



# Public Notice

---

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

Sponsor: T.J. Marquart  
and Sons, LLC. and  
BME Associates

Published: February 21, 2019  
Expires: March 25, 2019

---

Application No: LRB-2017-00346  
Section: New York

All written comments should reference the above Application No. and be addressed to:  
**U.S. Army Corps of Engineers, Buffalo District**  
**(Attn: Susan Baker, Regulatory Branch)**  
**1776 Niagara Street**  
**Buffalo, NY 14207**

---

**INTERESTED PARTIES ARE HEREBY NOTIFIED THAT A MITIGATION BANK PROSPECTUS HAS BEEN RECEIVED PURSUANT TO 33 CFR 332 AND 40 CFR 230. THE PURPOSE OF THIS PUBLIC NOTICE IS TO SOLICIT COMMENTS FROM THE PUBLIC REGARDING THE ESTABLISHMENT OF THE PROPOSED OATKA CREEK – GENESEE RIVER WATERSHED WETLAND MITIGATION BANK. THERE IS NOT AT PRESENT AN APPLICATION FOR WORK IN WATERS OF THE U.S. FOR THIS SITE HOWEVER, AUTHORIZATION UNDER SECTION 404 OF THE CLEAN WATER ACT MAY BE REQUIRED FOR CONSTRUCTION OF THE BANK. NO DECISION HAS BEEN MADE AS TO WHETHER OR NOT THIS MITIGATION BANK WILL BE APPROVED.**

BANK SPONSORS: T.J. Marquart and Sons, LLC. (6241 Route 41, Gainesville, NY 14066) and BME Associates (10 Lift Bridge Lane East, Fairport, NY 14450)

LOCATION: The proposed Oatka Creek – Genesee River Watershed Wetland Mitigation Bank (Bank) is located east of Route 19A and west of Saltvale Road, Town of Middlebury, Wyoming County, New York.

BACKGROUND: Under Section 404 of the Clean Water Act (CWA), applicants for Department of the Army permits to discharge dredged or fill material into waters of the U.S., including wetlands, are often required to mitigate for permitted losses of aquatic resources via establishing, restoring, enhancing, or in exceptional circumstances, preserving aquatic resources. Authorized mitigation banks provide the U.S. Army Corps of Engineers (Corps) and the regulated public with additional options for compensatory mitigation of aquatic resource losses. The establishment and use of a mitigation bank must be in accordance with a mitigation banking instrument signed by the Interagency Review Team (IRT). The New York IRT is comprised of the Corps Buffalo and New York Districts, the U.S. Environmental Protection Agency, the U.S.

Fish and Wildlife Service, the New York State Department of Environmental Conservation, and the U.S. Natural Resources Conservation Service.

DESCRIPTION OF THE PROPOSED ACTIVITY: T.J. Marquart and Sons, LLC and BME Associates (Sponsors) propose to establish a wetland mitigation bank to be known as the Oatka Creek – Genesee River Watershed Wetland Mitigation Bank (Bank) in order to provide compensatory wetland mitigation for wetland impacts associated with the discharge of dredged or fill material into waters of the U.S. authorized under Section 404 of the CWA.

The overall goal of the proposed Bank would be to provide convenient mitigation opportunities, while fully compensating for wetland losses in a manner that contributes to the long-term ecological functioning of the watershed, including the replacement of essential aquatic functions of emergent, scrub-shrub and forested wetland communities which are anticipated to be lost through authorized activities within the Lower Genesee River Watershed.

The site consists primarily of flat, active agricultural field. As confirmed by the Corps in November 2017, existing on-site aquatic resources include six emergent wetlands totaling 13.69 acres, three ephemeral tributaries totaling 2,175 linear feet, and two perennial tributaries (Oatka Creek and Dead Creek) totaling 11,670 linear feet.

Proposed wetland vegetation communities would include forested, scrub-shrub, and emergent. Much of the site would require minor excavation ranging from one to three feet in order to allow groundwater and surface water to accumulate in the created low areas. Other hydrology inputs would include flooding by Oatka Creek and Dead Creek. One pipe would be installed in the east to direct excess flows from an existing tributary (Dead Creek) into the Bank area. Small berms would be constructed to separate agriculture from the Bank. A buffer area surrounding the Bank ranging from 70 to 120 feet in width would be maintained.

Wetland credit generation is proposed as follows:

| <b>Mitigation Type</b>   | <b>Resource Type</b> | <b>Acreage</b> | <b>Mitigation Ratio</b> | <b>Credits</b> |
|--------------------------|----------------------|----------------|-------------------------|----------------|
| Wetland Establishment    | Forested             | 4.64           | Up to 1:1               | 4.64           |
| Wetland Establishment    | Scrub-Shrub          | 2.39           | Up to 1:1               | 2.39           |
| Wetland Establishment    | Emergent             | 6.14           | Up to 1:1               | 6.14           |
| Wetland Re-establishment |                      | 0.21           | Generally 1:1           | 0.21           |
| Buffer Restoration       |                      | 3.34           | Generally 1:4           | 0.84           |
| <b>Total</b>             |                      | <b>16.72</b>   |                         | <b>14.22</b>   |

PROPOSED SERVICE AREA: The proposed Bank service area for providing compensatory mitigation for wetland impacts associated with the discharge of dredged or fill material into waters of the U.S. would be the Lower Genesee River U.S. Geological Survey Hydrologic Unit Code (HUC) 04130003, in which the proposed Bank is physically located.

ADDITIONAL DOCUMENTS: The entire Prospectus entitled, “Oatka Creek – Genesee River

Watershed Wetland Mitigation Bank” may be found on the Buffalo District’s website along with this Public Notice: <http://www.lrb.usace.army.mil/Missions/Regulatory/Public-Notices/>

Based on preliminary findings, the proposed Bank area does not contain and is not adjacent to any properties listed in, or eligible for listing in, the National Register of Historic Places as per the New York State Office of Parks, Recreation & Historic Preservation Cultural Resource Information System. The Bank site has been historically farmed and no structures exist within the limits of the proposed Bank. This notice constitutes initiation of consultation with the New York State Office of Parks, Recreation & Historic Preservation per Section 106 of the National Historic Preservation Act. All currently available historic resource information pertaining to this proposed project if any has been provided to the New York State Office of Parks, Recreation & Historic Preservation. Additional information concerning historic properties should be submitted to the Corps before the end of the comment period of this notice. The Corps will forward that information to the New York State Office of Parks, Recreation & Historic Preservation for their review.

Pursuant to Section 7 of the Endangered Species Act (16 U.S.C. 1531), the Corps will consult with the USFWS under separate cover to evaluate any potential impacts to the northern long-eared bat to ensure that the proposed activity is not likely to jeopardize their continued existence or result in the destruction or adverse modification of critical habitat.

Comments submitted in response to this notice will be fully considered during the public interest review for this prospectus. 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 internet web site. Due to resource limitations, this office will normally not acknowledge the receipt of comments or respond to individual letters of comment.

The decision to approve or deny this 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.

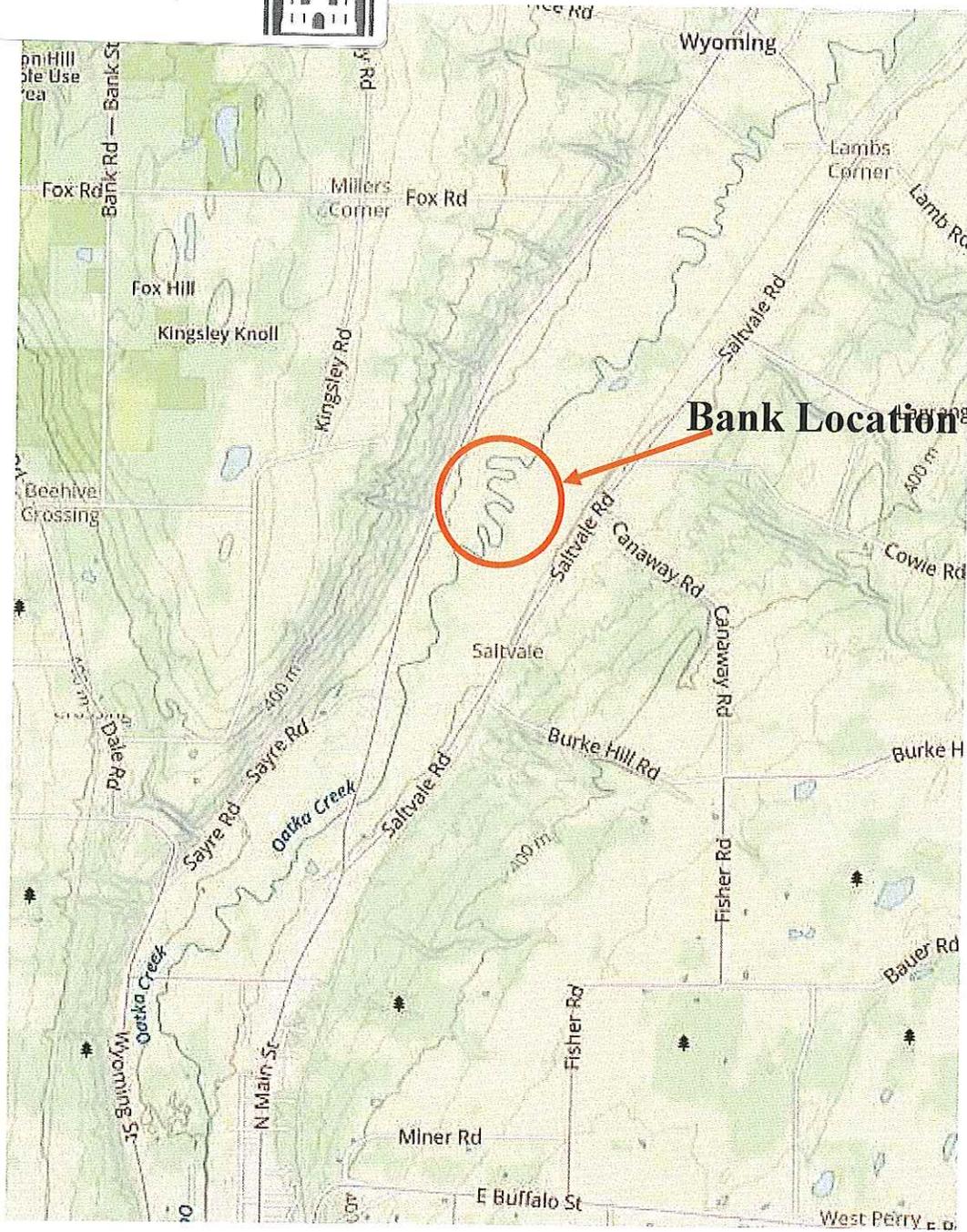
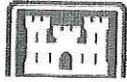
The Corps is soliciting comments from the public; Federal, state and local agencies and officials; Indian Tribes; and other interested parties in order to consider and evaluate the impacts of this proposed Bank. Any comments received will be considered by the Corps to determine whether to issue, modify, condition or deny approval 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 overall public interest of the proposed activity. A lack of response will be interpreted as meaning that there is no objection to the establishment of the proposed Bank.

**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.

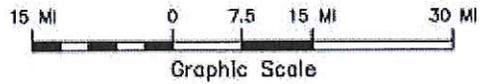


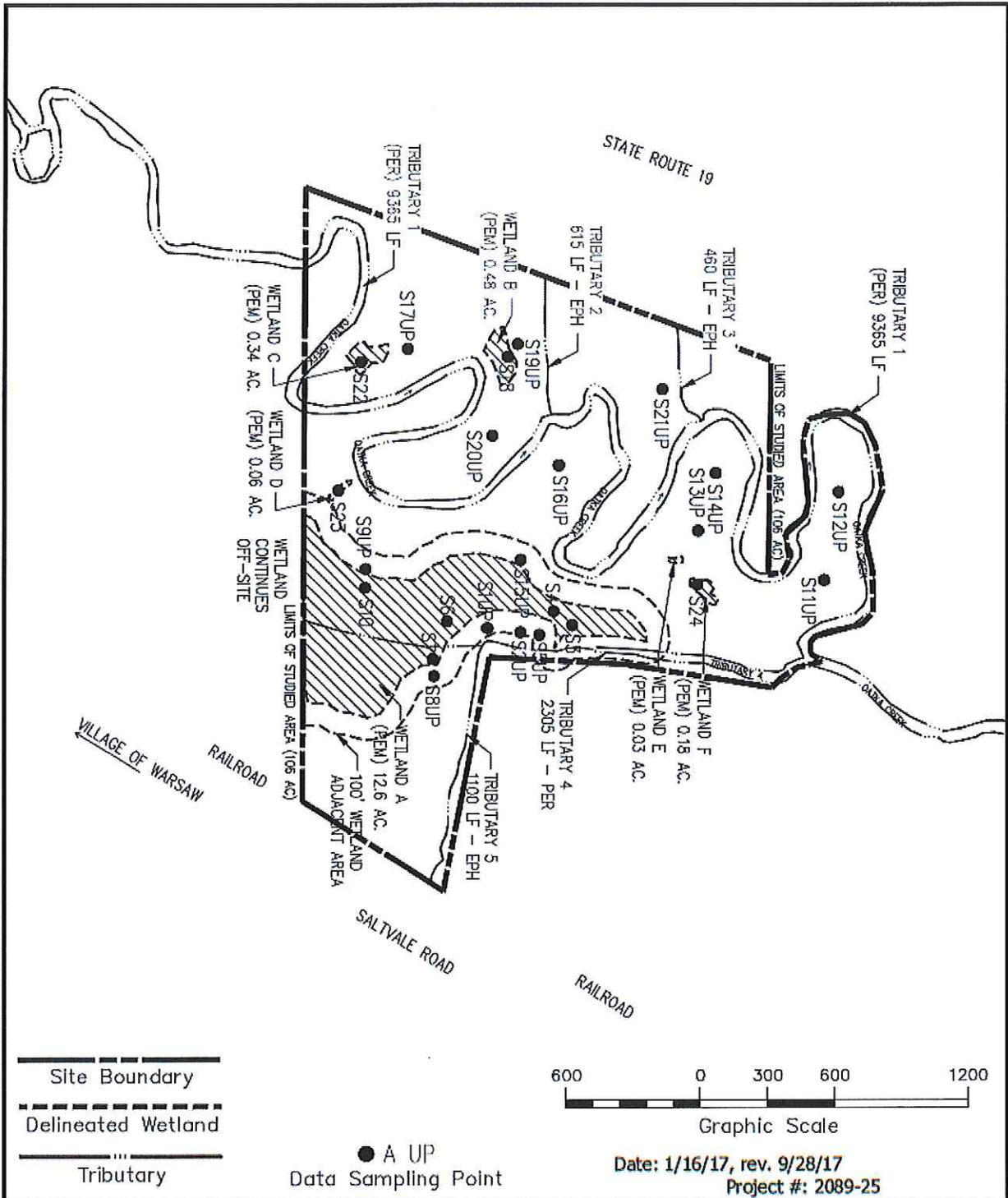
### G. PROPOSED SERVICE AREA

The proposed service area includes the lower Genesee River watershed.



Proposed Service Area





**Marquart Wetland Bank**  
 Wetland Delineation Exhibit  
 Town of Middlebury, Wyoming County, New York

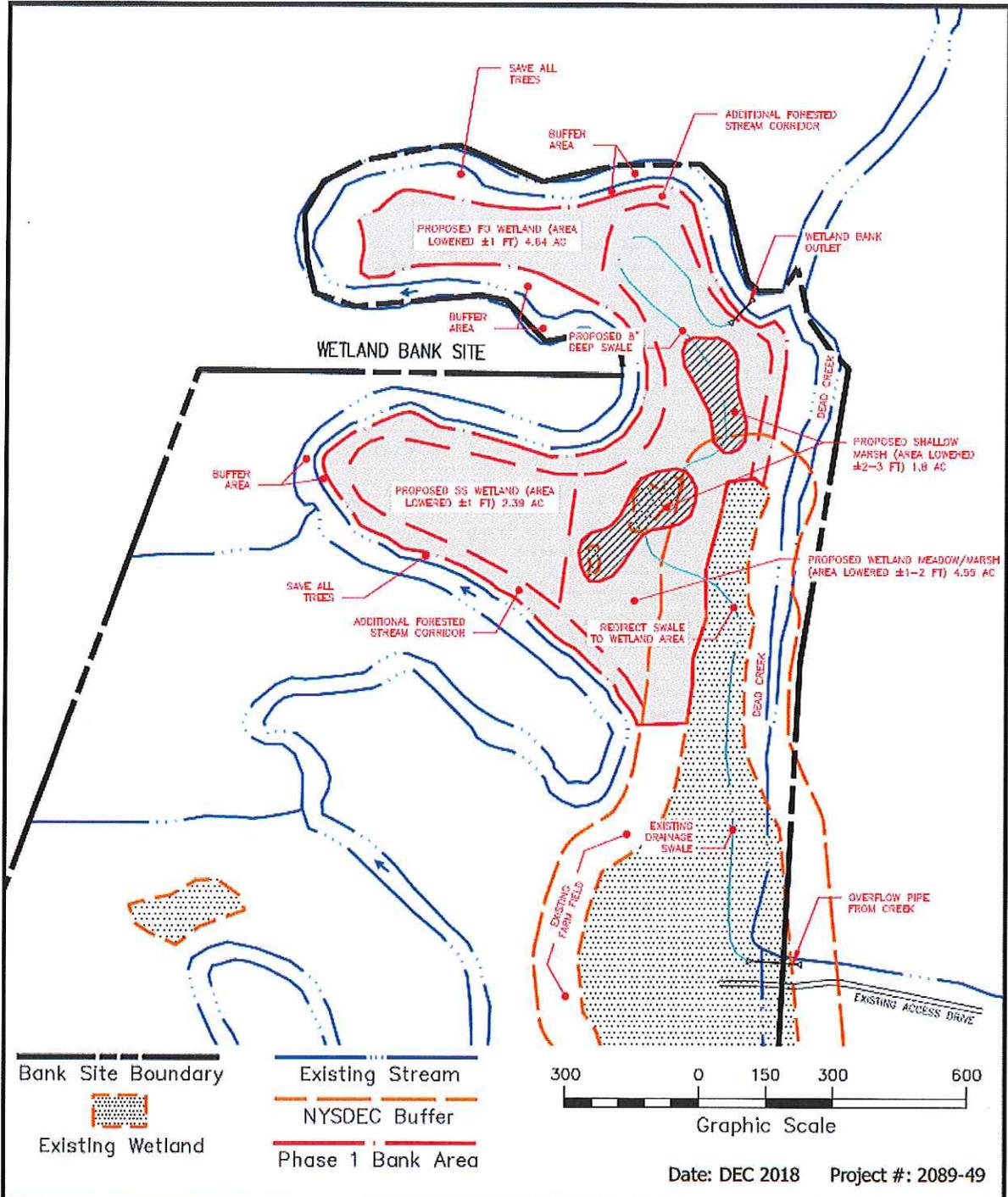


Scale:  
 1" = 600'

FIGURE 8

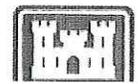
T.J. Marquart and Sons, LLC. and  
 BME Associates  
 D/A Processing No. 2017-00346  
 Wyoming County, New York  
 Quad: Wyoming  
 Sheet 3 of 5

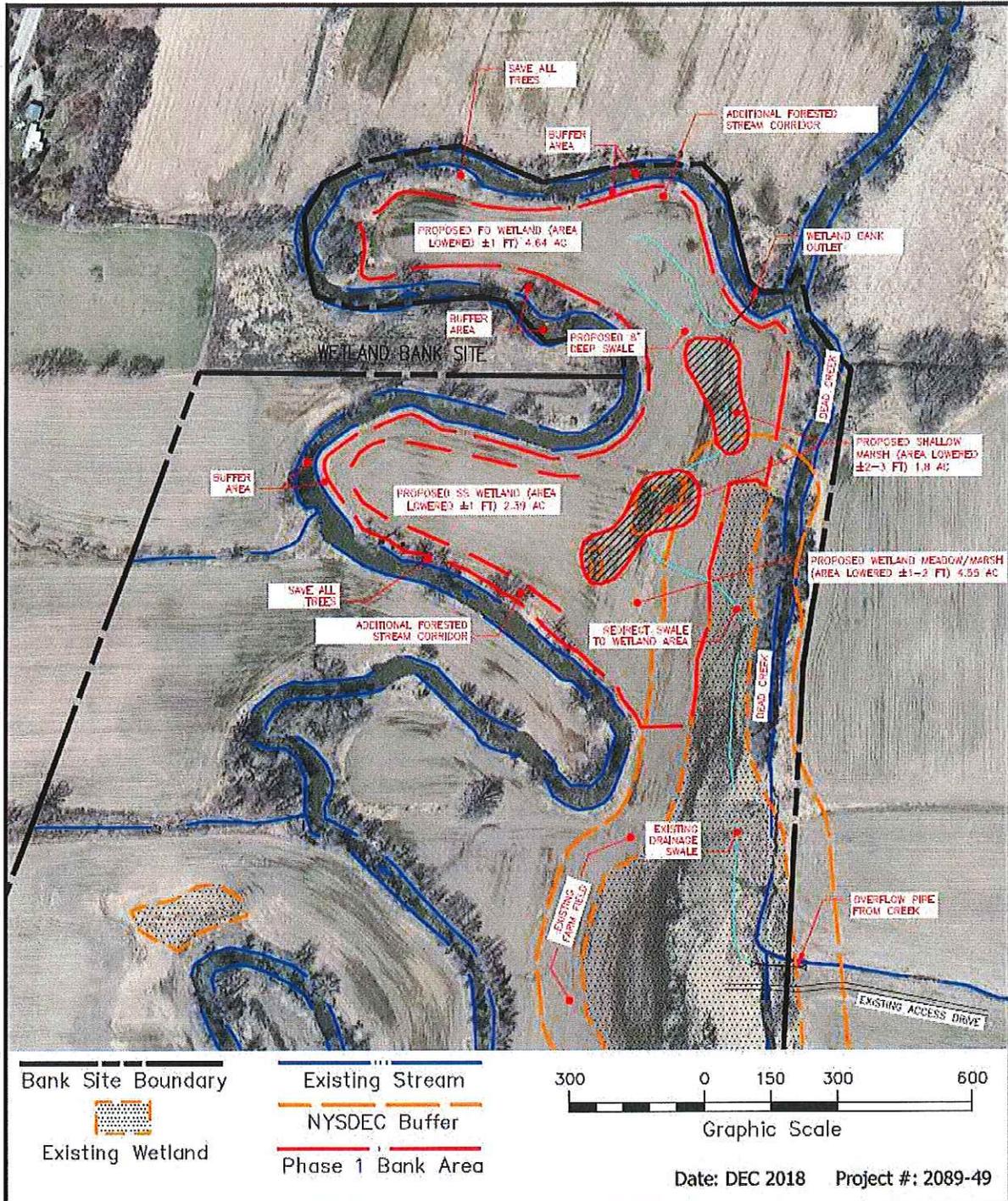




|  |  |   |
|--|--|---|
|  | <b>Oatka Creek - Genesee River<br/>Watershed Wetland Mitigation Bank<br/>Prospectus Site Plan<br/>Town of Middlebury, Wyoming County, New York</b> | <br>Scale:<br>1"=300'<br><b>EXHIBIT 1</b> |
|  |  |   |

T.J. Marquart and Sons, LLC. and  
BME Associates  
D/A Processing No. 2017-00346  
Wyoming County, New York  
Quad: Wyoming  
Sheet 4 of 5





Oatka Creek - Genesee River  
 Watershed Wetland Mitigation Bank  
 Prospectus Site Plan (Aerial)  
 Town of Middlebury, Wyoming County, New York



Scale:  
 1"=300'  
 EXHIBIT 2

T.J. Marquart and Sons, LLC. and  
 BME Associates  
 D/A Processing No. 2017-00346  
 Wyoming County, New York  
 Quad: Wyoming  
 Sheet 5 of 5

