

Public Notice

Applicant: DPS Southwestern Corporation
Published: July 30, 2012
Expires: August 30, 2012

U.S. Army Corps
of Engineers
Buffalo District
CELRB-TD-R

Application No: 1996-9760068
Section: NY

All written comments should reference the above Application No. and be addressed to:
U.S. Army Corps of Engineers
Buffalo District U.S. Army Corps of Engineers
Regulatory Branch (Attn: Kathleen Buckler)
1776 Niagara Street
Buffalo, New York 14207-3199

THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE WORK DESCRIBED BELOW. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT A PERMIT WILL BE ISSUED AT THIS TIME.

**Application for Permit under Authority of
Section 404 of the Clean Water Act (33 U.S.C. 1344).**

APPLICANT: DPS Southwestern Corporation; 5684 Glen Brook Court, Clarence Center, New York 14032

WATERWAY & LOCATION: Federal jurisdiction wetlands and tributaries adjacent to Smoke Creek, near the northeast corner of Freeman Road and Jewett-Holmwood Road, in the Town of Orchard Park, Erie County, New York.

LATITUDE & LONGITUDE: Latitude North: 42.75382
Longitude West: -78.6986

EXISTING CONDITIONS: The site consists of Part 1 and 3A of the existing Birdsong Subdivision, which is a low-density residential subdivision located on a 540-acre parcel. The existing subdivision is bordered on the north, east, and west by about 300 acres of undeveloped lands. The remaining undeveloped lands are comprised of forested uplands, early-to-mid successional upland fields, and forested, shrub/scrub, and emergent marsh wetlands, perennial streams, and seasonal tributaries. Approximately 60.96 acres of the 300-acre undeveloped area is comprised of Federal wetlands and tributaries. On-site waters were originally delineated and verified in 1997. A new wetland delineation was conducted in 2009, and the new wetland boundaries were confirmed on 18 November 2010. The on-site wetlands had expanded between 1997 and 2010.

In May of 1997, USACE affirmed Nationwide Permit (NWP) 26 for the Birdsong Subdivision, thereby permitting 5.0 acres of permanent wetland impact for the full build out of the subdivision. Approximately 2.36 acres of the total 5.0 acres of wetland fill had been completed before the NWP expired in 2002. As mitigation for 5.0 acres of potential impacts, the applicant constructed 8.36 acres of emergent/scrub shrub wetland, restored 0.07 acres of existing wetland, and preserved 52.40 acres of existing wetland and upland forest. The Corps accepted the mitigation in June 2000; however, the mitigation wetlands have since converted to open water ponds. Given that the mitigation consists of open water ponds, and the impacted wetlands are shrub/scrub and forested wetlands, additional mitigation will be required.

PROPOSED WORK: The current proposal is to fill the remainder of the wetlands that were permitted for impact in 1997. The proposal is to construct Part 3B of the Birdsong Subdivision, which is a 62-lot phase of the existing subdivision. Phase 3B proposes to impact 1.86 acres of federal jurisdictional waters. The proposal also includes the extension of Birdsong Parkway, which is the main thoroughfare for the subdivision. The cumulative wetland impacts amount to 4.22 acres.

An additional housing project with independent utility (Part 8: The Birdsong Village Homes), is located in the southwestern corner of the Birdsong Subdivision. Due to the independent utility, this work is a separate and complete project, and is being evaluated as a Nationwide Permit.

PROJECT PURPOSE

Basic: To expand an existing subdivision

Overall: To provide additional housing units, and to provide a parkway through the site.

Water Dependency Determination: The basic purpose of the proposed project is to expand a housing subdivision, and the activity is associated with a discharge which is proposed for a special aquatic site. Expanding a subdivision does not require access or proximity to or siting within the special aquatic site in question to fulfill its basic purpose; therefore, the project is not water dependent.

Avoidance and Minimization Information: The applicant has stated that they have considered the following alternatives to the proposed Birdsong Parkway and rejected them for the following reasons:

Alternative 1: Maintain the alignment that was permitted under the 1997 NWP issuance, which has since expired. This alternative was rejected because it resulted in additional wetland impacts.

Alternative 2: Re-align Birdsong Parkway so that it meets up with an existing gravel access road. This alternative was rejected because it would be more costly to construct, would result in the loss of four lots, and five lots would have double-road frontages, which are typically not allowed in the Town of Orchard Park.

Proposed Mitigation: The applicant has constructed 8.43 acres of wetland mitigation for what was anticipated to be impacts associated with the full build-out of the site. The mitigation site currently consists of open water ponds, which represents out-of-kind mitigation; therefore, the applicant will provide additional mitigation. The proposal is to construct one (1) acre of shrub/scrub wetland located between Wetland 12 and the proposed stormwater pond.

Location and details of the above described work are shown on the attached maps and drawings.

Comments or questions pertaining to the work described in this notice should be reference the Application Number and be directed to the attention of Kathleen Buckler, who can be contacted at the

above address, by calling (716) 879-4303, or by e-mail at: kathleen.a.buckler@usace.army.mil. A lack of response will be interpreted as meaning that there is no objection to the work as proposed.

The following authorization is required for this project:

Water Quality Certification (or waiver thereof) from the New York State Department of Environmental Conservation.

The project is located within an archaeologically sensitive area identified by the New York State Office of Parks, Recreation and Historic Preservation (NYSOPRHP). The Corps is consulting with the NYSOPRHP and hereby requests the NYSOPRHP to concur with this determination.

Available evidence indicates that the proposed work will not affect a species proposed or designated by the U.S. Department of the Interior as threatened or endangered, nor will it affect the critical habitat of any such species. There are no species listed as protected pursuant to the Endangered Species Act located within Erie County, New York, and therefore the Corps is not consulting beyond this Public Notice with the U.S. Fish and Wildlife Service.

This notice is promulgated in accordance with Title 33, Code of Federal Regulations, parts 320-330. Any interested party desiring to comment on the work described herein may do so by submitting their comments, in writing, so that they are received no later than 4:30 pm on the expiration date of this notice.

Comments submitted in response to this notice will be fully considered during the public interest review for this permit application. All written comments will be made a part of the administrative record which is available to the public under the Freedom of Information Act. The Administrative Record, or portions thereof may also be posted on a Corps of Engineers internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

Any individual may request a public hearing by submitting their written request, stating the specific reasons for holding a hearing, in the same manner and time period as other comments.

Public hearings for the purposes of the Corps permit program will be held when the District Commander determines he can obtain additional information, not available in written comments, that will aid him in the decision making process for this application. A Corps hearing is not a source of information for the general public, nor a forum for the resolution of issues or conflicting points of view (witnesses are not sworn and cross examination is prohibited). Hearings will not be held to obtain information on issues unrelated to the work requiring a permit, such as property ownership, neighbor disputes, or the behavior or actions of the public or applicant on upland property not regulated by the Department of the Army. Information obtained from a public hearing is given no greater weight than that obtained from written comments. Therefore, you should not fail to make timely written comments because a hearing might be held.

The decision to approve or deny this permit request will be based on an evaluation of the probable impact, including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among these are conservation, economics, aesthetics, general

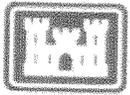
environmental concerns, wetlands, historic properties, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food and fiber production, mineral needs, considerations of property ownership, and in general, the needs and welfare of the people.

The Corps of Engineers is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed activity. Any comments received will be considered by the Corps of Engineers to determine whether to issue, modify, condition or deny a permit for this proposal. To make this decision, comments are used to assess impacts on endangered species, historic properties, water quality, general environmental effects, and the other public interest factors listed above. Comments are used in the preparation of an Environmental Assessment and/or an Environmental Impact Statement pursuant to the National Environmental Policy Act. Comments are also used to determine the need for a public hearing and to determine the overall public interest of the proposed activity.

SIGNED

Diane C. Kozlowski
Chief, Regulatory Branch

NOTICE TO POSTMASTER: It is requested that this notice be posted continuously and conspicuously for 30 days from the date of issuance.



W26J91L

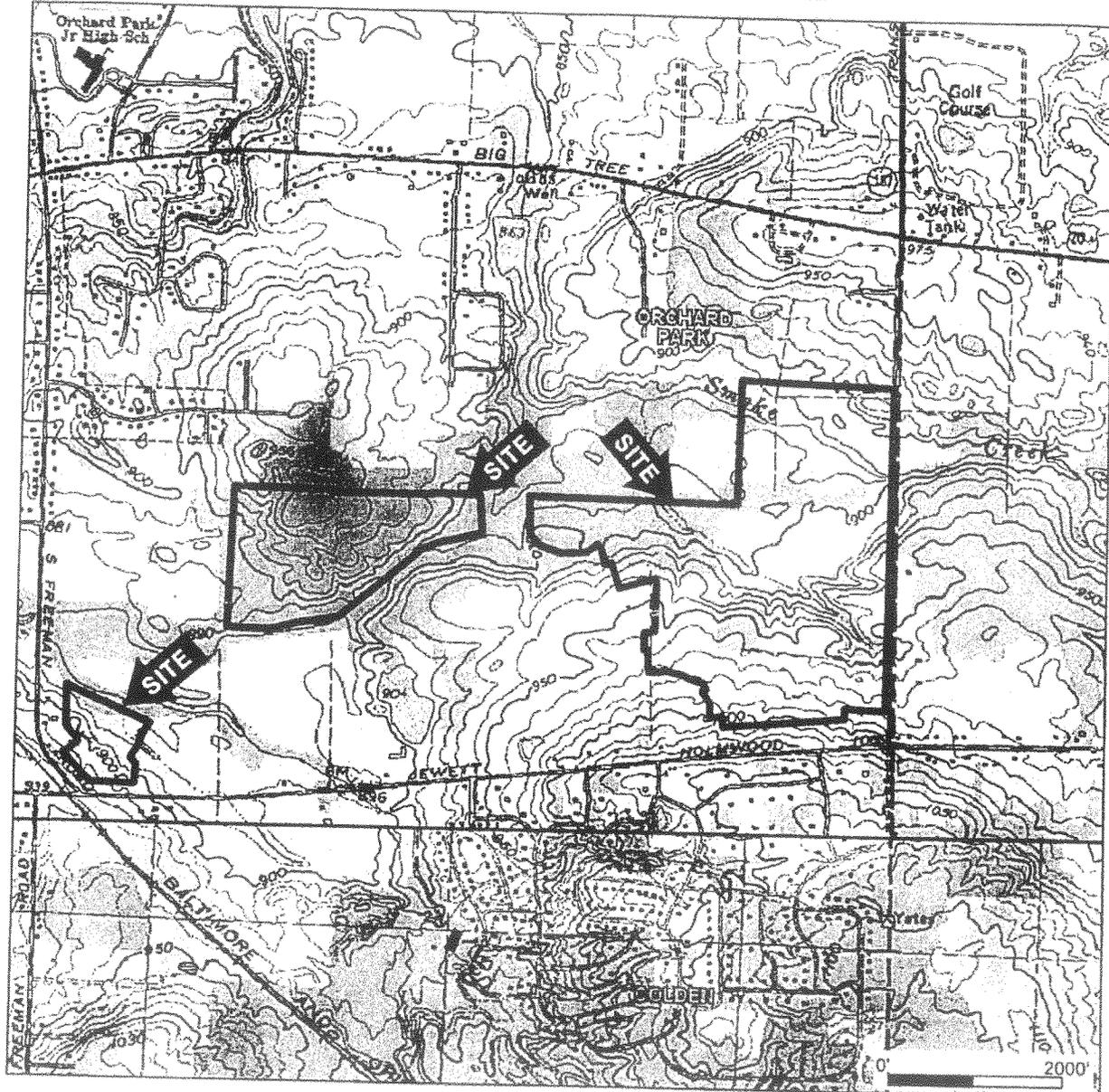


Figure 1: USGS 7.5 Minute Topographical Map
Orchard Park Quadrangle/ Delorme 2002

Birdsong Subdivision
Town of Orchard Park, Erie County, New York





LEGEND

	B LOT GRADING LINE
	EXISTING CONTOUR
	PROPOSED CONTOUR
	PROPOSED CONTOUR AT 930.0

NOTE:
 ALL LOT GRADING AND LOT AREA DATA SHALL BE OBTAINED FROM THE PROPOSED GRADING PLAN AND SHALL BE SUBJECT TO THE FINAL GRADING PLAN AND SHALL BE SUBJECT TO THE FINAL GRADING PLAN AND SHALL BE SUBJECT TO THE FINAL GRADING PLAN.



NOTE:
 THE PROPOSED GRADING PLAN IS BASED ON THE DATA PROVIDED BY THE CLIENT AND THE ENGINEER HAS CONDUCTED VISUAL INSPECTIONS OF THE SITE AND HAS FOUND THE DATA TO BE REASONABLY ACCURATE. THE ENGINEER HAS CONDUCTED VISUAL INSPECTIONS OF THE SITE AND HAS FOUND THE DATA TO BE REASONABLY ACCURATE. THE ENGINEER HAS CONDUCTED VISUAL INSPECTIONS OF THE SITE AND HAS FOUND THE DATA TO BE REASONABLY ACCURATE.

Town of Orchard Park
 1000 Orchard Park Blvd.
 Orchard Park, NY 11663

Birdsong Subdivision
 PLAN: GRADING
 DATE: 11/11/08

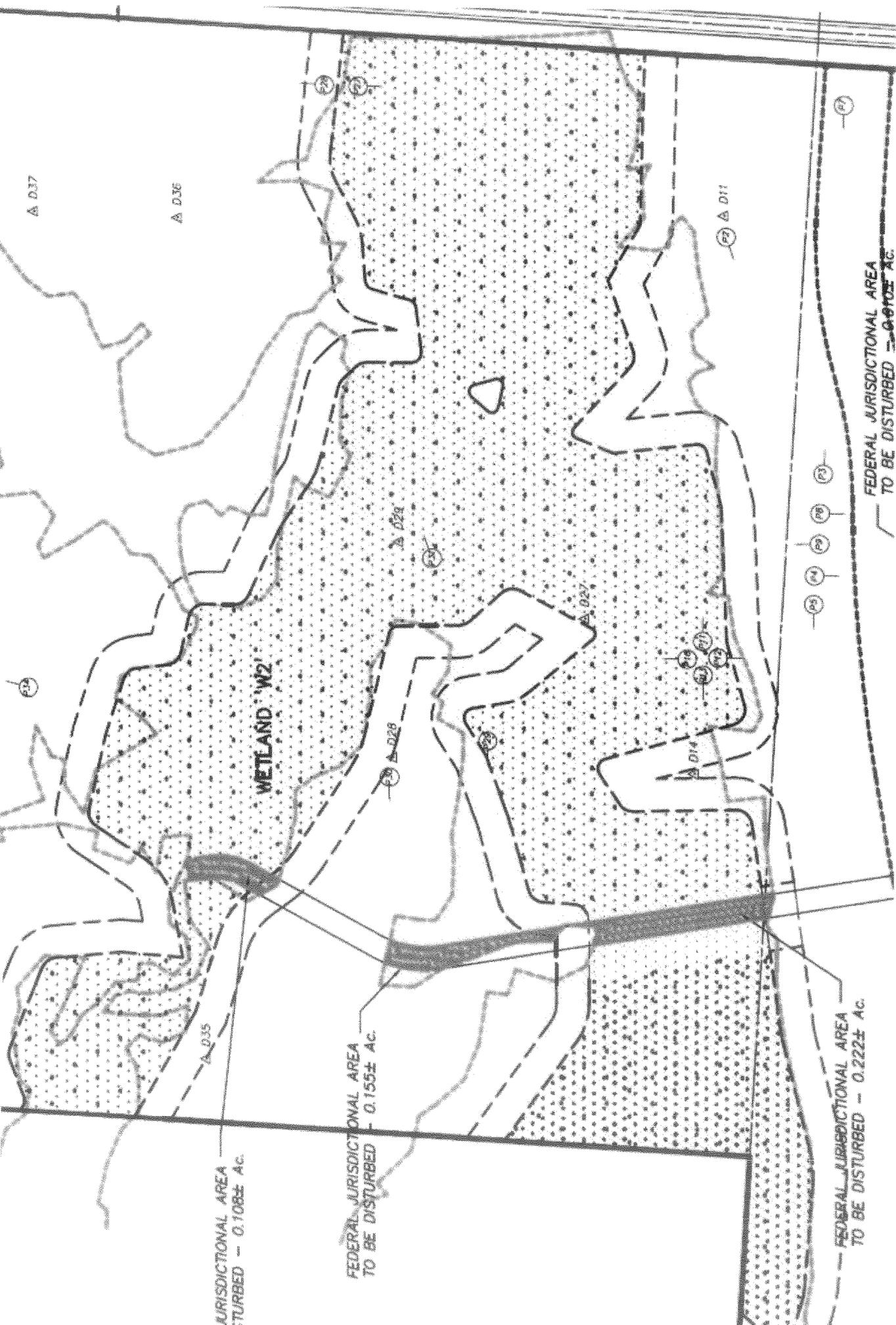
GENERAL ENGINEERING, INC.
 1000 Orchard Park Blvd.
 Orchard Park, NY 11663
 516-466-1111

DATE: 11/11/08
SCALE: 1" = 40' (VERTICAL)
SHEET NO.: 59 OF 67

DPS Southwestern Corporation
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 Erie County, New York
 Quad: Orchard Park
 Sheet 4 of 12



DPS Southwestern Corporation
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Erie County, New York
Quad: Orchard Park
Sheet 8 of 12

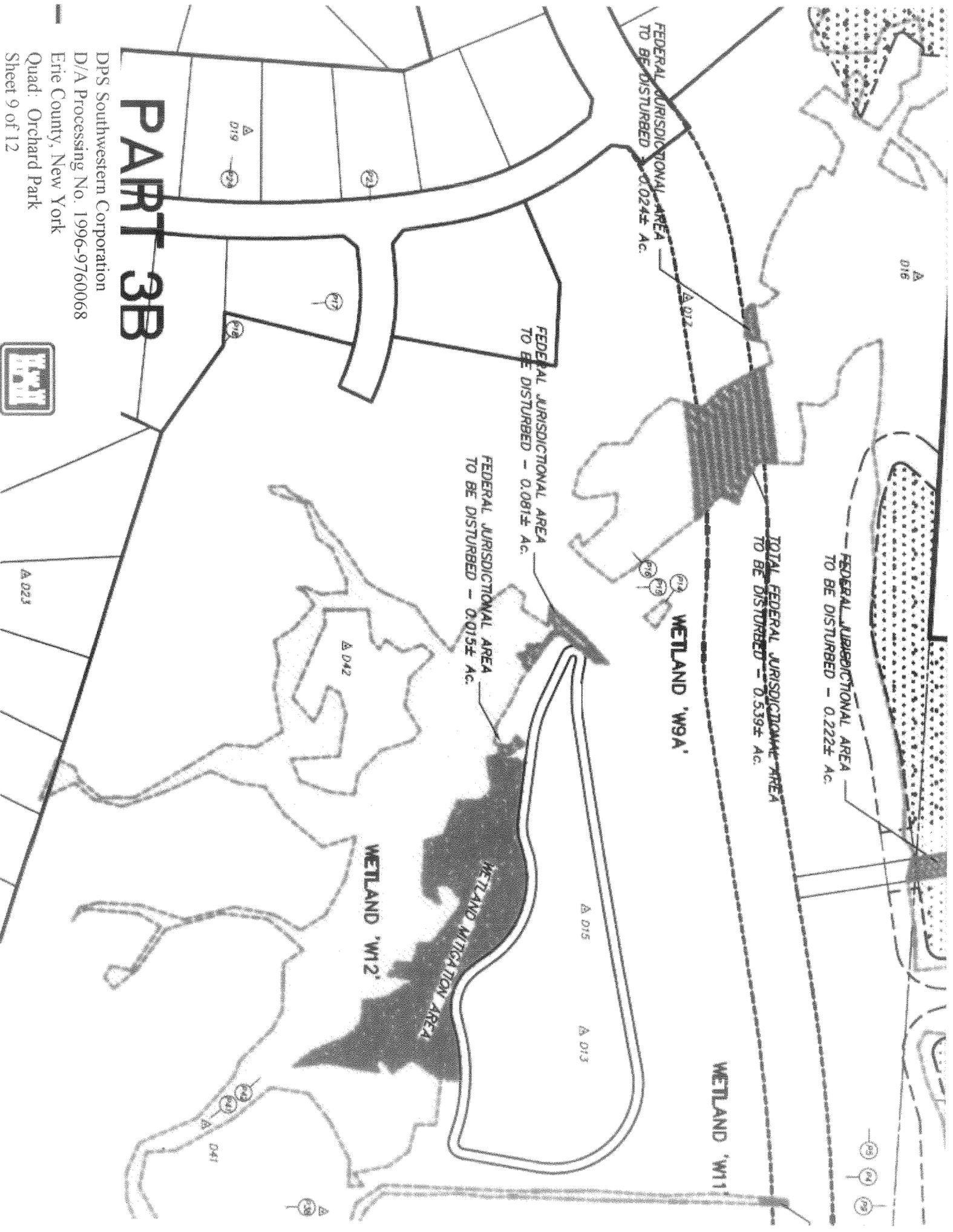


JURISDICTIONAL AREA
TO BE DISTURBED - 0.106± Ac.

FEDERAL JURISDICTIONAL AREA
TO BE DISTURBED - 0.155± Ac.

FEDERAL JURISDICTIONAL AREA
TO BE DISTURBED - 0.222± Ac.

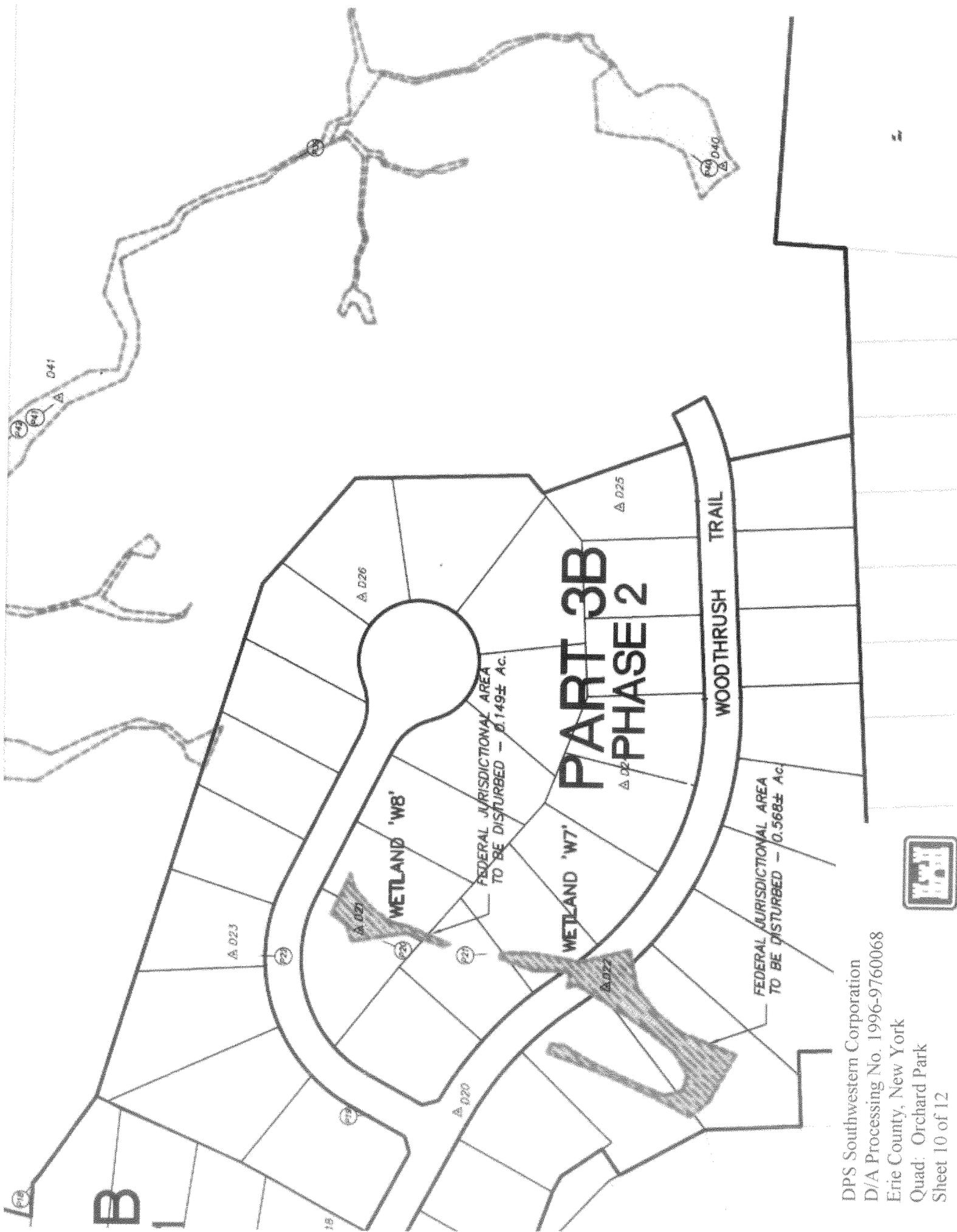
FEDERAL JURISDICTIONAL AREA
TO BE DISTURBED - 0.010± Ac.



PART 3B

DPS Southwestern Corporation
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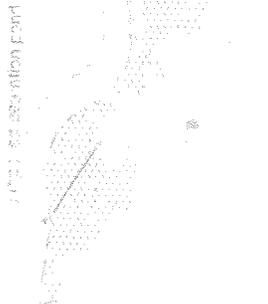




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EDJ PROJECT CODE: W2&J1a Base Map Provided by:  GREENMAN-PEDERSEN, INC. CONSULTING ENGINEERS <small>1000 WEST 10TH AVENUE, SUITE 1000, DENVER, CO 80202</small>		Birdsong Subdivision; Parts 3B & 8 Attachment E1: Cross-sectional Drawing TOWN OF ORCHARD PARK ERIE COUNTY, NEW YORK	
Map Date: 02-07-2012, JMC Revised: 06-14-2012, JMC		 EARTH DIMENSIONS, INC. <small>Soil and Hydrogeologic Investigations • Wetland Delineations 1001 Johnson Road • Elmira, NY 14898 (716) 855-7777 • Fax (716) 855-8316</small>	
Scale: 		File Name: E1 - Cross-section Drawing	



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