

**LAW OFFICE OF
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January 15, 2025

Town of Shandaken Planning Board
Mr. Cliff Rabuffo, Chairman
PO Box 134
Shandaken, New York 12480

RE: Wellington Restoration Project: Planning Board and
Zoning Board of Appeals Submittals

[VIA E-MAIL]

Dear Cliff and Planning Board Members:

Enclosed please find copies of the following documents,
same in connection with the above referenced Application:

- 1.) Endangered/Threatened Species Report by Ecological Solutions, LLC.
- 2.) Phase 1 a/b Archeological Investigation by Joseph E. Diamond, PhD.
- 3.) Area Variance Application Addendum.
- 4.) Use Variance Application Addendum.

It is my understanding from speaking with my client that we are scheduled to attend the January 29, 2025 Planning Board meeting. In this regard, I would like to discuss several issues with the board following a brief presentation and questions/answers discussions with board members, as follows:

- a.) Scheduling of a SEQRA Public Hearing.
- b.) Timing of a Referral of a full statement of the proposed action to the Ulster County Planning Board under Section 239-m of the General Municipal Law of New York State.
- c.) Potential preparation of a draft SEQRA EAF, Part 2 for Planning Board review.
- d.) Additions and/or revisions to the site plan maps.
- e.) Submittal of further documentation.

I am simultaneously forwarding copies of the foregoing

documents to the Town of Shandaken Zoning Board of Appeals under cover of this correspondence. Although my client must await a SEQRA determination of significance prior to obtaining any variances, I would like to offer the Memorandums in order to also facilitate the ZBA review process.

As customary, I am further forwarding all of the above documentation to Ben Gailey, Esq. for his review and comment.

In addition, RUPCO, Inc. and/or Wellington Blueberry, LLC may be submitting additional documentation to the Planning Board for the January 29, 2025 meeting.

Should you have any questions do not hesitate to contact me.

Very truly yours,



Michael A. Moriello

MAM:mrB

Enclosures

cc: Kevin O'Connor

Jan Jaffe

Tim Allred

Allan Dumas, PE

Shelley E. Smith, RA

Chandra Valianti, Esq.

Lorne Norton, Esq.

Mark Thaler, RA

Gigi Loizzo

Katya Blitsman

Grace Grant

Donna LeMoine

Ben Gailey, Esq.

Mark Loete

Olivia Amantia

[all via e-mail]

January 9, 2025

Tim Allred
Vice President, Real Estate Development
RUPCO, Inc.
289 Fair Street
Kingston, NY 12401

*Re: NYSDEC Threatened/Endangered Species Habitat Assessment
The Wellington Site
Town of Shandaken, Ulster County, NY*

Dear Tim:

Ecological Solutions, LLC completed a threatened and endangered species assessment on December 3, 2024 at the Wellington Blueberry, LLC Site (0.90 acre) located at 310 Main Street in the Town of Shandaken, Ulster County, New York. The proposed project will be an adaptive reuse of an existing 3.5 story, 12,000 Square foot wood framed structure that formerly housed a hotel. The project will consist of five (5) studio and five (5) one-bedroom apartments for a total of ten (10) apartments. It will also include a retail/grocery operation. The project will also include infrastructure for driveways and pathways, and parking. It will be served by public water via the Town of Shandaken Pine Hill Water District and public sewer via the Pine Hill Sewer Service Area which is served by the Pine Hill Wastewater Treatment Plant.

A review of the New York State Department of Environmental Conservation (NYSDEC) Environmental Assessment Form mapper and Environmental Resource Mapper indicates that there are no listed State species at this location and therefore the proposed project will not impact any State listed species. Please see the EAF for the project which indicates that there are no State listed species on or in the vicinity of the site.

A review of the US Fish and Wildlife Service (USFWS) IPaC database indicated that the Northern long-eared bat may occur in the area and that the Monarch butterfly a candidate species may also be located in the area (*Attachment 1*).

The Wellington site is 0.90 acre and contains an existing building, parking area, and other infrastructure as well as small Scots pine and Norway spruce trees and several small to moderately sized hardwoods in a residential setting.

Northern long-eared bat

Winter Habitat: Northern long-eared bats spend winter hibernating in caves and mines, called hibernacula. They typically use large caves or mines with large passages and entrances; constant temperatures; and high humidity with no air currents. Specific areas where they hibernate

have very high humidity, so much so that droplets of water are often seen on their fur. Within hibernacula, surveyors find them in small crevices or cracks, often with only the nose and ears visible.

Summer Habitat: During summer, northern long-eared bats roost singly or in colonies underneath bark, in cavities, or in crevices of both live and dead trees. Males and non-reproductive females may also roost in cooler places, like caves and mines. This bat seems opportunistic in selecting roosts, using tree species based on suitability to retain bark or provide cavities or crevices. It has also been found, rarely, roosting in structures like barns and sheds.

Feeding Habits: Northern long-eared bats emerge at dusk to fly through the understory of forested hillsides and ridges feeding on moths, flies, leafhoppers, caddisflies, and beetles, which they catch while in flight using echolocation. This bat also feeds by gleaning motionless insects from vegetation and water surfaces.

Conclusion - The trees on the site do not provide habitat characteristics for the northern long eared bat such as exfoliating bark, crevices, cracks, or holes. There is no impact to this species from the proposed re-adaptive use of the site and no mitigation measures recommended for this project.

Monarch butterfly

Monarchs, like all other butterflies and moths, go through egg, larval (caterpillar), chrysalis (pupa), and adult stages. Monarch caterpillars ingest milkweed that contains a toxic compound. The presence of this toxin is used by the monarch butterfly as a defense against predators.

In late August, masses of monarch butterflies begin an epic migration stretching thousands of miles from areas across the United States and as far north as Canada (east of the Rocky Mountains) to overwinter in mountaintops of Central Mexico.

Conclusion - The site does not provide the habitat characteristics necessary to sustain this species which relies on open areas that contain milkweed plants. There is no impact to this species from the proposed re-adaptive use of the site and no mitigation measures recommended for this project or required for this species since it is not yet listed as threatened or endangered

If you need any additional information, please contact me.

Sincerely,
ECOLOGICAL SOLUTIONS, LLC



Michael Nowicki
Biologist

Attachment 1



United States Department of the Interior

FISH AND WILDLIFE SERVICE
New York Ecological Services Field Office
3817 Luker Road
Cortland, NY 13045-9385
Phone: (607) 753-9334 Fax: (607) 753-9699
Email Address: fw5es_nyfo@fws.gov



In Reply Refer To:

01/09/2025 14:11:01 UTC

Project Code: 2025-0039382

Project Name: The Wellington

Subject: List of threatened and endangered species that may occur in your proposed project location or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2))

(c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<https://www.fws.gov/sites/default/files/documents/endangered-species-consultation-handbook.pdf>

Migratory Birds: In addition to responsibilities to protect threatened and endangered species under the Endangered Species Act (ESA), there are additional responsibilities under the Migratory Bird Treaty Act (MBTA) and the Bald and Golden Eagle Protection Act (BGEPA) to protect native birds from project-related impacts. Any activity, intentional or unintentional, resulting in take of migratory birds, including eagles, is prohibited unless otherwise permitted by the U.S. Fish and Wildlife Service (50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)). For more information regarding these Acts see <https://www.fws.gov/program/migratory-bird-permit/what-we-do>.

The MBTA has no provision for allowing take of migratory birds that may be unintentionally killed or injured by otherwise lawful activities. It is the responsibility of the project proponent to comply with these Acts by identifying potential impacts to migratory birds and eagles within applicable NEPA documents (when there is a federal nexus) or a Bird/Eagle Conservation Plan (when there is no federal nexus). Proponents should implement conservation measures to avoid or minimize the production of project-related stressors or minimize the exposure of birds and their resources to the project-related stressors. For more information on avian stressors and recommended conservation measures see <https://www.fws.gov/library/collections/threats-birds>.

In addition to MBTA and BGEPA, Executive Order 13186: *Responsibilities of Federal Agencies to Protect Migratory Birds*, obligates all Federal agencies that engage in or authorize activities that might affect migratory birds, to minimize those effects and encourage conservation measures that will improve bird populations. Executive Order 13186 provides for the protection of both migratory birds and migratory bird habitat. For information regarding the implementation of Executive Order 13186, please visit <https://www.fws.gov/partner/council-conservation-migratory-birds>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. **Please include the Consultation Code in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.**

Attachment(s):

- Official Species List

OFFICIAL SPECIES LIST

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

New York Ecological Services Field Office
3817 Luker Road
Cortland, NY 13045-9385
(607) 753-9334

PROJECT SUMMARY

Project Code: 2025-0039382

Project Name: The Wellington

Project Type: Residential Construction

Project Description: Adaptive reuse of an existing 3.5 story, 12,000 Square foot wood framed structure that formerly housed a hotel.

Project Location:

The approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/@42.1334479,-74.48055244149411,14z>



Counties: Ulster County, New York

ENDANGERED SPECIES ACT SPECIES

There is a total of 2 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

MAMMALS

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Endangered

INSECTS

NAME	STATUS
Monarch Butterfly <i>Danaus plexippus</i> There is proposed critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/9743	Proposed Threatened

CRITICAL HABITATS

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

YOU ARE STILL REQUIRED TO DETERMINE IF YOUR PROJECT(S) MAY HAVE EFFECTS ON ALL ABOVE LISTED SPECIES.

IPAC USER CONTACT INFORMATION

Agency: Ecological Solutions, LLC

Name: Michael Nowicki

Address: 121 Leon Stocker Drive

City: Stratton

State: VT

Zip: 05360

Email: ecolsol@aol.com

Phone: 2039104716

**PHASE 1 ARCHAEOLOGICAL INVESTIGATION
RENOVATIONS TO THE WELLINGTON HOTEL
310 MAIN STREET
VILLAGE OF PINE HILL, TOWN OF SHANDAKEN, ULSTER CO., NY**

OPRHP PR# 24PR04367

PREPARED FOR:

WELLINGTON BLUEBERRY, LLC

**310 MAIN STREET
PINE HILL, N.Y. 12465**

JANUARY 8th, 2025

PREPARED BY: JOSEPH E. DIAMOND, Ph.D.

**290 OLD ROUTE 209,
HURLEY, N.Y. 12443**

845-338-0091

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1. New York State.
2. U.S.G.S. West Kill Quadrangle.
3. Project Map (existing conditions).
4. Project Map (proposed construction).
5. Ulster County Soils Map (Tornes 1979: Sheet 5).
6. 1854 Brink and Tillson Map of Ulster County.
7. 1875 Beers Atlas of Ulster County (Page 28).
8. 1903 Phoenicia USGS Quadrangle
9. 1945 West Kill USGS Quadrangle

PHOTOGRAPHS

1. Wellington Hotel showing excavated basement area with steps under snow in right foreground. View west.
2. From edge of Main Street looking down LOD/APE. View east.
3. Foot bridge across Alton Creek. View north.

4. Shovel test #1 with grass plug near shovel test. View southeast.

FIGURES

1. Project area with shovel tests 1-4, and photographs 1-4.

APPENDICES

1. Shovel Test Record.

Management Summary

SHPO: Project Review #: **24PR04367**

Involved State and Federal Agencies: **SEQRA, OPRHP,**

Phase of Survey: **Phase 1A and 1B.**

Location Information: Survey Area (Metric and English): **.921 acres/.372 hectares**

Length: **225 ft/ 68.6 meters East/West**

Width: **224 ft/68.3 meters North/South**

APE: **.12 acres/.048 hectares.**

Number of Acres Surveyed: **.12 acres/ .048 hectares.**

USGS 7.5 Minute Quadrangle Map: **West Kill Quadrangle**

Archaeological Survey Overview:

Number and Interval of Shovel Tests: **4 Shovel tests at 50 foot/15.2m intervals in locations that had not been graded or had soil removed, such as around the north side of the Wellington Hotel foundation.**

Results of Archaeological Survey

Number & name of prehistoric sites identified: **None**

Number & name of historic sites identified: **None**

Number & name of sites recommended for Phase II: **None.**

Results of Architectural Survey

Number of buildings/structures/cemeteries within project area: **Wellington Hotel**

Number of buildings/structures adjacent to project area: **None**

Number of previously determined NR listed or eligible

buildings/structures/cemeteries/districts: **The Wellington Hotel is in the Pine Hill National Register District (11NR06297).**

Number of identified eligible buildings/structures/cemeteries/districts: The **Wellington Hotel is a contributing structure to the Pine Hill National Register District (02NR04925).**

Report Author: **Joseph E. Diamond, Ph.D.** Date of Report: **1/8/2025**

Shovel testing done by the author.

Abstract:

This cultural resource survey was conducted to evaluate a proposed construction project to renovate the Wellington Hotel in Pine Hill, Town of Shandaken, Ulster County. The parcel is .921 acres/.372 hectares in extent. The proposed project consists of renovating the Wellington Hotel to provide 10 housing Units as well as retail space and cafe on the first floor. The major ground disturbance (LOD/APE) is the construction of a new entry off of Main Street with parking locations, trash pickup access, and a handicapped accessible ramp to the hotel. This Phase 1A/1B was undertaken despite a No Adverse Impact determination by SHPO Reviewer Mariana Staines (Letter of 6/14/2024).

It was thought prudent by the folks at RUPCO to test the LOD/APE prior to construction to ensure that no precontact Native American artifacts or sites would be disturbed. During the Phase 1B, four shovel tests were excavated that located a total of five historic artifacts. No precontact Native American artifacts were found. Consequently, no further work is recommended.

PHASE 1A ARCHAEOLOGICAL SURVEY

Introduction

This cultural resource survey was conducted to evaluate a proposed construction project to renovate the Wellington Hotel in Pine Hill, Town of Shandaken, Ulster County, N.Y. (Map 1, 2, and 3). The parcel is .921 acres/.372 hectares in extent. The project area is roughly a trapezoid with a rounded south and west border which runs down the middle of Pine Hill Road to the north, and Main Street to the west. The project area is currently in lawn with large trees providing shade. A 19th century disturbance is the excavation of the hotel's basement and a large patio area at ground level, which has steps leading down into it (Photograph 1).

The proposed project consists of renovating the Wellington Hotel to provide 10 housing Units as well as retail space and cafe on the first floor. The major ground disturbance (LOD/APE) is the construction of a new entry off of Main Street with parking locations, trash pickup access, and a handicapped accessible ramp to the hotel (Photograph 2). There are also locations within the property for planting trees and hedgerows as a sight buffer for adjacent private property owners.

This Phase 1A/1B was undertaken despite a No Adverse Impact determination by SHPO Reviewer Mariana Staines (Letter of 6/14/2024). In that letter she stated that the renovation "will have No Adverse Impact on historic and archaeological resources, provided the following conditions are met:

1. Thoroughly document the chimney and additions that need to be demolished.
2. Leave the soffit at the ceiling or floor where the original partition walls were located as a visual marker" (Letter of 6/14/2024, paragraph #2).

Both of these criteria are structural, but it was thought prudent by the folks at RUPCO to test the LOD/APE prior to construction to ensure that no precontact Native American artifacts or sites would be disturbed.

The author was contacted by Mr. Tim Allred of RUPCO in November of 2024. The literature search for this project was conducted by Joseph E. Diamond in CRIS on 12/12/2024.

Environmental/Physical Setting

The project area is relatively open with maple trees as cover. The Alton Creek runs through the northern portion of the property and creates a divider between the northern and southern portions of the property. On the northern side of the creek, which has a poorly maintained foot bridge (Photograph 3), is a concrete pool and stairway leading up to the road. The pool will be filled in and the stairs to the street will be removed (see Map

4). On the southern side of the creek a proposed new entryway with parking is proposed. (Map 4). The project area ranges in elevation from c. 1515 to 1491 feet AMSL.

A walkover of the project area found no indication of any rock face or outcrop large enough to permit use as a prehistoric rockshelter or windbreak. Most of the property north of the Wellington Hotel and on the south side of the Alton Creek appears to have been graded downhill towards the back to create an access to the rear of the building.

The flora in the project area is composed primarily of maple trees, with other decorative trees up and down the street.

The soils in the project area (Map 5) consists of Valois very bouldery soils, gently sloping (VAB) Ternes (1979: Sheet 5).

The bedrock geology consists of the Middle Devonian Undifferentiated lower Hamilton Group (Panther Mountain, Mount Marion, Stony Hollow and Union Springs) shales and sandstones (Fisher et al. 1970: Hudson Mohawk Sheet).

Background Research

PRECONTACT ARCHAEOLOGICAL SITES

A search of the site files at the Office of Parks, Recreation and Historic Preservation (including the New York State Museum's prehistoric site files) on 12/12/2024 located no known precontact Native American sites within a one-mile radius of the project area. This is due to the steepness of the terrain and the cobbly and bouldery nature of the soils.

HISTORIC ARCHAEOLOGICAL SITES

The search through CRIS located five historic archaeological sites with a one-mile radius of the project area. These are:

02514.000291 Ulster and Delaware Railroad. 528 ft/161 meters.

11116.000123 Bellearye Farm Complex Site. 4752 ft/1448 meters (Diamond 2010).

11116.000125 Loomis Pool/Cistern. 5280 ft/1609 meters (Diamond 2010).

11116.000078 Turner Brisbane Mansion Site. 2640 ft/805 meters (Greenhouse 2001).

11116.000079 N. Haines Site. 3168 ft/966 meters (Greenhouse 2001).

NATIONAL REGISTER SITES/STRUCTURES

The Wellington Hotel is a contributing structure to the Pine Street National Register District.

11NR06297 Pine Hill National Register District.

02NR04925 Ulster House (Wellington) Hotel. A contributing structure within the Pine Hill National Register District.

Four historic maps of the project area were examined. The 1854 Brink and Tillson map (Map 6) shows no structures in the project area. The 1875 Beers Map of Ulster County (Map 7) is somewhat questionable about structures in the project area. Map 8,

the 1903 USGS Map as well as Map 9 the 1945 USGS Map both show the Wellington Hotel.

******Note: The subject parcel was outlined in Adobe Illustrator and placed on maps 6 and 7. Because these were hand drawn maps from the 19th century it is difficult, if not impossible, to reconcile the shape of the project area with the map.*

*Note: As part of the literature search several reports were also perused. These are 01SR52259 (Hartgen 2001), 04SR54844 (Tracker Archaeology 2004), 10SR59643 (Diamond 2010), 01SR52340 (Greenhouse Consultants 2001) and 21PR06053.

Sensitivity Assessment

PRECONTACT

The literature search at OPRHP produced evidence of no known precontact Native American sites within a one-mile radius of the project area. This would suggest that the project area is in a location that has a low potential for precontact Native American activity. However, since the southern portion of the project area is along the Alton Creek, subsurface testing of the LOD/APE for the parking lot/access area is warranted.

HISTORIC

Based on an examination of historic maps of the project area and the walkover, the possibility of encountering historic archaeological resources in the project area is considered high. The project area is in the Pine Hill National Register District, and the Wellington Hotel is a contributing structure. However, the area of the LOD/APE has been graded as a driveway, and a large portion of soil has been removed to the north of the hotel at basement level to create a patio. Like most sheet middens surrounding historic structures, there will probably be some historic artifacts in the A-Horizon soils.

Recommendations

Due to the project area's potentially sensitive location along the Alton Creek it is recommended that hand-excavated, hand-screened shovel tests be placed at 50-foot/15.2meter intervals (or less) across the project area within the LOD/APE. Locations that have had prior disturbance need not be tested. All soil should be screened through ¼ inch hardware mesh and examined for artifacts.

PHASE 1B ARCHAEOLOGICAL RECONNAISSANCE

Research Design

Field reconnaissance was begun on December 6th 2024 and completed within the same day. The overall soil conditions were excellent. There was about 8 inches of fresh snow, which prevented the ground from freezing. As suggested in the Phase 1A, shovel testing was undertaken in locations that are to be impacted by construction and within the marked LOD for the project. Shovel test locations and photograph locations and directions are shown on Figure 1.

Field Methods and Procedures

Field methods included the shovel testing at 50-foot (15.2 m) intervals in the location where the proposed parking area is located. The testing excluded areas that had been previously disturbed by soil removal, such as on the northern portion of the Hotel where the patio area had been dug out, and the graded road leading from Main Street down into the back yard of the Hotel. All soil was screened through ¼-inch hardware cloth and examined for artifacts. A Munsell soil color chart was used to determine soil colors. All soil was screened over heavy plastic and immediately backfilled. Photograph 4 shows the lawn plug taken out for testing, which was replaced after the soil was put back into the shovel test. There were not unanticipated problems with the testing. The soil at lawn level was not frozen and screened very easily.

Results of Field Investigation

A total of four shovel tests were excavated throughout the APE (see Figure 1 and Appendix 1). The soils consisted of a very dark grey brown loam with cobbles and pebbles overlying a yellow brown hardpacked silt with densely packed cobbles and pebbles. The area proposed for parking appears to have been in a high energy environment along Alton Creek, where variously sized cobbles were deposited with a minimum of soil between them. This was true for the level one soils, which had a humic buildup between the cobbles. Artifacts (See Appendix 1) were limited to ST#1. These included 2 brick fragments, 1 iron pipe fragment, a piece of cinder, and a small fragment of bottle glass that appears to be the base of an olive oil bottle c. 1880-1900. No precontact Native American artifacts were found in any of the shovel tests. Figure 1 shows the location of shovel tests and photograph locations and directions within the APE.

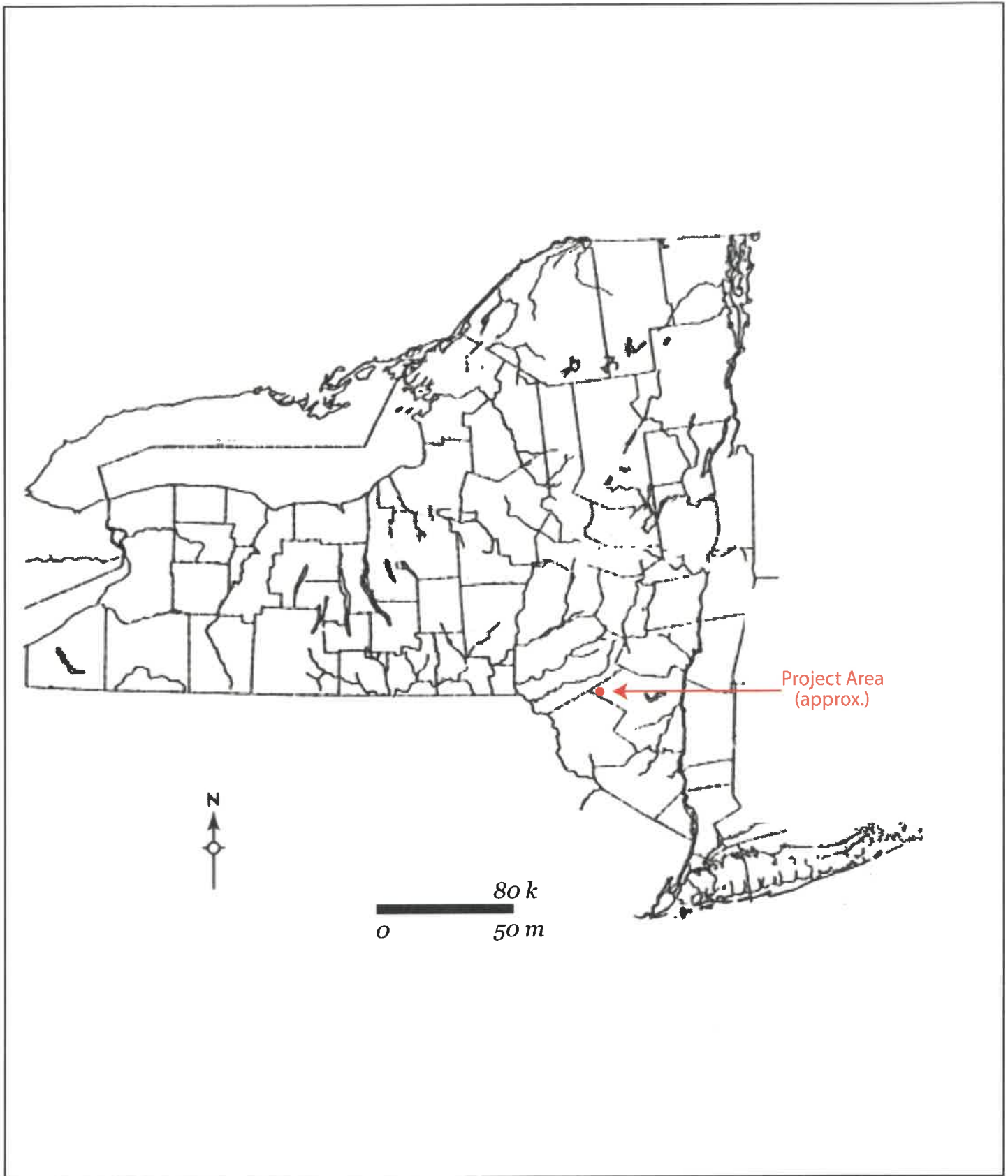
Conclusion and Recommendations

A total of four shovel tests were excavated within the LOD/APE of the project area. No precontact Native American artifacts were found. Historic artifacts were limited to five-all from ST#1. No further work is recommended.

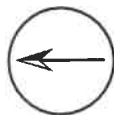
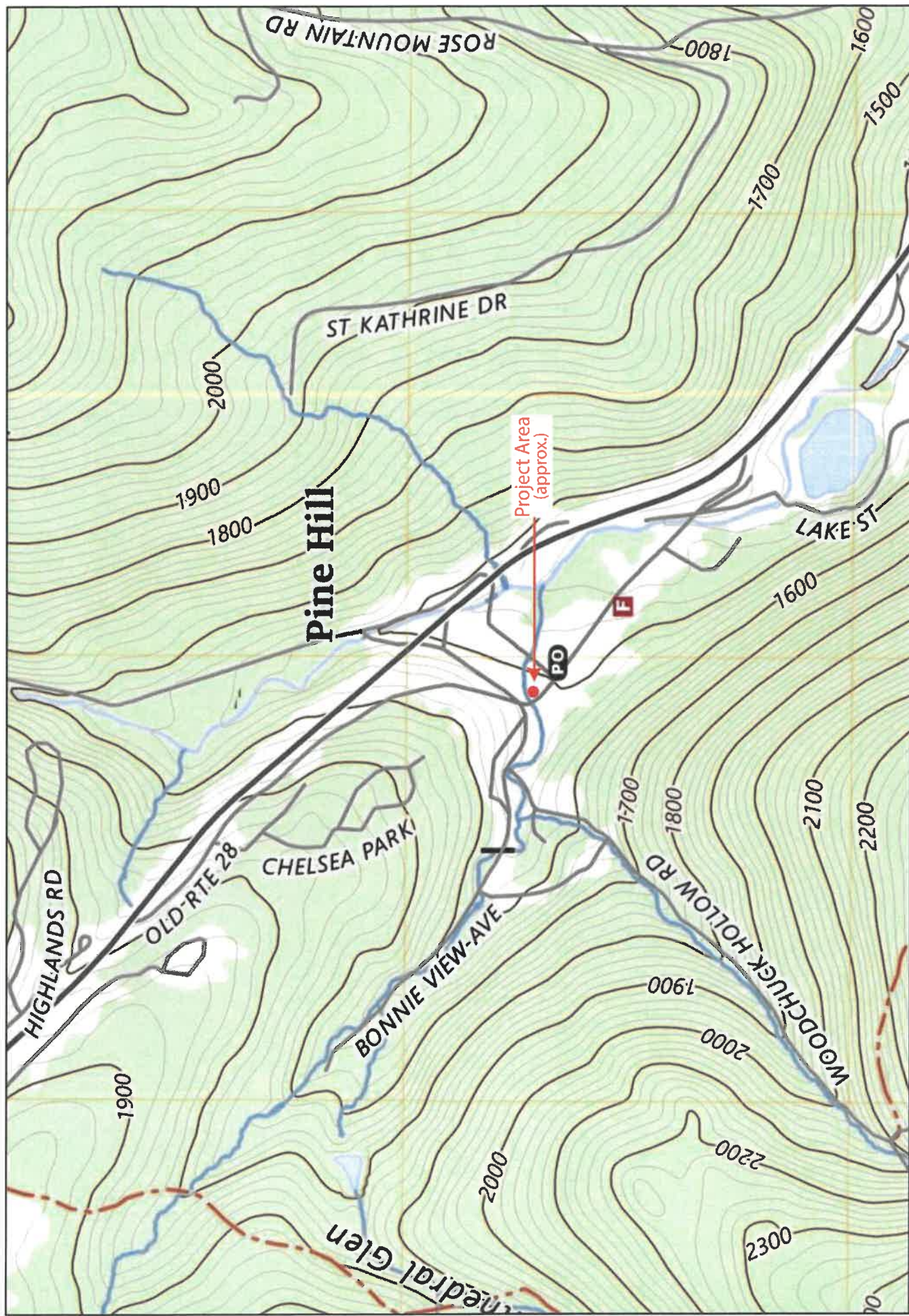
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- Brink, P. Henry, and Oliver J. Tillson
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2010 SEQRA Phase 1 Cultural Resource Investigation, Proposed Belleayre Expansion, Town of Shandaken, Ulster County, New York.
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1970 *Geologic Map of New York, Hudson-Mohawk Sheet.* The New York State Museum and Science Service Map and Chart Series No. 15, Albany.
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2001 Stage 1B Cultural Resource Survey of the Proposed Belleayre Resort at Catskill Park, Town of Shandaken, Ulster County and Middletown, Delaware County, New York.
- Hartgen Archaeological Associates
2001 Phase 1A Literature Review and Archaeological Sensitivity Assessment, Pine Hill Water Improvements, Village of Pine Hill, Town of Shandaken, Ulster County, New York.
- Tornes, Lawrence A
1979 *US Department of Agriculture in Cooperation with Cornell University Agricultural Experiment Station.*
- Tracker Archaeology
2004 Phase 1 Archeological Investigation for the Chelsea Park Property, Pine Hill, Town of Shandaken, Ulster County, New York.
- USGS Maps
1903 Phoenicia Quadrangle.
1945 West Kill Quadrangle.

MAPS



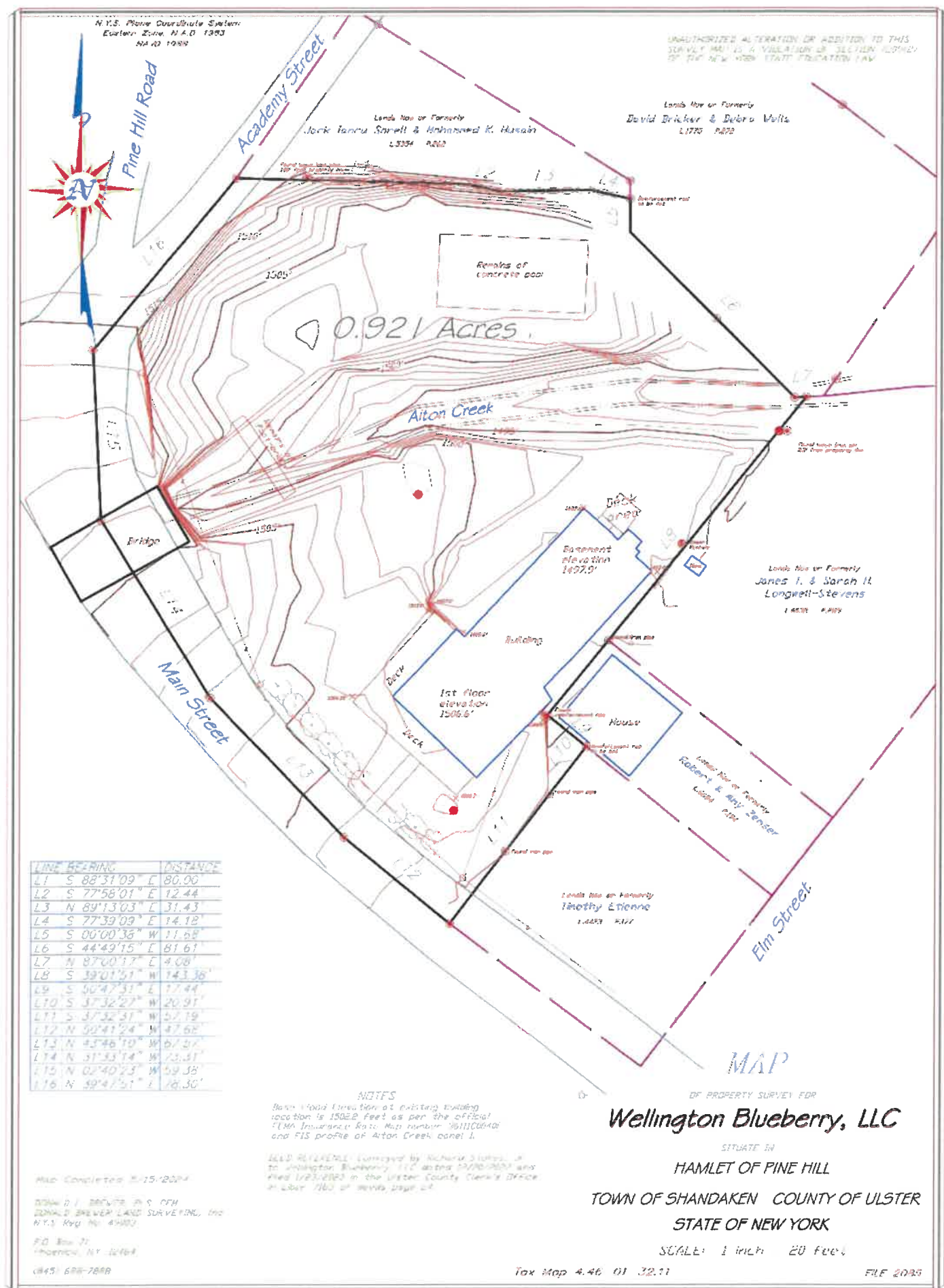
Map 1. New York State.



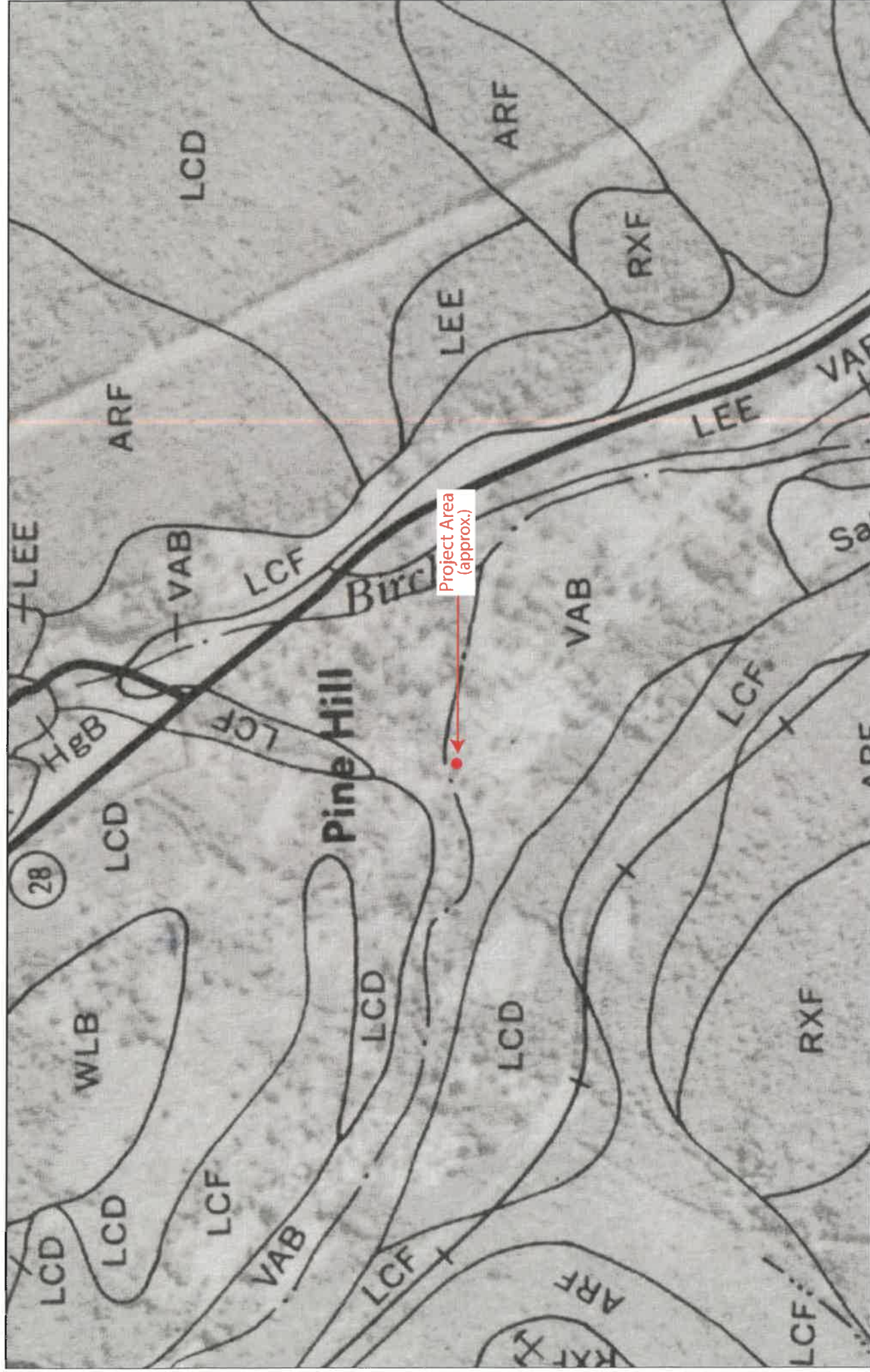
North

1600 ft. / 488 m.

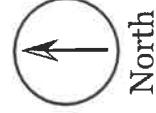
Map 2. U.S.G.S. West Kill Quadrangle.



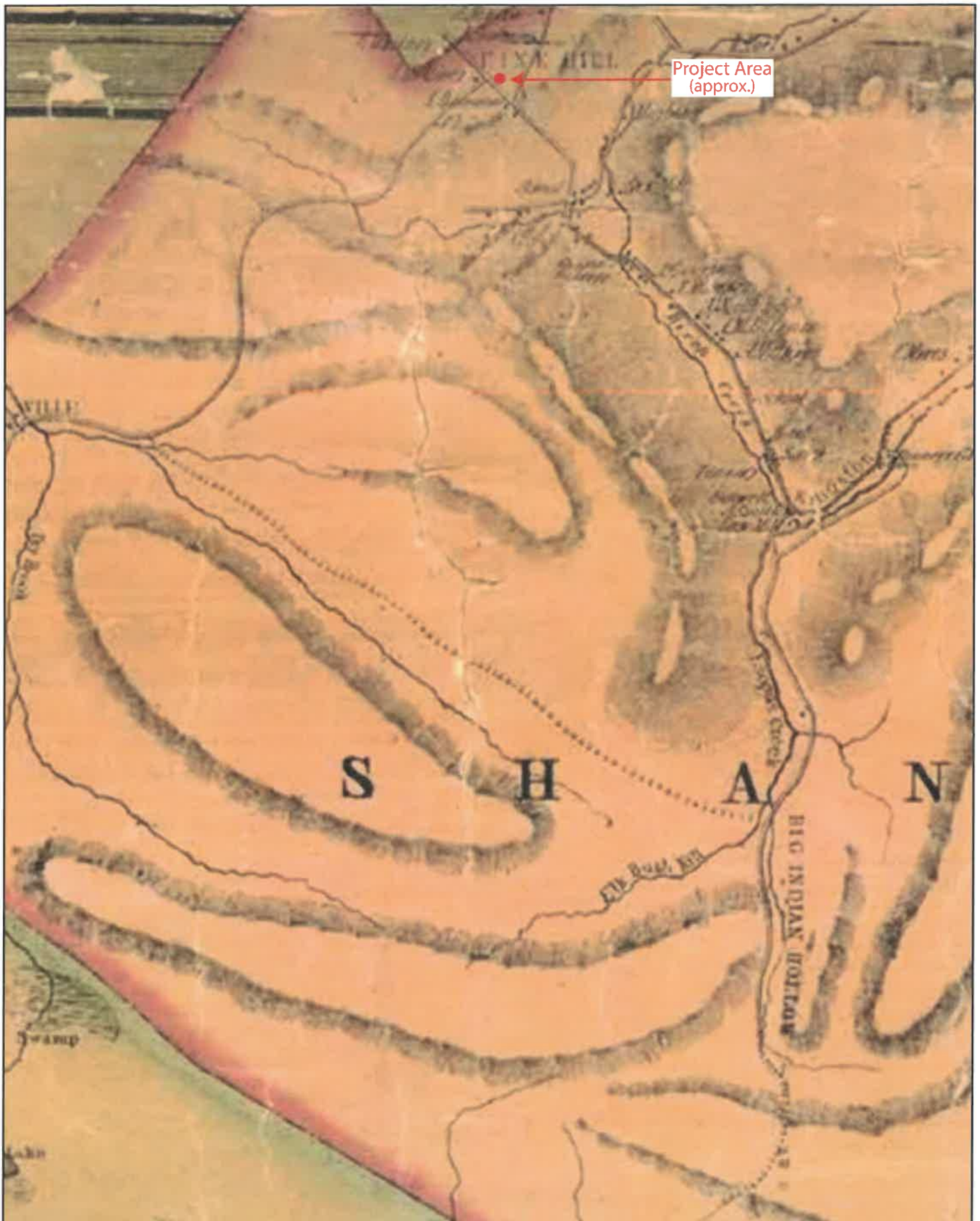
Map 3. Project Map (existing conditions).



1000 ft. / 305 m.



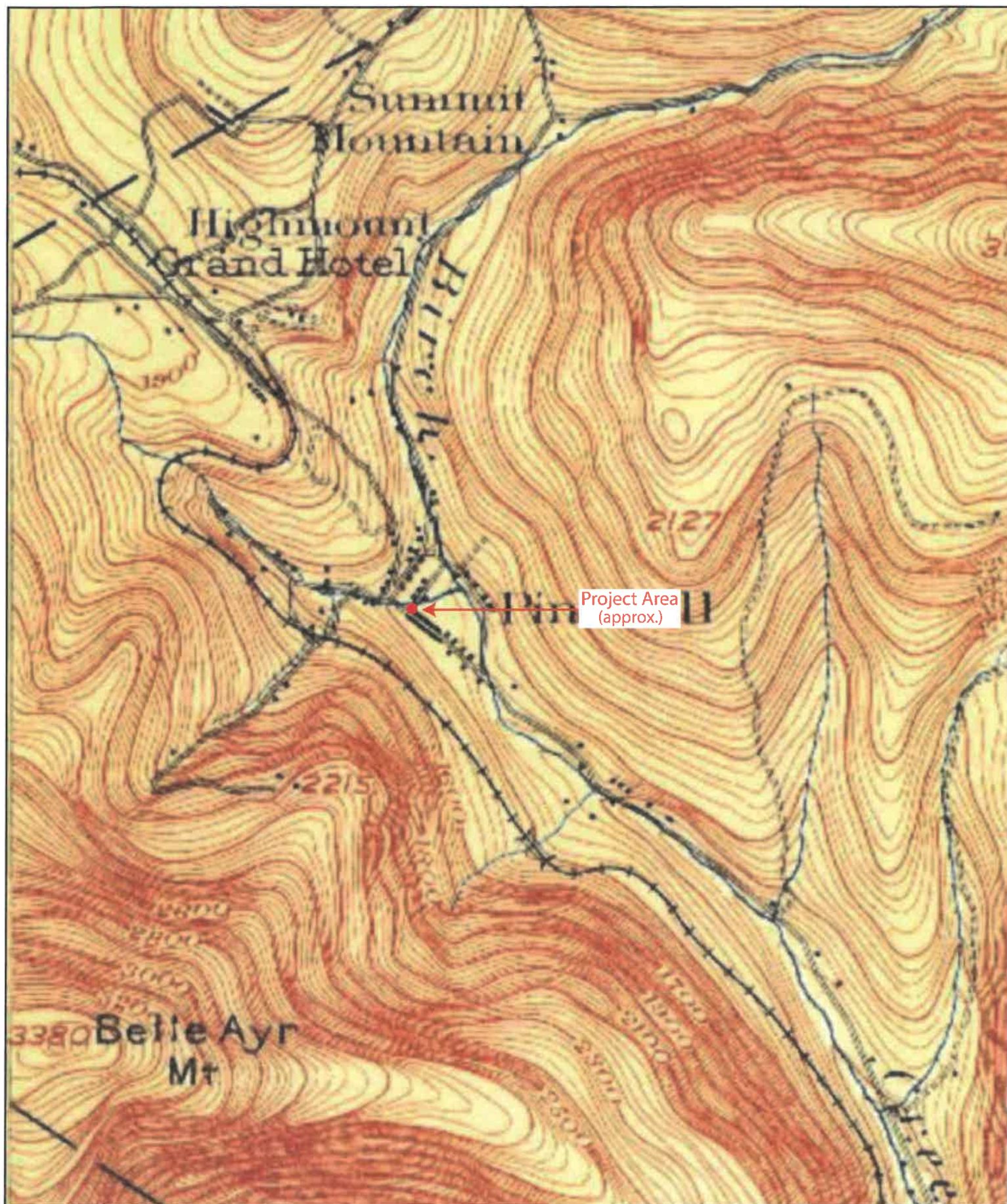
Map 5. Ulster County Soils Map (Tornes 1979: Sheet 5).



Map 6. 1854 Brink and Tillson Map of Ulster County.



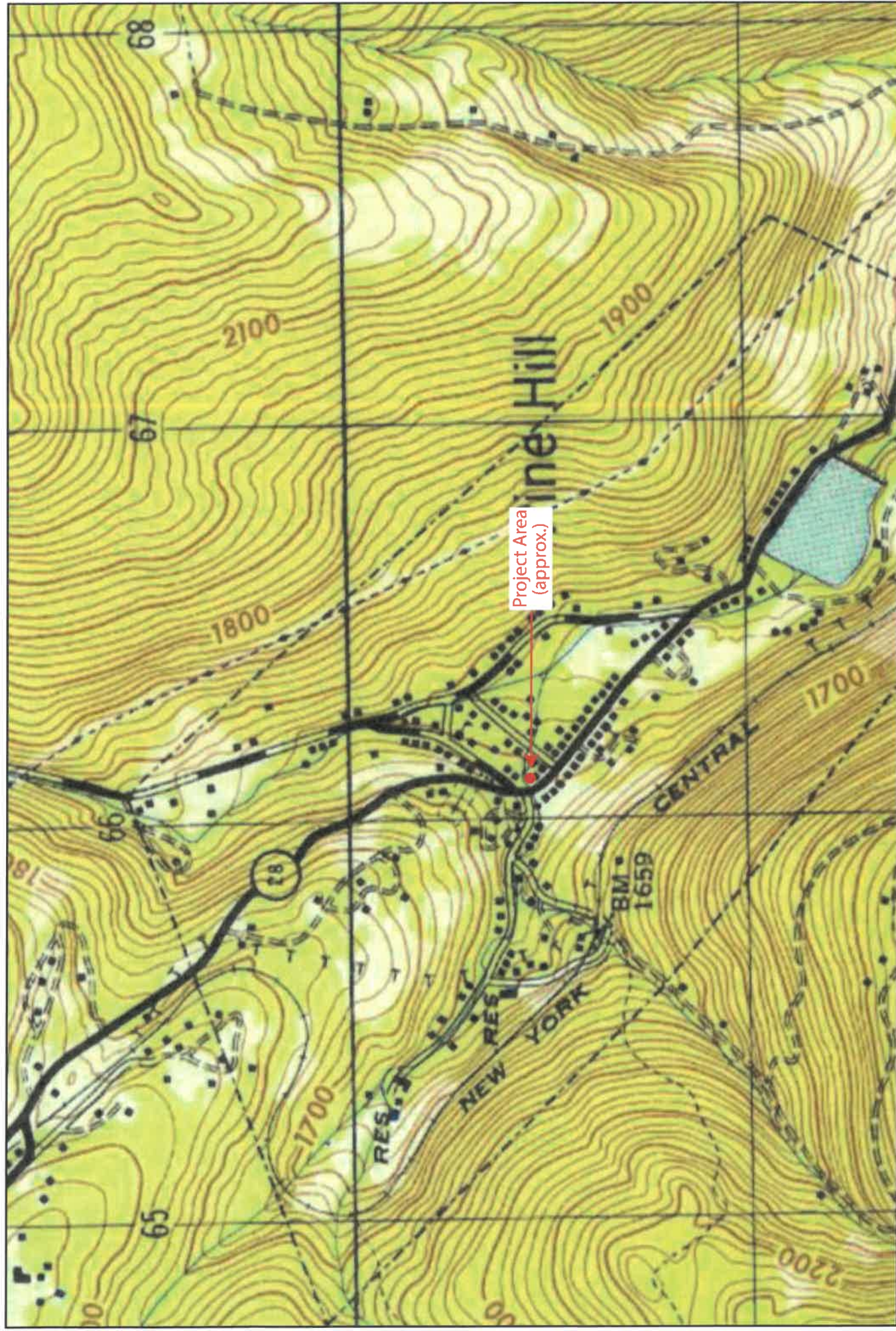
Map 7. 1875 Beers Atlas of Ulster County (Page 28).



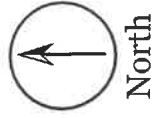
1600 ft. / 488 m.

Map 8. 1903 Phoenicia USGS Quadrangle.





1600 ft. / 488 m.



Map 9. 1945 West Kill USGS Quadrangle.

PHOTOGRAPHS



Photograph 1. Wellington Hotel showing excavated basement area with steps under snow in right foreground. View west.



Photograph 2. From edge of Main Street looking down LOD/APE. View east.



Photograph 3. Foot bridge across Alton Creek. View north.



Photograph 4. Shovel test #1 with grass plug near shovel test. View southeast.

FIGURES

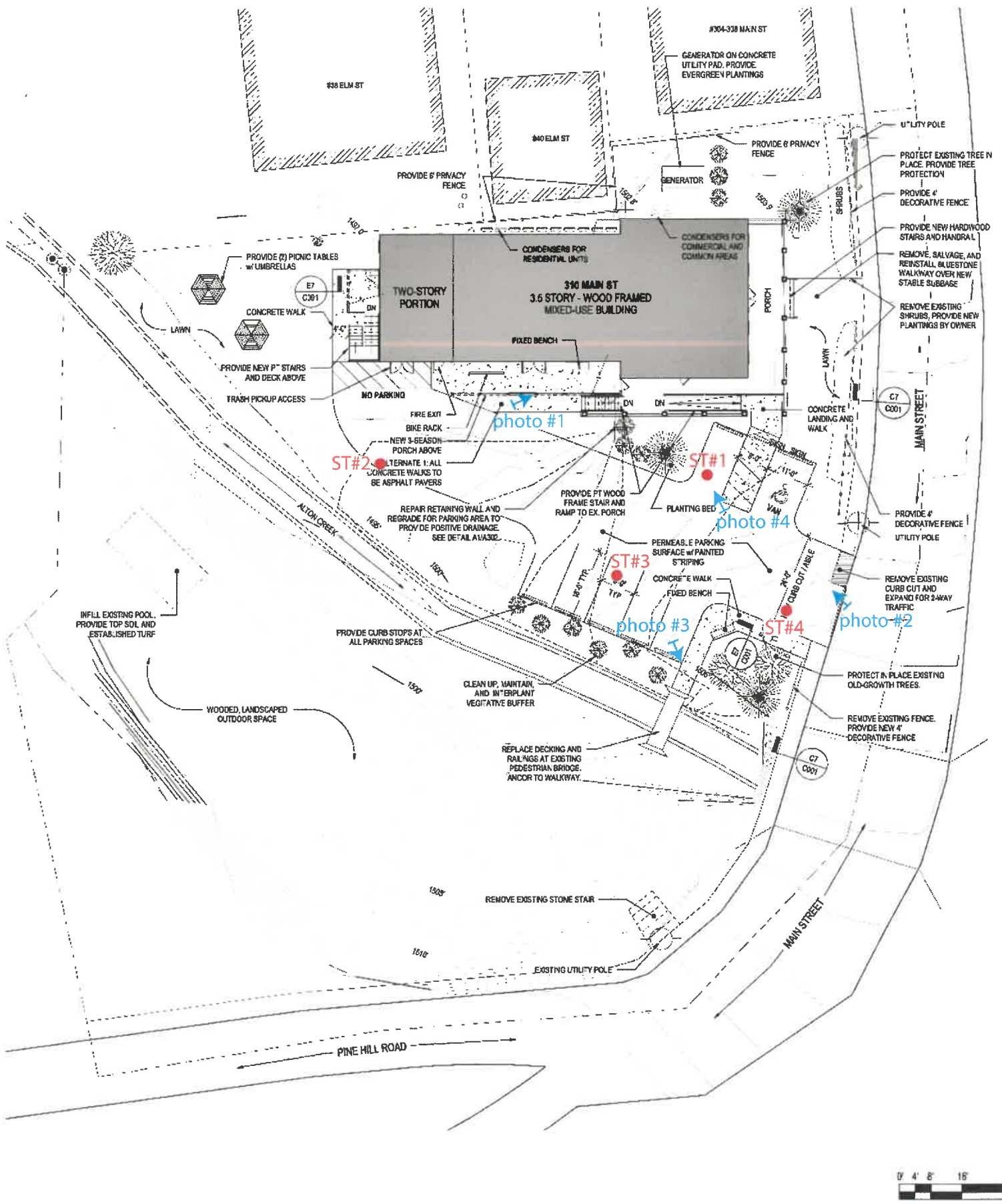


Figure 1. Project area with shovel tests 1-4, and photographs 1-4.

APPENDICES

APPENDIX 1

S.T#	Depth	Soil Description	Quan.	Artifacts
1	0-28	V.Dk. Grey Brn. Loam w/cobbles and pebbles	2	brick frags.
			1	iron pipe frag.
			1	cinder
			1	bottle glass
				probably an olive oil bottle
	28-36	Yell. Brn hardpacked silt w/cobbles and pebbles		None
2	0-20	V.Dk. Grey Brn. Loam w/cobbles and pebbles		None
	20-27	Yell. Brn hardpacked silt w/cobbles and pebbles		None
3	0-22	V.Dk. Grey Brn. Loam w/cobbles and pebbles		None
	22-32	Yell. Brn hardpacked silt w/cobbles and pebbles		None
4	0-26	V.Dk. Grey Brn. Loam w/cobbles and pebbles		None
	26-38	Yell. Brn hardpacked silt w/cobbles and pebbles		None

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**ADDENDUM TO AREA VARIANCE APPLICATION
FOR THE WELLINGTON RESTORATION PROJECT:
TOWN OF SHANDAKEN ZONING BOARD OF APPEALS**

This Addendum is submitted to the Town of Shandaken Zoning Board of Appeals [hereinafter "ZBA"] as part of the continuing "Wellington Restoration" administrative review which is simultaneously proceeding before the Town of Shandaken Planning Board [hereinafter "Planning Board"] under Site Plan and Special Use Permit reviews as Lead Agency under SEQRA.

A.) APPLICABLE LAW.

The Wellington Hotel premises [circa, 1800] is located in Pine Hill and within the HC and FFO zoning districts, wherein multi-family and commercial uses are permitted uses under the Town of Shandaken Zoning Law. It is further noted that the Town of Shandaken is a certified Pro-Housing Town.

The area variance application arises procedurally by way of Section 267-b of the Town Law of New York State and Article XI of the Town of Shandaken Zoning Law [hereinafter "Zoning Law"] as a direct action to the ZBA and pursuant to currently a pending Site Plan Application and Special Use Permit Application before the Planning Board.

With respect to SEQRA, a coordinated review has been initiated by the Planning Board, as Lead Agency [6 NYCRR Part 617.6(b)(3)], as such, the ZBA would customarily await the Determination of Significance by the Planning Board prior to any issuance of an area variance.

In the alternative, if the preference of the ZBA was to have addressed the area variance on its own merits and outside of coordinated review, the ZBA could have determined to conduct a lawfully segmented environmental review under SEQRA [6 NYCRR Part 617.3(g)(1)]. However, as this project further requires an address of a use variance request and lawful segmentation is not available for use variance analysis purposes, there is no real benefit to engaging in a lawfully segmented SEQRA review. [A

separate Use Variance Addendum will be submitted to the ZBA by the Applicant, RUPCO, Inc. at a future date].

B.) AREA VARIANCES REQUESTED.

On December 27, 2024 the Applicant aforesaid and the real property owner, Wellington Blueberry, LLC met with Town of Shandaken representatives in order to discuss the area variances which are necessary to be obtained for the pre-existing former Wellington Hotel, which is proposed to be adaptively re-used for ten (10) units of affordable housing and one (1) retail/café use.

Those present at said meeting (either in person, or via Zoom), were as follows:

- a.) Benjamin Gailey, Esq.
- b.) Grace Grant
- c.) Donna LeMoine
- d.) Jan Jaffe
- e.) Shelley E. Smith, RA
- f.) Allan M. Dumas, PE
- g.) Michael Moriello, Esq.

In examination of the current site plan, the following area variances were identified as part of the adaptive re-use of the Wellington Hotel premises [hereinafter "Wellington premises"] site:

- 1.) Number of units permitted = 4
Number of multi-family units requested = 10 [5 studio and 5 one bedroom units]
- 2.) Parking spaces: Number of spaces needed on site = 21
Number of proposed spaces on site = 12 [1 spot is for compact vehicles]
- 3.) Aisle widths = 26 feet wide required
Aisle width proposed = 25 feet
- 4.) Parking spaces size required = 9' x 20'
Parking spaces size proposed = 9' x 18'
- 5.) Side yard setback required = 20 feet
Side yard setback proposed = 5 feet

*It is noted that a front yard setback variance is not needed, owing to Zoning Law Section 116 - Attachment #1 [Note 2(b)], as the average setback from the road centerline is 23.1 feet and the Wellington Hotel is at

35 feet from the road centerline. [See Allan M. Dumas, PE 1/5/25 e-mail calculations annexed].

It is submitted that the above described area variance requests are appropriate under the particular circumstances presented and that the same pose no adverse effects pursuant to the required area variance balancing analysis, based upon the following examination of the applicable facts and law.

C. LEGAL ANALYSIS.

The five (5) area variances requested are being considered herein collectively, as the application of the statutorily required area variance balancing test in the instant matter is comprised of four (4) area variances which are derived from the parking spaces/side yard setback and the attendant area variance required for six (6) additional multi-family units.

Pursuant to the controlling precedent elucidated in Sasso v. Osgood, 86 NY2d 374 (1995) by the New York State Court of Appeals, a zoning board of appeals is required to enter into a balancing test through the consideration of several factors which bear upon the ultimate disposition regarding the grant of a requested area variance. Accordingly, an address of the several factors with respect to the area variance requested is as follows:

1.) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance?

The area of Pine Hill which is proximate to the Wellington premises is serviced by municipal water and sewer and is developed by existing residential and commercial structures which are situate outside of the Floodway [Alton Creek].

In addition, the Wellington premises is zoned HC and FFO wherein multi-family and commercial uses are permitted, subject to site plan and special use permit reviews. Accordingly, mixed use development within a fairly dense use pattern is the existing condition within the neighborhood.

Therefore, adverse effects will not occur to the neighborhood by virtue of the area variance grant inasmuch as the present mixed use pattern, vehicular circulation scheme and roadway channelization have been customarily part of the

neighborhood for many years. Platt v. Murdock, 24 Misc. 2d 552 (1959).

As to the use of the Wellington premises for affordable housing, via adaptive re-use, the 2019 Ulster County Housing Study revealed not only the shortage of multi-family housing county-wide, but also the glaring lack of affordable and workforce housing throughout the various county municipalities.

Fair share housing and its affordability basis has been a stated goal within the State of New York for many years. Balanced and integrated community growth, which emanates from application of a town's zoning law, is required to be provided for in consideration of both local and regional affordability necessities. Berenson v. Town of New Castle, 38 NY2d 102 (1975).

It is anticipated that workforce housing will be a mainstay of the Wellington Restoration Project and that the addition of this type of housing will assist with retention of local residents, as well as providing for employment opportunities for local businesses.

In this regard, the Applicant will not be introducing a discordant use into the existing neighborhood, as permitted multi-family and mixed use zoning provisions address only the use of land, not who owns or occupies the land. St Onge v. Donovan, 71 NY2d 507 (1988).

Further, as four of the area variance request derive from additional parking related necessities which are relatively minor in nature, area variances to permit density which is not inconsistent with the prevailing density of development has been considered not to be detrimental to the character of the neighborhood. Lim-Kim v. Zoning Board of Appeals of the Village of Irvington, 185 AD2d 346 (1992).

2.) Whether the benefit sought by the Applicant can be achieve by some method possible for the Applicant to pursue, other than an area variance?

This is an interesting question in light of the Town of Shandaken Zoning Law and the ability thereunder for the Planning Board to elect to affect a waiver of parking requirements upon their own motion in certain instances. As to this issue, Section 116-24(A)(3) of the Town of Shandaken Zoning Law reads as follows:

"In a case of a combination of uses on a single parcel, the requirement for off street parking spaces shall be the sum of the requirements for various individual uses, unless it can be established by the applicant, to the satisfaction of the Planning Board during site plan review that staggered hours of use would permit reduction of this requirement."

It is submitted that the residential multi-family use hours of occupancy will be concentrated during the evening and weekend hours and that the retail/café use will be primarily utilized during daylight hours and not necessarily all weekend. Accordingly, if buttressed by the facts, the Planning Board could make this finding and effectuate a waiver.

However, the Applicant is cognizant of the fact that multiple area variances for parking are being proposed and an area variance request is, likely, more appropriate in the matter before the ZBA.

Nevertheless, the waiver provision aforesaid provides indicia that the legislative intent of the Shandaken Town Board which originally enacted this Zoning Law language was to recognize special circumstances associated with forwarding mixed residential and commercial development uses.

Although your writer cannot be certain as to the reasons the waiver language was included within the Zoning Law, it does provide demonstrable proof that discretion, in applicable circumstances, is available for exercise at the administrative level.

In further examination of this prong of the area variance analysis, the parcel is unique, inasmuch as there is only a limited amount of developable land remaining upon the Wellington premises. Accordingly, owing to the Floodway, location of Main Street/Academy Street, topographical limitations and the pre-existing development footprint, only a limited portion of the 0.92+/- site is capable of providing the requisite parking.

This is an anomaly attributable to the developed parcel and it elevates form over substance to view the effect of the required parking through the prism of strict adherence to numbers of sizes, aisle widths and setbacks for parking spaces when the actual parking users will not customarily overlap to any great degree. Therefore, proximity of the developed areas to Main Street and the Floodway, in light of the geometry and

topographic limitations, is germane to the issue of uniqueness. Baker v. Brownlie, 248 AD2d 527 (1998).

There is no other method available to the Applicant in order to achieve the benefit sought, as the physical limitations of the subject premises, in light of the necessary improvements, cannot be significantly ameliorated at any reasonable expense. Meaning, the enormity of the costs associated with the Wellington Restoration Project necessitates the six (6) additional multi-family units and concomitant parking area variances. Otherwise, there will be no project at all, no workforce housing provided for and the Wellington Hotel structure will continue to deteriorate until it falls down, burns down or is condemned.

3.) Whether the requested area variance is substantial?

In consideration of whether an area variance is substantial, a Zoning Board of Appeals should consider the relevant facts and arrive at a common sense appraisal of the circumstances involved. In contemplation thereof, an area variance only becomes substantial if it relates to a quantified adverse effect upon the neighborhood. Kleinhaus v. Zoning Board of Appeals of the Town of Cortlandt, N.Y.L.J. March 26, 1996, Sup. Ct. Westchester County (1996); Niceforo v. Zoning Board of Appeals of the Town of Huntington, 147 AD2d 483 (1989), app. den. 74 NY2d 612 (1990).

By application of Section 116-24(B)(6) of the Town of Shandaken Zoning Law, the Town of Shandaken Town Board will be considering adoption of a Resolution permitting for up to thirteen (13) parking spaces offsite and within an existing municipal parking lot. This one time \$250.00 fee payment in lieu of parking spaces is permitted within the HC Zoning District for mixed residential/commercial uses within Pine Hill.

The foregoing parking fee is classified as a Type II Action under SEQRA and as such, is precluded from environmental review. [See 6 NYCRR Parts 617.5(c)(25) and 617.5(c)(26)]. Owing to the environmental classification of the parking fee payment aforesaid, limitation upon substantiality of the area variance has been duly recognized by the Town of Shandaken Town Board, as the application of a fee payment in lieu of parking is part of the continuing improvement of the Pine Hill area.

In addition to the analysis provided in 1 above, it is submitted that the proposed mixed use of the Wellington premises

will not prove to be substantial from either physical nor regulatory perspectives. This owes itself to several factors, as set forth below.

The Wellington Restoration will be of low impact in terms of traffic, vehicular queuing and deliveries to the premise. By way of examples, the following is noted:

a.) The adaptive re-use premises will increase the need for additional parking. However, these required parking spaces will only increase by a factor of less than 50% as a result of the municipal offsite parking on a one time fee basis.

b.) The foregoing multi-family and commercial uses will be further aided by on-street parking, as is customary within Pine Hill.

c.) The Wellington premises is pre-existing and the accommodation of affordable housing as an adaptive re-use will lessen the carbon footprint which would ensue with the advent of new development.

d.) The particular affordable housing adaptive re-use for multi-family/commercial purposes is not likely to arise in a similar context in the future.

e.) Varied times of usage is expected to be the norm, as the multi-family units will be utilized primarily during the evening and the retail/café would be expected to maximize use during the day.

As to the magnitude of the variance requested, it is submitted that, while a fairly significant portion of the percentage deviation requested for the area variances for numbers of units and the resultant parking restrictions may be large in magnitude, under the particular circumstances of this case, such deviation presents a distorted indication of the substantiality of the requested variance in light of all of the foregoing.

New York State Courts have held that it is the overall effect of the grant of the variance that is the relevant inquiry and the magnitude of the variance only becomes relevant if it relates to an identified adverse effect of impact on the neighborhood. Niceforo, Supra; Lim-Kim, Supra; Kleinhaus, Supra; Raubvogel v. Board of Zoning Appeals of the Village of Brookville, N.Y.L.J. December 27, 1995, p. 33, col. 2 (Sup. Ct. Nassau Co. 1995); Korean Evangelical Church of Long Island v.

Board of Appeals of the Village of Westburg, N.Y.L.J. February 28, 1996, p. 31, col. 2 (Sup. Ct. Nassau County, 1996).

4.) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood?

The area variance requested will pose no adverse effects to the existing physical or environmental conditions within the neighborhood or district.

With respect to this prong of the analysis, the Applicant references the address of environmental factors made part of the Coordinated SEQRA Review of the proposed project which is being comprehensively forwarded by the Town of Shandaken Planning Board, as Lead Agency. [See 6 NYCRR Part 617.7].

The Planning Board, the NYCDEP, the UCDOH and other agencies are working in conjunction with the Applicant, consultants, the Flood Administrator and the Zoning Enforcement Officer to provide for environmental mitigation measures which will control stormwater runoff, add landscaping, enhance lighting, improve aesthetics, protect the Alton Creek from contaminants and improve vehicular access.

It is further emphasized that the Wellington Restoration represents an adaptive re-use and redevelopment project which is effecting nowhere near the environmental impact which a wholly new development would pose.

Moreover, as the Wellington Hotel is historically designated and the application is effectuating a preservation of the structure, upon a comprehensive record a Type II Action SEQRA classification might have been pursued. Sierra Club v. Department of Parks & Recreation of the City of New York, Index No. 151735, Sup. Ct., NY Co. (2019), Rodriguez, J.

However, countervailing case law authority exists with respect to classification of the action as Type I under SEQRA. Carlson v. New York City Council, 227 AD2d 406 (2024) As such, your writer consulted with Ben Gailey, Esq. and the conservative determination to proceed with the action classified as Type I was mutually determined.

In review of the Type I Action criteria under SEQRA [6 NYCRR Part 617.7], the following is further noted:

a.) The redevelopment does not require legislative action with respect to the permitted and existing uses.

b.) Stormwater and engineering design will improve runoff and address the potential for concentrated pollutants.

c.) Traffic will not substantially increase.

d.) The Wellington premises structural elements will be significantly upgraded in order to meet New York State Energy Code Regulations.

e.) A fire suppression system will be employed.

f.) The parking area variances will provide for, at minimum, a five (5') foot wide greater buffer area from the one hundred (100') foot wide buffer for the Floodway.

g.) There will be no adverse effects upon cultural resources. [See Joseph E. Diamond, PhD Phase 1 a/b Report].

h.) There will be no adverse effect upon Endangered/Threatened Species of Plants or Animals. [See Ecological Solutions, LLC Report].

i.) Lighting, landscaping and architectural aesthetics will be substantially improved.

j.) Municipal water and municipal sewer will be utilized at the project site.

k.) Coordinated participation with the Town of Shandaken Planning Board, NYCDEP, the UCDOH, NYSDEC, the Town of Shandaken Flood Administration, the Town of Shandaken Zoning Enforcement Officer and the Town of Shandaken Highway Superintendent will continue during the pendency of project review and related permitting.

Based upon all of the foregoing, the physical and environmental conditions of the site will not change substantially as a result of the area variance.

5.) Whether the alleged difficulty was self-created?

This portion of the area variance analysis is statutorily proscribed so that the self-created hardship is relevant to the

decision of the board of appeals, but shall not necessarily preclude the granting of the area variance. Sasso, Supra.

It is admitted that, to some degree, the alleged difficulty might be viewed as being partially self-created, inasmuch as potential purchasers of real property are charged with knowledge of the applicable Zoning Law when forwarding development proposals. [Parenthetically, see the Use Variance Legal Analysis, wherein self-created hardship is dispelled upon legal grounds].

However, it is submitted that this issue is mitigated by several factors which demonstrate that the proposed uses and project plans balance in favor of the Applicant under the above analyzed criteria. Shaughnessy v. Roth, 204 AD2d 333 (1994); to wit:

a.) There is an economic need for additional retail uses in the Town of Shandaken and the plan is to retain local employees for business purposes.

b.) The subject premises consists of an already existing former hotel which has been in a substantial state of decline for years.

c.) The area variance request is consistent with existing mixed use (residential/commercial) development proximate to the project site and the attendant neighborhood effects are deminimis in light of the non-effect upon the neighborhood and community at large.

d.) There is a societal, county-wide and local need for affordable and workforce housing and the Wellington Restoration will contribute positively to assisting with providing this necessary multi-family housing.

e.) The Applicant and Owner are working with a renowned historic structure designated architect in order to restore the Wellington Hotel to a state of mixed use grandeur.

f.) This is a project of statewide importance, as evidence by involvement of the NYSDHCR, Restore NY Empire State Development and other governmental entities.

g.) The project will assist with the continuing economic revitalization of the Town of Shandaken and the Pine Hill Hamlet.

h.) Workforce additions will be added to the local economy.

i.) An economic micro-stimulus will be provided to the Pine Hill area and the communal businesses located in the vicinity of the project site.

j.) Without RUPCO, Inc. adding it's funding sources, expertise and political capital to the project, the Wellington Restoration would not occur.

k.) The tireless work of the Wellington Blueberry, LLC owners and associated volunteers, who are not personally benefitting economically, in any manner, from this project.

l.) The cooperation and assistance of the Town of Shandaken and other agencies in order to make this critical project a success.

m.) The preservation of the Wellington Hotel premises as an important part of the history of the Town of Shandaken.

n.) Non-applicability of the 50% Rule, under 44 CFR, Part 59 et. seq., for historic structure preservation.

o.) From a legal perspective, the use of parcels which are said to be substandard in terms of zoning requirements, even by owners who acquired their property with knowledge of the zoning provisions, have been sustained where such use is consistent with the character of the neighborhood. Berger v. Zoning Board of Appeals of the Town of Carmel, 146 AD2d 698 (198

6.) Balancing test.

A zoning board of appeals is charged with granting a minimum variance as said board shall deem necessary to alleviate the problem upon which the application is based and at the same time, preserve and protect the character of the neighborhood. Nardone v. Zoning Board of Appeals of the Town of Lloyd, 144 AD2d 807 (3rd Dept., 1988).

In this regard, the magnitude of the area variance is not substantial in light of the cumulative effects posed by the relief which is being requested and as analyzed within this Application. As such, the Applicant has requested the minimum area variance necessary in order to allow for the lawful

redevelopment use of the Wellington premises as set forth herein.

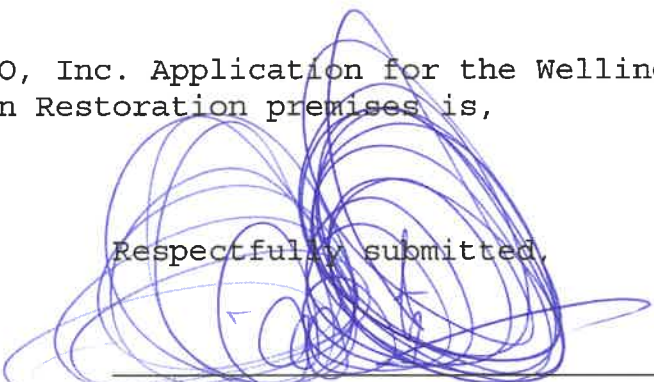
In taking into consideration the benefit to the Applicant if the area variances are granted, as weighed against the detriment to the health, safety, and welfare of the neighborhood or community, it is submitted that the foregoing legal analysis militates to the granting of the area variance requested.

With respect to SEQRA and continuing coordinated environmental review for the Wellington Restoration, the decision as to the grant of any area variances by the ZBA must await the completion of the SEQRA review process. [6 NYCRR Part 617.3(a)].

WHEREFORE, the RUPCO, Inc. Application for the Wellington Blueberry, LLC Wellington Restoration premises is,

Dated: January 14, 2025

Respectfully submitted,



MICHAEL A. MORIELLO, ESQ.
RISELEY & MORIELLO, PLLC
Attorneys for RUPCO, Inc.
111 Green Street, PO Box 4465
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Michael Moriello

From: Allan Dumas <adumas@Blengineers.com>
Sent: Friday, January 3, 2025 5:26 PM
To: Jan Jaffe; Shelley Smith; Michael Moriello
Cc: Kevin O'Connor; Timothy Allred; Dennis Larios; William Pine
Subject: Measurements / Calculations Regarding Wellington, T. Shandaken
Attachments: Wellington Blueberry floodplain and offset calculations.docx

To All,

As a follow up to our ongoing discussions regarding variances, etc. attached please find a summary that should cover what Mike needs as a follow up to our meeting / zoom call with Ben and Mike last Friday for which Jan, Shelley and I attended in person and Mike and Ben attended virtually.

Per the attached notes that my colleague Bill Pine prepared based upon the CAD file as well as the Brewer survey and our historic Pine Hill WD water main and service mapping, please note the following:

- Floodplain/Floodway:
 - o 15.8 % of Property in the Floodway
 - o 29.2 % of Property in the 100 Year Floodplain
 - o 10.0 % of the Existing 100 Year Floodplain Property is Disturbed
 - o 26.5 % of the 100 Year Floodplain Property is Proposed to be Disturbed
- Open Space:
 - o 59.7% of the Property to be Open Space
- Parking Setbacks:
 - o Distance from Road CL to East 2-Spot Parking – 30.2 Ft.
 - o Distance from Road CL to West 12-Spot Parking – 20.2 Ft.
- Building Setbacks:
 - o Wellington:
 - 34.9 Ft. from Road CL to SE Corner of Front Porch
 - 35.0 Ft. from Road CL to NW Corner of Front Porch
 - o Neighboring Properties:
 - 28.6 Ft. from Road CL to SBL: 4.46-1-32.120, Address: 304-308 Main St., Owner: Timothy Etienne
 - 20.5 Ft. from Road CL to SBL: 4.46-2-1.100, Address: 302 Main St., Owner: Binnekill Properties LLC
 - 20.1 Ft. from Road CL to SBL: 4.46-2-33, Address: 298-300 Main St., Owner: Main Street Roost LLC

Note the average setback from the Road CL of the three (3) neighboring properties within 200 Ft. that need to be evaluated per the zoning code is properties is 23.1 Ft. The 35 Ft. +/- to the front of The Wellington is well in excess of this which is acceptable.

Please feel free to call if you have any questions.

Enjoy your weekend. Regards, Allan

Allan M. Dumas III, P.E., M.B.A
Sr. Project Engineer
Brinnier and Larios, P.C.
67 Maiden Lane

On the property

Floodway	6,323 sq.ft.	15.8%
100 yr. Floodplain	11,719 sq.ft.	29.2%
Property	40103 sq.ft.	

Of the 29.2% 100 yr. Floodplain on the property

Existing Disturbance (Building & Deck)	1,576 sq.ft.	10.0%
Proposed Disturbance	3348 sq.ft.	26.5%

Note: Numbers are approximate and are calculated based on FEMA information as shown on the Ulster County Parcel Veiwier.

Approximate Greenspace	23,940 sq.ft.	59.7%
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Offsets

Nearest space of main parking area to centerline of road	20.2 ft.
2 space parking area	30.2 ft.
SE corner of front porch	34.9 ft.
NW corner of front porch	35.0 ft.

Adjacent properties

Colonial Inn Annex	28.6 ft.
Indian Restaurant	20.5 ft.
Post Office	20.1 ft.
Average of three (3) properties	23.1 ft.

Offsets from centerline of road for adjacent properties taken from As Built Map dated May 2006 and Titled "INSTALLATION OF WATER MAIN & APPURTENANCES , FOR THE PINE HILL WATER DISTRICT" created by Brinnier and Larios, PC.

Offsets from centerline of road for this project taken from design plans based on survey map of Donald L.Brewer., PLS, CFM titled "MAP OF PROPERTY SURVEY FOR WELLINGTON BLUEBERRY, LLC" Dated 5/15/2024.

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**USE VARIANCE APPLICATION ADDENDUM
FOR THE WELLINGTON RESTORATION PROJECT:
TOWN OF SHANDAKEN ZONING BOARD OF APPEALS**

I.) PROCEDURAL HISTORY

This Addendum is submitted to the Town of Shandaken Zoning Board of Appeals [hereinafter "ZBA"] in order to supplement the documentation previously submitted to the ZBA by the fee owner of the Wellington Hotel premises [Wellington Blueberry, LLC] and the Applicant [RUPCO, Inc.] for use variances as set forth herein.

Continuing SEQRA coordinated review with the Town of Shandaken Planning Board [hereinafter "Planning Board"], as Lead Agency, is simultaneously taking place with this Application. [6 NYCRR Part 617.6(b)(3)].

A December 18, 2024 ZBA Public Hearing, in consideration of the use variances requested, was held by the ZBA and the Applicant has, in writing, waived the 62 day period within which the ZBA is required to render it's Decision as to the disposition of the use variances.

In addition, the Applicant has recognized, of record, that a new and duly noticed use variance Public Hearing will be required to be held by the ZBA once SEQRA is completed. [See Section 267-b of the Town Law of New York State and 6 NYCRR Part 617.7].

II.) USE VARIANCES REQUESTED

The Applicant plans for the Wellington Restoration to include ten (10) single family apartments for affordable housing, together with a ground floor retail/café use in accordance with site development plans prepared by Brinnier & Larios, P.C. and architectural renderings by Thaler Reilly Wilson Architecture & Preservation. [See also, detailed Application documents, related Application Addendum, Area Variance Addendum and all associated project submittals/plans as

part of the ongoing SEQRA coordinated review for a Type I Action.

With respect to the foregoing, the two use variances requested derive from the Town of Shandaken Zoning Law and the same are set forth as follows:

A.) Acreage necessary for 10 units of multi-family housing is 2.06 acres. The Wellington Restoration redevelopment site is 0.90 acres in size and as such accommodates 4 units of multi-family housing. [7,500 sq ft/unit and additional retail/café use at 1,500 sq ft = 9,000 sq ft].

It is noted that both multi-family and retail/café uses are permitted within the HC and FFO Zoning Districts. An area variance for the additional units is being pursued by the Applicant before the ZBA. Therefore, it is the acreage [2.06 acres vs. 0.90 acres (56.4% deviation)] which serves as the use variance request predicate. [See Density Control Schedule two-family calculation and "Notes 2"].

B.) The amount of required minimum lot area located within the entire floodplain area for a multi-family/commercial parcel cannot exceed 25% of the parcel's total acreage. The parcel at issue has 15.8% of it's lands within the Floodway and 29.2% of it's lands within the 100 Year Floodplain, for a total of 45.0%. accordingly, the percentage of deviation from the use requirement is 20%. [See Density Control Schedule, at "Notes 3(a)"].

* [See also, Allan M. Dumas, PE 1/5/25 e-mail calculations annexed].

III. USE VARAINCE ANALYSIS

In order to demonstrate unnecessary hardship and the concomitant proof of the use variance requirements, the Applicant must demonstrate the following:

"(1) The applicant is substantially unable to make a reasonable return from the property, as shown by competent financial evidence;

(2) The hardship is somewhat unique, or at least not shared by a majority of parcels in the same zoning district;

(3) The hardship has not been self-created; and

(4) The relief asked for - i.e., the requested variance- will not alter the essential character of the neighborhood."

A.) Lack of Reasonable Return:

The Wellington Hotel premises has been in a state of severe decline for over 20 years prior to the purchase of the parcel by Wellington Blueberry, LLC on December 22, 2022. The building has continued to severely decline during the past 2-year period following the purchase.

In the event the premises continues to be left vacant, the majestic former hotel will eventually fall down, burn down or continue to decline until it is not salvageable. The current plan for multi-family and retail/café use by RUPCO, Inc. is the last remaining chance for the revitalization of the Wellington premises.

The subject premises has been a losing economic venture since current fee owner, Wellington Blueberry, LLC, acquired the property. In this regard, the owner has had substantial realized losses which have been derived from the former Wellington Hotel sitting vacant.

Portions of these losses are attributable to year over year maintenance/rehabilitation costs and attendant depreciation, all of which have been reported to your writer by the Applicant as follows:

- i.) Taxes: \$3,534.00+/year.
- ii.) Insurance: \$4,150.00+/year.
- iii.) Landscaping: \$500.00+/year.
- iv.) Repairs: \$6,700.00+/year.
- v.) Water: \$200.00+/year.
- vi.) Electric: \$240.00+/year.

In addition, the community members comprising the Wellington Blueberry, LLC contributed over \$550,000.00 to

purchase, safeguard and clean up the premises. The closing aforesaid took place at, or near, the height of the real estate market. Since said time the real estate market has receded and the owner cannot realistically sell the premises on the open market for any sum that would approach a reasonable return on investment, even if desired.

However, a sale is not desired. Completion of the project is the singular goal, so that the premises may be conveyed the owner related non-profit entity, Friends of the Pine Hill Historic District, Inc. and for additional Historic Tax Credit related purposes.

My client estimates that in excess of \$200,000.00 in sweat equity value has been devoted to the Wellington Restoration over the past two years in terms of securing the premises, management of the building and pursuing grant money for the restoration project.

It is further submitted that the former hotel is presently plagued with a high degree of functional obsolescence and physical limitations which make further expenditures for improvement which would benefit any other permitted use within the HC and FFO Zoning Districts prohibitive. [See analysis herein].

The hotel structure is historically designated and it's rehabilitation, retrofitting and repurposing will be considerably more expensive than a non-historically designated structure in terms of bring it up to New York State Building and Fire Code Standards for permitted use occupancies. Current estimates, based upon conceptual design drawings by the consulting historic architects are at 5.2 million dollars for repairs to the former hotel. An additional 2.5 million dollars, including soft costs, is estimated at 7.7 million dollars.

The grant money and financing necessary to make restoration possible amounts to approximately 4.6 million dollars in grant funds, plus 3 million dollars in historic tax credits sales and an institutional financing contingency.

With respect to all of the foregoing, the functional obsolescence of the former hotel has been exacerbated by lack of HVAC system improvements and related appurtenances replacements. The electrical system, plumbing and all shared bathrooms must all be completely replaced.

In addition, a sprinkler and fire suppression system is required at law and although being benefitted by municipal water, this system is extremely expensive.

As with all improvement to historically designated structures, the preservation of history, conservation of aesthetic attributes and attendant retrofitting of windows, sills, fenestrations, decorative embellishments, stairways, plumbing, heating, air conditioning, individual bathrooms, wood framing, code compliant commercial space and like measures comes at a greater cost and with increased agency review by the New York State Office of Parks, Recreation and Historic Preservation ["NYSOPRHP"].

In fact, the historic designation of the former hotel actually resulted in the NYSOPRHP denying 3 larger one bedroom apartments on the third floor, with loft space in the attic, owing to the fact that the required dormers would be "visible" from Main Street.

It is further submitted that two structural engineers [John Stinemire, PE and Alpine Engineering] have inspected the former hotel and have noted that the foundation must be replaced within the next several years in order to keep the structure intact.

In this regard, the property owner needed to conduct emergency repairs in 2023 in order to maintain the structural integrity of the front porch and to shore up the easterly portion of the structure with an internal buttress in the basement and the ground floor to reduce the buckling of portions of the foundation.

With respect to all of the foregoing, the Applicant and the owner plan to submit the relevant Reports, Grant Information, Cost Estimates and physical repair/restoration particulars to the ZBA, as received from engineering, architectural and historic restoration professionals during the continuing pendency of use variance review.

As to the legal address of the lack of reasonable return standard, the following analysis is set forth:

Zoning Boards of Appeals are granted broad discretion to consider any applications for variance. Friendly Ice Cream Corp. v. Barrett, 106 AD2d 748 (3rd Dept, 1984) and review is predicated upon whether the ZBA decision is based upon substantial evidence of record in order to support a

determination which possess a rational basis. Conley v. Town of Brookhaven Zoning Board of Appeals, 40 NY2d 309 (1976).

Dollars and cents proof of lack of reasonable return may be arrived at by comparing the costs to convert and/or demolish a structure with the economic loss which would result therefrom when compared with the expenditures by the Applicant. Village of Fayetteville v. Jarrold, 53 NY2d 254 (1981), Sheeley v. Levine, 147 AD2d 871 (3rd Dept, 1989).

Furthermore, carrying charges, maintenance and debt service associated with a structure in its current state are all relevant to the dollars and cents inquiry. Crossroads Recreation v. Broz, 4 NY2d 39 (1958).

Moreover, in the instant matter, the Wellington premises may be further considered in terms of the Applicants cost basis in the property, present value in the investment and a computed return on equity utilizing construction costs and potential sale prices. Rothenburg v. Board of Zoning Appeals of the Town of Smithtown, 232 AD2d 568 (1996).

It is submitted that in consideration of the relevant history, the foregoing expenditures, estimated restorative costs and professional opinions, there is no value in the Wellington premises outside of the Wellington restoration Project, as proposed. Based upon the analysis herein, documentation presented and future testimony/submittals of record, a lawful basis exists for the ZBA to exercise it's considerable discretion in order to meet the lack of reasonable return prong of the unnecessary hardship use variance analysis.

B.) Unique Hardship:

The salient facts demonstrate that the alleged hardship relating to the property is unique and does not apply to a substantial portion of the zoning district or neighborhood at large.

First, the mere existence of the large, historically designated and uniquely constructed former Wellington Hotel premises distinguishes this property from virtually all other residential and commercial properties within the respective neighborhood. Couple this fact with the support in the form of grants, together with the proposal to adaptively re-use this important structure, which is uniquely suited to the particular affordable housing use proposed and the uniqueness is further

accentuated. The reasons buttressing this claim of uniqueness owe themselves to several factors, among them:

i.) The current challenging state of the real estate market for dilapidated, tear down and functionally obsolete structures and the patent fact that said conditions will not significantly change.

ii.) The costs to upgrade, rehabilitate and restore the former Wellington Hotel premises for anything other than the desperately needed affordable housing project described herein.

iii.) The support of grant awarding agencies, financing entities and locally supportive volunteers for the restorative efforts set forth herein.

iv.) The planned site development improvements to parking, channelization, aesthetics, grading, buffering Alton Creek, stormwater management and community involvement for affordable housing in connection therewith.

In this regard, zoning determinations run with the land, unless otherwise conditioned, and the same are not limited by the persons who utilize or occupy the premises. St. Onge v Donovan, 71 NY2d 507 (1988).

v.) The commitment by RUPCO, Inc. to the project and concomitant financial, administrative and organizational support.

vi.) The pre-existing nature of the former Wellington Hotel and related accessory improvements; making physical changes difficult and necessitating numerous area variances and use variance records in order to bring the entire project to a beneficial conclusion. Accordingly, these improvements form part of a single integrated project which cannot be duplicated from an aesthetic perspective, once completed.

With respect to all of the foregoing and in consideration of the case law related thereto, the following is offered:

Uniqueness does not require that only the parcel of land in question and none other be affected by the condition which creates the hardship. Jayne Estates v. Raynor, 22 NY2d 417 (1968).

What is required is that the hardship condition be not so generally applicable throughout the district as to require the conclusion that if all parcels similarly situated are granted variances the zoning of the district would be materially changed. Neighborhood in the Nineties Inc. v. City of New York, Donglastin Civic Association v. Klein, 51 NY2d 963 (1980).

It is further submitted that the lands of the Applicant are adversely affected by a now obsolete structure. Accordingly, the unique circumstances showing may be met by demonstrating that the difficulty complained of relates to existing improvements on the land which are obsolete, or which will deteriorate further if not cared for. Commco, Inc. v. Amelkin, 109 AD2d 794 (1985), app. den. 65 NY2d 606 (1985), Fiore v. Zoning Board of Appeals of the Town of Southeast, 21 NY2d 393 (1968).

Moreover, the particular unique characteristics of the improvements situate upon the land at issue may be viewed by a zoning board of appeals in light of the market for a debilitated, deteriorating and defunct structure which is obsolete for any other uses than the uses presently proposed. Fiore, supra Dwyer v. Polsinello, 160 AD2d 1056 (3rd Dept, 1990). A structure which, ultimately, falls down, burns down or is inhabited by pigeons, rodents and/or insects will prove to be of no benefit to anyone.

Finally, a rational determination in consideration of uniqueness may be made by finding that the subject premises is unsuitable for an alternative HC/FFO permitted development owing to the proximity of the Wellington Hotel premises to other properties, the limit of the size of the 0.90 acre parcel and the requisite approvals which would be necessitated were an attempt to otherwise redevelop the premises absent the current owner and Applicant involvement therewith. La Dirot Associates v. Smith, 169 AD2d 896 (3rd Dept, 1991).

Even assuming the owner's and the Applicant's good intentions as being the catalyst for redevelopment with a munificent purpose, in the event that the Wellington premises use is not approved, the structure will eventually fall to rack and ruin as this was it's definitive course prior to the current project and no reason for forwarding philanthropic purposes would remain.

C.) Change in the Character of the Neighborhood:

It is submitted that a grant of variance will not result in a change in the character of the neighborhood for the following reasons:

i.) The residential and commercial mix of properties located within the Pine Hill area of the Town of Shandaken will be consistent with the proposed Wellington Restoration use.

ii.) The use of money in lieu of parking spaces on site will lessen the potential for on-street parking, which is a common practice during certain weekends and holiday periods.

iii.) The focus of the residential portion of the project will be to provide for workforce housing and local persons retention. This is not a project targeted at transplants presently residing far south of Shandaken.

iv.) The Wellington redevelopment will be an adaptive re-use of a pre-existing structure and as such, there will not be introduction of aesthetic effects which do not accentuate the historical context of Pine Hill. A piece of this history will be preserved by way of the project.

v.) The architect for the project is a nationally recognized historic restoration professional and the improvements to the former Wellington Hotel premises will reflect an architectural aesthetic which is consistent with the Pine Hill historic context in light of the necessary improvements to the project site.

vi.) The project will assist with Floodway management and associated safety, owing to stormwater improvements, structural enhancements, native buffering, Floodway set back observation, flood vents and grading improvements.

vii.) Multi-family and commercial uses are permitted under the Zoning Law of the Town of Shandaken within the HC and FFO Districts, subject to site plan and special use permit requirements. Therefore, the New York State Court of Appeals has ruled that inclusion of a permitted use in a local zoning law is tantamount to a legislative finding that said use is in harmony with the zoning law and will not adversely affect the community. WEOK Broadcasting Corp

v. Planning Board of the Town of Lloyd, 79 NY2d 373 (1992), DeNiccolo v. Village of Saugerties Planning Board, Index No. 16-2155, Sup. Ct., Ulster Co. (2016), Mott, J.

D.) Self-Created Hardship:

Under New York State Law, for self-created hardship purposes, an Applicant is charged with knowledge of the applicable Zoning Law provisions upon delivery of the deed. LaDiro, supra. [See also, Section 267-b of the Town Law of New York State].

In the Application at issue, the hardship is not self-created, as the multi-family and commercial/café uses are both permitted within the HC and FFO Zoning Districts. Consequently, as the use variance requested is not inconsistent with zoning and it is only the degree of non-conformity which is the necessary use factor to be analyzed. Jones v. Zoning Board of Appeals of the Town of Oneonta, 90 AD3d 1280 (3rd Dept, 200).

Further, the courts have successfully held that purchasing a parcel of land burdened by an obsolete building is not a self-created hardship which would preclude the grant of a use variance. Fiore, supra, Citizens Savings Bank v. Board of Zoning Appeals of the Village of Lansing, 238 AD2d 874 (3rd Dept, 1987).

In Citizens Savings Bank, the Court found that, even though property was purchased with knowledge that the current use (restaurant) was non-conforming and that there were problems with the septic system. The hardship was not self-created because the owner was not aware of the full extent of the septic system problems until after the purchase was complete.

The Wellington Restoration is analogous to the Citizens Savings Bank case, as in light of the HC zoning, former hotel use occupancy density and the size of the Wellington Hotel structure, it was not readily discernable to the owner that multi-family unit count would be limited to a total of four.

Accordingly, the courts have further found that self-created hardship issues are largely fact specific and if physical or neighborhood conditions have changed over time in light of zoning restrictions, so that the same could not have been fully appreciated, the hardship may be determined to not be self-created. Douglastown Civic Association v. Klein, 67 AD2d 54 (1979), aff'd, 51 NY2d 963 (1980).

It bears emphasizing that the Wellington Restoration premises is uniquely affected by the residential and commercial development patterns which have occurred over many decades. None of the surrounding properties within the HC and FFO Districts are similarly situated. Douglastown, supra.

Based upon the entire analysis provided herein, the physical condition of the premises, economic conditions effectuated thereby and the uniqueness of the premises in comparison with other Pine Hill properties in light of the applicable zoning, there is no self-created hardship in this matter which would preclude the use variance by the ZBA.

E.) Minimum Variance Necessary:

Based upon all of the foregoing, it is submitted that the Applicant has requested the minimum variance necessary in the above captioned matter. The Applicant recognizes the Town of Shandaken's right to grant the minimum variance necessary, together with the imposition of reasonable conditions upon the grant of any use variance approval. [See Section 267-b(2)(c) of the Town Law of New York State].

In this regard, the economics of the project, in light of all of the foregoing unavoidable costs, as well as the necessary use of public funds, limit the Restoration Project to 10 residential units and 1 retail/café use in order to provide for a positive cash flow. Without this minimum redevelopment baseline, the Wellington premises is not economically viable.

F.) Prior Precedent:

In address of the issue of prior precedent, as commonly at issue within use variance review, an administrative body and/or quasi-judicial board is only bound by prior precedent upon cases which exhibit essentially identical facts. Field Delivery Service, Inc. v. Roberts, 66 NY2d 516 (1986), Knight v. Amelkin, 68 NY2d 808 (1986).

Based upon the facts and law presented to the ZBA, it is submitted that this exacting standard will not be met by any future applicant in comparison with the instant application.

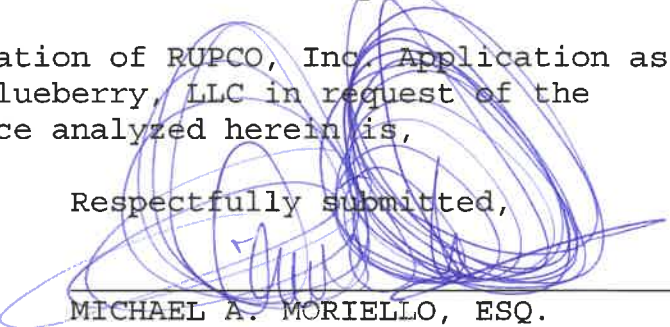
G.) Future Proceedings:

This matter is proceeding under a coordinated SEQRA review process [6 NYCRR Parts 617.6 and 617.7] and the Applicant and owner both plan to supplement the record at or prior to the required public hearing upon the above captioned Application. The Applicant and owner will further respond to any issues which may be raised as a result of continuing review of this matter by the ZBA, Town of Shandaken Officials and the public.

WHEREFORE, the Application of RUPCO, Inc. Application as authorized by Wellington Blueberry, LLC in request of the issuance of the use variance analyzed herein is,

Dated: January 14, 2025

Respectfully submitted,



MICHAEL A. MORIELLO, ESQ.
RISELEY & MORIELLO, PLLC
Attorneys for RUPCO, Inc.
111 Green Street, PO Box 4465
Kingston, New York 12402

Michael Moriello

From: Allan Dumas <adumas@Blengineers.com>
Sent: Friday, January 3, 2025 5:26 PM
To: Jan Jaffe; Shelley Smith; Michael Moriello
Cc: Kevin O'Connor; Timothy Allred; Dennis Larios; William Pine
Subject: Measurements / Calculations Regarding Wellington, T. Shandaken
Attachments: Wellington Blueberry floodplain and offset calculations.docx

To All,

As a follow up to our ongoing discussions regarding variances, etc. attached please find a summary that should cover what Mike needs as a follow up to our meeting / zoom call with Ben and Mike last Friday for which Jan, Shelley and I attended in person and Mike and Ben attended virtually.

Per the attached notes that my colleague Bill Pine prepared based upon the CAD file as well as the Brewer survey and our historic Pine Hill WD water main and service mapping, please note the following:

- Floodplain/Floodway:
 - o 15.8 % of Property in the Floodway
 - o 29.2 % of Property in the 100 Year Floodplain
 - o 10.0 % of the Existing 100 Year Floodplain Property is Disturbed
 - o 26.5 % of the 100 Year Floodplain Property is Proposed to be Disturbed
- Open Space:
 - o 59.7% of the Property to be Open Space
- Parking Setbacks:
 - o Distance from Road CL to East 2-Spot Parking – 30.2 Ft.
 - o Distance from Road CL to West 12-Spot Parking – 20.2 Ft.
- Building Setbacks:
 - o Wellington:
 - 34.9 Ft. from Road CL to SE Corner of Front Porch
 - 35.0 Ft. from Road CL to NW Corner of Front Porch
 - o Neighboring Properties:
 - 28.6 Ft. from Road CL to SBL: 4.46-1-32.120, Address: 304-308 Main St., Owner: Timothy Etienne
 - 20.5 Ft. from Road CL to SBL: 4.46-2-1.100, Address: 302 Main St., Owner: Binnekill Properties LLC
 - 20.1 Ft. from Road CL to SBL: 4.46-2-33, Address: 298-300 Main St., Owner: Main Street Roost LLC

Note the average setback from the Road CL of the three (3) neighboring properties within 200 Ft. that need to be evaluated per the zoning code is properties is 23.1 Ft. The 35 Ft. +/- to the front of The Wellington is well in excess of this which is acceptable.

Please feel free to call if you have any questions.

Enjoy your weekend. Regards, Allan

Allan M. Dumas III, P.E., M.B.A
Sr. Project Engineer
Brinnier and Larios, P.C.
67 Maiden Lane

On the property

Floodway	6,323 sq.ft.	15.8%
100 yr. Floodplain	11,719 sq.ft.	29.2%
Property	40103 sq.ft.	

Of the 29.2% 100 yr. Floodplain on the property

Existing Disturbance (Building & Deck)	1,576 sq.ft.	10.0%
Proposed Disturbance	3348 sq.ft.	26.5%

Note: Numbers are approximate and are calculated based on FEMA information as shown on the Ulster County Parcel Viewer.

Approximate Greenspace	23,940 sq.ft.	59.7%
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Offsets

Nearest space of main parking area to centerline of road	20.2 ft.
2 space parking area	30.2 ft.
SE corner of front porch	34.9 ft.
NW corner of front porch	35.0 ft.

Adjacent properties

Colonial Inn Annex	28.6 ft.
Indian Restaurant	20.5 ft.
Post Office	20.1 ft.
Average of three (3) properties	23.1 ft.

Offsets from centerline of road for adjacent properties taken from As Built Map dated May 2006 and Titled "INSTALLATION OF WATER MAIN & APPURTENANCES , FOR THE PINE HILL WATER DISTRICT" created by Brinnier and Larios, PC.

Offsets from centerline of road for this project taken from design plans based on survey map of Donald L.Brewer., PLS, CFM titled "MAP OF PROPERTY SURVEY FOR WELLINGTON BLUEBERRY, LLC" Dated 5/15/2024.