



FLAT CREEK SOLAR

Permit Application No. 23-00054

Towns of Root and Canajoharie

Montgomery County

New York

Appendix 12-6

Net Conservation Benefit Plan

August 2024

APPENDIX 12-6 NET CONSERVATION BENEFIT PLAN

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1.0 Introduction

1.1 Facility Overview

Flat Creek Solar NY LLC, a subsidiary of Cordelio Power LP (Cordelio; Applicant) proposes the construction of Flat Creek Solar (Facility), a 300-megawatt (MW) solar generating facility located in the Towns of Root and Canajoharie, Montgomery County, New York (Figure 1). The participating parcels encompassing Facility components totals approximately 3,794 acres (Facility Site). Facility components will include commercial-scale solar arrays, access roads, buried electric collection lines, and electrical interconnection facilities (e.g., a collection substation and point of interconnection (POI) switchyard). The collection substation and POI switchyard will be located on land within the Facility Site. This Net Conservation Benefit Plan (NCBP; the Plan) provides information required in accordance with the requirements of Section 1100-2.13 of the Article VIII Regulations.

1.2 Purpose of the Net Conservation Benefit Plan

The purpose of this document is to outline actions proposed to be undertaken by the Applicant to result in a net conservation benefit for [REDACTED] and [REDACTED] during Facility construction and operation. This Plan is required as described in the Article VIII Regulations:

- Under Section 1100-2.13 (f): *For a facility that would adversely impact any NYS threatened or endangered species or their habitat, a copy of a Net Conservation Benefit Plan prepared in compliance with section 1100-6.4 (o) of this Part.*

A net conservation benefit is achieved when the adverse impacts of the Facility on a protected species or its occupied habitat will be outweighed by the positive benefit anticipated from the mitigation measures proposed (NYSDEC, [n.d.]a).

The Applicant has taken the following steps to assess, evaluate, and mitigate for impacts to state-listed threatened and endangered species, particularly to [REDACTED], as further detailed in Section 2.0.

- Agency consultations with United States Fish and Wildlife Service (USFWS) (2022), New York State Department of Environmental Conservation (NYSDEC) (2022), and

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Office of Renewable Energy Siting (ORES; the Office) (prior to implementation of each pre-application survey);

- Wildlife Site Characterization Report (WSCR; 2022);
- Grassland Breeding Bird Surveys (BBS; 2022) and Wintering Grassland Raptor Surveys (WGRS; 2020-2022);
- Occupied Habitat Take Conference;
- Final Take Determination;
- Discussions with Magnolia on mitigation; and
- Preparation of this final Plan.

2.0 Species Pursuant to This Plan

Based on the ORES Determination of Occupied Habitat, Take, and Net Conservation Benefit, the Facility will adversely impact (“take”) state-listed [REDACTED] and [REDACTED]. Therefore, pursuant to 6 NYCRR Part 182§ 900-6.4(o), this NCBP has been prepared in compliance with § 1100-6.4(o). The purpose of the NCBP is to identify and describe the proposed mitigation actions to be undertaken to offset impacts resulting from Facility development such that a net conservation benefit is achieved for each listed species impacted (in this instance, the [REDACTED] and [REDACTED]). The implementation of the proposed NCBP would result in a net positive conservation benefit on to each of the affected species by protecting [REDACTED] or [REDACTED].

2.1 ORES Determination

ORES issued a final Determination of Occupied Habitat, Take, and Net Conservation Benefit on April 17, 2024, which indicated the following regarding the need for a NCBP:

- The Facility Site overlaps with occupied habitat for [REDACTED]. ORES has determined that the Facility is estimated to adversely impact 7 [REDACTED], [REDACTED], [REDACTED], and [REDACTED]. The Applicant shall avoid potential significant adverse impact(s) to these habitats to the maximum extent practicable. If the Applicant can demonstrate that full avoidance of potential significant adverse impact(s) to these habitats is not practicable, the Applicant is required to develop and submit a NCBP to minimize or mitigate any remaining potential significant adverse impact(s) to these habitats for the proposed Facility.
- To avoid and minimize impacts to [REDACTED], construction shall also adhere to the Uniform Standards and Conditions (USC) § [REDACTED]. To avoid direct impacts to individual listed [REDACTED] during construction and to mitigate impacts to [REDACTED], the Applicant shall adhere to USC § [REDACTED] [REDACTED]

This NCBP is therefore required for the take of [REDACTED] and [REDACTED] [REDACTED] and [REDACTED]. There are no federal species requiring mitigation associated with Facility construction or operation.

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2.2 Applicant Consultations and Background

Early in development of the Facility, the Applicant prepared a WSCR pursuant to § 1100-1.3(g)(1) for the Facility and was submitted to the NYSDEC and the ORES on April 29, 2022. A Pre-application Wildlife Site Characterization Consultation meeting between the Applicant and associated representatives, the NYSDEC, and ORES was held virtually on June 6, 2022. At this meeting, the agencies provided feedback on the content and conclusions of the WSCR. Following this meeting, ORES provided a Pre-Application Wildlife Site Characterization Consultation on June 8, 2022, confirming presence of occupied habitat in vicinity of the Facility and recommending supplemental surveys, as discussed below. The WSCR is included as Appendix 12-1 of Exhibit 12.

Following completion of BBS and WGRS, the Applicant provided the subsequent reports and data (Appendices 12-2 through 12-4 of Exhibit 12). The Applicant also submitted an Occupied Habitat & Estimated Take Memo and Field-by-Field Analysis on February 8, 2024. A subsequent Occupied Habitat & Take Conference was held with ORES on March 8, 2024, to discuss ORES' review of the Occupied Habitat and Estimated Take Memo, ORES' draft determination of occupied habitat and take, along with the Applicant's proposed mitigation. After this meeting, ORES provided a Determination of Occupied Habitat, Take, and Net Conservation Benefit on April 4, 2024. Another meeting was held between the Applicant and ORES on April 15, 2024, which resulted in a revised Determination of Occupied Habitat, Take, and Net Conservation Benefit being submitted to the Applicant on April 17, 2024.

2.2 Species Specifics and Survey Results

As described in Exhibit 12, WGRS were conducted by TRC within the Facility Site from November 16, 2020, to April 15, 2021, and November 15, 2021, to April 13, 2022. Grassland BBS were conducted by TRC within the Facility Site from May 3, 2022, to July 15, 2022. The total results of these surveys are summarized in Exhibit 12 of the Article VIII Application and associated appendices (i.e., Appendix 12-1 Wildlife Site Characterization Report; Appendix 12-2 Grassland Breeding Bird Survey Report; Appendix 12-3 Wintering Grassland Raptor Survey Report 2020-2021; and Appendix 12-4 Wintering Grassland Raptor Survey Report 2021-2022); species-specific results are summarized below.

2.2.1

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

During WGRS conducted by TRC in 2020-2021, there were [REDACTED] [REDACTED] observations were recorded during or incidental to stationary surveys and [REDACTED] were

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recorded during daytime driving surveys. [REDACTED]

[REDACTED] of the Facility Area, with [REDACTED]

[REDACTED] The [REDACTED]

[REDACTED] See Appendix 12-3 of Exhibit 12 of the Article VIII Application for the 2020-2021 Wintering Grassland Raptor Survey Report.

During WGRS conducted by TRC in 2021-2022, [REDACTED]. A total of [REDACTED] occurred during stationary and driving WGRS at the Facility Area with an additional [REDACTED] recorded incidentally to surveys. [REDACTED] use minutes [REDACTED] stationary survey locations. [REDACTED]

[REDACTED] This species was recorded [REDACTED]

[REDACTED] within the Facility Area. [REDACTED]

[REDACTED] See Appendix 12-4 of

Exhibit 12 of the Article VIII Application for the 2021-2022 Wintering Grassland Raptor Survey Report.

During grassland BBS conducted by TRC during the 2022 breeding season, [REDACTED]

[REDACTED] of which were recorded incidentally to regular surveys. Recorded behaviors of [REDACTED]

[REDACTED] the Facility Site. [REDACTED]

including [REDACTED]

[REDACTED] See Appendix 12-2 of Exhibit 12 of the Article VIII Application for the 2022 Grassland Breeding Bird Survey Report.

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2.2.2

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

During WGRS conducted by TRC in 2020-2021, there were [REDACTED], [REDACTED] which were recorded incidentally to regular surveys. [REDACTED] stationary survey locations. [REDACTED] of these observations occurred at [REDACTED] and [REDACTED] located in the [REDACTED] of the Facility Area. The

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Individuals were documented [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] during the survey. See Appendix 12-3 of Exhibit 12 of the Article VIII Application for the 2020-2021 State-Listed Wintering Grassland Raptor Survey Report.

During WGRS conducted by TRC in 2021-2022, there were [REDACTED], [REDACTED]

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were recorded incidentally to regular surveys. [REDACTED] stationary survey locations. Recorded behaviors [REDACTED], and [REDACTED]. [REDACTED] were categorized as [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] during the survey. See Appendix 12-4 of Exhibit 12 of the Article VIII Application for the 2020-2021 State-Listed Wintering Grassland Raptor Survey Report.

During grassland BBS conducted by TRC during the 2022 breeding season, [REDACTED] observed. See Appendix 12-2 of Exhibit 12 of the Article VIII Application for the 2022 Grassland Breeding Bird Survey Report.

2.3 Existing Habitat Conditions

Based on the habitat requirements of the [REDACTED] described above, the results of the WGRS and BBS, and consultation with the agencies (NYSDEC, and ORES), portions of the Facility Site can be considered [REDACTED]. As identified in the ORES Determination of Occupied Habitat, Take, and Net Conservation Benefit maps, [REDACTED] [REDACTED] [REDACTED] with exceptions primarily in the [REDACTED] of the Facility Site (Appendix 12-5 of Exhibit 12 of the Article VIII Application).

2.4 Estimated Take of Occupied Habitat

Based on the WSCR, the BBS, the WGRS, and ORES's Determination of Occupied Habitat, Incidental Take, and Net Conservation Benefit (Exhibit 12, Appendix 12-5), the Facility will be impacting [REDACTED] [REDACTED] (see Table 1). These numbers are based on the layout that was submitted at the time of the February 8, 2024, Occupied Habitat & Estimated Take Memo and Field-by-Field Analysis. The layout at the time of the Article VIII Application has since changed and reduced the acreage of occupied habitat taken. Therefore, a new take determination will be requested from ORES.

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Per Section [REDACTED] of the USCs, [REDACTED]
[REDACTED]
[REDACTED] These mitigation requirements are [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

The total acres of mitigation required to provide a net conservation benefit for the take of habitat for [REDACTED]. The extent of occupied habitat, “take” of occupied habitat, and subsequent acres to be mitigated is estimated at:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Table 1. Estimated Take of Occupied Habitat

Habitat Type	Species	Estimated Take Acreage ¹	Estimated Mitigation Acreage ¹
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Total:		[REDACTED]	[REDACTED]
¹ These numbers are based on the layout that was submitted at the time of the February 8, 2024, Occupied Habitat & Estimated Take Memo and Field-by-Field Analysis. The layout at the time of the Article VIII Application has since changed and reduced the acreage of occupied habitat taken. Therefore, a new take determination will be requested from ORES.			

As previously mentioned, the estimated take and mitigation acreage (shown above) is based on an

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outdated layout. The Applicant modified the design of the Project by removing panels from a portion of the Facility that contained [REDACTED] habitat in an effort to minimize potential impacts to [REDACTED]. Therefore, a new take determination will be requested from ORES, based on the revised layout and the estimated take acreage and mitigation acreage is anticipated to be less than [REDACTED]

2.5 Population Impacts Assessment

Habitat loss is the primary driver of population declines in the [REDACTED] documented within the Facility Site. Regionally, [REDACTED]

[REDACTED]

There are relatively few studies quantifying the effects of utility-scale solar projects on biodiversity. The currently available peer-reviewed publications on renewable energy, including solar, are insufficient to thoroughly assess the impact of utility-scale solar projects on wildlife populations (Lovich and Ennen, 2011). Impacts to [REDACTED] are the most well-studied, though even this research is limited. Mortality studies evaluating the impact utility-scale ground-mounted solar are geographically concentrated, limited in number and provide insignificant findings (Walston et al., 2016; Kosciuch et al., 2020). Of studies that have investigated direct impacts to [REDACTED] from solar facilities, all were conducted on facilities in the southwestern United States and therefore, are only moderately applicable to projects in the northeast, which contain significantly different habitat, species assemblages, and associated population trends, as well as employ different solar technologies from those facilities studied (photovoltaic versus concentrating solar power). Each of these factors is known to contribute substantial variability in estimates of mortality rates, even so, utility-scale

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solar¹ is estimated to cause less than 0.01% of annual [REDACTED] fatalities from anthropogenic sources in the United States for which estimates exist (e.g., building collisions, vehicle collisions, wind energy, fossil fuel generation, and communication towers; Table 2).

Table 2. Estimated Annual [REDACTED] Mortality from Anthropogenic Sources in the U.S.

Mortality Source	Estimated Annual Mortality ¹	Percent of Overall Mortality ¹
Buildings and Windows	365–988 million	73–75%
Roadway Vehicles	89–340 million	20–25%
Fossil Fuel Power Plants	14.5 million	1–3%
Communication Towers	4.5–6.8 million	<0.5%
Wind Energy Developments	140,000–573,000	<0.05%
Utility-Scale Solar Energy Developments	37,800–138,600	<0.01%
¹ Walston et al, 2016		

The [REDACTED] mortality at utility-scale solar energy facilities accounts for less than one percent of [REDACTED] mortality and is insignificant when compared to other anthropogenic sources. Solar facilities primarily affect [REDACTED] at the local scale and not at the population level (Sánchez-Zapata et al., 2016), however, even effects to local populations are minimal at PV solar facilities (Walston et al., 2016).

Walston et al. reviewed synthesized data from seven utility-scale solar facilities in California and Nevada to evaluate [REDACTED] mortality. Data was collected through both systematic and incidental monitoring from 2011-2014. Over 1,300 mortality events were documented; however, the cause of death could not be determined for 50 percent of the observations. Therefore, a direct link between mortality and the facilities monitored cannot be established (Walston et al. 2015). Mortality is expected to vary seasonally, influenced by influx of migrants and departure of residents, as well as based on local [REDACTED] abundance, non-facility related causes of mortality, and factors influencing detectability of mortality events (e.g., predation and scavenging). Numerous design factors may influence mortality, however, given the complexity of determining facility-related mortality events, the current understanding of these factors is exceedingly limited.

It is also important to note that due to climate change many [REDACTED] species, including [REDACTED], could lose significant portions of their ranges because of rising temperatures. According to [REDACTED] scientists, climate change is the number one threat to U.S. [REDACTED].

¹ Estimates based on 14GW nameplate capacity operational or in construction at the time of study (Walston et al., 2016)

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In order to combat that threat, solar and other green energy projects must proceed. An [REDACTED] article states:

“All energy development has some impact on habitats and wildlife, and in the big picture, the threat of climate change poses a greater risk to entire species than renewable energy installations generally pose to individual [REDACTED]. However, it’s crucial to reduce these projects’ impacts on wildlife as much as possible.”
(Smithson-Stanley and Bergstrom, 2017).

Due to threats from climate change, including increased wildfire events and spring heat waves, [REDACTED] are projected to lose an estimated 30% of their North American breeding range and 3% of their wintering range. [REDACTED] will experience even more significant impacts, including 39% of their breeding range and 8% of their wintering range ([REDACTED]). This Facility plays an important part in combating climate change and thereby, adding to the protection of these [REDACTED] species.

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3.0 Avoidance and Minimization

The Applicant sited the Facility to avoid or minimize impacts to sensitive features, specifically wetlands, streams, and forested areas, as well as siting within previously disturbed parcels, to the maximum extent practicable. Although habitat modification could not be entirely avoided, the Applicant attempted to maximize use of contiguous parcels to reduce the overall footprint of the Facility. Areas where collection was required is limited to small easement corridors between areas of panels. Based on the results of the surveys conducted on site, the Applicant modified the design of the Facility by removing panels from a portion of the Facility that contained [REDACTED]. Additionally, the Applicant has made a concerted effort to co-locate Facility components, where feasible, to reduce the Facility footprint. However, impacts to [REDACTED] available for [REDACTED] are unavoidable.

Per Section [REDACTED] for facilities that will have more than a *de minimis* impact on NYS [REDACTED], impacts to listed [REDACTED] Facility construction will be avoided and/or minimized through the following measures:

- Environmental monitoring will be implemented immediately prior to and during construction in the occupied habitat to search for NYS threatened or endangered species [REDACTED] occurrence based on the species' seasonal windows for presence.
- If active nests of the NYS threatened or endangered species are found within the occupied habitat, then the Applicant will coordinate with the New York State Department of Public Service (NYSDPS) and the Office to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed.
- To avoid direct impacts to NYS threatened or endangered [REDACTED] species [REDACTED] the following work windows will be applied for all ground disturbance and construction-related activities, including restoration and equipment/component staging, storage, and transportation, within occupied habitat:
 - In NYS threatened or endangered [REDACTED], work will be conducted only between August 16 and April 22.
 - In NYS threatened or endangered [REDACTED], work will be conducted only between April 1 and November 14.
 - In areas of the Facility where [REDACTED] habitat occurs, work shall be conducted only between August 16 and November 14, and between

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April 1 and 22.

- If fields within identified [REDACTED] are planted with row crops (e.g., corn, beans, or vegetables) in the farming season prior to the commencement of Facility construction and such fields were historically used for row crops during at least one of the prior 5 years, these fields will not be subject to the construction timing restrictions mentioned above.
- If the Applicant has identified construction activities that must occur between November 15 and March 31 in identified NYS threatened or endangered [REDACTED] [REDACTED] or between April 23 and August 15 in identified NYS threatened or endangered [REDACTED] outside of row crop areas described above, the occupied habitat areas proposed for active construction will be assessed by an on-site environmental monitor or biologist who shall conduct surveys for NYS threatened or endangered [REDACTED]. The surveys shall occur weekly until construction activities have been completed in the occupied habitat area, unless otherwise agreed to by the Office. If no [REDACTED] are detected during the survey, the area shall be considered clear for seven days, when another survey shall be performed. If NYS threatened or endangered [REDACTED] species are detected, the Applicant will comply with subdivision (o)(7) of the USC.
- All temporary disturbance or modification of established grassland vegetation communities that occurs as a result of Facility construction, restoration, or maintenance activities will be restored using a native herbaceous seed mix or the pre-existing grassland vegetative conditions by re-grading and re-seeding with an appropriate native seed mix after disturbance activities are completed, unless returning to agricultural production or otherwise specified by the landowner. These temporarily disturbed or modified areas include all areas within the Facility Site that do not have impervious cover, such as temporary roads, material, and equipment staging and storage areas, and electric line rights-of-way.
- The Applicant will implement the avoidance and minimization measures identified in Section 1100-2.13 of the Article VIII Regulations and the other conditions herein to minimize potential take of the species.

Per Section 1100-6.4 (o)(7) of the USCs, during construction and restoration of the Facility, the

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Applicant will maintain a record of all observations of NYS threatened or endangered species as follows:

- *Construction:* During construction the onsite Environmental Monitor (EM) will be responsible for recording all occurrences of NYS threatened or endangered species within the Facility Site. All occurrences will be reported in a biweekly monitoring report submitted to the NYSDPS, with a copy to the Office, and such reports will include the information described in the “*Reporting Requirements*” section below. If a NYS threatened or endangered species is demonstrating breeding behavior, it will be reported to the NYSDPS and the Office within 48 hours.
- *Restoration:* After construction is complete, incidental observations of any NYS threatened or endangered species will be documented and reported to the NYSDPS, with a copy to the Office, in accordance with the reporting requirements as described below.
- *Reporting Requirements:* All reports of NYS threatened or endangered species will include the following information:
 - Species;
 - Number of individuals;
 - Age and sex of individuals (if known);
 - Observation date(s) and time(s);
 - Global Positioning System (GPS) coordinates of each individual observed (if operation and maintenance staff do not have a GPS available, the report will include the nearest solar panel array and crossroads location);
 - Behavior(s) observed;
 - Identification and contact information of the observer(s); and
 - The nature of and distance to any Facility construction, maintenance or restoration activity.

Per Section 1100-6.4 (o)(8) of the USCs, if an active nest of a federal or NYS threatened or endangered [REDACTED] is discovered (by the EM or other Designated Agent) within the Facility Site, the following actions will be taken:

- The NYSDPS and the Office will be notified within 48 hours of discovery and prior to any further disturbance around the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior;
- An area at least 500 feet in radius around the active nest will be posted and avoided until notice to continue construction, ground clearing, grading, maintenance, or restoration

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activities are granted by the ORES; and

- The active nest(s) or nest tree(s) will not be approached under any circumstances unless authorized by the ORES.

Additionally, if any dead or injured federal or NYS threatened or endangered [REDACTED], or eggs or nests thereof, are discovered by the onsite EM or other Designated Agent at any time during the life of the Facility, the Applicant will immediately (within 24 hours) contact the NYSDEC and the USFWS for federally listed species, to arrange for recovery and transfer of the specimen(s). The NYSDPS and the Office will also be notified. The following information pertaining to the find will be recorded:

- Species;
- Age and sex of the individual(s), if known;
- Date of discovery of the animal or nest;
- Condition of the carcass, or state of the nest or live animal;
- GPS coordinates of the location(s) of discovery;
- Name(s) and contact information of the person(s) involved with the incident(s) and find(s);
- Weather conditions at the Facility Site for the previous 48 hours;
- Photographs, including scale and of sufficient quality to allow for later identification of the animal or nest; and
- An explanation of how the mortality/injury/damage occurred, if known.

Electronic copies of each record, including photographs, will be kept with the container holding the specimen(s) and given to the NYSDEC or the USFWS at the time of transfer. If the discovery is followed by a non-business day, the Applicant will ensure all the information listed above is properly documented and stored with the specimen(s). Unless otherwise directed by the NYSDEC or the USFWS, after all information has been collected in the field, the fatality specimen(s) will be placed in a freezer, or in a cooler on ice until transported to a freezer, until it can be retrieved by the proper authorities.

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4.0 Mitigation Measures

4.1 *Net Conservation Benefit*

As previously discussed, [REDACTED] was identified for [REDACTED] and [REDACTED] was identified for [REDACTED] within the Facility Site (Appendix 12-5 of Exhibit 12 of the Application). Construction of the Facility may result in adverse habitat modification (i.e., a “take”) of occupied habitat for the listed species above. Article VIII requires that mitigation for incidental take of a listed species must result in a positive benefit to that species.

Per Section 1100-(o)(3)(viii) of the USCs, an applicant can pay a mitigation fee commensurate with the actual acreage of occupied habitat taken into the Endangered and Threatened Species Mitigation Bank Fund with the sole purpose to conserve habitat of similar or higher quality or otherwise achieve a net conservation benefit to the impacted species, or an applicant can propose permittee-funded mitigation. Here, the Applicant is proposing an NCBP involving permittee-funded [REDACTED] in lieu of payment of a mitigation fee per Section 1100-(o)(3)(ix).

As previously discussed, the required [REDACTED]

[REDACTED] The estimated mitigation acreage for the Facility based on these [REDACTED] and [REDACTED], for a total mitigation requirement of [REDACTED] however these numbers may decrease based on the current layout and a revised take determination from ORES (Section 2.4).

The above-described mitigation is proposed to be implemented by the Applicant or a designated agent (Magnolia) for the useful life of the Facility over multiple management cycles on the mitigation site(s). [REDACTED]

[REDACTED] By implementing multiple cycles of habitat management, the Applicant will sustain this [REDACTED] and achieve a net conservation benefit over time to offset continued habitat loss occurring elsewhere through succession and development.

If at any point over the duration of the mitigation to be implemented by the Applicant, one or more of the species described in this Plan are downlisted, the area of occupied habitat will be re-evaluated to reflect only listed species. The acreage for mitigation efforts will subsequently be updated to include only the acreage of occupied habitat for listed species. Additionally, if for some reason the permittee-implement NCBP is no longer feasible, the Applicant would instead negotiate a mitigation

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fee to be provided on a one-time basis to the Endangered and Threatened Species Mitigation Bank Fund to provide a net conservation benefit for the take of occupied habitat, as described above.

4.2 Mitigation Site and Plan

The Applicant is actively pursuing off-site mitigation with NY Magnolia LLC (Magnolia) as described in Attachment A – Flat Creek Solar Project [REDACTED] Mitigation Plan. As described in the Mitigation Plan, the [REDACTED] Flat Creek Solar Mitigation Site is located in the Town of Cape Vincent, Jefferson County, New York. The Mitigation Site comprises [REDACTED] from the Tibbetts Point Mitigation Complex. The Mitigation Site will be owned and managed by Thousand Islands Land Trust as part of the larger Tibbetts Point Mitigation Complex. The Mitigation Site is generally bound by other protected and managed areas within Magnolia's Tibbetts Point [REDACTED] Mitigation Complex to the north and south, agricultural land and Fuller Bay to the west, agricultural land to the north, and a protected site owned by Thousand Islands Land Trust to the east. The entire Mitigation Site is located within [REDACTED] and the Jefferson County [REDACTED], identified as priority areas for conservation of [REDACTED] habitat in the NYSDEC Strategy for [REDACTED] Habitat Management and Conservation 2022-2027. The Mitigation Site also sits adjacent to an [REDACTED] identified as a priority area for supporting [REDACTED].

Habitat management for [REDACTED] will be implemented as part of the larger Tibbetts Point Mitigation Complex. Specific management practices of the Mitigation Site will adhere to the Tibbetts Point Mitigation Complex [REDACTED] Mitigation Plan.

Based on correspondence with and approval from NYSDEC, the initial restoration tasks of the Tibbetts Point Mitigation Plan have already begun and are progressing on schedule. The Tibbetts Point Mitigation Plan was developed to provide a viable mitigation options for projects such as Flat Creek and functionally operates as a proper mitigation fund mechanism as ORES originally intended, as the ORES-administered fund is not available to applicants at this time. Crop fields were converted to [REDACTED] in the early growing season of 2023. The primary task included the installation of a matrix of native grasses and forbs for the benefit of native [REDACTED], [REDACTED]. Additionally, roughly a third of the complex was mowed to create a diversity of vegetation heights and to promote growth of installed native seed. As a [REDACTED] require a habitat that supports a healthy diversity of [REDACTED]. The initial restoration practices have already proven successful as suitable habitat for [REDACTED] multiple sightings of the

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species have been observed at the Mitigation Site in 2023.

The Tibbetts Point Mitigation Complex [REDACTED] Mitigation Plan was developed in coordination with the NYSDEC and the land manager, Thousand Islands Land Trust. For more information pertaining to the mitigation site, such as management, funding, and reporting refer to Attachment A - Flat Creek Solar Project [REDACTED] Mitigation Plan.

5.0 References

[illegible]

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APPENDIX 12-6 NET CONSERVATION BENEFIT PLAN

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[REDACTED]

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[REDACTED]

[REDACTED]

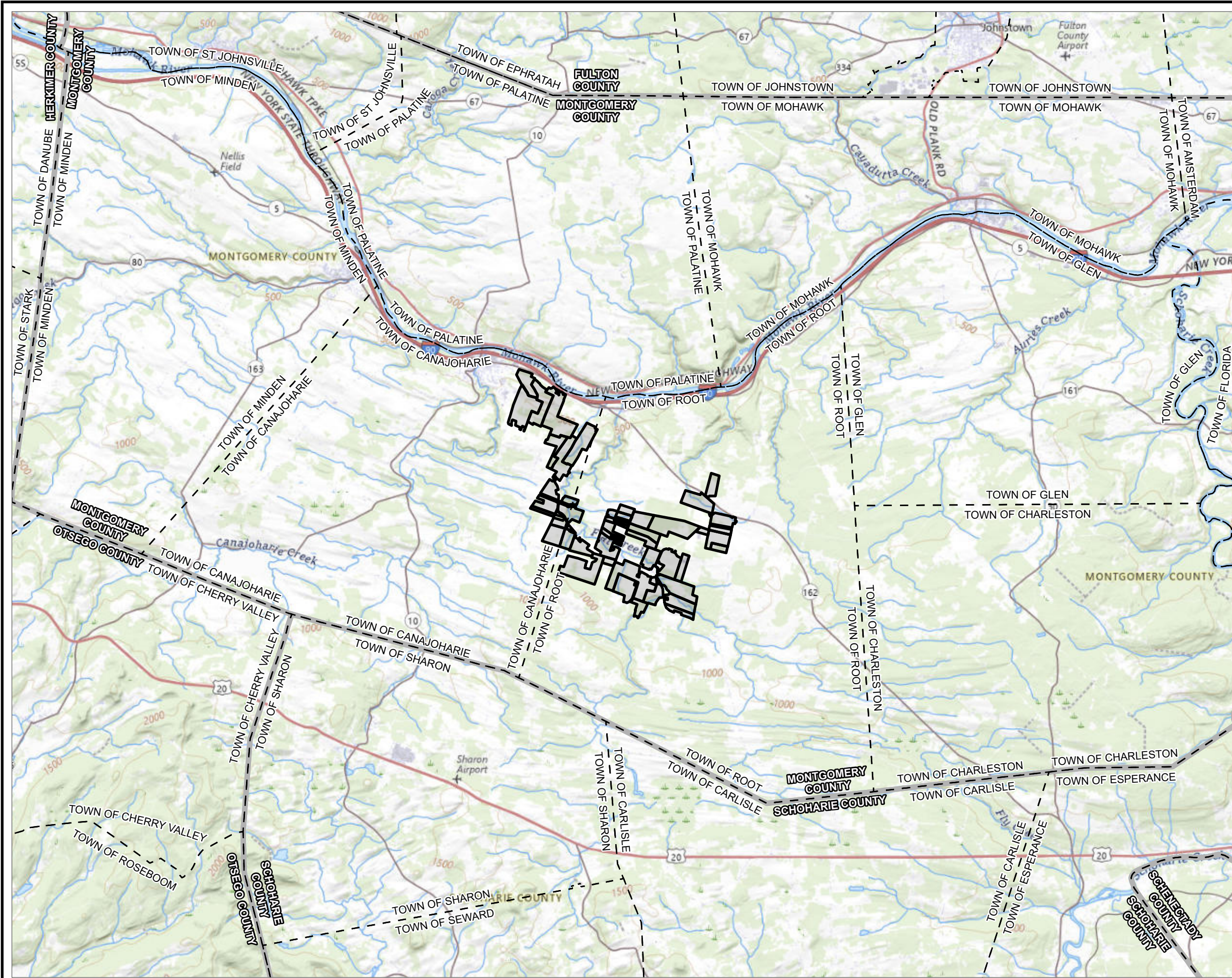
[REDACTED]

[REDACTED]

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APPENDIX 12-6 NET CONSERVATION BENEFIT PLAN

FIGURE 1




LEGEND


- FACILITY SITE
- TOWN BOUNDARY
- COUNTY BOUNDARY

NOTES:
1. THIS FIGURE IS DESIGNED TO BE VIEWED OR PRINTED IN COLOR AT 11X17.

BASE MAP: USGS NATIONAL MAP ONLINE SERVICE LAYER.
DATA SOURCES: TRC, NYSGIS.



1:126,720
1" = 2 mi



0 2 4 MILES

PROJECT: FLAT CREEK SOLAR TOWNS OF CANAJOHARIE AND ROOT MONTGOMERY COUNTY, NY	
TITLE: REGIONAL FACILITY LOCATION	
DRAWN BY: G. CORYELL	PROJ. NO.: 427281.0000.0000
CHECKED BY: J. RIZZO	FIGURE 1
APPROVED BY: S. KRANES	
DATE: MAY 2024	

Attachment A.
Flat Creek Solar Project [REDACTED] Mitigation Plan

FLAT CREEK SOLAR PROJECT **[REDACTED] MITIGATION PLAN** **JEFFERSON COUNTY, NEW YORK**



PREPARED FOR:

Flat Creek Solar NY LLC

PREPARED BY:

NY Magnolia LLC
50 S 16th Street, Suite 1700
Philadelphia, PA 19102

PREPARED: July 24, 2024

Summary and General Information

NY Magnolia LLC (“Magnolia”) has prepared the following Mitigation Plan for the Flat Creek Solar Project (“Project”) on behalf of Flat Creek Solar NY LLC (“Permittee”). This Plan is intended to satisfy Permittee-implemented mitigation for the [REDACTED] and the [REDACTED] (“Target Species”) required by condition 6(f) of the Article VIII Siting Permit; the Office of Renewable Energy Siting (“ORES”) Occupied Habitat Determination, issued March 2024; and the Project’s Net Conservation Benefit Plan (“NCBP”). As part of the NCBP, the Permittee is required to implement mitigation commensurate with project impacts. This mitigation is to feature not less than a 30-year management of [REDACTED] and [REDACTED] for the Target Species to achieve a net conservation benefit associated with adversely impacting [REDACTED] habitat. As described in these documents, the Permittee has elected to implement a 36-year management agreement of [REDACTED] of both suitable [REDACTED] [REDACTED] for the Target Species. This Mitigation Plan describes the Permittee’s plan to enhance and preserve [REDACTED] acres of [REDACTED] and [REDACTED] for the Target Species (the “Mitigation Site”) under a 36-year management agreement. This Mitigation Plan has been prepared in accordance with the requirements in 19 NYCRR 900-10.2 and 900-6.4(o)(3). This Mitigation Plan is being provided to ORES to initiate formal evaluation and approval of the lands included in the Plan, but ultimately, the final total mitigation acreage required for the Facility may change as the Facility design is finalized.

The [REDACTED]-acre Flat Creek Solar Mitigation Site is located in the Town of Cape Vincent, Jefferson County, New York. The Mitigation Site is contained within the 263.6-acre Tibbetts Point Mitigation Complex; a mitigation project that has already undergone review by NYSDEC. Adjacent to the Mitigation Site is acreage that is also being managed for [REDACTED] associated with 94c permits and related mitigation actions. The entirety of the Mitigation Site will be managed for the benefit of the Target Species.

The Mitigation Site will be owned and managed by Thousand Islands Land Trust as part of the larger Tibbetts Point Mitigation Complex. The Mitigation Site is generally bound by other protected and managed areas within Magnolia’s Tibbetts Point [REDACTED] Mitigation Complex to the north and south, agricultural land and Fuller Bay to the west, agricultural land to the north, and a protected site owned by Thousand Islands Land Trust to the east. The entire Mitigation Site is located within [REDACTED] and the Jefferson County [REDACTED], identified as priority areas for conservation of [REDACTED] habitat in the NYSDEC Strategy for [REDACTED] Habitat Management and Conservation 2022-2027 (“NYSDEC Strategy”). The Mitigation Site also sits adjacent to an [REDACTED], identified as a priority area for supporting at-risk [REDACTED] populations by the [REDACTED]. A Focus Area Map with the location of the Tibbetts Point Mitigation Complex in relation to each of the aforementioned priority conservation areas is included as **Exhibit A-4** within **Appendix B: Tibbetts Point Mitigation Complex [REDACTED] Mitigation Plan**. The Mitigation Site provides suitable [REDACTED] habitat for [REDACTED] and suitable [REDACTED] for [REDACTED], along with other at-risk [REDACTED] identified in the NYSDEC Strategy, including but not limited to [REDACTED].

Mitigation Site figures are included as **Appendix A**. A vicinity map is included as **Appendix A-1** and shows the location of the Mitigation Site in relation to the Facility Site. The location of the Mitigation Site within the Tibbetts Point Mitigation Complex on aerial background is included as **Appendix A-2**.

Habitat management for [REDACTED] and [REDACTED] will be implemented as part of the larger Tibbetts Point Mitigation Complex. Specific management practices of the Mitigation Site will adhere to the Tibbetts Point Mitigation Complex [REDACTED] Mitigation Plan, included as **Appendix B**.

The Tibbetts Point Mitigation Complex [REDACTED] Mitigation Plan was developed in coordination with the New York State Department of Environmental Conservation ("NYSDEC") and the land manager, Thousand Islands Land Trust. The complete mitigation plan is included as **Appendix B**. Email correspondence with NYSDEC involving discussions and their review of the Tibbetts Point Mitigation Complex [REDACTED] Mitigation Plan is included here as **Appendix C**.

All other materials pertaining to management, funding, and reporting for the Mitigation Site are included in the exhibits section of the Tibbetts Point Mitigation Complex [REDACTED] Mitigation Plan.

Based on correspondence with and approval from NYSDEC, the initial restoration tasks of the Tibbetts Point Mitigation Plan have already begun and are progressing on schedule. Crop fields were converted to native grassland prairie in the early growing season of 2023. The primary task included the installation of a matrix of native grasses and forbs for the benefit of native [REDACTED], specifically [REDACTED]. Additionally, roughly a third of the complex was mowed to create a diversity of vegetation heights and to promote growth of installed native seed. As a [REDACTED] require a habitat that supports a healthy diversity of [REDACTED] The initial restoration practices have already proven successful as suitable habitat for [REDACTED]; multiple sightings of the species have been observed at the Mitigation Site in 2023.

APPENDIX A-1: VICINITY MAP



Legend

- + Tibbetts Point Mitigation Site
- Flat Creek Solar

Proximity to Impact Area

Tibbetts Point Mitigation Complex

Jefferson County, NY



0 15 30 60 90 120 Miles



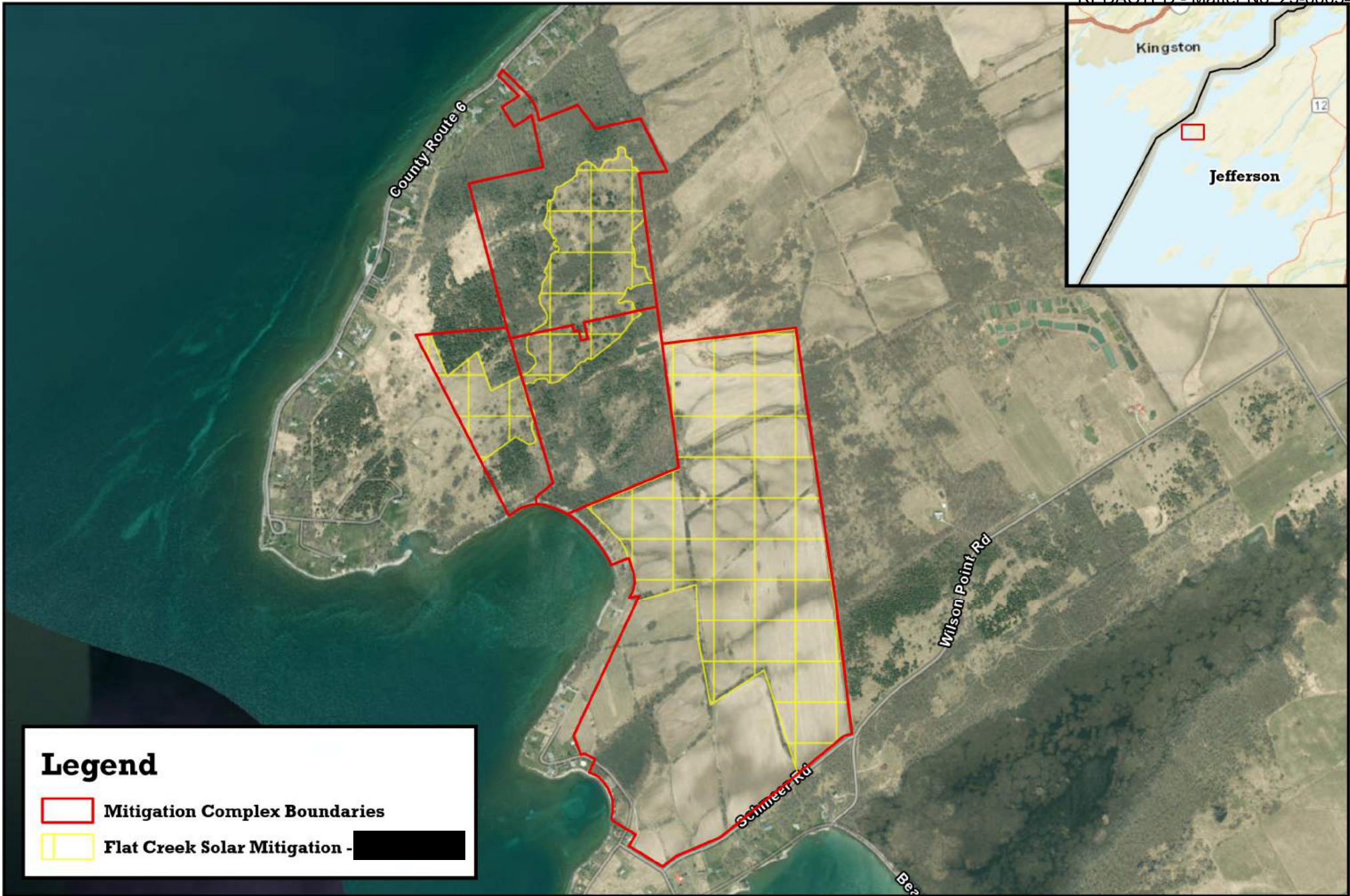
Magnolia

Date: April 2024

Scale: 1:3,000,000

Source: USGS, Esri

APPENDIX A-2: MITIGATION SITE BOUNDARIES



Legend

- Mitigation Complex Boundaries
- Flat Creek Solar Mitigation - [REDACTED]

Flat Creek Mitigation Area

Tibbets Point Mitigation Complex

Jefferson County, NY



0 500 1,000 2,000 3,000 Feet



Magnolia

Date: July 2024

Scale: 1:15,000

Source: USGS, Esri

**APPENDIX B: TIBBETTS POINT MITIGATION COMPLEX [REDACTED] MITIGATION
PLAN**

TIBBETTS POINT MITIGATION COMPLEX **[REDACTED] MITIGATION PLAN** **JEFFERSON COUNTY, NEW YORK**



PREPARED FOR:

New York Department of Environmental Conservation

PREPARED BY:

NY Magnolia LLC
100 S Juniper Street, Floor 3
Philadelphia, PA 19107

SUBMITTED: August 19, 2022

REVISED: April 4, 2024

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Exhibit A-2: Mitigation Complex Aerial Photo

Exhibit A-3: Site Vicinity Map

Exhibit A-4: Focus Area Map

Exhibit A-5: Target Species Record Map

Exhibit A-6: Restoration Plan

Exhibit B: Management Requirements and Work Schedule

Exhibit C: Endowment Fund Analysis and Schedule

INTRODUCTION

NY Magnolia LLC (“Magnolia”) has prepared this off-site mitigation plan to establish the Tibbets Point Mitigation Complex (the “Mitigation Complex”) to provide mitigation for unavoidable impacts to listed [REDACTED] elsewhere in New York.

The Mitigation Complex is located in the Town of Cape Vincent in Jefferson County, NY. This area has been identified as important habitat to many listed [REDACTED]. The Complex is comprised of approximately 263 acres which will be managed for the benefit of listed [REDACTED] (the “Conservation Area”).

OBJECTIVES

The objective of the Mitigation Complex is to provide mitigation for impacts to listed [REDACTED] habitat resulting from projects elsewhere within New York State. The development efforts in the Conservation Area will provide an in-kind replacement for the direct loss or functional degradation of habitat for listed [REDACTED] species. In addition, the establishment of these functional improvements in concurrence of the compensated functional impacts will serve to eliminate the temporal loss of function which may result from alternative mitigation approaches.

BASELINE INFORMATION AND SITE DESCRIPTION

The Mitigation Complex site consists of approximately 263 acres in Cape Vincent, NY and is within [REDACTED]. The site contains approximately 183 acres of active cropland, currently in soy-bean production. The remaining 80 acres are a mix of wetlands, scrub-shrub, woodlands, and hedgerows. The parcel has approximately 250 feet of developable water frontage along Fuller Bay Drive with water frontage on Wilson Bay in Lake Ontario. The Conservation Area will consist of approximately 52 acres of scrub-shrub, 15 acres of shrubby hedgerows, and 183 acres of active agricultural land and will be restored to [REDACTED] habitat. The Mitigation Complex site was chosen after careful consideration of multiple alternatives and was selected because of its ability to accomplish high-quality [REDACTED] habitat conservation and enhancement. Several Target Species, defined below, already have a presence near the Complex.

Target Species are those listed as “probably” or “confirmed” in the 2005 New York [REDACTED] where the site is located (NYSDEC). Several Target Species in the [REDACTED] are labeled by NYSDEC as “at risk” and are a high priority for protection and management. The Target At-Risk Species in [REDACTED] are:

[REDACTED] Records from the [REDACTED] are detailed in Table 1 and confirm the presence of at-risk species in the vicinity of the Mitigation Complex. Additionally, the New York Natural Heritage Program provided records of Target Species in the vicinity of the Mitigation Complex. The locations of these records are included in **Exhibit A-5**.

4. The area can be protected and managed for a period of time that extends beyond the 30-year life of the Facility (e.g., 40 years, 50 years, or in perpetuity).

The Mitigation Complex meets three out of four of the above criteria, as summarized below in **Table 2**, indicating that the Complex provides an excellent option for [REDACTED] habitat conservation.

Table 2. Summary of Criteria met at Mitigation Complex.

	Criterion 1	Criterion 2	Criterion 3	Criterion 4
Status:	Not Met	Met	Met	Met
Description:	The Mitigation Complex is adjacent to a parcel owned by TILT. However, the protected land is not currently managed for the benefit of [REDACTED]. The use of mitigation acres at the Mitigation Complex by Project Applicants will allow for the co-locating of suitable habitat that would not occur if mitigation was completed on a one-off basis.	The Mitigation Complex contains approximately 263.1 acres of [REDACTED] occupied by multiple [REDACTED]	The Mitigation Complex is within the [REDACTED]	The Mitigation Complex will be protected in perpetuity and managed for 36 years (greater than 30 years of management)

SITE PROTECTION INSTRUMENT AND FINANCIAL ASSURANCES

Immediate protection of the Mitigation Complex will be accomplished by providing financial assistance to TILT to acquire the property in-fee simple. Magnolia will provide the up-front funding necessary to meet the purchase price agreed upon with the existing landowner. The Management Requirements and Work Schedule (**Exhibit B**) will be included as part of Magnolia's funding agreement with TILT, and will detail the short- and long-term management plans for the Mitigation Complex. TILT is a Land Trust Alliance accredited land trust and will serve as the Land Manager of the Mitigation Complex. TILT has extensive experience managing conservation lands for [REDACTED] and owns properties that have been enrolled in the Wildlife Habitat Incentive Program and the Landowner Incentive Program, both of which required similar management practices to those that will be implemented on the Mitigation Complex.

Upon approval of this Mitigation Plan, Magnolia will establish an endowment fund with TILT serving as the recipient. These endowment funds will ensure the longevity of the site. Annual earnings from the fund will cover all management, monitoring, and maintenance costs associated with the Mitigation Complex. NYSDEC will have third-party beneficiary rights to the Endowment Fund, and in the event of non-compliance, NYSDEC will direct the endowment funds to be released to an alternate entity. NYSDEC maintains the right to access the property, provided it grants TILT forty-eight (48) hours' prior notice.

DEVELOPMENT PLAN

This development plan covers the initial restoration work to be conducted on the Mitigation Complex in conjunction with the Long-Term Management Plan (Section IX).

Extensive initial vegetation management will be performed in the first year of the program to establish suitable habitat conditions for the Target Species. Initial management actions will include the following practices:

- Seeding of desired native species;
- Mowing of herbaceous vegetation;
- Brush hogging to control woody vegetation;
- Shrub and tree removal; and
- Application of herbicides to control invasive species growth.

Initial work will focus on converting unsuitable vegetative cover, such as cropland and scrub-shrub, to [REDACTED] habitat by planting and facilitating the growth of native grasses and forbs that provide habitat to the Target Species and prepare the Mitigation Complex for the Long-Term Management period. Initial vegetation management in approximately 183 acres of crop fields begins with native seed installation. Approximately 52 acres exist at 30% shrub cover that will require additional management tasks such as forestry mowing and herbicide application. Following any required vegetation management, a native herbaceous seed mix will be installed. It is anticipated that the seed mixes used will be a mixture of eastern warm and cool season grasses and forbs. In addition, approximately 15 acres of hedgerows lining and separating the crop fields will be removed and converted to [REDACTED] though native grassland seeding. Approximately 1 acre of an existing hedgerow has been identified as having a high presence of pale swallowwort. This hedgerow, as well as the adjacent habitat, will be targeted for invasive species removal. Approximately 2 acres of hedgerow and 12 acres of PSS/PFO wetland will be left in place to provide variation in habitat and avoid any potential adverse impacts to wildlife. Any invasive species growth noted in the Mitigation Complex will be treated to prevent spread into the restoration areas. The initial management activities are further detailed in the Management Requirements and Work Schedule (**Exhibit B**). A map detailing the proposed restoration plan is included as **Exhibit A-6**.

MONITORING REQUIREMENTS

Vegetation monitoring will occur in the Conservation Area twice a year for the first 6-years (one habitat-cycle) of the project, and once a year for the remainder of the project's life (30 years, five habitat-cycles). In addition to these vegetation monitoring visits, the Conservation Area will be surveyed for the Target Species in the breeding and wintering season of the second year of each habitat-cycle. In such years, [REDACTED]

[REDACTED] Each survey will consist of one point count per 100 acres. However, if these surveys indicate that the management of the site is not successful, the frequency of surveys and the density of point counts on the Mitigation Complex may be increased to inform future management activities.

The Land Manager (defined below) will be responsible for ensuring the completion of seasonal inspections, species surveys, report preparation, and submittal for NYSDEC review. Monitoring reports will be submitted annually and will include the following:

1. Establishment of photo points to provide representative views of the mitigation area during development and implementation;
2. Summarization of any species monitoring;
3. Annual photographic documentation from each photo point;
4. Minimum of two site visits during the first 6 years, one in the wintering season and one in the breeding season, and a minimum of one site visit per year in subsequent years;
5. Summarization of year-to-year trends of vegetation (focusing on invasive species growth and grass length);
6. Documentation of any observed violations of the terms of the Management Agreement; and
7. Recommendation of remedial actions, if needed to meet performance standards.

In addition to the results of population surveys, monitoring reports will also be used to inform management activities in future habitat-cycles.

LONG-TERM MANAGEMENT PLAN

For the duration of the agreement, after any initial restoration work, the Conservation Area will be left undisturbed during the [REDACTED]

[REDACTED] Management of the Conservation Area will be completed in 6-year rotations. Rotational mowing will be completed every three years, with roughly one-third of the Conservation Area being mowed between August 16th and November 1st of each year. As such, each section of the Conservation Area will be mowed twice in each 6-year interval, and 12 times throughout the 36-year duration of management. The annual mowing will be completed by the Land Manager. Vegetation will be cut to a height of 6-8 inches using a brush-hog or similar rotary-blade mower, and at least one third of cuttings will be left on the fields to provide coverage for the Target Species. If haying occurs in the Conservation Area, hay bales will be removed prior to the start of the [REDACTED]

Rotational mowing ensures that there is vegetation of different lengths and densities in each section of the Mitigation Complex at any given time. This variety of habitat is expected to increase species diversity and encourage utilization of the Mitigation Complex by the listed species.

More intensive management practices such as woody vegetation management via brush hogging and invasive plant species treatment may be required on an as-needed basis as determined by the results of vegetative monitoring. The Land Manager will oversee these management events and ensure all actions are performed by qualified individuals.

Alternative management actions may be introduced to benefit Target Species, as defined in Section III. Alternative management actions will be based on the habitat take of associated projects or the results of the population surveys and monitoring reports. NYSDEC may also require alternative management actions. Alternative management actions may include altering mowing schedules, varying the amount of thatch left on fields after mowing, or additional invasive management and will be included as an amendment to the Management Requirements and Work Schedule (**Exhibit B**).

References

[REDACTED]

[REDACTED]

Mohawk Solar LLC. Case No. 17-F-0182: Application of Mohawk Solar LLC for a Certificate of Environmental Combability and Public Need Pursuant to Article 10 of the Public Service Law for the Construction of a Solar Electric Generating Facility in the Towns of Canajoharie and Minden, Montgomery County. 2020. Available from:
<http://documents.dps.ny.gov/public/MatterManagement/CaseMaster.aspx?MatterCaseNo=17-F-0182&submit=Search>.

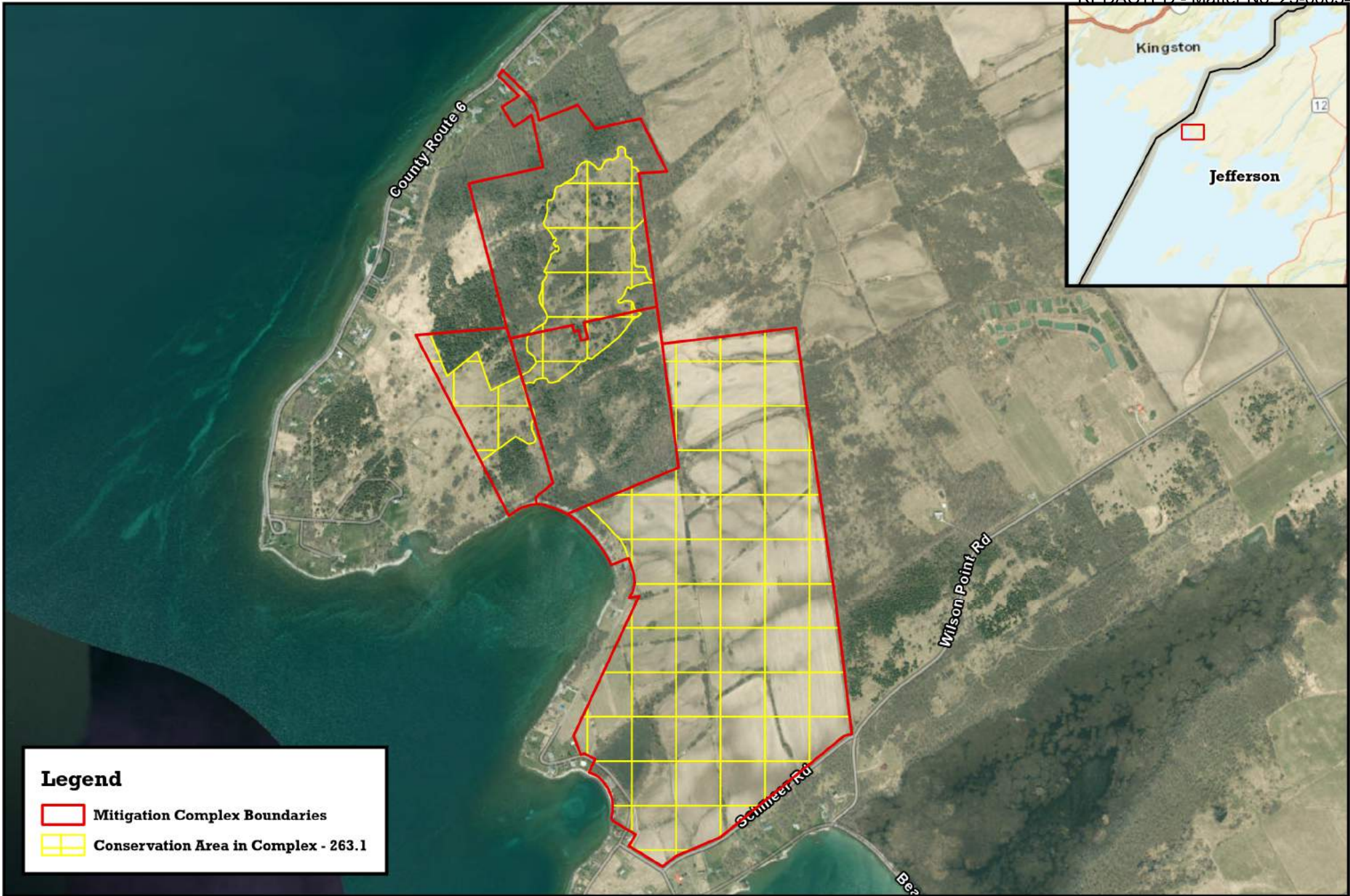
[REDACTED]

[REDACTED]



EXHIBIT A: SITE FIGURES

- **Exhibit A-1: Mitigation Complex Boundaries**
- **Exhibit A-2: Mitigation Complex Aerial Photo**
- **Exhibit A-3: Site Vicinity Map**
- **Exhibit A-4: Focus Area Map**
- **Exhibit A-5: Target Species Record Map**
- **Exhibit A-6: Restoration Plan**

EXHIBIT A-1: MITIGATION COMPLEX BOUNDARIES



Legend

-  Mitigation Complex Boundaries
-  Conservation Area in Complex - 263.1

Mitigation Complex Boundaries

Tibbetts Point Mitigation Complex
Jefferson County, NY



0 500 1,000 2,000 3,000 Feet



Date: April 2024

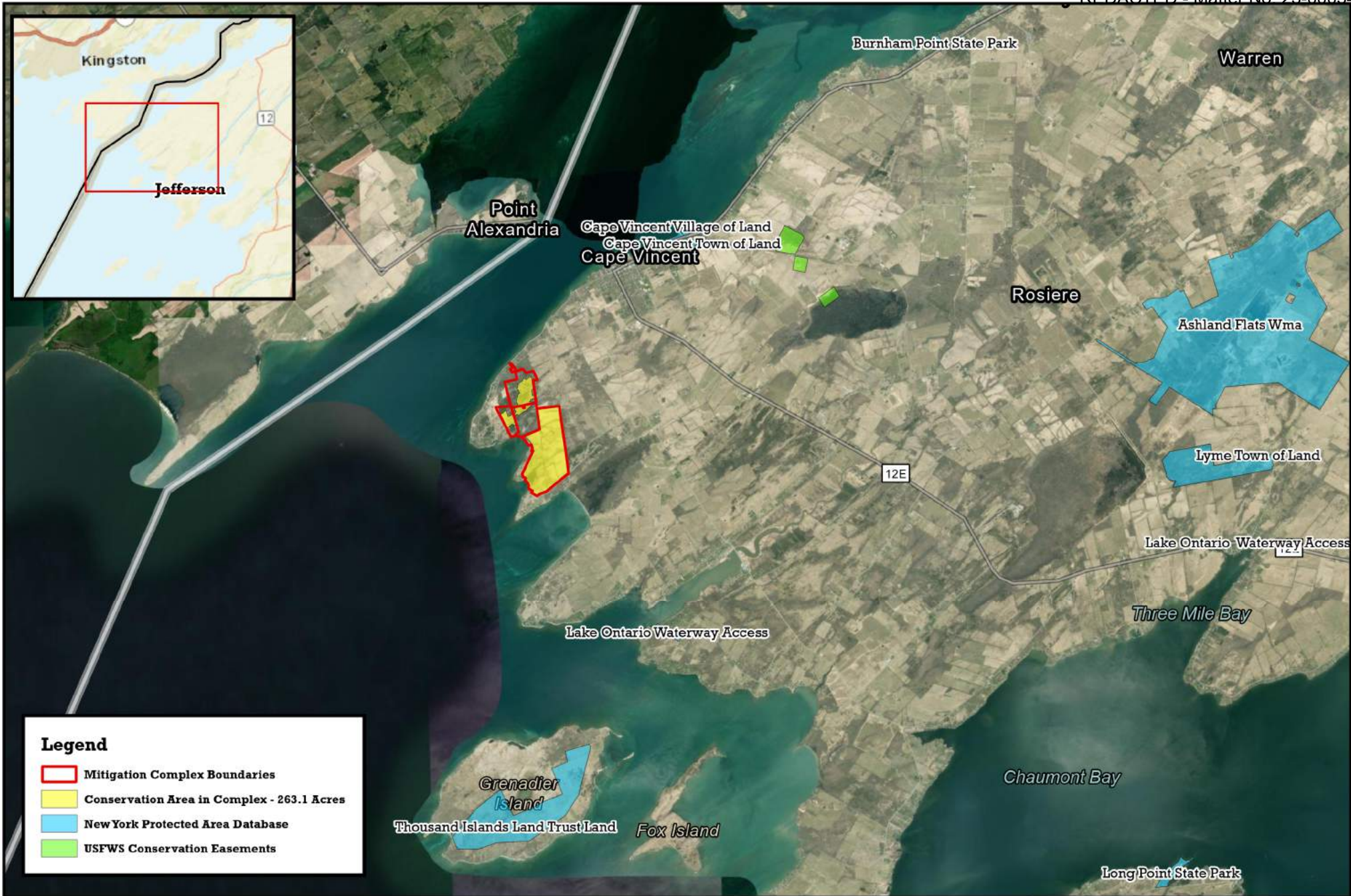
Scale: 1:15,000

Source: USGS, Esri

EXHIBIT A-2: MITIGATION COMPLEX AERIAL PHOTO



EXHIBIT A-3: SITE VICINITY MAP



Legend

- Mitigation Complex Boundaries
- Conservation Area in Complex - 263.1 Acres
- New York Protected Area Database
- USFWS Conservation Easements

Vicinity Map

Tibbetts Point Mitigation Complex
Jefferson County, NY



0 0.5 1 2 3 Miles



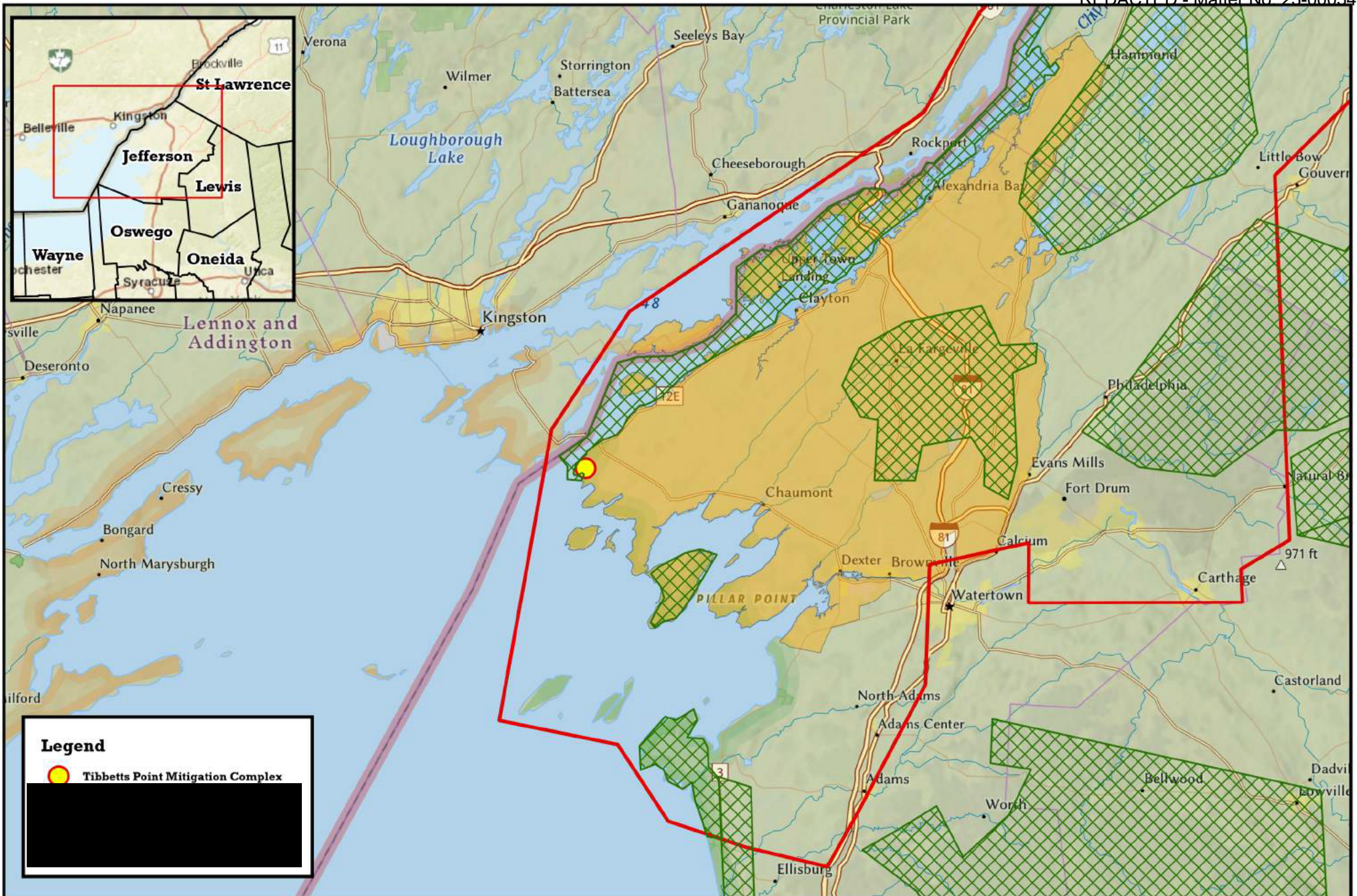
Magnolia

Date: April 2024

Scale: 1:90,000

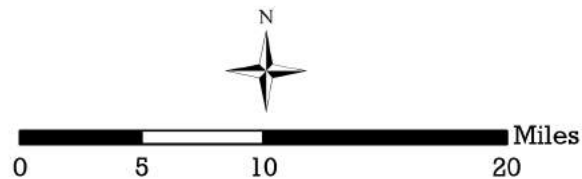
Source: USGS, Esri, NYNHP, USFWS

EXHIBIT A-4: FOCUS AREA MAP



Focus Area Map

Tibbetts Point Mitigation Complex
Jefferson County, NY

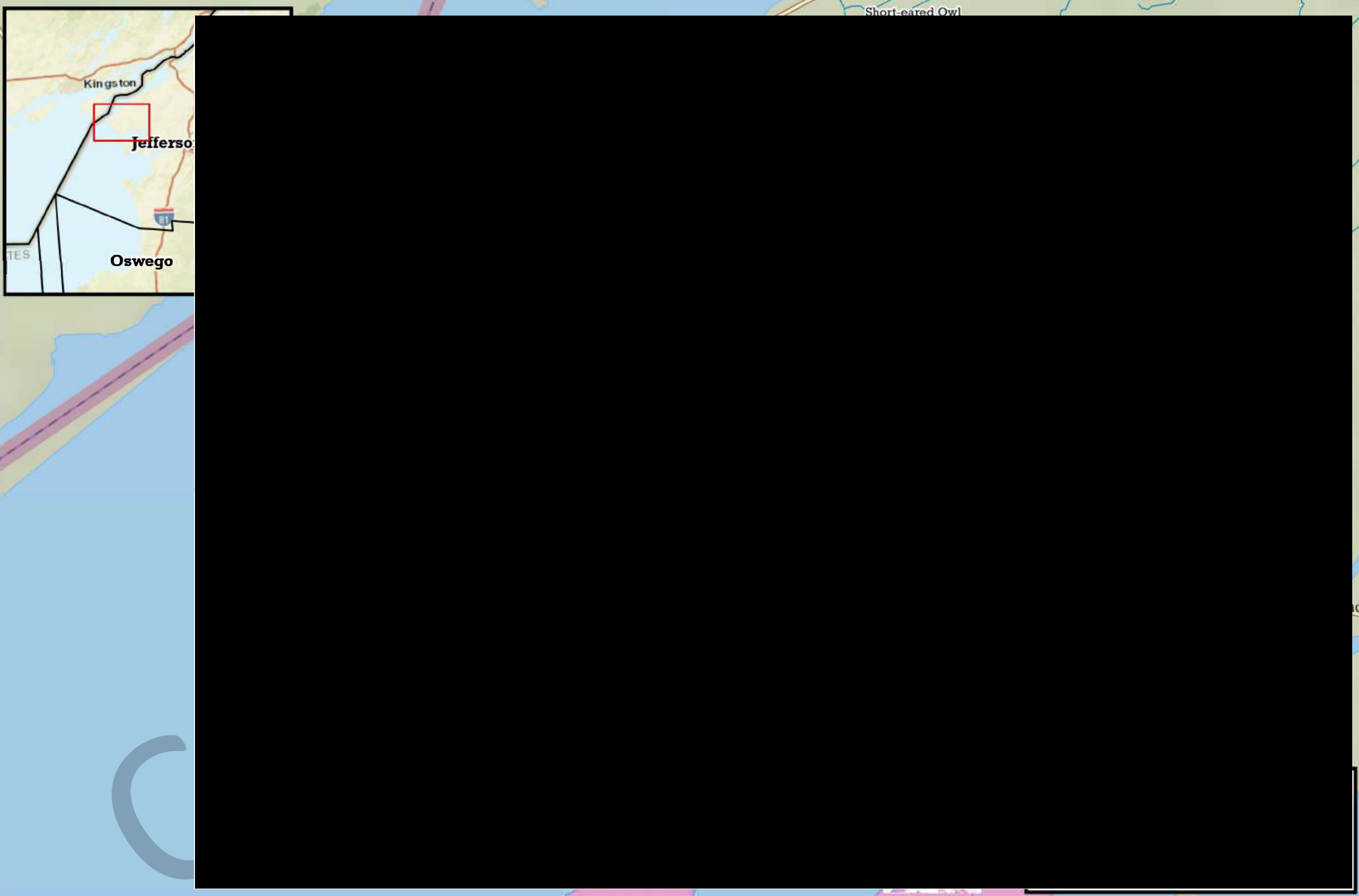


Date: April 2024

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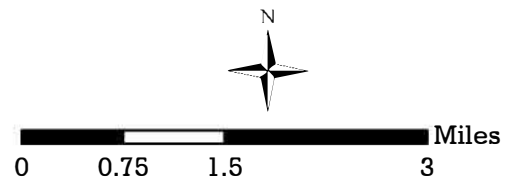
Source: USGS, Esri, NYDEC, Audubon

EXHIBIT A-5: TARGET SPECIES RECORD MAP



Proximity to Target Species

Tibbetts Point Mitigation Complex
Jefferson County, NY

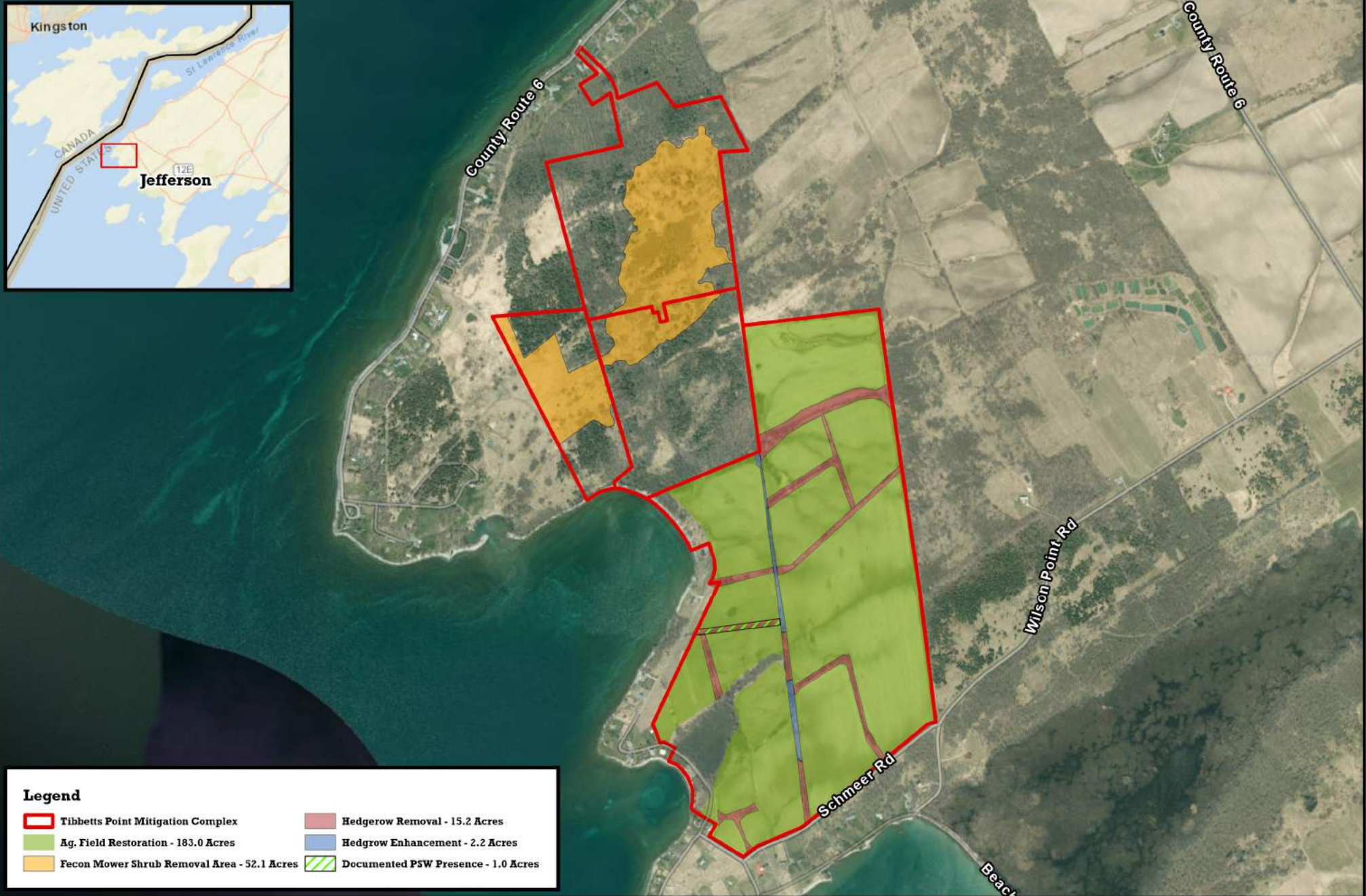


Date: April 2024

Scale: 1:90,000

Source: USGS, Esri, NYNHP, USFWS

EXHIBIT A-6: RESTORATION PLAN



Legend

- | | |
|---|-------------------------------------|
| Tibbetts Point Mitigation Complex | Hedgerow Removal - 15.2 Acres |
| Ag. Field Restoration - 183.0 Acres | Hedgerow Enhancement - 2.2 Acres |
| Facon Mower Shrub Removal Area - 52.1 Acres | Documented PSW Presence - 1.0 Acres |

Restoration Plan

Tibbetts Point Mitigation Complex
Jefferson County, NY



0 500 1,000 2,000 3,000 Feet



Date: April 2024

Scale: 1:15,000

Source: USGS, Esri

EXHIBIT B: MANAGEMENT REQUIREMENTS AND WORK SCHEDULE

MANAGEMENT REQUIREMENTS AND WORK SCHEDULE

I. Overview of Vegetation Management

The goal of this project is to increase the ecological value of the Conservation Area for the listed species via management of invasive plant species, increasing the effective area of [REDACTED] habitat by reseeding land that's in crop production, and maintaining restored and existing [REDACTED] habitat through rotational mowing. These goals will be met with a combination of planting native species, herbicide application, and mowing. Management actions will be timed to avoid disturbances to [REDACTED]. Magnolia NY LLC (the "Project Sponsor") will be funding management activities through an endowment fund. Distributions from the endowment fund will be directed to the Thousand Islands Land Trust (TILT, the "Owner"), who will be responsible for implementing management activities and performing vegetative and species monitoring.

II. Initial Management Activities

The goals of the initial management actions are to restore approximately 263 acres to [REDACTED] and to prepare the Conservation Area for subsequent years of management. This will be done through the planting of native grasses, brush hogging to control woody vegetation, shrub and tree removal, and application of herbicides to control invasive species growth. Extensive management actions will occur in the first years of the program.

III. Ongoing Management Activities

(a) Activities

- (1) Nesting restrictions: The Conservation Area must not be disturbed by mowing, planting, harvesting, driving, or by any other mechanized equipment or vehicles during the [REDACTED].
- (2) Grazing Restrictions: High-intensity rotational grazing of livestock is prohibited within the boundaries of the LIP field during the nesting season.
- (3) Wintering Restrictions: Excessive disturbance in the Conservation Area such as frequent high-speed snowmobile, ATV, or motorized vehicle operation or loud noises must be avoided from [REDACTED].
- (4) Mowing Window: All mowing must be done between August 16th and November 1st of each year in the Agreement Period.
- (5) Mowing restrictions: The Owner must mow as early within the mowing window as circumstances and conditions allow. The Conservation Area will be cut to a height no shorter than 6 inches using a brush-hog or similar rotary-blade mower.
- (6) Rotational Mowing: The Project Sponsor and the Owner have agreed upon how to divide the Conservation Area into sections. The Agreement Period has also been divided into six (6) grassland habitat-cycles, each six (6) years in length. The Owner will be required to mow a specific section(s) each year. The section that is to be mowed will be rotated in subsequent years of the contact. The rotation will be completed at the conclusion of one habitat cycles and will begin again in the subsequent habitat cycle. This is further outlined in the Work Schedule.

(7) Control of Undesirable Species:

- i. Invasive Species: Invasive Species may be present in the Conservation Area. Large Invasive Species management events or spot-treatment will be required on as-needed basis as determined by the results of vegetative monitoring.
- ii. Woody Vegetation: Woody Vegetation may be present within the Conservation Area. Throughout the Agreement Period, the Owner must reduce fragmentation of the [REDACTED] by eliminating hedgerows, shrubs, and trees within the Conservation Area. Woody vegetation removal must take place outside of the [REDACTED] unless otherwise specified in the Work Schedule.

- (8) Other Restrictions: The Owner must take all reasonable efforts to prevent disturbance of [REDACTED] by other sources (under his or her control) not mentioned in this Agreement, including but not limited to, livestock, household animals, recreational vehicles or ATVs, etc.

IV. Additional Conditions

- (1) Hunting: Traditional hunting practices are not affected by this Agreement.
- (2) Nest Box Installment: With the Owner's permission, the Project Sponsor or its representatives may install nest boxes on the Owner's Property. The Project Sponsor or its representatives will monitor nest boxes over the course of the Agreement Period.
- (3) Plan Adjustments: The Project Sponsor may need to adjust the Work Schedule according to the information gathered during site inspections, vegetative and species monitoring, and progress reports. Any necessary changes will be discussed with the Owner, and will be reflected in an Amendment.
- (4) Public Access: The Conservation Area will not be open to the public. However, educational activities, such as guided hikes, are allowed so long as they are led by TILT personnel and do not adversely affect the Conservation Area.

V. Work Schedule

Year(s)	Month(s)	Description of Activities
Year 1	August-November	Vegetation Monitoring visit to document existing conditions prior to any management activities. COMPLETED Spring 2023
		Perform Initial Management Activities in crop fields and mow approximately one-third of the Conservation Area. COMPLETED Spring 2023
		Vegetation Monitoring visit to document conditions after initial management. COMPLETED Fall 2023
Year 2	November-March	Vegetation Monitoring visit to document wintering season conditions. COMPLETED
	August-November	Perform Initial Management activities in shrub-scrub areas
		Vegetation Monitoring visit to document breeding season conditions.
		Mow the second-third of the Conservation Area. Perform follow-up invasive species management, if necessary.
Year 3	November-March	Vegetation Monitoring visit to document wintering season conditions.
	August-November	Vegetation Monitoring visit to document breeding season conditions.
		Mow the final-third of the Conservation Area. Perform follow-up invasive species management, if necessary
Year 4	November-March	Vegetation Monitoring visit to document wintering season conditions.
	August-November	Vegetation Monitoring visit to document breeding season conditions.
		Mow the first portion of the Conservation Area, last managed in Year 1. Perform follow-up invasive species management, if necessary.
Year 5	November-March	Vegetation Monitoring visit to document wintering season conditions.
	August-November	Vegetation Monitoring visit to document breeding season conditions.
		Mow the second portion of the Conservation Area last managed in Year 2. Perform follow-up invasive species management, if necessary.
Year 6	November-March	Vegetation Monitoring visit to document wintering season conditions. This is the final winter vegetation monitoring event. Each year after will only have one vegetation monitoring event per year, which will occur in the breeding season.
		Vegetation Monitoring visit to document breeding season conditions.

	August- November	Mow the third portion of the Conservation Area, last mowed in Year 3. Perform vegetation management throughout the Conservation Area to restore grassy conditions and remove invasive species that may have encroached.
Second Habitat-Cycle (Years 7-12)		Second habitat cycle; perform rotational mowing and manage the Mitigation Complex in a pattern similar to the one used for the previous cycle. Starting with this cycle, vegetation monitoring events will be reduced to once a year, in the breeding season. Species Monitoring visits to occur in Year 7.
Third Habitat-Cycle (Years 13-18)		Third habitat cycle; perform rotational mowing and manage the Mitigation Complex in a pattern similar to the one used for the previous cycle. Species Monitoring visits to occur in Year 13.
Fourth Habitat-Cycle (Years 19-24)		Fourth habitat cycle; perform rotational mowing and manage the Mitigation Complex in a pattern similar to the one used for the previous cycle. Species Monitoring visits to occur in Year 19.
Fifth Habitat-Cycle (Years 25-30)		Fifth habitat cycle; perform rotational mowing and manage the Mitigation Complex in a pattern similar to the one used for the previous cycle. Species Monitoring visits to occur in Year 25.
Sixth Habitat-Cycle (Years 31-36)		Sixth habitat cycle; perform rotational mowing and manage the Mitigation Complex in a pattern similar to the one used for the previous cycle. Species Monitoring visits to occur in Year 31.

EXHIBIT C: ENDOWMENT FUND ANALYSIS AND SCHEDULE

ENDOWMENT PAYMENT SCHEDULE
TIBBETTS POINT MITIGATION COMPLEX

2024 FIRST CALENDAR YEAR OF WORK WITH ENDOWMENT FUNDS ("YEAR 1")

Endowment Fund Target Rate of Return

FULL ENDOWMENT AMOUNT (Including 10% Contingency)

LEGEND

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 Headings and Reference Info.

Anticipated Payment Schedule

ENDOWMENT PAYMENT SCHEDULE YEARS 1-36[illegible]

ENDOWMENT PAYMENT SCHEDULE
TIBBETTS POINT MITIGATION COMPLEX


2024 FIRST CALENDAR YEAR OF WORK WITH ENDOWMENT FUNDS ("YEAR 1")

Endowment Fund Target Rate of Return

FULL ENDOWMENT AMOUNT (Including 10% Contingency)

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 Headings and Reference Info.

Anticipated Payment Schedule

ENDOWMENT PAYMENT SCHEDULE CALCULATIONS ^{1,2}

CATEGORY	SPECIFIC ACTIVITY (Briefly Describe)	YEARS 1-6	EVERY YEAR	EVERY 6 YEARS	AS NEEDED
TOTALS					

[illegible]

APPENDIX C: EMAIL CORRESPONDENCE WITH NYSDEC

----- Forwarded message -----

From: **Meyer, Ashley R (DEC)** <Ashley.Meyer@dec.ny.gov>

Date: Thu, Sep 1, 2022 at 11:36 AM

Subject: Re: Tibbetts Point Mitigation Complex - Upcoming [REDACTED] Mitigation Requirements

To: Abby Singer <abby@mitigation.org>, Rosenblatt, Daniel L (DEC) <daniel.rosenblatt@dec.ny.gov>, Palumbo, Matthew (DEC) <Matthew.Palumbo@dec.ny.gov>

Cc: John Yarchoan <john@mitigation.org>, Mark Bernstein <mark@mitigation.org>

Hi Abby,

At this time, I can say the following on behalf of the DEC:

The habitat management approach outlined for the Tibbetts Point Mitigation Complex is consistent with other individual mitigation plans that the Department has accepted as mitigation for impacts to [REDACTED]. As identified in the revised Tibbetts Point Mitigation Plan dated 08.19.22, up to 197 acres of contiguous [REDACTED] will be available as potential mitigation acreage. For any project requiring mitigation under the New York State Endangered Species Law (ECL 11-0535) and its implementing regulations (Part 182, 6NYCRR), the Department must review and approve the Project Applicant's Net Conservation Benefit Plan (NCBP) otherwise known as an Endangered Species Mitigation Plan. To be consistent with this approach, the Department would assess the extent of the impact of the project proposed by the Project Applicant to determine the species affected, the acreage required for mitigation, and the appropriate management required for the target species. Magnolia will work with the Project Applicant to develop an Implementation Agreement that corresponds with the specific acres and management plan necessary for the project to satisfy the identified mitigation needs. The Project Applicant would include this Implementation Agreement in its application to the Department to use the Mitigation Complex to satisfy all or part of the mitigation in their NCBP. The acres of the Mitigation Complex used to satisfy a Project Applicant's required mitigation will be managed by Magnolia as required based on the species identified in NCBP, input from the Department and within the guidance outlined in Tibbetts Point Mitigation Plan.

With that said, there are still some kinks in the process that DEC requires more time to work out internally, particularly regarding mitigation bank service areas. While on-site mitigation is viewed as the most beneficial mitigation option for the impacted species, we acknowledge that this option is often unavailable and/or impractical. Our hope is for mitigation banks to offer another option in this case, and we encourage Magnolia to continue pursuing contracts with project applicants. We will continue to keep Magnolia updated on what we determine internally as this process is worked out.

Thank you,

Ashley