

Docket No. #17SUBDIV1011

Proposed 323 lot Conservation Subdivision on property located at 1313
Johnson Road

Developer: Inverness Homes



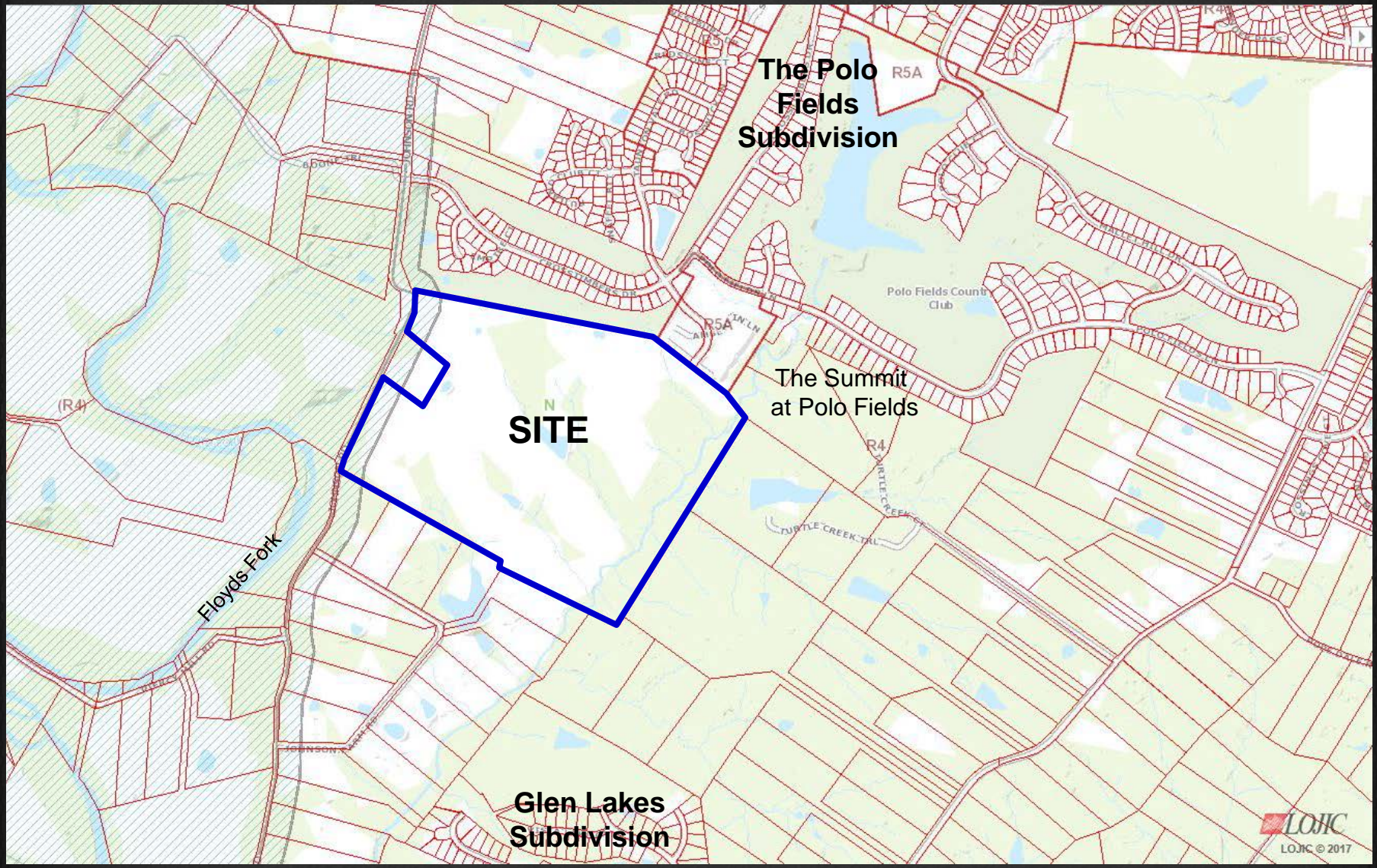
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Tab 1



LOJIC Zoning Map



**The Polo
Fields
Subdivision**

Polo Fields Country
Club

**The Summit
at Polo Fields**

SITE

Floyds Fork

**Glen Lakes
Subdivision**

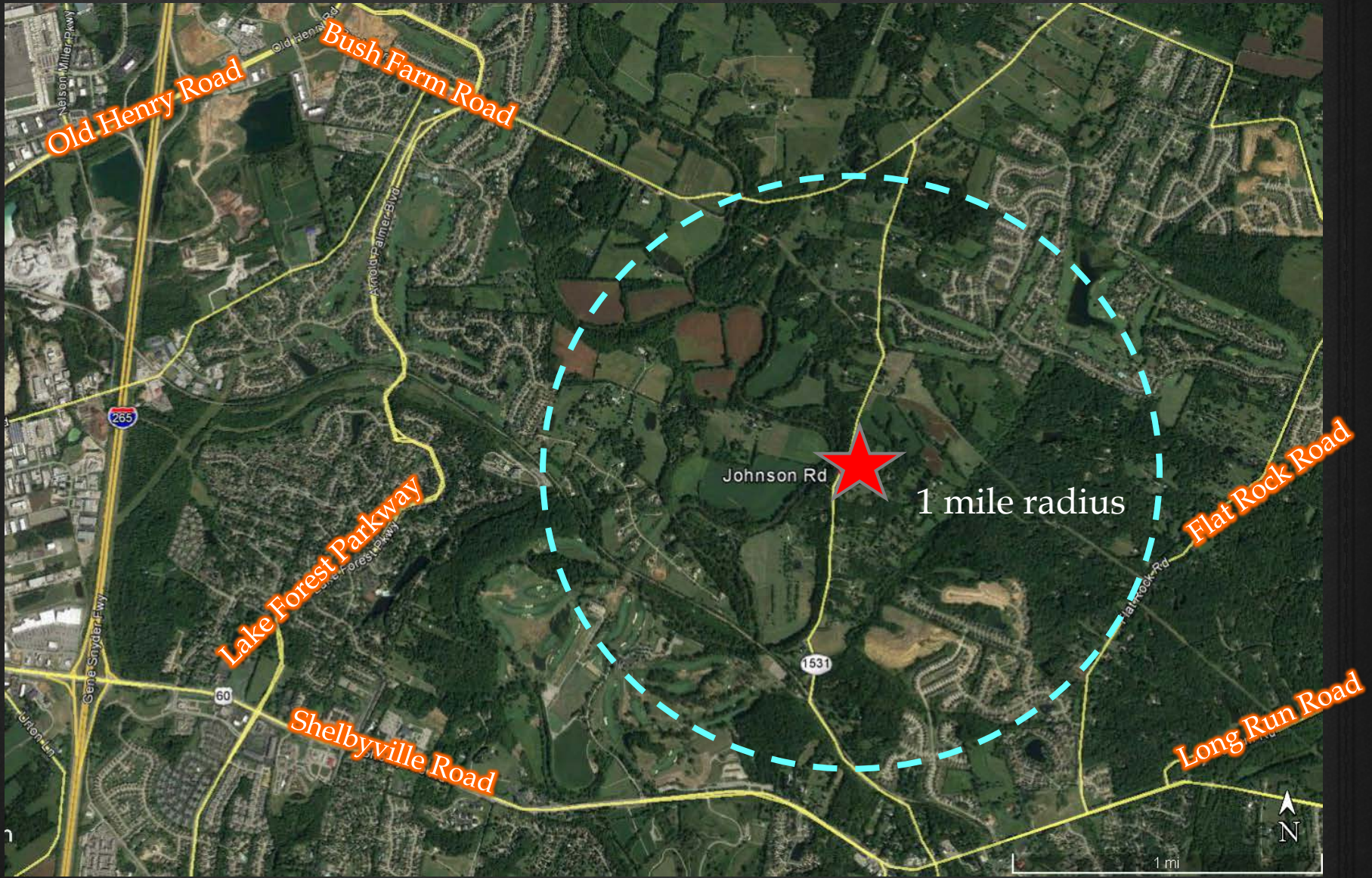
Tab 2



Aerial photograph of the site
and surrounding area



Vicinity Map



Tab 3



Ground level photograph of
the site



View of site from Johnson Road

Tab 4



Site Resource Plans

Resource and Site Analysis Plan



1 VIEW FROM TAUNTON VALE RD.



2 LOOKING NORTH ALONG BRUSH RUN



3 SOUTHEAST ACROSS MEADOW



4 NEW TOWARDS JOHNSON RD.



5 UTILITIES PARALLEL TO JOHNSON RD.



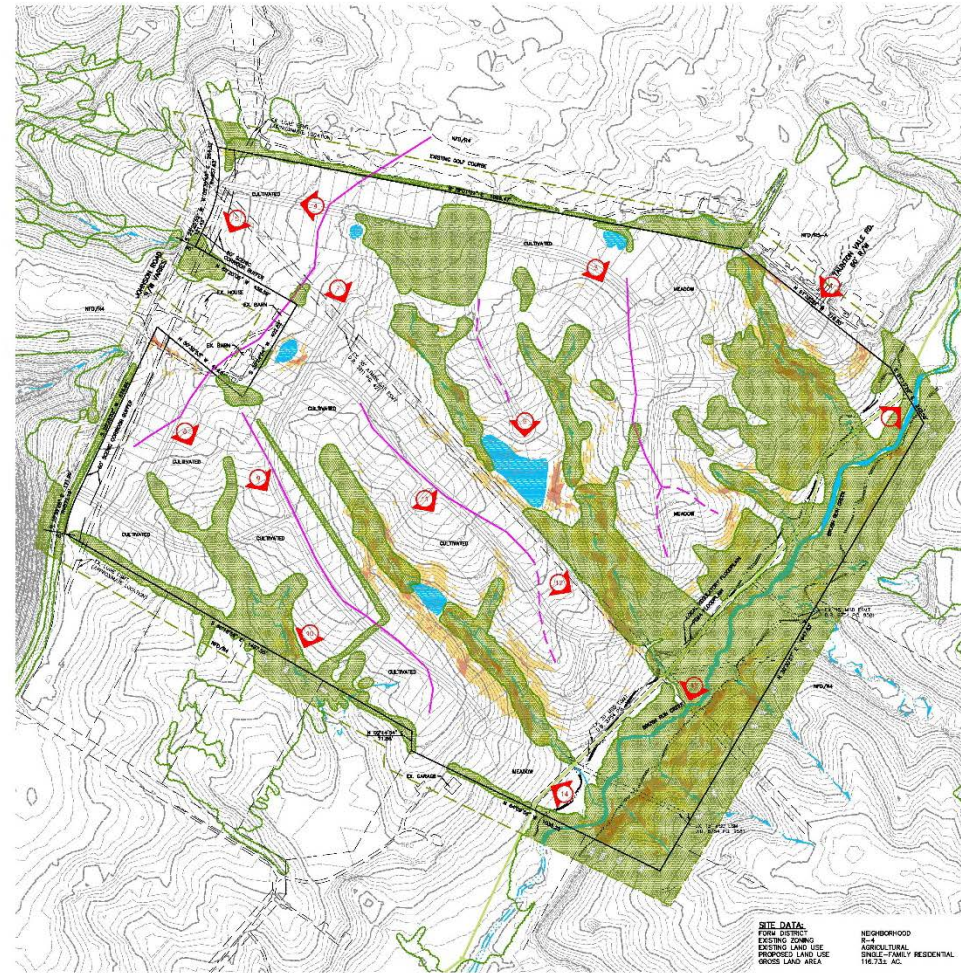
6 NEW SOUTH ACROSS LARGE POND



7 VIEW SOUTHEAST ALONG GAS LINE

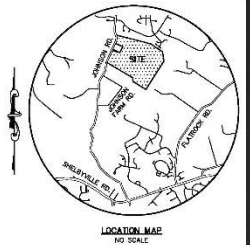


8 CULTIVATED FARM LAND



SITE DATA:
 FORM DISTRICT: R-4
 EXISTING ZONING: AGRICULTURAL
 EXISTING LAND USE: AGRICULTURAL
 PROPOSED LAND USE: SINGLE-FAMILY RESIDENTIAL
 BRUSH RUN AREA: 16.731 AC.

- LEGEND**
- PRIMARY RIDGE
 - SECONDARY RIDGE
 - EXISTING STREAM
 - LOCAL FLOODPLAIN
 - EXISTING FENCE
 - EXISTING TREE MASS
 - EXISTING WATER BODY
 - SLOPES 15-20%
 - SLOPES 20-30%
 - SLOPES 30% (+)
 - PICTURE POINT



SOILS MAP



Jefferson County, Kentucky (K1111)			
Map Unit Symbol	Map Unit Name	Area in ACI	Percent of ACI
BUB	Blackish all loam, 2 to 6 percent slopes	23.5	13.9%
MAC	Blackish all loam, 6 to 12 percent slopes	3.0	1.8%
CFB	Cover all loam, 2 to 6 percent slopes	2.6	1.5%
FAJ	Fragrant all loam, 12 to 25 percent slopes	4.2	2.5%
FAF	Fragrant-Spodosol, clayey, compact, 6 to 10 percent slopes	3.6	2.1%
MS	Medium all loam, 2 to 5 percent slopes	15.4	11.0%
Ro	Reddish all loam, 8 to 12 percent slopes, nonrockily (rocked)	13.4	7.9%
SHD	Shallow all loam, 2 to 8 percent slopes	4.2	2.6%
SHC2	Shallow silt loam, 6 to 12 percent slopes, moderately wooded	30.7	21.6%
SHC3	Shallow all loam, 12 to 25 percent slopes, severely wooded, very rocky	36.7	21.7%
SHFC	Urban land (shrublands) compact, 6 to 12 percent slopes	5.9	3.5%
SHC	Urban land (shrublands) compact, no grass, subordinate shrubs, 6 to 12 percent slopes	7.3	4.5%
SHC	Urban land (shrublands) compact, 6 to 12 percent slopes, open self-sustaining, 5 to 12 percent slopes	0.5	0.3%
SHC	Urban land (shrublands) compact, 6 to 12 percent slopes, open hard-packed, 6 to 12 percent slopes	0.0	0.0%
SHC	Urban land (shrublands) compact, 6 to 12 percent slopes, open hard-packed, 6 to 12 percent slopes	0.2	0.1%
W	Water	1.7	1.0%
Totals for Area of Interest		169.3	100.0%



9 SOUTHERN VIEW OF CULTIVATED AREA



10 DRAINAGE WAY FLOWING OFF-SITE



11 RIDGE LINE VIEW LOOKING SOUTHEAST



12 SOUTHEASTERN VIEW ALONG TREE LINE



13 LOOKING SOUTH ALONG BRUSH RUN



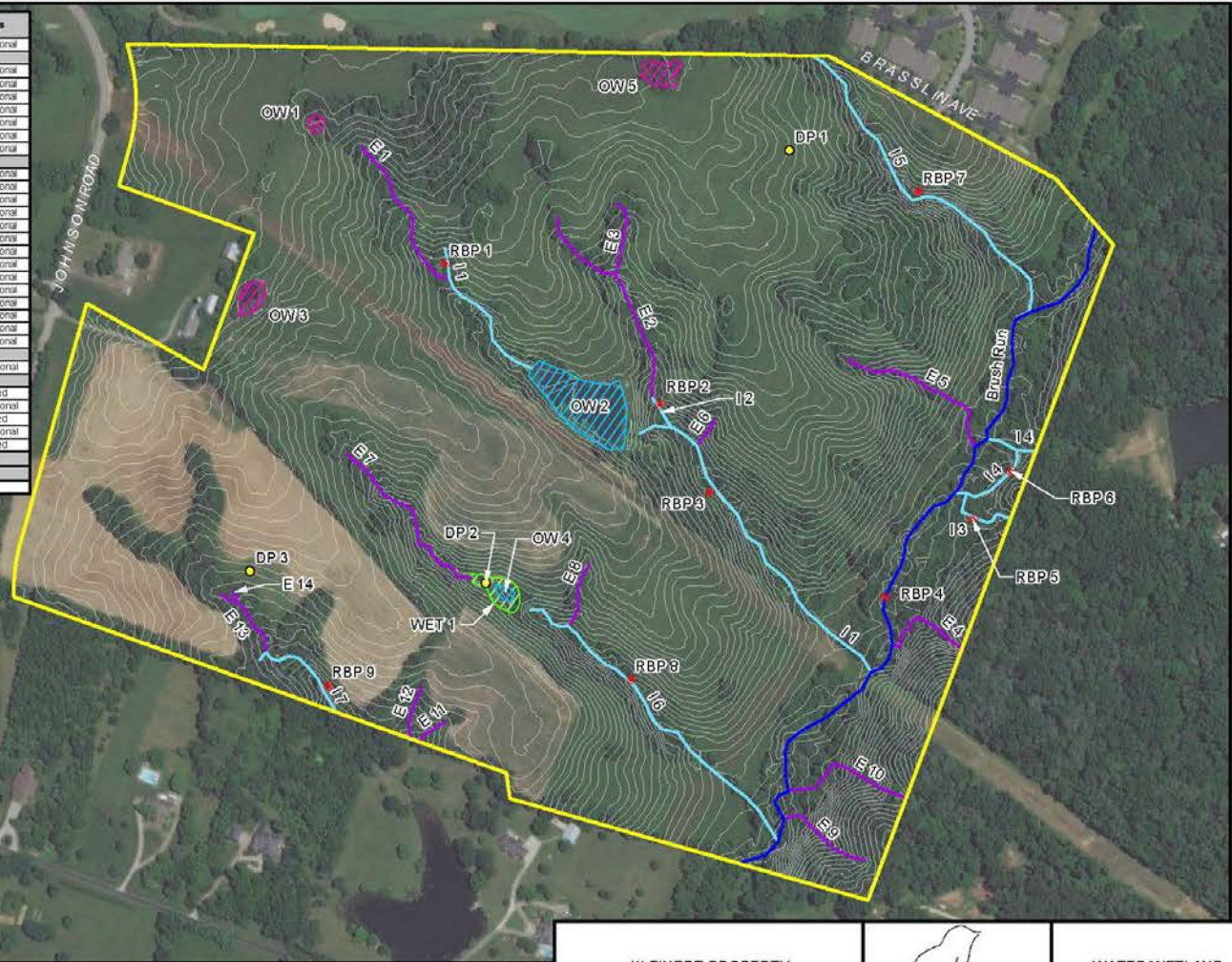
14 SOUTH CORNER LOOKING NORTH

CASE #17SUBDIV
 WSD SUB # XXXX
 GRAPHIC SCALE 1"=200'
 0 100 200 400

Source: World Imagery - Esri and the GIS User Community (2016).

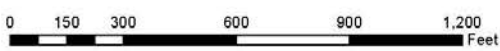
Feature	Stream Length (feet)	Stream Width (feet)	Area (acres)	Status
Perennial Stream 1	2,275	15	0.783	Jurisdictional
Intermittent Stream Total	2,275	15	0.783	
Intermittent Stream 1	1,250	5	0.166	Jurisdictional
Intermittent Stream 2	100	4.5	0.010	Jurisdictional
Intermittent Stream 3	240	6.5	0.036	Jurisdictional
Intermittent Stream 4	305	8	0.065	Jurisdictional
Intermittent Stream 5	1,015	5	0.117	Jurisdictional
Intermittent Stream 6	862	7	0.158	Jurisdictional
Intermittent Stream 7	315	9	0.036	Jurisdictional
Intermittent Stream Total	4,460	0.588		
Ephemeral Stream 1	470	3.5	0.038	Jurisdictional
Ephemeral Stream 2	620	3.5	0.050	Jurisdictional
Ephemeral Stream 3	210	2.5	0.012	Jurisdictional
Ephemeral Stream 4	285	3	0.020	Jurisdictional
Ephemeral Stream 5	480	3	0.033	Jurisdictional
Ephemeral Stream 6	90	2	0.004	Jurisdictional
Ephemeral Stream 7	530	2.5	0.030	Jurisdictional
Ephemeral Stream 8	190	2.5	0.011	Jurisdictional
Ephemeral Stream 9	275	2.5	0.016	Jurisdictional
Ephemeral Stream 10	385	4	0.039	Jurisdictional
Ephemeral Stream 11	95	2	0.004	Jurisdictional
Ephemeral Stream 12	155	2	0.007	Jurisdictional
Ephemeral Stream 13	55	3	0.004	Jurisdictional
Ephemeral Stream 14	200	3	0.014	Jurisdictional
Ephemeral Stream Total	4,460	0.278		
Wetland 1	---	---	0.144	Jurisdictional
Wetland Total	---	---	0.144	
Pond 1	---	---	0.057	Isolated
Pond 2	---	---	0.832	Jurisdictional
Pond 3	---	---	0.116	Isolated
Pond 4	---	---	0.036	Jurisdictional
Pond 5	---	---	0.143	Isolated
Pond Total	---	---	0.870	
Jurisdictional Features Total	10,775	---	2.863	

These totals are only for jurisdictional features. Isolated features are not included.



Legend

- Study Area
- Perennial Stream
- Intermittent Stream
- Ephemeral Stream
- Open Water
- Isolated Open Water
- Wetland
- Wetland Determination Data Point
- Rapid Bioassessment Protocol Point



NOTE: JURISDICTIONAL WATER/WETLAND BOUNDARIES WERE DELINEATED AND SURVEYED BY REDWING WETLAND SCIENTISTS ON JUNE 1 AND 2, 2017. THESE BOUNDARIES HAVE NOT BEEN VERIFIED BY THE U.S. ARMY CORPS OF ENGINEERS. USE OF THIS MAP IS FOR PRELIMINARY PLANNING PURPOSES ONLY.



KLEINERT PROPERTY JEFFERSON COUNTY, KENTUCKY	 REDWING ECOLOGY SERVICES, INC.	WATER/WETLAND DELINEATION MAP
REVISED DATE: 08-04-17 DRAWN BY: EDB	FIGURE 2	

P:\2017 Projects\17-05-24\delin\ESources\Water - Wetland Map.mxd, 08-14-2017, 10:00am

Tab 5



Conservation Subdivision
Plan





Tab 6



Constitutional and regulatory
limits on off-site exactions and
correct and interpretations of LDC
Section 7.3.10A

Constitutional and regulatory limits on off-site exactions and correct and interpretations of LDC Section 7.3.10A

- LDC Sec. 7.3.10A sets an 18' width objective standard re: the primary means of access.
- An underpinning principle of all administrative law is that regulations must contain objective standards; subjective ones being illegal.
- No one argues with that very specific 18' width req. It has been imposed on local developers going back to the time of adoption of the 18' road width standard.
- But the sentence 13 lines down from top of Sec. 7.3.10A (**specifying that “in addition to the roadway width, the Planning Commission may require other offsite improvements to correct conditions that would impede the safe flow of traffic associated with the new subdivision”**) was intended to apply to other narrow road conditions, like a sudden drop-off or culvert alongside that 18' wide or widened road, that may need to be extended.
- That language was never intended to apply to circumstances such that any impacted road or i/s, otherwise deemed inadequate, could subjectively be determined by MPW and/or the PC or any other agency or authority for that matter as necessary to be improved in the case of a mere subdivision of land.
- Otherwise, e.g., when a subdivision developer years ago was told to improve Thixton Ln east to Bardstown Rd to satisfy the 18' road width standard, MPW could, by virtue of the recent reading of this reg, have required an added right-turn lane from Bardstown Rd onto I-265, since nearly all of that developer's Thixton Ln subd traffic was predicted to head north onto I-265. That was never the intent of this regulation.
- As further explanation, the issue of a Rd System Develop Charge credit is very different in a ministerial subd application than in a discretionary rezoning one, e.g. the Ellingworth apt rezoning case where the developer was required to perform additional off-site imps beyond its frontage as a condition to the discretionary rezoning approval. In that case, the cost of the off-site (meaning non-frontage) roadway improvements significantly exceeded the credit available and subsequently received. Fair enough, as that was a discretionary application which the developer understood going in, under Guidelines and Policies of the Comp Plan, could result in significant exactions in order to mitigate Comp Plan enumerated impacts.
- Under the US SCT's enunciated test for exactions, an “essential nexus” existed in that case between the designated exaction and fairly determined impacts of the

development and also so long as the exaction, was also “roughly proportional” to the development’s community and infrastructure impacts.

- However, in a ministerial subd case, under the US SCT’s “essential nexus”/“rough proportionality” test, a developer’s obligations really can **only** be extended, under the formulation of LDC Section 7.3.10A in combination with the System Develop Charge Ordinance, to the following: (a) dedication of additional right-of-way, (b) frontage improvements, (c) assurance of an 18-foot access from the nearest arterial, and (d) payment of the system development charge.
- **All off-site improvements (other than any referenced widening of the access road or roads to 18’, which is an objective standard known to the developer going in) are to be paid for through the Road System Develop Charge.**
- Specifically as to the law, apart from what we believe to be a fair interpretation of this reg, the KY legal doctrine of “Reasonable Connection” is set forth in Lexington-Fayette Urban County Government v. Schneider, 849 S.W.2d 557 (Ky. App. 1992), wherein the Court reviewed subd reg requirements (authorized by KRS 100.281) and concluded at the end of the Opinion: *“While local governments barely have funds for street maintenance, much less construction, they nevertheless may not put unreasonable burdens on developers as a condition precedent to approval of a subdivision. It is one thing to require land dedication and street construction to collector street specifications, but quite another thing to require construction of an expensive public improvement of any type.”*
- That is really really important language!
- The reason this issue is particularly important for ministerial developer-subdividers, as in this particular case, is because they need and deserve certainty as to their costs, and often the only way to determine the cost of these off-site improvements is to perform significant engineering work to ascertain exactly what utilities need to be moved, including not only LWC, LG&E, but also AT&T, Spectrum cable, etc. Subdiv developers cannot take the risk of determining off-site costs like this, often only later to find out they are in excess of any entitled credits received, which is the reason for the need for application of specified objective standards as to costs.
- Further, in Snyder v Owensboro, 528 S.W.2d 663, 664 (Ky. 1975), the Ky Ct made clear the legal limits of a regulatory authority in a subdivision case to impose requirements that are not specific and objective standards, such as off-site road improvement exactions. The Snyder v Owensboro court stated: *“Our statute, KRS 100.281, specifies requirements for the contents of subdivision regulations. The statute plainly*

contemplates that specific standards shall be set forth, rather than mere broad generalizations with regard to health, safety, morals and general welfare...(emphasis added)”

- The above **bold type-faced and underlined** LDC Section 7.3.10A language does not amount to a specific standard, but rather is a broad generalization with regard to safety, which Ky’s highest court has said does not cut it.
- Sec 7.3.10A was actually intended to say something like this “. . . In addition to the roadway width, the Planning Commission may require other off-site improvements **along that 18’ of roadway** to correct conditions **(specifically limited to culvert and guardrail extensions)** that would impede the safe flow of traffic associated with the new subd. . .”
- An R-4 Conservation Subdivision is entitled to the benefit of the zoning and subdivision regulations without any restrictions on development apart from what the regulations specifically say.