

## **GROUNDS OF APPEAL:**

The grounds of appeal challenging the revised Mitigation Measure 6-1 are attached as **Attachment 12**. However, since the Applicant submitted a revised proposal, to which the Appellant submitted a response, the basis for the appeal has changed. The following outlines the basis for the revised proposal, contained in the Applicant's letters of March 8 and March 29, 2022, (See **Attachments 2 and 3**.) and the appeal grounds set forth in the response to the revised proposal, as contained in Appellant's March 29, 2022, letter (See **Attachment 4**). For convenience, Staff has provided a summary below, but recommends the Board review the actual Letter for details.

### **Applicant's Revised Proposal**

As discussed above, the approved revision to Mitigation Measure 6-1 would exchange the permanent preservation of 248 acres of woodland habitat with a combination of preservation and tree planting. After further consideration, the Applicant now proposes to return to the previously approved mitigation, the conservation of 248 acres of woodland habitat, with additional information to substantiate the effectiveness of the mitigation and to address the concerns identified by the Court of Appeal. Specifically, the Applicant identified 292.6<sup>1</sup> acres of woodland habitat that was suitable for conservation based on the Court's criteria, as well as additional limitations the Applicant imposed to ensure the habitat was appropriate for mitigation. The 292.6 acres meet the following criteria:

- They are all mapped as woodland habitat.
- They are all located on slopes less than 30%.
- They are not located within the Millikin Reservoir watershed.
- They are not located within required setbacks from riparian corridors.
- There is no overlap with the land to be converted to other uses as part of the project.
- They are not designated for preservation under adopted mitigation measures requiring protection of other resources on the property, as set forth in the approved Biological Resources Management Plan.

Staff has reviewed the maps provided by the Applicant, comparing them to the mapping on the record, and has confirmed that the criteria are met. In addition, the Applicant has proposed revising the Biological Resources Management Plan ("BRMP") to include the GHG mitigation, thus incorporating the provisions relating to management of permanent preservation.

While the Applicant's proposal does not state the specific metes and bounds of the conservation easement, detailed mapping has been provided that allows staff to analyze the proposal. Section 6.1 of the BRMP requires that the specific areas to be covered by a conservation easement be determined by a qualified botanist or biologist and approved by the County before recording. In addition, the conservation easement document, representing the negotiated agreement between

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<sup>1</sup> The March 8, 2022, proposal identified approximately 312 acres of available woodland habitat, but the Applicant revised this total to remove woodland within the Milliken Reservoir watershed. County regulations impose additional restrictions on vegetation removal within the municipal watershed that reduces the viability of this land for conservation. The Appellant's March 29, 2022, response was based on the March 8, 2022, proposal, though the only substantive difference is the total available acreage for conservation.

the Applicant and the certified land trust, approved by the County, would establish the appropriate financial security that would be required to maintain the easement area.

Based on the information submitted by the Applicant, and in light of the decision of the Court of Appeal regarding the previously approved Mitigation Measure 6-1, staff believes that substantial evidence supports the conclusion that the proposed revision to Mitigation Measure 6-1, included in Attachment 5, would result in a less-than-significant impact on GHG emissions.

### **Appellant's Response**

In response to the proposed revision submitted by the Applicant, the Appellant provided a letter, dated March 29, 2022. (Attachment 4.) Initially, the Appellant requests that the Board grant the appeal and reject the proposed mitigation. However, this request is not supported by argument in the letter. Instead, the Appellant makes five requests for modification to the mitigation proposal, claiming that without the suggested modifications, the mitigation would lack sufficient specificity and assurances and, thus, would not be supported by substantial evidence. Staff treats these requests as new grounds of appeal, summarizing them below, but the Board is encouraged to review the March 29, 2022, letter for the complete details.

**Appeal Ground No. 1:** The Board should require more specificity regarding the location and configuration of the 248 acres to be placed in a conservation easement within the 312 acres of identified available woodland. Understanding that some flexibility in identifying appropriate easement areas is needed, the Applicant should provide more clarity regarding the possible configuration of the easements.

**Staff Response:** The California Environmental Quality Act (CEQA) does not require that the County specifically identify the metes and bounds of a conservation easement at the adoption of an environmental document. As a practical matter, the specific property to be conserved must be identified in coordination with the entity or organization that will hold the easement in perpetuity. Additionally, as discussed below, the boundaries of the easement will be identified in consultation with a biologist or botanist to ensure that the easement meets the standards set forth in the mitigation measures. Instead, as highlighted in the Court of Appeal decision in this matter, CEQA requires that the mitigation set forth standards to ensure that the conservation easement does, in fact, mitigate the impact that it is intended to address.

The Applicant's revised proposal does just that. The proposal includes detailed mapping of 292.6 acres of woodland habitat on the Property that meets specific standards to ensure that the conservation easement preserves woodland that would otherwise be threatened with development. From the 292.6 acres, the Applicant, the easement holder, and a qualified botanist or biologist, will identify at least 248 acres to include in a conservation easement, subject to approval by County staff.

As discussed above, staff has confirmed that the 292.6 acres of woodland habitat identified by the Applicant in the revised proposal meets the conditions identified by the Court of Appeal to ensure that the mitigation will preserve developable woodland. While there is no requirement that there be present plans for development on these 248 acres, and indeed, the Applicant has

presented no such plans, maps prepared by County staff show that, due to the constraints on the Property, the 292.6 acres identified by the Applicant represent the likeliest areas for development on the Property. (See Figure ##, attached.)

At this stage, the Board's role is to ensure that the mitigation measure is likely to be successful by establishing the standards to guide the necessary parties in recording the ultimate easement. The Applicant's proposal, by identifying the eligible woodland that meets the standards established by the Court of Appeal, allows the Board to make that determination while still allowing the necessary parties the flexibility to identify an appropriate easement area.

**Appeal Ground No. 2:** The Board should prioritize conserving large areas of intact and contiguous habitats as much as possible to demonstrate they aim to optimize carbon sequestration and storage potential.

**Staff Response:** The Applicant's proposal identified discrete portions of the Property that met the standards required by the Court of Appeal. As a result, the eligible woodland habitat appears to include many isolated areas across the Property. However, this must be understood in the context of the entire Property and in relation to the other constraints on the Property as a result of other mitigation, as well as Napa County Code and General Plan Policies. The EIR, adopted and certified in December 2016, captured this context well. The EIR stated that large portions of the Property are protected from development by existing laws and regulations. Over 1000 acres of the Property consist of slopes exceeding 30 percent and approximately 148 acres consist of wetlands or riparian corridors and their associated setbacks. (See Figure ##, attached.) Additional acreage will be preserved under other mitigation measures, which requires that 525 acres be conserved to mitigate for potential impacts to biological resources.<sup>2</sup>

In reviewing the detailed mapping provided by the Applicant in their revised proposal, along with the substantial GIS mapping available on the record, Staff has determined that the eligible woodland habitat is not, in fact, isolated or discrete areas of woodland, but is part of a largely contiguous area of undevelopable land, either due to steep slopes or proximity to wetlands or riparian waterways. (See Figure ##, attached.)

The Appellant's argument for contiguous habitat appears to be based on their claim that "edge effects" of human activity will degrade forest habitats and reduce carbon sequestration in the conserved areas. In this context, it is clear from the mapping that the proposed conservation easements, when considered in connection with the other constraints on the Property, will result in the preservation of contiguous habitat on the Property. It is also clear that most forest "edges" resulting from the conservation easements are not edges at all. Instead, most boundaries of the potential conservation areas are either naturally occurring transitions between woodland and grasslands or shrublands, or simply lines on a map showing where the slope increases above 30 percent. Very few, if any, of the "edges" are the result of vegetation removal to accommodate approved vineyard blocks.

Regardless, Appellant's argument is not persuasive, nor does it appear to be supported by relevant studies. The Appellant's response was reviewed by Ascent Environmental (Ascent).

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<sup>2</sup> Some of this acreage overlaps with the riparian corridors and setbacks and the areas over 30 percent slopes.

(Ascent Memorandum, 4/8/22, Attachment 6.) Based on Ascent's review and independent research, they concluded that because of the complex nature of edge effects and variations in the carbon cycle related to several factors, the conclusions made by the Appellant cannot reasonably be applied to ecosystems in Napa County. In fact, most of the sources cited by the Appellant acknowledge that their conclusions should not displace local models: "Moreover, development and implementation of effective mitigation strategies to reduce carbon emissions will require the use of local biomass models since they are accurate." (Ascent Memorandum, p. 2, citing Wakesa, et al., 2016.) Napa County has a Mediterranean climate, rather than a sub-tropical or tropical climate, which were the biomes studies in the papers relied upon by the Appellant. According to Ascent, recent research suggests that forest edges in temperate forests exhibit increased forest growth and biomass with no change in total mortality relative to the forest interior. (Ascent Memorandum, p. 2, citing Morreale et al. 2021.)

The County used the California Emission Estimator Model (CalEEMod) to calculate the Project's GHG emissions and the extent of conservation required to mitigate that potential impact. This local model is the industry standard for GHG emissions calculations, which factors in much more locally applicable conditions than the papers cited by the Appellant. The Court of Appeal upheld the County's reliance on this methodology as well as the conclusion that the preservation of 248 acres of woodland habitat would constitute appropriate mitigation if substantial evidence supported the conclusion that the habitat would be subject to development. The implication of the Appellant's argument regarding edge effects is that isolated easement areas would increase these "edge effects" and somehow reduce the effective sequestration of the conserved habitat. In addition to the failures of this argument, discussed above, the Appellant's methodology need not be adopted by the County, which relies on the industry standard modelling in the CalEEMod.

**Appeal Ground No. 3:** The Board should require Applicants to demonstrate how conservation easements will be buffered from roads and vineyard development to minimize edge effects that will degrade the woodlands and reduce their carbon sequestration and storage potential.

**Staff Response:** As discussed above, the concept that fragmentation (i.e. edge effects) is unsupported in temperate forest environments. Temperate forest edges have, in fact, shown a positive relationship between biomass and proximity to forest edge relative to the interior of the forest, citing a 95 percent increase in aboveground carbon stock within 5 meters of a forest edge. (Ascent Memorandum, p. 2, citing Meeussen et al. 2021.) Additionally, most of the "edges" of the proposed conservation areas are not edges at all, but merely transitions from different natural habitats or between steeper slopes. (See Figure ##, attached.)

**Appeal Ground No. 4:** The Board should require Applicants to implement easements in consultation with local and regional biologists, government agencies, and other stakeholders.

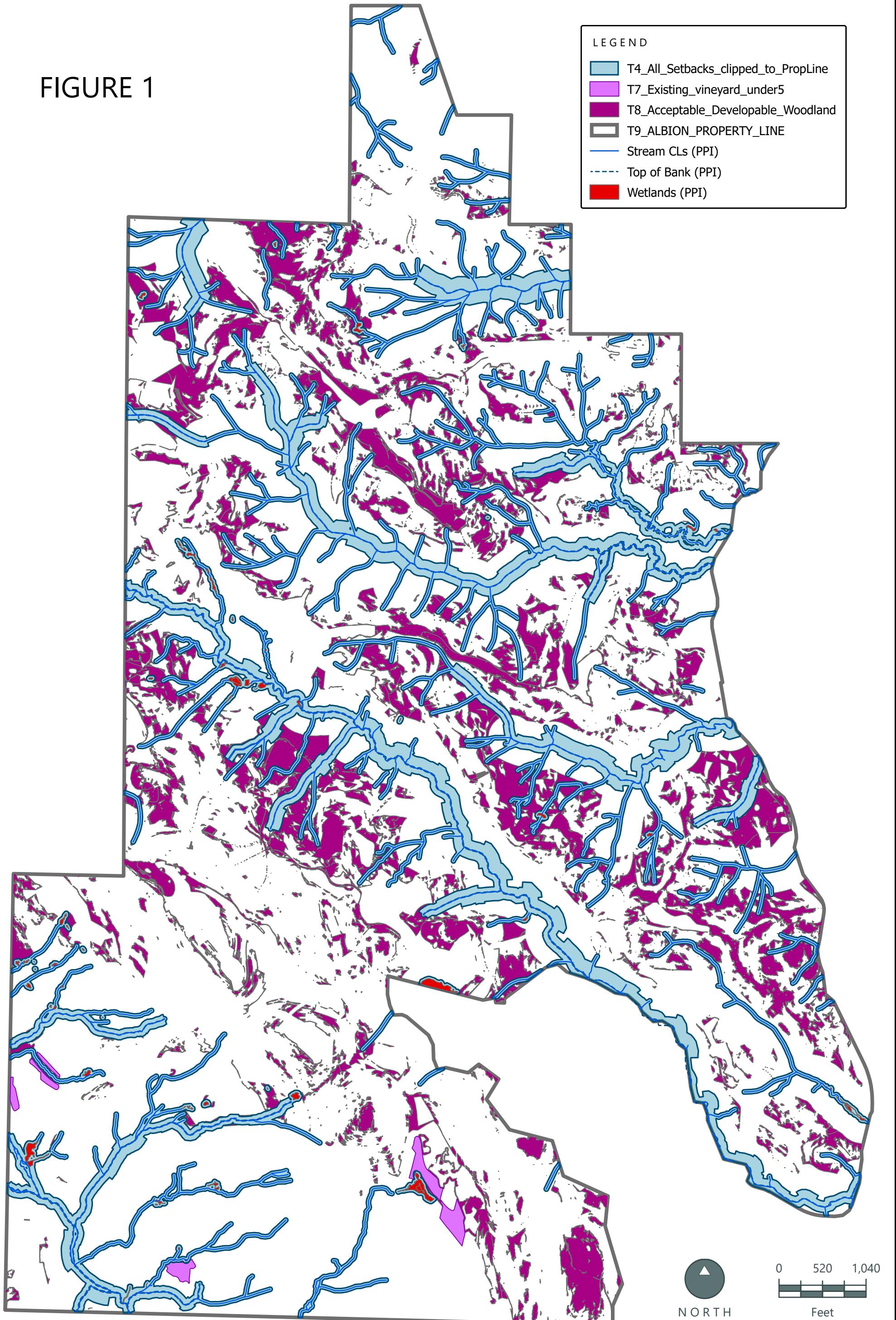
**Staff Response:** The revised proposal requires the Applicant to include the conservation easement in the Biological Resource Management Plan, or the BRMP. Section 6.1 of the BRMP requires the Applicant to work directly with a qualified botanist or biologist to determine the areas to be covered by conservation easements. In addition, County staff must approve the

easement prior to any project activities, which approval may include review by various state agencies, such as the Department of Fish and Wildlife.

**Appeal Ground No. 5:** The Board should require Applicant to demonstrate that adequate resources will be set aside to protect, monitor, and adaptively manage the conservation easements in perpetuity.

**Staff Response:** Conservation easements generally require financial commitments from the applicant to support the management of the easement area. That financial arrangement is between the Applicant and the certified land trust or other agency that acquires the easement. As discussed above, County staff must approve the form of the easement and will, therefore, be able to ensure that adequate financial security is in place. Since the primary purpose of the easement is conservation of natural land, management of the preserved land will be minimal.

FIGURE 1



## Water-related constraints | WALT

[ DATE PUBLISHED: 3/16/2022 DATE REVISED:

AUTHOR: MSL MAP SCALE: 1:12,480 ]

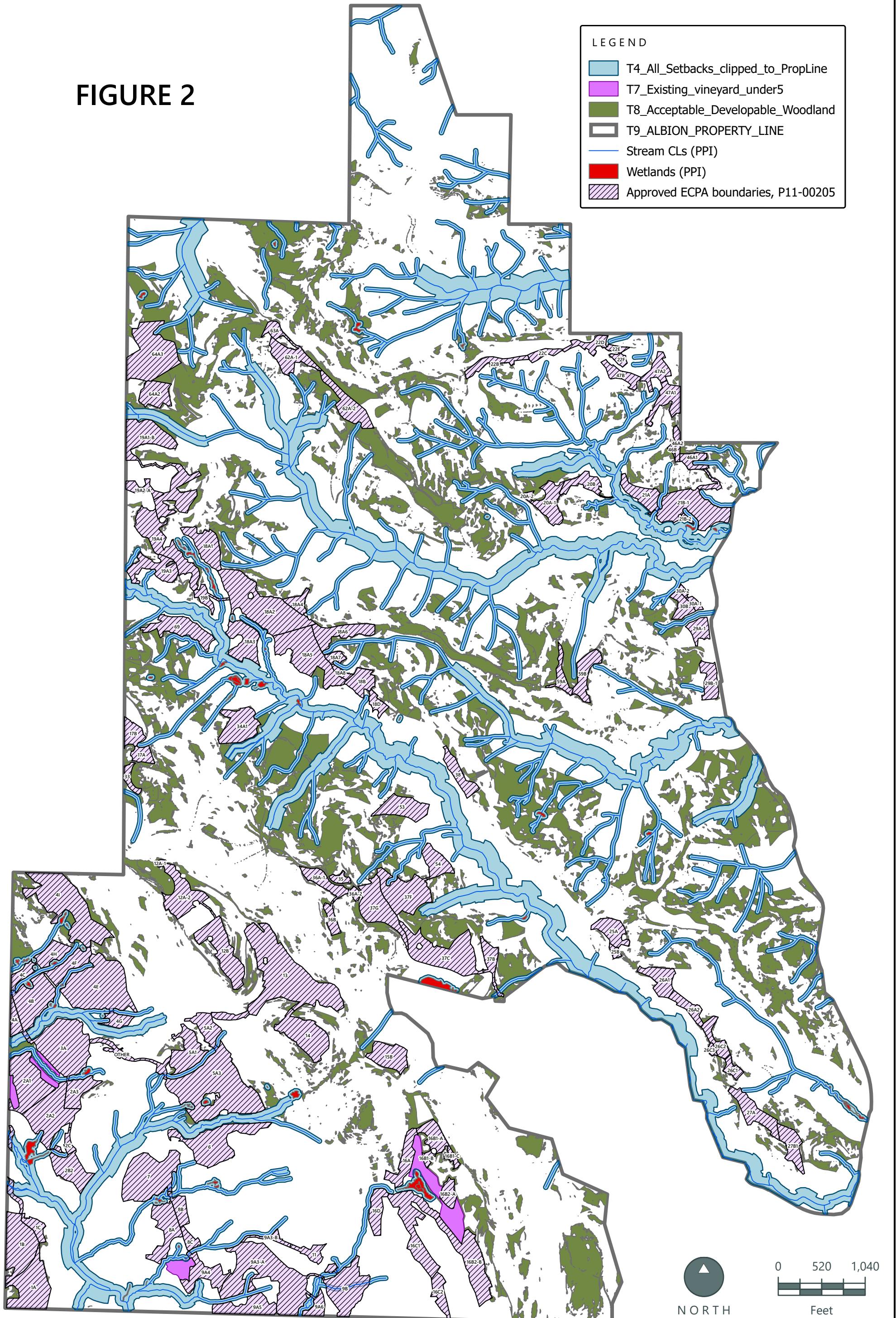
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Disclaimer: This map was prepared for informational purposes only. No liability is assumed for the accuracy of the data delineated hereon.

# FIGURE 2



## Water-related constraints | WALT

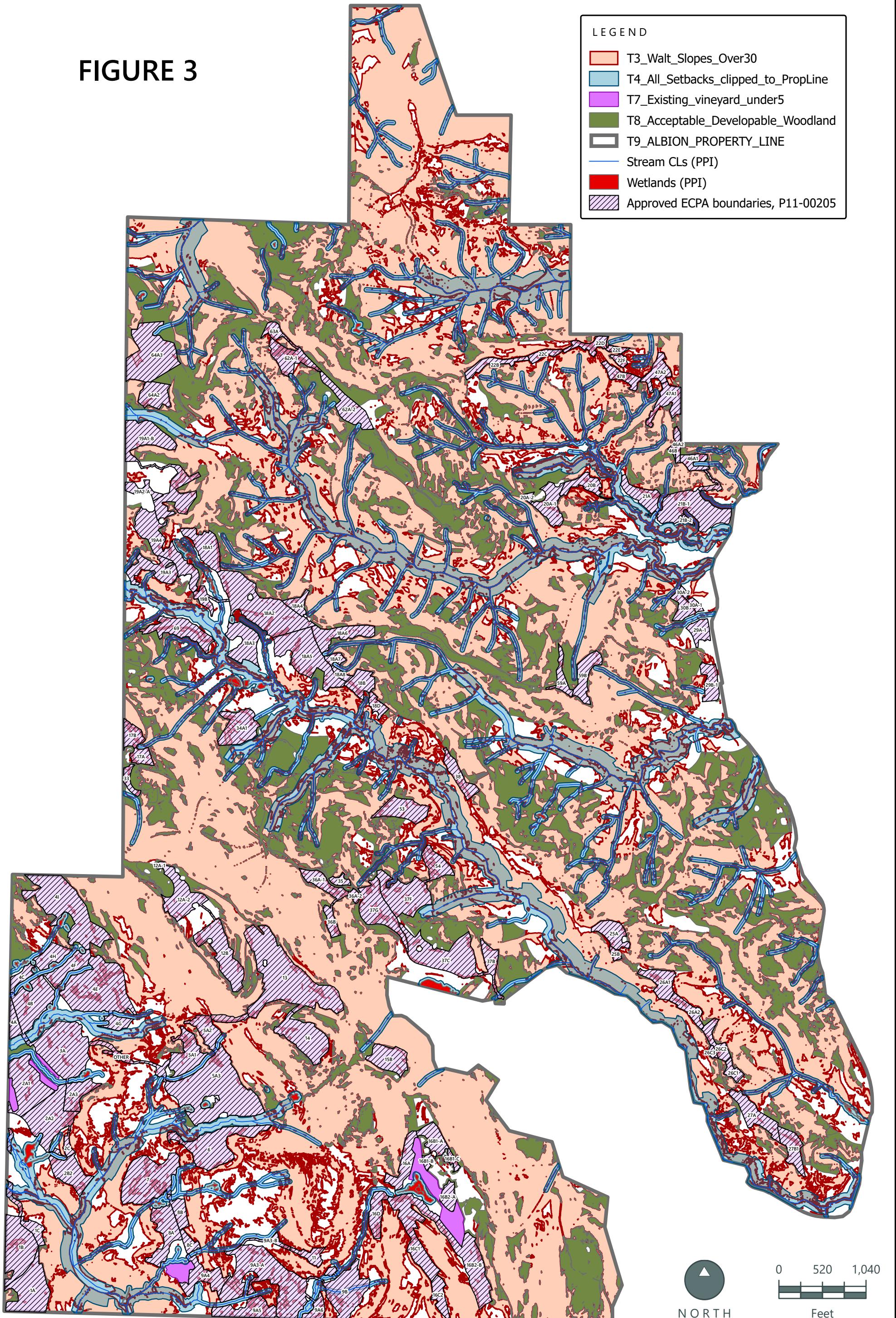
[ DATE PUBLISHED: 3/16/2022 DATE REVISED: 4/1/2022 AUTHOR: MSL MAP SCALE: 1:12,480 ]

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# FIGURE 3



## Water-related constraints | WALT

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# FIGURE 4

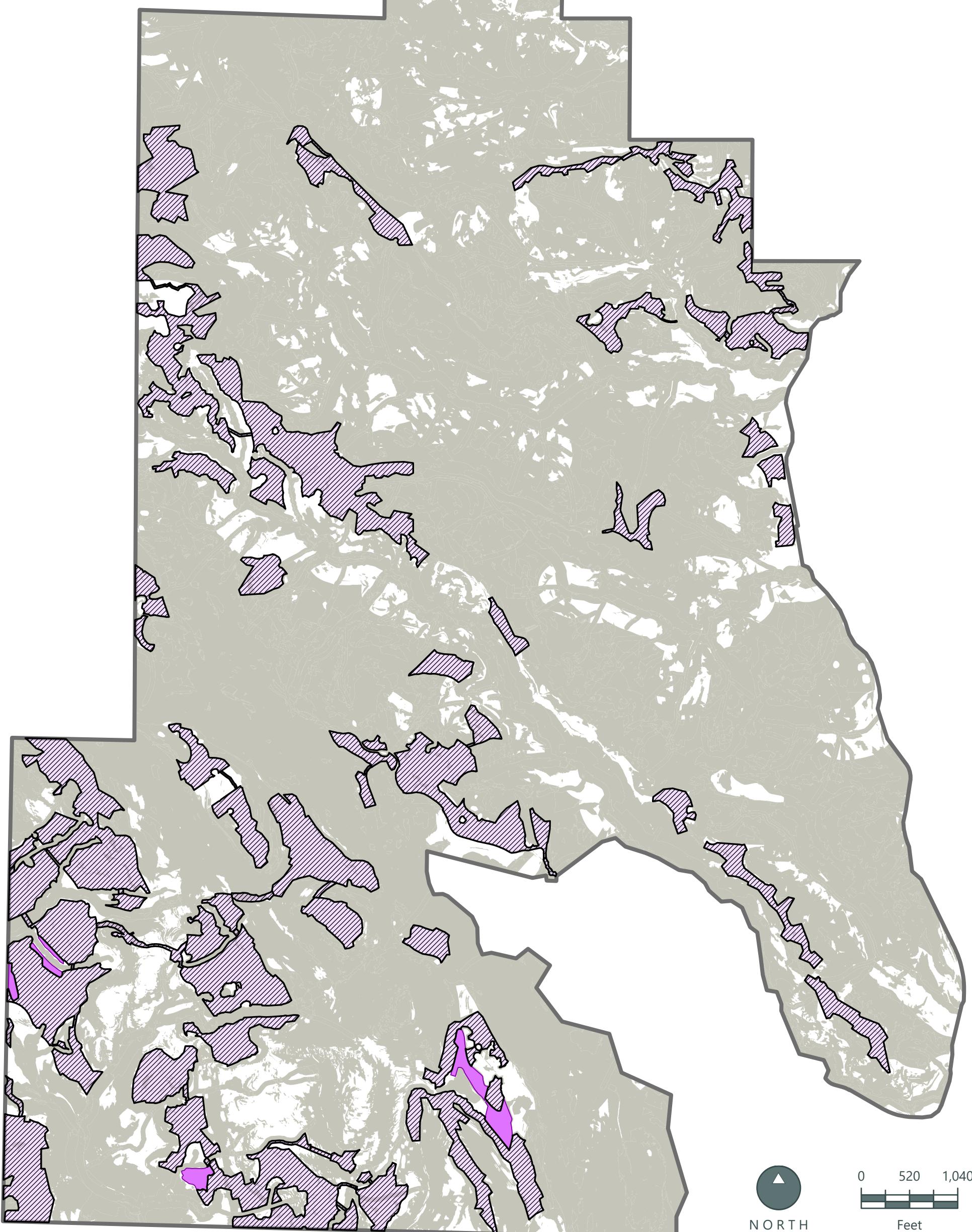
## LEGEND

- All undevelopable lands combined
- T6: Approved Clearing Limits, P11-00205
- T7: Existing vineyard under 5%
- T9: Albion Property Line



## Undevelopable Land Type

	Acres
Slopes > 30%	1,065
Stream/Wetland Setback	148
Woodland Easement	315
Slopes > 30% + Stream/Wetland Setback	217
Slopes > 30% + Woodland Easement	0.00000066
<b>TOTAL</b>	<b>1,744</b>



## Undevelopable Lands | WALT

[ DATE PUBLISHED: 4/8/2022 DATE REVISED:

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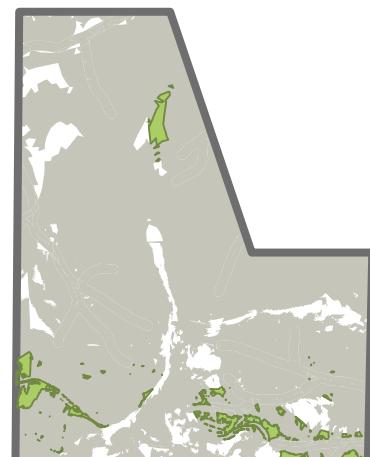


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## LEGEND

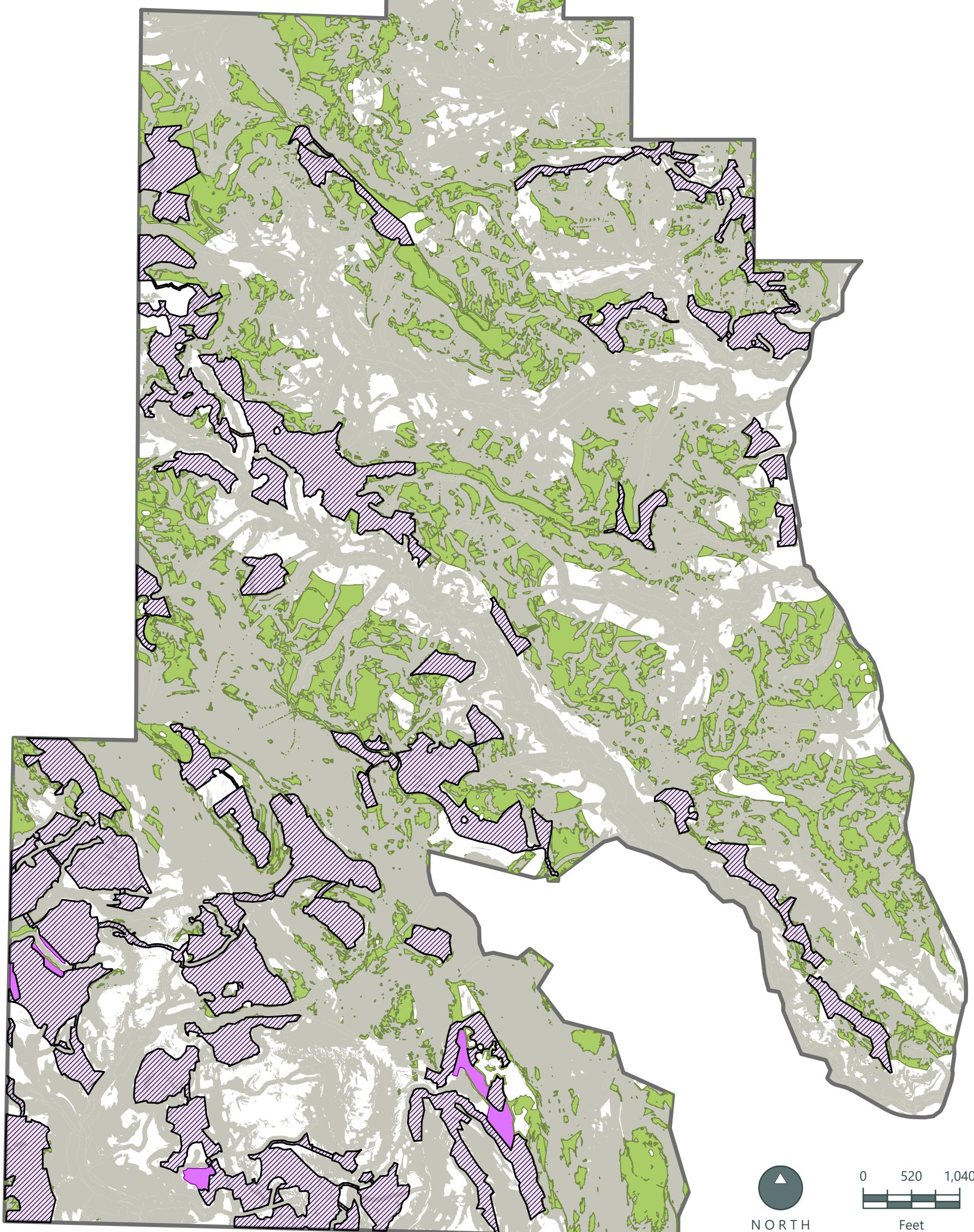
- Acceptable Developable Woodland (T8)
- Stream/Wetland Setbacks (T4) and Slopes > 30% (T3)
- T6: Approved Clearing Limits, P11-00205
- T7: Existing vineyard under 5%
- T9: Albion Property Line

FIGURE 5



## Undevelopable Land Type

	Acres
Slopes > 30%	1,065
Stream/Wetland Setback	148
Woodland Easement	315
Slopes > 30% + Stream/Wetland Setback	217
Slopes > 30% + Woodland Easement	0.00000066
<b>TOTAL</b>	<b>1,744</b>



## Undevelopable Lands v2 | WALT

[ DATE PUBLISHED: 4/11/2022 DATE REVISED:

AUTHOR: MSL MAP SCALE: 1:12,500 ]

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