

COPY DELIVERED TO:

Mr. ROBERT A. GREENE  
REGIONAL PERMIT ADMINISTRATOR  
REGULATORY AFFAIRS UNIT  
NEW YORK STATE DEPT. OF ENVIRON.  
CONSERV., REGION ONE  
BLDG. #40, SUNY CAMPUS  
STONY BROOK, LI, NY 11794

COPY MAILED TO:

MS. SUSAN DUBOIS  
ADMINISTRATIVE LAW JUDGE  
& FRESHWATER WETLANDS  
HEARING OFFICER  
NEW YORK STATE DEPT. OF  
ENVIRON. CONSERV.  
50 WOLF ROAD  
ALBANY, NY 12233

-----  
This document constitutes a petition to:

ROBERT A. GREENE (as Regional Permit Administrator of Region One of the New York Department of Environmental Conservation), SUSAN DUBOIS (as Administrative Law Judge & Freshwater Wetlands Hearing Officer of the New York State Department of Environmental Conservation), and HENRY G. WILLIAMS (as Commissioner of the New York State Department of Environmental Conservation),

in the matter of this request by:

DAVID ALVAR, WILLIAM ZOHA, THOMAS MULRYAN PHILIP SURIANO, and HELENE BYRNE (as individuals and as officers of the TIMBER BROOK WETLANDS CIVIC ASSOCIATION),

to have the TIMBER BROOK WETLANDS and the ADJACENT AREA thereof properly delineated on the Final Freshwater Wetlands Maps of Suffolk County, New York, in strict accordance with Articles 8 and 24 of the Environmental Conservation Law.

**PETITION**

RECEIVED

APR 19 1985

N Y. S. D. E. C.  
REGULATORY AFFAIRS REGION #

18th of APRIL 1985

Fort Salonga, L.I., N.Y.

Dear Mr. Greene, Ms. DuBois, and Mr. Williams:

We, the undersigned citizens of the State of New York and officers of the Timber Brook Wetlands Civic Association and citizens owning real property in and near the Timber Brook Wetlands, do hereby petition and request that the New York State Department of Environmental Conservation take the following actions:

- [1] Act to protect and preserve to the fullest extent possible under law the region of freshwater wetlands known as the "Timber Brook Wetlands" located in the hamlet of Fort Salonga in the Towns of Huntington and Smithtown, Suffolk County, Long Island, New York.
- [2] Read and review this petition and the enclosed affidavit entitled "Bioscientific Affidavit on Delineating the Timber Brook Wetlands Pursuant to ECL Article 24", by biologist Frederick C. Schlauch (A.S., B.S., M.S., M.Phil.), who we have retained as our scientific consultant.
- [3] Enter the petition and the said affidavit (hereinafter termed the SCHLAUCH AFFIDAVIT) into the official record of the ongoing review being held by the New York State Department of Environmental Conservation on the plans to finalize the Freshwater Wetlands Maps of Suffolk County, New York, and continue to incorporate this petition and the SCHLAUCH AFFIDAVIT into all future decision-making and into all records thereof on matters relating to the freshwater wetlands of Suffolk County in general and to the area of freshwater wetlands known as the Timber Brook Wetlands.
- [4] Correct the DEC delineation of the Timber Brook Wetlands on your tentative freshwater wetlands maps (N-2 on the Northport Quadrangle) to the boundary and area shown in Figure 1 on page 32 of the SCHLAUCH AFFIDAVIT and as shown in Map 1 of this petition.

- [5] Define the Adjacent Area of the Timber Brook Wetlands in accordance with Figure 2 of the SCHLAUCH AFFIDAVIT and in accordance with the outline thereof shown in black and red inking on Map 1 of this petition so as to protect and preserve wetlands [the 100-foot width would be far too inadequate to protect the wetlands; see pages 25-28 of the SCHLAUCH AFFIDAVIT].
- [6] Include all of the 11.824 acre parcel of land zoned for "Neighborhood Business" within the bounds of the Timber Brook Wetlands on the tentative and final freshwater wetlands maps of Suffolk County [see paragraphs 41, 42 and 43 on pages 22 and 23 of the SCHLAUCH AFFIDAVIT].
- [7] Issue a "Determination of Significance" in accordance with 6 NYCRR 617.10 (c) on the plans of DEC to finalize the freshwater wetlands maps of Suffolk County and prepare a Draft Environmental Impact Statement in accordance with 6 NYCRR 617.14 on your plans to finalize the freshwater wetlands maps of Suffolk County insofar as (1) plans are not exempt from Article 8 of the Environmental Conservation Law (SEQRA); (2) the maps as presently designed will cause significant negative impacts to the wetlands as a result of omissions; (3) only after DEC has taken the required H.O.M.E.S. case "hard look" under SEQRA will our freshwater wetlands be mapped and accorded full protection under Article 24 of the Environmental Conservation Law; (4) a Draft Environmental Impact Statement will aid in the dissemination of complete and accurate information; (5) because conformance with SEQRA will guarantee us that our relevant concerns will be incorporated into the decision-making process to a greater degree than Article 24 alone; and (6) because we submit it is required by law.
- [8] Use biologists with high-level educational backgrounds and sound biological field research experience in the sciences of plant ecology, freshwater wetlands biology, vertebrate zoology, agronomy, and phytosociology, and related "pure" science disciplines in gathering additional field information on the Timber Brook Wetlands and other wetlands.

- [9] Categorize the Timber Brook Wetlands as a CLASS I wetlands (see Section VI of the SCHLAUCH AFFIDAVIT).
- [10] Enact and follow all recommendations relating to the Timber Brook Wetlands that are set forth in the SCHLAUCH AFFIDAVIT.
- [12] Send us your detailed responses to this petition and the SCHLAUCH AFFIDAVIT at our addresses given at the end of this petition.
- [13] Please accept our appreciation for your consideration of this petition and the SCHLAUCH AFFIDAVIT.

*David A. Alvar*

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Respectfully submitted,

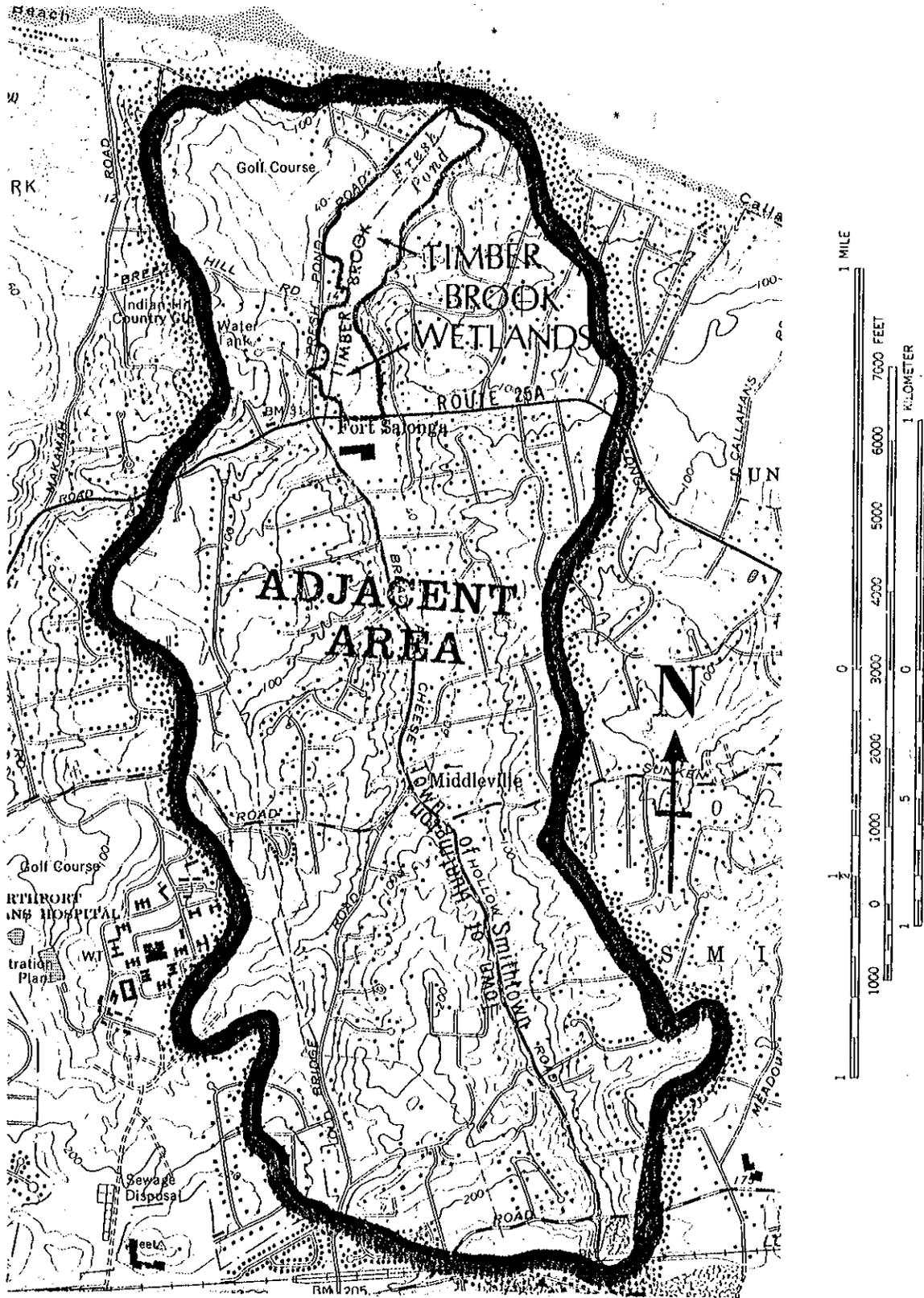
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NORTHPORT QUADRANGLE  
 NEW YORK - SUFFOLK CO.  
 7.5 MINUTE SERIES (TOPOGRAPHIC)



MAP 1

Boundaries requested for the Timber Brook Wetlands and for the Adjacent Area needed to protect the integrity of the Timber Brook Wetlands.

# **Bioscientific Affidavit**

on

**Delineating the**

**TIMBER BROOK WETLANDS**

**pursuant to ECL Article 24**

**PREPARED BY:**

**Frederick C. Schlauch, A.S., B.S., M.S., M.Phil.**

=====

BIOSCIENTIFIC  
AFFIDAVIT  
ON  
DELINEATING  
THE  
TIMBER BROOK WETLANDS  
PURSUANT TO  
ECL ARTICLE 24

=====

prepared by

FREDERICK C. SCHLAUCH,  
A.S., B.S., M.S., M.Phil.,

Bioscientific Consultant

RECEIVED

APR 19 1985

N.Y. S. D. E. C.  
REGULATORY AFFAIRS REGION 11

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FREDERICK C. SCHLAUCH, 415 Clift Street,  
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CONTENTS

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Section I:	INTRODUCTION .....	1
Section II:	QUALIFICATIONS OF THE DEPONENT ...	3
Section III:	OBJECTIVES OF THIS STUDY .....	8
Section IV:	CRITERIA OF ECL 24-0107 .....	15
Section V:	ADJACENT AREA .....	25
Section VI:	CLASSIFICATION .....	28
Section VII:	FIGURES .....	32
Verification	.....	38

(4) The field research used as a basis for the preparation of this affidavit was conducted by the deponent during April 1985. Field work was particularly concentrated in and near the portion of the Timber Brook Wetlands located between Route 25A and ca. 500 feet north of Route 25A.

science of ecology.

(8) The deponent has been engaged in biological field research on Long Island, New York, for more than 20 years. This includes field work in many parts of the North Shore Deciduous Forest (a biogeographic district in which the Timber Brook Wetlands are located) and in the Town of Huntington and the Town of Smithtown. The deponent has also done considerable research (especially herpetological and botanical) in many of the freshwater wetlands of Long Island.

(9) The deponent has authored more than 70 scientific publications (including papers and notes on Long Island zoology and biogeography) since 1965.

(10) The deponent has served as the Editor of the publications of the Northeastern Field Naturalists' Society, including its scientific journal Engelhardtia, since 1968. This position involves the editing and publishing of many papers and notes on Long Island natural history and on the plant and animal life of freshwater wetlands.

(11) The deponent has served as a peer reviewer and/or editorial consultant to various scientific journals,

including Atala and The American Midland Naturalist.

(12) The deponent was elected to membership in the Council of Biology Editors, the national organization of bioscientific editors dedicated to the standardization and improvement of biological publication practices (1979).

(13) The deponent held a position as a Research Assistant in the Division of Biological Sciences at Cornell University, under the auspices of Dr. Kraig Adler (1974). This position involved curatorial work on the preserved vertebrate collections and editorial work on herpetological publications.

(14) The deponent served as a Research Intern with the late Dr. James D. Anderson in research on the endangerment status of several species of amphibians and reptiles in New Jersey (1975 to 1976). This was contractual research performed at Rutgers University for the New Jersey Endangered Species Project of the the New Jersey Department of Environmental Protection.

(15) The deponent was retained by the Islip Town Environmental Council, the official advisory body of the

to include the revision in an affidavit so that DEC could correct the mapping of "N-2" before the final wetlands maps for Suffolk County are adopted.

(23) As is detailed later in this affidavit, I have found the survey and tentative mapping by DEC personnel to be substantially deficient. Therefore, it is necessary for me to fulfill the second primary objective, and I present a correct mapping of the boundaries of the Timber Brook Wetlands in this affidavit as FIGURE 1. This delineation and not the one now on the tentative mapping of "N-2" should be included on the final freshwater wetlands maps of Suffolk County.

(24) The "piecemealing" of an action or group of interrelated actions that may have significant environmental impacts is specifically prohibited by the provisions of ECL Article 8 (SEQRA) and 6 NYCRR 617. The delineating of the bounds of freshwater wetlands without simultaneously delineating boundaries for the "adjacent areas" (within the meaning of 6 NYCRR 664.2) would constitute such "piecemealing" of an action contrary to SEQRA. This is made clear by 6 NYCRR 617.11[b]:

For the purpose of determining whether an action will cause one of the foregoing consequences, the action shall be deemed to include other simultaneous or subsequent actions which are:

- (1) included in any long-range plan of which the action under consideration is a part;
- (2) likely to be undertaken as a result thereof; or
- (3) dependent thereon.

Obviously, the delineating of the bounds of an "adjacent area" is part of the same long-range plan involved in mapping the involved freshwater wetlands. The delineating of the bounds of an "adjacent area" is definitely undertaken as a result of the mapping of the involved freshwater wetlands. And the delineating of the bounds of an "adjacent area" is dependent on the mapping of the involved freshwater wetlands. Therefore, the "adjacent area" for the Timber Brook Wetlands (as well as the "adjacent areas" for all other freshwater wetlands in Suffolk) must be delineated and finalized simultaneously with the finalizing of the bounds of the wetlands.

(25) The mapping of freshwater wetlands and the delineating of their "adjacent areas" are dependent actions that do not qualify as Type II actions (6 NYCRR 617.13), excluded actions (6 NYCRR 617.2[n]), nor exempt actions (6 NYCRR 617.2[o]). Regardless of whether considered Type I

actions (6 NYCRR 617.12) or unlisted actions (6 NYCRR 617.2[ab]), the finalizing of freshwater wetlands maps and the delineating of "adjacent areas" are actions that will undoubtedly allow most or all of the significant environmental effects listed in 6 NYCRR 617.11[a] to occur on the many wetlands and "adjacent areas" that have not been mapped in their entirety by DEC personnel and the others that have not been even partially mapped by DEC personnel.

(26) Upon information and belief, DEC has not issued the DETERMINATION OF SIGNIFICANCE required pursuant to 6 NYCRR 617.10[c] for the planned finalization of the bounds of "N-2" and a possible conclusorily determined "adjacent area" not encompassing all of the sites more than 100 feet from the wetlands border that are existing and potential sources for negative impacts on the Timber Brook Wetlands. Failure to define the "adjacent area" as extending much farther than 100 feet from the bounds of the Timber Brook Wetlands will definitely result in negative impacts on the wetlands from sources more than 100 feet away [see Section V ("Adjacent Area") of this affidavit]. Thus, the manner in which the "adjacent area" of the Timber Brook Wetlands is defined and all actions relating thereto require simultaneous review not only pursuant to ECL Article 24 but also pursuant to ECL Article 8 (SEQRA). Clearly, DEC is prohibited

by law from finalizing any freshwater wetlands maps and from finalizing the limits of any "adjacent areas" until after DEC incorporates the SEQRA process into the freshwater wetlands final mapping process.

(27) This affidavit is being prepared with the hope that DEC will not attempt to finalize the freshwater wetlands maps of Suffolk County until after the public has been allowed to participate in the SEQRA decision-making process, including the right of the public to submit comments on and to attend the required public hearing on the DRAFT ENVIRONMENTAL IMPACT STATEMENT (hereinafter "DEIS"), which DEC must prepare for this collective action in accordance with 6 NYCRR 617.14 before any wetlands and "adjacent area" boundaries are finalized. All public hearings held by DEC to date have been in noncompliance with SEQRA, as neither a Determination of Significance nor a DEIS was made available for public inspection prior to the said hearings. Regardless, this affidavit is being written with a desire to contribute some of the empirical data gathered by a scientific authority and needed for DEC to make correct delineations of the Timber Brook Wetlands site and adjacent area and that will allow DEC to meet the three-part "hard look" test required by H.O.M.E.S. v. New York State Urban Development Corporation, 69 AD2d 222, at p. 232 (4th Dept., 1979) and the specific criteria set forth in a

(28) Therefore, the third primary objective of this affidavit is to recommend an "adjacent area" of a size sufficient to encompass sites having present and potential sources for negative impacts on the Timber Brook Wetlands. The rationale for my recommended "adjacent area" is given in Section V ("Adjacent Area") of this affidavit, and the bounds of this recommended "Adjacent Area" are delineated in FIGURE 2.

(29) My field research endeavors were specifically aimed at fulfilling the three primary goals specified in the preceding paragraphs of this affidavit. I have made no effort to attempt a complete biological inventory of the Timber Brook Wetlands. Such an inventory is beyond the scope and intent of this affidavit. However, sufficient data are available to support a secondary goal of my work: the classification of the Timber Brook Wetlands in accordance with the criteria set forth in 6 NYCRR 664.5. This topic is covered in Section VI ("Classification") of this affidavit.

## IV

### CRITERIA OF ECL 24-0107

=====

(30) My field research was performed with an intent of outlining the bounds of the Timber Brook Wetlands in strict accordance with the definitions in ECL 24-0107. The most important indicator species in the Timber Brook Wetlands is the Red Maple (Acer rubrum). Lands in which "competitive advantage" is given to the Red Maple as a result of the presence of "sufficiently water logged soils" are among the lands that are defined as "freshwater wetlands" by ECL 24-0107. DEC is required by law to map and protect all "lands and submerged lands" [ECL 24-0107(1)(a)] with a significant presence of:

wetland trees, which depend upon seasonal or permanent flooding or sufficiently water-logged soils to give them a competitive advantage over other trees; including, among others, red maple (Acer rubrum) . . . .

ECL 24-0107(1)(a)(1) [emphasis added].

Thus, DEC must include, on the final freshwater wetlands maps of Suffolk County, all parts of the Timber Brook Wetlands giving Red Maples a "competitive advantage" as a result of the presence of "sufficiently water-logged soils".

(31) Among the criteria used by phytoecologists to determine the relative importance of individual species of trees in vegetation are: (i) the percentage of an individual species in the total foliage coverage of all species; (ii) the proportion of trunks representing an individual species; (iii) the proportionate representation of an individual species in the total basal area of all species; and (iv) the percentage representation of an individual species in the total biomass of all species. The dominance of the Red Maple in the Timber Brook Wetlands is so strong that no other tree species approaches the overall importance of Red Maple in these wetlands.

If every tree in the Timber Brook Wetlands were measured, the Red Maple would clearly show relative measurements vastly outweighing those of all other tree species in all four of the categories. For example, based on a small sample of dbh (diameter at breast height) measurements and extensive visual estimations, I conservatively conclude the Red Maple represents approximately 80 to 95 percent or more of the total basal area of all trees within the bounds that I give for the Timber Brook Wetlands in FIGURE 1. Clearly, the Red Maple is the most important tree in the Timber Brook Wetlands.

(32) The Red Maple typically does not attain the magnitude of importance shown in the Timber Brook Wetlands

unless there exist extremely favorable conditions of "seasonal or permanent flooding or sufficiently water-logged soils" that give this species a very strong "competitive advantage over other trees".

(33) I have examined both the tentative mapping of the Timber Brook Wetlands on the DEC-file copy of the "Northport, N.Y." quadrangle and the more detailed (in scale) mapping sent to DAVID ALVAR (President of the TIMBER BROOK WETLANDS CIVIC ASSOCIATION) with a letter by MICHAEL J. FISCINA (Senior Environmental Analyst of the Regulatory Affairs Unit of Region 1 of the DEC) dated 1 May 1984. Both of those DEC-mappings grossly underdelineate the size of the Timber Brook Wetlands and are not in conformity with the definition and mapping requirements of ECL 24-0107 and 6 NYCRR 664. The said letter by FISCINA states the following:

Mr. Scott Crocoll, our Environmental Protection Biologist, has placed orange flagging on the vegetation that delineates the boundary of the freshwater wetlands. That boundary was found to exist approximately 500 feet north of Route 25A and running in an east-west direction except that it follows the shoreline of the two ponds on the south half of the property, the bank of the ditch and all of the property on the northern half of the property except northwest corner (see attached survey).

[emphasis added].

As I have examined the letter-cited "attached survey" (the more detailed mapping) and as I have seen "orange flagging" on the site that conforms in location with the DEC-proposed bounds, I am able to determine the extent to which the field work by DEC personnel did not produce results in conformity with the definitions of "freshwater wetlands" set forth in ECL 24-0107.

(34) The cited field work by SCOTT CROCOLL (to the extent described in the letter by FISCINA and reflected in the "attached survey") fails to include much wetlands acreage dominated by Red Maple. Some of the densest stands of Red Maple on the site are excluded. The degree of error is very major.

(35) The extent of the DEC-misdesignation of the actual bounds of the wetlands is apparent in photographs that I took along and outside the DEC-defined bounds. I took FIGURE 3 at a point ca. 440 feet north of Route 25A. The view is in a southerly direction. Note the "orange flagging" on the Red Maple on the east side of the brook. This flagging indicates that the DEC-defined boundary excludes all lands located east of the brook, all parts of the brook itself south of the flagging, and all lands on both sides of the

southern (upstream) section of the brook. Most of the trees visible in FIGURE 3, including those on the lands outside the DEC-demarcation, are Red Maples.

(36) FIGURE 4 is an easterly view of a dense stand of young trees (mostly ca. 1/2 to 6 inch dbh) just east of the section of the brook shown in FIGURE 3. More than 90 percent of these trees are Red Maples; however, all of the trees and lands shown in FIGURE 4 are outside the DEC-demarcation of the Timber Brook Wetlands. All of the acreage shown in FIGURE 4, however, qualifies within the "freshwater wetlands" definition of ECL 24-0107(1)(a)(1).

(37) FIGURE 5 was taken at a point ca. 270 feet north of Route 25A. This picture shows the brook depicted in FIGURE 3 at a spot about 170 feet farther upstream. Note the young Red Maples growing along the brook. This entire area is outside the DEC-demarcation but qualifies within the "freshwater wetlands" definitions of ECL 24-0107. On the date FIGURE 5 was taken (9 April 1985), the brook exhibited continuous surface flow of water through this point, and the surface flow was continuous from a point even farther upstream (ca. 150 feet north of Route 25A), above which the water surface of the brook was in the form of non-flowing pools.

(38) Most of the acreage of the Timber Brook Wetlands that the DEC fails to demark as "freshwater wetlands" did not exhibit surface water during my period of field work in April 1985. However, this does not mean that surface water is not considerably more widespread in this acreage during periods of greater precipitation. The winter of 1984-85 was droughty, and this drought has continued into April 1985. Therefore, during the period of my field work, water levels in the Timber Brook Wetlands were naturally and significantly lower than normal for this time of year.

(39) ECL 24-0107 makes it very clear that the presence of surface water is not required for lands to be designated as "freshwater wetlands". ECL 24-0107(1)(a)(1) and ECL 24-0107(1)(a)(2) clearly point out that lands need only have "sufficiently water-logged soils" that give wetlands plants such as Red Maple a "competitive advantage" over other plants. Although the present relatively dry surface leaf litter of much of the Timber Brook Wetlands might seem an indicator of dry soils to a casual visitor during the current drought, the impression would be a false one. Poorly drained soils (including soils of the Walpole and Wareham Series) are predominant in the acreage improperly excluded by DEC from the Timber Brook Wetlands; these soils typically have "a seasonal high water table at a

depth that ranges from 6 to 18 inches" (John W. Warner, Jr., et al., Soil Survey of Suffolk County, New York, Soil Conservation Service, U.S. Dept. of Agriculture, U.S. Government Printing Office, Washington, D.C., 1975). Obviously, despite the surficial scarcity of water, the soils of the Timber Brook Wetlands are sufficiently "water-logged" (saturated) in lower horizons (B and C) to give Red Maple and other wetland plants "competitive advantage" over plants favored by less hydric conditions.

(40) My mapping of the bounds of the Timber Brook Wetlands (FIGURE 1) clearly shows that the wetlands extend southward to Route 25A. The extreme inaccuracy of the DEC-delineation is further substantiated by the fact that the actual southern boundary of the wetlands runs along Route 25A. The FISCINA letter indicates that the position of DEC is that most of the southern border is "approximately 500 feet north of Route 25A". At no point in the "attached survey" accompanying that letter does DEC map the southern boundary of the wetlands as being closer than ca. 300 feet from Route 25A, and a major portion of the southern boundary proposed by DEC is ca. 500 or more feet from Route 25A.

(41) The most extreme DEC-exclusion of a parcel of land is the avoidance of a lot of ca. 3.7 acres extending from Route 25A to 500 feet north of Route 25A. This excluded parcel bears the zoning designation "Neighborhood Business" on the DEC-survey map. Most, if not all, of this parcel qualifies as "freshwater wetlands" under the definitions of ECL 24-0107. A majority of the wetlands on this lot are treed and dominated by the Red Maple. FIGURE 4 shows a dense stand of Red Maples within this parcel. The brook depicted in FIGURES 3 and 4 is along or near the western property line of the lot.

(42) The southernmost portion of the ca. 3.7-acre parcel contains wetlands vegetation indicative of disturbance by land scarification (including bulldozing) within the past decade. This disturbed area extends from Route 25A to ca. 140 feet north of Route 25A. Herbaceous plants (such as Phragmites communis) and shrubs are predominant in this section. The fact that the original vegetation of this area has been destroyed does not mean that the qualifications for "freshwater wetlands" pursuant to ECL 24-0107 are not met. The area still has characteristics associated with "freshwater wetlands". Hydric soil conditions exist, and wetlands indicator species are present. FIGURE 6 shows some of the vegetation growing on the disturbed site, including Phragmites communis [which is defined as a wetlands indicator

species in ECL 24-0107(1)(a)(3)]. Thus, the Timber Brook Wetlands must be mapped as "freshwater wetlands" extending to Route 25A.

(43) Within the ca. 3.7-acre tract, I observed landscape scarification even more recent than the disturbance that is responsible for the herbaceous and shrub dominance in the area just north of Route 25A. Two corridors have been created within the past year. One swath runs from the disturbed area northward and primarily involves the cutting of trees. The other swath is much wider and runs northward through the disturbed area and deep into the part of the tract dominated by Red Maple. Much damage to the swampland vegetation and the natural soil horizons has occurred. Upon information and belief, no person or corporation applied to DEC for the permit required pursuant to ECL Article 24 to engage in the scarification responsible for the existence of the disturbed area or to further disturb the wetlands vegetation in order to create the two corridors extending deep into the maple-dominated swampland. Nor, upon information and belief, did any person or corporation engage in the environmental impact reviews required pursuant to ECL Article 8 (SEQRA) and 6 NYCRR 617 for these scarification actions having significant negative environmental effects.

(44)           The "freshwater wetlands" boundary that I delineate in FIGURE 1 is in conformity with the letter and intent of the law as set forth in ECL Article 24. However, there exists reason for DEC to engage in a new, more precise survey of the Timber Brook Wetlands, with the goal of defining the boundaries of the wetlands with a precision of one foot or less. But this should not be attempted until scientists thoroughly trained in phytosociological classification, freshwater wetlands biology and soil science are available to do the field research required. Also, this survey should not be attempted until Region 1 of DEC adopts detailed, objective, written standards (including field survey methods) for delineating "freshwater wetlands" in Suffolk County in a manner conforming with the definitions of ECL 24-0107.

# V

## ADJACENT AREA =====

(45) Actions that may have significant environmental effects on the Timber Brook Wetlands are subject to review pursuant to ECL Article 8 (SEQRA) and ECL Article 24. To protect the integrity of the Timber Brook Wetlands, it is imperative that DEC designate an "adjacent area" of sufficient size to include all sites from which such negative impacting actions may originate.

(46) The designation by DEC of "adjacent areas" is required by law:

Activities subject to regulation shall include any form of drainage, dredging, excavation, removal of soil, mud, sand, shells, gravel or other aggregate from any freshwater wetland, either directly or indirectly; and any form of dumping, filling, or depositing of any soil, stones, sand gravel, mud, rubbish or fill of any kind, either directly or indirectly; erecting any structures, roads, the driving of pilings, or placing of any obstructions whether or not changing the ebb and flow of the water; any form of pollution, including but not limited to, installing a septic tank, running a sewer outfall, discharging sewage treatment effluent or other liquid wastes into or so as to drain into a freshwater wetland; and any other activity which substantially impairs any of the several functions served by freshwater wetlands or the benefits derived therefrom which are set

forth in section 24-0105 of this article. These activities are subject to regulation whether or not they occur upon the wetland itself, if they impinge upon or otherwise substantially affect the wetlands and are located not more than one hundred feet from the boundary of such wetland. Provided, that a greater distance from any such wetland may be regulated pursuant to this article by the appropriate local government or by the department, whichever has jurisdiction over such wetland, where necessary to protect and preserve the wetland.

ECL 24-0701(2) [emphasis added].

The Timber Brook Wetlands cannot be adequately protected and preserved through the use of an "adjacent area" extending only 100 feet from the boundary of the wetlands. Much of the water feeding the Timber Brook Wetlands unquestionably originates from sites at distances far greater than than 100 feet from the bounds that I propose for the wetlands (FIGURE 1). Contaminants from septic tanks and other sources of sewage may already be degrading the quality of the wetlands. Road runoff originating from points at distances greater than 100 feet from the wetlands bounds undoubtedly brings contaminants into the wetlands. Included in the "adjacent area" of the Timber Brook Wetlands should be all sites on which any new actions (additional septic tank construction, sewage plant construction, road drainage projects, industrial liquid waste disposal, etc.) might be

initiated and from which pollutants might enter and degrade, through surface and underground water flow, the Timber Brook Wetlands.

(47) To protect and preserve the Timber Brook Wetlands, it is necessary to protect and regulate the watershed area in which the wetlands are situated and all sites that may be serving as sources for the underground water that feeds the wetlands. With this in mind, I recommend that the DEC adopt the "adjacent area" of the Timber Brook Wetlands as the region outlined in black in FIGURE 2.

## VI

### CLASSIFICATION

=====

(48) DEC is required to classify wetlands pursuant to 6 NYCRR 664.4 and 6 NYCRR 664.5. If a wetlands "is a resident habitat of an endangered or threatened animal species" (6 NYCRR 665.5[a][2]), DEC must designate the wetlands as Class I. As is pointed out in Section III ("Objectives of This Study") of this affidavit, DEC has not acted in accordance with the provisions of ECL Article 8 (SEQRA) and 6 NYCRR 617 in its efforts to finalize the bounds of the Timber Brook Wetlands and its "adjacent area". The failure of DEC to perform a comprehensive biological inventory of all plant and animal species means that DEC does not have sufficient information upon which to take the "hard look" [required by the H.O.M.E.S. and Tehan decisions cited on pages 13 and 14 of this affidavit] needed to determine if any endangered and/or threatened species occur in the Timber Brook Wetlands. There is a definite possibility that one or more of the species designated as endangered, threatened and/or special concern by the DEC occur in the Timber Brook Wetlands.

(49) DEC is also required to classify the Timber Brook Wetlands as a Class I wetlands if it "supports an animal species in abundance or diversity unusual for the state or for the major region of the state in which it is found" (6 NYCRR 664.5[a][4]). Although it is highly likely that the Timber Brook Wetlands support such species, the required "hard look" biological inventory has not yet been performed by DEC to confirm the presence or absence of any such species.

(50) Although sufficient data are not yet available to determine whether or not the Timber Brook Wetlands must be categorized as Class I based on the presence of one or more of the species covered by 6 NYCRR 664.5[a][2] or by 6 NYCRR 664.5[a][4], the Timber Brook Wetlands and its watershed are clearly connected to the Long Island aquifer, which is used for public water supply. This means that DEC must designate the Timber Brook Wetlands as a Class I wetlands (6 NYCRR 664.5[a][6]).

(51) The applicability of 6 NYCRR 664.5[a][6] automatically qualifies the Timber Brook Wetlands as Class I. However, the Timber Brook Wetlands must be regarded as Class I wetlands as the requirements are also met under

6 NYCRR 664.5[a][7], which states that any wetlands having four or more Class II characteristics must be deemed Class I. More than 25 percent of the area of the Timber Brook Wetlands is covered by the "woody structural group" (6 NYCRR 664.6[b][1][ii]) and more than 15 percent of the area consists of the "water structural group" (6 NYCRR 664.6[b][1][iii]); therefore, the Class II qualifications 6 NYCRR 664.5[b][2] apply. The Timber Brook Wetlands meet the Class II criterion of 6 NYCRR 664.5[b][4] by association with a permanent body of water outside the wetlands, the Long Island Sound (into which Timber Brook flows). The position of the Timber Brook Wetlands on the morainal North Shore of Long Island and its geological association with Long Island Sound indicate the applicability of the Class II criteria of 6 NYCRR 664.5[b][11]. The Timber Brook Wetlands definitely meet the Class II criterion of being "hydraulically connected to an aquifer which has been identified by a governmental agency as a potentially useful water supply" (6 NYCRR 664.5[b][13]). The Timber Brook Wetlands are located within the "urbanized area" known as "New York - Northeastern New Jersey" (6 NYCRR 664.6[e][1][iv]); therefore, the Class II characteristic of 6 NYCRR 664.5[b][15] is applicable. Clearly, a minimum of five of the enumerated Class II characteristics apply

to the Timber Brook Wetlands, and the wetlands must  
be deemed Class I pursuant to 6 NYCRR 664.5[a][7].



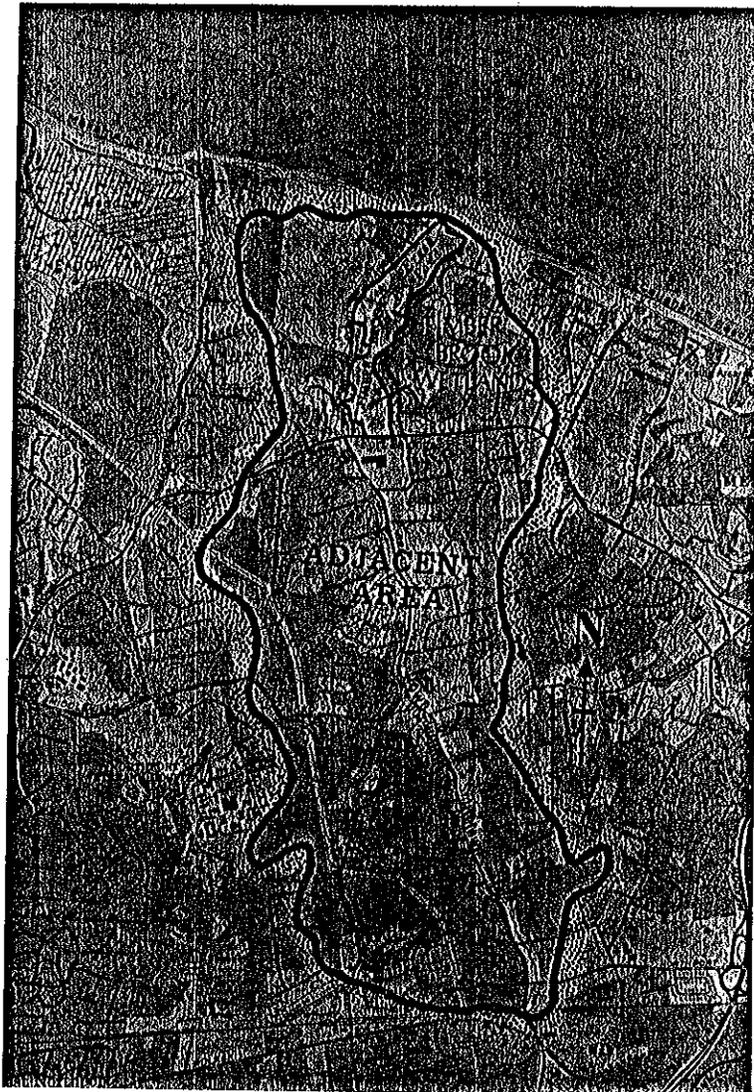


FIGURE 2. "Adjacent Area" of the Timber Brook Wetlands as determined by Frederick C. Schlauch. "Adjacent Area" is outlined in black.



FIGURE 3. View of brook and wetlands dominated by Red Maple (Acer rubrum) from ca. 440 feet north of Route 25A. The view is to the south. Note the "orange flagging" wrapped around the tree on the east side of the brook. See paragraph (35), on pages 18-19, of this affidavit for detailed explanation. Photograph taken on 9 April 1985, by Frederick C. Schlauch.



FIGURE 4. Stand of young Red Maples (Acer rubrum) growing in wetlands on the ca. 3.7 acres labelled "Neighborhood Business" on the DEC survey map. DEC failed to map this area as wetlands. This scene was taken just east of the section of the brook shown in FIGURE 3. See paragraph (36), on page 19, of this affidavit for comments. Photograph taken on 9 April 1985, by Frederick C. Schlauch.



FIGURE 5. View of brook and wetlands from a point ca. 270 feet north of Route 25A. See paragraph (37), on page 19, of this affidavit for details. Photograph taken on 9 April 1985, by Frederick C. Schlauch.



FIGURE 6. View of wetlands vegetation in the "disturbed area" extending to ca. 140 feet north of Route 25A. Note the presence of an important wetland indicator species, *Phragmites communis*. DEC failed to map this area as part of the Timber Brook Wetlands. See paragraph (42), on page 22, of this affidavit for details. Photograph taken on 9 April 1985, by Frederick C. Schlauch.

VERIFICATION

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I, FREDERICK C. SCHLAUCH (being the deponent), do depose and verify: that I prepared the contents of this affidavit; that I have read and that I know the contents of this affidavit; that the same are true to the best of my knowledge, except as to matters herein stated to be upon information and belief (and that as to those matters, I believe them to be true); that the grounds of my belief not based upon my own knowledge are derived from municipal documents, public records and scientific literature; and that I have sufficient training and scientific knowledge in the sciences of ecology, vegetation science, and freshwater wetlands biology, and in related scientific disciplines to render the scientific statements made in this affidavit.

*Frederick C. Schlauch*

STATE OF NEW YORK }  
COUNTY OF SUFFOLK } **SS.**

FREDERICK C. SCHLAUCH,  
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(516) 582-4332

Sworn to before me on this 15 day of April 1985.

*Sal Bocchieri*

NOTARY PUBLIC

**SAL BOCCHIERI**  
NOTARY PUBLIC, State of New York  
No. 5362202, Suffolk County  
Term Expires March 30, 1986