

WELL MITIGATION AGREEMENT
RALEIGH RESIDENTIAL DEVELOPMENT

THIS WELL MITIGATION AGREEMENT (this "Agreement") is made and entered into as of the ~~27~~ day of ~~September~~^{October}, 2014, by and between RALHAL, LLC, a New York limited liability company having its principal place of business at 1481 47th Street, Brooklyn, New York 11219 (the "Developer") and the TOWN OF FALLSBURG, a municipal corporation of the State of New York, having its principal place of business at 19 Railroad Avenue, South Fallsburg, New York 12779 (the "Town"). The Developer and the Town may be referred to this Agreement, individually, as a "party" and jointly, as the "parties."

RECITALS

WHEREAS, the Developer has submitted to the Town a residential development project (the "Project") consisting of the construction of 236 new residential dwelling units, plus infrastructure and amenities, on several parcels of real property owned by the Developer and located in the Town of Fallsburg, Sullivan County, New York, Town of Fallsburg, Section 60, Block 1, Lots 50, 56, 65 and 66 (the "Property"); and

WHEREAS, the Project has received conditional approval from the Town Planning Board;

WHEREAS, one of the conditions of approval is that the Developer adopt a Well Mitigation Program (the "Program") to mitigate any adverse impacts that the operation of the Wells that will service the Project may have with respect to the operation and supply of neighboring Wells (those within the geographic area that is described in the Program); and

WHEREAS, the Developer has provided to the Town the Program which is annexed hereto as Exhibit "A"; and

WHEREAS, the Town has agreed that the Program satisfies the well mitigation condition that the Town Planning Board has required;

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. WELL MITIGATION PROGRAM.

a. The Developer hereby agrees to the Well Mitigation Program (the "Program") which is annexed hereto as Exhibit "A", and agrees to be bound by all of the terms and conditions which are set forth therein. The foregoing includes, but is not limited to, the \$25,000.00 cash escrow which is set forth in the Program.

b. Notwithstanding Paragraph "1(a)" above, the Town agrees that it shall not incur any expenses of investigating a claim from an alleged affected well owner without first allowing the Developer to so investigate and submit a report to the Town.

c. The Town agrees that the Program plus this Agreement satisfies the condition of the Town Planning Board that the Developer adopt a Well Mitigation Program that is acceptable to the Town.

2. DEFAULT BY DEVELOPER:

In the event of a material default by the Developer with respect to the Program, the Developer agrees that the Town may pursue all of the remedies which are provided for in the Program or such other remedies as may be allowable to the Town pursuant to applicable law.

3. RELEASE AND INDEMNIFICATION:

The Developer hereby confirms the indemnification provisions of the Program. The Developer confirms that the indemnification shall include reasonable attorneys' fees and litigation expenses. The Developer agrees that in the event of a claim against the Town, as provided for in the Program, the Developer will retain an attorney to represent the Developer and the Town in connection with the claim, and will pay all costs of said representation. In addition, in the event that it is judicially determined that modifications to the Program are necessary, all costs and expenses applicable to the foregoing shall be the obligation of the Developer.

4. MISCELLANEOUS:

a. Notices. All notices hereunder to the respective parties will be in writing and will be served by personal delivery, or by prepaid, express mail (next day) via a national known courier service, or by prepaid, registered or certified mail, addressed to the respective parties at their addresses set forth below. Any such notice will be deemed to be given and effective: (i) if personally delivered, then on the date of such delivery; (ii) if sent via express mail (next day) then one business day after the date such notice is sent; or (iii) if sent by registered or certified mail, then three business days following the date such notice is deposited in the United States mail addressed as aforesaid. For purposes of this Agreement, "business day" shall be deemed to mean a day of the week other than a Saturday or Sunday or other holiday recognized by a banking institutions of the State of New York. Notices shall be sent as follows (unless notice is given of a new address):

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| If to the Developer: | Ralhal LLC 1481 47 th Street Brooklyn, New York 11219 |
|----------------------|--|

With a copy to: Jay L. Zeiger, Esq.
Kalter, Kaplan, Zeiger & Forman
6166 State Route 42
PO Box 30
Woodbourne, NY 12788

If to the Town: Town of Fallsburg
19 Railroad Avenue
South Fallsburg, New York 12779
Steven Vegliante, Town Supervisor

With a copy to: Jacob Billig, Esq.
Billig, Loughlin & Baer, L.L.P.
461 Broadway, PO Box 1447
Monticello, New York 12701

b. Parties in Interest. All of the terms and provisions of this Agreement will be binding upon and inure to the benefit of and be enforceable by the heirs, legal representatives, successors and permitted assigns of the parties hereto. In addition, as provided for in the Program, the Town may enforce the Program and this Agreement against any Homeowners Association or Condominium Association that is formed by the Developer in connection with the Project.

c. Entire Contract. There are and were no verbal or written representations, warranties, understandings, stipulations, agreements, or promises pertaining to the subject matter of this Agreement made by either party or any agent, employee, or other representative of either party or by any broker or any other person representing or purporting to represent either party, not incorporated in writing in this Agreement, and neither this Agreement nor any of the terms, provisions, conditions, representations, or covenants contained in this Agreement can be modified, changed, terminated, amended, superseded, waived, or extended except by an appropriately written instrument specifically referencing this provision duly executed by the parties.

d. Originals. This Agreement may be executed in counterparts, each of which will be an original, and a facsimile copy showing execution shall be given the same force and effect of an original.

e. Section and Other Headings. The Section and other headings contained in this Agreement are for reference purposes only and will not in any way affect the meaning or interpretation of the text of this Agreement.

f. Governing Law. This Agreement will be construed and enforced in accordance with the laws of the State of New York, without giving effect to any conflict of laws or choices of law rules to the contrary.

g. Assignment of Contract. The Developer shall not be entitled to assign all or any interest in this Agreement without impairing any of the Town's rights under this Agreement. Except as aforesaid, the Developer may assign this Agreement to a new developer of the Project.

h. No Third Party Beneficiaries. This Agreement is for the sole benefit of the Developer and the Town and their respective legal representatives, successors, heirs and permitted assigns, and no other person or entity shall be entitled to rely upon or receive any benefit from this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

Ralhal, LLC
 By: *Abraham Leser*
 Abraham Leser, President

Town of Fallsburg
Steven Vegliante
 By: Steven Vegliante, Town Supervisor

STATE OF NEW YORK)
):ss
 COUNTY OF SULLIVAN)


On the 22 day of ~~September~~ ^{October}, in the year 2014, before me, the undersigned, personally appeared Abraham Leser, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Joel Rosenfeld
 Notary Public

JOEL ROSENFELD
 Notary Public - State of New York
 No. 01RO6231830
 Qualified in King County
 My Commission Expires Nov. 29, 2014

STATE OF NEW YORK)
):ss
 COUNTY OF SULLIVAN)

On the 27 day of ~~September~~ ^{October}, in the year 2014, before me, the undersigned, personally appeared STEVEN VEGLIANTE, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

 **DONNA M. AKERLEY**
 NOTARY PUBLIC, STATE OF NEW YORK
 No. 01AK6223062
 Qualified in Sullivan County
 My Commission Expires June 1, 2018

Donna M. Akerley
 Notary Public

**Well Mitigation Program
Raleigh Residential Development
RALHAL Corporation
Town of Fallsburg, NY**

April 4, 2013

Purpose of Well Mitigation Program

Monitoring of draw down of a sampling of neighboring wells while water supply wells planned for use in the Raleigh residential development were being drawn down was performed during environmental review of the Raleigh and Heiden Properties approval. The monitoring did not result in significant impacts on the operation and supply of monitored wells. However at the direction of the Town this Well Mitigation Program was established in the event a neighboring well does happen to be affected by Raleigh well drawdown once the system is fully operational. The area this Well Mitigation Program encompasses is illustrated on the Raleigh Well Mitigation Program Maps dated February 21, 2013, attached hereto. The RALHAL Corporation ("RALHAL") is the development entity of record. This program agreement shall encumber RALHAL, its successors and assigns.

Well Impact Assessment and Repair Protocol

To file a claim of well impact the following procedures must be observed:

- a. The affected well owner must submit an assessment of the well issue(s) to the Fallsburg Code Enforcement Office from a certified well contractor, on the well contractor's letterhead. The assessment must include the original well driller's name and address, if available (this is usually located on the well cap). Any additional information on the well that is available should also be submitted. Useful information would include the date the well was originally drilled, the depth of the well, the type and depth of casing, the type and depth of the pump, the well yield and well driller's log, and the height of the water column at the time it was drilled and on any subsequent dates when it may have been serviced. The contractor should also include estimated repair costs.
- b. The Town's staff and/or well expert will provide initial review of the assessment and may contact the owner and/or contractor for additional information if necessary, and may visit the site to help assess the situation. Town staff will determine if the well issues are typical well owner issues, e.g. power supply to the pump, that are attributable to the well owner, his equipment or that originate on his property and therefore are the responsibility of the owner, or alternatively whether well issues do not appear to be typical owner well issues and may be the result of offsite influences.
- c. If the Town determines that well issues are the responsibility of the owner(s) then the case will be closed and the owner(s) will be responsible for making whatever repairs are necessary themselves.
- d. If the Town determines the neighboring well may be being influenced by the RALHAL wells, a designated representative of RALHAL will be contacted to

investigate the case. The well owner will provide RALHAL or its assigns access to the subject property to assess and correct the issue(s). However if RALHAL determines the well issue(s) are the owner's responsibility the Town will be notified in writing stating the facts of the case. If the Town concurs, then (c) above will apply.

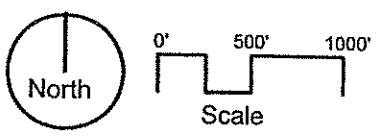
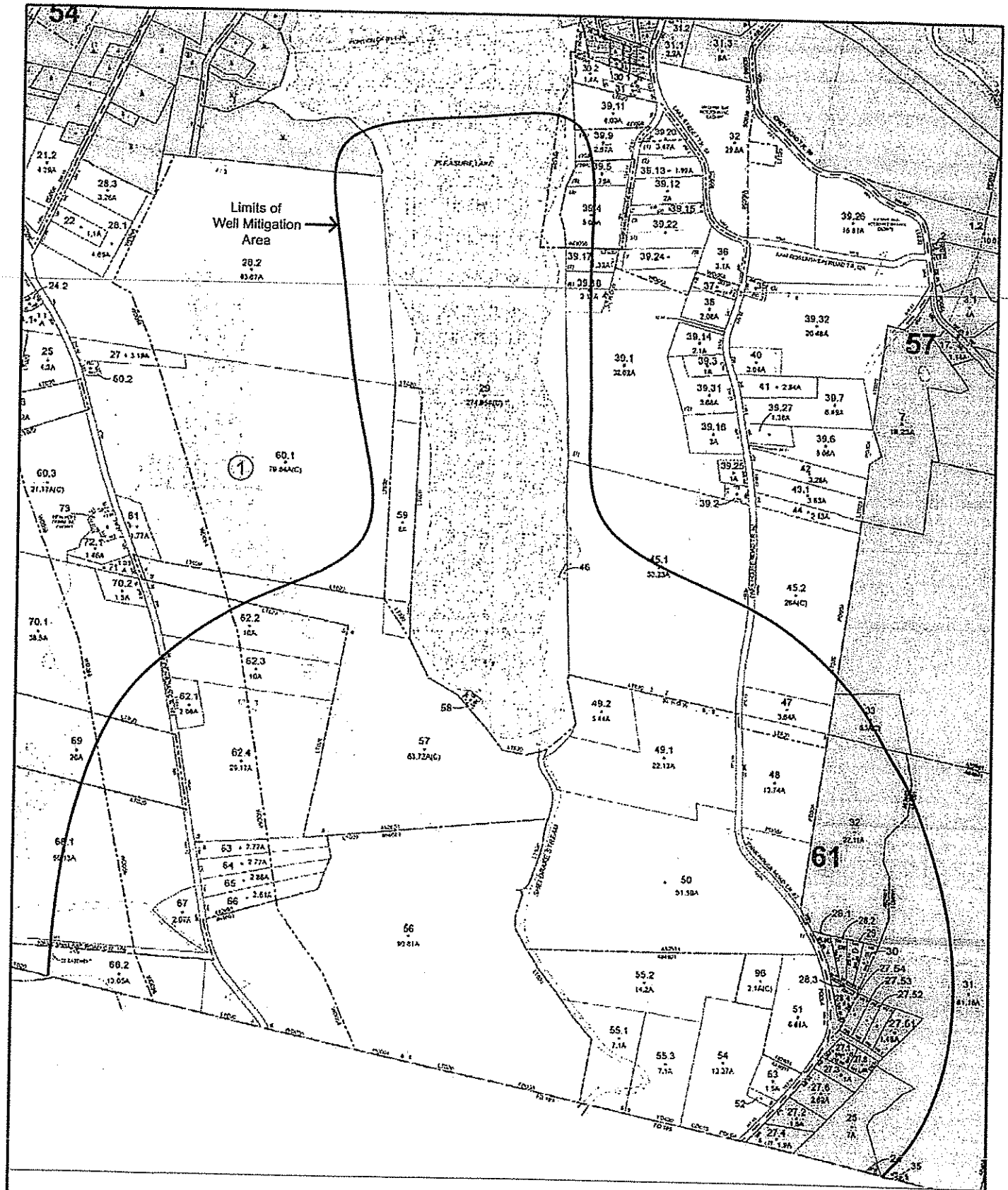
- e. If the RALHAL Corporation does not contest responsibility for correcting the well issue(s) and chooses not to correct the well issue(s), or does not correct the well issue(s) within 30 days, the Town at its discretion may authorize the well owner's contractor or a well contractor of the Town's choosing to correct the well issue(s).
- f. RALHAL will post a \$25,000 cash escrow to the Town to be used to pay any and all expenses incurred by the Town to make any review, determinations or assessments the Town is going to make when a well owner requests an assessment of its well as referenced in Paragraph a and b above; and in making neighboring well repairs, in accordance with the above procedures, when either the Town or the owner makes the repairs. At any time the cash escrow is reduced, RALHAL will replenish the escrow to \$25,000 within 5 business days of notification.
- g. The area covered by this agreement will extend to all property owners within 3000 feet from each of the Raleigh wells, and also will include all existing wells of homeowners in the Pleasure Lake community represented by the Fallsburg Fishing and Boating Club, Inc.
- h. This Well Mitigation Program will begin upon filing of the first building permit application. It will be maintained throughout the development and until such time as three years have elapsed after the last Certificate of Occupancy is issued. The balance of escrow funds will then be returned to RALHAL. However if there occurs a temporary hiatus in project development, resulting for instance between project phases and lasting more than three years, and additional building permits are subsequently filed the Well Mitigation Program will be reactivated.
- i. Upon completion of the period of time covered by this agreement the Town will no longer maintain an escrow account for purposes of rectifying potential off site well impacts from the operation of the Raleigh wells. Any remaining monies in the escrow account at that time will be returned to the RALHAL Corporation.
- j. Irrespective of the provisions of this agreement, the parties to this agreement recognize that any property owners within the surrounding area of the RALHAL project will maintain any and all legal and equitable rights they have concerning their property.
- k. RALHAL agrees to defend, hold harmless and indemnify the Town for any and all litigation that may arise as a result of the RALHAL project which includes and is not limited to legal actions that result as a result of the well development and construction that will occur or any other related infrastructure that is built as part of the RALHAL project. This duty to defend, hold harmless and indemnify shall be assigned to any corporation, LLC, entity and or person who RALHAL may sell

or assign the project. The obligation to the Town, referenced in this section, shall also be undertaken and include any Homeowners Associations and or Condominium Associations that are formed as a result of the RALHAL project, as it is built out.

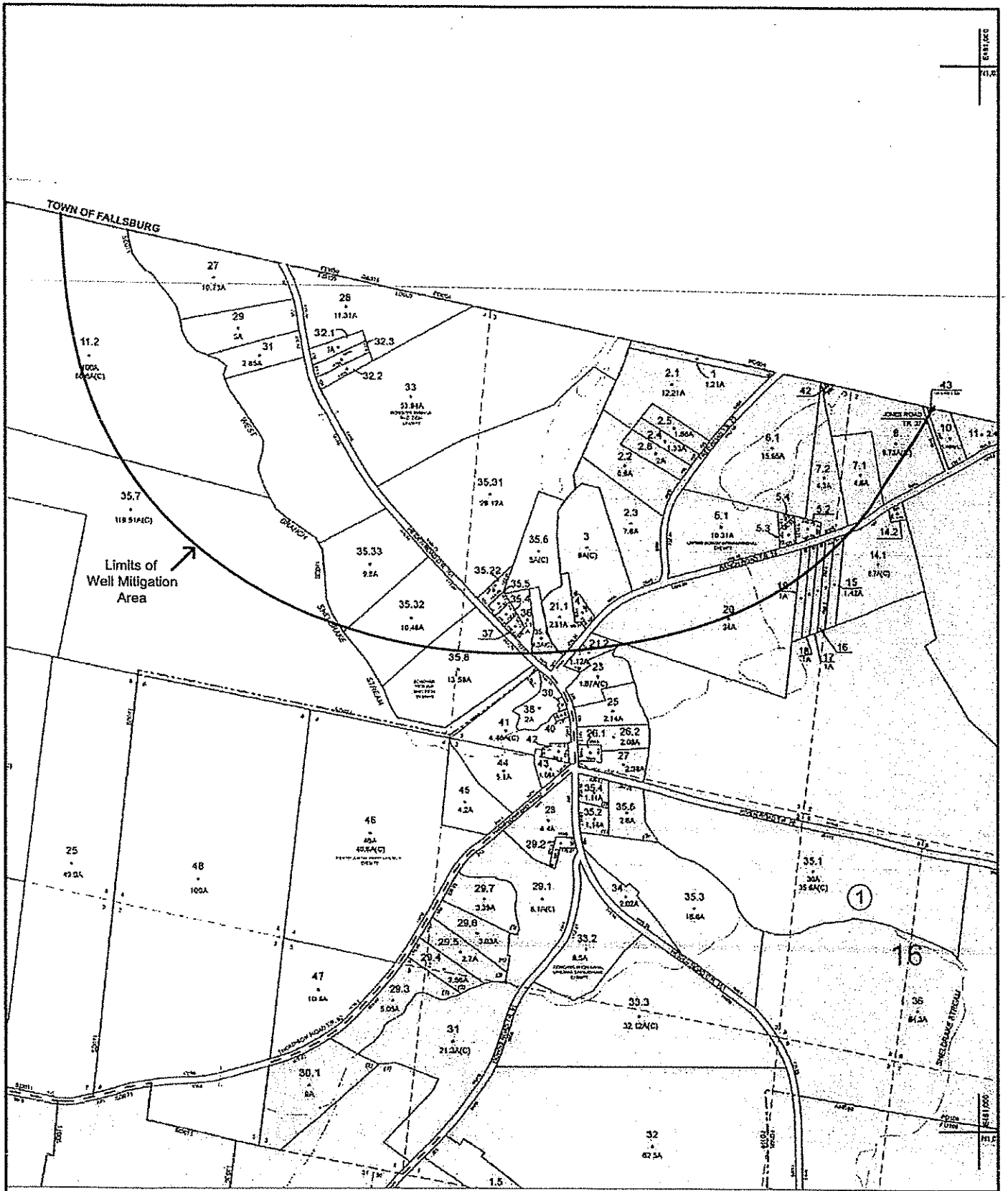
For questions on the program contact:

Town of Fallsburg Code Enforcement Office

5250 Main Street
South Fallsburg, NY 12779
Phone: (845)434-8811



Raleigh Well Mitigation Program Map
 Raleigh and Heiden Properties
 Town of Fallsburg, Sullivan County, NY
 Base Map: Sullivan County Tax Map, Sheet 60
 TMA February 5, 2013



Raleigh Well Mitigation Program Map
 Raleigh and Heiden Properties
 Town of Thompson, Sullivan County, NY
 Base Map: Sullivan County Tax Map, Sheet 15

TMA February 5, 2013