



## **PRE-EMPTION ROAD MITIGATION PLAN SENECA – FINGER LAKES SERVICE AREA Ducks Unlimited New York In-Lieu Fee Program**

To be considered by:

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## **0.0 INTRODUCTION**

Ducks Unlimited, Inc. (DU) established the Ducks Unlimited, Inc. New York In-Lieu Fee Program (DU-NY ILF Program) to provide a third party compensatory mitigation option to permit applicants under the permit programs of the U.S. Army Corps of Engineers (USACE) and the New York State Department of Environmental Conservation (NYSDEC). The DU-NY ILF Program has sold 9.89 credits to permit applicants to compensate for wetland impacts in the Seneca River sub-basin (HUC 04140201). Credits were purchased to compensate for impacts to 9.04 acres of wetlands in the Seneca River sub-basin (Appendix A).

DU identified and evaluated an extensive list of potential mitigation sites in coordination with State, Federal and other NGO partners. The Pre-Emption Road site (hereinafter Mitigation Site) was selected as having the highest opportunity for restoration and meaningful preservation based on location, size, likelihood of success, and types of existing and potential aquatic resources. The following mitigation plan has been prepared and will be implemented by DU in accordance with 33 CFR 332.4, the “U.S. Army Corps of Engineers New York District Compensatory Mitigation Guidelines” and the “Guidelines for Mitigation Banking in Ohio” (currently used by the U.S. Army Corps of Engineers Buffalo District).

## **1.0 GOALS AND OBJECTIVES**

The overall goal of this compensatory wetland mitigation plan is to generate 17.67 credits in the Seneca Lakes Service Area (Appendix A). The functions and values that will be realized by this proposed wetland mitigation plan aim to replace, at a minimum, the functions and values of the wetlands impacted. These functions and values include groundwater recharge/discharge, floodflow alteration, sediment retention, nutrient removal and wildlife habitat.

The wetland mitigation plan will take into consideration the priority issues and recommendations set forth by the New York State Wildlife Action Plan, the Seneca Lake Watershed Management Plan, Seneca Lake Pure Waters Association, and the Finger Lakes Institute. These priority issues include habitat loss, habitat fragmentation, water-level alterations, degraded water quality and invasive species.

Most of the Mitigation Site is classified farmland of statewide importance. Given the size, cost, and location of the property, it is expected the Mitigation Site would be attractive to buyers looking for agricultural land. The Mitigation Site is adjacent to agricultural land, therefore present and ongoing agricultural land use is a threat to the Mitigation Site’s conservation value. Most of the forests in the Seneca sub-basin were cleared and wetlands were drained for agriculture. Restoring and protecting wetlands at the Mitigation Site will increase wildlife habitat and prevent further habitat fragmentation.

The history of agricultural and industrial activity in the Seneca sub-basin has negatively affected water quality. Nutrients, sediment and pollutants enter streams in the watershed due to agricultural and industrial runoff. Restoring wetlands at the Mitigation Site will improve water quality by removing nutrients and retaining sediment from surface flow.

This wetland mitigation plan will provide breeding and migration habitat for waterfowl species such as black duck and wood duck. Other species that will benefit from this project include New York State Department of Conservation (NYSDEC) Species of Greatest Conservation Need (SGCN) such as American woodcock, wood thrush, blue-winged warbler, and scarlet tanager.

Palustrine mineral soil wetlands are the critical aquatic habitat supporting the greatest number of SGCN in the Southeast Lake Ontario basin. The NYSDEC recommends restoring degraded emergent marshes in the Southeast Lake Ontario basin. The objectives of the mitigation work plan are:

- Re-establish 4.23 acres of palustrine emergent (PEM) wetlands
- Rehabilitate 0.81 acres of PEM wetlands
- Re-establish 1.68 acres of palustrine scrub-shrub (PSS) wetlands
- Rehabilitate 0.28 acres of PSS wetlands
- Preserve 3.51 acres of PSS wetlands
- Re-establish 8.44 acres of palustrine forested (PFO) wetlands
- Rehabilitate 1.89 acres of PFO wetlands
- Preserve 956 linear feet of stream
- Re-establish 3.54 acres of forested upland buffer
- Preserve 17.22 acres of upland buffer

## **2.0 MITIGATION SITE SELECTION**

The mitigation site was selected for the following reasons:

1. It is in the Seneca Lakes Service Area
2. It has the hydric soils, adequate hydrology, and topography conducive to successful wetland restoration.
3. The site presents a cost-effective opportunity to create a greater amount of wetland habitat than the minimum required amount and with a high likelihood of success in replacing wetland functions lost at the impact sites.
4. Wetland mitigation at this site will realize positive impacts to a diversity of wildlife species and will not negatively impact known endangered or threatened plants or animals.
5. The site will not negatively impact cultural resources pending results from archaeological survey.
6. There are no logistical or design constraints at the site that would inhibit successful wetland re-establishment.
7. The site is under threat of continued agricultural use, residential development and commercial development.



### 3.0 BASELINE INFORMATION

#### Location

The Mitigation Site is located at Latitude: 42.428316° and Longitude: -76.982357° at 4030 Pre-Emption Road in the Town of Reading, Schuyler County, New York in the Big Stream-Seneca Lake watershed (HUC 0414020108).

#### Site Information

The Mitigation Site encompasses 52.9 acres and was recently purchased by Wetlands America Trust, Inc. (WAT) a wholly owned subsidiary of Ducks Unlimited, Inc. The land composition of the Mitigation Site is detailed in Table 1 and illustrated in Appendix B, Fig. 9. The surrounding land use consists of agriculture, upland forests, and wetlands. The Mitigation Site was used for row crops and hay. A stream runs through the Mitigation Site. There are no known hazardous material sites in the vicinity of the site. There are no known contaminants in the soil or water at the site.

**Table 1.** Land composition of Mitigation Site

<u>Land Type</u>	<u>Acres</u>	<u>Percent</u>
<b>Emergent Wetlands</b>	1.1	2
<b>Forested Wetlands</b>	8.3	16
<b>Upland Forests</b>	9.9	19
<b>Prairie/Pasture</b>	29.2	55
<b>Scrub/Shrub</b>	4.4	8
<b>Total Acreage</b>	52.9	100

#### Cultural Resources

A request for an environmental review of the Mitigation Site was submitted to New York’s State Historic Preservation Office (SHPO). Based on the environmental review, the SHPO recommended a Phase I archaeological survey for the Mitigation Site (Appendix C). A request for proposals has been submitted to qualified archaeological consultants to perform the Phase I archaeological survey. The results of the Phase I archaeological survey will be submitted to the SHPO for review. Based on findings from the archaeological survey, the design plans will be modified to ensure no damage will occur on historic sites.

#### Wildlife Usage

According to the NYS Breeding Bird Atlas 2000 – 2005 survey, the site is in an area where several SGCN addressed in the NYSDEC’s State Wildlife Action Plan (NYSDEC, 2015) were

observed. These SGCN were American kestrel, ruffed grouse, wood thrush, American woodcock, Eastern meadowlark, scarlet tanager and bobolink. Implementing the Mitigation Plan will benefit most of these SGCN by protecting and/or increasing their habitat. Implementing the Mitigation Plan will not negatively impact any of these SGCN.

According to the US Fish and Wildlife Service's (USFWS) Official Species List for the Mitigation Site (Appendix D), the northern long-eared bat may occur within the Mitigation Site's boundary. According to the NYSDEC mapper, no known occurrences of federally-listed species are within the boundary or vicinity of the Mitigation Site. According to the NYSDEC, the northern long-eared bat's primary habitats include caves and tunnels, upland forests, and wetland forests (NYSDEC, 2015). . The proposed wetland mitigation activities will have no effect on northern long-eared bat. Efforts will be made within the restoration area to improve northern long-eared bat habitat if possible. The New York Natural Heritage Program (NYNHP) has no record of rare or state-listed animals at the Mitigation Site or within its immediate vicinity (Appendix D).

### Watershed

The Mitigation Site is in the Big Stream-Seneca Lake watershed (HUC 0414020108) located in the Seneca sub-basin (HUC 04140201) (Appendix B, Fig. 1), which is the largest 8-digit hydrological unit code watershed in New York State. The Mitigation Site includes a tributary of Rock Stream, which drains into Seneca Lake which is the largest of the Finger Lakes.

The land use of the Seneca sub-basin can be characterized as a mix of predominantly agricultural lands and deciduous forests with patches of woody wetlands. Habitat loss and fragmentation is a cause of concern in the watershed. Most of the sub-basin was originally forested, and then cleared for agriculture and timber. Grasslands and agricultural lands account for 47.2% of the area in the Seneca sub-basin, while wetlands account for 6.9% of the area (United States Department of Agriculture – Natural Resources Conservation Service [USDA – NRCS], 2010).

### Wetlands

According to the National Wetland Inventory (NWI), there are already wetlands present at the Mitigation Site (Appendix B, Fig. 4). The Mitigation Site supports several palustrine scrub-shrub (PSS) wetlands. A wetland/upland mosaic occurs in the westernmost field. Approximately 36% of the wetland/upland mosaic in the westernmost field should be classified as PEM due to the prevalence of emergent hydrophytic vegetation. The wetland delineation of the Mitigation Site (Appendix E) shows the exact locations of these wetlands (Appendix E, Fig 1.). Approximately 8.9 acres (16.8%) of the Mitigation Site delineates as wetlands.

### Hydrology

The primary inputs of water to the Mitigation Site are direct precipitation, surface water runoff and groundwater seepage.

According to the Northeast Regional Climate Center, the Mitigation Site is in an area where the average annual precipitation is 37.35 inches. A conservative estimate of water loss due to evapotranspiration is 23.9 inches of water loss during the growing season (May – October). This estimate is based upon a field study conducted with reed canary grass (*Phalaris arundinacea*) in

Iowa (Schilling and Kiniry, 2007). In an average year the Mitigation Site will have enough water from direct precipitation to overcome water loss from potential evapotranspiration by 13.45 inches.

In addition, a high water table will help the re-established/rehabilitated wetlands retain water and contribute to the Mitigation Site's hydrology. Water table information was collected through soil borings at several locations at the Mitigation Site late in the growing season. Based on the timing of this data, it is anticipated that higher water tables will be present early in the growing season. Monitoring wells with pressure transducers will be installed prior to the construction phase to gather more data regarding the water table (Appendix F).

The Mitigation Site drains an area of 73.2 acres, including the Mitigation Site's footprint.

### Vegetation

Vegetation communities were classified during the wetland delineation (Appendix E). The Mitigation Site is currently used for row crops and hay production. The existing vegetation in the westernmost field includes hydrophytic vegetation such as sedges (*Carex* spp.), alongside upland vegetation such as goldenrod (*Solidago* spp.), asters and clover. The shrub community of the delineated wetlands consisted of hydrophytic shrubs such as white meadowsweet (*Spirea alba*), red osier (*Cornus sericea*) and European buckthorn (*Rhamnus cathartica*). The tree community of the Mitigation Site consisted of trees such as Eastern white pine (*Pinus strobus*), red maple (*Acer rubrum*) and red oak (*Quercus rubra*).

### Soils

The following soil series are present at Mitigation Site based on the soil map (Appendix B, Fig. 4).

Alden series consists of very deep, very poorly drained soils in depressions and low areas on upland till plains. Alden silt loam (Ad) is classified as a hydric soil with a hydric rating of 95%. Ad has a water table at the soil surface. Saturated hydraulic conductivity for Ad is moderately high.

Mardin series consists of very deep, moderately well drained soils on glaciated uplands. Mardin channery silt loam, 3 – 8% slopes (MrB) and Mardin channery silt loam, 8 – 15% (MrC) are not classified as hydric soils. Both MrB and MrC have a depth to water table of 17 inches. Saturated hydraulic conductivity for both MrB and MrC is moderately high.

Volusia series consists of very deep, somewhat poorly drained soils formed in loamy till. Volusia channery silt loam, 0 – 3% slopes (VoA) and Volusia channery silt loam, 3 – 8% slopes (VoB) are classified as hydric soils with a hydric rating of 5%. Both VoA and VoB have a depth to water table of 8 inches. Saturated hydraulic conductivity for both VoA and VoB is moderately high.

Wetland re-establishment activities will occur primarily on VoA and VoB soil map units. Both of these soil map units already support wetlands delineated at the Mitigation Site. VoA has features very favorable for holding water behind an embankment. VoB has features somewhat favorable for holding water behind an embankment. Both VoA and VoB soil map units have

high runoff potential when thoroughly wet. Both VoA and VoB soil map units are suitable for successful wetland re-establishment.

## **4.0 MITIGATION WORK PLAN**

### **4.1 CONSTRUCTION AND PLANNED HYDROLOGY**

The following work plan is for a wetland mitigation plan based on site visits and existing data including USGS topographic maps, USDA soil surveys, state and federal wetland and floodplain maps, tax maps, aerial photos and topographic survey. The preliminary wetland design plan has been attached to this plan (Appendix F). The preliminary and final design will include a full-size construction plan with the following components:

1. Overall property map showing the property boundary and Mitigation Site boundary. The overall map will show areas to be re-established, rehabilitated, and protected.
2. Project site plan and grading plan showing the proposed restored wetland areas including current and proposed elevations.
3. Details for construction of water control structures and embankment.
4. Cross sections of proposed earth moving activities.
5. A planting plan showing the areas of different planting regimes.
6. An Erosion and Sediment Control Plan.
7. A Monitoring Plan detailing the location of monitoring plots, photo points, and hydrology sampling points.
8. Specifications that include applicable construction methods and materials.

Construction of the mitigation wetlands shall commence in summer 2016, depending on permit approval and appropriate site conditions. DU will secure a qualified contractor to construct the wetland mitigation plan. An erosion and sediment control plan will be implemented and maintained during construction. DU staff shall be on-site during critical parts of construction to monitor construction of the wetland mitigation areas to ensure compliance with the mitigation plan and to make adjustments when appropriate to meet mitigation goals.

- Wetland restoration activities will occur in the three agricultural fields.
- Wetland rehabilitation will occur in the wetlands already present in the agricultural fields.
- Areas not restored or rehabilitated will be preserved, including the stream running through the Mitigation Site.

Shallow excavations will be created in the western, middle and eastern agricultural fields for a total of 4.95 acres of grading. These shallow excavations will provide the appropriate topography for re-establishing PEM and PSS wetlands. Using material from the excavations, several low-level berms will be constructed along most of the border between the agricultural fields and the preservation area. These berms will allow surface water to accumulate which will promote ponding in the areas planned for re-establishing PEM and PSS wetlands. Water control structures will also be installed to back the water

into the re-establishment area and provide a controlled outlet for water leaving the wetlands. Several ditch plugs will be placed to further promote wetland hydrology.

#### **4.2 PLANNED VEGETATION AND HABITAT FEATURES**

The ponded areas adjacent to the berms will be seeded with emergent herbaceous vegetation to re-establish PEM wetlands. The edges of these PEM wetlands will be planted with hydrophytic shrubs to transition to PSS wetlands. The edges of these restored PSS wetlands will be planted with shrubs and trees to transition to PFO wetlands. Most of the remainder of the agricultural fields will be planted with shrubs and trees to re-establish PFO wetlands and provide an upland forested buffer. The southwest corner of the Mitigation Site will be planted with trees to serve as an upland forested buffer.

Hydrophytic perennials observed at the Mitigation Site during the wetland delineation indicated the presence of a hydrophytic seed bank. Evidence of a robust hydrophytic seed bank and seed source at the site guarantees the presence and natural recruitment of desirable wetland vegetation.

Seeding and planting will be used to supplement the existing seed bank to establish diverse wetland plant communities as follows:

- The planned PEM wetlands (5.05 acres) will be seeded with a seed mix to re-establish wet meadows grading into shallow emergent marshes as described in “Ecological Communities of New York State” (New York State Heritage Program, 2014). (Table 2)
- The planned PFO wetlands (11.28 acres) will be planted to re-establish hardwood swamps. (Table 3, 4 and 5)
- The planned PSS wetlands (2.06 acres) will be planted to re-establish shrub swamps as described in “Ecological Communities of New York State” (New York State Heritage Program, 2014). (Table 4 and 5)
- The planned upland forested buffer (2.72 acres) will be planted and seeded with native hardwood trees, and seeded with grasses and ground cover. (Table 6 and 8)
- The planned berm (2.31 acres) will be planted with a mix of cool season grasses, warm season grasses and ground cover. (Table 7)



**Table 2.** Seeding list for planned PEM wet meadow/shallow emergent marsh wetland plant community with an estimated vegetation index of biotic integrity “floristic quality” (VIBI-FQ) metric of 50.

Common Name	Scientific Name	WIS*	CoC**	Percent by weight
Several-Vein Sweetflag	<i>Acorus americanus</i>	OBL	6	2
American Water Plantain	<i>Alisma subcordatum</i>	OBL	4	4
Bearded Sedge	<i>Carex comosa</i>	OBL	4	5
Shallow Sedge	<i>Carex lurida</i>	OBL	3	15
Common Fox Sedge	<i>Carex vulpinoidea</i>	OBL	2	20
Common Spike-Rush	<i>Eleocharis palustris</i>	OBL	5	2
Rattlesnake Manna Grass	<i>Glyceria canadensis</i>	OBL	5	2
Lamp Rush	<i>Juncus effusus</i>	OBL	2	5
Rice Cut-Grass	<i>Leersia oryzoides</i>	OBL	3	4
Fowl Blue Grass	<i>Poa palustris</i>	FACW	4	15
Hard-stem Club-rush	<i>Schoenoplectus acutus</i>	OBL	7	1
Three-square	<i>Schoenoplectus pungens</i>	OBL	7	1
Dark-Green Bulrush	<i>Scirpus atrovirens</i>	OBL	5	5
Cottongrass Bulrush	<i>Scirpus cyperinus</i>	OBL	5	3
Broad-Fruit Burr-Reed	<i>Sparganium americanum</i>	OBL	5	4
American Burr-Reed	<i>Sparganium eurycarpum</i>	OBL	5	4
Simpler’s Joy	<i>Verbena hastata</i>	FACW	4	8
<b>Seed mix application rate</b>			<b>20 lbs. per acre</b>	

\*WIS: Wetland Indicator Status

\*\*CoC: Coefficient of Conservatism

**Table 3.** Planting list for planned PFO hardwood swamp wetland plant community (all plantings are 3 – 4’ tall bare root plants [BRP])

Common Name	Scientific Name	WIS	CoC	Woody stems per acre
Red Maple	<i>Acer rubrum</i>	FAC	2.5	15
Silver Maple	<i>Acer saccharinum</i>	FACW	5	20
Black Gum	<i>Nyssa sylvatica</i>	FAC	7	25
American Sycamore	<i>Platanus occidentalis</i>	FACW	6.5	25
Eastern Cottonwood	<i>Populus deltoides</i>	FAC	3	20
Swamp White Oak	<i>Quercus bicolor</i>	FACW	5	35
Pin Oak	<i>Quercus palustris</i>	FACW	7.5	30
Pussy Willow	<i>Salix discolor</i>	FACW	3	15
Black Willow	<i>Salix nigra</i>	OBL	4.5	15
			<b>TOTAL</b>	200

**Table 4.** Planting list for shrub community in the planned PFO and PSS wetlands (all plantings are 3 – 4’ tall BRP)

Common Name	Scientific Name	WIS	CoC	PFO Shrubs/Acre	PSS Shrubs/Acre
Speckled Alder	<i>Alnus incana</i>	FACW	3	15	30
Black Chokeberry	<i>Aronia melanocarpa</i>	FAC	6	25	
Common Hackberry	<i>Celtis occidentalis</i>	FAC	7	25	
Common Buttonbush	<i>Cephalanthus occidentalis</i>	OBL	6.5		70
Red Osier	<i>Cornus alba</i>	FACW	3	25	50
Silky Dogwood	<i>Cornus amomum</i>	FACW	4	25	50
Spicebush	<i>Lindera benzoin</i>	FACW	7	30	60
Swamp Rose	<i>Rosa palustris</i>	OBL	6		50
Silky Willow	<i>Salix sericea</i>	OBL	3.5		30
White Meadowsweet	<i>Spiraea alba</i>	FACW	5	30	60
American Bladdernut	<i>Staphylea trifolia</i>	FAC	7	25	
			<b>TOTAL</b>	200	400

**Table 5.** Seeding list for PSS and PFO wetlands with an estimated VIBI-FQ of 54.

<b>Common Name</b>	<b>Scientific Name</b>	<b>WIS</b>	<b>CoC</b>	<b>Percent by weight</b>
Greater Bladder Sedge	<i>Carex intumescens</i>	FACW	4	10
Pointed Broom Sedge	<i>Carex scoparia</i>	FACW	2	10
Squarrose Sedge	<i>Carex squarrosa</i>	OBL	4	10
Common Buttonbush	<i>Cephalanthus occidentalis</i>	OBL	6.5	10
Red Osier	<i>Cornus alba</i>	FACW	3	10
Silky Dogwood	<i>Cornus amomum</i>	FACW	4	10
Spotted St. John's-Wort	<i>Hypericum punctatum</i>	FAC	5	2
Lesser Poverty Rush	<i>Juncus tenuis</i>	FAC	2	3
Spicebush	<i>Lindera benzoin</i>	FACW	7	20
Narrow-leaf Mountain-Mint	<i>Pycnanthemum tenuifolium</i>	FAC	5	1
Swamp Rose	<i>Rosa palustris</i>	OBL	6	5
Crooked-Stem American-Aster	<i>Symphotrichum prenanthoides</i>	FAC	5	4
Golden Alexanders	<i>Zizia aurea</i>	FAC	4	5
<b>Seeding rate</b>			<b>15 lbs./acre</b>	

**Table 6.** Planting list for trees and shrubs in the planned forested upland buffer (All plantings are 3 – 4’ tall BRP)

Common Name	Scientific Name	WIS	CoC	Woody stems per acre
Red Maple	<i>Acer rubrum</i>	FAC	2.5	25
Sugar Maple	<i>Acer saccharinum</i>	FAC	3.5	15
Black Chokeberry	<i>Aronia melanocarpa</i>	FAC	6	25
Pig-Nut Hickory	<i>Carya glabra</i>	FACU	7	45
Shag-Bark Hickory	<i>Carya ovata</i>	FACU	5	30
Common Hackberry	<i>Celtis occidentalis</i>	FAC	7	25
Flowering Dogwood	<i>Cornus florida</i>	FACU	6	30
Gray Dogwood	<i>Cornus racemosa</i>	FAC	2	20
American Witch-Hazel	<i>Hamamelis virginiana</i>	FACU	4.5	35
Burr Oak	<i>Quercus macrocarpa</i>	FACU	7.5	50
Northern Red Oak	<i>Quercus rubra</i>	FACU	2.5	20
Eastern White Pine	<i>Pinus Strobus</i>	FACU	4.5	15
Fragrant Sumac	<i>Rhus aromatica</i>	UPL	6	20
Sassafras	<i>Sassafras albidum</i>	FACU	3	15
American Bladdernut	<i>Staphylea trifolia</i>	FAC	7	30
<b>TOTAL</b>				<b>400</b>

**Table 7.** Seeding list for planned berms

Common Name	Scientific Name	WIS	Percent by Weight
Rough Bent	<i>Agrostis scabra</i>	FAC	5
Big Bluestem	<i>Andropogen gerardii</i>	FAC	10
Nodding Wild Rye	<i>Elymus canadensis</i>	FACU	20
Red fescue	<i>Festuca rubra</i>	FACU	10
Perennial Rye Grass	<i>Lolium perenne</i>	FACU	30
Garden Bird's-Foot-Trefoil	<i>Lotus corniculatus</i>	FACU	5
Wand Panic Grass	<i>Panicum virgatum</i>	FAC	5
Kentucky Blue Grass	<i>Poa pratensis</i>	FACU	10
Red Clover	<i>Trifolium pratense</i>	FACU	5

**Table 8.** Seeding list for upland buffer

Common Name	Scientific Name	WIS	Percent by weight
Upland Bent	<i>Agrostis perennans</i>	FACU	15
Nodding Wild Rye	<i>Elymus canadensis</i>	FACU	20
Eastern Bottle-Brush	<i>Elymus hystrix</i>	FACU	20
Yellow Indian Grass	<i>Sorghastrum nutans</i>	FACU	10
Red Fescue	<i>Festuca rubra</i>	FACU	35

## 5.0 PERFORMANCE AND SUCCESS STANDARDS

The following performance standards are based on the goals and objectives of the mitigation project as well as the character of existing wetlands surrounding the mitigation site. These standards will be used to evaluate development and overall success of the mitigation project:

1. Construction has been completed in accordance with approved plans and specifications in the permit.
2. The soils on the site will be stable and any non-biodegradable erosion controls will be removed.
3. The wetland re-establishment and re-habilitation areas will meet the conditions for indicators of wetland hydrology according to the “Corps of Engineers Wetlands Delineation Manual”, dated January, 1987. The presence of wetland hydrology will be based on soil saturation and/or evidence of inundation via water potential, water depth measurements during the growing season and water table depth data from the monitoring wells.
4. At the end of the 10-year monitoring period:
  - a. The wetlands shall have 90% relative coverage by native perennial hydrophytic plants (those with a regional indicator status of FAC, FACW, or OBL in the report entitled “Northcentral and Northeast 2014 Regional Wetland Plant List”).
  - b. The planned wetlands shall have a VIBI-FQ metric of at least 40.
  - c. The planned PFO and PSS areas will have at least 400 woody stems per acre, and the PFO areas will have at least 200 trees per acre.
  - d. The planned wetland areas shall have no more than 5% coverage of the following invasive plant species: purple loosestrife (*Lythrum salicaria*), common reed (*Phragmites australis*), reed canary grass (*Phalaris arundinacea*), cattails (*Typha angustifolia* and *Typha x glauca*), buckthorn (*Rhamnus cathartica*) and Japanese knotweed (*Polygonum cuspidatum*).
  - e. The forested upland buffer re-establishment areas will have 80% coverage of native perennials and no more than 10% coverage of the following invasive plant species: buckthorn (*Rhamnus cathartica*), honeysuckles (*Lonicera* spp.), and reed canary grass (*Phalaris arundinacea*).
  - f. The re-established and re-habilitated wetlands will meet the federal wetland criteria outlined in the report entitled “Corps of Engineers Wetlands Delineation



Manual”, dated January, 1987, with current Corps of Engineers Northcentral and Northeast Regional Supplement.

In addition to the performance standards mentioned above, three interim goals must be met during the 10-year monitoring period. Each interim goal will release 15% of the credits for re-establishment and rehabilitation when the goal has been met.

1<sup>st</sup> Interim Goal:

- The planned wetland areas will have 50% coverage by native perennial hydrophytes.
- The planned wetland areas will demonstrate progress in vegetative development towards meeting the final VIBI-FQ goal.
- The planned PFO and PSS areas will have at least 150 trees/shrubs per acre.
- The planned wetland areas will have no more than 25% coverage of the following invasive plant species: purple loosestrife (*Lythrum salicaria*), common reed (*Phragmites australis*), reed canary grass (*Phalaris arundinacea*), cattails (*Typha angustifolia* and *Typha x glauca*), buckthorn (*Rhamnus cathartica*), and Japanese knotweed (*Polygonum cuspidatum*).
- Upland buffer rehabilitation areas will have 50% coverage of native perennials.
- The upland buffer rehabilitation area will have no more than 35% coverage of the following invasive plant species: buckthorn (*Rhamnus cathartica*), honeysuckles (*Lonicera* spp.), and reed canary grass (*Phalaris arundinacea*).

2<sup>nd</sup> Interim Goal:

- The planned wetland areas will have 60% coverage by native perennial hydrophytes.
- The planned wetland areas will demonstrate progress in vegetative development towards meeting the final VIBI-FQ goal.
- The planned PFO and PSS areas will have at least 250 trees/shrubs per acre.
- The planned wetland areas will have no more than 20% coverage of the following invasive plant species: purple loosestrife (*Lythrum salicaria*), common reed (*Phragmites australis*), reed canary grass (*Phalaris arundinacea*), cattails (*Typha angustifolia* and *Typha x glauca*), buckthorn (*Rhamnus cathartica*), and Japanese knotweed (*Polygonum cuspidatum*).
- The upland buffer rehabilitation area will have no more than 25% coverage of the following invasive plant species: buckthorn (*Rhamnus cathartica*), honeysuckles (*Lonicera* spp.), and reed canary grass (*Phalaris arundinacea*).

3<sup>rd</sup> Interim Goal:

- The planned wetland areas will have 75% coverage by native perennial hydrophytes.
- The planned wetland areas will demonstrate progress in vegetative development towards meeting the final VIBI-FQ goal.
- The planned PFO and PSS areas will have at least 350 trees/shrubs per acre.
- The planned wetland areas will have no more than 15% coverage of the following invasive plant species: purple loosestrife (*Lythrum salicaria*), common reed (*Phragmites australis*), reed canary grass (*Phalaris arundinacea*), cattails (*Typha angustifolia* and

*Typha x glauca*), buckthorn (*Rhamnus cathartica*), and Japanese knotweed (*Polygonum cuspidatum*).

- The upland buffer rehabilitation area will have no more than 15% coverage of the following invasive plant species: buckthorn (*Rhamnus cathartica*), honeysuckles (*Lonicera* spp.), and reed canary grass (*Phalaris arundinacea*).

The success of this wetland mitigation project will be assessed based on the performance standards and interim goals outlined above and include any additional conditional standards identified and agreed upon by the USACE upon final design and during the permitting process.

## 6.0 CREDIT DETERMINATION

The mitigation site will generate 17.67 credits based on the following ratios and acreages for each mitigation activity.

**Table 9.** Credits generated by wetland mitigation activity

Mitigation activity	Acreage	Ratio	Credits
PEM Re-establishment	3.93	1:1	3.93
PEM Re-establishment (within 50 m buffer)	0.3	1:2	0.15
PEM Rehabilitation	0.75	1:2	0.38
PEM Rehabilitation (within 50 m buffer)	0.06	1:4	0.02
PFO Re-establishment	6.76	1:1	6.76
PFO Re-establishment (within 50 m buffer)	1.68	1:2	0.84
PFO Rehabilitation	1.64	1:2	0.82
PFO Rehabilitation (within 50 m buffer)	0.25	1:4	0.06
PSS Re-establishment	1.55	1:1	1.55
PSS Re-establishment (within 50 m buffer)	0.13	1:2	0.07
PSS Rehabilitation	0.28	1:2	0.14
Forested Upland Buffer Re-establishment	3.54	1:4	0.89
Upland Buffer Preservation	17.22	1:10	1.72
Wetland Preservation	3.51	1:10	0.35

The credit release schedule will include:

- All of the credits associated with the preservation will be released upon documentation of preservation (recorded deed) with associated approved stewardship plan (long-term management plan).
- 10% of the credits for re-establishment and rehabilitation will be released upon approval of this mitigation plan
- 20% of the credits for re-establishment and rehabilitation will be released at as-built production and approval by the IRT.
- 15% of the credits for re-establishment and rehabilitation will be released after meeting the first interim goal.
- 15% of the credits for re-establishment and rehabilitation will be released after meeting the second interim goal.
- 15% of the credits for re-establishment and rehabilitation will be released after meeting the third interim goal.
- 25% of the credits for re-establishment and rehabilitation will be released after the final vegetation goals have been met for 10-year monitoring period.

## **7.0 MITIGATION SITE PROTECTION**

The Mitigation Site is owned by Wetlands America Trust, Inc. (WAT). WAT a wholly owned subsidiary of DU is a non-profit conservation organization that is an Accredited Land Trust.

Ownership of the Mitigation Site by WAT meets the site protection requirements of 33 CFR 332.7(a)(1). In addition to ownership, WAT will record a Notice of Mitigation Agreement (Appendix G) in the land records of Schuyler County, upon approval of this mitigation plan. The Notice of Mitigation Agreement will give the USACE the ability to enforce compliance with the approved Mitigation Plan.

Upon the future sale or transfer of the property, WAT will retain a conservation easement in the form provided in Appendix G.

A long-term protection endowment will be established per the approved project budget for long term protection monitoring in perpetuity.

## **8.0 MONITORING**

DU staff, experienced with wetland restoration and mitigation, will coordinate and oversee monitoring activities. A surveyed drawing showing the As-Built conditions of the mitigated area will be submitted within 60 days following the completion of the mitigation project. The site will be monitored and a monitoring report will be submitted annually to the USACE for years 1, 2,3,5,7, and 10 or when performance and success standards have been met. Observations will occur in late summer/early fall.

The reports will address the performance standards in the summary data section and will address the additional items noted in the monitoring report requirements, in the appropriate section. The reports will also include the monitoring-report appendices. The first year of monitoring will be the first year that the Mitigation Site has been through a full growing season after completion of construction and planting. Each annual monitoring report, in the format provided in the New York District Compensatory Mitigation Guidelines, will be submitted to the Corps, Regulatory Division, Policy Analysis and Technical Support Branch, no later than December 15 of each monitoring year and include the following information:

1. A copy of the USACE permit referencing the approved mitigation plan.
2. A copy of the approved mitigation plan including the goals, objectives and performances standards.
3. Identification of any structural failures or external disturbances to the Mitigation Site.
4. A description of management activities and remedial actions implemented during the past year.
5. A surveyed drawing of the mitigation area, including water level elevations and acreage of wetlands. The locations of focused 20 m x 50 m VIBI-FQ plots, random 10 m x 10 m plots, vegetation communities, and planting zones will also be identified on the drawings. The plans will include overlays to show pre-construction conditions and changes from monitoring year to monitoring year. A sample focused 20 m x 50 m VIBI-FQ plot is attached in Appendix H.
6. Color photographs from monitoring stations and a photograph location map showing all representative areas of each cover type within the mitigation site.
7. A plant species list that gives USFWS Wetland Indicator Status and strata (herb, shrub, tree). Dominant plants will be highlighted and the percent of the aerial cover noted. Plants introduced through seeding or planting will be indicated. A vegetation cover map based on the collected plant data will be provided.
8. Water depth and the date of measurement from fixed locations including monitoring wells within the wetland will be recorded. These sample points will be plotted on the survey drawings.
9. Anecdotal list of wildlife species observed using the wetlands.
10. Methodologies used to control nuisance vegetation (e.g., *Phalaris arundinacea*, *Phragmites australis*, *Lythrum salicaria*, *Rhamnus cathartica*).
11. A quantitative assessment of monitoring data (e.g., VIBI-FQ, percent coverage of invasive species, and woody stems per acre) and a statement as to whether or not the goals of the mitigation project are being met and a plan with an implementation time table to correct any deficiencies.
12. A narrative summary of the monitoring data and conclusions of the monitoring.

A post-construction assessment report and wetland delineation survey will be submitted to the USACE in conjunction with the monitoring reports for the fifth and tenth years of the monitoring period.

## **9.0 MAINTENANCE AND ADAPTIVE MANAGEMENT PLAN**

DU will conduct adaptive management activities during the monitoring period. When monitoring indicates that a performance standard is not being met, then that standard will be evaluated to determine if simply more time is needed or a remedial action may be required. This will be accomplished by consulting wetland experts and permitting agencies to determine an appropriate course of action. Remedial actions may include seeding or planting, non-native plant control, and erosion control measures. Remedial actions requiring earth movement or changes in hydrology will not be implemented without written approval from the USACE. Once the monitoring period is over, the completed wetland will be managed by the long term steward and managed only as needed and specified in the site management plan.

## **10.0 LONG-TERM STEWARDSHIP PLAN**

DU will be responsible for the maintenance and management of the Mitigation Site.

A long-term management endowment will be established per the approved project budget for long-term management of the Mitigation Site in perpetuity using DU-NY-ILF program funds.

Long-term management for this site to ensure it is maintained as a high quality wetland will include invasive species management every 3 years. It is anticipated that the only threat to the wetland beyond the initial 10 years of the project will be encroachment by invasive species.

Although sufficient efforts will be made to eradicate invasive species from the site, it is likely that they will recolonize and need control. DU will provide written notice to the USACE if ownership of the Mitigation Site is transferred to a third party by WAT. (A transfer prior to attaining the final performance standard will require the approval of the USACE.)

For said transfer to also include responsibility for the long-term stewardship of the Mitigation Site, it will only occur upon approval of the USACE. If the long-term stewardship responsibility is transferred, the long-term management endowment will also be transferred.

## **11.0 FINANCIAL ASSURANCES**

Financial assurances for the construction and performance of the Mitigation Site will be provided by DU in the form of a “letter of credit.” The letter of credit will extend sufficient financial resources to complete significant alterations to the project if necessary to achieve success. The letter of credit will be in the full amount of the construction estimate (for a maximum of three years) and for the replanting of 25% of the PSS, PFO and Upland forest areas if these areas fail to meet stem count performance objectives (for the duration of the monitoring period). The letter of credit will not be called upon unless DU has exhausted the existing project budget, including all money set aside for contingency and wetland maintenance.



**References:**

New York State Department of Environmental Conservation. (2015). *State wildlife action plan*. Retrieved from [http://www.dec.ny.gov/docs/wildlife\\_pdf/swapfinaldraft2015.pdf](http://www.dec.ny.gov/docs/wildlife_pdf/swapfinaldraft2015.pdf)

Schilling, K.E, and Kiniry, J. R. (2007). Estimation of evapotranspiration by reed canarygrass using field observations and model simulation. *Journal of Hydrology*, 337(3), 356 – 363.

United States Department of Agriculture – Natural Resources Conservation Service. (2010). *New York rapid watershed assessment profile: Seneca watershed*. Retrieved from: <http://www.nrcs.usda.gov/wps/portal/nrcs/detail/ny/technical/dma/rwa/?cid=stelprdb1246990>

**APPENDIX A:**  
**SUMMARY OF IMPACTS TO WETLANDS**

**Table 1.** Impacts to wetlands in the Seneca Lakes Service Area

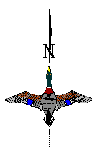
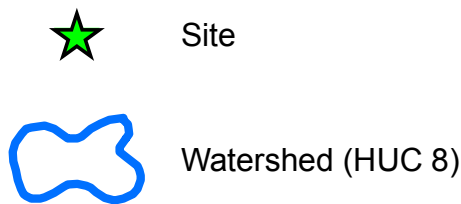
<b>DA Permit Number</b>	<b>HUC 8</b>	<b>Resource Type</b>	<b>Acres Impacted</b>	<b>Credits Purchased</b>
<b>1999-00213</b>	414020	PEM & R4SB	0.362	0.4
<b>1999-01650</b>	414020	PFO	0.27	0.48
<b>2001-02559</b>	414020	PEM	4.01	4.01
<b>2003-00443</b>	414020	PEM	0.49	1.0
<b>2005-01010</b>	414020	PFO & PEM	2.18 (PFO: 0.7, PEM: 1.48)	1.88
<b>2006-01852</b>	414020	PEM	0.16	0.25
<b>2009-00901</b>	414020	PEM	0.5	0.5
<b>2012-00070</b>	414020	PEM	0.43	0.5
<b>2013-01324</b>	414020	PFO & PEM	0.36 (PFO: 0.21, PEM: 0.147)	0.36
<b>2014-01283</b>	414020	PEM	0.137	0.2
<b>2015-00301</b>	414020	PEM	0.14	0.28
<b>TOTAL</b>			<b>9.04</b>	<b>9.86</b>

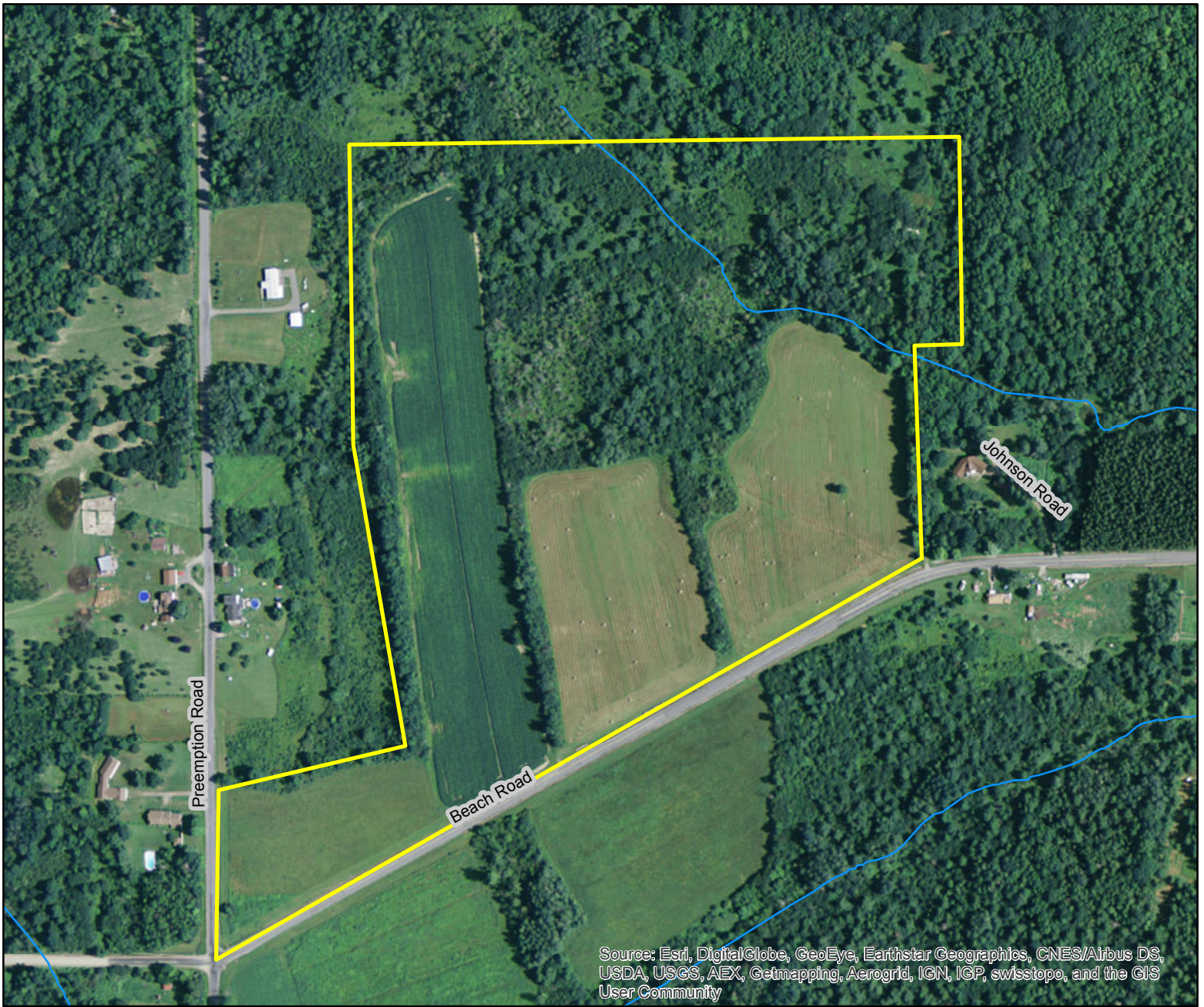
## **APPENDIX B**

### **Baseline Information**



**Fig. 1: Pre-Emption Rd. Watershed Map**




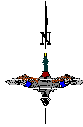


Source: Esri, DigitalGlobe, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AEX, Getmapping, Aerogrid, IGN, IGP, swisstopo, and the GIS User Community

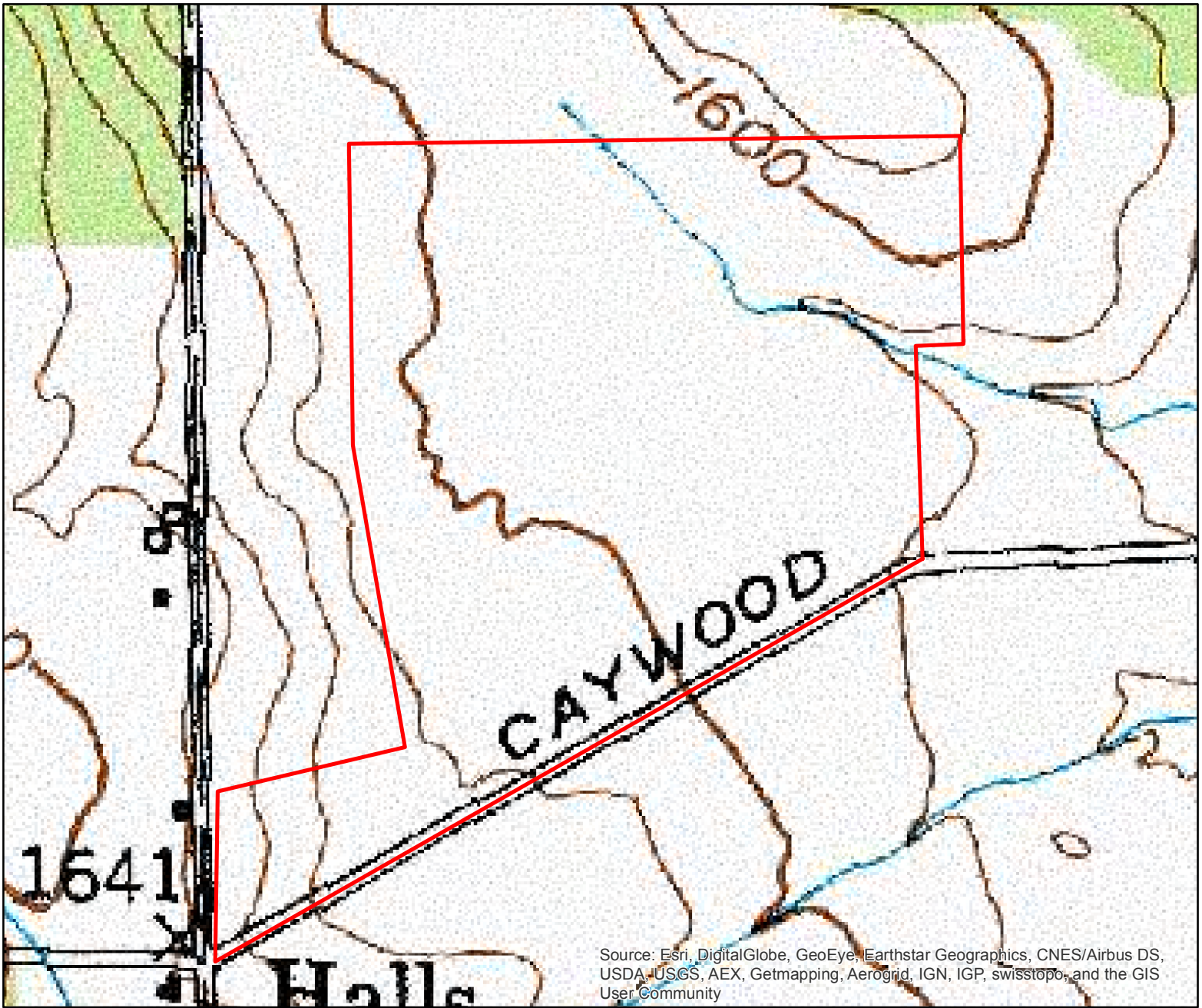


**Fig 2. Pre-Emption Road Aerial**

 Property Boundary (52.9 Acres)




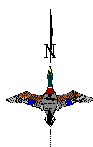




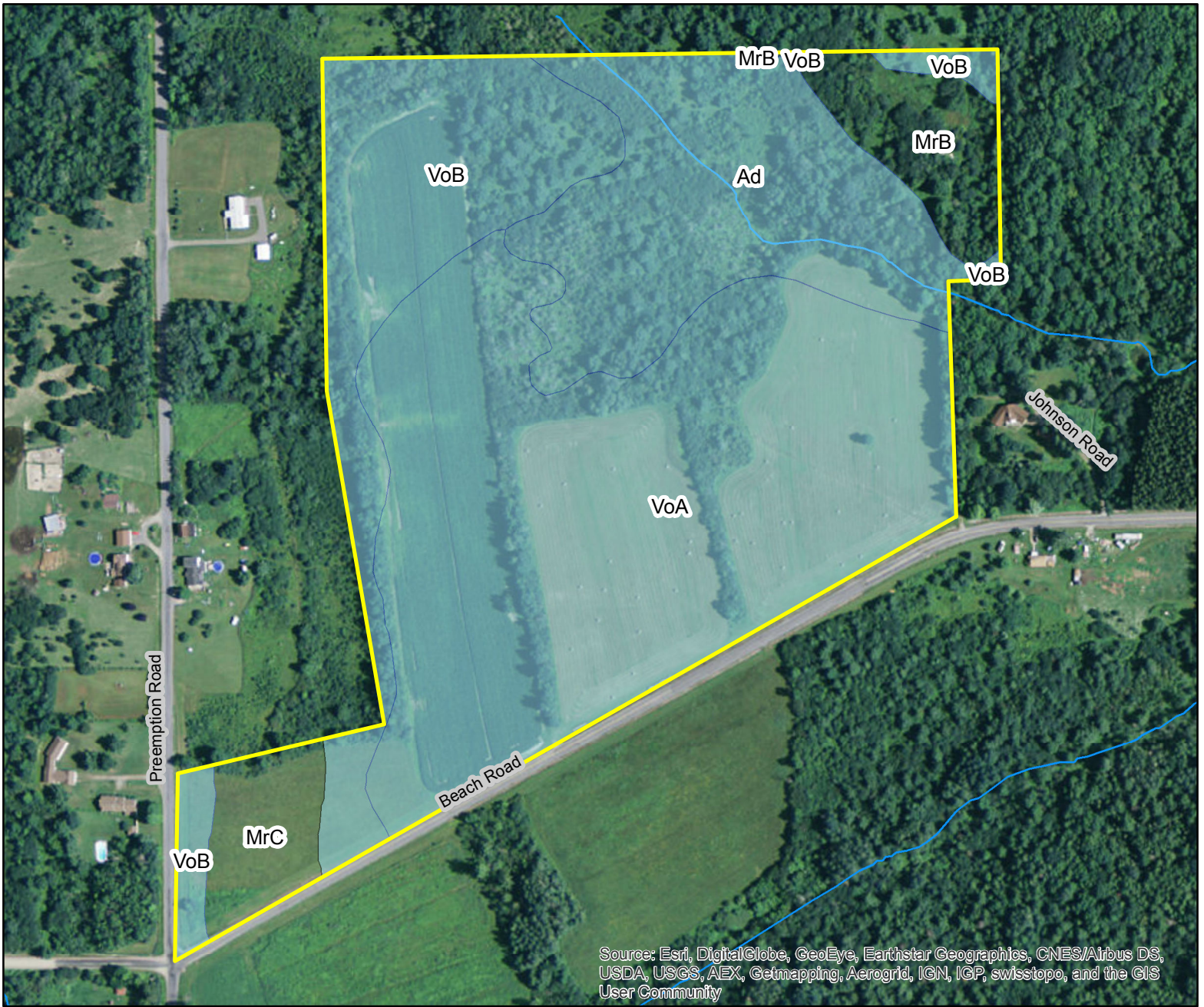
**Fig. 3: Pre-Emption Rd. Topography**





 Property Boundary (52.9 Acres)



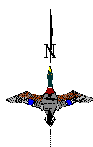




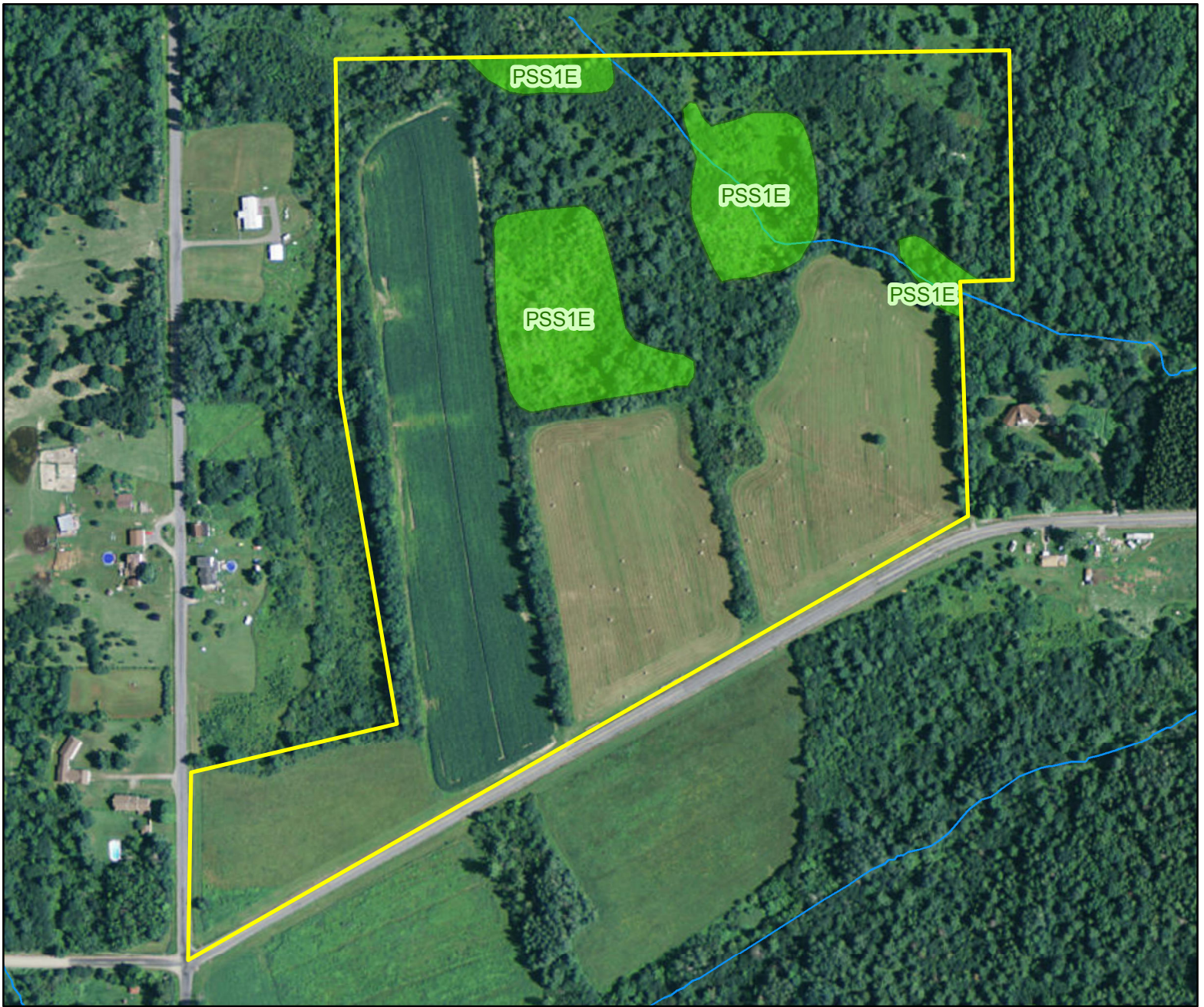
**Fig. 4: Pre-Emption Rd. Soils (SSURGO)**

 Property Boundary (52.9 Acres)  Hydric Soils

Map Unit Symbol	Map Unit Name
Ad	Alden silt loam
MrB	Mardin channery silt loam, 3 to 8 percent slopes
MrC	Mardin channery silt loam, 8 to 15 percent slopes
VoA	Volusia channery silt loam, 0 to 3 percent slopes
VoB	Volusia channery silt loam, 3 to 8 percent slopes






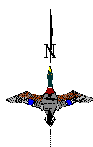


**Fig. 5: Pre-Emption Rd. Wetlands (NWI)**

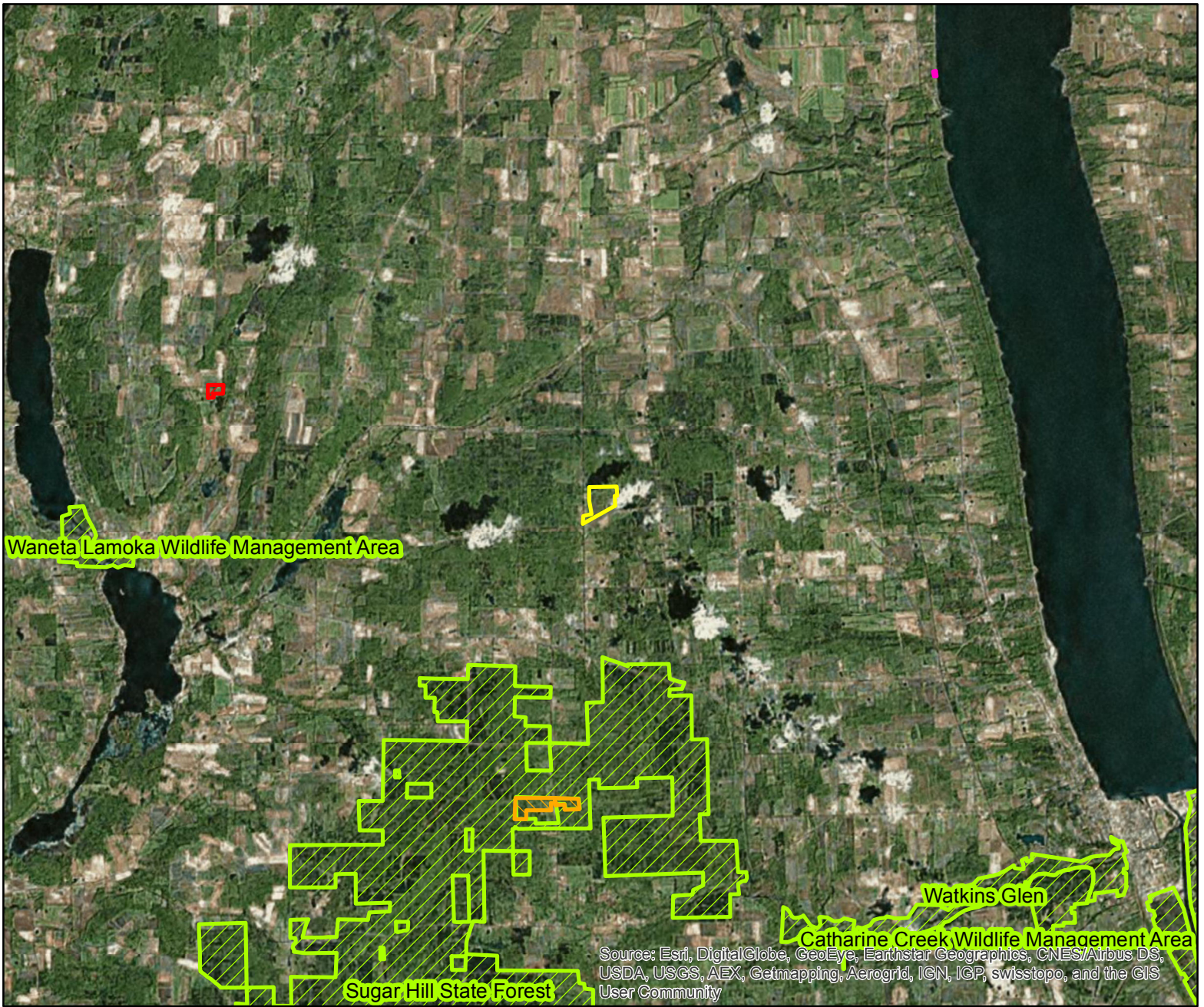


 Property Boundary (52.9 Acres)




 National Wetland Inventory

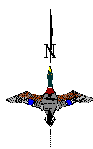




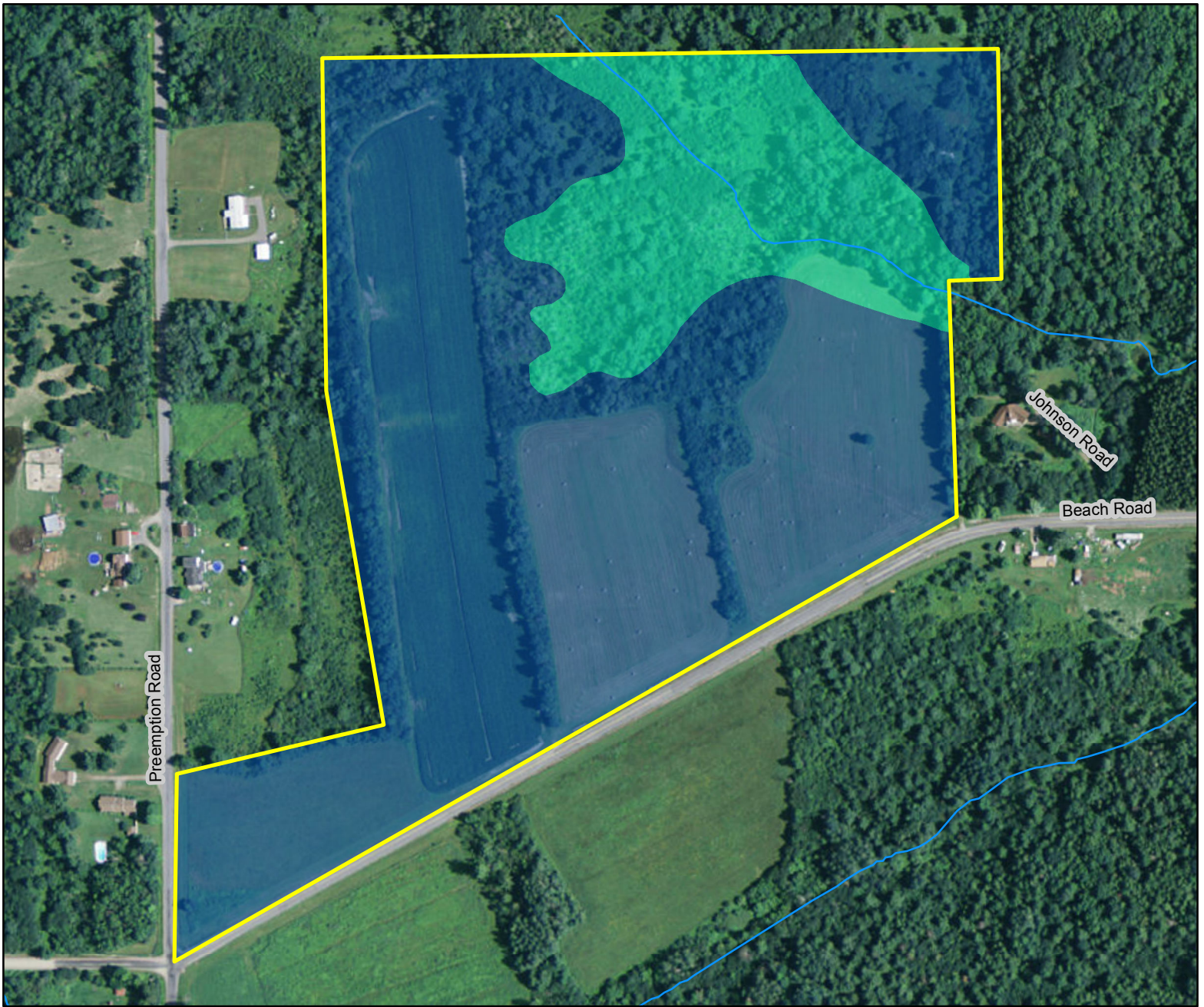


**Fig. 6: Pre-Emption Rd. Protected Lands**

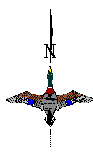
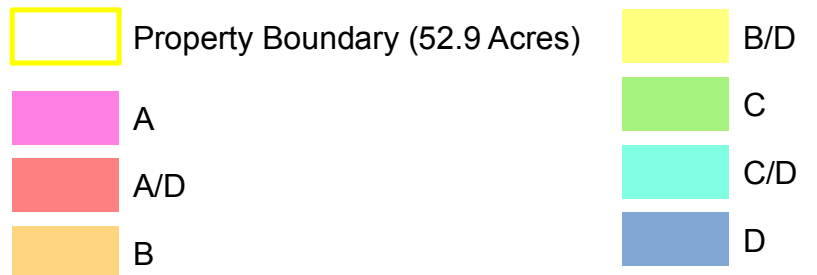
-  Property Boundary (52.9 Acres)
-  Federal Land
-  State Land
-  Finger Lakes Land Trust



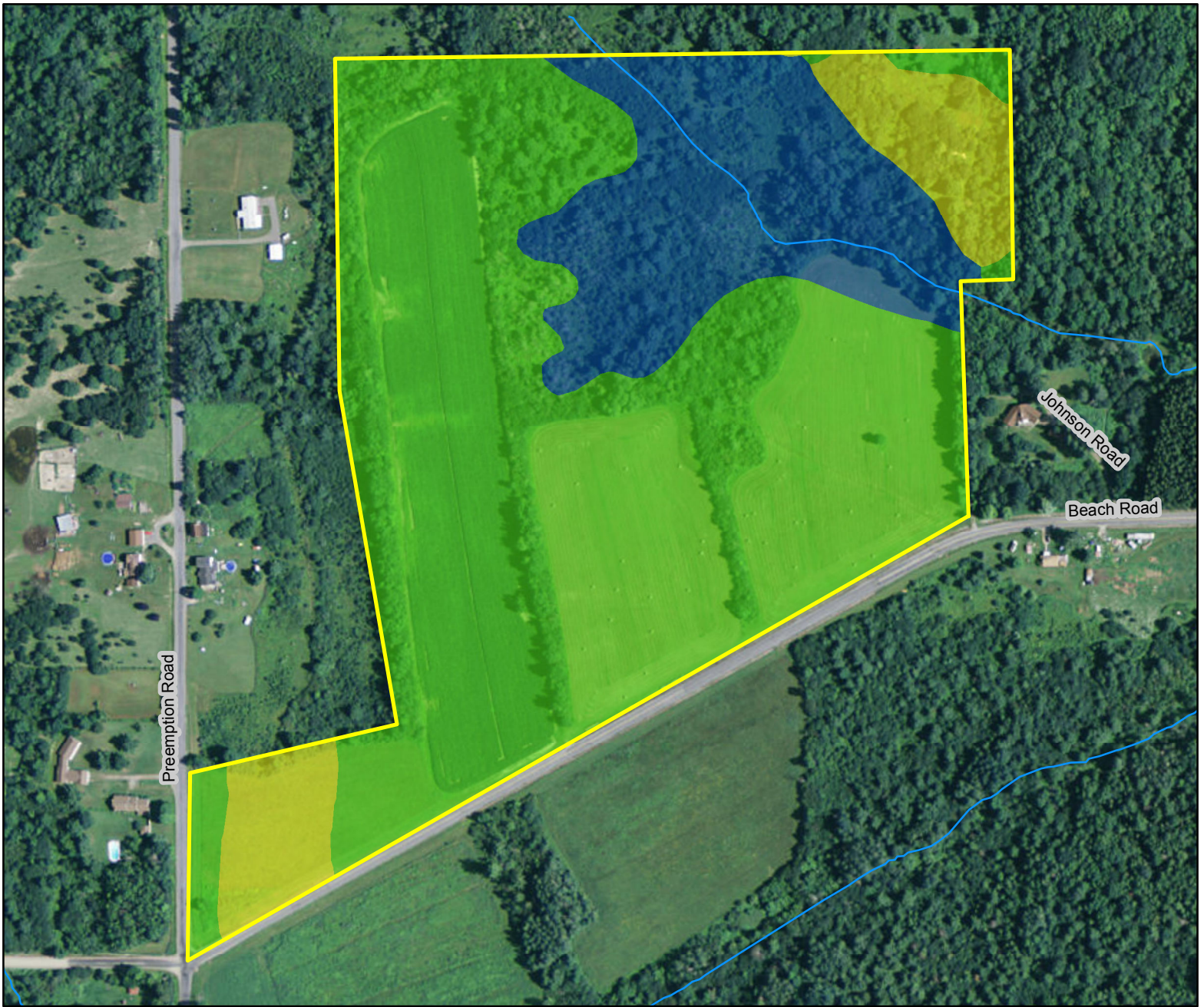




**Fig. 7: Pre-Emption Rd.  
Hydrologic Soils Group**














**Fig. 8: Pre-Emption Rd.  
Depth to Water Table (inches)**

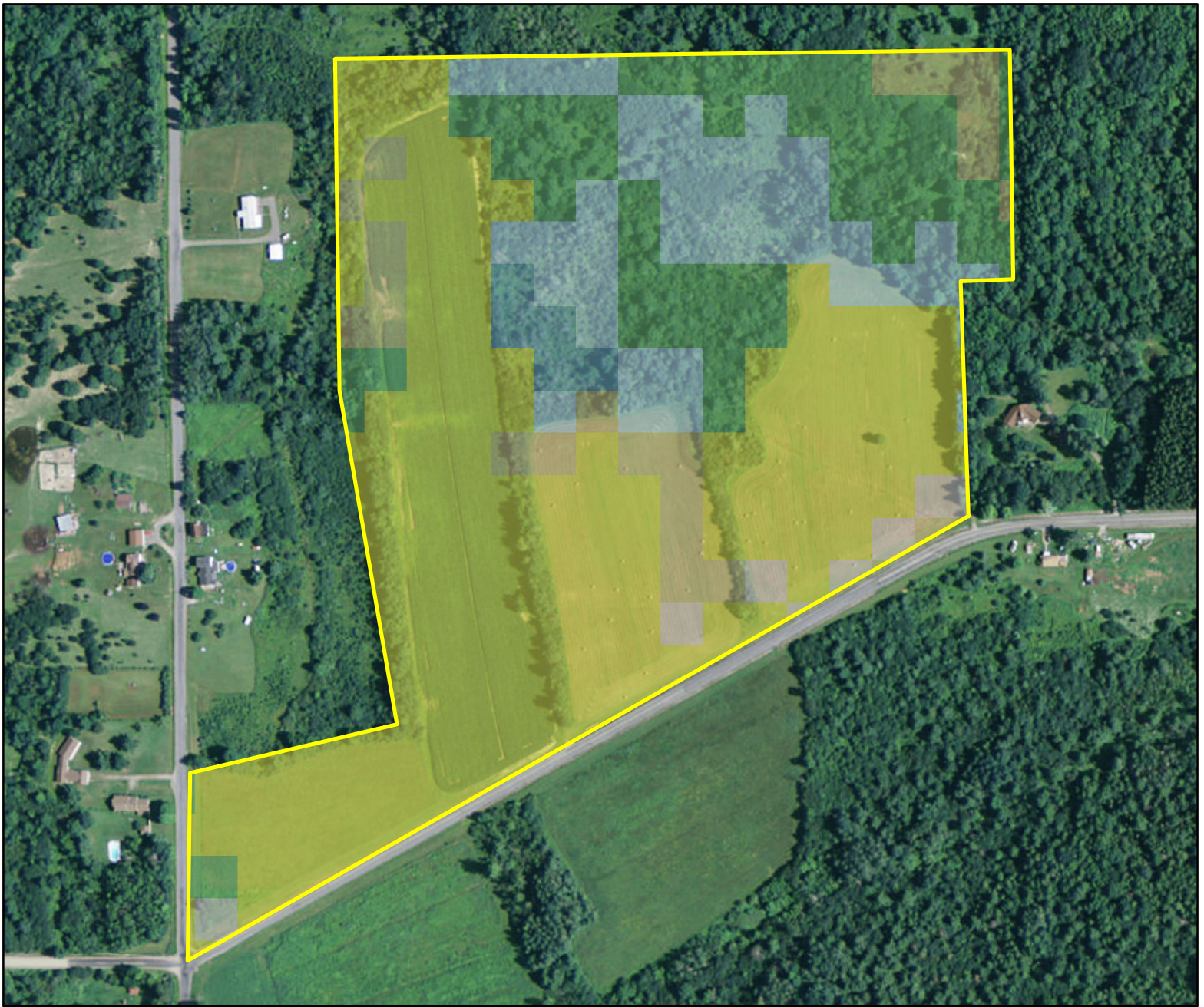


 Property Boundary (52.9 Acres)

-  0
-  1 - 6
-  7 - 12
-  13 - 18
-  18 - 24
-  > 24

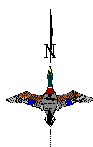






**Fig. 9: Pre-Emption Rd. Land Cover (NLCD)**

- Property Boundary (52.9 Acres)
- Developed, Open Space
- Deciduous Forest
- Evergreen Forest
- Mixed Forest
- Shrub/Scrub
- Hay/Pasture
- Woody Wetlands
- Emergent Herbaceous Wetlands



**APPENDIX C:**  
**CULTURAL RESOURCES**



## Parks, Recreation and Historic Preservation

ANDREW M. CUOMO  
Governor

ROSE HARVEY  
Commissioner

### ARCHAEOLOGY COMMENTS

#### Phase I Archaeological Survey Recommendation Project: Preemption Road Wetland Mitigation Project 15PR06645

Based on available information, your project is located in an archaeologically sensitive environmental context. Therefore, the Office of Parks, Recreation and Historic Preservation (OPRHP) 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 entire project area to be disturbed, documentation of the disturbance will need to be reviewed by OPRHP. 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 (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.

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.

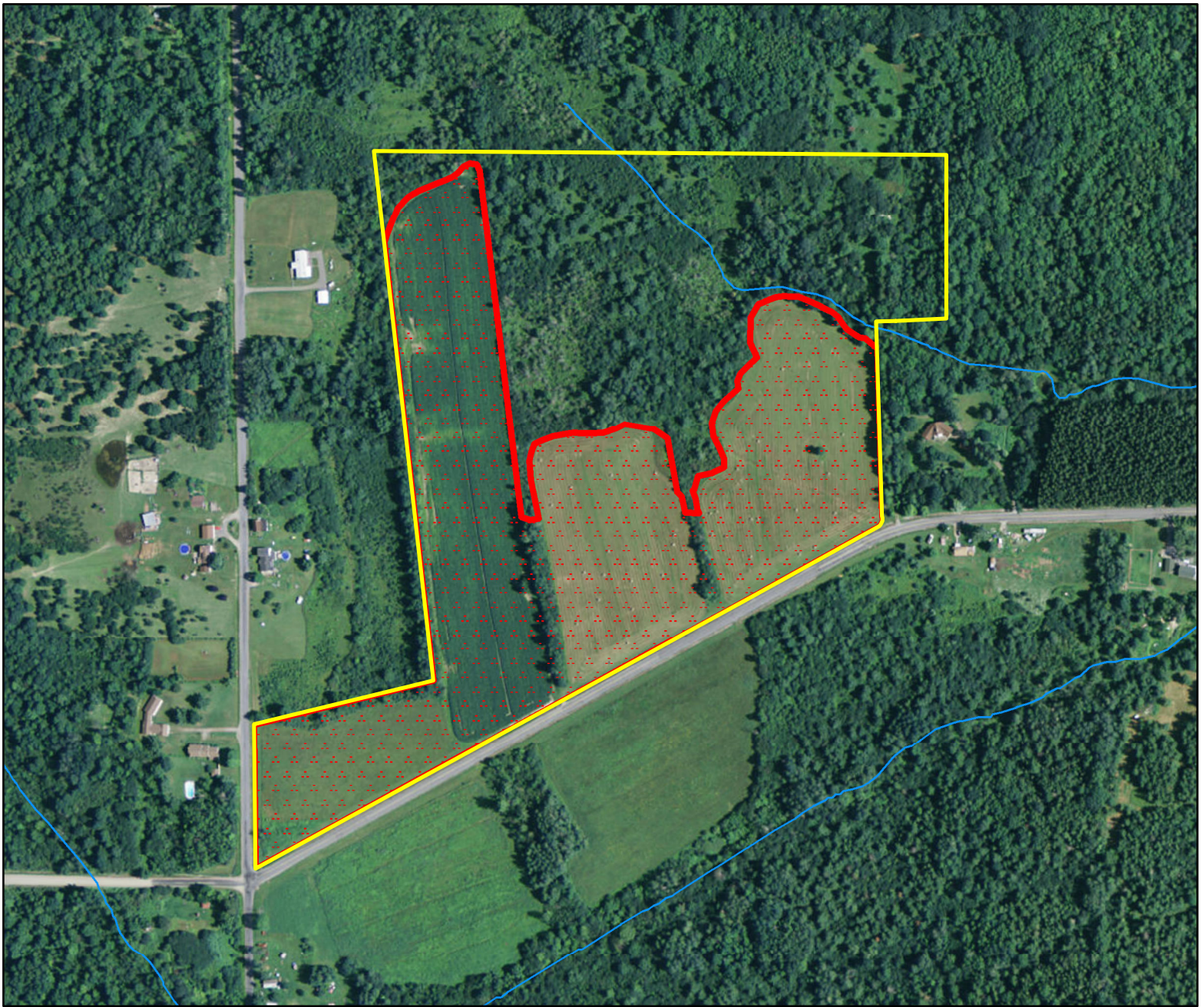
A Phase I survey is designed to determine the presence or absence of archaeological sites or other cultural resources in the project's area of potential effect. OPRHP can provide standards for conducting cultural resource investigations upon request. Cultural resource surveys and survey reports that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

Our office does not conduct archaeological surveys. A 36 CFR 61 qualified archaeologist should be retained to conduct the Phase I survey. Many archaeological consulting firms advertise their availability online. 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 archaeological fieldwork is 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 lands.

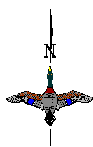
If you have any questions concerning archaeology, please contact Andrew Farry at 518.268.2185 or [andrew.farry@parks.ny.gov](mailto:andrew.farry@parks.ny.gov)





### Pre-Emption Rd. Area of Potential Effects (APE)

-  Property Boundary (52.9 Acres)
-  Area of Potential Effect (30 Acres)





**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-0287

November 13, 2015

Event Code: 05E1NY00-2016-E-00661

Project Name: Pre-Emption Road

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: Pre-Emption Road

## 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-0287

**Event Code:** 05E1NY00-2016-E-00661

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

**Project Name:** Pre-Emption Road

**Project Description:** This is a wetland mitigation project in the Seneca Lakes watershed.

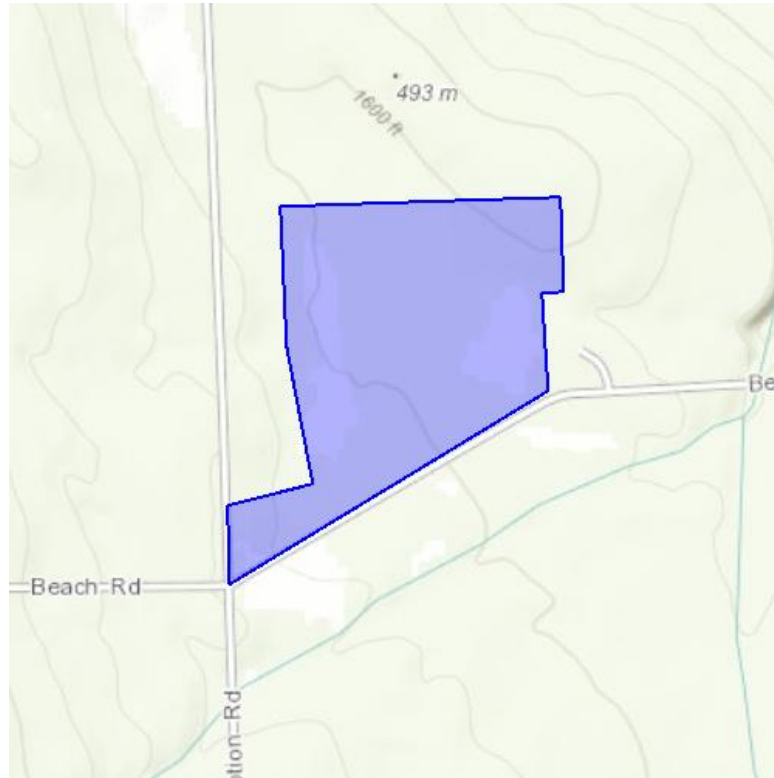
**Please Note:** The FWS office may have modified the Project Name and/or Project Description, so it may be different from what was submitted in your previous request. If the Consultation Code matches, the FWS considers this to be the same project. Contact the office in the 'Provided by' section of your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



United States Department of Interior  
Fish and Wildlife Service

Project name: Pre-Emption Road

### Project Location Map:



**Project Coordinates:** MULTIPOLYGON (((-76.97956573369089 42.42756095030283, -76.98620442952651 42.42460565955325, -76.98621870606458 42.42580490813658, -76.98444981513518 42.426148126903676, -76.98501195865605 42.42826804767315, -76.98511483635528 42.43038876490313, -76.9793022061519 42.43054634334185, -76.97922678471681 42.429081138677624, -76.97968024199422 42.42906053050004, -76.97956573369089 42.42756095030283)))

**Project Counties:** Schuyler, NY



United States Department of Interior  
Fish and Wildlife Service

Project name: Pre-Emption Road

## 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: Pre-Emption Road

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

There are no critical habitats within your project area.

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**  
**Division of Fish, Wildlife and Marine Resources**  
**New York Natural Heritage Program**  
**625 Broadway, 5th Floor, Albany, New York 12233-4757**  
**Phone: (518) 402-8935 • Fax: (518) 402-8925**  
**Website: [www.dec.ny.gov](http://www.dec.ny.gov)**



December 11, 2015

Matthew Regan  
Ducks Unlimited, Inc.  
159 Dwight Park Circle, Suite 205  
Syracuse, NY 13209

Re: Proposed wetland mitigation project, 4030 Pre-Emption Road, Watkins Glen  
Town/City: Reading. County: Schuyler.

Dear Matthew Regan:

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to the above project.

We have no records of rare or state-listed animals or plants, or significant natural communities at your site or in its immediate vicinity.

The absence of data does not necessarily mean that rare or state-listed species, significant natural communities, or other significant habitats do not exist on or adjacent to the proposed site. Rather, our files currently do not contain information that indicates their presence. For most sites, comprehensive field surveys have not been conducted. We cannot provide a definitive statement on the presence or absence of all rare or state-listed species or significant natural communities. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other resources may be required to fully assess impacts on biological resources.

This response applies only to known occurrences of rare or state-listed animals and plants, significant natural communities, and other significant habitats maintained in the Natural Heritage database. Your project may require additional review or permits; for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the appropriate NYS DEC Regional Office, Division of Environmental Permits, as listed at [www.dec.ny.gov/about/39381.html](http://www.dec.ny.gov/about/39381.html).

Sincerely,

A handwritten signature in black ink that reads "Andrea Chaloux". The signature is written in a cursive, flowing style.

Andrea Chaloux  
Environmental Review Specialist  
New York Natural Heritage Program



**APPENDIX E**  
**WETLAND DELINEATION REPORT**

## **1.0 INTRODUCTION**

Ducks Unlimited, Inc. (DU) investigated site conditions at the Pre-Emption Road site (hereinafter Mitigation Site). The wetland delineation was performed to estimate total restorable acreage and if wetlands existing on the Mitigation Site are federal jurisdictional wetlands.

The goal of the Mitigation Site's work plan is to re-establish and rehabilitate wetlands to compensate for wetland impacts to 9.04 acres of wetlands in the Seneca River sub-basin (Appendix A).

## **2.0 METHODS**

Onsite data collection and wetland boundary flagging of the 52.9 acre delineation area was performed by DU on November 10 – 11, 2015. Climatic/hydrologic conditions were typical for this time of year. The boundaries were delineated following the protocols outlined in the United States Army Corps of Engineers' (USACE) 1987 "Wetland Delineation Manual" and data were collected on the "Regional Supplement to the Corps of Engineers Wetland Delineations Manual: Northcentral and Northeast Region (Version 2.0)" (Regional Supplement). A routine on-site determination was performed as specified in Section D of Chapter IV of the 1987 Delineation Manual. Prior to the delineation survey, the property was walked to identify general topography, drainage patterns, major plant communities, and potential areas of disturbance. A representative data point was selected in each plant community. A total of 13 data points were sampled for the delineation. Vegetation, soils, and hydrology data were collected at each data point using the USACE's methods for vegetation, soils, and hydrology. Where wetlands and uplands were too closely associated to be effectively delineated, the procedures for sampling wetland/non-wetland mosaics according the Regional Supplement were used.

Data were collected for each vegetation stratum (i.e., herb, sapling/shrub, tree, and woody vine stratum). The size (i.e., radius in feet) for sampling each stratum at each data point followed USACE guidelines unless topography or other site conditions restricted the sampling area, (i.e., herb: 5 ft., sapling/shrubs: 15 ft., trees: 30 ft., and woody vines: 30 ft.). Hydrophytic plants had an indicator status of obligate (OBL), facultative-wet (FACW), or facultative (FAC) as listed on the USACE's "Northcentral and Northeast 2014 Regional Wetland Plant List" (Lichvar, Butterwick, Melvin and Kirchner, 2014).

An assessment of the vegetation began with a rapid field test for hydrophytic vegetation to determine if there was a need to collect additional detailed vegetative data. If there was a need to collect additional detailed vegetation data, then the percent coverage of all plant species classified in each stratum were visually estimated, recorded, and ranked in decreasing order of percent coverage. The presence/absence of wetland vegetation was determined by a quantitative assessment of the dominance and prevalence of hydrophytic plants across all strata at each data point. The plant community was evaluated using hydrophytic vegetation indicator procedures (i.e., indicators 1-4), as outlined in the Regional Supplement. Hydrophytic vegetation was present wherever any of these indicators were met.

Soils data were collected by observing soil profiles. Soil pits were dug to a depth of 12 – 20 inches with a sharpshooter shovel to observe soil profiles. Characteristics of the soil profiles

were described by using the Munsell soil color chart, identifying soil texture, and measuring the depth and thickness of each soil matrix layer. The soil profiles were evaluated for hydric soil indicators as defined in the Regional Supplement. The soil data collected from the field were compared with a soil map of the Mitigation Site according to the National Resource Conservation Services' (USDA-NRCS) Web Soil Survey.

Hydrology was evaluated based on direct field observations, and primary and secondary indicators of wetland hydrology as defined in the Regional Supplement.

Data points and wetland boundary points were recorded with a hand-held GPS unit accurate to within 3 meters.

### 3.0 RESULTS

Normal circumstances were not present in the three agricultural fields due to problematic vegetation. The fields have a plant community managed for hay and one of the fields was cropped within the past year. White-tail deer tracks were observed during the delineation.

The most prevalent type of wetland delineated at the Mitigation Site was palustrine scrub-shrub wetlands (PSS; 5.13 acres). Two areas of palustrine emergent wetlands (PEM; 0.36 acres) were delineated along with a palustrine emergent wetlands/upland mosaic (PEM; 3.39 acres) in the fields at the Mitigation Site.

**Table 1. Delineated Wetlands at the Mitigation Site**

NAME	Wetland Type	Wetland Acres
Wetland A	PSS	0.15
Wetland B	PEM	0.17
Wetland C	PEM	0.19
Wetland D	PSS	0.73
Wetland E	PSS	2.06
Wetland F	PSS	2.19
Mosaic A	PEM	3.39

The shrub stratum in the PSS wetlands were typically characterized by European buckthorn (*Rhamnus cathartica*, FAC), silky dogwood (*Cornus amomum*, FACW), and white meadowsweet (*Spiraea alba*, FACW). The herbaceous stratum in the PSS wetlands and the PEM wetlands were typically characterized by common fox sedge (*Carex vulpinoidea*, OBL). The tree stratum in the upland forested areas were characterized by eastern white pine (*Pinus strobus*, FACU). The herbaceous stratum in the upland sections of the fields were characterized by tall goldenrod (*Solidago altissima*, FACU), black-eyed-susan (*Rudbeckia hirta*, FACU), and white heath American-aster (*Symphotrichum ericoides*, FACU). The PEM/upland mosaic was characterized by common fox sedge and woolgrass in the microtopographical depressions and conversely characterized by goldenrod and white heath American-aster in the microtopographical ridges. Wetland vegetation comprised approximately 34% of the ground cover in this area. The mosaic covered an area of approximately 10 acres, and 3.39 acres were considered PEM wetland.

**Table 2.** Dominant vegetation in the delineated wetlands

<b>Scientific Name</b>	<b>Common Name</b>	<b>WIS</b>
<i>Acer rubrum</i>	Red Maple	FAC
<i>Carex lacustris</i>	Lakebank Sedge	OBL
<i>Carex vulpinoidea</i>	Common Fox Sedge	OBL
<i>Cornus amomum</i>	Silky Dogwood	FACW
<i>Leersia oryzoides</i>	Rice Cut Grass	OBL
<i>Phalaris arundinacea</i>	Reed Canary Grass	FACW
<i>Rhamnus cathartica</i>	European Buckthorn	FAC
<i>Spiraea alba</i>	White Meadowsweet	FACW

Field observations of soil profiles at the Mitigation Site confirmed the NRCS Web Soil Survey where soils were classified as Alden silt loam (Ad) and Volusia silt loam (VoA and VoB) based on texture and soil color. The texture of the soils were typically loamy and clayey, therefore the hydric soil indicators for loamy and clayey soils detailed in the Regional Supplement were used. Several soil profiles had a layer where 60% or more of the matrix had a chroma of 2 or less, prominent redox concentrations, and met the thickness requirements for hydric soil indicator F3: depleted matrix. Most of the soil profiles where F3: depleted matrix was observed co-occurred with a layer above with a value of 3 and chroma of 2 or less, and met the minimum thickness requirements for hydric soil indicator A11: depleted below dark surface. The hydric soil indicators F3: depleted matrix and A11: depleted below dark surface were observed in both PEM and PSS wetlands and were the most frequently observed hydric soil indicators.

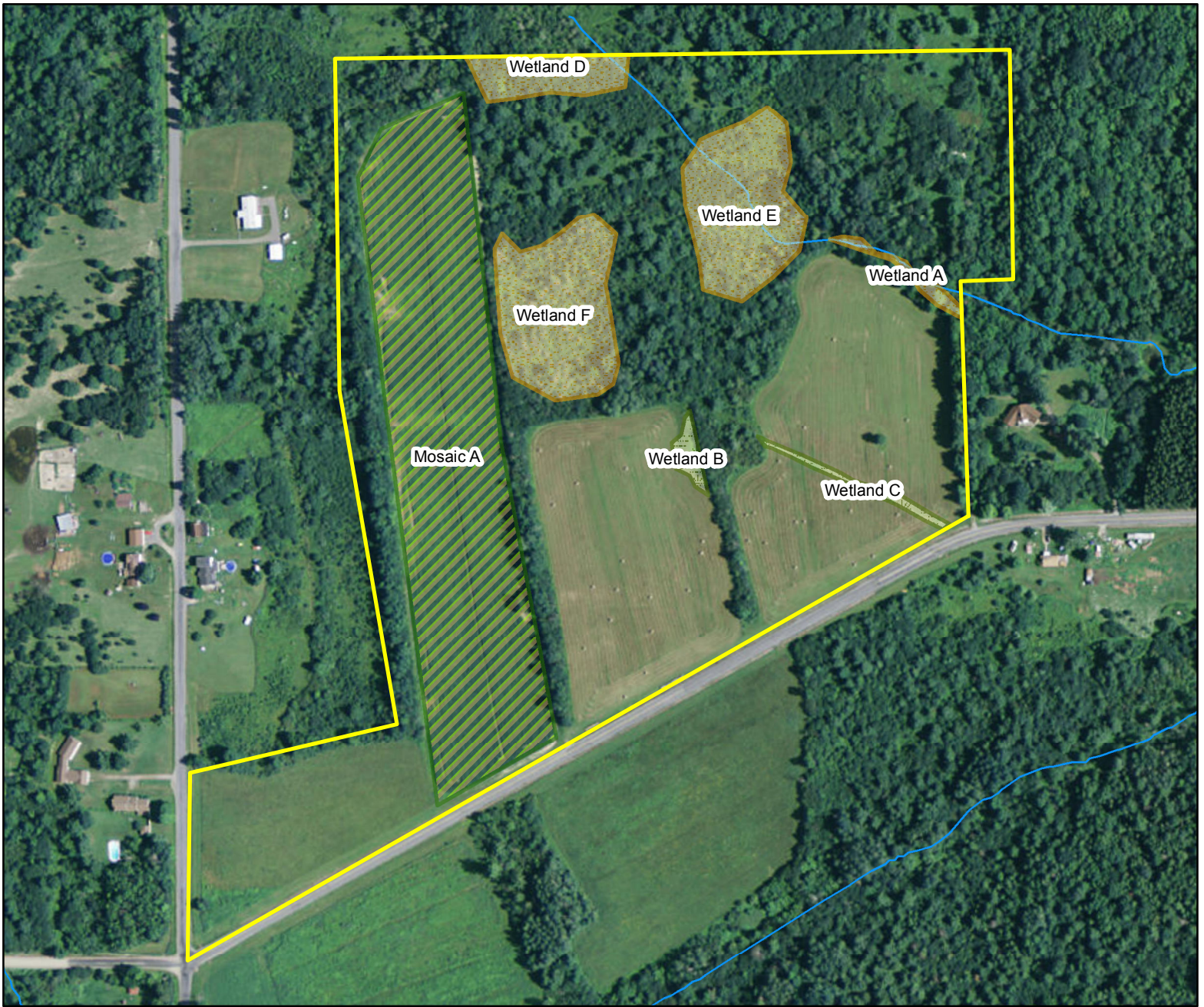
The Mitigation Site was visited during a time of normal precipitation. The most observed primary wetland hydrology indicator was saturation. Other wetland hydrology indicators observed were surface water, high water table and water-stained leaves. A water table was observed in five data points and ranged in depth from 4 – 14 inches. Surface water was observed in two points, and ranged from 1 – 1.5 inches deep.

#### **4.0 CONCLUSIONS**

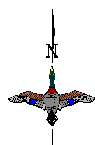
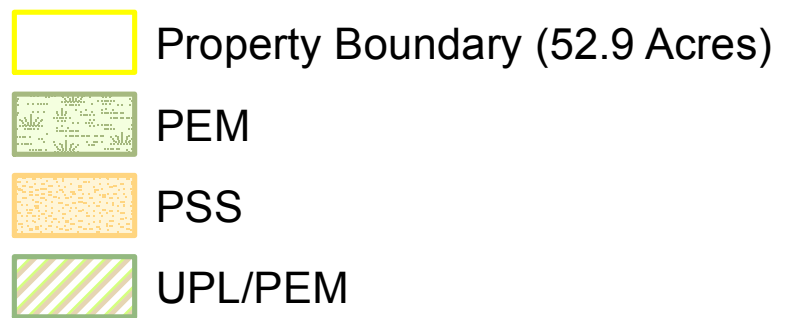
Most of the Mitigation Site delineated as upland including most of the area in the fields and forests. The Mitigation Site supported 8.88 acres of PSS and PEM wetlands. The PSS wetlands are hydrologically connected by a stream. Invasive plant species are present in several of the wetlands. The non-native European buckthorn was the dominant shrub in two of the PSS wetlands. Reed canary grass was a dominant herbaceous plant species in one of the PEM wetlands. The PEM wetlands are found in the low-lying areas of the fields. A PEM wetland/upland mosaic occurs in the western-most field due to the frequent changes in microtopography over a relatively short distance.

Soil saturation and hydrological conditions at the Mitigation Site were of sufficient frequency and duration to support hydrophytic vegetation and wetland conditions for the PSS and PEM wetlands.





**Fig. 1: Pre-Emption Rd.  
Delineated Wetlands**



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

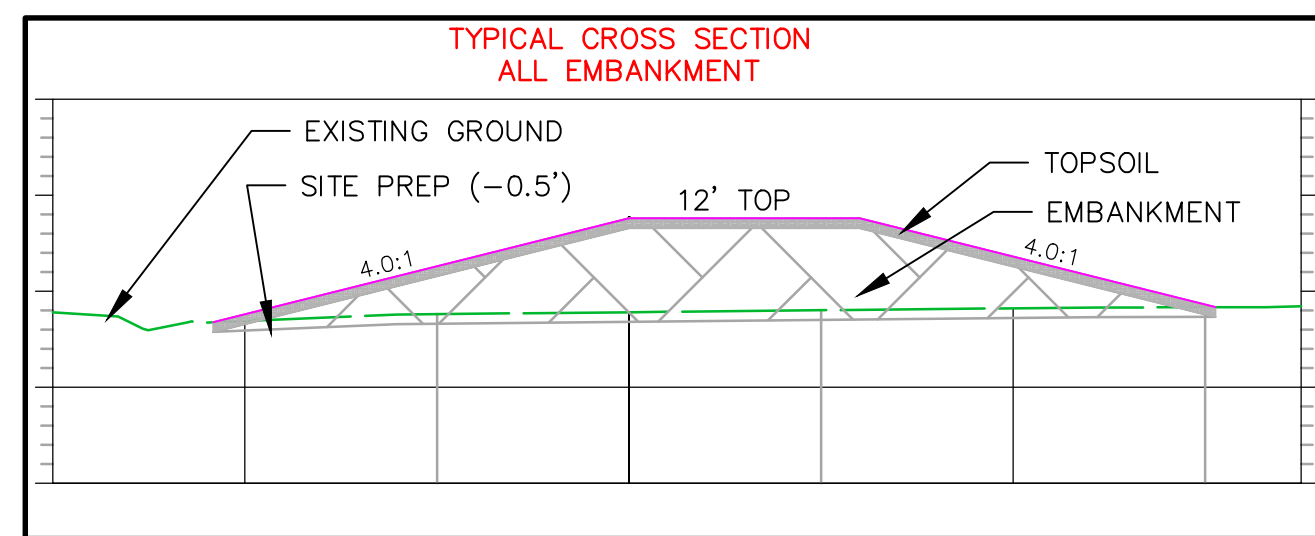
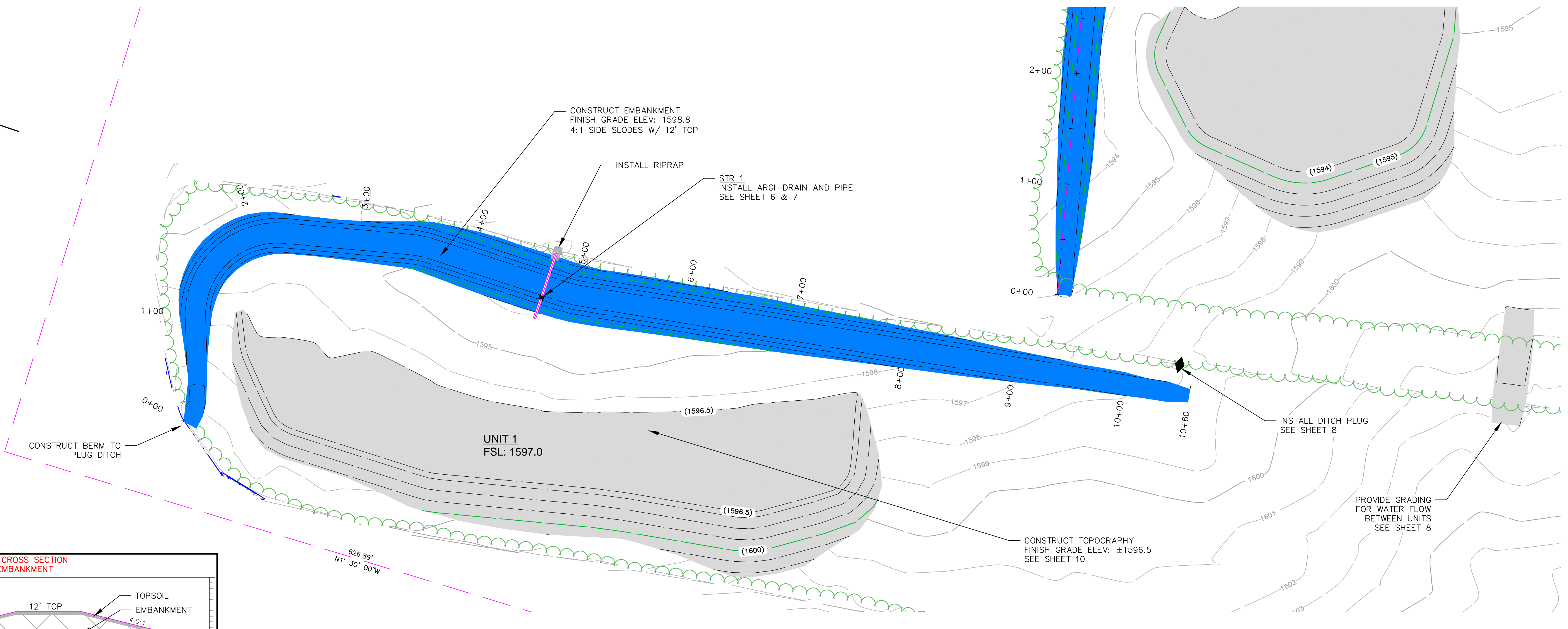
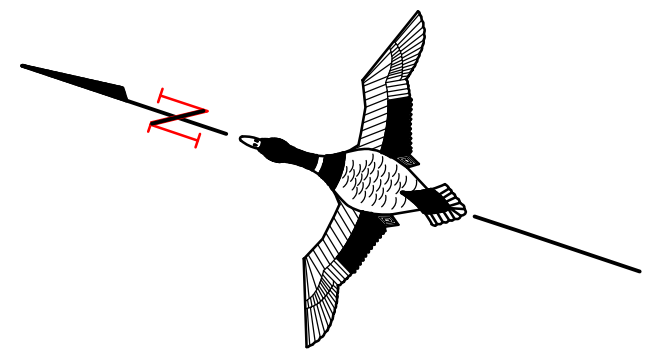




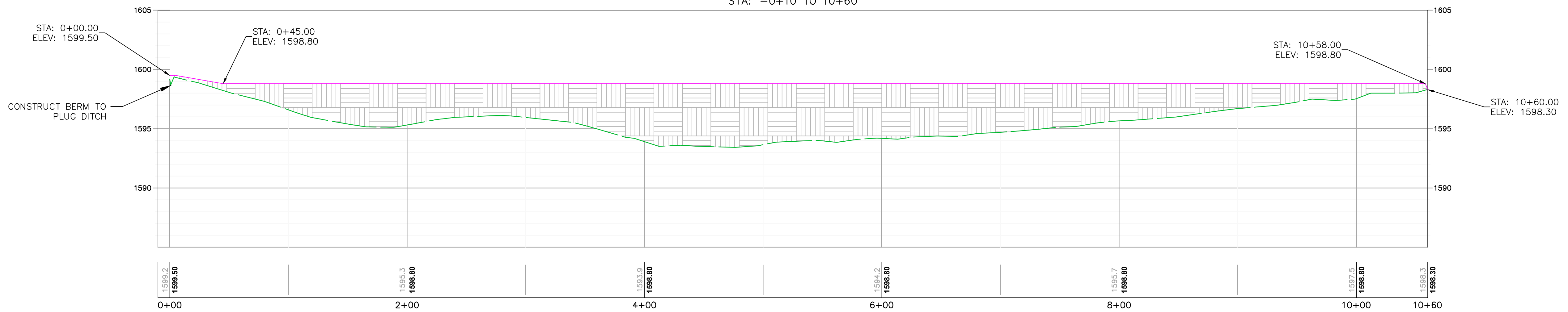






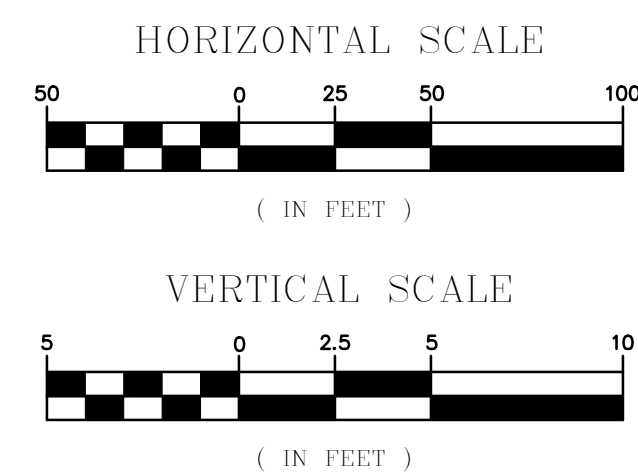


PROFILE  
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**LEGEND**

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| — — — — — | EXISTING GROUND PROFILE       | — — — — — | EXISTING TREE LINE        | — — — — — | oe        | EXISTING OVERHEAD ELECTRIC |                       |
| — — — — — | PROPOSED GROUND PROFILE       | — — — — — | EDGE OF VEGETATION LINE   | — — — — — | o         | EXISTING UTILITY POLE      |                       |
| — — — — — | EXISTING BERM                 | — — — — — | EDGE OF CULTIVATION       | — — — — — | >         | EXISTING GUY WIRE          |                       |
| x 000.0   | EXISTING SPOT ELEVATION       | — — — — — | APPROXIMATE WATERLINE     | — — — — — | *         | EXISTING LIGHT POLE        |                       |
| +         | HORIZONTAL & VERTICAL CONTROL | — — — — — | EDGE OF RIPRAP            | — — — — — | □         | EXISTING TELEPHONE PED     |                       |
| △         | BENCHMARK                     | — — — — — | EDGE OF PAVEMENT          | — — — — — | ⊙         | SOIL BORING                |                       |
| — 000 —   | EXISTING MAJOR CONTOUR        | — — — — — | EDGE OF GRAVEL            | — — — — — | ⊙         | WATER CONTROL STRUCTURE    |                       |
| — (000) — | PROPOSED MAJOR CONTOUR        | — — — — — | ROAD OR TRAIL             | — — — — — | ⊙         | EXISTING SINGLE SIGN       |                       |
| — — — — — | PROPOSED BERM                 | — — — — — | EXISTING FENCE LINE       | — — — — — | ⊙         | EXISTING CATCH BASIN       |                       |
| — — — — — | PROPOSED DITCH                | — — — — — | APPROX. BOUNDARY LINE     | — — — — — | ⊙         | EXISTING MANHOLE           |                       |
|           |                               | — — — — — | APPROX. RIGHT OF WAY LINE | — — — — — | ⊙         | EXISTING WELL              |                       |
|           |                               | •         | FOUND PROPERTY CORNER     | — — — — — | — — — — — | UTL                        | EXISTING UTILITY LINE |



**PRELIMINARY**

**NOTICE:** Construction site safety is the sole responsibility of the contractor. Ducks Unlimited, Inc. shall not assume any responsibility for the safety of the work performed, persons engaged in the work, nearby structures or of other persons on-site.

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Global Leader in Wetlands & Wildlife Conservation  
**GREAT LAKES/ATLANTIC REGIONAL OFFICE**  
 ANN ARBOR, MICHIGAN (734) 623-2000  
 BISMARCK, NORTH DAKOTA (701) 355-3500



**PLAN & PROFILE UNIT 1**  
**PREEMPTION ROAD MITIGATION SITE**  
 NEW YORK IN-LIEU FEE PROGRAM  
 SENECA-FINGER LAKES REGION  
 SERVICE AREA  
 SCHUYLER COUNTY, NEW YORK

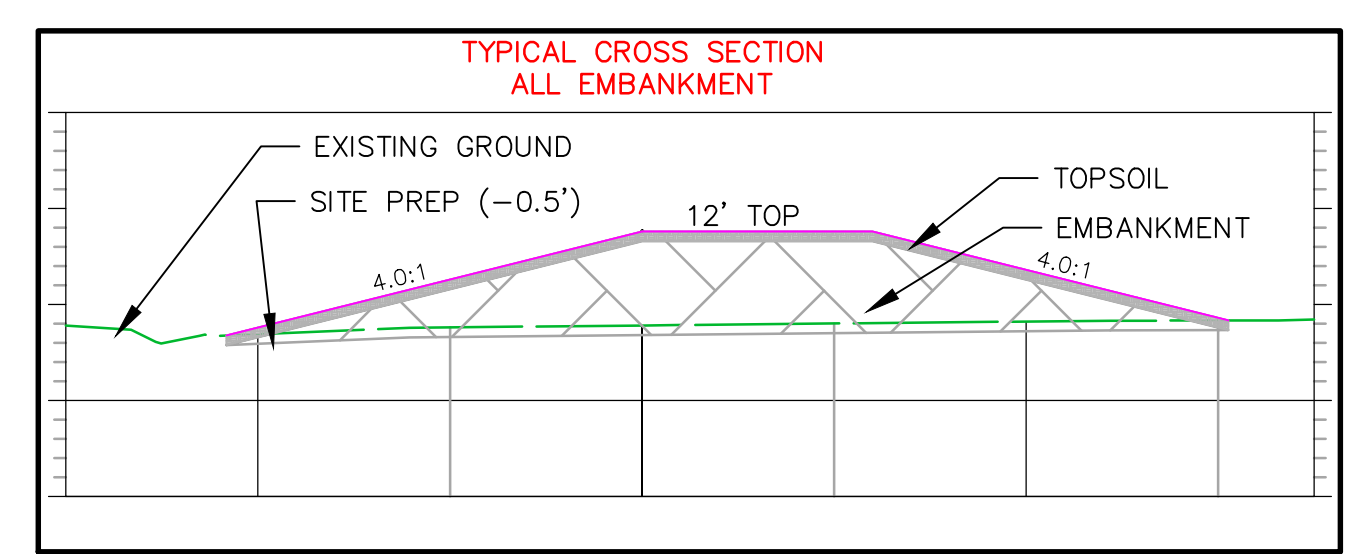
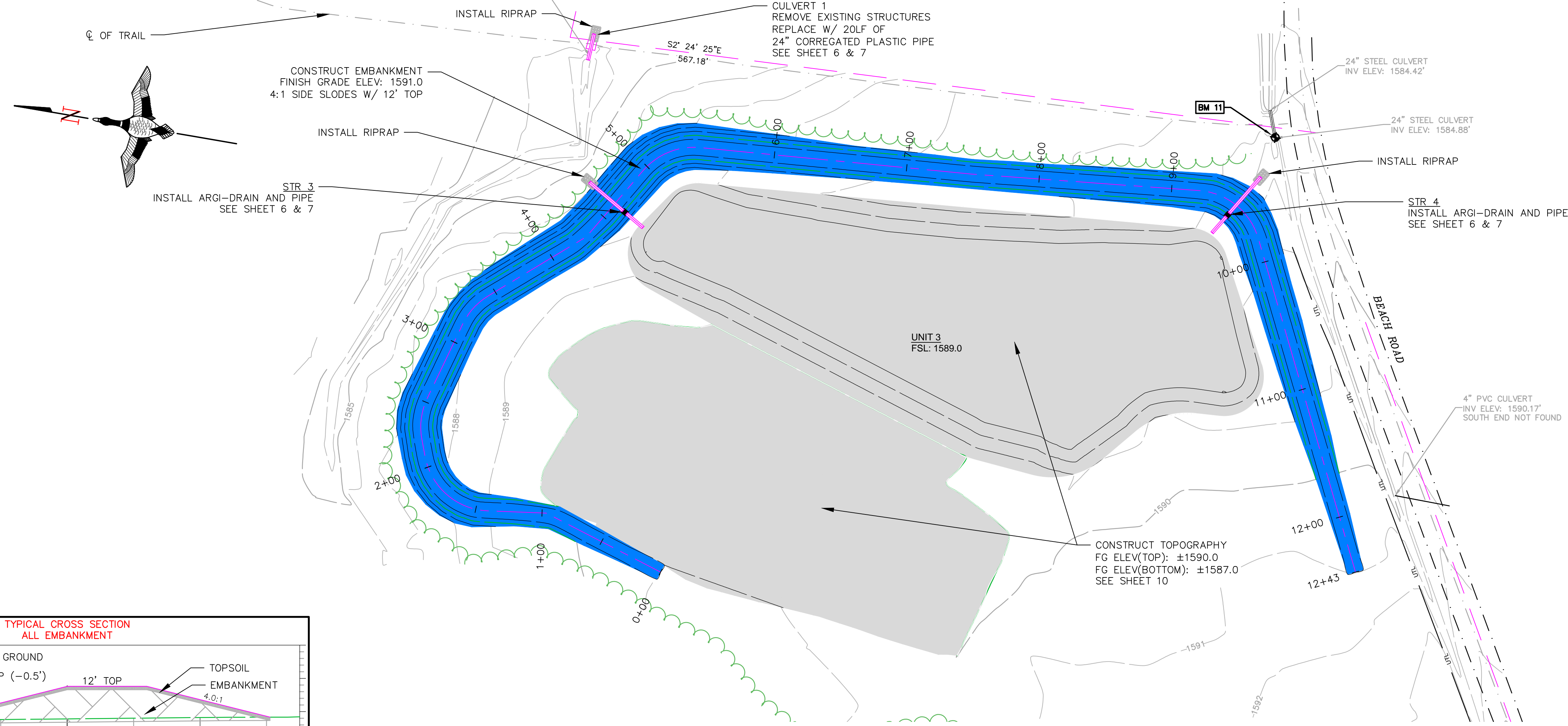
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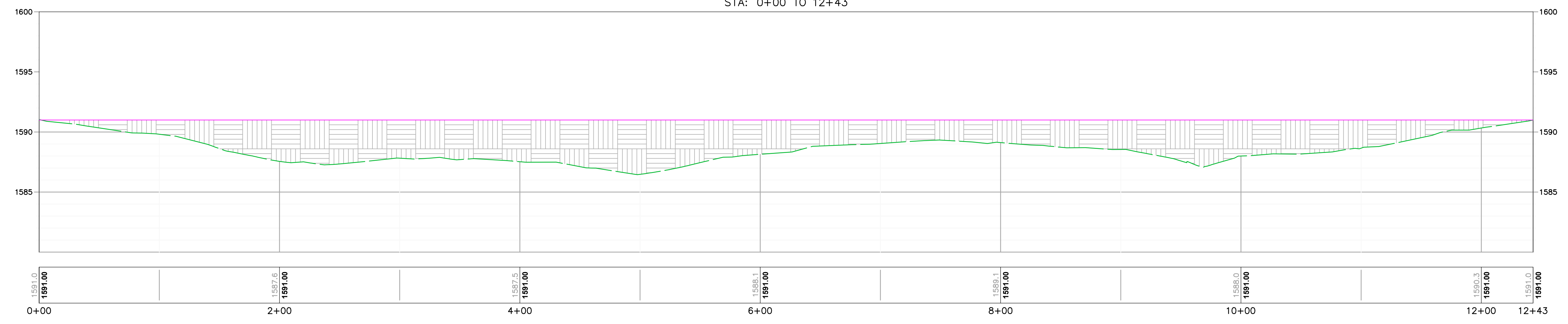




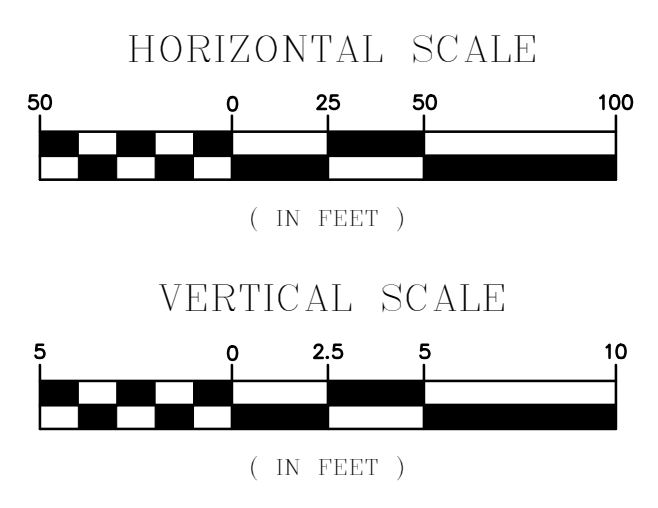




PROFILE  
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LEGEND	
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	BENCHMARK
	EXISTING MAJOR CONTOUR
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	EXISTING TREE LINE
	EDGE OF VEGETATION LINE
	EDGE OF CULTIVATION
	APPROXIMATE WATERLINE
	EDGE OF RIPRAP
	EDGE OF PAVEMENT
	EDGE OF GRAVEL
	ROAD OR TRAIL CL
	EXISTING FENCE LINE
	APPROX. BOUNDARY LINE
	APPROX. RIGHT OF WAY LINE
	FOUND PROPERTY CORNER
	EXISTING OVERHEAD ELECTRIC
	EXISTING UTILITY POLE
	EXISTING GUY WIRE
	EXISTING LIGHT POLE
	EXISTING TELEPHONE PED
	SOIL BORING
	WATER CONTROL STRUCTURE
	EXISTING SINGLE SIGN
	EXISTING CATCH BASIN
	EXISTING MANHOLE
	EXISTING WELL
	EXISTING UTILITY LINE



PRELIMINARY

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BISMARCK, NORTH DAKOTA (701) 355-3500

**DUCKS UNLIMITED**

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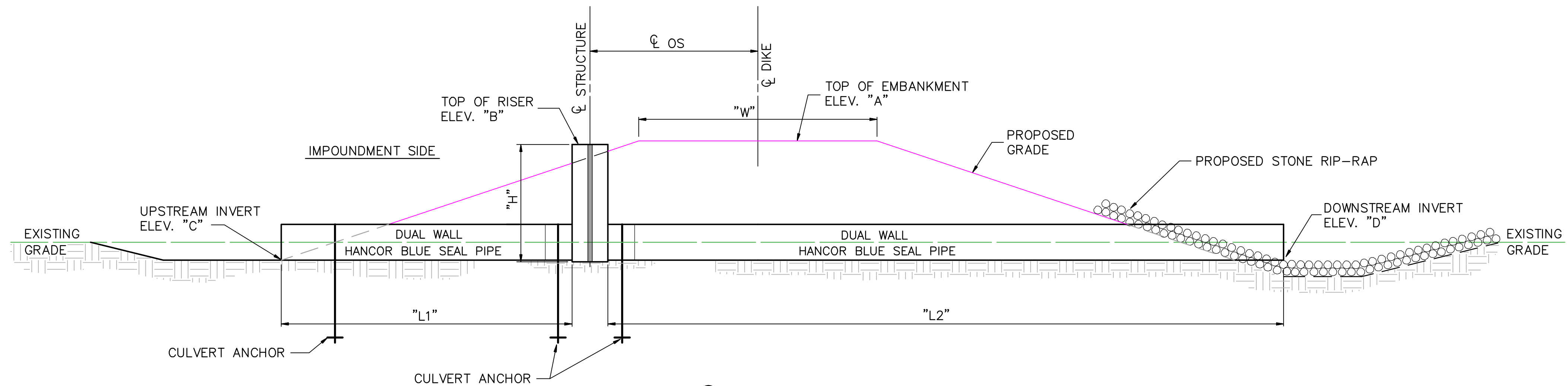
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PREEMPTION ROAD MITIGATION SITE  
NEW YORK IN-LIEU FEE PROGRAM  
SENECA-FINGER LAKES REGION  
SERVICE AREA  
SCHUYLER COUNTY, NEW YORK

Revision No.	By	Date
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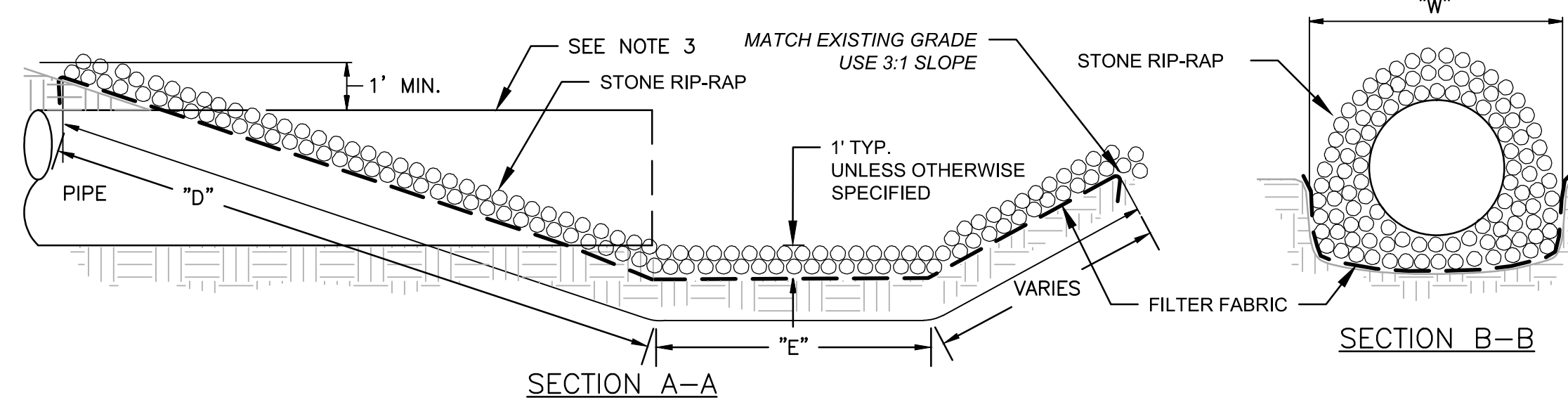
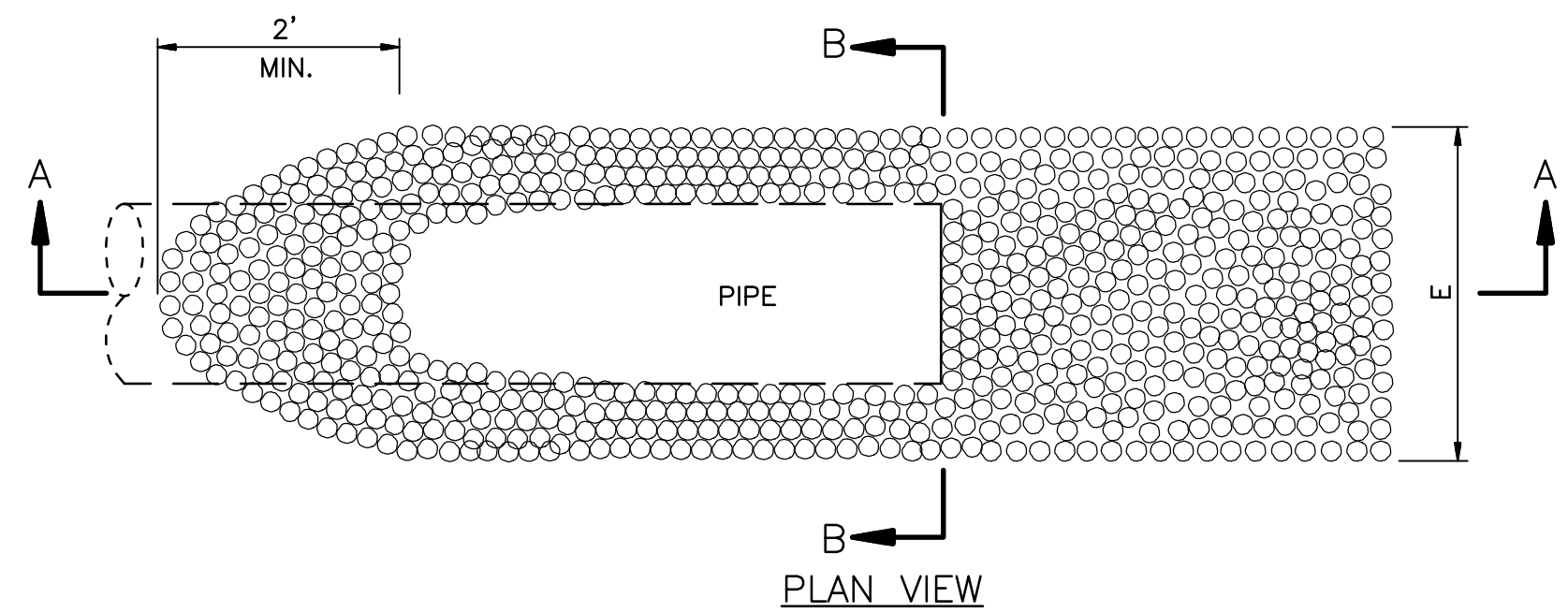




PROFILE OF AGRI-DRAIN® WATER CONTROL STRUCTURE  
NOT TO SCALE

STRUCTURE SCHEDULE

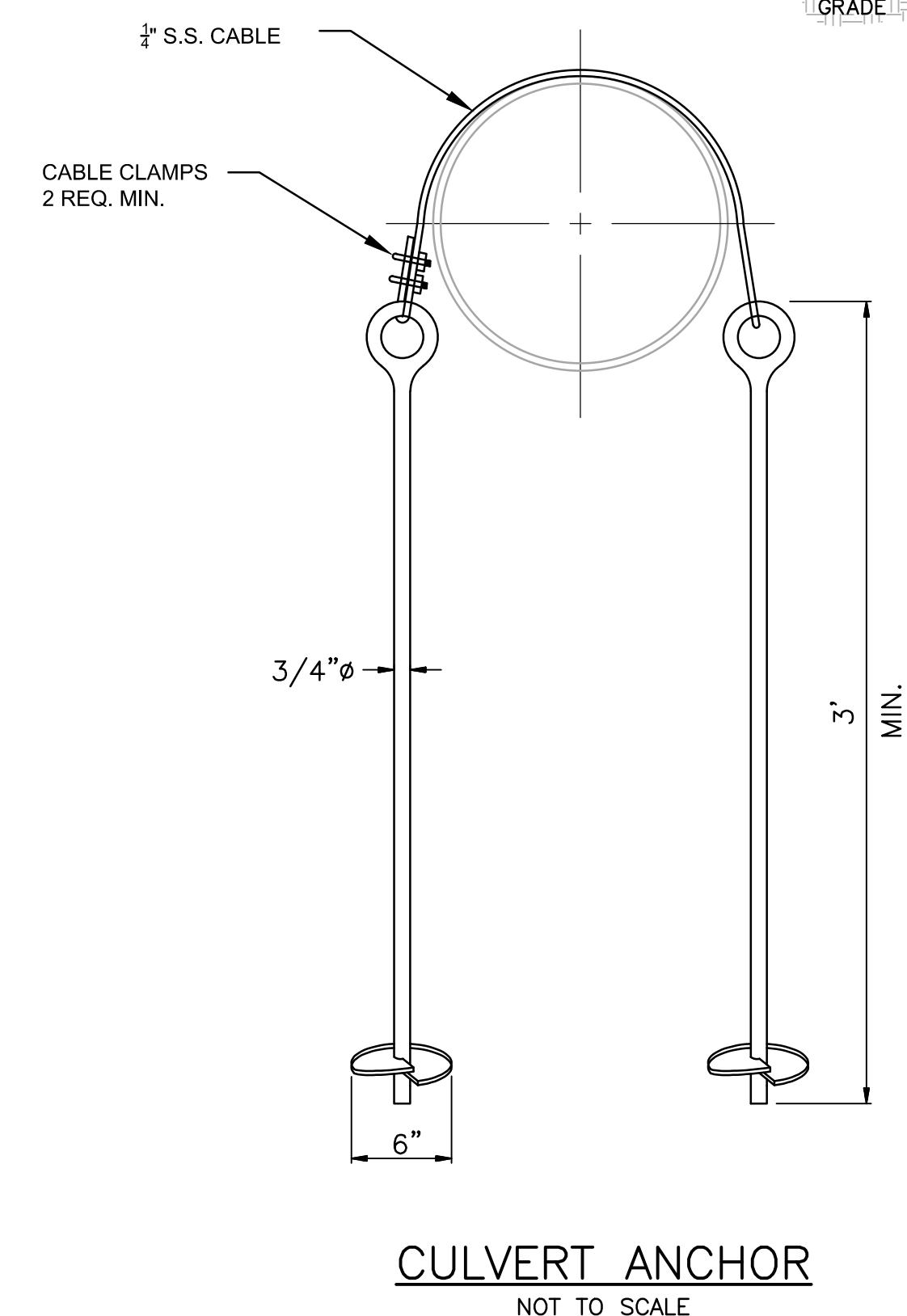
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STR 1	24"	31" X 29"	6'	1598.8	1598.72	1597.0	1592.8	1592.8	12'	18	40	11'	4+72.4	UNIT 1 ALIGNMENT
STR 2	24"	31" X 29"	5'	1596.0	1595.92	1594.0	1591.0	1591.0	12'	13	32.5	9.8'	4+33.5	UNIT 2 ALIGNMENT
STR 3	24"	31" X 29"	6'	1591.0	1590.92	1591.0	1585.0	1585.0	12'	16	33	10'	4+63.0	UNIT 3 ALIGNMENT
STR 4	24"	31" X 29"	5'	1591.0	1590.92	1591.0	1586.0	1586.0	12'	16	36	9.8'	9+50.5	UNIT 3 ALIGNMENT
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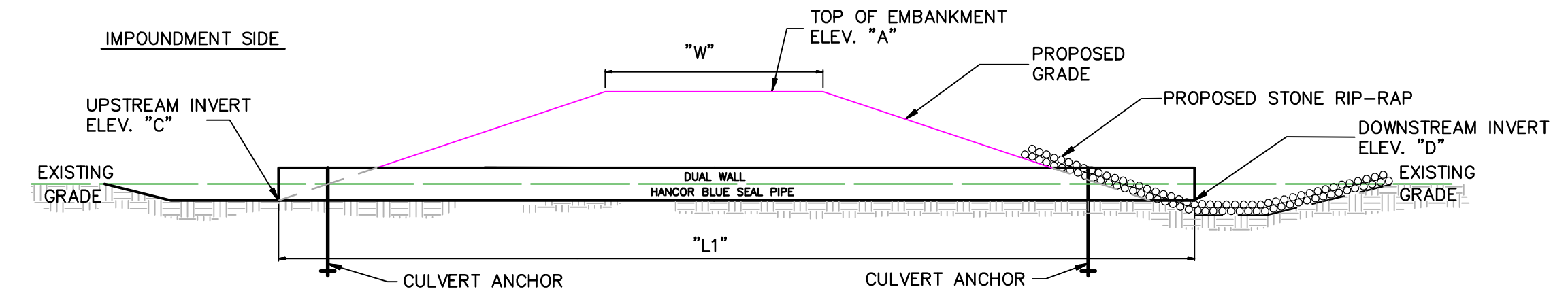
- NOTES:
- IF THE RIPRAP CLASS DESIGNATION IS NOT SPECIFIED ON THE CONSTRUCTION PLANS, CLASS 1 ROCK RIPRAP SHALL BE UTILIZED, THE ROCK SHALL BE APPROVED BY THE ENGINEER PRIOR TO INSTALLATION.
  - UNLESS OTHERWISE SPECIFIED, FILTER FABRIC SHALL BE UTILIZED IN THE INSTALLATION OF RIPRAP.
  - DOWNSTREAM PIPE OUTLET SHALL CONFORM TO SLOPE FOR PIPE DIAMETERS 30" AND LONGER.
  - DIMENSIONS FOR "D" ARE BASED ON A 4:1 SLOPE. ACTUAL LENGTHS MAY VARY DEPENDING ON THE SPECIFIED SLOPE.

OUTLET AND STONE RIP-RAP DETAIL  
NOT TO SCALE

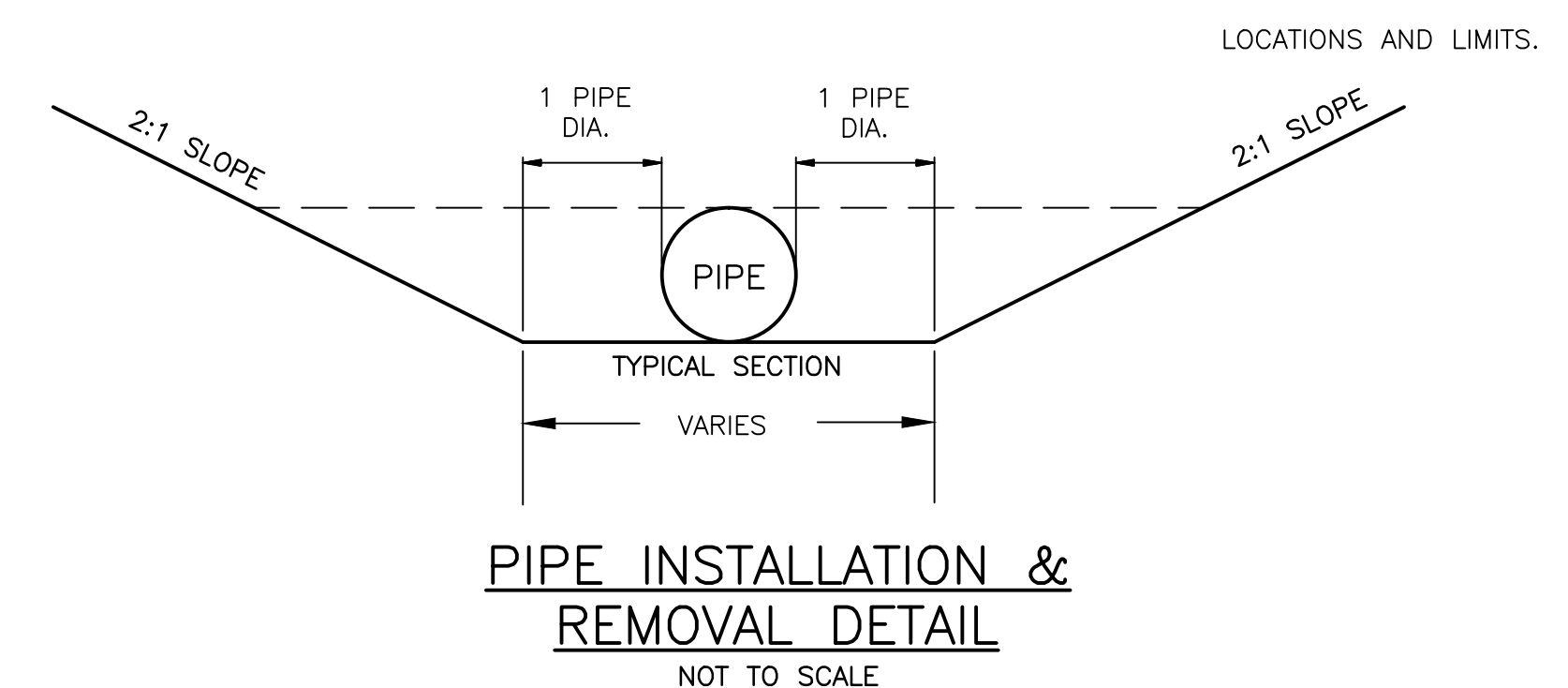
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15"	13'	3.75'	3.75'	7.2
18"	14'	4.5'	4.5'	8.3
21"	15'	5.25'	5.25'	11.0
24"	16'	6'	6'	13.2
27"	17'	6.75'	6.75'	15.4
30"	18'	10'	10'	28.7
36"	20'	10'	10'	30.3
42"	22'	10'	10'	31.8
48"	24'	10'	10'	33.2
54"	26'	10'	10'	34.5
60"	28'	10'	10'	35.7



CULVERT ANCHOR  
NOT TO SCALE



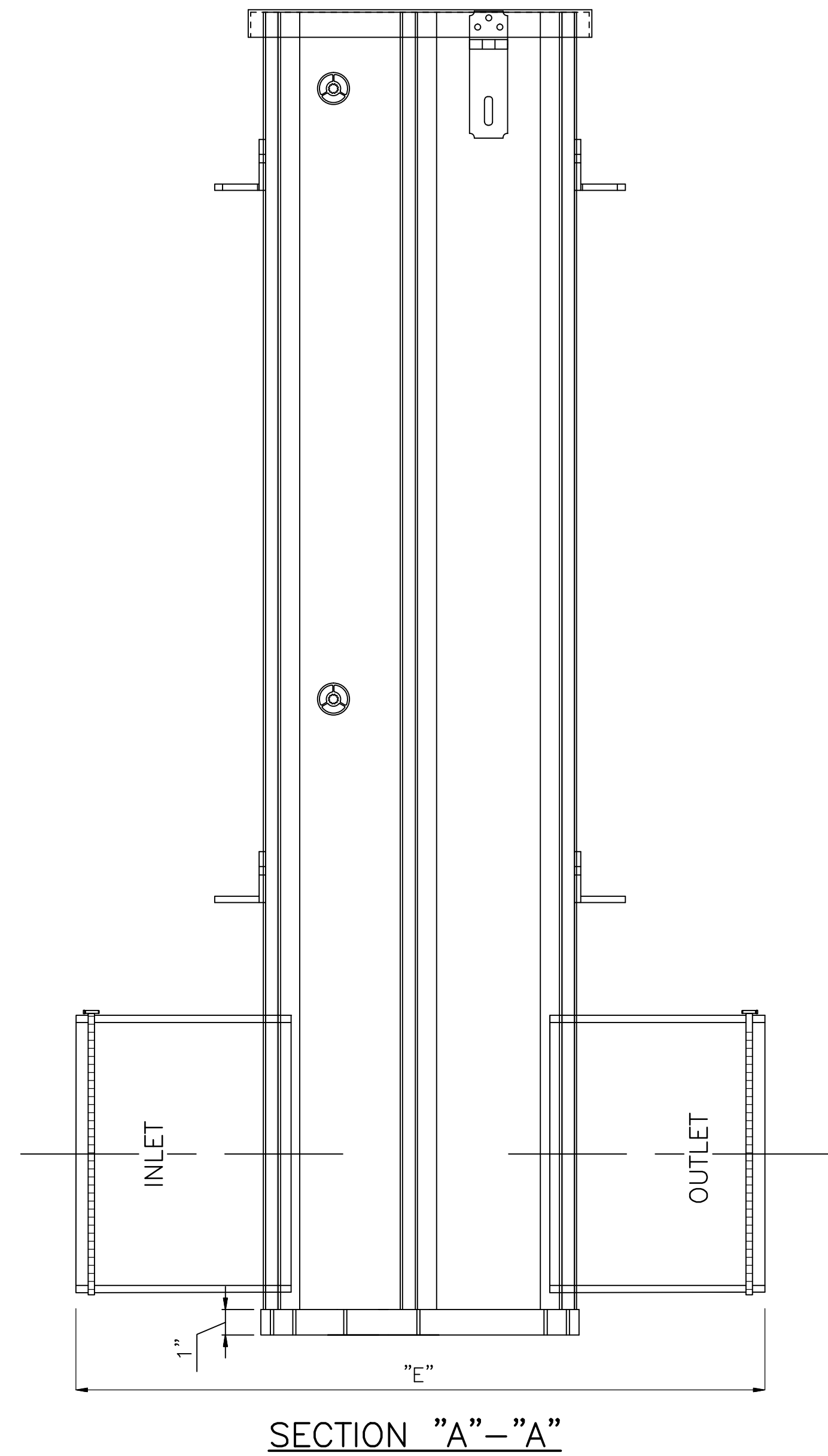
CULVERT STRUCTURE  
NOT TO SCALE



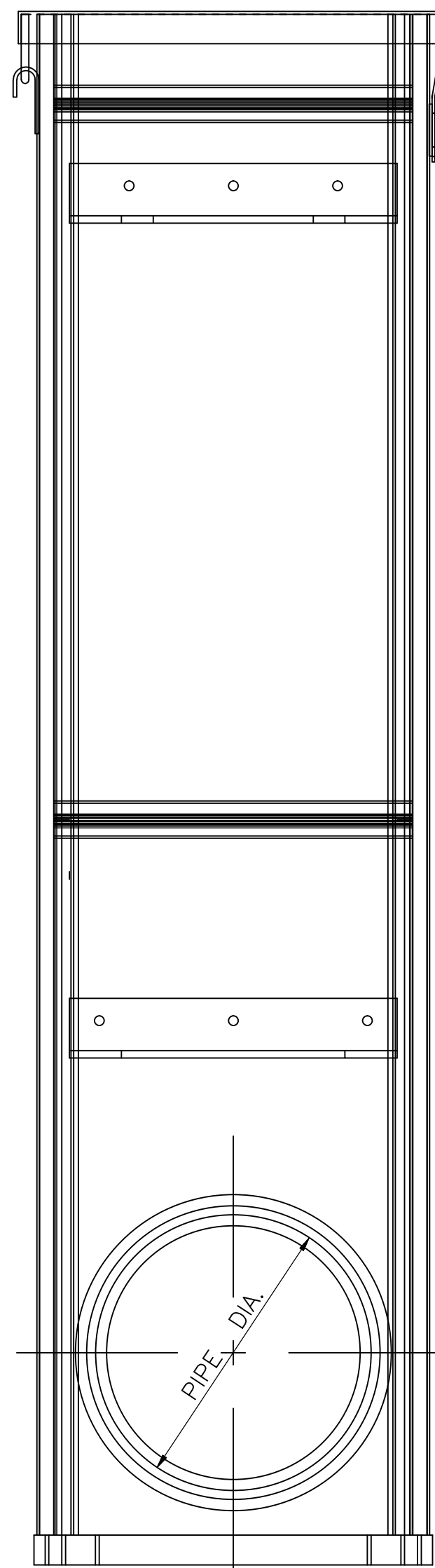
PIPE INSTALLATION & REMOVAL DETAIL  
NOT TO SCALE



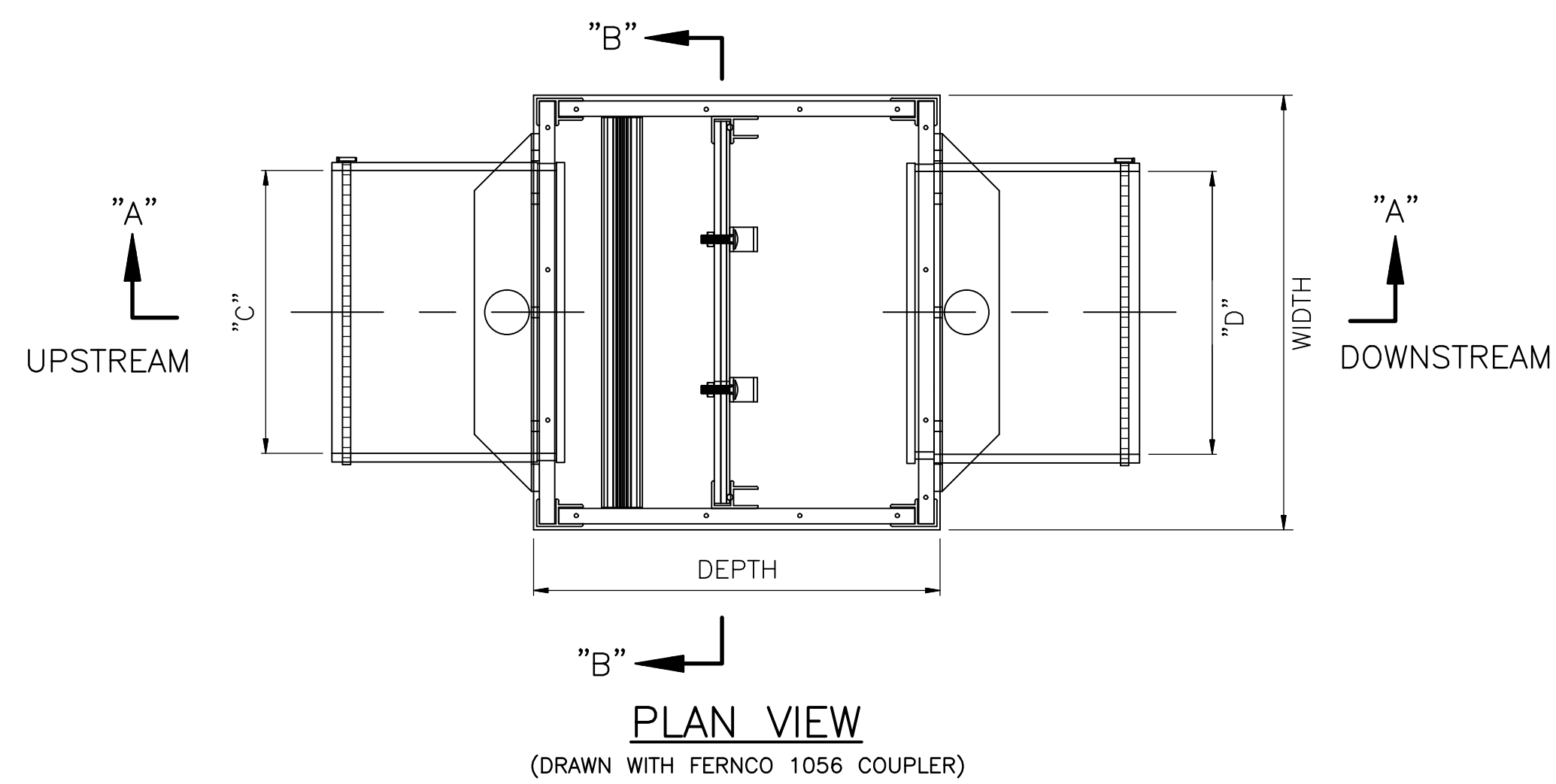
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10	x	x	x



SECTION "A"-"A"

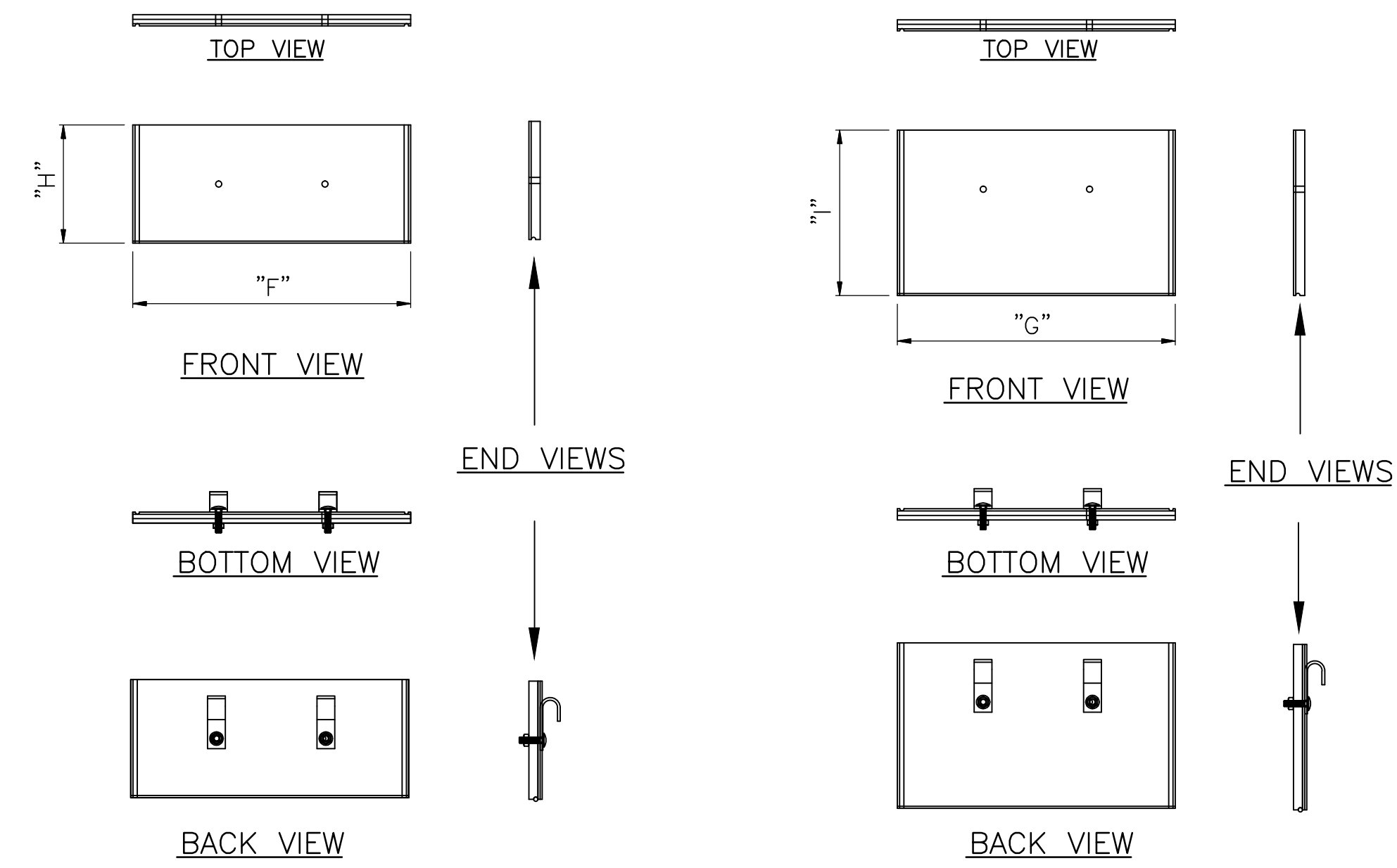


SECTION "B"-"B"



PLAN VIEW

(DRAWN WITH FERNCO 1056 COUPLER)



STOPLOG DETAIL  
NOT TO SCALE

PIPE DIA.	INSIDE DIM.		COUPLING DIM.		COUPLING LENGTH H	STOPLOG DIM.			
	WIDTH	DEPTH	"c" (I.D.)	"d" (I.D.)		WIDTH		HEIGHT	
						"F"	"G"	"H"	"I"
4"	6"	10"	4.42"	4.42"	17.5"	7.75"	7.75"	5"	7"
6"	8"	10"	6.38"	6.38"	17.5"	7.75"	7.75"	5"	7"
8"	12"	12"	8.50"	8.50"	23.5"	11.75"	11.75"	5"	7"
10"	14"	16"	10.60"	10.60"	27.5"	13.75"	13.75"	5"	7"
12"	16"	20"	12.83"	12.83"	31.5"	15.75"	15.75"	5"	7"
15"	20"	24"	17.85"	17.85"	43.5"	19.75"	19.75"	5"	7"
18"	24"	28"	21.70"	21.70"	47.5"	23.75"	23.75"	5"	7"
24"	31"	39"	29.00"	29.00"	58.5"	30.75"	30.75"	5"	7"

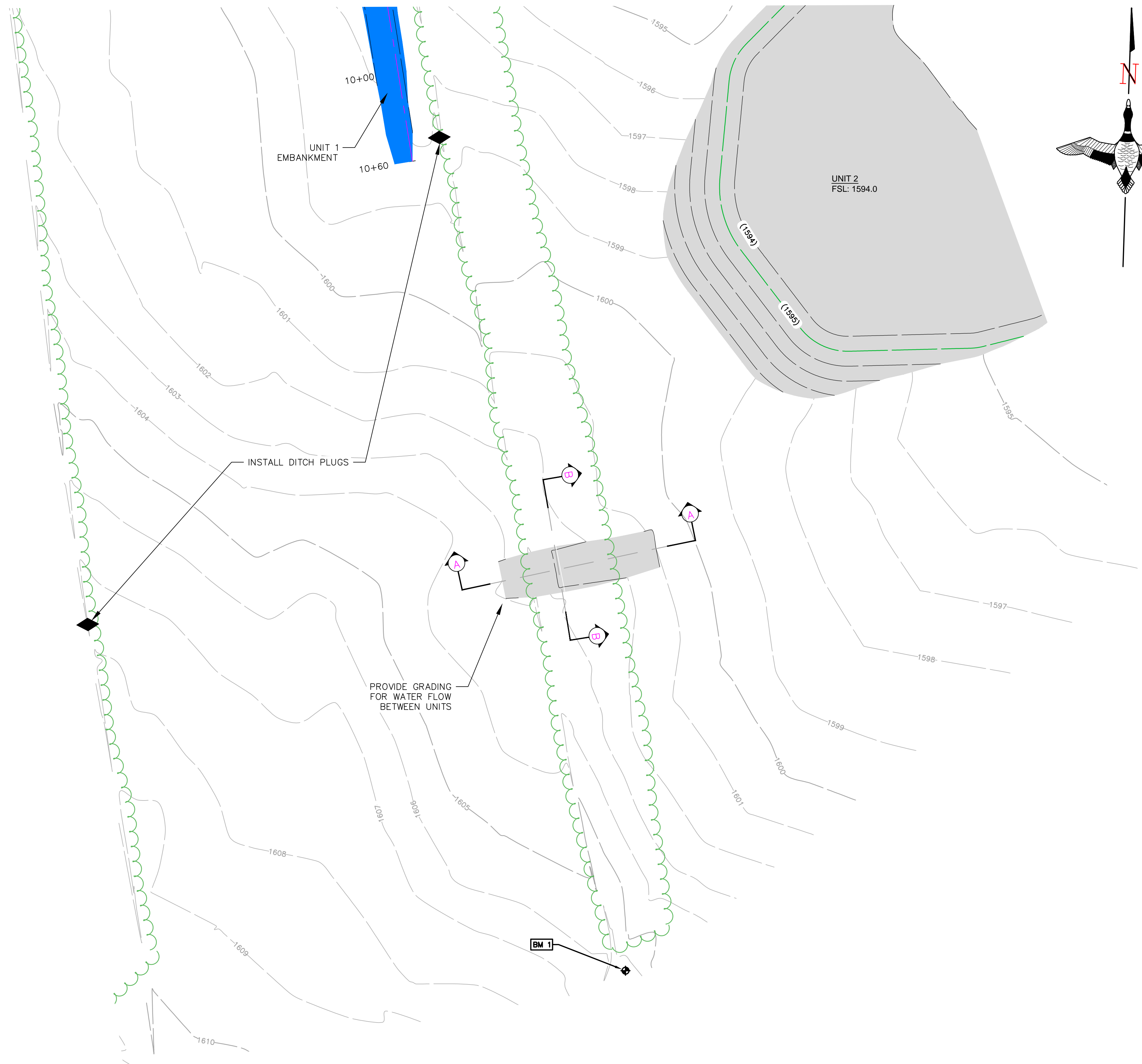
\* ALL APPLICATIONS WILL UTILIZE DUAL WALL HANCOR BLUE SEAL PIPE OR APPROVED EQUAL FOR ATTACHMENT TO INLINE WATER CONTROL STRUCTURE

AGRI-DRAIN® INLINE WATER LEVEL CONTROL STRUCTURE DETAIL

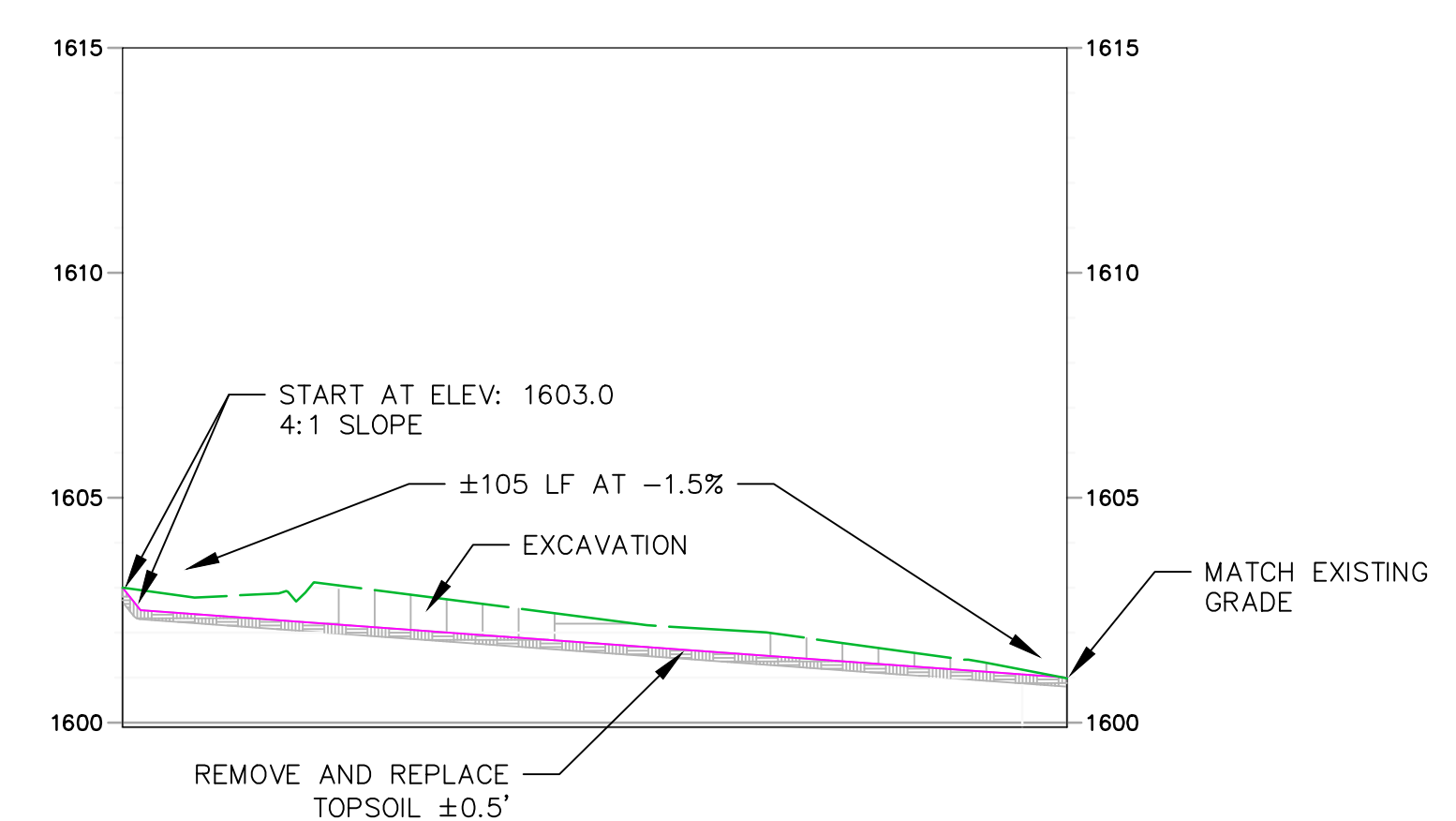
NOT TO SCALE

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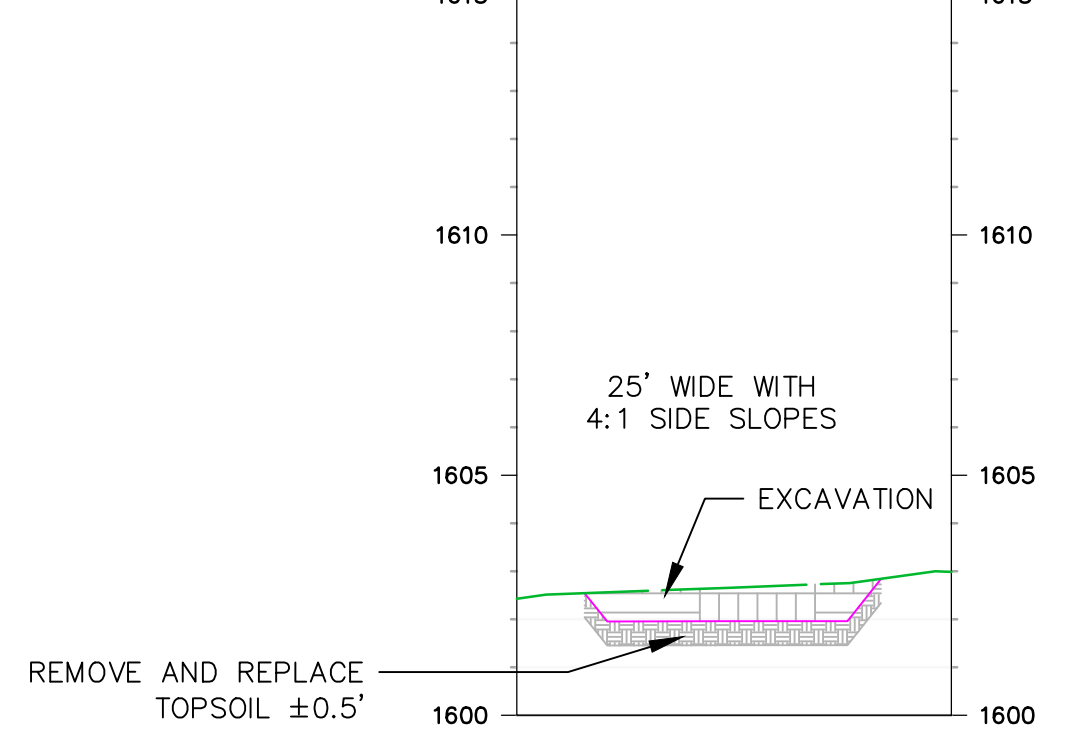




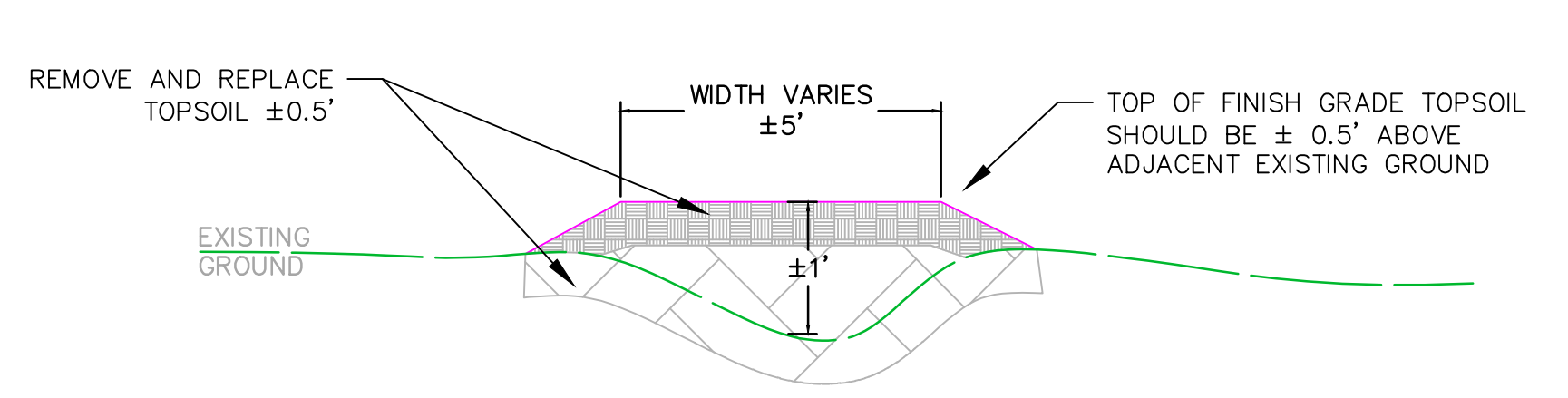
SECTION A-A



SECTION B-B



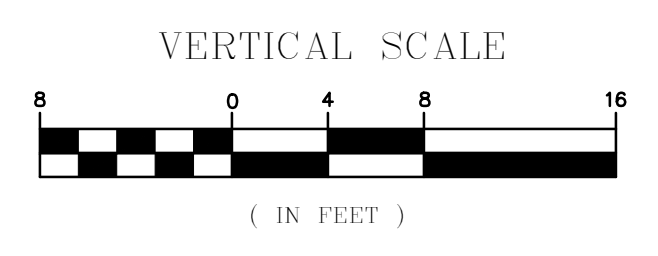
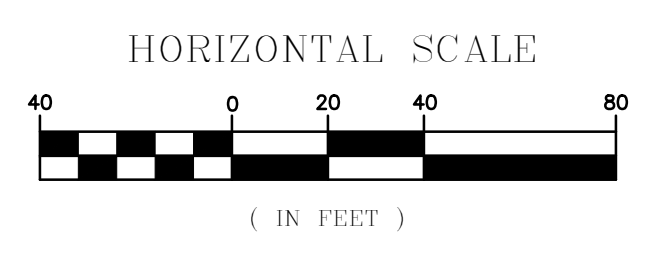
DITCH PLUG TYPICAL 2 LOCATIONS



**NOTES:**  
 DITCH PLUGS SHOULD BE ±3' IN LENGTH.  
 DITCH PLUGS WILL REQUIRE SEED AND MULCH UPON COMPLETION.  
 ANY AND ALL SLOPES TO BE A MINIMUM OF 2:1.

**LEGEND**

	EXISTING GROUND PROFILE		EXISTING TREE LINE		EXISTING OVERHEAD ELECTRIC
	PROPOSED GROUND PROFILE		EDGE OF VEGETATION LINE		EXISTING UTILITY POLE
	EXISTING BERM CL		EDGE OF CULTIVATION		EXISTING GUY WIRE
	EXISTING SPOT ELEVATION		APPROXIMATE WATERLINE		EXISTING LIGHT POLE
	HORIZONTAL & VERTICAL CONTROL		EDGE OF RIPRAP		EXISTING TELEPHONE PED
	BENCHMARK		EDGE OF PAVEMENT		SOIL BORING
	EXISTING MAJOR CONTOUR		EDGE OF GRAVEL		WATER CONTROL STRUCTURE
	PROPOSED MAJOR CONTOUR		ROAD OR TRAIL CL		EXISTING SINGLE SIGN
	PROPOSED BERM CL		EXISTING FENCE LINE		EXISTING CATCH BASIN
	PROPOSED DITCH CL		APPROX. BOUNDARY LINE		EXISTING MANHOLE
			APPROX. RIGHT OF WAY LINE		EXISTING WELL
			FOUND PROPERTY CORNER		EXISTING UTILITY LINE



**PRELIMINARY**

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 ANN ARBOR, MICHIGAN (734) 623-2000  
 BISMARCK, NORTH DAKOTA (701) 355-3500  
**DUCKS UNLIMITED**

**DITCH PLUG PLAN**  
 PREEMPTION ROAD MITIGATION SITE  
 NEW YORK IN-LIEU FEE PROGRAM  
 SENECA-FINGER LAKES REGION  
 SERVICE AREA  
 SCHUYLER COUNTY, NEW YORK

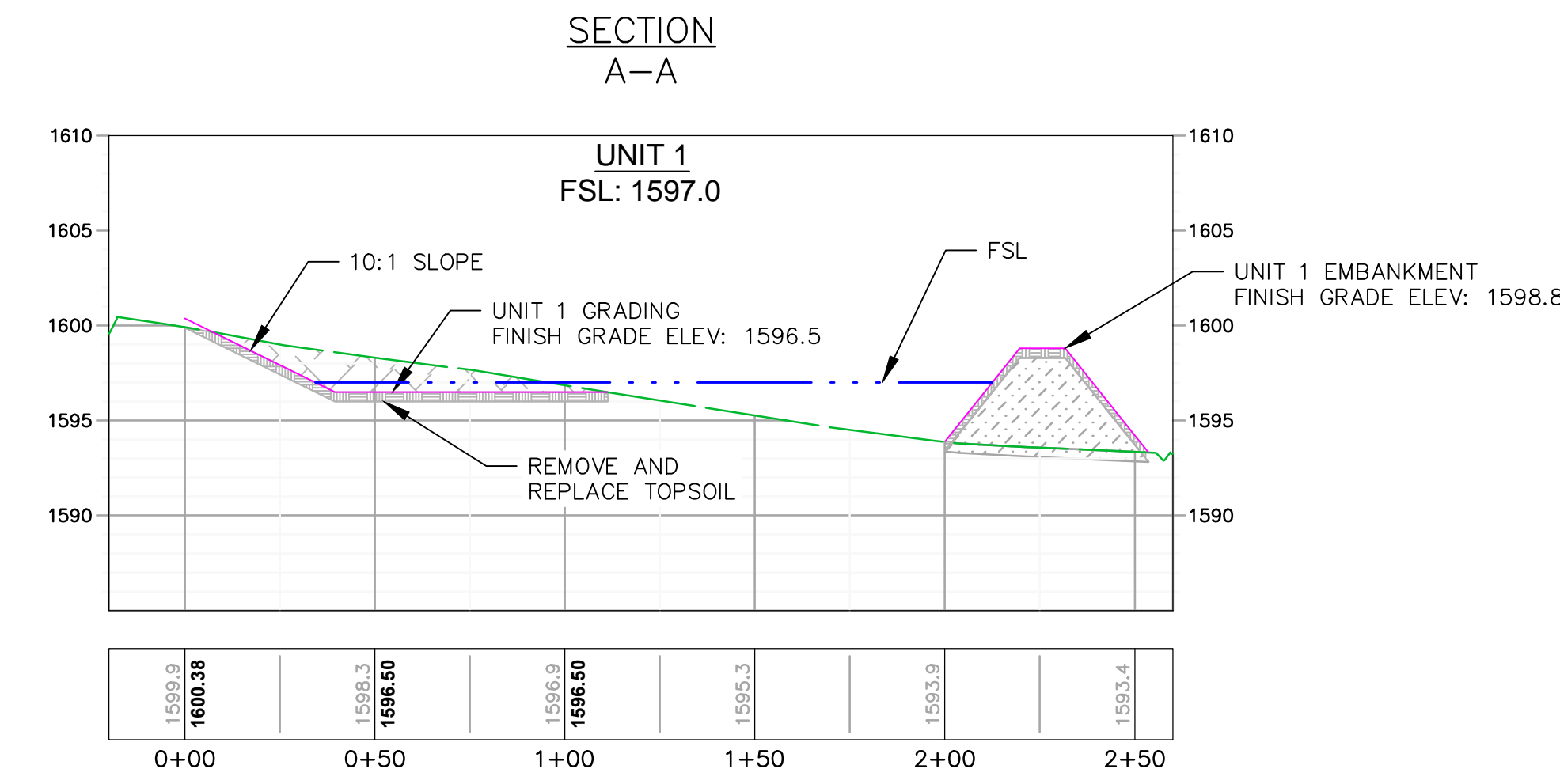
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4	x	x	
5	x	x	
6	x	x	
7	x	x	
8	x	x	
9	x	x	
10	x	x	

CAD FILE: NY-181-1\_DESIGN  
 DESIGNED BY: PW  
 DRAWN BY: JA  
 SURVEYED BY: JP GB  
 BIOLOGIST: BN  
 DATE: 12/03/2015  
 PROJECT NO: US-NY-181-1  
 GLARO-NY-057-08

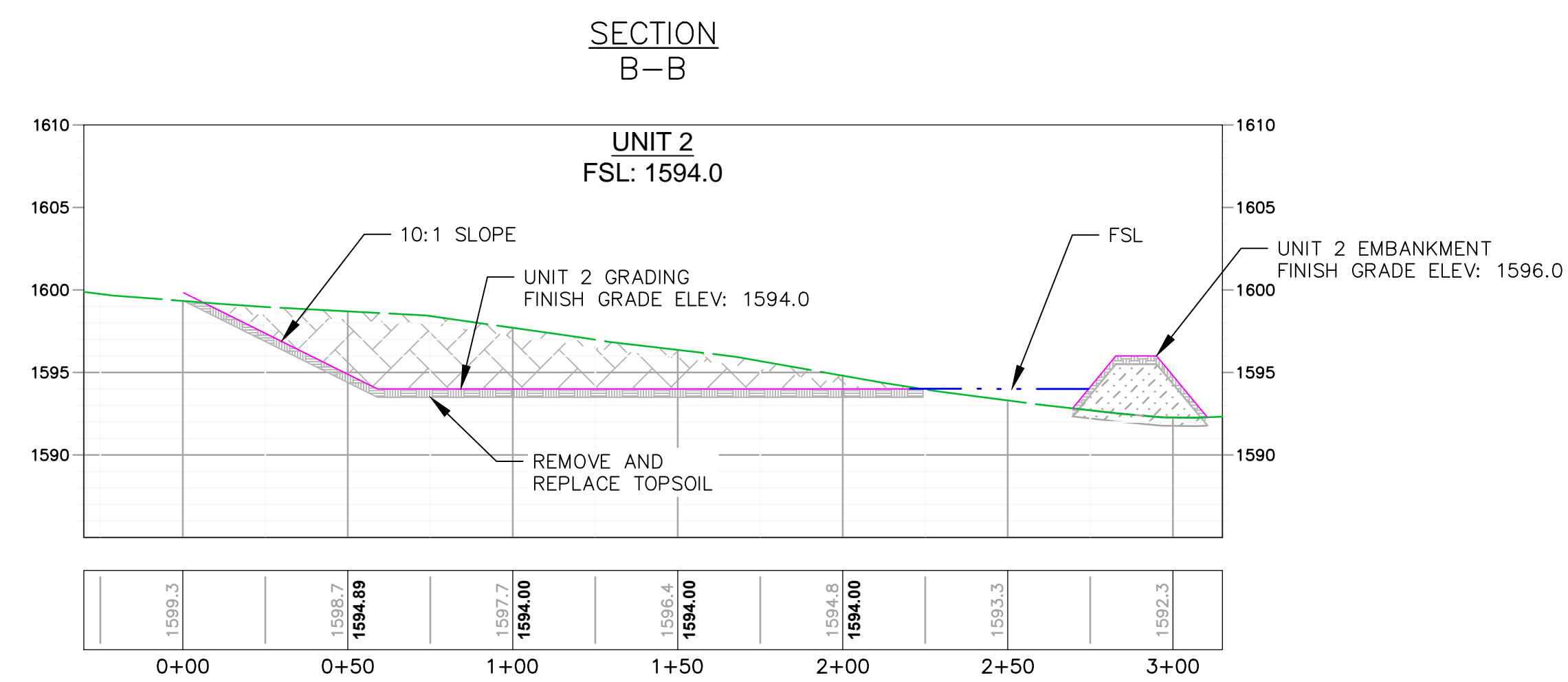




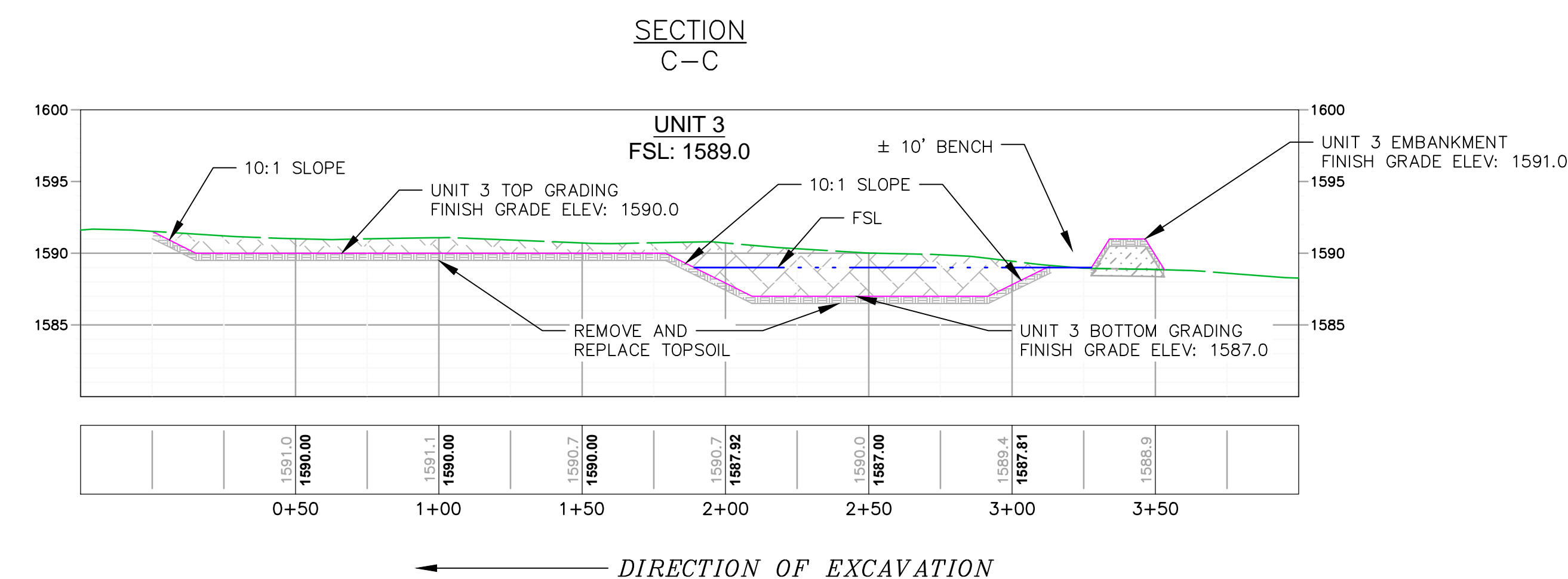




**UNIT 1**  
 EMBANKMENT TOPSOIL: 725 CYDS  
 EMBANKMENT COMPACTED IN PLACE: 3325 CYDS  
 EMBANKMENT SITE PREP: 725 CYDS  
 EMBANKMENT FOOTPRINT: 39335 SQFT  
 GRADING EXCAVATION: 2940 CYDS  
 GRADING SITE PREP: 1310 CYDS  
 GRADING FOOTPRINT: 70640 SQFT



**UNIT 2**  
 EMBANKMENT TOPSOIL: 510 CYDS  
 EMBANKMENT COMPACTED IN PLACE: 1890 CYDS  
 EMBANKMENT SITE PREP: 510 CYDS  
 EMBANKMENT FOOTPRINT: 27295 SQFT  
 GRADING EXCAVATION: 3260 CYDS  
 GRADING SITE PREP: 940 CYDS  
 GRADING FOOTPRINT: 50470 SQFT

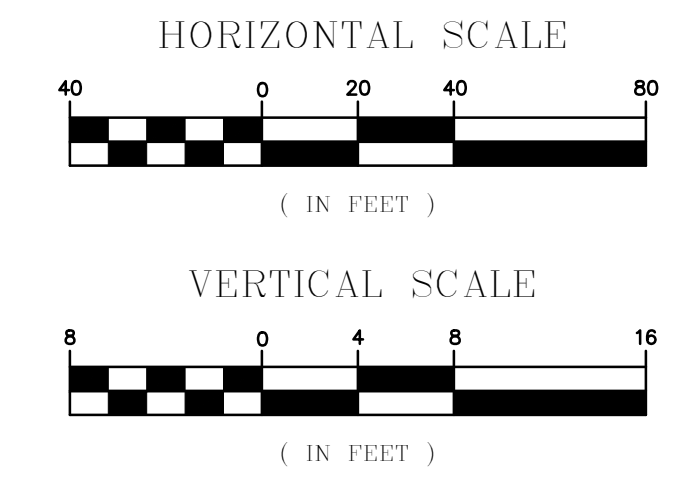
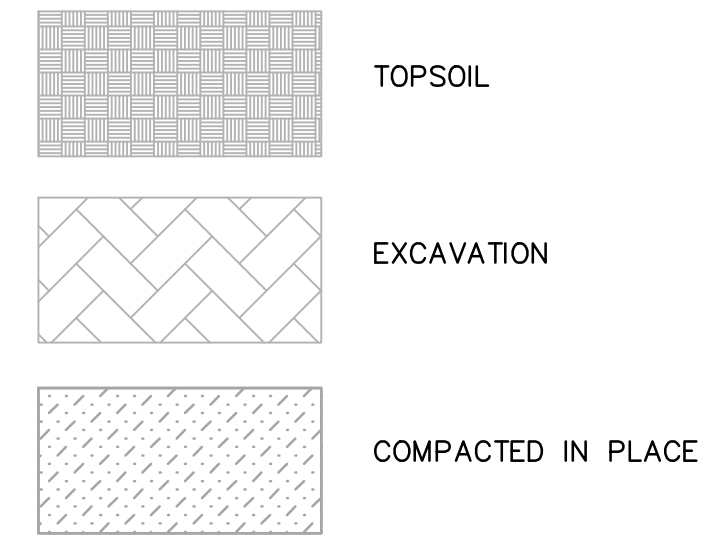


**UNIT 3**  
 EMBANKMENT TOPSOIL: 630 CYDS  
 EMBANKMENT COMPACTED IN PLACE: 2440 CYDS  
 EMBANKMENT SITE PREP: 630 CYDS  
 EMBANKMENT FOOTPRINT: 34000 SQFT  
 GRADING EXCAVATION: 6340 CYDS  
 GRADING SITE PREP: 2280 CYDS  
 GRADING FOOTPRINT: 122970 SQFT

**NOTES:**  
 THE UNIT 3 BOTTOM GRADING SHOULD BE DONE PRIOR TO THE TOP GRADING PLAN. THE TOP GRADING PLAN WILL BE UTILIZED IF ADDITIONAL BORROW MATERIAL IS REQUIRED FOR EMBANKMENT CONSTRUCTION.

**LEGEND**

EXISTING GROUND PROFILE	EXISTING TREE LINE	EXISTING OVERHEAD ELECTRIC
PROPOSED GROUND PROFILE	EDGE OF VEGETATION LINE	EXISTING UTILITY POLE
EXISTING BERM CL	EDGE OF CULTIVATION	EXISTING GUY WIRE
EXISTING SPOT ELEVATION	APPROXIMATE WATERLINE	EXISTING LIGHT POLE
HORIZONTAL & VERTICAL CONTROL	EDGE OF RIPRAP	EXISTING TELEPHONE PED
BENCHMARK	EDGE OF PAVEMENT	SOIL BORING
EXISTING MAJOR CONTOUR	ROAD OR TRAIL CL	WATER CONTROL STRUCTURE
PROPOSED MAJOR CONTOUR	EXISTING FENCE LINE	EXISTING SINGLE SIGN
PROPOSED BERM CL	APPROX. BOUNDARY LINE	EXISTING CATCH BASIN
PROPOSED DITCH CL	APPROX. RIGHT OF WAY LINE	EXISTING MANHOLE
	FOUND PROPERTY CORNER	EXISTING WELL
		EXISTING UTILITY LINE



PRELIMINARY

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DUCKS UNLIMITED

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MITIGATION GRADING PLAN  
 CROSS SECTIONS  
 PREEMPTION ROAD MITIGATION SITE  
 NEW YORK IN-LIEU FEE PROGRAM  
 SENECA-FINGER LAKES REGION  
 SERVICE AREA  
 SCHUYLER COUNTY, NEW YORK

Revision No.	By	Date
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2	x	x
3	x	x
4	x	x
5	x	x
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25	x	x
26	x	x
27	x	x
28	x	x
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30	x	x

CAD FILE:  
 NY-181-1\_DESIGN

DESIGNED BY: PW  
 DRAWN BY: JA  
 SURVEYED BY: JP GB  
 BIOLOGIST: BN

DATE:  
 12/03/2015

PROJECT NO:  
 US-NY-181-1

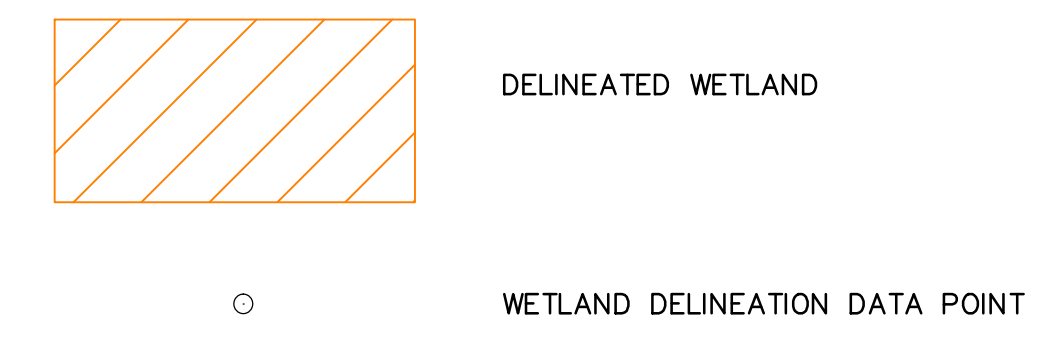
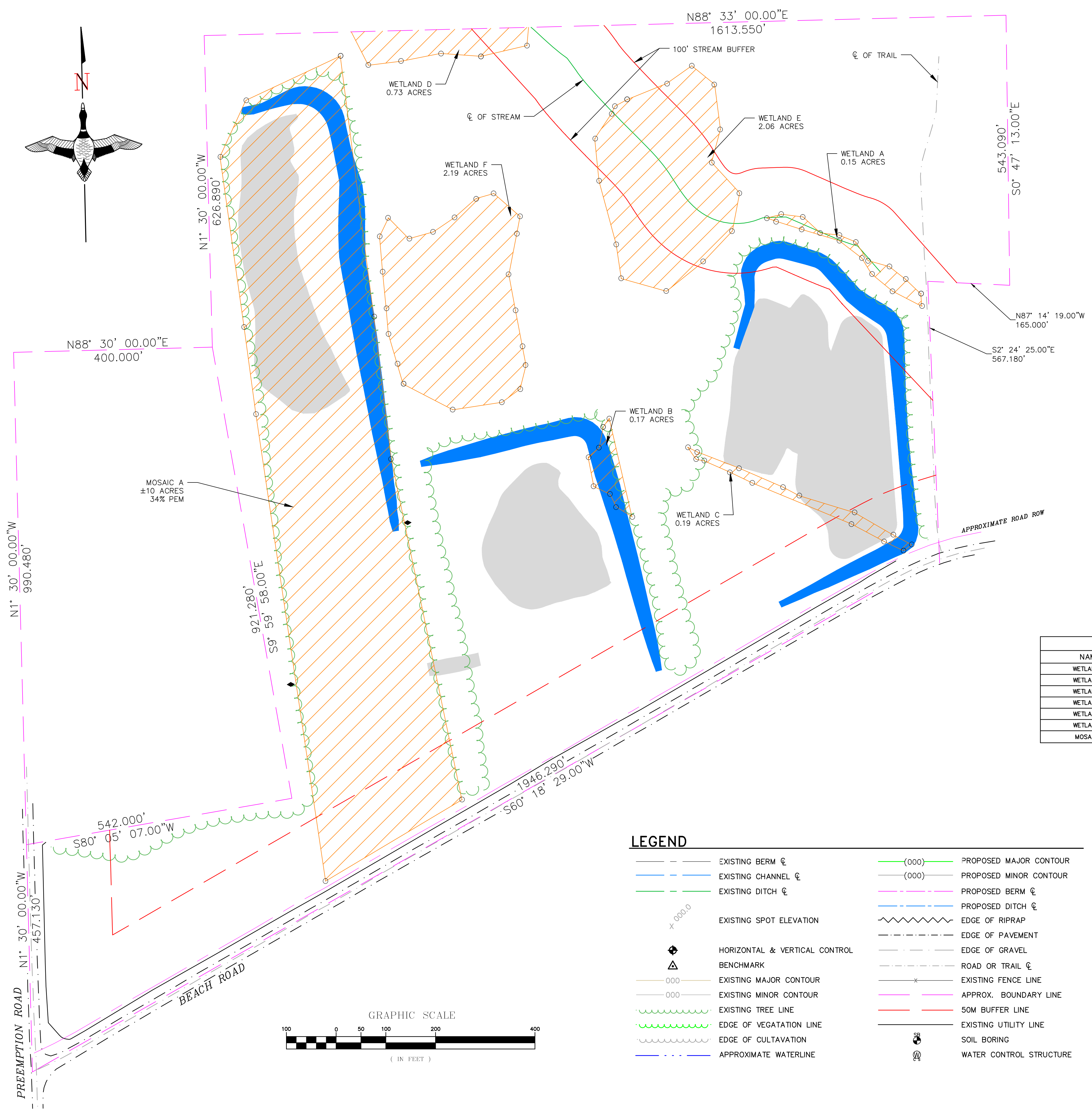
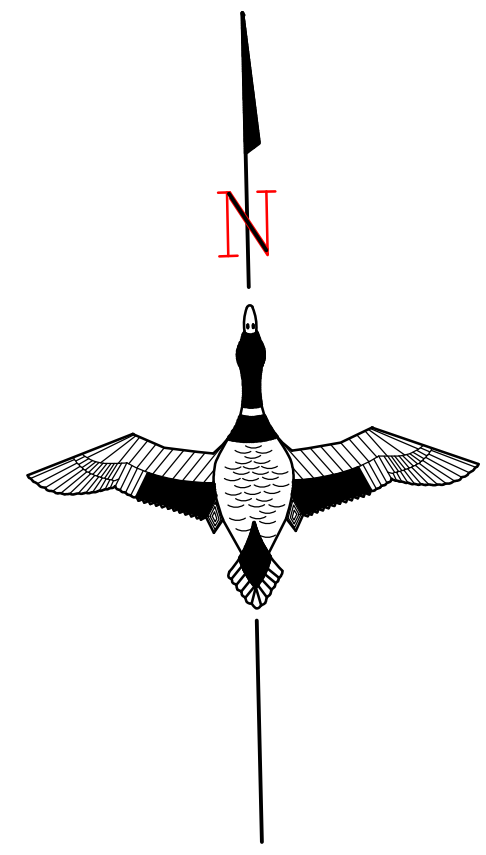
GLARO-NY2-057-10

©GLARO CSD Projects NEW YORK/US-NY-181-1 - Pre-Emption Rd (CSD) DRAWING NY-181-1 - Pre-Emption Rd (CSD) 3/20/16 10:25 PM GLARO



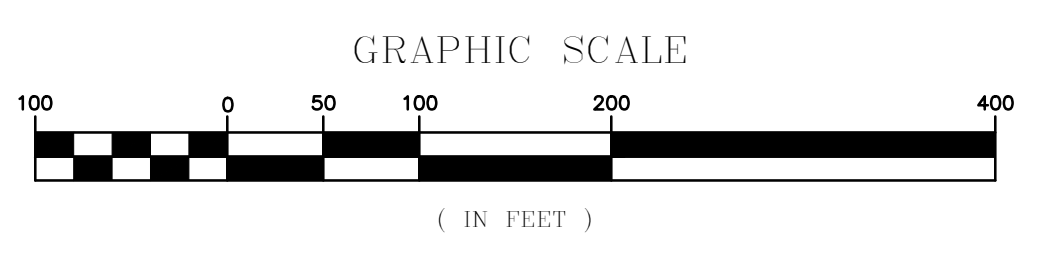






WETLAND TABLE		
NAME	TYPE	ACRES
WETLAND A	PSS	0.15
WETLAND B	PEM	0.17
WETLAND C	PEM	0.19
WETLAND D	PSS	0.73
WETLAND E	PSS	2.06
WETLAND F	PSS	2.19
MOSAIC A	34% PEM	TOTAL ±10 (3.39 @ 34%)

LEGEND	
— — — — —	EXISTING BERM $\phi$
— — — — —	EXISTING CHANNEL $\phi$
— — — — —	EXISTING DITCH $\phi$
x 000.0	EXISTING SPOT ELEVATION
◆	HORIZONTAL & VERTICAL CONTROL
▲	BENCHMARK
000	EXISTING MAJOR CONTOUR
000	EXISTING MINOR CONTOUR
— — — — —	EXISTING TREE LINE
— — — — —	EDGE OF VEGETATION LINE
— — — — —	EDGE OF CULTIVATION
— — — — —	APPROXIMATE WATERLINE
— (000)	PROPOSED MAJOR CONTOUR
— (000)	PROPOSED MINOR CONTOUR
— — — — —	PROPOSED BERM $\phi$
— — — — —	PROPOSED DITCH $\phi$
— — — — —	EDGE OF RIPRAP
— — — — —	EDGE OF PAVEMENT
— — — — —	EDGE OF GRAVEL
— — — — —	ROAD OR TRAIL $\phi$
x	EXISTING FENCE LINE
— — — — —	APPROX. BOUNDARY LINE
— — — — —	50M BUFFER LINE
— — — — —	EXISTING UTILITY LINE
SB	SOIL BORING
⊗	WATER CONTROL STRUCTURE



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**DUCKS UNLIMITED**

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**WETLAND DELINEATION**  
PREEMPTION ROAD MITIGATION SITE  
NEW YORK IN-LIEU FEE PROGRAM  
SENECA-FINGER LAKES REGION  
SERVICE AREA  
SCHUYLER COUNTY, NEW YORK

Revision No.	Sheet No.	Date	By
x	x	x	x
x	x	x	x
x	x	x	x
x	x	x	x
x	x	x	x
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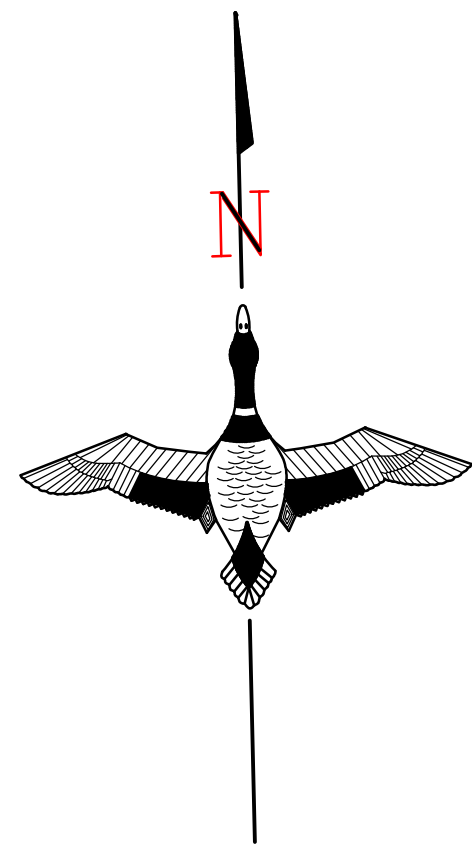
DESIGNED BY: PW  
DRAWN BY: JA  
SURVEYED BY: GB JP  
BIOLOGIST: MR

DATE:  
12/03/2016  
PROJECT NO:  
US-NY-181-1

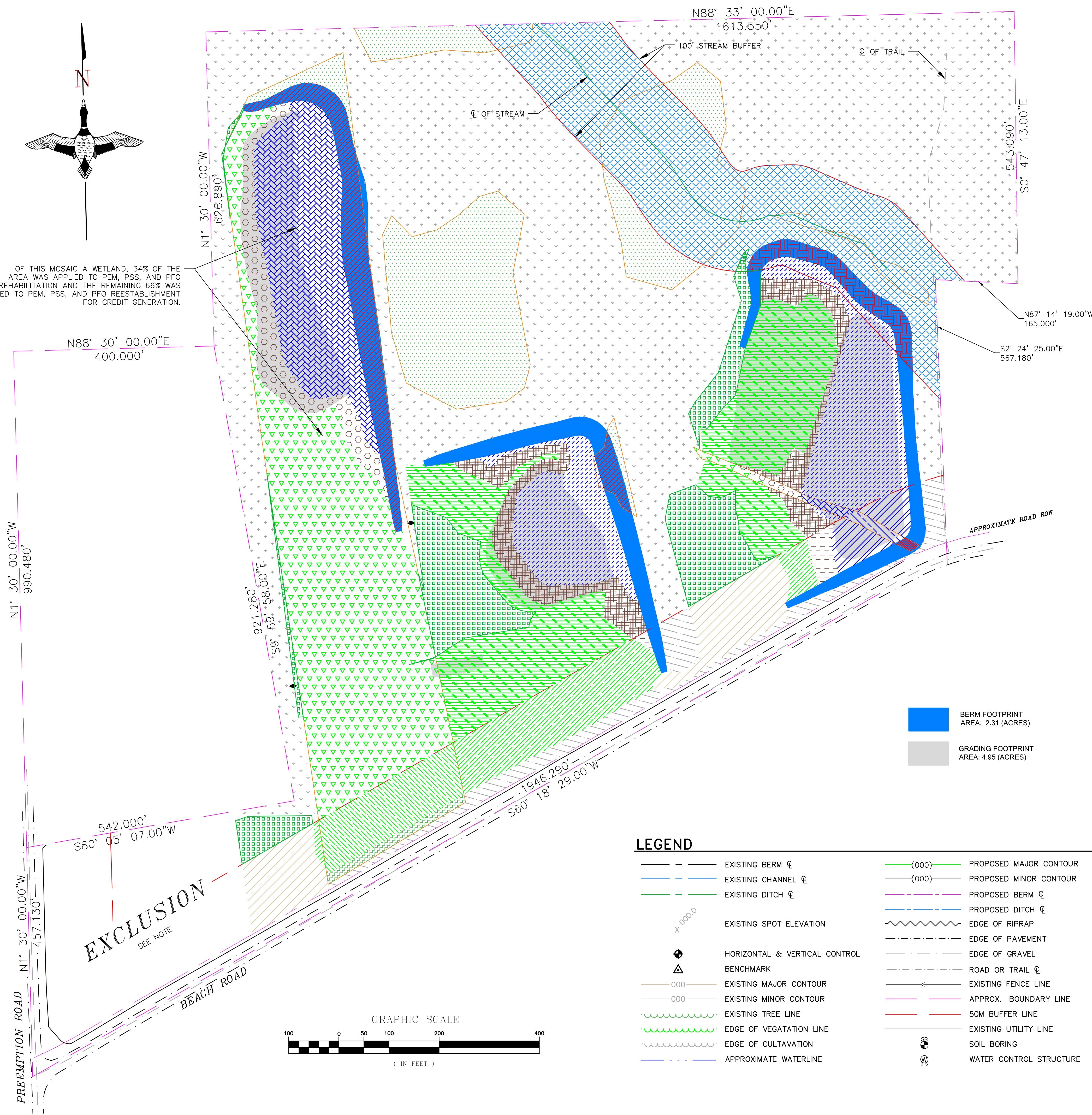
GLARO-NY2-057-12

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OF THIS MOSAIC A WETLAND, 34% OF THE AREA WAS APPLIED TO PEM, PSS, AND PFO REHABILITATION AND THE REMAINING 66% WAS APPLIED TO PEM, PSS, AND PFO REESTABLISHMENT FOR CREDIT GENERATION.

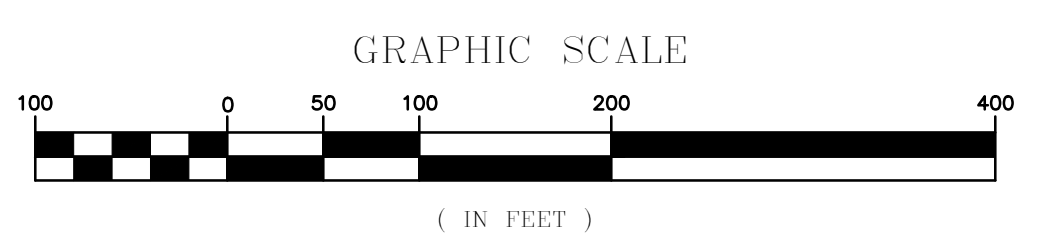


- PEM REESTABLISHMENT  
AREA: 3.93 (ACRES)
- PEM REESTABLISHMENT WITHIN 50 METER BUFFER  
AREA: 0.30 (ACRES)
- PEM REHABILITATION  
AREA: 0.75 (ACRES)
- PEM REHABILITATION WITHIN 50 METER BUFFER  
AREA: 0.06 (ACRES)
- PFO REESTABLISHMENT  
AREA: 6.76 (ACRES)
- PFO REESTABLISHMENT WITHIN 50 METER BUFFER  
AREA: 1.68 (ACRES)
- PFO REHABILITATION  
AREA: 1.64 (ACRES)
- PFO REHABILITATION WITHIN 50 METER BUFFER  
AREA: 0.25 (ACRES)
- PSS REESTABLISHMENT  
AREA: 1.55 (ACRES)
- PSS REESTABLISHMENT WITHIN 50 METER BUFFER  
AREA: 0.13 (ACRES)
- PSS REHABILITATION  
AREA: 0.28 (ACRES)
- UPLAND TREE REESTABLISHMENT  
AREA: 2.42 (ACRES)
- UPLAND TREE REESTABLISHMENT WITHIN 50 METER BUFFER  
AREA: 1.12 (ACRES)
- UPLAND BUFFER PRESERVATION  
AREA: 16.38 (ACRES)
- UPLAND BUFFER PRESERVATION WITHIN 50 METER BUFFER  
AREA: 0.84 (ACRES)
- WETLAND IMPACT  
AREA: 0.67 (ACRES)
- WETLAND IMPACT WITHIN 50 METER BUFFER  
AREA: 0.01 (ACRES)
- WETLAND PRESERVATION  
AREA: 3.39 (ACRES)
- WETLAND PRESERVATION WITHIN 50 METER BUFFER  
AREA: 0.12 (ACRES)
- STREAM BUFFER PRESERVATION  
LENGTH: ±1050 LF

- BERM FOOTPRINT  
AREA: 2.31 (ACRES)
- GRADING FOOTPRINT  
AREA: 4.95 (ACRES)

**LEGEND**

- EXISTING BERM CL
- EXISTING CHANNEL CL
- EXISTING DITCH CL
- EXISTING SPOT ELEVATION
- HORIZONTAL & VERTICAL CONTROL
- BENCHMARK
- EXISTING MAJOR CONTOUR
- EXISTING MINOR CONTOUR
- EXISTING TREE LINE
- EDGE OF VEGETATION LINE
- EDGE OF CULTIVATION
- APPROXIMATE WATERLINE
- PROPOSED MAJOR CONTOUR
- PROPOSED MINOR CONTOUR
- PROPOSED BERM CL
- PROPOSED DITCH CL
- EDGE OF RIPRAP
- EDGE OF PAVEMENT
- EDGE OF GRAVEL
- ROAD OR TRAIL CL
- EXISTING FENCE LINE
- APPROX. BOUNDARY LINE
- 50M BUFFER LINE
- EXISTING UTILITY LINE
- SOIL BORING
- WATER CONTROL STRUCTURE



**NOTE:**  
EXCLUSION AREA NOT INCLUDED IN CREDIT GENERATION OR THE EASEMENT.

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 BISMARCK, NORTH DAKOTA (701) 355-3500  
**DUCKS UNLIMITED**

**CREDIT GENERATION  
 PREEMPTION ROAD MITIGATION SITE  
 NEW YORK IN-LIEU FEE PROGRAM  
 SENECA-FINGER LAKES REGION  
 SERVICE AREA  
 SCHUYLER COUNTY, NEW YORK**

Revision No.	By	Date	Revisions
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CAD FILE: NY-181-1\_WET DEL  
 DESIGNED BY: PW  
 DRAWN BY: JA  
 SURVEYED BY: GB JP  
 BIOLOGIST: MR  
 DATE: 12/03/2016  
 PROJECT NO: US-NY-181-1  
 GLARO-NY-057-13











**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.

16

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

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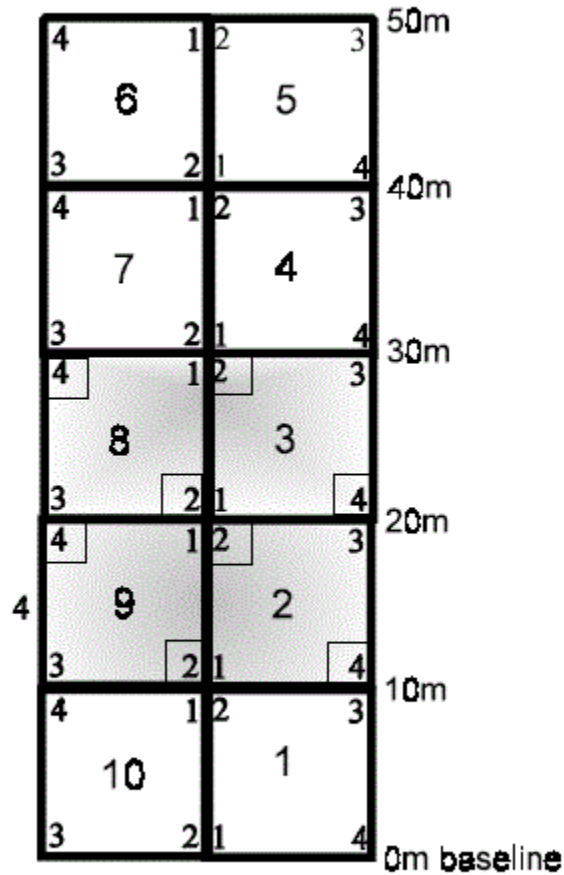
10.1 Executory Limitation. If Grantee shall cease to exist or be qualified organization under Section 170(h) of the Internal Revenue Code, as amended, or has been determined by the Buffalo District Corps of Engineers to not hold firm the interest in protecting of water resources regulated under Section 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.