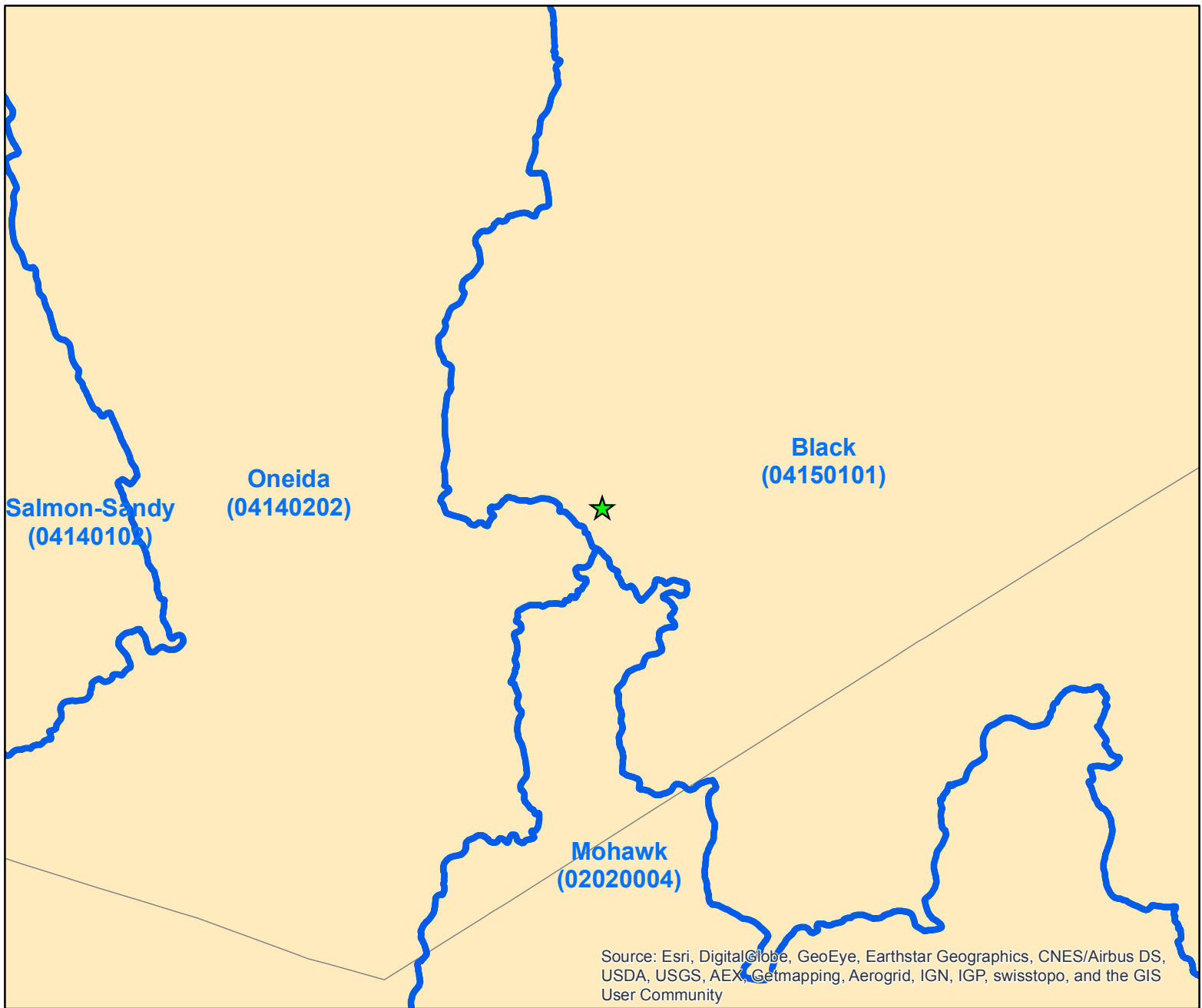
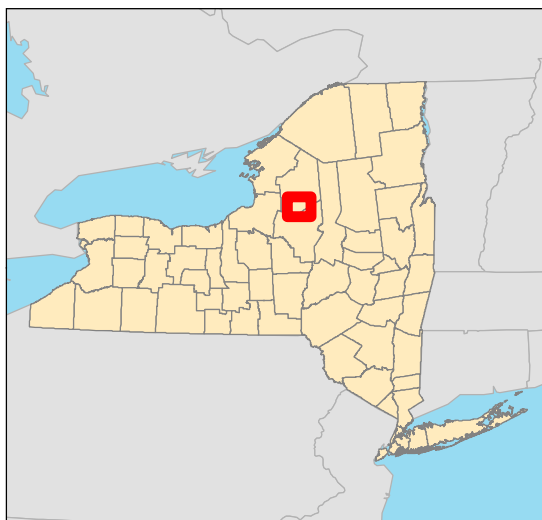


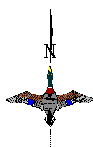
**APPENDIX B:**  
**BASELINE INFORMATION**

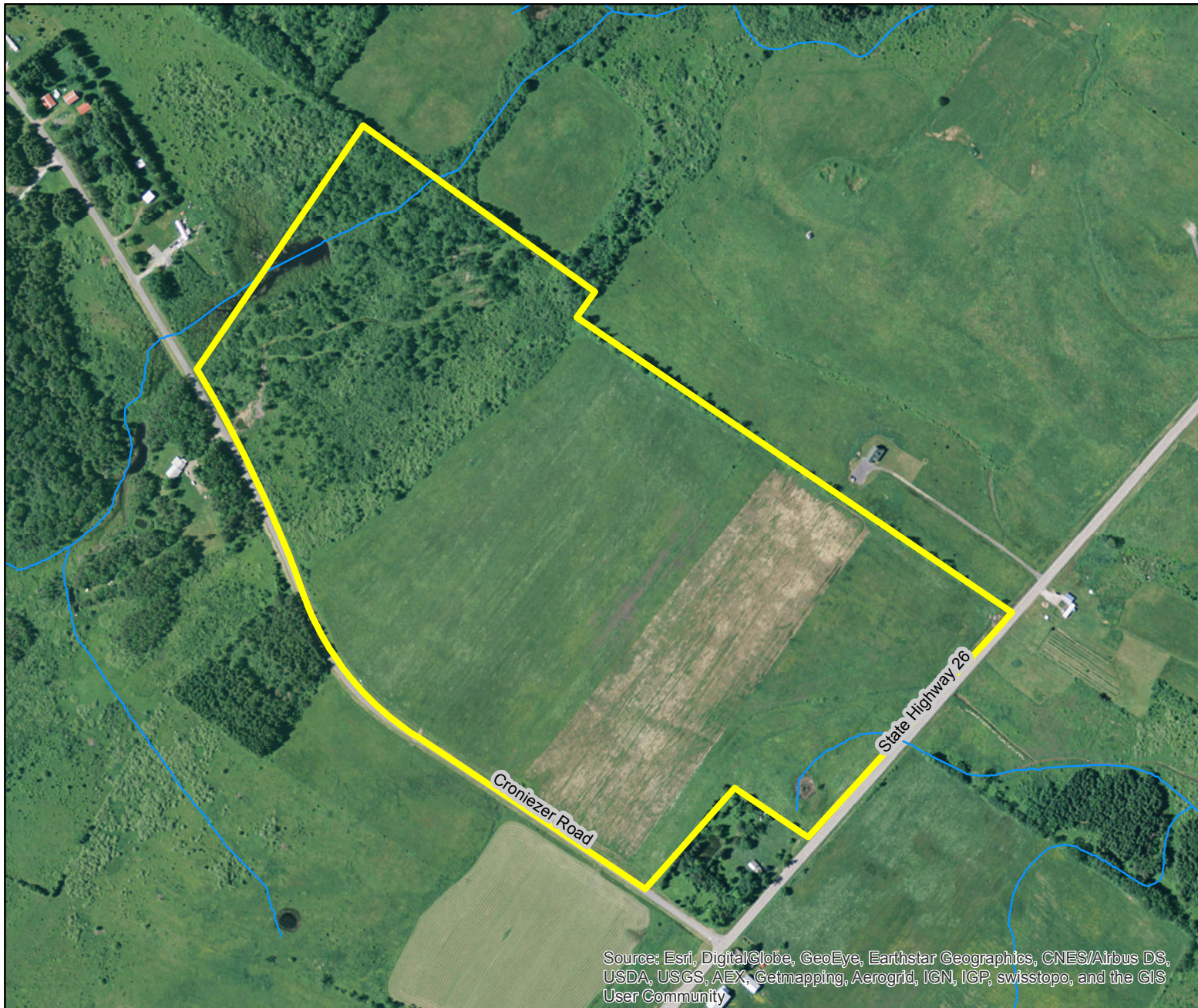


**Fig. 1: Highway 26 Watershed (HUC8)**



- ★ Property Location
- Watershed (HUC 8)

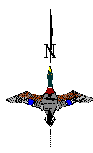




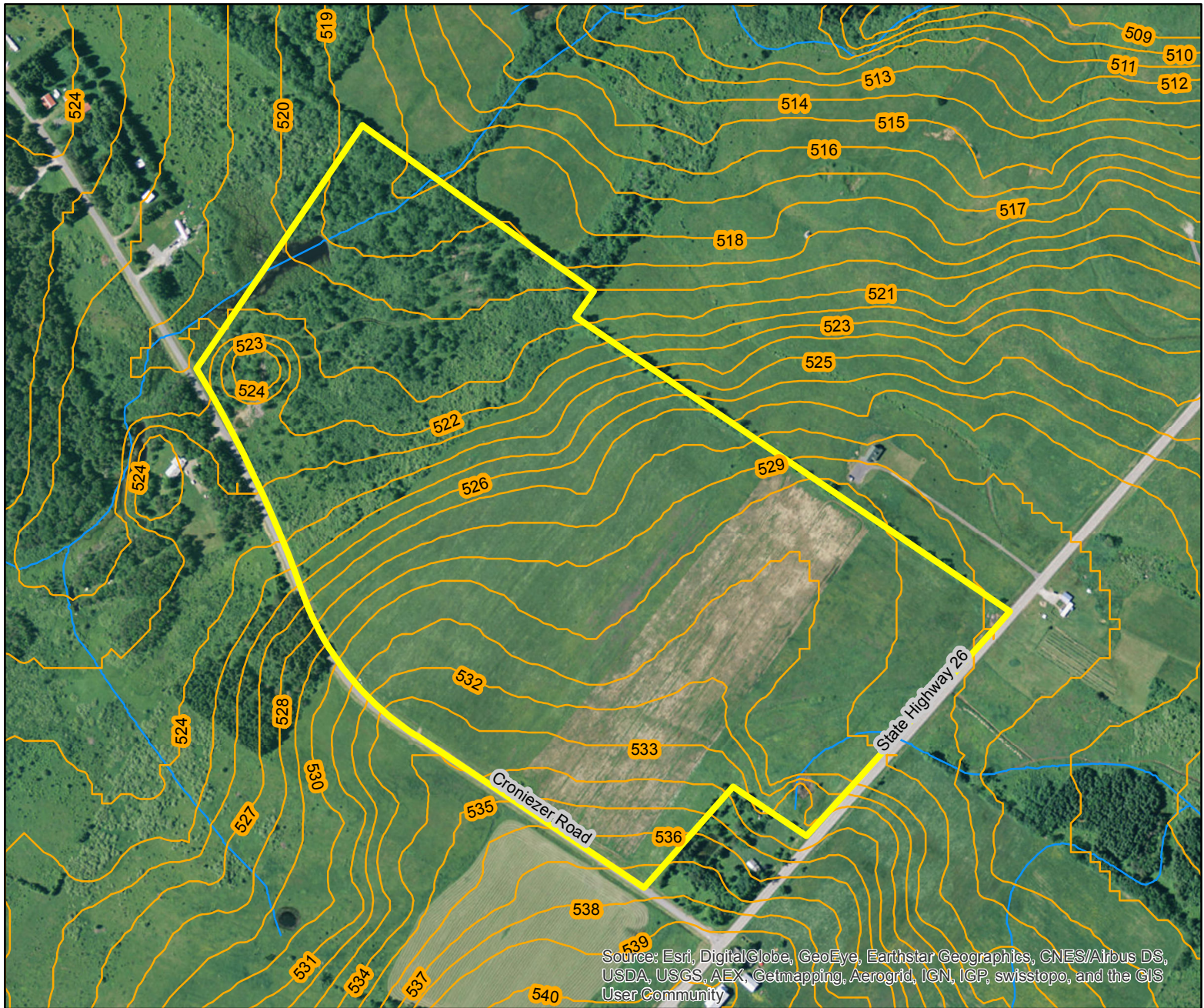
**Fig. 2: Highway 26 Aerial**



 Property Boundary (79.5 Acres)



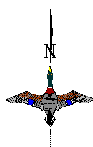




**Fig. 3: Highway 26 Topography**



- Property Boundary (79.5 Acres)
- Contours (1 m)



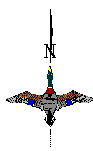




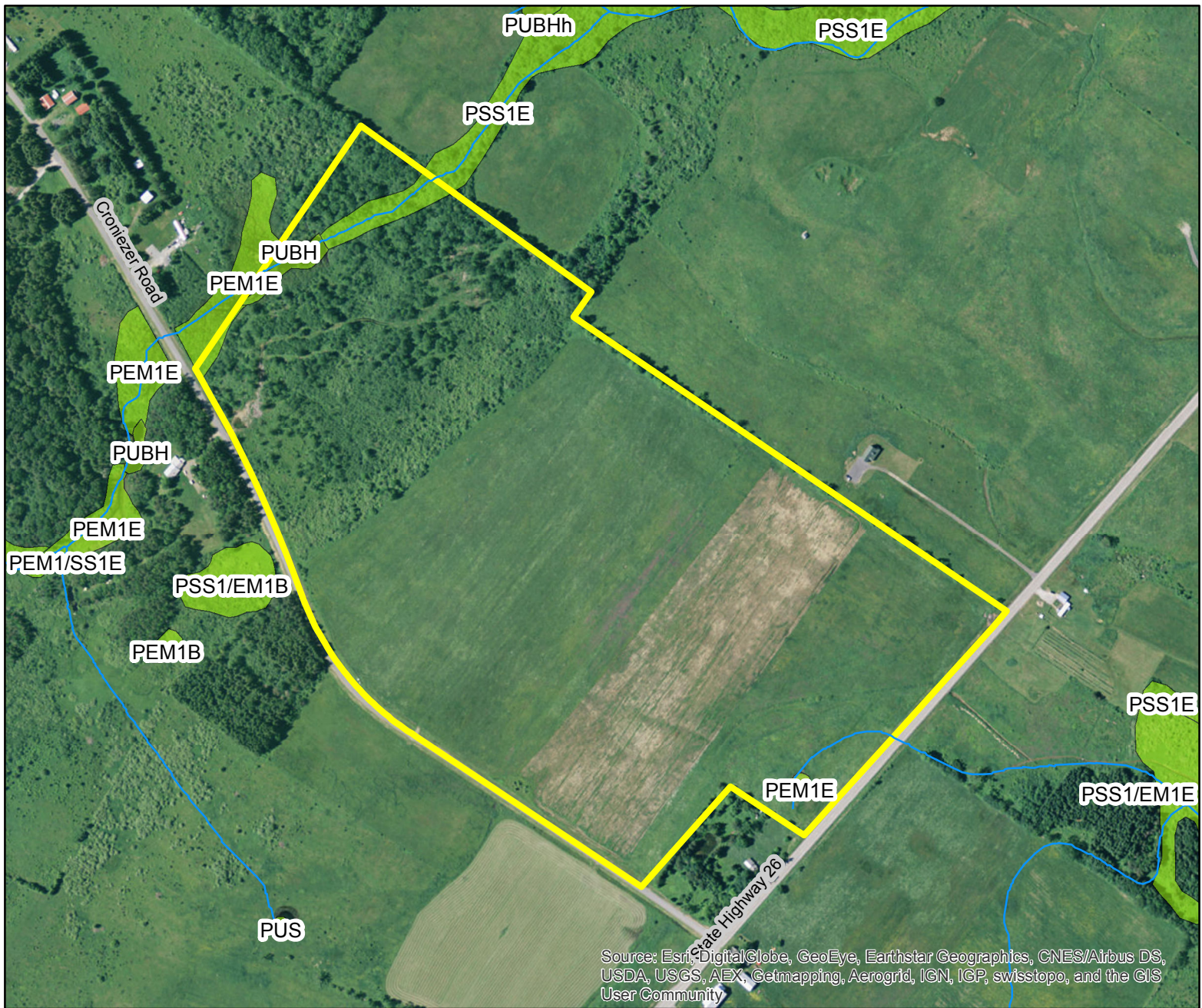
**Fig. 4: Highway 26 Soils (SSURGO)**

Property Boundary (79.5 Acres)  Hydric Soils

Soil Map Unit Symbol	Soil Map Unit Name
AcA	Alden silt loam, 0 to 3 percent slopes
CaB	Camroden silt loam, 3 to 8 percent slopes
EcB	Empeyville flaggy silt loam, 3 to 8 percent slopes
EcC	Empeyville flaggy silt loam, 8 to 15 percent slopes
MeA	Marcy silt loam, 0 to 3 percent slopes
MeB	Marcy silt loam, 3 to 8 percent slopes
WkB	Worth flaggy silt loam, 3 to 8 percent slopes
WkC	Worth flaggy silt loam, 8 to 15 percent slopes
WmD	Worth loam, 15 to 25 percent slopes, stony



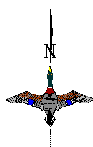




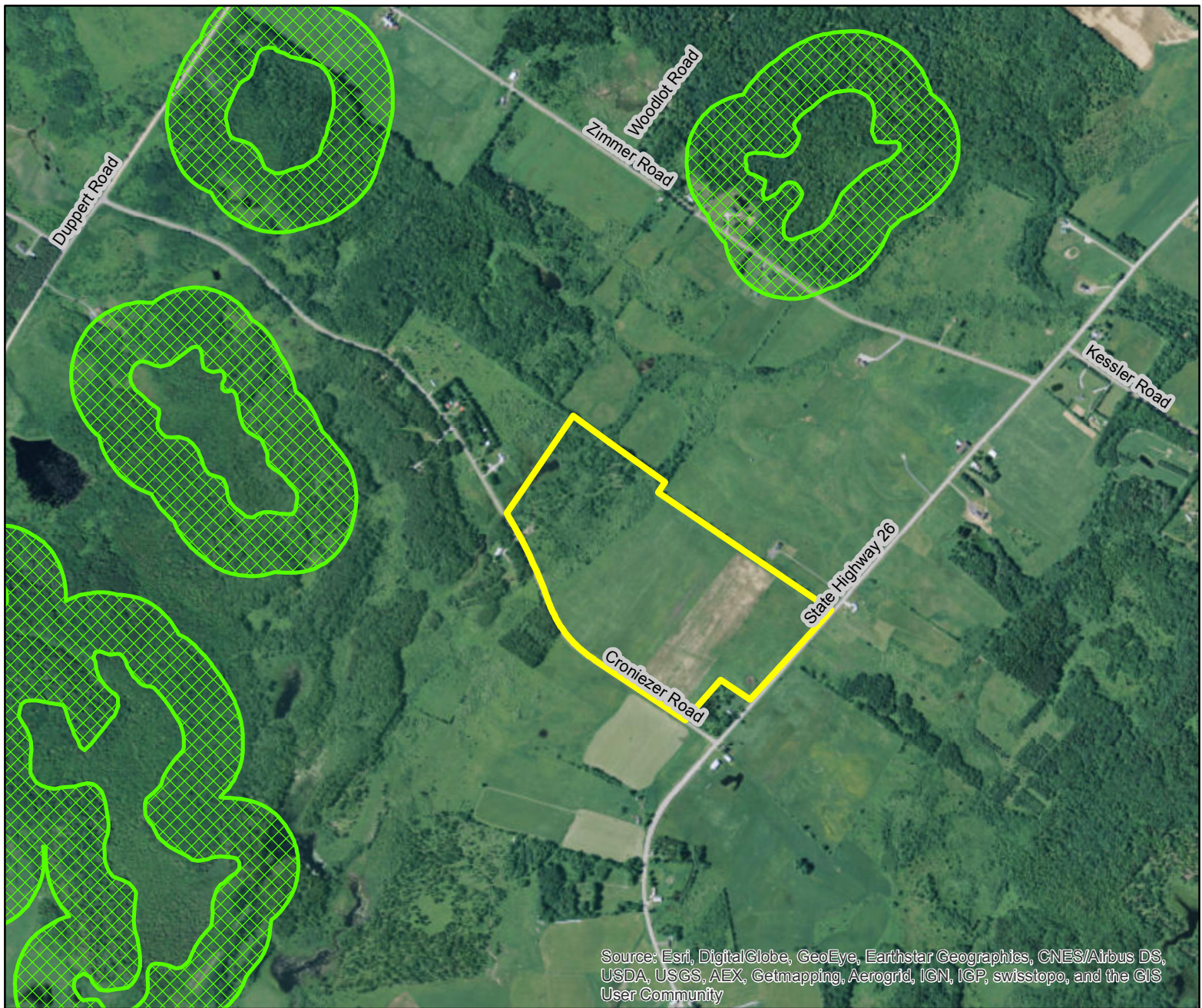
**Fig. 5: Highway 26  
Wetlands (NWI)**



- Property Boundary (79.5 Acres)
- Wetlands (NWI)


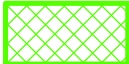


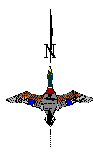




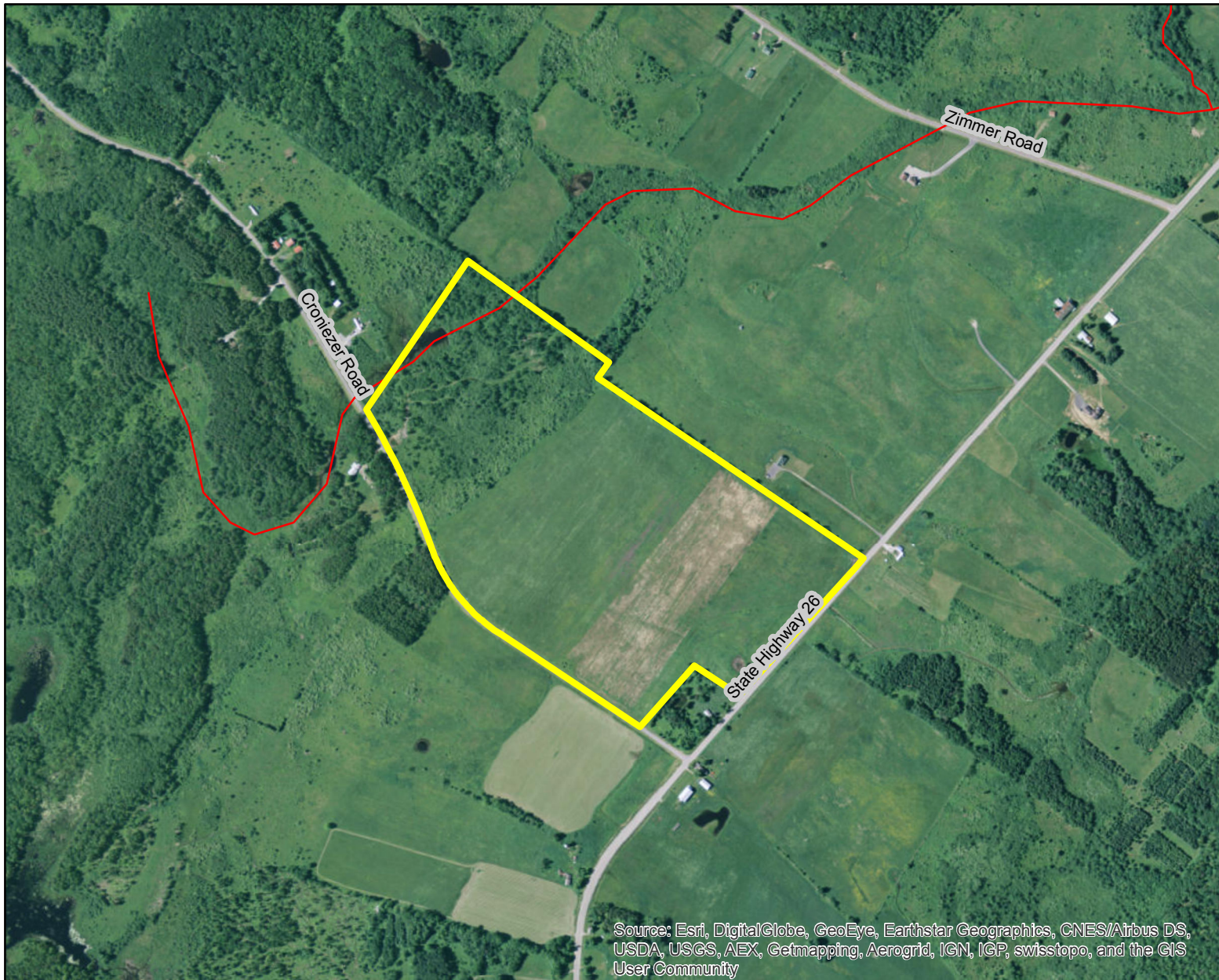
**Fig. 6: Highway 26  
Wetlands (DEC)**



-  Property Boundary (79.5 Acres)
-  NY DEC Wetlands Checkzones





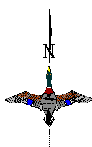




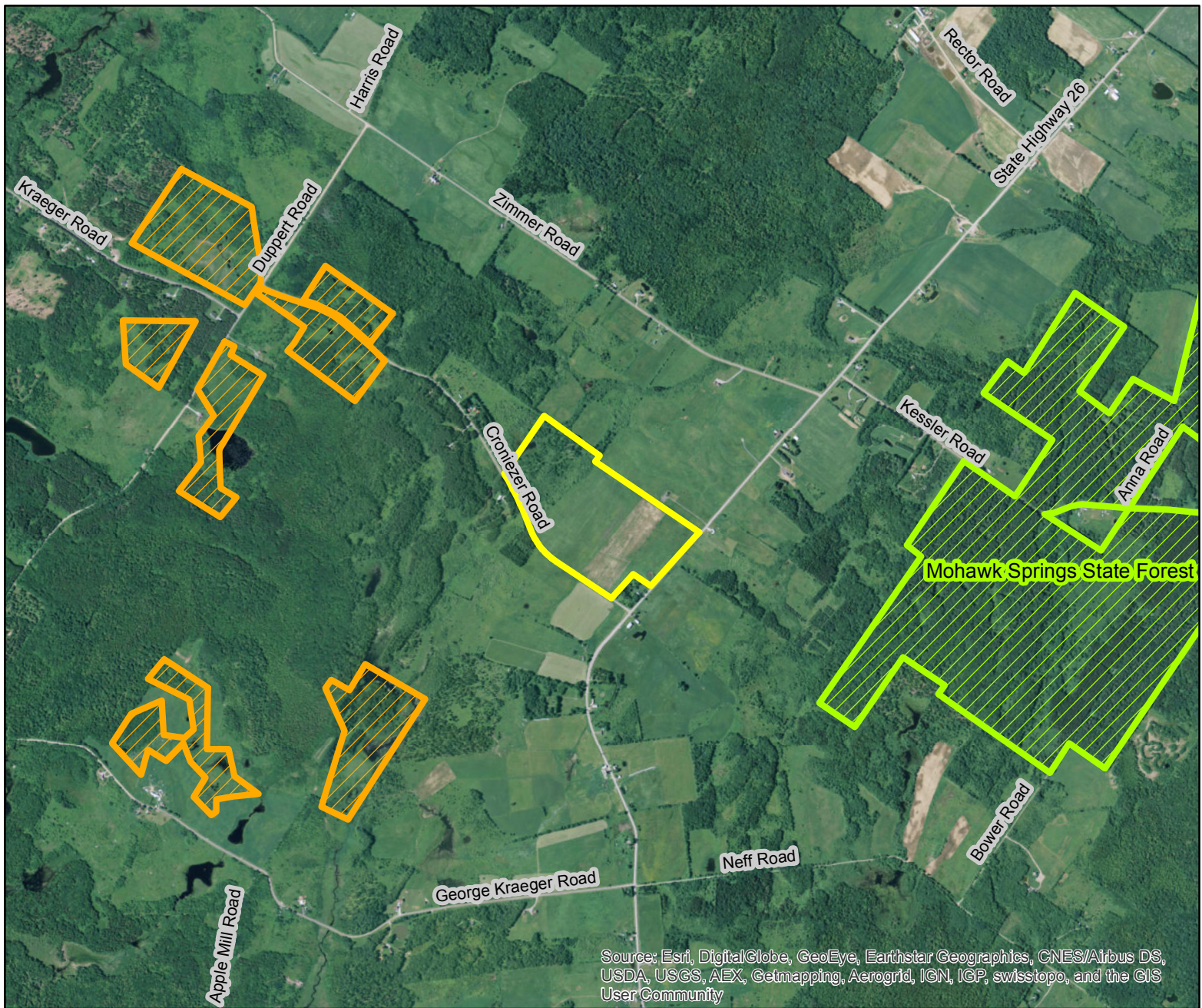
**Fig. 7: Highway 26  
303(d) Impaired Waters (EPA)**



-  Property Boundary (79.5 Acres)
-  303(d) Listed Waters



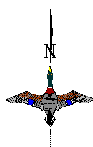




**Fig 8: Highway 26  
Protected Lands**



-  Property Boundary (79.5 Acres)
-  Wetlands Reserve Program
-  State



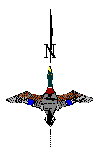




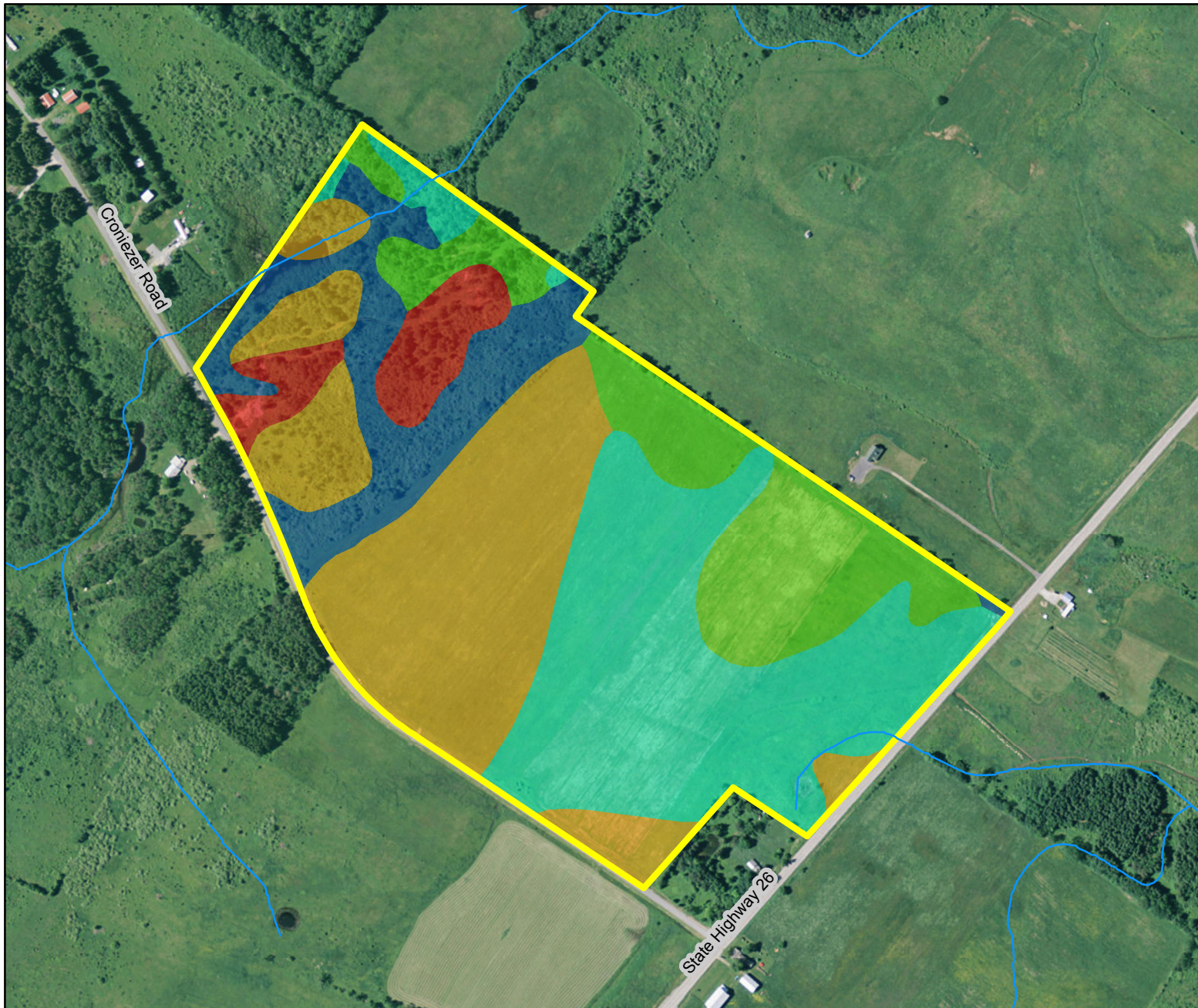
**Fig. 9: Highway 26  
Drainage Area**



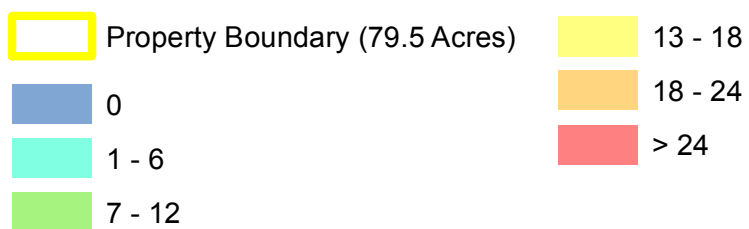
- Property Boundary (79.5 Acres)
- Drainage Area (258.4 Acres)



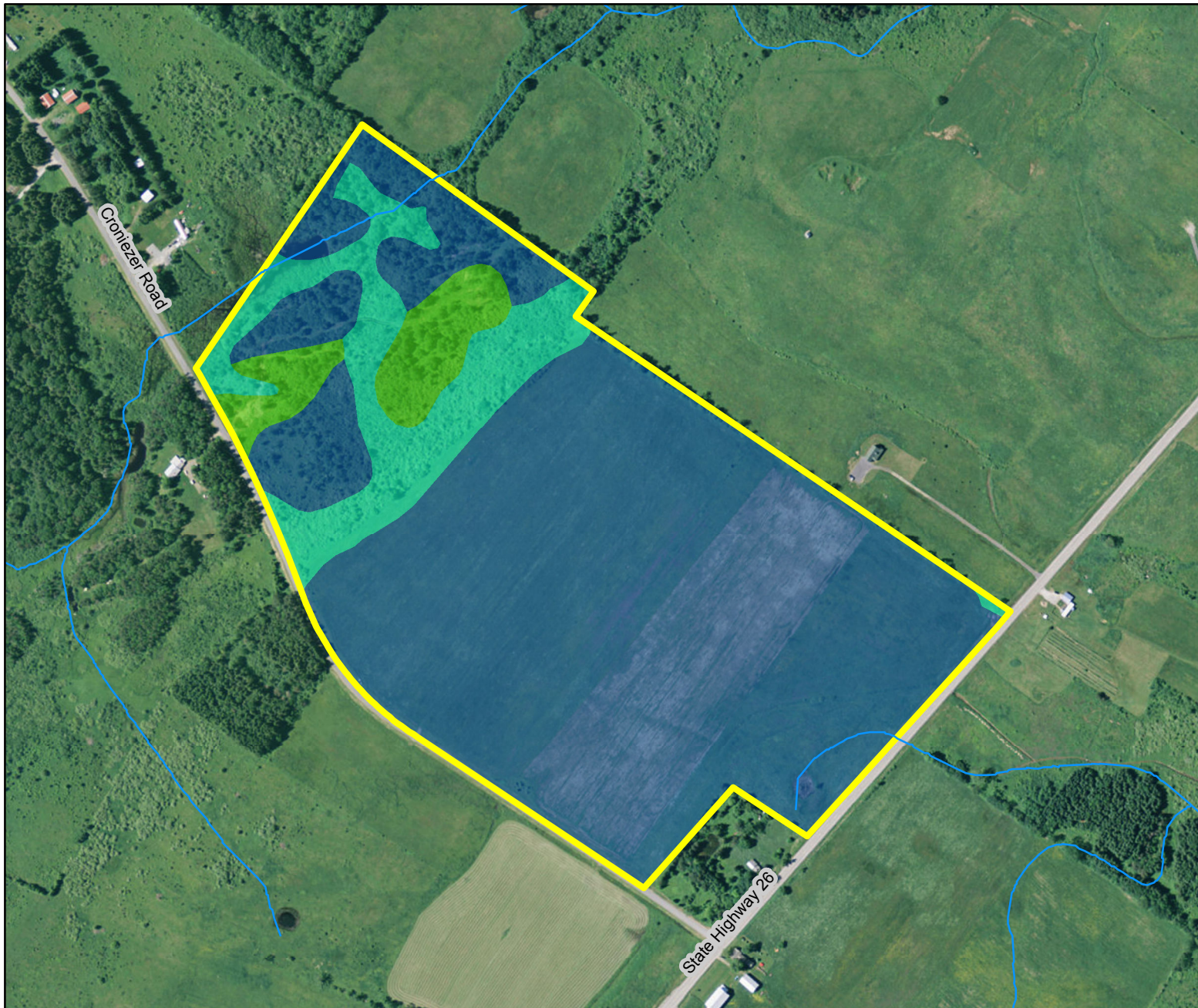




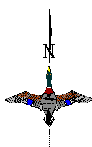
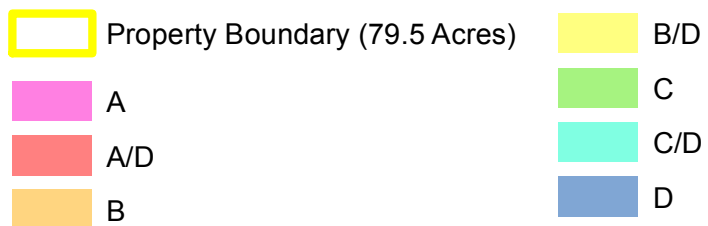
**Fig. 11: Highway 26 Depth to Water Table (inches)**



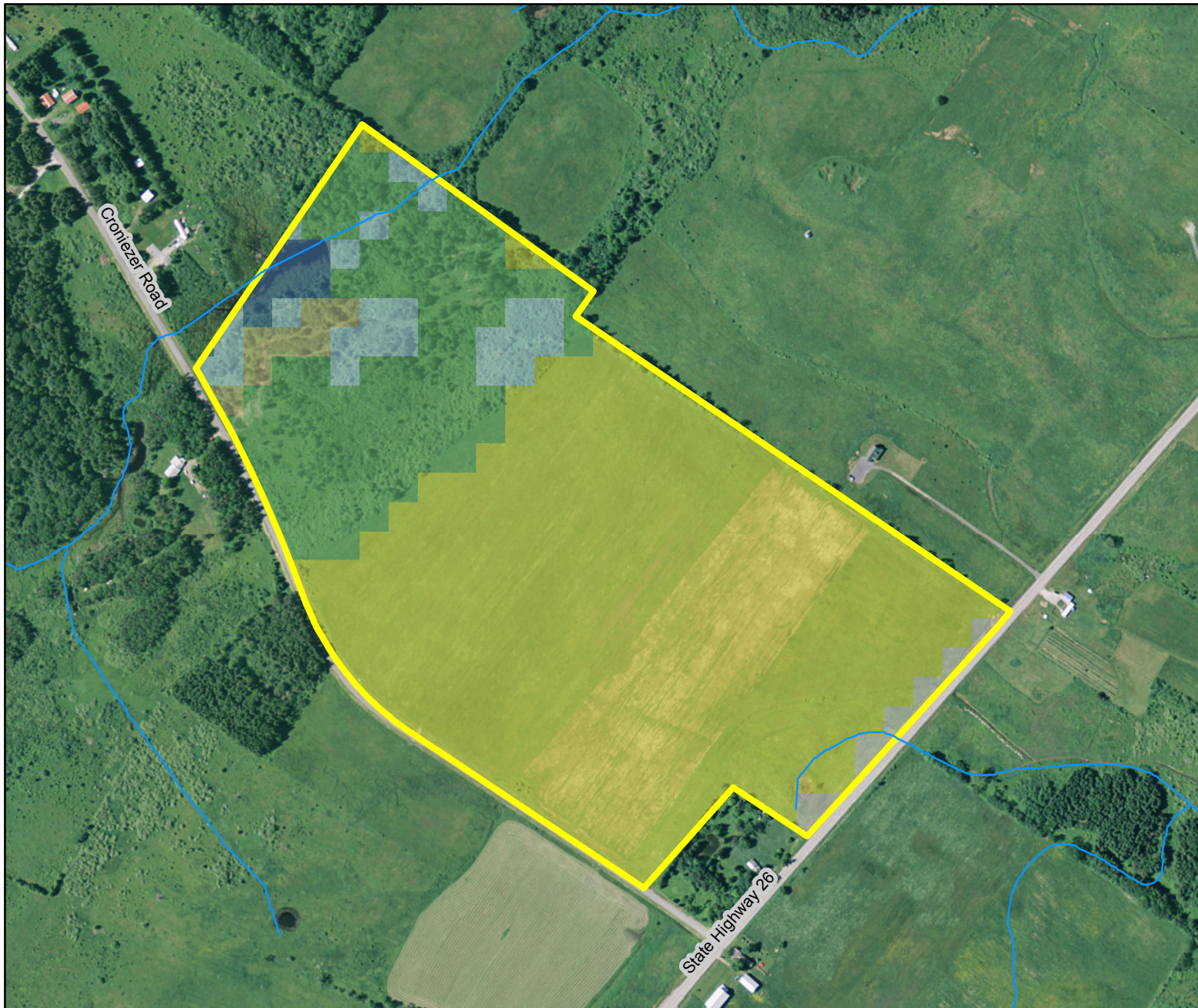




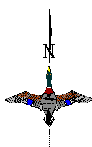
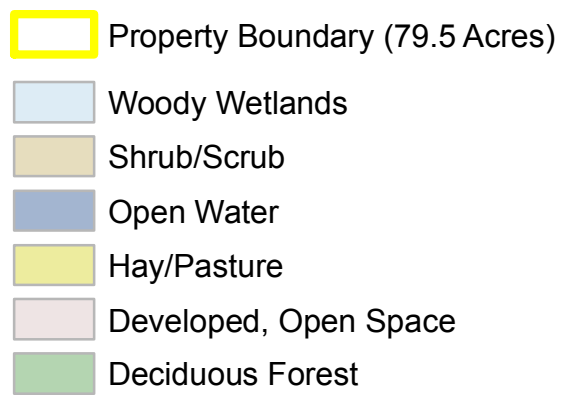
**Fig. 10: Highway 26  
Hydrologic Soils Group**







**Fig. 12: Highway 26  
Land Cover (NLCD)**





**APPENDIX C:**  
**Cultural Resources**





## Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO  
Governor

ROSE HARVEY  
Commissioner

March 04, 2016

Mr. Matthew Regan  
Wetland Mitigation Specialist  
Ducks Unlimited, Inc.  
159 Dwight Park Circle  
Syracuse, NY 13209

Re: USACE  
Hwy 26  
Croniezer Rd at Hwy 26, Constableville, NY  
16PR01104

Dear Mr. Regan:

Thank you for requesting the comments of the New York State Historic Preservation Office (SHPO). We have reviewed the submitted materials in accordance with Section 106 of the National Historic Preservation Act of 1966. These comments are those of the SHPO and relate only to Historic/Cultural resources. They do not include other environmental impacts to New York State Parkland that may be involved in or near your project. Such impacts must be considered as part of the environmental review of the project pursuant to the National Environmental Policy Act and/or the State Environmental Quality Review Act (New York Environmental Conservation Law Article 8).

Based on available information, your project is located in an archaeologically sensitive area. Therefore, SHPO recommends that a Phase I archaeological survey is warranted for all portions of the project that will involve ground disturbance, unless substantial prior ground disturbance can be documented. If you consider the project area to be disturbed, documentation of the disturbance will need to be reviewed by SHPO. Examples of disturbance include mining activities and multiple episodes of building construction and demolition.

Documentation of ground disturbance should include a description of the disturbance with confirming evidence. Confirmation can include current photographs and/or older photographs of the project area which illustrate the disturbance (approximately keyed to a project area map), past maps or site plans that accurately record previous disturbances, or current soil borings that verify past disruptions to the land. Agricultural activity is not considered to be substantial ground disturbance and many significant sites have been identified in previously cultivated land.

Please note that in areas with alluvial soils or fill archaeological deposits may exist below the depth of superficial disturbances, such as pavement or even deeper disturbances, depending on the thickness of the alluvium or fill. Evaluation of the possible impact of prior disturbance on archaeological sites must consider the depth of potentially culture-bearing deposits and the depth of planned disturbance by the proposed project.

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**Division for Historic Preservation**

P.O. Box 189, Waterford, New York 12188-0189 • (518) 237-8643 • [www.nysparks.com](http://www.nysparks.com)



Also, please note that wetlands may have areas of higher elevation that were suitable for habitation and/or the staging of temporary resource procurement camps. In addition, past climatic variations or modern changes in hydrology may have inundated areas formerly available for occupation.

A Phase I survey is designed to determine the presence or absence of archaeological sites or other cultural resources in the project's area of potential effect. The SHPO can provide standards for conducting cultural resource investigations upon request. Cultural resource surveys and survey reports that meet these standards will be accepted and approved by the SHPO.

Our office does not conduct cultural resources surveys. A 36 CFR 61 qualified archaeologist should be retained to conduct the Phase I survey. Many archaeological consulting firms advertise their availability in the yellow pages. The services of qualified archaeologists can also be obtained by contacting local, regional, or statewide professional archaeological organizations. Phase I surveys can be expected to vary in cost per mile of right-of-way or by the number of acres impacted. We encourage you to contact a number of consulting firms and compare examples of each firm's work to obtain the best product.

Please also be aware that a Section 233 permit from the New York State Education Department (SED) may be necessary before any archaeological survey activities are conducted on State-owned land. If any portion of the project includes the lands of New York State you should contact the SED before initiating survey activities. The SED contact is Christina B. Rieth and she can be reached at (518) 402-5975. Section 233 permits are not required for projects on private land.

If you have any questions please don't hesitate to contact me.

Sincerely,



Philip A. Perazio, Historic Preservation Program Analyst - Archaeology Unit

Phone: 518-268-2175

e-mail: [philip.perazio@parks.ny.gov](mailto:philip.perazio@parks.ny.gov)

via e-mail only



## **APPENDIX D**

### **Wildlife Usage**





## United States Department of the Interior



### FISH AND WILDLIFE SERVICE

New York Ecological Services Field Office

3817 LUKER ROAD

CORTLAND, NY 13045

PHONE: (607)753-9334 FAX: (607)753-9699

URL: [www.fws.gov/northeast/nyfo/es/section7.htm](http://www.fws.gov/northeast/nyfo/es/section7.htm)

Consultation Code: 05E1NY00-2016-SLI-1184

March 14, 2016

Event Code: 05E1NY00-2016-E-02656

Project Name: Hwy 26

Subject: List of threatened and endangered species that may occur in your proposed project location, and/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 (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). This list can also be used to determine whether listed species may be present for projects without federal agency involvement. 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 ESA, 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 ECOS-IPaC site at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list. If listed, proposed, or candidate species were identified as potentially occurring in the project area, coordination with our office is encouraged. Information on the steps involved with assessing potential impacts from projects can be found at: <http://www.fws.gov/northeast/nyfo/es/section7.htm>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (



[http://www.fws.gov/windenergy/eagle\\_guidance.html](http://www.fws.gov/windenergy/eagle_guidance.html)). Additionally, wind energy projects should follow the Services wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

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 ESA. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment





United States Department of Interior  
Fish and Wildlife Service

Project name: Hwy 26

## Official Species List

**Provided by:**

New York Ecological Services Field Office

3817 LUKER ROAD

CORTLAND, NY 13045

(607) 753-9334

<http://www.fws.gov/northeast/nyfo/es/section7.htm>

**Consultation Code:** 05E1NY00-2016-SLI-1184

**Event Code:** 05E1NY00-2016-E-02656

**Project Type:** LAND - RESTORATION / ENHANCEMENT

**Project Name:** Hwy 26

**Project Description:** Wetland Mitigation Project

**Please Note:** The FWS office may have modified the Project Name and/or Project Description, so it may be different from what was submitted in your previous request. If the Consultation Code matches, the FWS considers this to be the same project. Contact the office in the 'Provided by' section of your previous Official Species list if you have any questions or concerns.

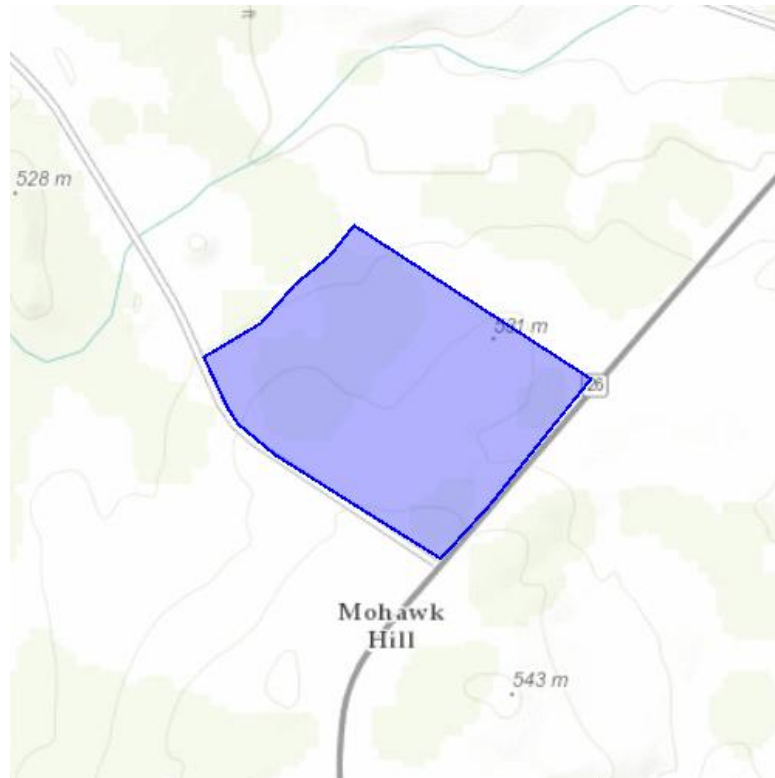




United States Department of Interior  
Fish and Wildlife Service

Project name: Hwy 26

### Project Location Map:



**Project Coordinates:** MULTIPOLYGON (((-75.46622514724731 43.52879342273755, -75.46390771865845 43.53089363796477, -75.46935796737671 43.533444912152696, -75.46993732452393 43.53294711102997, -75.47070980072021 43.532464862273905, -75.47150373458862 43.53182704348013, -75.47283411026001 43.531267001904425, -75.47227621078491 43.53042692978989, -75.4720401763916 43.53013134607789, -75.47118186950684 43.529633517604296, -75.46736240386961 43.52789108558806, -75.46622514724731 43.52879342273755)))

**Project Counties:** Lewis, NY





United States Department of Interior  
Fish and Wildlife Service

Project name: Hwy 26

## Endangered Species Act Species List

There are a total of 1 threatened or endangered species on your 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. Critical habitats listed under the **Has Critical Habitat** column may or may not lie within your project area. See the **Critical habitats within your project area** section further below for critical habitat that lies within your project. Please contact the designated FWS office if you have questions.

Mammals	Status	Has Critical Habitat	Condition(s)
Northern long-eared Bat ( <i>Myotis septentrionalis</i> )	Threatened		



United States Department of Interior  
Fish and Wildlife Service

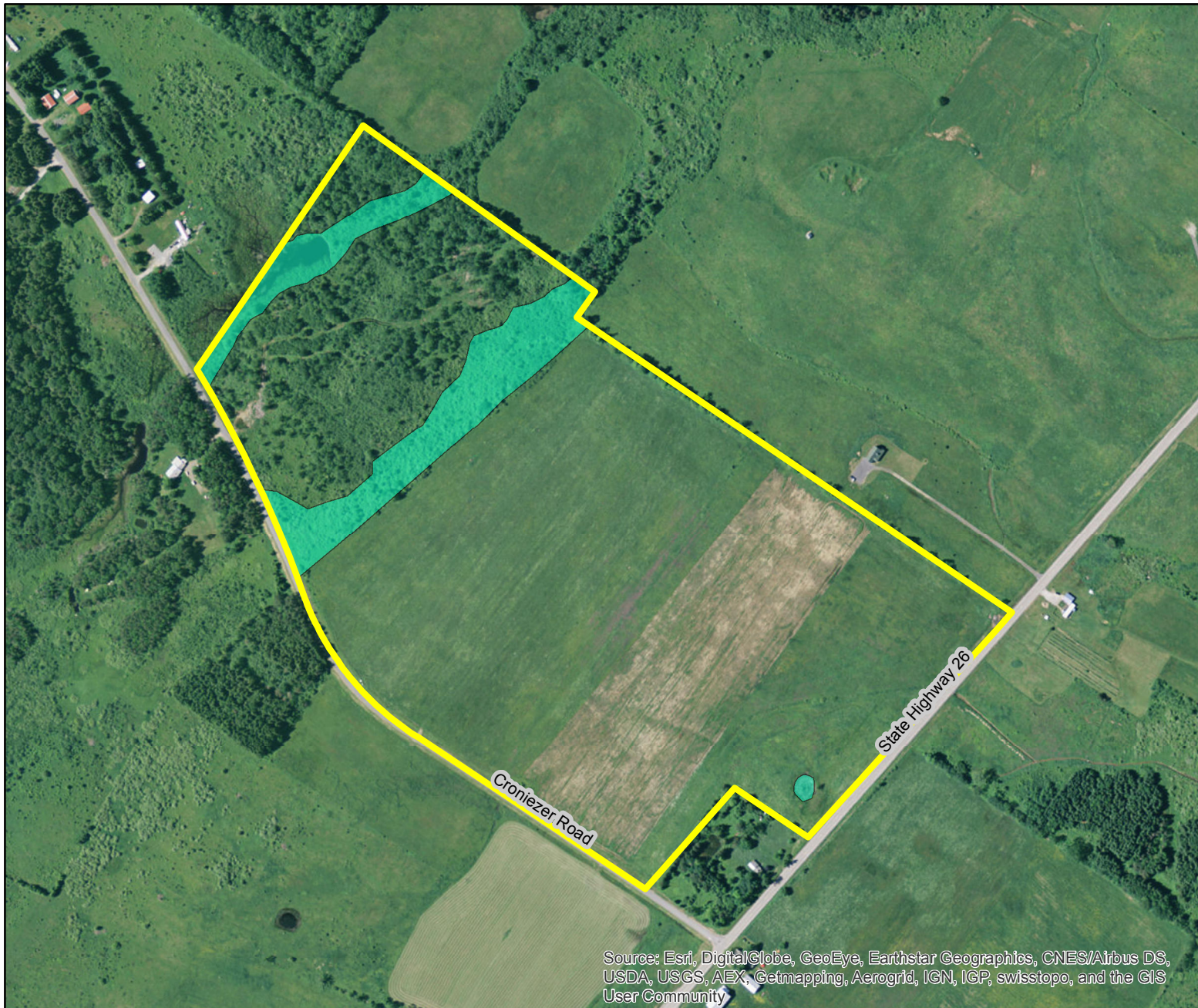
Project name: Hwy 26

## **Critical habitats that lie within your project area**

There are no critical habitats within your project area.



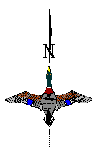
**APPENDIX E**  
**PRELIMINARY WETLAND DELINEATION**



**Fig. 1: Highway 26  
Delineated Wetlands**

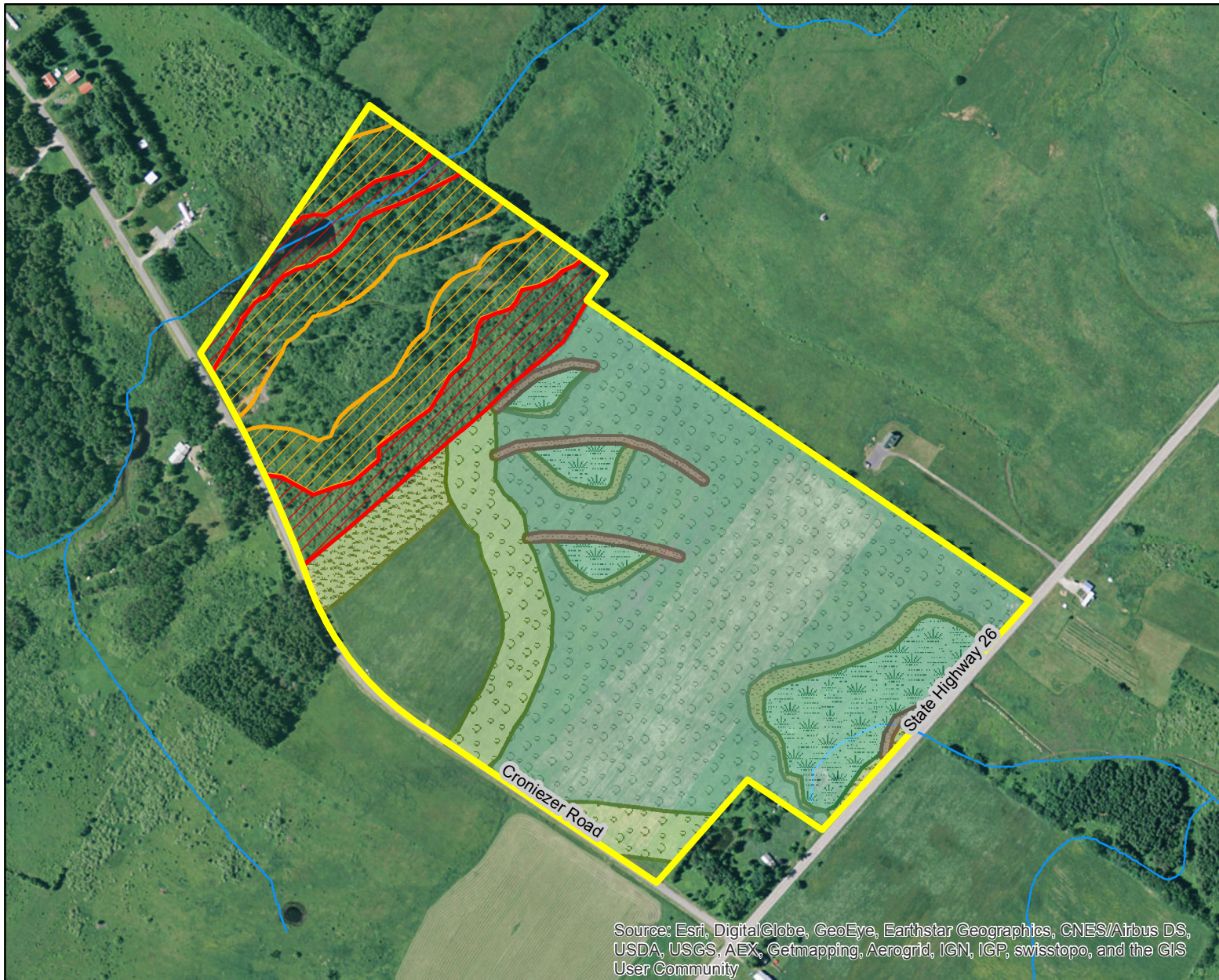


- Property Boundary (79.5 Acres)
- Delineated Wetlands (7.4 Acres)














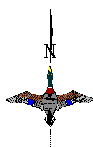
**APPENDIX F**  
**MITIGATION WORK PLAN**



**Fig. 1: Highway 26 Concept Plan**



-  Property Boundary (79.5 Acres)
-  PFO Re-establishment (32.2 Acres)
-  PEM Re-establishment (6.3 Acres)
-  PSS Re-establishment (2.3 Acres)
-  PSS Preservation (7.3 Acres)
-  Low-Head Embankment (1.5 Acres)
-  Upland Forested Buffer Re-establishment (6.1 Acres)
-  Grassland Buffer Re-establishment (2.5 Acres)
-  Upland Buffer Preservation (10.9 Acres)





## **APPENDIX G**

### **Mitigation Site Protection Instruments**

**RECORD AND RETURN TO:**

WETLANDS AMERICA TRUST, INC.

ONE WATERFOWL WAY

MEMPHIS, TENNESSEE 38120

**NOTICE OF MITIGATION REQUIREMENTS**

- 1.01 In-Lieu Fee Program. **DUCKS UNLIMITED, INC.**, a non-profit corporation organized under the laws of the District of Columbia, with an address of One Waterfowl Way, Memphis, Tennessee 38120, operates a New York In-Lieu Fee Program (“**Program**”) to provide a third-party, compensatory mitigation option for unavoidable impacts to waters of the United States (including both wetlands, streams and other aquatic resources). The Program was approved on September 28, 2012 by the Army Corps of Engineers under authority established by Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act (Buffalo District Permit No. 2010-00673).
- 1.02 Fee-Title Ownership. On [ENTER RECORDED DATE OF ACQUISITION], **WETLANDS AMERICA TRUST, INC.**, a supporting organization of Ducks Unlimited, Inc. and a non-profit corporation organized under the laws of the District of Columbia, with an address of One Waterfowl Way, Memphis, Tennessee 38120 (“**Land Trust**”), became the owner in fee simple of approximately \_\_\_\_ acres, more or less, of real property (“**Property**”) located in [insert county name] County, New York, and more particularly described in **Exhibit A**.
- 1.03 Restoration Project. Ducks Unlimited, Inc. has developed and implemented a wetland restoration plan (“**Project**”) to restore and protect [xx] acres, more or less, of wetland and associated upland habitat located on the Property to provide wetland mitigation credits under the Program.
- 1.04 Long-Term Protection. In accordance with requirements of the Program, Ducks Unlimited, Inc. shall establish long-term protection of the Project through the transfer of title to, or through real-estate instruments such as conservation easements held by, entities such as non-profit conservation organizations or federal, tribal, state, or local resource agencies.
- 1.05 Notice Requirements. The Land Trust agrees to notify the **BUFFALO DISTRICT ENGINEER OF THE U.S. ARMY CORPS OF ENGINEERS**, with an address of 1776 Niagara Street, Buffalo,



New York 14207 (“**District Engineer**”), at least sixty (60) days in advance of transferring ownership of the Property. The Land Trust, and its successors and assigns, hereby agrees to be bound by requirements of the Program to ensure the long-term protection of the Project as described in Section 1.04. In the event title to the Property is transferred to an entity other than those described in Section 1.04, the Land Trust hereby agrees that its transfer of ownership shall be contingent upon recording at or prior to the transfer of ownership of the Property a conservation easement or other protection instrument that is approved by the District Engineer to ensure long-term protection of the Project.

1.06 Termination. The requirements of this Notice shall be satisfied at the time of transfer of title from the Land Trust to another entity as the requirements in Section 1.05 are met. This Notice shall automatically expire upon such transfer.

In witness whereof the Wetlands America Trust, Inc. has set its hand and seal this \_\_\_\_ day of \_\_\_\_\_, 2016.

\_\_\_\_\_  
By: Earl H. Grochau  
Its: Assistant Secretary  
DULY AUTHORIZED

STATE OF TENNESSEE  
COUNTY OF SHELBY

On this \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me personally appeared Earl H. Grochau, to me personally known, who, being by me duly sworn did state that he is the Assistant Secretary of the corporation named in the foregoing instrument; and acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public  
My commission expires:

**EXHIBIT A**  
**LEGAL DESCRIPTION**



## Model Conservation Easement

*Note: The numbers underlined in the text of the easement correspond with the subheading numbers in the commentary that follows.*

### DEED OF CONSERVATION EASEMENT 1

THIS GRANT DEED OF CONSERVATION EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_ and \_\_\_\_\_, corporation, having an address at \_\_\_\_\_ (“Grantors”) in favor of \_\_\_\_\_ a nonprofit \_\_\_\_\_ [state of corporation] \_\_\_\_\_ corporation/agency organized under \_\_\_\_\_ qualified to do business in \_\_\_\_\_ [state where property is located], having an address at \_\_\_\_\_ (“Grantee”). 2

#### WITNESSETH:

WHEREAS, 3 Grantors are the sole owners in fee simple of certain property in \_\_\_\_\_ County, \_\_\_\_\_ [State] \_\_\_\_\_, more particularly described in Exhibit A attached hereto and incorporated by this reference (the “Property”); 4 and

WHEREAS, the property possesses [wetland, streams, other water resources, buffer areas, wildlife habitats, endangered species, watershed protection values, wild/scenic rivers, endangered species critical habitat areas, critical resource areas, etc.] values (collectively, “conservation values” of great importance to the Grantors, the people of [locale or region] and the people of the State of \_\_\_\_\_; 5 and

WHEREAS, in particular, \_\_\_\_\_ [describe specific conservation values] \_\_\_\_\_; 6 and

WHEREAS, the specific conservation values of the Property are documented in the inventory of relevant features of the Property, dated \_\_\_\_\_, 20\_\_, [on file at the offices of ...] and incorporated by this reference (“Baseline Documentation”), which consists of maps, reports, photographs and other documentation that the parties agree provide, collectively, an accurate representation of the Property at the time of this grant and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this grant; and 7

WHEREAS, Grantors intend that the conservation values of the Property be preserved and maintained by the established land use patterns, including, without limitation, those relating to [public access, parks, etc.] proposed/existing at the time of this grant and further described in Exhibit C, that do not significantly impair or interfere with those values; and 8

WHEREAS, Grantors intend to protect the Property in perpetuity as part of a mitigation requirement for Department of the Army permit number \_\_\_\_\_ affirmed

for/issued to Grantor requiring the protection of valuable public water resources. The permit was issued/affirmed in accordance with the provisions of the Water Pollution Control Act of 1972, 33 USC Sections 1251-1387; Section 1344 Wetlands permitting, aka Section 404 of the Clean Water Act. The Corps of Engineers has endorsed the area as containing wetlands pursuant to a wetland delineation performed as prescribed in the 1987 Corps of Engineers Wetland Delineation Manual; and

WHEREAS, Grantors further intend, as the owners of the property, to convey the Grantee the right to preserve and protect the conservation values of the Property in perpetuity; and

WHEREAS, Grantor agrees, in accordance with ECL Section 49-0305.5, that rights of enforcement of the terms of this Conservation Easement shall be held by the Grantee, and that third-party rights of enforcement shall also be held by the Corps of Engineers or other appropriate enforcement agencies of the United States and that these rights are in addition to, and do not limit, the rights of enforcement under the Permit; 9

WHEREAS, Grantee is a            [publicly supported, tax exempt nonprofit organization/] qualified under            [Section 501(c)(3) and 170(h) of the Internal Revenue Service Code or Chapter 15XX of the New York Revised Code ], and a New York public body or not-for-profit conservation organization qualified to hold a Conservation Easement in accordance with ECL Section 49-0305 whose primary purpose is            [the preservation, protection of land in its natural, scenic, historical, forested, etc. condition]           ; 10;

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of the Grantors stated herein and to preserve and protect in perpetuity the conservation values of the Property for the benefit of this generation and the generations to come; 11

NOW, THEREFORE, in consideration of the above and mutual covenants, terms, conditions and restrictions contained herein, and pursuant to the laws of            [state where property is located] and in particular            [specific state statutory authority]           , Grantor hereby creates, gives, grants, bargains and conveys to the Grantee a perpetual easement in, to, over and across, the Protected Property for the purposes of preservation, protection, maintenance and conservation of the Protected Property and the aquatic resources thereon. Grantor shall ensure compliance with the following Restrictions on the Protected Property, which shall run with the Protected Property in perpetuity, and be binding on the Grantor, the Grantee, and their respective successors, assigns, lessees, and other occupiers and users. These Restrictions are subject to Grantor's Reserved Rights, which follow. 12

1. Purpose. It is the purpose of this easement to assure that the Property will be retained forever in its [e.g. natural, wetland, scenic, historic, forested, etc.] conditions and to prevent any use of the Property that will impair or interfere with the conservation values of the Property. Grantors intend that this Easement will confine the use of the



Property to such activities, including, without limitation, those involving [e.g. hiking, wildlife observation, etc.], as are consistent with the purpose of this Easement. 13

2. Rights of the Grantee. To accomplish the purpose of this Easement the following rights are conveyed to the Grantee and the Corps of Engineers by this Easement:

- (a) To preserve and protect the conservation values of the Property;
- (b) To enter upon the Property at reasonable times in order to monitor Grantors' compliance with and otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to the Grantors, and Grantee shall not unreasonably interfere with the Grantors' use and quiet enjoyment of the Property; and
- (c) To prevent any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 6. 14

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited: 15

- A. Clearing, cutting or mowing;
- B. Earthmoving, grading, removal of topsoil, cultivation, burning, filling or material changes in the topography of the land in any manner, unless associated with a permitted reserved right;
- C. Placement of refuse, wastes, sewage, dredged spoil, solid waste, incinerator residue, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial, municipal, or agricultural waste on the Property;
- D. Draining, ditching, diking, dredging, channelizing, pumping, impounding, excavating;
- E. Diverting or affecting the natural flow of surface or underground waters within, or out of the Property; manipulating or altering any natural water course, body of water or water circulation and any activities or uses detrimental to water quality;
- F. All methods of surface and subsurface exploration and extraction of

oil, gas, minerals, sand, gravel, soil, and any other materials for commercial and non-commercial use on or off of the Protected Property. This includes, mining and drilling activities.

- G. Burning, systematically removing or cutting timber or otherwise materially destroying any vegetation. Upon approval from the Grantee selective pruning, unsafe trees or exotic non-native vegetation may be removed in accordance with current scientific best management practices as set out by the U.S. Forest Service or the New York Forestry Commission;
- H. Spraying with biocides or use of herbicides only in those amounts and with that frequency of application as approved by the laws and regulations of the United States and the State of New York and as constituting the minimum necessary to accomplish reasonable activities permitted by the terms of this Easement.;
- I. Introducing exotic species on the Property, altering the natural state of the wetlands or streams or causing erosion or sedimentation;
- J. Grazing or use by domesticated animals such that animal wastes enter soil and water;
- K. Releasing, generating, treating, disposing, or abandoning any substance defined, listed, or otherwise classified pursuant to any federal, state, or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water, soil, or in any way harmful or threatening to human health or the environment on the Protected Property.
- L. Construction of any kind in the wetlands, streams, buffers or upland, whether temporary or permanent.
- M. Any other use of, or activity on, the Restricted Property which is or may become inconsistent with the purposes of this Declaration, the preservation of the Restricted Property substantially in its natural condition, or the protection of its environmental systems, is prohibited.
- N. As permitted or approved in writing by USACE the property may have: (1) a narrow pedestrian walking trail in the uplands or upland buffer using pervious materials, (2) minimal structures and boardwalks for the observation of wildlife and wetland/stream ecology, (3) crops for wildlife or placement of temporary hunting stands in uplands.
- O. Display of billboards, signs, or advertisements on or over the Property, except for the posting of no trespassing signs, temporary signs indicating



the property is for sale, signs identifying the trees, vegetation, wetlands or conservation values of the property and/or signs identifying the owner of the property.

- P. Conservation and wildlife habitat management plans may be implemented by the New York Department of Environmental Conservation, US Forest Service, conservation land trusts holding conservation easements, or other conservation management entities where the habitat, wildlife or forest management does not result in any impacts to the wetlands/streams/riparian corridors and its buffers, or to property protected for its historical, cultural and/or archeological value, and where the proposal would enhance the management of the property for its conservation use.

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Reserved Rights. Grantors reserve to themselves, and their personal representatives, heirs, successors, and assigns, all rights accruing from their ownership of the property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Nothing herein shall be deemed to modify or amend any other or additional agreements between or among the Grantor, the Grantee and the Corps of Engineers. In the event any of the Grantor's acts or uses, whether on the Protected Property or on the Permitted Property, are subject to review under the New York State Environmental Quality Review Act (SEQRA), the Grantee shall be designated as an interested party and notified of the review process. [Without limiting the generality of the foregoing, the following rights are expressly reserved:] 17

[Insert Express Reservation, if desired] 18

4. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring the Grantors to notify Grantee prior to undertaking certain permitted activities, as provided in paragraphs \_\_\_\_\_ [e.g. maintenance of constructed wetlands or streams]\_\_\_\_, is to afford Grantee an opportunity to ensure that activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required Grantors shall notify Grantee in writing not less than \_\_\_\_\_ days prior to the date Grantors intend to undertake the activity in question. The notice shall describe the nature, scope design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantee to make an informed judgment as to the consistency with the purpose of this Easement.

4.1 Grantee's Approval. Where Grantee's approval is required, as set forth in paragraphs \_\_\_\_\_, Grantee shall grant or withhold its approval in writing within \_\_\_\_\_ days of receipt of the Grantors' written request therefore. Grantee's approval may be withheld only upon a reasonable determination by the Grantee that the proposed action would be inconsistent with the purpose of this Easement. 19

5.

6. Grantee's Remedies. If Grantee or the Corps of Engineers determines that the Grantors are in violation of the terms of this Easement or that a violation is threatened, Grantee shall give notice to Grantors of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If the Grantors fail to cure the violation within \_\_\_\_\_ days after receipt of notice thereof from Grantee, or under circumstances where the violation cannot be reasonably within a \_\_\_\_\_ day period, fail to begin curing such violation within the \_\_\_\_\_ day period until finally cured, Grantee may bring an action at law or in equity in court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for loss of scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting the Grantors' liability therefore, Grantee in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action. If Grantee, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to conserve the conservation values of the Property, Grantee may pursue its remedies under this paragraph without prior notice to the Grantors or without waiting for the period provided for the cure to expire. Grantee's rights under this paragraph apply equally in the event of either actual or threatened violations of the terms of this Easement, and Grantors agree that Grantee's remedies at law for any violation of the terms of this Easement are inadequate and that Grantee shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which the Grantee may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantee's remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now and hereafter existing at law or in equity. 20

6.1 Costs of Enforcement. Any costs incurred by the Grantee in enforcing the terms of this Easement against Grantors, including, without limitation, costs of suit and attorneys' fees, and any costs or restoration necessitated by Grantors' violation of the terms of this Easement including Corps of Engineers costs shall be borne by Grantors.

6.2 Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of the Grantee or the Corps of Engineers, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantors or the Corps of Engineers shall not be deemed or construed to be a waiver of such term of any subsequent breach of the same or any other term of this Easement or of any of rights of Grantee to the Corps of Engineers under this Easement. No delay or omission by Grantee or the Corps of Engineers in the exercise of any right or remedy upon any breach by Grantors shall impair such right or remedy or be

construed as a waiver. Enforcement shall not be defeated because of any subsequent adverse possession, laches, estoppel or waiver.

7. Waiver of Certain Defenses. Grantors hereby waive any defense of laches, estoppel, or prescription. 22

8. Acts Beyond the Grantors' Control. Nothing Contained in this Easement shall be construed to entitle Grantee to bring any such action against Grantors for any injury to or change in the Property resulting from the causes beyond Grantors' control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Property resulting from such causes. 23

9. Access. No right of access by the general public [other than those.....] to any portion of the Property is conveyed by this Easement. 24

10. Costs and Liabilities. Grantors retain all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantors shall keep Property free from any liens arising out of any work performed for, materials furnished to, or obligations incurred by the Grantors. Any liens, mortgages or other encumbrances affecting the Protected Property shall be subject to the terms of this Conservation Easement. The Grantee or the Corps of Engineers shall not be responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Protected Property, except as expressly provided herein. Nothing herein shall relieve the Grantor of the obligation to comply with federal, state or local laws, regulations and permits that may apply to the exercise of ownership or rights under this Conservation Easement, by Grantor. 25

11. Taxes. Grantors shall pay before delinquency all taxes, assessments, fees, and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of, this Easement, and shall furnish Grantee with satisfactory evidence of payment upon request. Grantee is authorized but in no event obligated to make or advance any payment of taxes upon \_\_\_\_ days prior written notice to Grantors, in accordance with any bill, statement, or estimated procures from appropriate authority, without inquiry into the validity of the taxes or the accuracy of the bill, statement or estimate, and the obligation created by such payment shall bear interest until paid by Grantors at the lesser of \_\_\_\_ percentage points over the prime rate of interest from time to time charged by \_\_\_\_\_ bank or the maximum rate allowed by law. 26

12. Hold Harmless. Grantors shall hold harmless, indemnify, and defend Grantee and its members, directors, officers, employees, agents, and contractors and the heirs, [personal representatives, successors, and assigns of each of them (collectively "Indemnified Parties") from and against all liabilities, penalties, costs, losses, damages,



expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorneys' fees, arising from, or in any way connected with: (1) injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due solely to the negligence of any of the Indemnified Parties; (2) the obligations specified in paragraphs 2 and 5; and (3) the existence or the administration of this Easement. 27

13. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceeding under authority of ECL Section 49-0307 in a court of competent jurisdiction, and the amount of the proceeds to which Grantee shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided by [state] law at the time, in accordance with paragraph 13.1. Grantee shall notify the Buffalo District Corps of Engineers of any such court-approved decision within 30 days of that decision. The Grantee shall propose, in writing to the Buffalo District Corps of Engineers and shall use all proceeds in a manner consistent with the conservation purposes of its mission . 28

13.1 Proceeds. The Easement constitutes a real property interest immediately vested in Grantee, which, for purposes of paragraph 13, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to be the value of the Property, without deduction for the value of the Easement, at the time of this grant. For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant. 29

13.2 Condemnation. If the Easement is taken, in whole by the exercise of the power of eminent domain, Grantee shall be entitled to compensation in accordance with applicable law. Grantee shall apply proceeds of the action of eminent domain to the purchase of additional property that meets the purpose of this Easement. Grantee shall notify and coordinate such actions with the Buffalo District Corps of Engineers within 30 days of the condemnation. Once the Buffalo District Corps of Engineers has approved the purchase of suitable easements, Grantee shall complete the new grant within \_\_\_\_ days of receipt of the approval. 30

14. Assignment. This Easement is Transferable, but Grantee may assign its rights and obligations under this Easement only but only to a Grantee qualified under ECL Section 49-0305.3 that is approved by Buffalo District Corps of Engineers for this grant. As a condition of such transfer, Grantee shall require that the conservation purposes that this grant is intended to advance continue to be carried out. Assignments

shall be accomplished by amendment of this Conservation Easement in accordance with paragraph 20. 31

15. Subsequent Transfers. Grantors agree to incorporate the terms of this Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including without limitation, a leasehold interest. Grantors further agree to give written notice to Grantee of the transfer of any interest at least \_\_\_\_\_ days prior to the date of such transfer. The failure of Grantors to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way. 32

16. Estoppel Certificates. Upon request by Grantors, Grantee shall within \_\_\_\_\_ days execute and deliver to grantors any document, including an estoppel certificate, which certifies the Grantors' compliance with any obligation of Grantors contained in this Easement and otherwise evidences the status of this Easement as requested by Grantors. 33

17. Failure of Grantee. If at any time the Grantee is unable or fails to enforce this Conservation Easement, or if the Grantee ceases to be a Grantee qualified under ECL Section 49-0305, and if within a reasonable period of time after the occurrence of one of these events the Grantee fails to make an assignment pursuant to paragraph 13, then the Grantee's interest shall become vested in another grantee qualified in accordance with an appropriate (*e.g., cy pres*) proceeding, to be brought by the Grantor in a court of competent jurisdiction.

18. Recording. The Grantor shall have this Conservation Easement duly recorded and indexed as such in the Office of the County Clerk of \_\_\_\_\_ County, New York, as described in ECL Section 49-0305.4. Upon recording, the Grantor shall forward a copy of this Conservation Easement as recorded to the Grantee, to the Corps of Engineers and, as described in ECL Section 49-0305.4, the New York Department of Environmental Conservation. The Grantor's recording and transmission to the Grantee, the Corps of Engineers and the Department of Environmental Conservation shall take place prior to Grantor's commencing work as authorized by the Permit.

19. Subsequent Transfer. This Conservation Easement shall be perpetual and run with the land and shall be binding upon all future owners of any interest in the Protected Property. The conveyance of any portion of or any interest in the Protected Property, by sale, exchange, devise or gift, shall be made by an instrument which expressly provides that the interest thereby conveyed is subject to this Conservation Easement, without modification or amendment of the terms of this Easement, and such instrument shall expressly incorporate this Conservation Easement by reference, specifically setting forth the date, office, liber and page of the recording of this Conservation Easement. The failure of any such instrument to comply with the provisions hereof shall not affect the validity or enforceability of this Conservation Easement, nor shall such failure affect the Grantee's or the Corps of Engineers' rights hereunder. No less than thirty (30) days prior to conveyance of any interest in the Protected Property,

Grantor (to include any successor Grantor) shall notify the Grantee and the Corps of Engineers of such intended conveyance, providing the full names and mailing addresses of all Grantees, and the individual principals thereof, under any such conveyance.

20. No Merger of Interests. In the event the same person or entity ever simultaneously holds an interest in the Protected Property under this Conservation Easement, and holds the underlying title in fee, the parties intend that the separate interests shall not merge.

21. Amendment. This Conservation Easement may be amended in accordance with ECL Section 49-0307, but only in a writing signed by the Grantor and the Grantee, or their successors or assigns, and approved in writing by the Corps of Engineers, its successors or assigns; provided such amendment does not affect the qualification of this Conservation Easement or the status of the Grantee under ECL Section 49-0305 or any other applicable law; and provided such amendment is consistent with the conservation purposes of this grant and its perpetual duration. Any amendment to this Conservation Easement shall be recorded and provided to the Grantee, the Corps of Engineers and the New York State Department of Environmental Conservation, in the manner set forth in paragraph 24.

22. Warranties by Grantor. Grantor warrants that it owns the Protected Property in fee simple, and that Grantor owns all interests in the Protected Property that may be impaired by the granting of this Conservation Easement. Grantor further warrants that there are no outstanding mortgages, tax liens, encumbrances, or other interests in the Protected Property that have not been expressly subordinated to this Conservation Easement. Grantor further warrants that no structures of any kind, to include roads, trails or walkways, and no violations of the restrictions of this Conservation Easement exist on the Protected Property at the time of execution hereof. Grantor further warrants that the Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement.

23. At the time conveyance of this Easement, the Property is subject to the mortgage identified in Exhibit \_\_\_\_ attached hereto and incorporated by this reference, the Grantee of which has agreed by separate instrument, will be recorded immediately after this Easement, to subordinate its rights in the Property to this Easement to the extent necessary to permit the Grantee to enforce the purpose of the Easement in perpetuity and to prevent any modification or extinguishment of this Easement by the exercise of any rights of the mortgage Grantee. The priority of the existing mortgage with respect to any valid claim on the part of the existing mortgage Grantee to the proceeds of any sale, condemnation proceedings, or insurance or to the leases, rents, and profits of the Property shall not be affected thereby, and any lien that may be created by Grantee's exercise of any of its rights under this Easement shall be junior to the existing mortgage. Upon request, Grantee agrees to subordinate its rights under this Easement to the rights of any future mortgage Grantees or beneficiaries of deeds of trust to the proceeds, leases, rents and profits described above and likewise to subordinate its rights under any lien and to execute any documents required with respect to such subordination, except that the



priority of lien created by Grantee's exercise of its rights under this easement prior to the creation of a mortgage or deed of trust shall not be affected thereby, nor shall the Easement be subordinated in any other respect. 43

24. No Gift or Dedication. Nothing contained in this Conservation Easement shall be deemed to be a gift for dedication of all or any part of either the Permitted Property or the Protected Property to the public, or for public use.

25. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and served personally or sent by first class mail, postage prepaid, addressed as follows:

To  
Grantor(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

To Grantee:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

To the Corps of Engineers:  
U.S. Army Corps of Engineers, Buffalo District  
ATTN: Regulatory Branch  
1776 Niagara Street  
Buffalo, NY 14207

or to such other address as either party from time to time shall designate by written notice to the other. 34

26. General Provisions.

(a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of \_\_\_\_\_.

(b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to

effect the purpose of this Easement, of the application and the policy and the purpose of \_\_\_\_[state statute]\_\_\_\_. If any provision in this instrument is found to be ambiguous and interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

(c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

(d) Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supercedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation shall be valid or binding unless contained in an amendment that complies with paragraph \_\_\_\_\_ (see supplementary provision re: Amendment).

(e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

(f) Joint Obligation. The obligations imposed by this Easement upon the Grantors shall be joint and several.

(g) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

(h) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not part of this instrument and shall have no effect upon construction or interpretation.

(i) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties; each counterpart shall be deemed an original instrument as against any party who has signed it.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever. 36

INTO WITNESS WHEREOF Grantors and Grantee have set their hands on the day and year first above written.

\_\_\_\_\_

Grantor(s)

\_\_\_\_\_

Grantee

By \_\_\_\_\_

Its \_\_\_\_\_ [Official  
Capacity] \_\_\_\_\_

**Execution by Mortgagee**

For Purposes of Paragraph 22 Only:

By: \_\_\_\_\_

Name:

Title: 38

STATE OF NEW YORK )) ss.:

COUNTY OF )

On the day of in the year 200\_\_ before me, the undersigned, a notary public in  
and for said state, personally appeared the Grantor \_\_\_\_\_, 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 this instrument.

Notary Public

STATE OF NEW YORK )) ss.:

COUNTY OF )

On the day of in the year 200\_\_ before me, the undersigned,  
a notary public in and for said state, personally appeared the Grantee  
\_\_\_\_\_,

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 this instrument.

Notary Public

STATE OF NEW YORK )) ss.:



COUNTY OF )

On the day of in the year 200\_\_\_ before me, the undersigned,  
a notary public in and for said state, personally appeared the Mortgagee

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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 this instrument.

Notary Public

### SCHEDULE OF EXHIBITS

- A. Legal Description of Property Subject to Easement
- B. Site Descriptions, Map
- C. Identification of Prior Mortgage

### Supplementary Provisions 39

5.2 Arbitration. 40

41

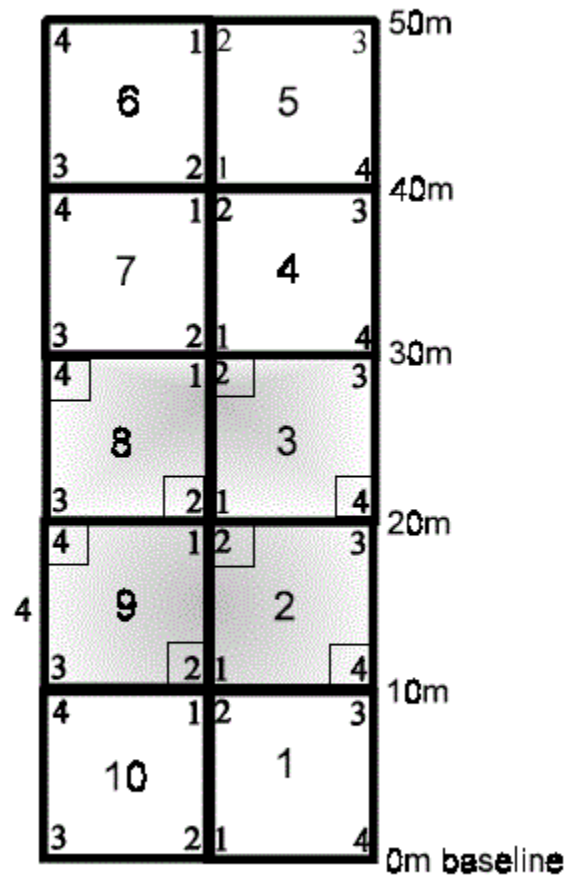
10.1 Executory Limitation. If Grantee shall cease to exist or be qualified organization under Section 170(h) of the Internal Revenue Code, as amended, or has been determined by the Buffalo District Corps of Engineers to not hold firm the interest in protecting of water resources regulated under Section 404 of the Clean Water Act and/or Section 10 of the Rivers and Harbors Act, or to be authorized to acquire and hold conservation easements under state statute, and a prior assignment is not made pursuant to Paragraph 10, then the Grantee's rights and obligations under this Easement shall be immediately vested in \_\_\_[designated back-up grantee]\_\_\_. If \_\_\_[designated back-up grantee]\_\_\_ is no longer in existence at the time the rights and obligations under this Easement would otherwise vest in it, or if \_\_\_[designated back-up grantee]\_\_\_ is not qualified or authorized to hold conservation easements as provided for an assignment pursuant to paragraph 14, or if it shall refuse such rights and obligations, then the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to the applicable state law and with due regard to the requirements for an assignment pursuant to paragraph 14. 42



**APPENDIX H**  
**Monitoring Protocol**



Vegetation monitoring will occur in focused 20m x 50m vegetation plots (Fig. 1) and random 10m x 10m vegetation plots. Vegetation data will be collected to calculate the Vegetation Index of Biotic Integrity – Floristic Quality (VIBI-FQ).



**Figure 1.** Standard fixed 20m x 50m vegetation sampling plot.