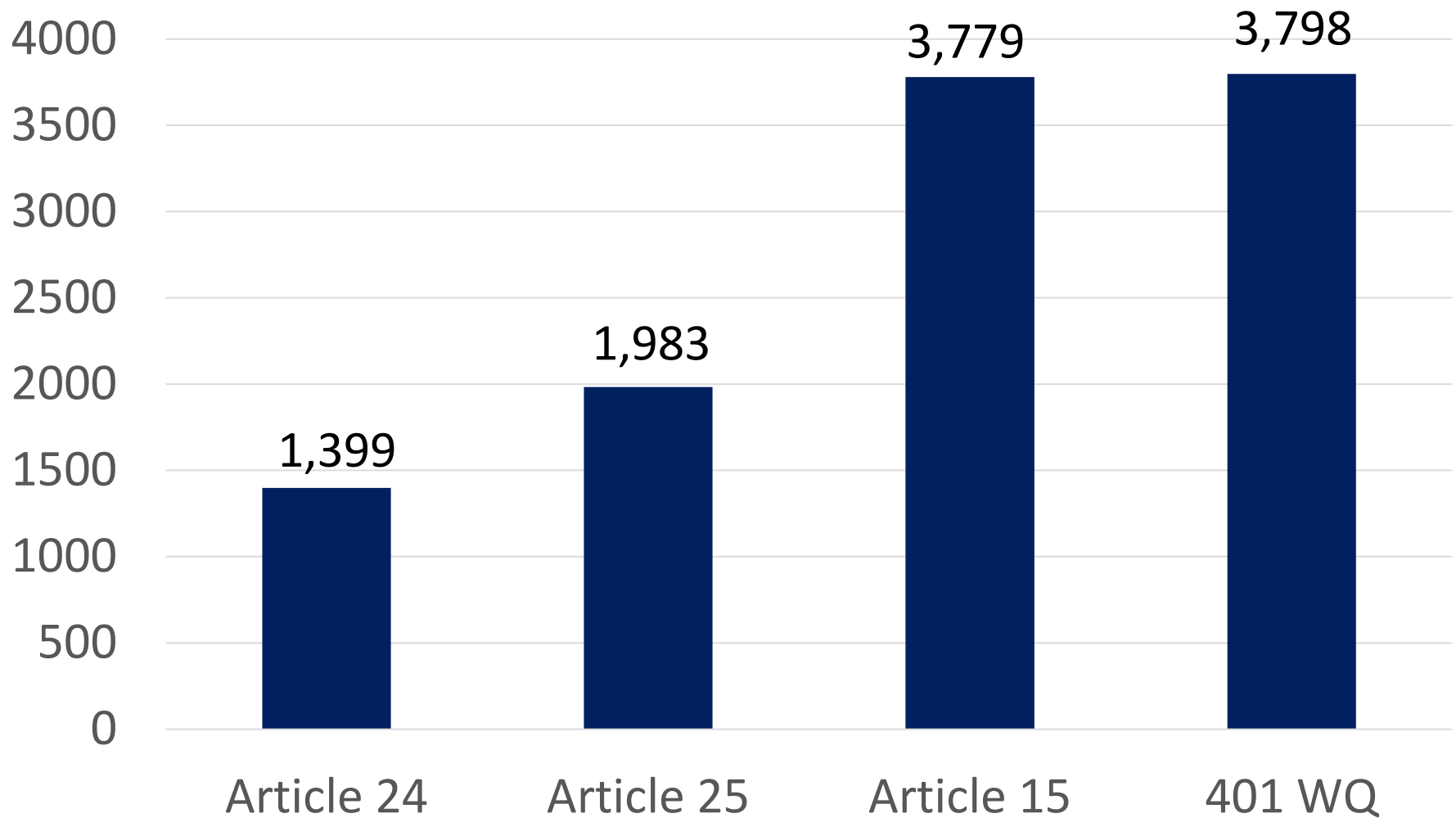
Bureaucratic Feats of Strength



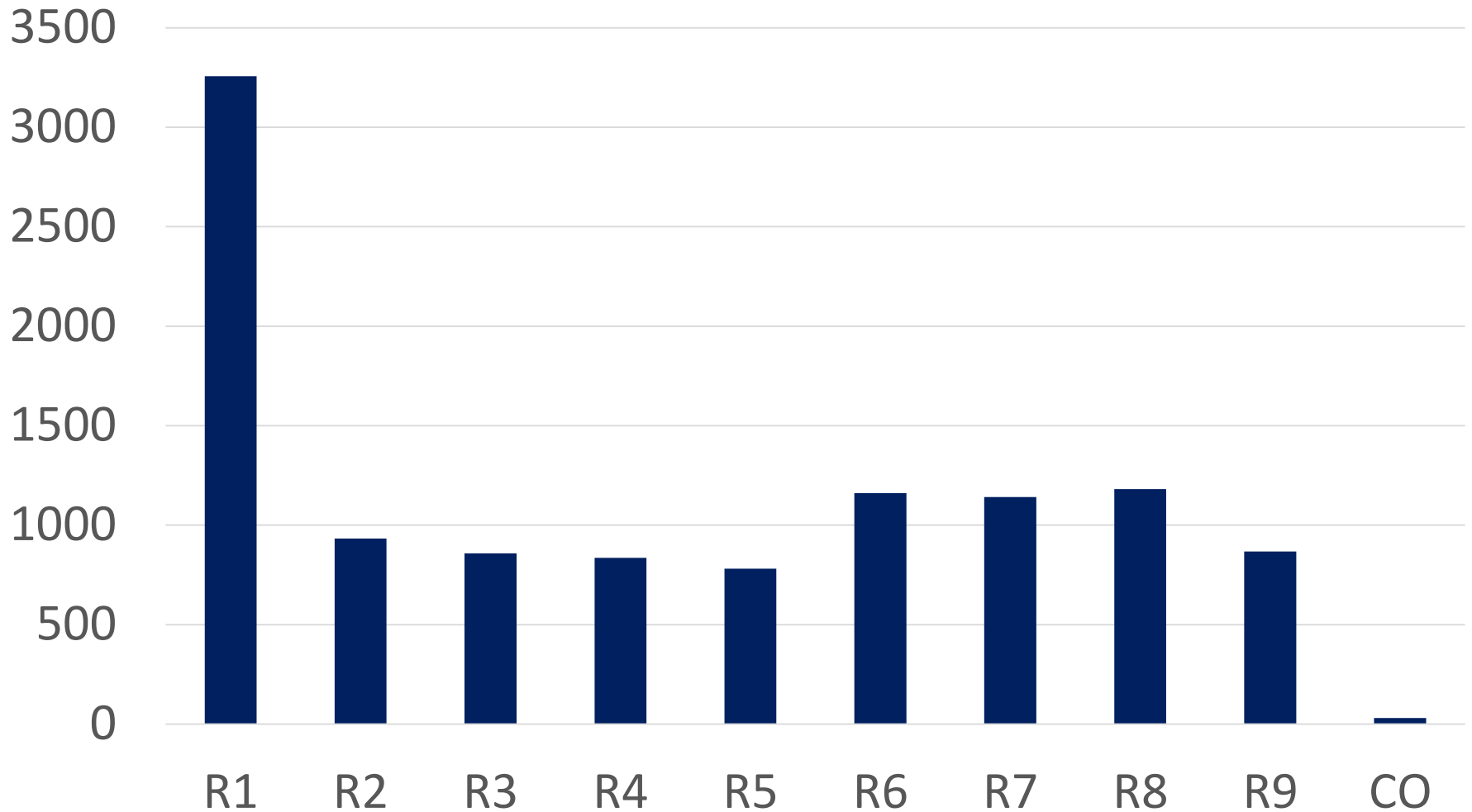
Permit Applications



Permit Applications FY2018



Permit Applications FY2018



Regulatory Fun – Freshwater Wetlands





New York State
Freshwater Wetlands Map

Rensselaer
County



Map 16 of 22

This map was promulgated, pursuant to Article 24 of the Environmental Conservation Law (The Freshwater Wetlands Act) on March 26, 1986 by the Commissioner of New York State Department of Environmental Conservation.

LEGEND:

Approximate wetland boundary

Upland inclusion

AA-00 Wetland identification code

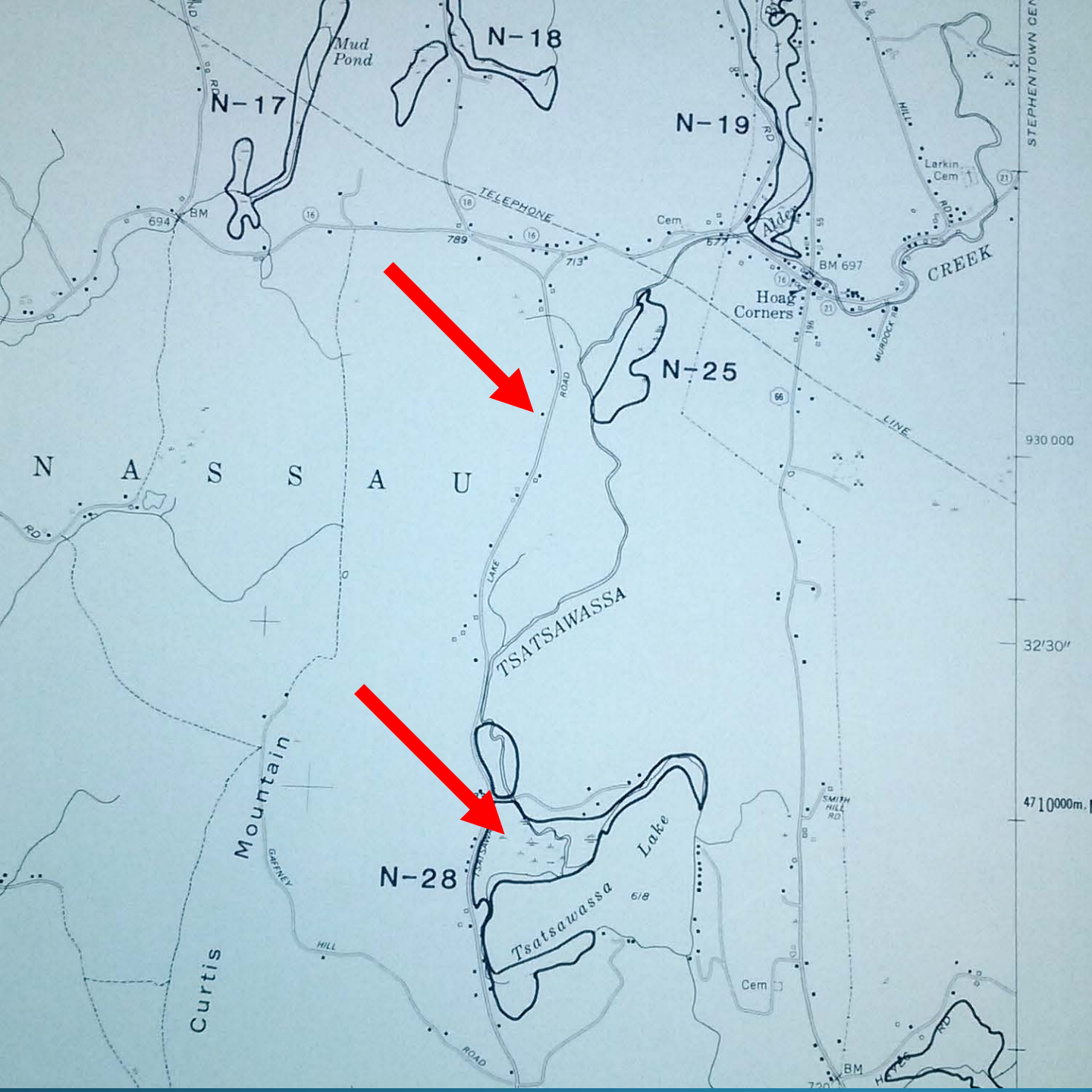
NOTES:

This map indicates the approximate location of the actual boundaries of wetlands regulated according to the Freshwater Wetlands Act.

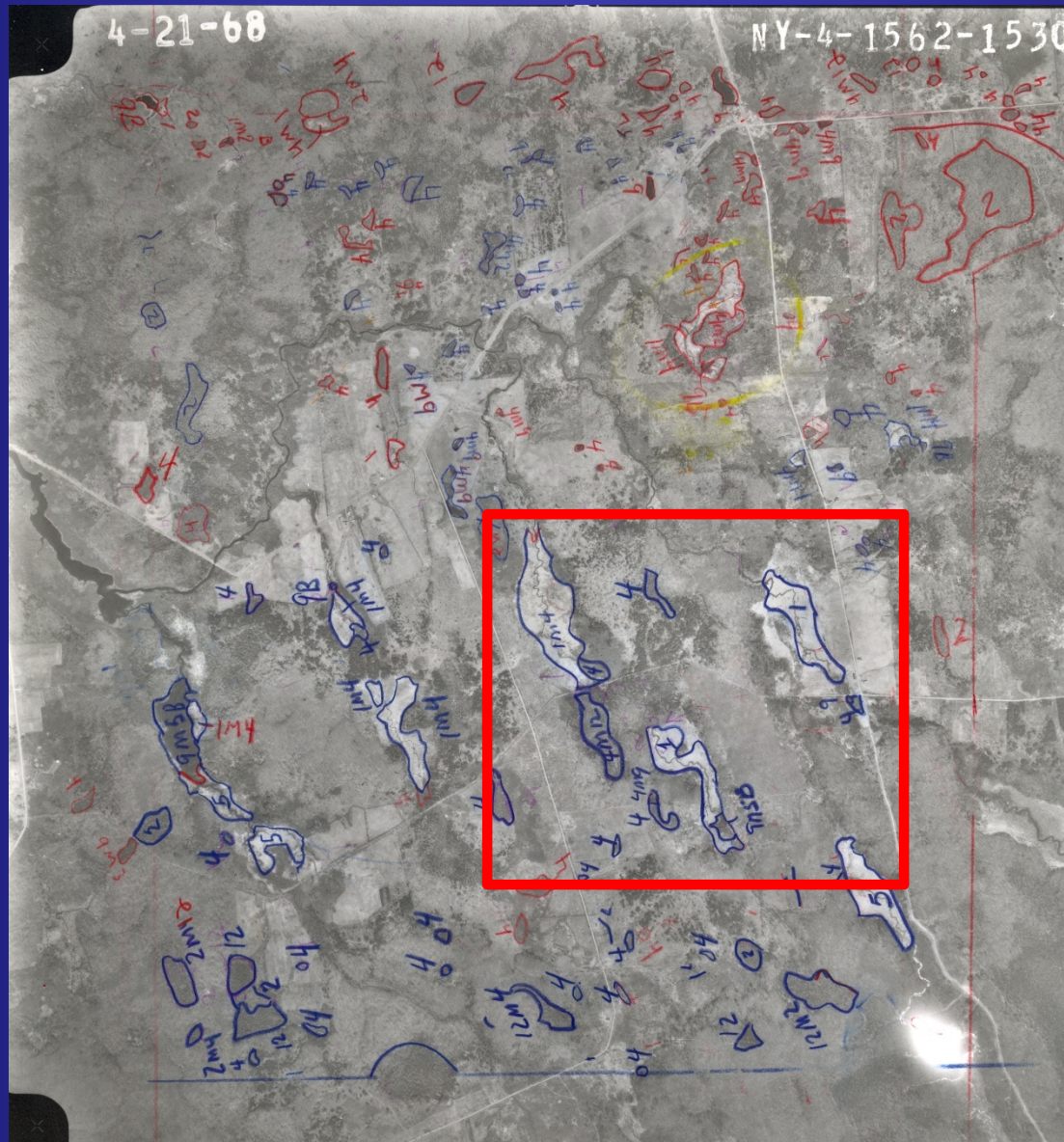
Map information other than the wetland boundaries was prepared by the New York State Department of Transportation and the United States Geological Survey. The locational information provided on the map is for reference only. Marsh symbols do not necessarily indicate the location of a regulated wetland.

Adjacent areas of the regulated wetlands are those areas within 100 feet of the boundary of the wetland. These areas are subject to regulation pursuant to the Freshwater Wetlands Act but are not delineated on this map. An adjacent area may be extended by special order of the Commissioner of the New York State Department of Environmental Conservation or the local regulatory authority.

Copies of Freshwater Wetlands Maps are available from the regional offices of the Department of Environmental Conservation. Maps are available for inspection at these

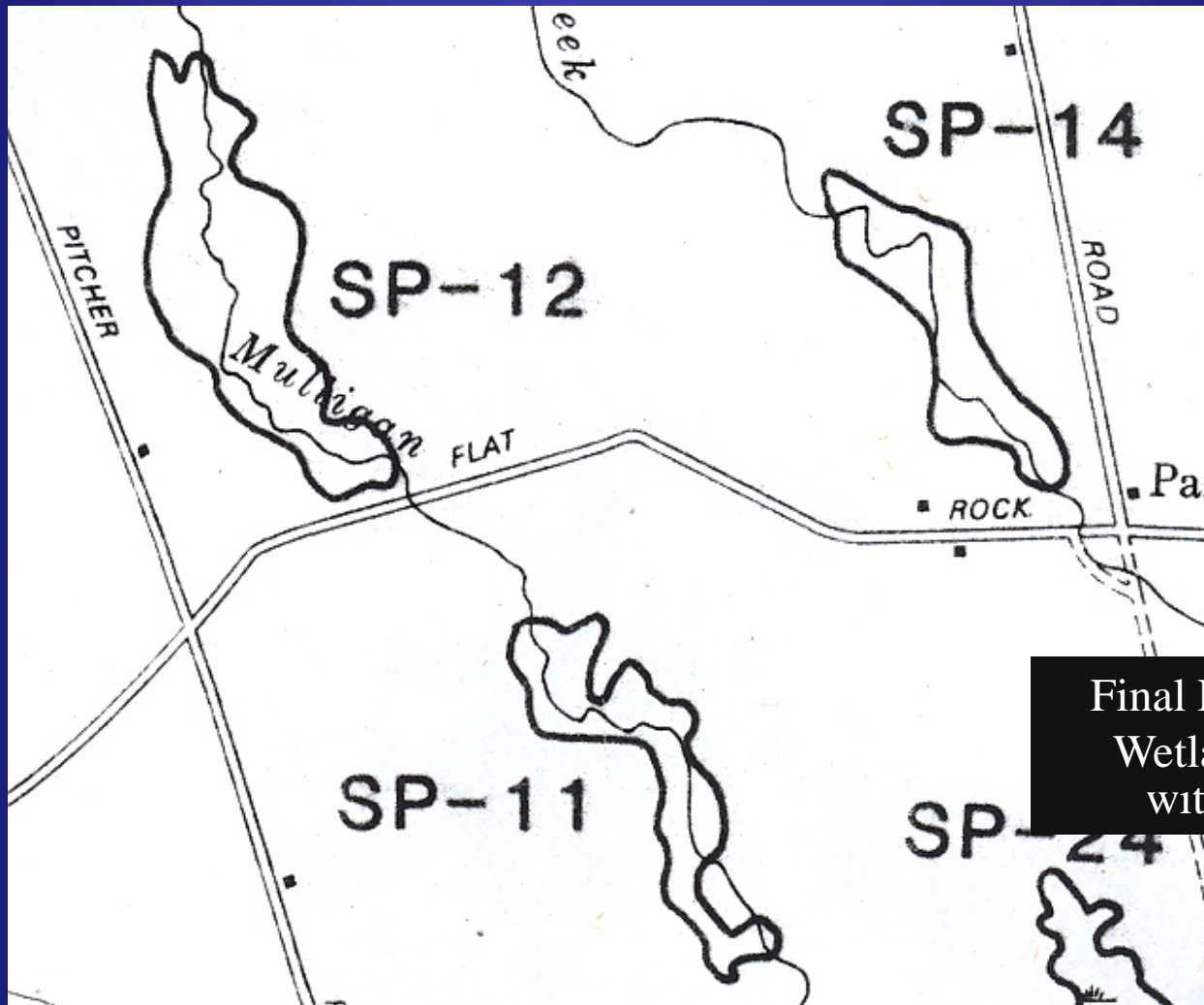


1960-70's Air Photos



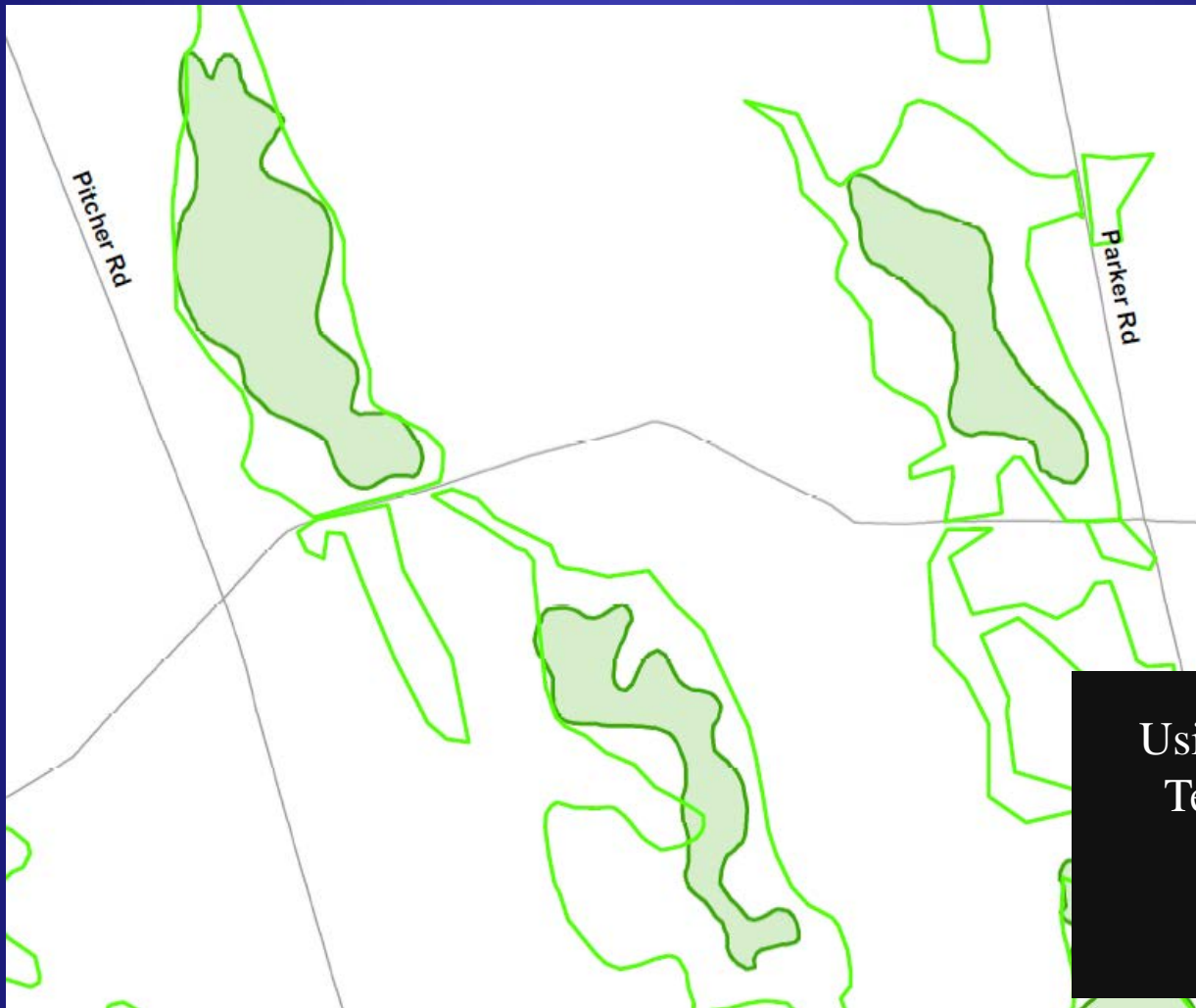
Example:
Lewis County

Original Map Development



Final Freshwater
Wetlands Map
with Notes

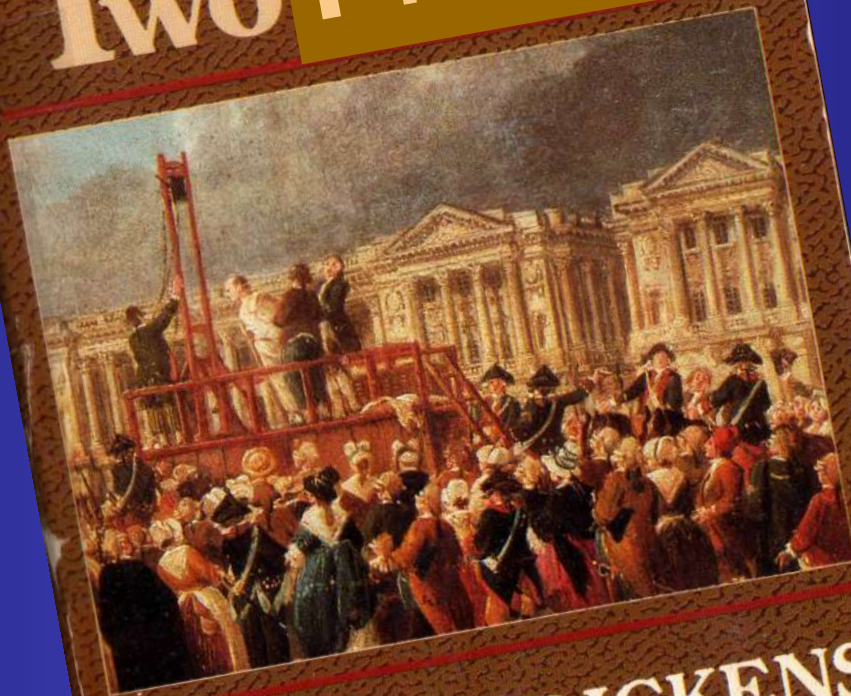
Today's Technology



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A Tale of Two Problems



CHARLES DICKENS

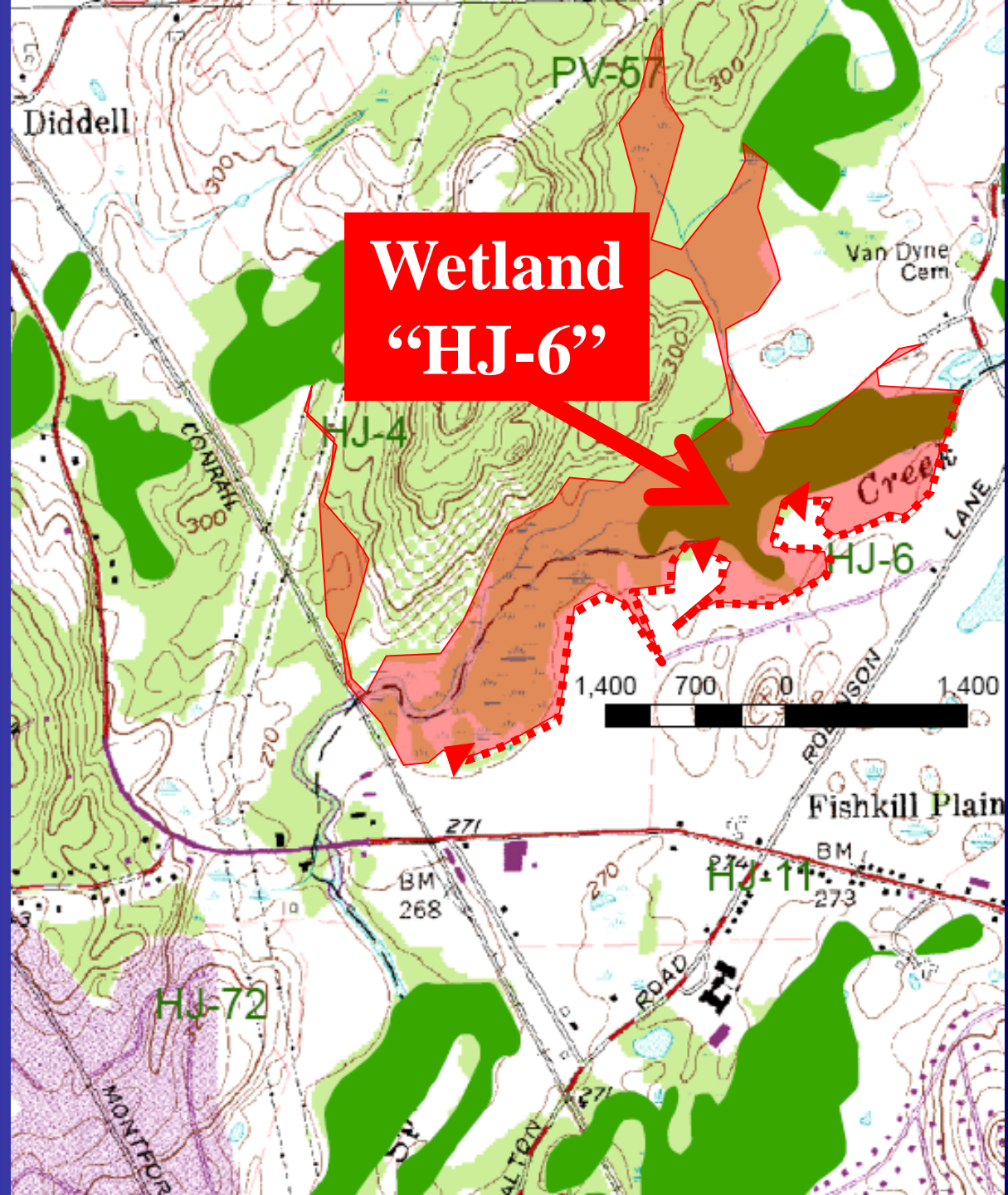
Completely Unmapped

> 50 acres
Rensselaer
County



Inaccurately Mapped

Dutchess County



1,000,000

1,251,000 existing

and provide the guidance needed to adapt to a changing climate.

Proposal: Launch Resilient NY to Dramatically Enhance Community Resiliency in the F

...and the Department of Environmental Conservation will update and improve its maps of wetlands...

summer, there is no denying that we must prepare for extreme weather that is increasing in frequency due to our changing climate. In each of these instances, Governor Cuomo has taken bold, aggressive action, pioneering landmark initiatives like the NY Rising program, to ensure that communities affected by

as advertised

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Remapping FWW in New York

- Includes certified mail, newspaper notice, and hearings

Quantity limited; no rain checks.



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Prices Valid
3/9-3/13

2019 Department Interest

Governor's Article VII Bill

Reduce Cost of Map Amendments

FY 2020 NEW YORK STATE EXECUTIVE BUDGET

**TRANSPORTATION
ECONOMIC DEVELOPMENT AND
ENVIRONMENTAL CONSERVATION
ARTICLE VII LEGISLATION**

MEMORANDUM IN SUPPORT

require

Policy Implications:

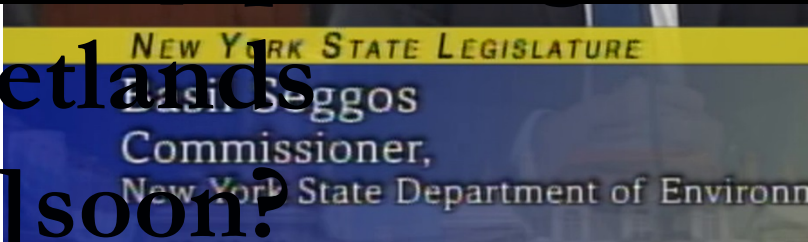
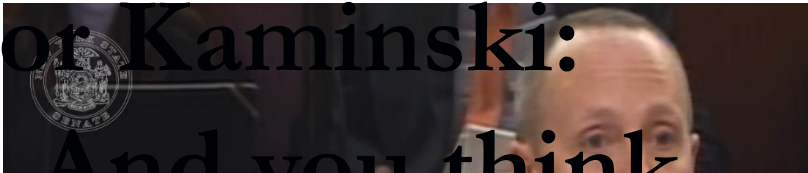
Stakeholder Interest

Legislator Interest

Senator Kaminski:
 Okay. And you think

Commissioner Seggos: I believe
 so - in 2019.

the wetlands
 maps] soon?



Wait a Minute...

S. 1508--C

13

A. 2008--C

1 conservation law, all moneys required to be deposited pursuant to
 2 sections 27-2805 and 27-2807 of the environmental conservation law, and
 3 all other moneys credited or transferred thereto from any other fund or
 4 source pursuant to law. All such revenue shall be initially deposited
 5 into the environmental protection fund, for application as provided in
 6 subdivision five of this section.

7 § 5. This act shall take effect March 1, 2020.

PART I

8
9 Intentionally Omitted

PART J

10
11 Intentionally Omitted

PART K

12
13 Intentionally Omitted

PART L

14
15 Section 1. The banking law is amended by adding a new article 14-A to
 16 read as follows:

ARTICLE 14-A

STUDENT LOAN SERVICERS

Section 710. Definitions.

711. Licensing.

712. Application for a student loan servicer license; fees.

713. Application process to receive license to engage in the

business of student loan servicing



Patience, you must have



Regulatory Fun - Pipelines



CONSTITUTION PIPELINE



Appeals to Federal Courts

April 2016 – DEC Denies 401 WQ Certification

May 2016 – Constitution Appeals to US Court of Appeals for the Second Circuit

August 2017 – Second Circuit Denies Appeal

September 2017 – Constitution Requests Rehearing from Full Panel

October 2017 – Second Circuit Denies Rehearing Request

January 2018 – Constitution Appeals to US Supreme Court

April 2018 – US Supreme Court Denies Hearing the Case

Appeals to FERC

October 2017 – Constitution Petitions FERC Regarding
Waiver of 401 WQ Certification

January 2018 – FERC Denies Petition

February 2018 – Constitution Requests Rehearing

July 2018 – FERC Denies Rehearing

Appeals to Federal Courts – Part 2

September 2018 – Constitution Appeals FERC Denial to the US Court of Appeals for the DC Circuit

February 2019 – FERC requests DC Circuit to remand case back to FERC to review in light of Hoopa Valley Tribe V FERC Case (Decided 1/25/2019)

February 2019 – DC Circuit Remands Case Back to FERC

Appeals to FERC – Part 2

March 2019 – FERC “Notice Affording the Parties an Opportunity to File Pleadings”

April 2019 – Constitution and DEC Provide Legal Briefs and Affidavits

August 2019 – FERC D

September 2019 – NY

Legal Fun to Continue



OFFICE OF THE COMMISSIONER

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www.dec.ny.gov



OCT 21 2019

Via regulations.gov
Andrew Wheeler, A

“Compounding this sad attempt to block the implementation of Section 401 by all states simply because the Administration doesn’t like NYSDEC’s decisions, in this proposal the Administration attempts to fabricate a problem that does not exist as a means of justifying this unlawful effort.”

... attempt to block the implementation of Section 401 by all states simply because the Administration doesn't like NYSDEC's decisions, in this proposal the Administration attempts to fabricate a problem that does not exist as a means of justifying this unlawful effort.

Let me be clear – provided that a project will comply with applicable water quality standards, NYSDEC will issue the required Water Quality Certification (WQC) under Section 401. In fact, NYSDEC timely and efficiently issues thousands of WQCs each year. Coupled with the actions of other certifying authorities, NYSDEC's actions demonstrate that, despite what the Administration and EPA suggest, there is no epidemic of delay and denial in the implementation of Section 401.

Questions?



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