

NY RISING COMMUNITY RECONSTRUCTION PROGRAM

Rochester Creek Mitigation Environmental Assessment



Prepared by Louis Berger
96 Morton Street, 8th Floor
New York, NY 10014

**New York State Homes and Community Renewal
Governor's Office of Storm Recovery**
38-40 State Street
Albany, NY 12207

July 31, 2018

Rochester Creek Mitigation Environmental Assessment

July 31, 2018

Project Name: Rochester Creek Mitigation

Project Location: Latitude: 41.814702, Longitude: -74.266447

Federal Agency: US Department of Housing and Urban Development
Responsible Entity: New York State Homes and Community Renewal

**Responsible Agency's
Certifying Officer:** Lori A. Shirley, Director and Certifying Officer
 38-40 State St., Hampton Plaza, Albany, NY 12207
 (518) 474-0755, lori.shirley@nyshcr.org

Project Sponsor: Town of Rochester
Primary Contact: Mike Baden, Town Supervisor, Town of Rochester
 50 Scenic Road, Accord, New York 12404, mbaden@townofrochester.ny.gov
 (845) 626-3043

Project NEPA Classification: 24 CFR 58.36 (Environmental Assessment)

Environmental Finding:	<input checked="" type="checkbox"/> Finding of No Significant Impact - The project will not result in a significant impact on the quality of the human environment.
	<input type="checkbox"/> Finding of Significant Impact - The project may significantly affect the quality of the human environment.
Certification	The undersigned hereby certifies that New York State Homes and Community Renewal has conducted an environmental review of the project identified above and prepared the attached environmental review record in compliance with all applicable provisions of the National Environmental Policy Act of 1969, as amended (42 USC Sec. 4321 et seq.) and its implementing regulations at 24 CFR Part 58.
Signature	 Lori A. Shirley

**Environmental
Assessment Prepared By:** Louis Berger
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 New York, NY 10014

CERTIFICATION OF NEPA CLASSIFICATION

It is the finding of the New York State Housing Trust Fund Corporation that the activity(ies) proposed in its 2018 NYS CDBG-DR project,
Project Year

Rochester Creek Mitigation are:
Project Name

Check the applicable classification.

- Exempt as defined in 24 CFR 58.34 (a).
- Categorically Excluded as defined in 24 CFR 58.35(b).
- Categorically Excluded as defined in 24 CFR 58.35(a) and no activities are affected by federal environmental statues and executive orders [i.e., exempt under 58.34(a)(12)].
- Categorically Excluded as defined in 24 CFR 58.35(a) and some activities are affected by federal environmental statues and executive orders.
- "Other" neither exempt (24 CFR 58.34(a)) nor categorically excluded (24 CFR 58.35).
- Part or all of the project is located in an area identified as a floodplain or wetland. For projects located in a floodplain or wetland, evidence of compliance with Executive Orders 11988 and/or 11990 is required.

For activities excluding those classified as "Other", attached is the appropriate Classification Checklist (Exhibit 2-4) that identifies each activity and the corresponding citation.



Signature of Certifying Officer

July 31, 2018

Date

Lori A. Shirley
Print Name

Director and Certifying Officer
Title

CERTIFICATION OF SEQRA CLASSIFICATION

It is the finding of the New York State Housing Trust Fund Corporation that the activity(ies) proposed in its 2018 NYS CDBG-DR project,
Project Year

Rochester Creek Mitigation constitutes a:
Project Name

Check the applicable classification:

- Type I Action (6NYCRR Section 617.4)
- Type II Action (6NYCRR Section 617.5)
- Unlisted Action (not Type I or Type II Action)

Check if applicable:

- Environmental Impact Statement (EIS) Prepared
 - Draft EIS
 - Final EIS



Signature of Certifying Officer

July 31, 2018

Date

Lori A. Shirley

Print Name

Director and Certifying Officer

Title

Description of the Proposed Project [24 CFR 50.12 & 58.32; 40 CFR 1508.25]:

The Town of Rochester is proposing a mitigation project to address berm erosion at two ponds located off the banks of Rochester Creek in Ulster County, New York (see **Figure 1**). Rochester Creek is approximately 11 miles in length and is a tributary to Rondout Creek, which is itself a tributary of the Hudson River. Rochester Creek's headwaters lie in the Catskill Mountains in the far western corner of the Town of Marbletown. The stream travels a very short distance before reaching the Town of Olive, where it flows in a southwesterly direction. Upon passing into the Town of Rochester, the stream flows south for most of its course before turning to the southeast and discharging to Rondout Creek in the hamlet of Accord. The project area begins at Moony Pond, located approximately 0.6 miles downstream of the Boodlehole Road Bridge, and extends approximately 0.5 mile downstream to include South Pond (see **Figure 2**).

During Hurricane Irene and Tropical Storm Lee, berms holding Moony and South Ponds in place were severely eroded. In the event of another 100-year storm, these berms will be at risk of failure, resulting in uncontrolled release of impounded water and sediment into Rochester Creek, and causing extensive damage to the creek and to downstream properties.

At Moony Pond, the earthen berm holding the pond in place is registered with the NYS DEC Inventory of Dams as a Hazard Code A. It is also registered as a federal dam. The lower half of the berm separating the pond from the creek has been subjected to erosion due to stream flow in Rochester Creek. Within the lower extent of the berm, approximately 250 linear feet has been severely eroded and water is actively seeping through the berm. Continued erosion, in combination with hydrostatic pressure from the pond, will potentially result in catastrophic failure of the berm and spontaneous draining of the pond into the creek, which would first, cause flooding of residences downstream, and second, cause potential failure of berm infrastructure at the South Pond location.

The proposed project would address potential failure of the Moony Pond berm through the following measures:

- Drain the pond by cutting a V-shaped notch in the retaining berm facing Rochester Creek,
- Remove the current riser structure, outlet structure, and piping,
- Allow the basin to drain in a controlled manner into Rochester Creek.
- Filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek.

The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek. Areas downstream and adjacent to the notch will be regraded to shallow slopes to inhibit erosion that would result in sediments entering Rochester Creek. These measures would result in the removal of approximately 90 percent of the pond's water impoundment. The remaining water level would be maintained at the lowest elevation of the pond through natural surface water run-off and via the intermittent tributary. A rock sill will be installed to maintain this impoundment for the purpose of creating a wetland habitat. For areas of the impoundment that will remain dry, native plant species will be planted.

Repairs to South Pond would be similar to those described for Moony Pond, with the pond being drained through removal of part of the berm. An appropriately sized channel will be constructed to convey flows from the pond to Rochester Creek. Like Moony Pond, a rock sill will be installed to maintain this

impoundment for the purpose of creating a wetland habitat, and native plant species will be planted. The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek.

Statement of Purpose and Need for the Proposal [40 CFR 1508.9(b)]:

Hurricane Irene and Tropical Storm Lee caused record rainfall in the Rochester area. Floodwater levels in Rochester Creek reached record heights and resulted in flash flooding which damaged homes, closed businesses and damaged millions of dollars of crops on several farms located next to the creek. Emergency response was hindered by the closing of roads affected by the flooding as well. During these storm events, the banks of Rochester Creek, which act as retention dams to hold these ponds in place, were severely eroded. In the event of another storm such as Irene or Lee, the existing condition of the banks are such that they present a risk of cascading failure, with the influx of waters released by Moony Pond into Rochester Creek and causing the failure of embankments along South Pond. The purpose of this repair and improvements project is to reduce the risk of flooding and to mitigate storm water effects.

Existing Conditions and Trends [24 CFR 58.40(a)]:

The Town of Rochester and the proposed project area are located in the south-central portion of Ulster County, New York. The project site involves Rochester Creek, a tributary that flows into Rondout Creek which then flows into the Hudson River.

Rochester Creek flows in a generally southerly direction. The watershed of Rochester Creek is 53.6 square miles in size and is bound to the north by several peaks within the Catskill Mountain State Park including High Point, Mambaccus Mountain, and Little Rocky and other unnamed hills to the east and west. Tributaries to Rochester Creek include Mill Brook, Vly Creek, Beaverdam Creek, and Mettakahonts Creek. Mill Brook is the largest comprising 37 percent of the Rochester Creek basin.

Recent flooding events have resulted in the aggradation of excessive amounts of bedload sediment within some areas of Rochester Creek and bank erosion in other areas. The aggradation of sediment has resulted in the formation of lateral bars along the stream banks and mid-channel islands and has led to the overall reduction of flood conveyance capacity in the channel.

The northern-most of the two ponds, Moony Pond, is approximately 7 acres in size and located along the bank of Rochester Creek approximately 0.75 miles downstream of Boodle Hole Road. The second pond, South Pond, is approximately 1.5 acres in size and is located approximately 2,600 feet farther downstream from Moony Pond.

Land Use

According to *Phase I – Stream Repair and Restoration Technical Report and Recommendations*, completed by Milone & MacBroome, the watershed of Rochester Creek is 85% forested (May 2016). Other land uses in the project area consists of rural, single family residential, RV campgrounds, commercial sand and gravel operations, and agriculture. The proposed project would not alter the existing land use of the area.

Floodplain Management

According to the FEMA Flood Insurance Rate Map (FIRM) Panels 36111C0570E and 36111C0575E, portions of South Pond are located within a Special Flood Hazard Area (100-year floodplain).

Wetlands

The two ponds are classified as freshwater pond wetlands according to the USFWS National Wetland Inventory.

Cultural and Ecological Resources

One National Register listed property is within the vicinity of the project area; but not within the viewshed of project activities. No other previously surveyed architectural resources are within one-half mile of the project area. The Moony and South Ponds were constructed sometime after 1963. The Rochester Creek section of the project area is within an archaeological sensitive area as depicted in NY-CRIS; but Moony Pond and South Pond are not within an archaeological sensitive area. Although there is no critical habitat designated within the Proposed Project area, three listed species – Indiana bat, northern long-eared bat, and bog turtle – potentially occur with the project area. Implementation of the Proposed Project is conditioned upon issuance of applicable federal and state permits and would be constructed in accordance with federal and state permit conditions.

Funding Information

Estimated Total HUD Funded Amount: \$800,000

Estimated Total Project Cost (HUD and non-HUD funds) [24 CFR 58.32(d)]: \$800,000

Compliance with 24 CFR 58.5, and 58.6 Laws and Authorities

Record below the compliance or conformance determinations for each statute, executive order, or regulation. Provide credible, traceable, and supportive source documentation for each authority. Where applicable, complete the necessary reviews or consultations and obtain or note applicable permits of approvals. Clearly note citations, dates/names/titles of contacts, and page references. Attach additional documentation as appropriate.

Compliance Factors: Statutes, Executive Orders, and Regulations listed at 24 CFR §58.5 and §58.6	Are formal compliance steps or mitigation required?	Compliance determinations
STATUTES, EXECUTIVE ORDERS, AND REGULATIONS LISTED AT 24 CFR 50.4 and 58.6		
Airport Hazards 24 CFR Part 51 Subpart D	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	Based on guidance provided by the Department of Housing and Urban Development (HUD) in Fact Sheet #D1, the National Plan of Integrated Airport Systems was reviewed for civilian, commercial service airports within the vicinity of the project sites. No known civil airports are located within 2,500 feet and no known military airports are located within 15,000 feet of the project site. No impacts would result.

		https://www.michigan.gov/documents/mshda/mshda_cd_nsp2_air_accident_315724_7.pdf
<p>Coastal Barrier Resources</p> <p>Coastal Barrier Resources Act, as amended by the Coastal Barrier Improvement Act of 1990 [16 USC 3501]</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The project site is not located within a coastal barrier resource area or buffer zone. No impacts would result.</p> <p>http://www.fws.gov/ecologicalservices/habitatconservation/cbra/Maps/index.html</p>
<p>Flood Insurance</p> <p>Flood Disaster Protection Act of 1973 and National Flood Insurance Reform Act of 1994 [42 USC 4001-4128 and 42 USC 5154a]</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>Based on FEMA Flood Insurance Rate Maps 36111C0570E and 36111C0575E, portions of South Pond to be decommissioned are located within a Special Flood Hazard Area. However, the project does not require proof of National Flood Insurance Program (NFIP) Insurance (See Figure 10).</p>
<p>Clean Air</p> <p>Clean Air Act, as amended, particularly section 176(c) & (d); 40 CFR Parts 6, 51, 93</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>Ulster County is in attainment for all criteria pollutants as defined by the Environmental Protection Agency's (EPA's) Green Book for Nonattainment Areas for Criteria Pollutants.</p> <p>The proposed project would include regrading of slopes, partial removal of berms, construction of channels from the ponds to the creek channel, and construction of sills to maintain low berms at ponds.</p> <p>Air quality impacts would be expected during the construction period from the use of heavy equipment, however these impacts would be short-term and minimal. No long-term adverse impacts are anticipated.</p> <p>http://www.epa.gov/airquality/greenbook/addendum.html</p>
<p>Coastal Zone Management</p> <p>Coastal Zone Management Act, sections 307(c) & (d)</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>State agencies must complete a Coastal Assessment Form (CAF) as soon as the agency contemplates an action that may affect the policies for the coastal area or of an approved Local Waterfront Revitalization Program (LWRP). The project site is not located within the boundaries of the New York State Coastal Area Boundary (see Figure 3). While there are four LWRPs in Ulster County, there are no currently adopted LWRPs in the Town of Rochester. Therefore, no adverse impacts are anticipated.</p> <p>http://www.dos.ny.gov/opd/programs/pdfs/WaterwaysList_07-12.pdf</p>

<p>Contamination and Toxic Substances</p> <p>24 CFR Part 50.3(i) & 58.5(i)(2)</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The project site is not listed on a EPA Superfund National Priorities or Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) List, or equivalent State list, located within 3,000 feet of a toxic or solid waste landfill site (see Figure 4), does not have an underground storage tank, and is not known or suspected to be contaminated by toxic chemicals or radioactive materials. No significant adverse impacts are anticipated related to toxic, hazardous, or radioactive materials would occur.</p> <p>http://nepassisttool.epa.gov/nepassist/entry.aspx</p>
<p>Endangered Species</p> <p>Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402</p>	<p>Yes No</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p>According to the USFWS IPaC Trust Resource Report and Official Species Lists, the following three listed species may occur in the Proposed Project area and/or may be affected by the Proposed Project: Indiana bat (<i>Myotis sodalists</i> – endangered), northern long-eared bat (<i>Myotis septentrionalis</i> – threatened), and bog turtle (<i>Clemmys muhlenbergii</i> – threatened). The USFWS IPaC Trust Resources Report also indicates that there are seventeen species of migratory birds that are protected by the MBTA and the BGEPA that could potentially be affected by the Proposed Project.</p> <p>A request for species records within the vicinity of the Proposed Project area was sent to the New York State Natural Heritage Program (NYSNHP). A response letter from NYSNHP dated November 21, 2017, does not indicate records of NLEB, Indiana bat, bog turtle, or any other ESA species under USFWS jurisdiction within the vicinity of the Proposed Project area. Additionally, there no records of rare or state-listed animals or plants, or significant natural communities at the Proposed Project site or in its immediate vicinity.</p> <p>Tree removal associated with the Proposed Project would result in a slight reduction of potential Indiana and northern long-eared bat summer roosting, foraging, and travel habitat. However, large, intact woodlands surrounding the ponds would remain undisturbed. In December 2017, initial consultation with USFWS determined that the Proposed Project may</p>

		<p>affect, but is not likely to adversely affect bat species, based on the assumption that tree clearing could occur outside of the active season for bats. However, due to changes in the project construction timeframe, the proposed conditions for winter tree clearing could not be met.</p> <p>Subsequently, a Phase 1 Summer Habitat Assessment was conducted by Amanda Bailey (NYSDEC) on March 23, 2018. At Moony Pond, she observed that there were several live trees with exfoliating bark and a number of trees with snags that could provide roosting habitat. She recommended that an acoustic survey be conducted. At South Pond, she observed that the project area was unlikely roosting habitat, but could provide foraging habitat, and recommended that an acoustic survey also be conducted at this project area.</p> <p>Based on the results of the Summer Habitat Assessment, consultation with USFWS was reinitiated on April 10, 2018 recommending that an acoustic survey be conducted at the project areas to determine the presence of Indiana and Northern long eared bats, so that tree clearing could be conducted in late Summer 2018 (post June-July pup season).</p> <p>Acoustic monitoring was conducted between May 17 and May 26, 2018, for 3-5 nights at each project location, for a total of 12 successful detector nights. Recorded files were analyzed to determine maximum likelihood estimates (MLE) for species presence on each detector night. According to these results, big brown bats (<i>Eptesicus fuscus</i>), hoary bats (<i>Lasiurus cinereus</i>), silver-haired bats (<i>Lasionycteris noctivagans</i>), and little brown bats (<i>M. lucifugus</i>) were present at all sites monitored. Maximum likelihood estimates suggested that neither the Indiana bat nor the Northern long-eared bat were present at either project location.</p> <p>On June 15, 2018, GOSR submitted a follow up determination to USFWS finding that based on the results of the acoustic survey, the proposed project may affect, but is not likely to adversely affect the Indiana bat and the Northern long-</p>
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		eared bat, and therefore, tree clearing could be conducted in late Summer 2018, after the June-July pup season. In a response dated July 11, 2018, USFWS concurred with GOSR's determination (See Appendix A).
Explosive and Flammable Hazards 24 CFR Part 51 Subpart C	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	This criterion is applicable to HUD-assisted projects that involve new residential construction, conversion of non-residential buildings to residential use, rehabilitation of residential properties that increase the number of units, or restoration of abandoned properties to habitable condition. As the proposed project consists of decommissioning two ponds and establishing riparian buffers within Rochester Creek, the criterion does not apply and no adverse impacts are anticipated.
Farmlands Protection Farmland Protection Policy Act of 1981, particularly sections 1504(b) and 1541; 7 CFR Part 658	Yes No <input type="checkbox"/> <input checked="" type="checkbox"/>	The proposed project is located in Agricultural District 3 within Ulster County and is surrounded by agricultural lands (see Figure 9). The proposed project is not anticipated to cause disturbance to Prime, Unique, or Statewide Important Farmland per the U.S. Department of Agriculture (USDA) soil classifications (see Appendix C and Figure 8) and would not involve the conversion of farmland to non-agricultural use. The proposed project would not violate the Farmland Protection Policy Act and no adverse impacts are anticipated.
Floodplain Management Executive Order 11988, particularly section 2(a); 24 CFR Part 55	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>	Based on FEMA Flood Insurance Rate Maps 36111C0570E and 36111C0575E, portions South Pond to be decommissioned are located within a Special Flood Hazard Area. In accordance with Executive Order 11988, the Floodplain Management 5-Step Decision Making Process was followed (Appendix D).
Historic Preservation National Historic Preservation Act of 1966, particularly sections 106 and 110; 36 CFR Part 800; Tribal notification for new ground disturbance.	Yes No <input checked="" type="checkbox"/> <input type="checkbox"/>	Ground disturbing activities for the project are associated with regrading slopes, partial removal of berms, construction of channels from the ponds to the creek channel, and construction of sills to maintain low berms at ponds. One National Register listed property is within the vicinity of the project area; but not within the viewshed of project activities. No other previously surveyed architectural resources are

		<p>located within one-half mile of the project area. The Moony and South Ponds were constructed sometime after 1963. The Rochester Creek section of the project area is within an archaeological sensitive area as depicted in NY-CRIS; however, Moony Pond and South Pond are not within an archaeological sensitive area.</p> <p>Consultation with the New York State Office of Parks, Recreation and Historic Preservation and five tribal nations was initiated on November 17, 2017. On December 13, concurrence was received from New York State Office of Parks, Recreation and Historic Preservation indicating that there would be No Historic Properties Affected by the proposed project (see Appendix B). Consultation was also initiated with the Delaware Nation, the Delaware Tribe of Indians, the Mohawk Nation, the St. Regis Mohawk Tribe, and the Stockbridge Munsee Band of Mohicans. The Delaware Nation, the Delaware Tribe, and the Stockbridge-Munsee Community Band of Mohicans responded that they have no significant cultural resource concerns with the proposed action. No responses were received from other tribal entities (See Appendix B).</p>
<p>Noise Abatement and Control</p> <p>Noise Control Act of 1972, as amended by the Quiet Communities Act of 1978; 24 CFR Part 51 Subpart B</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The proposed project would not result in a new facility that would generate noise on the project site, nor would it introduce any new or rehabilitate any existing noise sensitive uses. While construction of the proposed project would cause temporary increases in noise levels, all construction activities would comply with local noise ordinances. Therefore, no significant noise impacts would occur as a result of the proposed project.</p>
<p>Sole Source Aquifers</p> <p>Safe Drinking Water Act of 1974, as amended, particularly section 1424(e); 40 CFR Part 149</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The project area is not located over a sole source aquifer (see Figure 12) and would not pose a significant threat to public health or groundwater resources and complies with Section 1424(e) of the Safe Drinking Water Act.</p>
<p>Wetlands Protection</p> <p>Executive Order 11990, particularly sections 2 and 5</p>	<p>Yes No</p> <p><input checked="" type="checkbox"/> <input type="checkbox"/></p>	<p>A Protection of Waters permit is required to physically disturb the bed or banks of a stream over 300 linear feet to mitigate the erosion and stabilization mitigation of the creek. Prior to</p>

		<p>construction the project engineer will also need to secure Clean Water Act Section 401 and 404 authorizations from NYSDEC and USACE.</p> <p>The project will adhere to and be in compliance with the guidelines and regulations of Executive Order 11990, in order to minimize the destruction, loss or degradation of wetlands and to preserve and enhance the natural and beneficial values of wetlands in the project vicinity (see Figure 7). In accordance with Executive Order 11990, a 5-Step Process was completed to determine that there are no practicable alternatives to wetlands development (see Appendix D).</p>
<p>Wild and Scenic Rivers</p> <p>Wild and Scenic Rivers Act of 1968, particularly section 7(b) and (c)</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The project site is not located within the vicinity of any designated wild, scenic, or recreational rivers or scenic areas of statewide significance (see Figure 5). Therefore, the proposed project would not violate the Wild and Scenic Rivers Act.</p>
<p>Environmental Justice</p> <p>Executive Order 12898</p>	<p>Yes No</p> <p><input type="checkbox"/> <input checked="" type="checkbox"/></p>	<p>The proposed site is not located in or adjacent to potential environmental justice areas identified by the New York State Department of Environmental Conservation (see Figure 11). Therefore, the proposed project would not violate Executive Order 12898.</p>

Environmental Assessment Factors [24 CFR 58.40; Ref. 40 CFR 1508.8 &1508.27] Recorded below is the qualitative and quantitative significance of the effects of the proposal on the character, features and resources of the project area. Each factor has been evaluated and documented, as appropriate and in proportion to its relevance to the proposed action. Verifiable source documentation has been provided and described in support of each determination, as appropriate. Credible, traceable and supportive source documentation for each authority has been provided. Where applicable, the necessary reviews or consultations have been completed and applicable permits of approvals have been obtained or noted. Citations, dates/names/titles of contacts, and page references are clear. Additional documentation is attached, as appropriate. **All conditions, attenuation or mitigation measures have been clearly identified.**

Impact Codes: Use an impact code from the following list to make the determination of impact for each factor.

- (1) Minor beneficial impact
- (2) No impact anticipated
- (3) Minor Adverse Impact – May require mitigation
- (4) Significant or potentially significant impact requiring avoidance or modification which may require an Environmental Impact Statement

Environmental Assessment Factor	Impact Code	Impact Evaluation
LAND DEVELOPMENT		
Conformance with Plans / Compatible Land Use and Zoning / Scale and Urban Design	2	No impact anticipated. While the Town of Rochester does have a zoning ordinance, being that the project area is predominantly water features, they do not lie within an area that is zoned. The proposed project would be compatible with existing land uses in the surrounding area and would not result in changes to land use. Therefore, no impacts would result.
Soil Suitability/ Slope/ Erosion/ Drainage/ Storm Water Runoff	1	Minor beneficial impact anticipated. Rochester Creek would benefit significantly from berm repair and/or rehabilitation activities through restoration of flow and capacity. Repairs will also significantly reduce the risk of flooding and mitigate stormwater effects. During construction, erosion and sediment controls would be utilized. Adherence to DEC/USACE permits will minimize turbidity, and the project would halt future erosion.
Hazards and Nuisances including Site Safety and Noise	2	No impact anticipated. The proposed project would not result in hazards and nuisances. All state and local construction safety procedures would be followed. Therefore, no impacts would result.
Energy Consumption	2	No impact anticipated. The proposed project would not affect energy generation or distribution. Therefore, no impact would result.

Environmental Assessment Factor	Impact Code	Impact Evaluation
SOCIOECONOMIC		
Employment and Income Patterns	2	No impact anticipated. The actions comprising the proposed project are limited to berm repairs and improvements to reduce the risk of flooding and to mitigate storm water effects. These actions would have no potential to impact employment opportunities or income patterns.
Demographic Character Changes, Displacement	2	No impact anticipated. The proposed project is being undertaken to reduce the risk of flooding and to mitigate storm water effects. The project is not expected to induce any change in demographic character of the surrounding area, displace individuals or families, eliminate jobs, local businesses, or community facilities, or disproportionately affect particular populations.

Environmental Assessment Factor	Impact Code	Impact Evaluation
COMMUNITY FACILITIES AND SERVICES		
Educational and Cultural Facilities	2	No impact anticipated. The proposed project would not introduce any new population that would increase the student population of the area. As a result, the proposed project has no potential to affect educational facilities. In addition, the proposed project would not adversely impact historic/cultural facilities.
Commercial Facilities	2	No impact anticipated. The proposed project is limited to berm repairs and improvements to reduce the risk of flooding and to mitigate storm water effects. These actions would not introduce any new development that would require retail services or other commercial facilities.
Health Care and Social Services	2	No impact anticipated. The proposed project is limited to berm repairs and improvements to reduce the risk of flooding and to mitigate storm water effects. These actions would not significantly impact social services
Solid Waste Disposal / Recycling	2	No impact anticipated. The proposed project is limited to berm repairs and improvements to reduce the risk of flooding and to mitigate storm water effects. These actions would not introduce any new development that would generate solid waste.
Waste Water / Sanitary Sewers	2	No impact anticipated. The proposed project is limited to berm repairs and improvements to reduce the risk of flooding and to mitigate storm water effects. These actions would not introduce any new development that would generate waste water.
Water Supply	2	No impact anticipated. The proposed project is limited to berm repairs and improvements to reduce the risk of flooding and to mitigate storm water effects. These actions would not introduce any new development that would generate demand for water.

Public Safety - Police, Fire and Emergency Medical	1	Minor beneficial impact anticipated. The proposed project is limited to berm repairs and improvements to reduce the risk of flooding and to mitigate storm water effects. These actions would not introduce any new development that would generate demand for additional police fire and emergency medical staff. The proposed project will restore the ability of the town to respond quickly to emergencies during future events.
Parks, Open Space and Recreation	2	No impact anticipated. The proposed project is limited to berm repairs and improvements to reduce the risk of flooding and to mitigate storm water effects. These actions would not introduce any new development that would generate demand for open space resources.
Transportation and Accessibility	2	No impact anticipated. The proposed project would not introduce any new development that would require new or improved transportation connections and would not add any new demand on transportation services.

Environmental Assessment Factor	Impact Code	Impact Evaluation
NATURAL FEATURES		
Unique Natural Features, Water Resources	3	Minor adverse impacts would occur. Project activities would include regrading of slopes, partial removal of berms, construction of channels from the ponds to the creek channel, and construction of sills to maintain low berms at ponds. Adverse impacts resulting from in-stream activities would be limited and short-term in duration. During construction, erosion and sediment controls would be utilized. Adherence to DEC/USACE permits will minimize turbidity. As a result of these controls, no long-term adverse impacts on natural features or water resources would occur.
Vegetation, Wildlife	3	Tree removal associated with the Proposed Project would result in a slight reduction of potential Indiana and northern long-eared bat summer roosting, foraging, and travel habitat. However, large, intact woodlands surrounding the ponds would remain undisturbed. Tree removal activities would occur between November 1 and March 31, outside of the active season/roosting season. The project is not located in the vicinity of any significant natural and vegetative communities (see Figure 6).
Other Factors	2	Not applicable.

Standard Conditions for All Projects

Any change to the approved scope of work will require re-evaluation by the Certifying Officer for compliance with NEPA and other laws and Executive Orders.

This review does not address all federal, state and local requirements. Acceptance of federal funding requires the recipient to comply with all federal state and local laws. Failure to obtain all appropriate federal, state and local environmental permits and clearances may jeopardize federal funding.

Additional Studies Performed:

SEQRA Environmental Assessment and Negative Declaration, June 2018

Field Inspection (Date and completed by):

Site visits and inspections were performed by Milone & MacBroome in November and December of 2015

Phase 1 Summer Habitat Assessment, Amanda Bailey, NYSDEC, March 2018

Bat Acoustic Survey, Amanda Bailey, NYSDEC, May 17-26, 2018

List of Sources, Agencies and Persons Consulted [40 CFR 1508.9(b)]:

Sources

NY Rising Community Reconstruction Plan Ulster Communities, March 2014,
https://stormrecovery.ny.gov/sites/default/files/crp/community/documents/ulstercounty_nyrcr_plan.pdf (accessed on 3/25/2105)

Phase I – Stream Repair and Restoration Technical Report and Recommendations. dated May, 2016 completed by Milone & MacBroome.

New York State Department of Environmental Conservation, Permit (ID 3-5148-00207/00005) Stream Disturbance – Under Article 15 Title 5, Permit (ID 3-5148-00207/00006) Water Quality Certification – Under Section 401 – Clean Water Act, November 11, 2014

National Wild and Scenic Rivers System. <http://www.rivers.gov/maps/conus.php>

New York State Cultural Resource Information System,
<https://cris.parks.ny.gov/Login.aspx?ReturnUrl=%2f>.

New York State Historic Preservation Office (SHPO) and the Division for Historic Preservation (DHP) within the Office of Parks, Recreation and Historic Preservation (OPRHP), New York State Cultural Resource Information System (CRIS), <https://cris.parks.ny.gov/>.

New York State Department of Environmental Conservation, Environmental Justice Areas,
<http://www.dec.ny.gov/public/899.html>

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<http://www.dec.ny.gov/imsmaps/ERM/viewer.htm>

New York State Department of Environmental Conservation, Environmental Facilities Mapper, <http://www.dec.ny.gov/imsmaps/facilities/viewer.htm>

New York State Department of Environmental Conservation, Environmental Site Remediation Database, <http://www.dec.ny.gov/cfm/xtapps/derexternal/index.cfm?pageid=3>

New York State Department of Environmental Conservation, Spill Incidents Database Search, <http://www.dec.ny.gov/cfm/xtapps/derexternal/index.cfm?pageid=2>

New York State Department of State, Coastal Boundary Map, <http://www.dos.ny.gov/opd/atlas/>.

United States Department of Agriculture Natural Resources Conservation Services, Web Soil Survey, <http://websoilsurvey.sc.egov.usda.gov/App/HomePage.htm>.

United States Department of Housing and Urban Development. HUD Fact Sheet #d1 Siting HUD Assisted Projects in Accident Potential Zones
https://www.michigan.gov/documents/mshda/mshda_cd_nsp2_air_accident_315724_7.pdf

United States Environmental Protection Agency, The Green Book Nonattainment Areas for Criteria Pollutants. <http://www.epa.gov/airquality/greenbook/adden.html>

United States Environmental Protection Agency, Sole Source Aquifers, <https://www.epa.gov/dwssa>

United States Federal Emergency Management Agency. FIRM Panels. <https://msc.fema.gov/portal>

United States Fish and Wildlife Service, Coastal Barrier Resources, <http://www.fws.gov/ecological-services/habitat-conservation/cbra/Maps/index.html>

United States Fish and Wildlife Service, National Wetlands Inventory, <http://www.fws.gov/wetlands/>.

United States Fish and Wildlife Service, Wetland-Codes, <https://www.fws.gov/wetlands/data/Wetland-Codes.html>

United States Fish and Wildlife Service, IPaC Information for Planning and Conservation, <http://ecos.fws.gov/ipac/>.

See Figures 1- 12 and Appendices A-D for additional sources.

Agencies and Persons Consulted

New York State Department of Environmental Conservation; Division of Fish, Wildlife and Marine Resources, Natural Heritage Program

New York State Department of Environmental Conservation; Division of Environmental Permits, Region 3

New York Ecological Services Field Office, U.S. Fish & Wildlife Service

Division for Historic Preservation, New York State Parks, Recreation & Historic Preservation

Tribal consultation: Delaware Nation; Delaware Tribe of Indians; Saint Regis Mohawk; Stockbridge-Munsee

Community Band of Mohicans; Mohawk Nation

List of Permits Obtained or Required:

Article 15, Protection of Waters Permit, pursuant to 6NYCRR Part 608 is required for any disturbance to the bed and banks of these streams.

State Pollutant Discharge Elimination System (SPDES) General Permit (GP-0-15-002) for Stormwater Discharge from Construction Activities, and a Stormwater Pollution Prevention Plan (SWPPP) must be developed which conforms to requirements of the General Permit.

Local Floodplain Development Permit (Chapter 81 of Town of Rochester Town Code)

Public Outreach [24 CFR 50.23 & 58.43]:

Initial project recommendations were generated by the Ulster NYRCR Planning Committee, which was comprised of residents, business owners and municipal representatives from the ten NYRCR Ulster Communities. The Committee met approximately every other week from September 2013 through March 2014. Materials were circulated to the Planning Committee before and after each meeting and also posted to the NYRCR website. The Planning Committee members also created Facebook pages, posted relevant materials to their municipal websites, held additional meetings within their communities, and attended municipal meetings to report on their NYRCR Plan progress.

Four public engagement meetings were held throughout the eight-month planning process. These meetings provided the opportunity for Ulster County residents to learn about the NYRCR planning process and provide input to help develop community-driven plans for a more resilient future. The format and venue of the Public Engagement Meetings varied, but generally included power point presentations, display boards and mapping, workgroups with maps and markers, survey sheets and comment boxes.

Cumulative Impact Analysis [24 CFR 58.32]:

Flooding impacts do not adhere to municipal jurisdictional boundaries. According to the NY Rising Community Reconstruction Plan for the Ulster Communities, several strategies were developed to concentrate the resiliency efforts toward resolving critical issues identified within the entire Ulster County region. One strategy listed was to repair, upgrade and protect existing infrastructure assets and critical facilities from flood damage to reduce their vulnerability along with a project at the Rochester Creek Bridge, located just downstream from this proposed action. Another strategy listed was to preserve and restore natural areas including floodplains, streams and wetlands to help mitigate flooding, which includes the proposed action of this review, in addition to repairs along Rochester and Rondout Creeks.

Only the controlled draining of Moony and South Ponds through a permanent V-notch openings, removal of outlet structures and piping, and filtering of flows prior to their entering the creek is moving forward. Cumulative environmental impacts of the project are not expected.

Alternatives [24 CFR 58.40(e); 40 CFR 1508.9]

Other alternatives considered would have addressed restoration of additional areas outside of the two ponds, including tributary repair project along Rochester Creek and Rondout Creek.

No Action Alternative [24 CFR 58.40(e)]:

Detritus that was deposited throughout the tributaries of the area during the various storm events would continue to remain blocking culverts, lodging against bridge abutments, and inhibiting the flow of water. The resulting damage and compromised infrastructure remains not only in these municipalities, but also the municipalities downstream. The regional implications of not addressing these flow issues are substantial.

Flooding would continue to impact farms in Rochester and continue to cause physical damage to roads, bridges, homes, and other essential infrastructure compounding short and long term economic impacts that will ripple throughout the County and the region.

Irreparable losses to farms, power failures, and, in some cases, isolation from economic centers could continue to complicate and delay recovery efforts in the event of future storms. Tourism could suffer greatly through both an overall loss of revenue and lost wages due to postponed business activity in the event of future flooding.

Summary of Findings and Conclusions:

Proposed improvements will help mitigate damage caused by flooding in future storm events. By draining Moony and South Ponds, the project will help to restore the natural flow and capacity of Rochester Creek, thereby reducing the risk of flooding and mitigating storm water effects. This project will address the impact of previous storm damage through the reduction of flood risks, more efficient emergency response, and the ability to recover quickly from future storm impacts and mitigate future flooding and associated dangers to health and welfare of the local residents.

As shown above in the Environmental Assessment Checklist, no significant land development, neighborhood, socioeconomic, natural resources, community facilities or other direct, indirect, or cumulative impacts would result from the proposed project. As shown in the accompanying Statutory Checklists, the proposed project would comply with all relevant regulations listed in 24 CFR subparts 58.5 and 58.6.

Mitigation Measures and Conditions [40 CFR 1505.2(c)]

Summarize below all mitigation measures adopted by the Responsible Entity to reduce, avoid, or eliminate adverse environmental impacts and to avoid non-compliance or non-conformance with the above-listed authorities and factors. These measures/conditions must be incorporated into project contracts, development agreements, and other relevant documents. The staff responsible for implementing and monitoring mitigation measures should be clearly identified in the mitigation plan.

Law, Authority, or Factor	Mitigation Measure
Endangered Species Act of 1973, particularly section 7; 50 CFR Part 402	Tree removal would be minimized in the design to the greatest extent practicable, and trees to be protected from cutting would be clearly demarcated with bright orange construction fencing and flagging to prevent unnecessary clearing.
Erosion and sediment control	Sedimentation and erosion control measures would be incorporated into the project design. Initial drawdown of ponds will be pumped directly to Rochester Creek as long as they run clean; if any turbid water is encountered it will be pumped to settling basin that will run overland to creek.
Permit Requirements	All permit conditions listed above or otherwise required for activities under the proposed project must be adhered to.

Determination:

Finding of No Significant Impact [24 CFR 58.40(g)(1); 40 CFR 1508.27]
The project will not result in a significant impact on the quality of the human environment.

Finding of Significant Impact [24 CFR 58.40(g)(2); 40 CFR 1508.27]
The project may significantly affect the quality of the human environment.

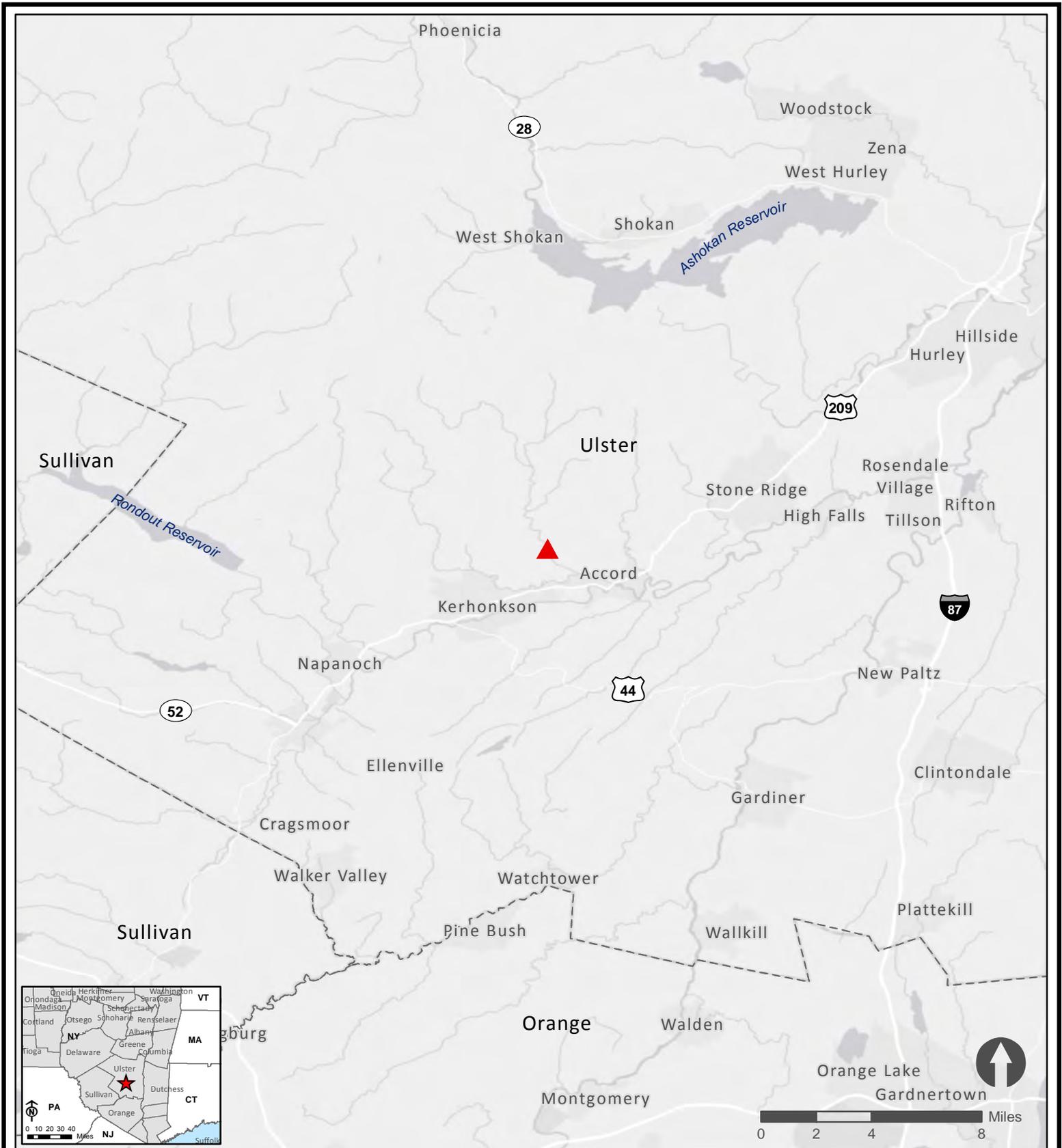
Preparer Signature:  Date: July 31, 2018

Name/Title/Organization: Joshua Schnabel/Planner/Louis Berger

Certifying Officer Signature:  Date: July 31, 2018

Name/Title: Lori A. Shirley / Director and Certifying Officer

This original, signed document and related supporting material must be retained on file by the Responsible Entity in an Environmental Review Record (ERR) for the activity/project (ref: 24 CFR Part 58.38) and in accordance with recordkeeping requirements for the HUD program(s).



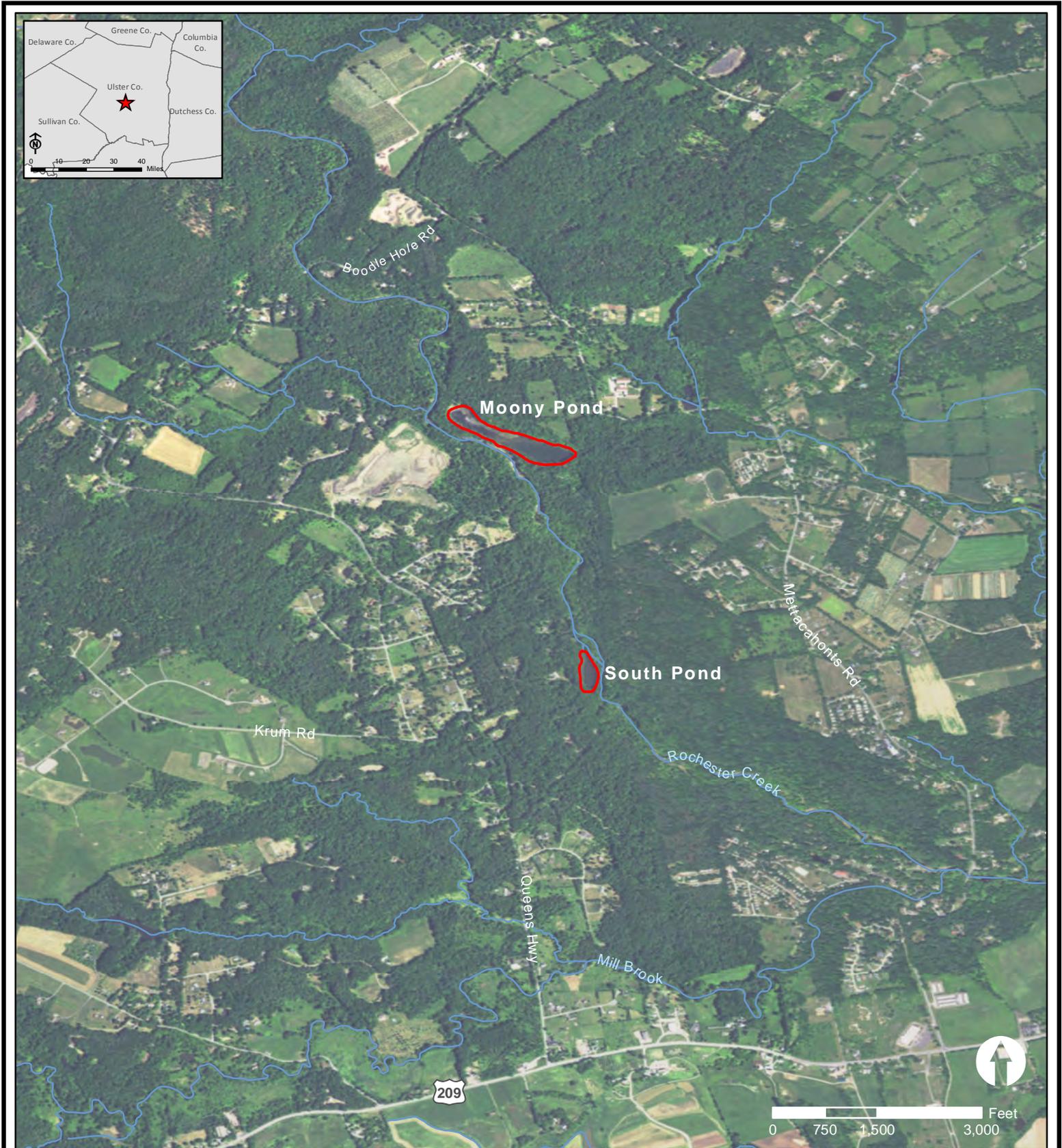
-  Project Location
-  County Boundary

Figure 1
Regional Location

Rochester Creek Mitigation

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets; NYS Dept. of State; NYS Department of Environmental Conservation; U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map

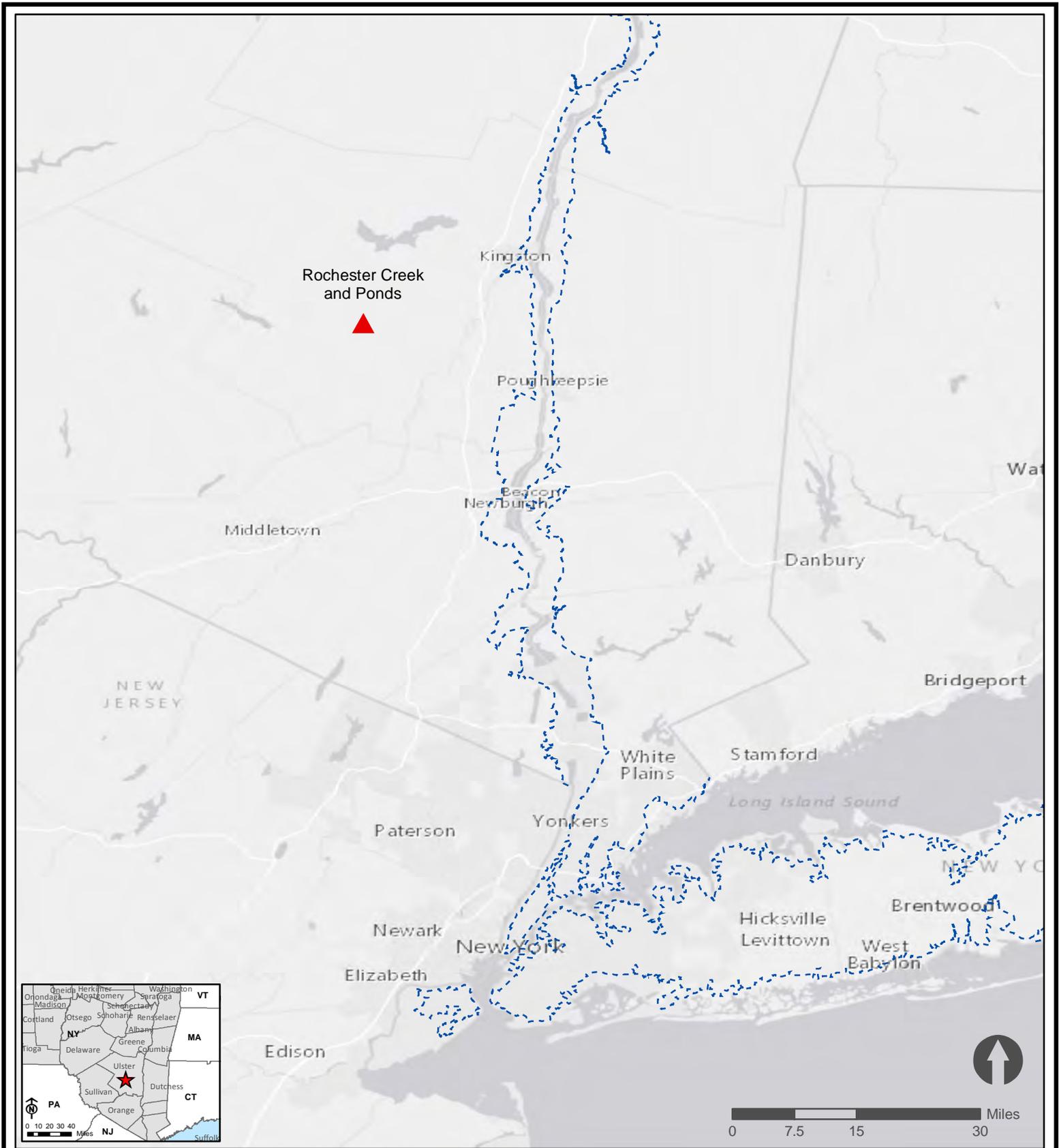




 Project Boundary

Figure 2
Project Area

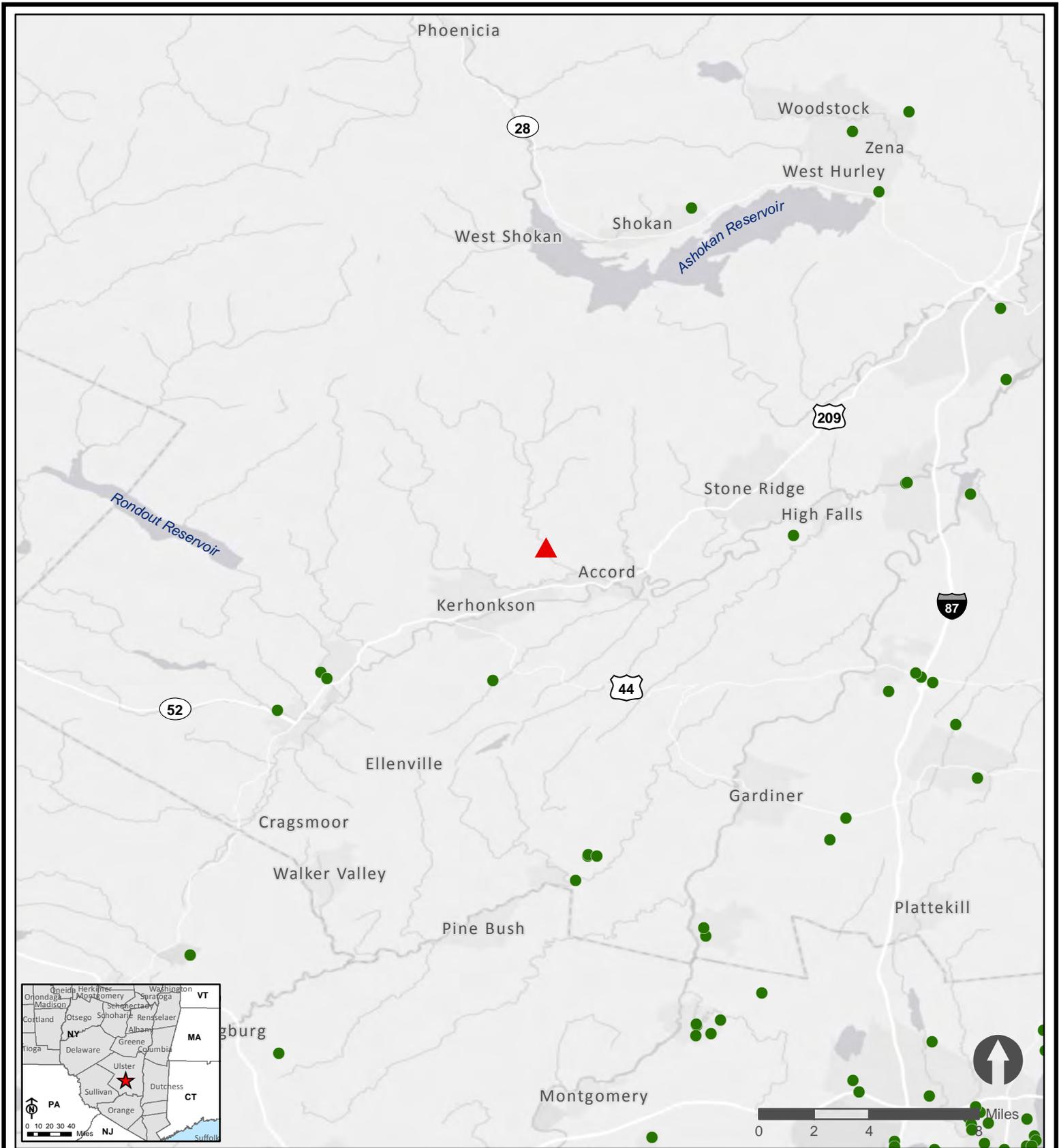
Rochester Creek Mitigation



- ▲ Project Location
- Coastal Boundary

Figure 3
Coastal Boundary

Rochester Creek Mitigation



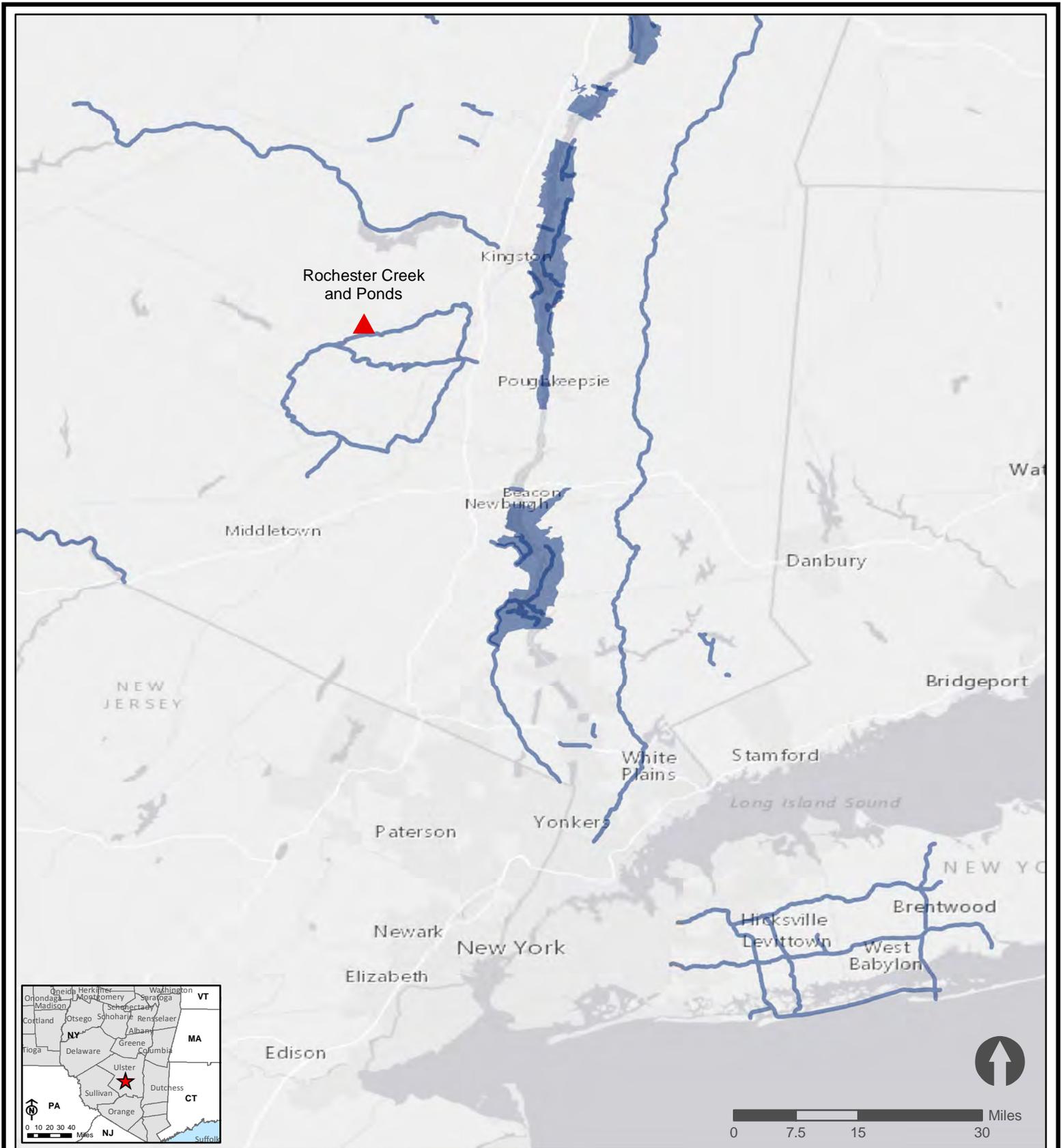
- ▲ Project Location
- Remediation Site

Figure 4
Remediation Sites

Rochester Creek Mitigation

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets; NYS Dept. of State; NYS Department of Environmental Conservation; U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map





- ▲ Project Location
- New York State Scenic Byway
- Scenic Areas

Figure 5
Scenic Areas of
Statewide Significance
 Rochester Creek Mitigation

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets; NYS Dept. of State; NYS Department of Environmental Conservation; U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map



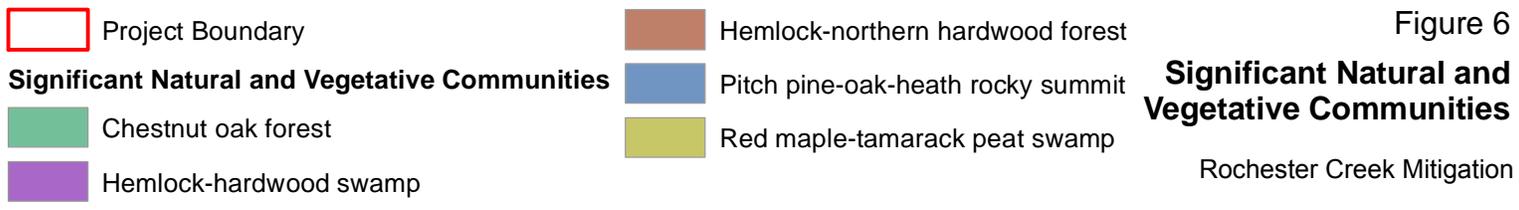
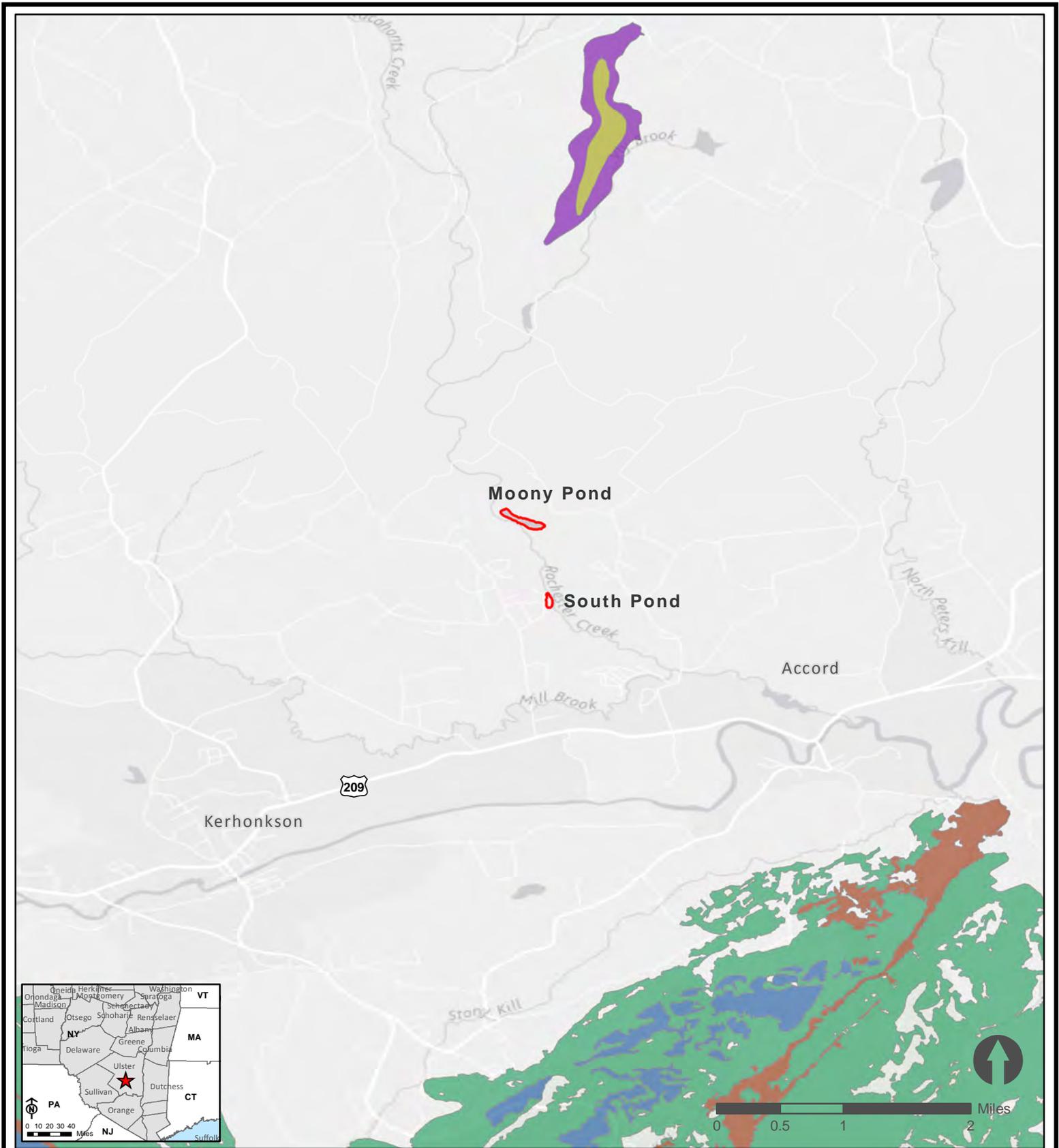


Figure 6
Significant Natural and Vegetative Communities
 Rochester Creek Mitigation

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets; NYS Dept. of State; NYS Department of Environmental Conservation; U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map



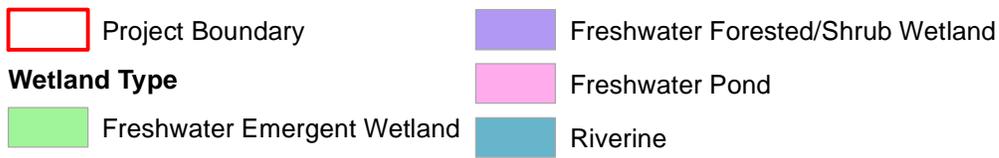
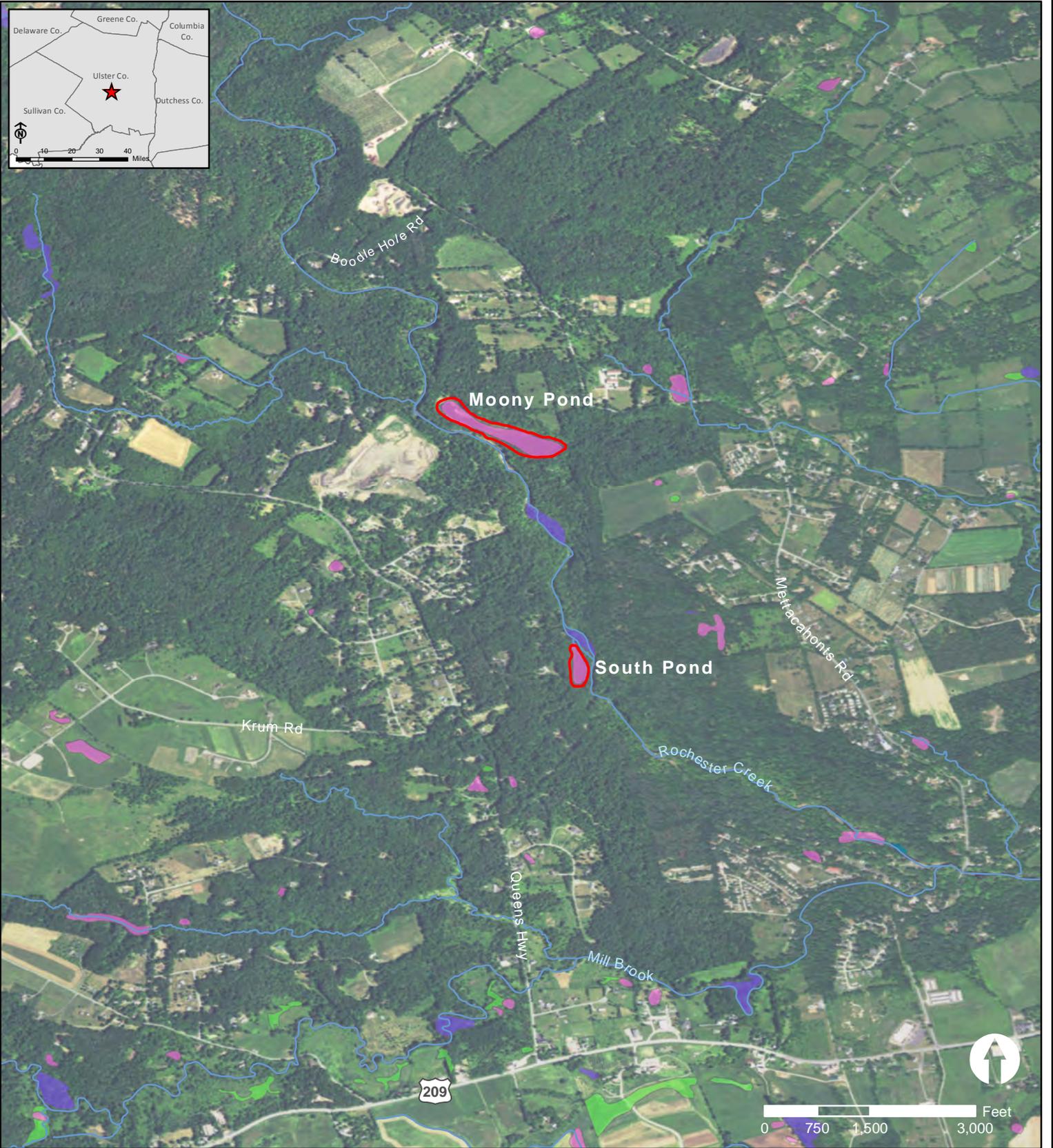


Figure 7
Existing Wetlands

Rochester Creek Mitigation

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets; NYS Dept. of State; NYS Department of Environmental Conservation; U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map



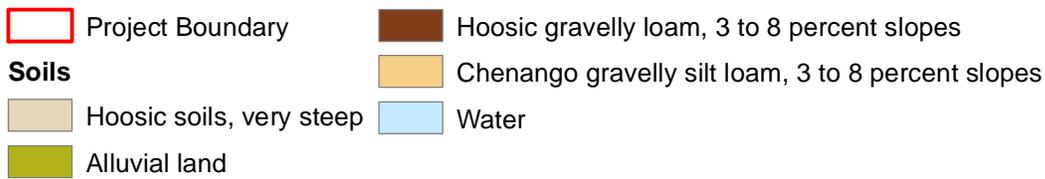
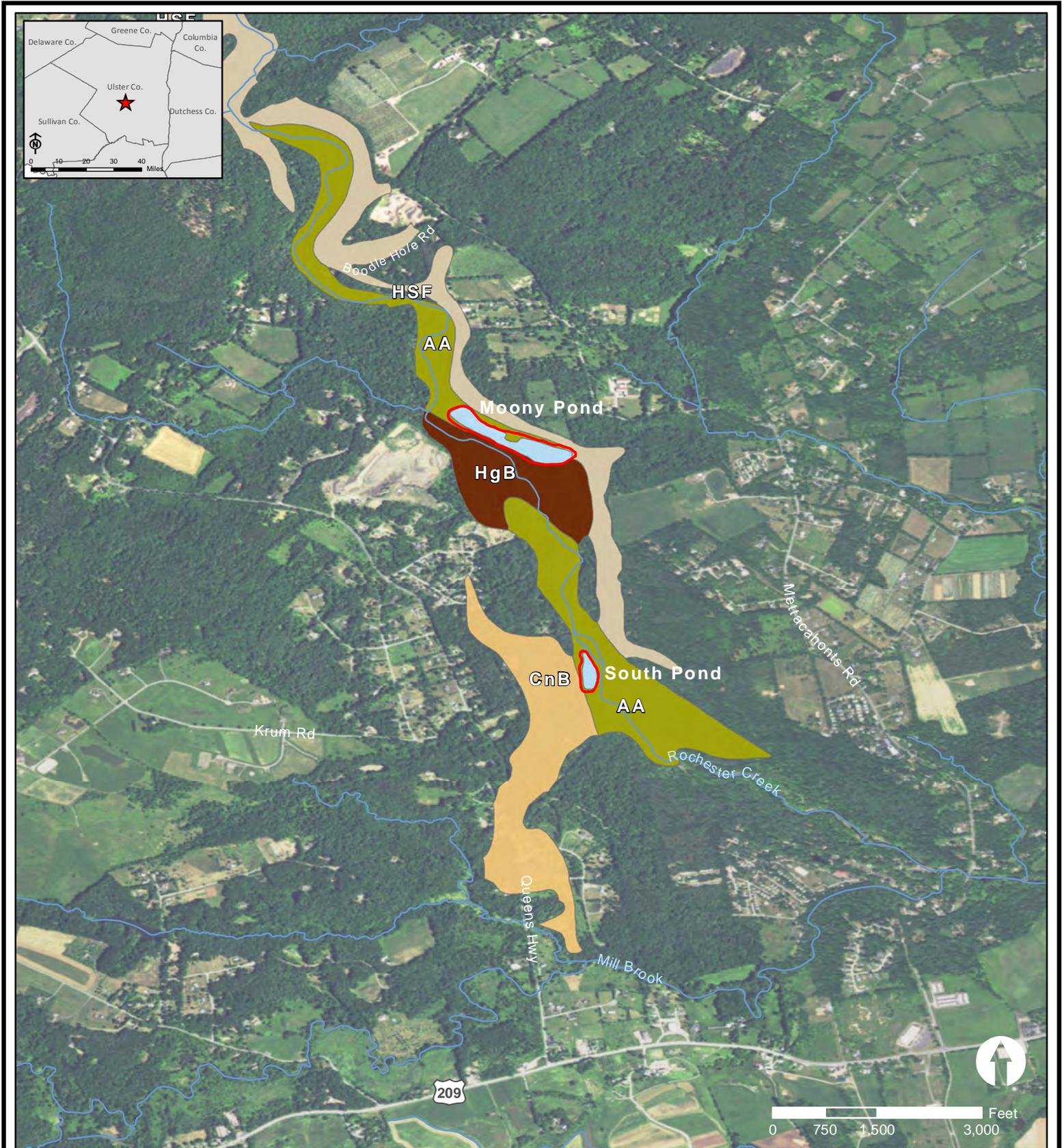
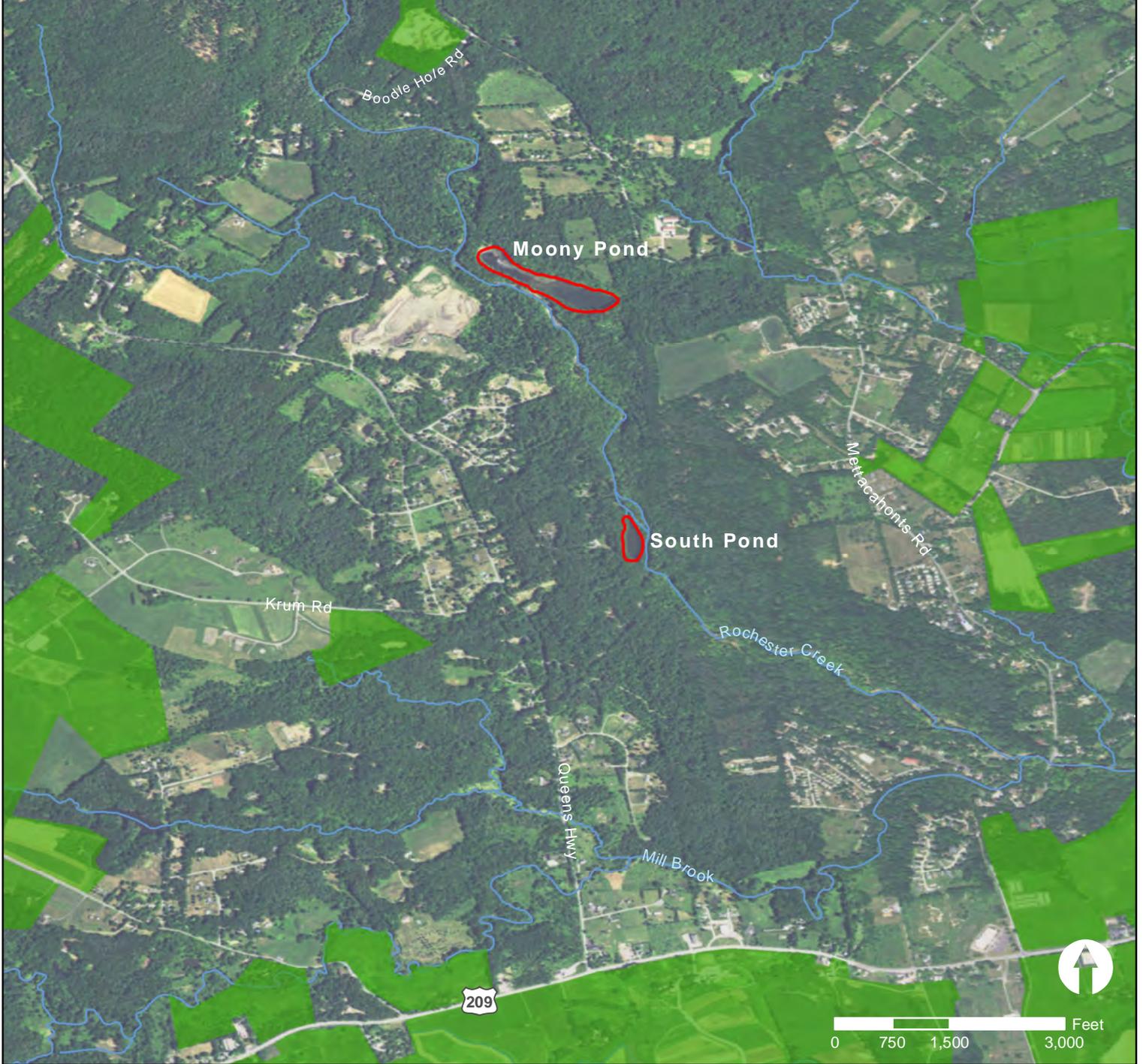
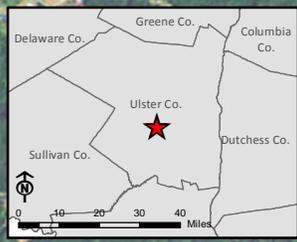


Figure 8
Soils

Rochester Creek Mitigation

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets; NYS Dept. of State; NYS Department of Environmental Conservation; U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map



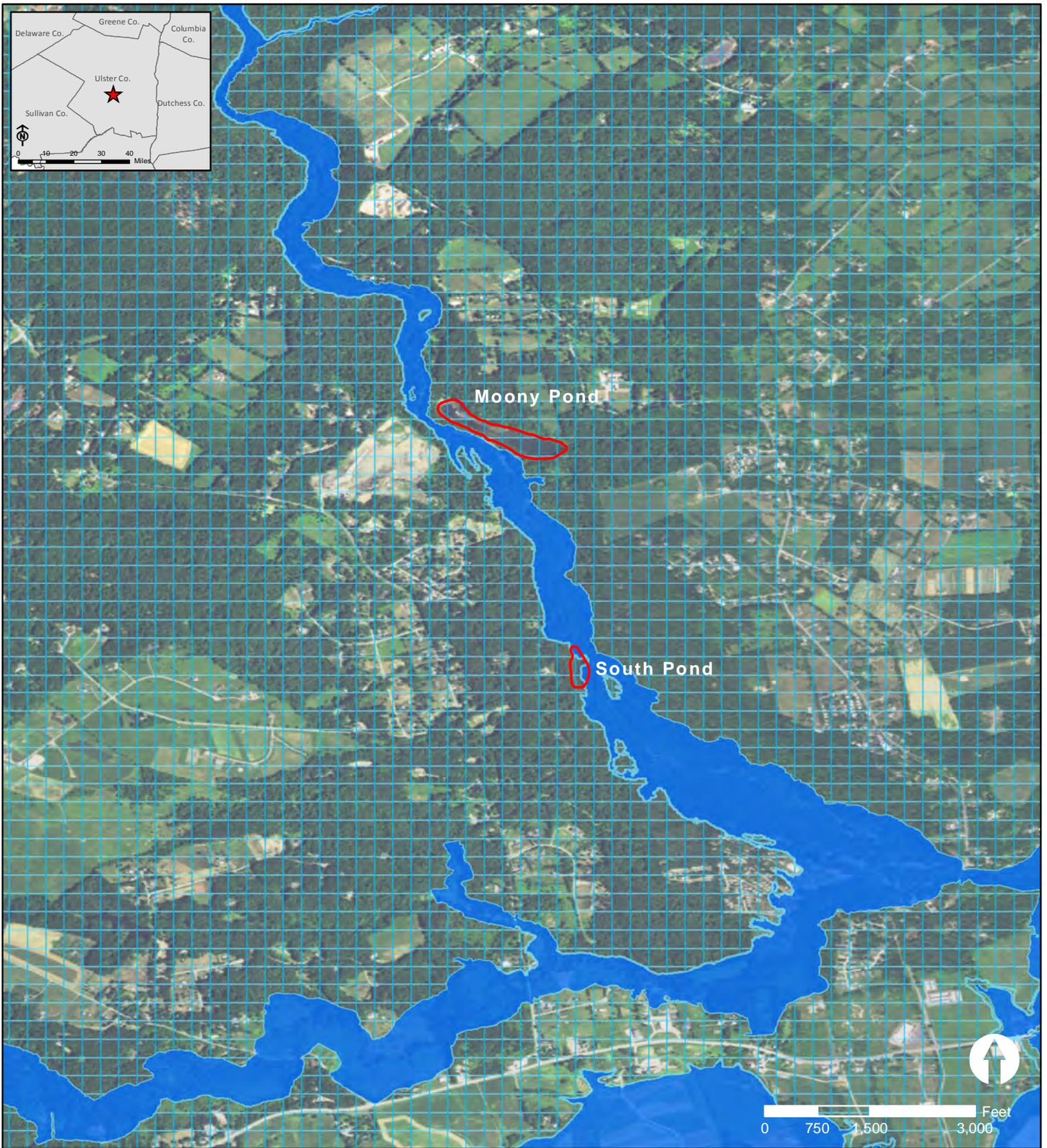
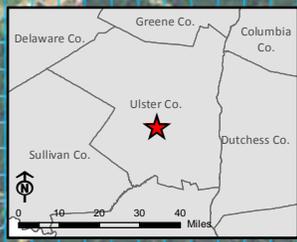
-  Project Boundary
-  Agricultural Land

Figure 9
Existing Agricultural Lands

Rochester Creek Mitigation

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets; NYS Dept. of State; NYS Department of Environmental Conservation; U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map

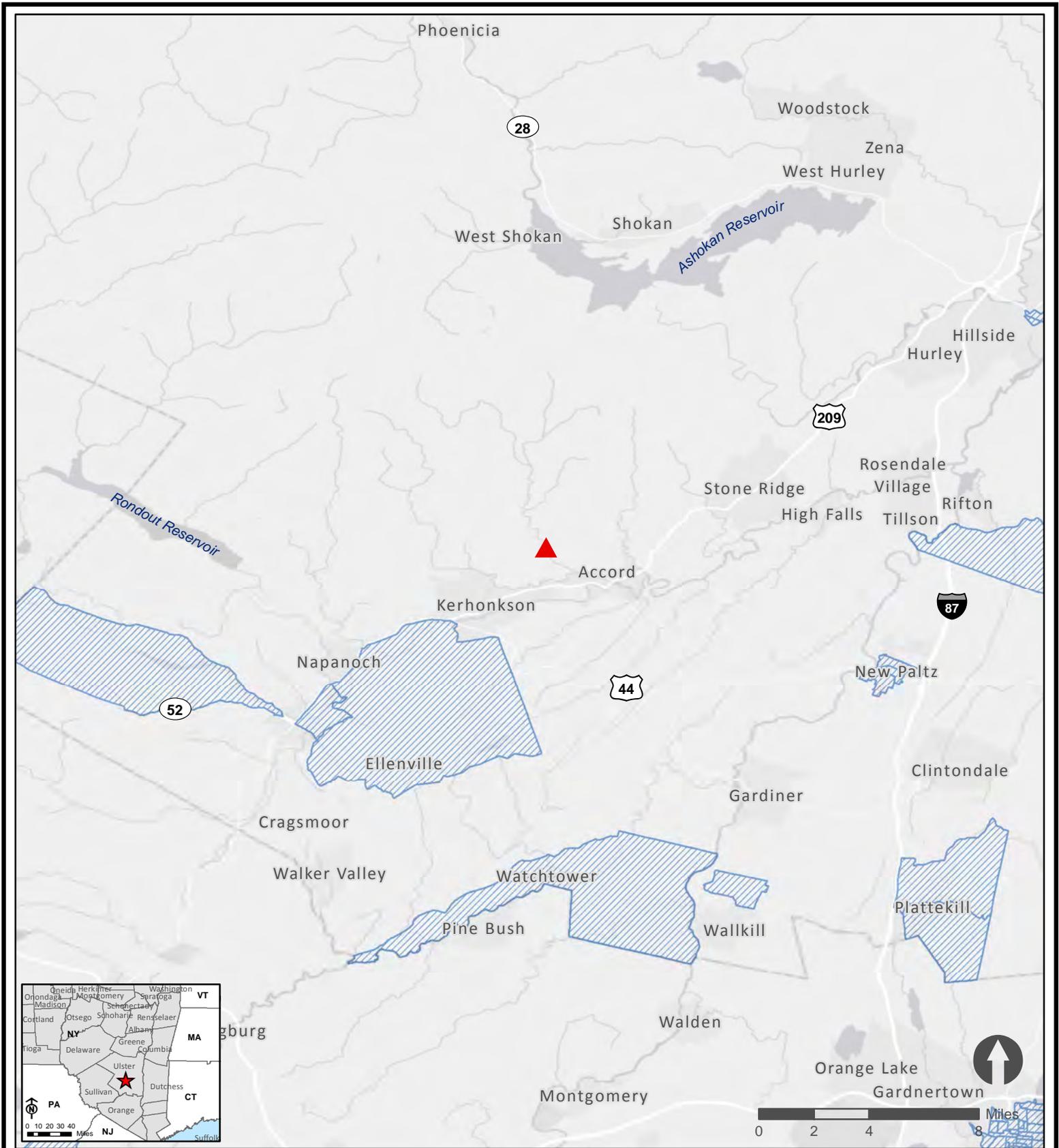




-  Project Boundary
-  FEMA 100 Yr. Flood Hazard Zone
-  FEMA 500 Yr. Flood Hazard Zone

Figure 10
Flood Hazard

Rochester Creek Mitigation



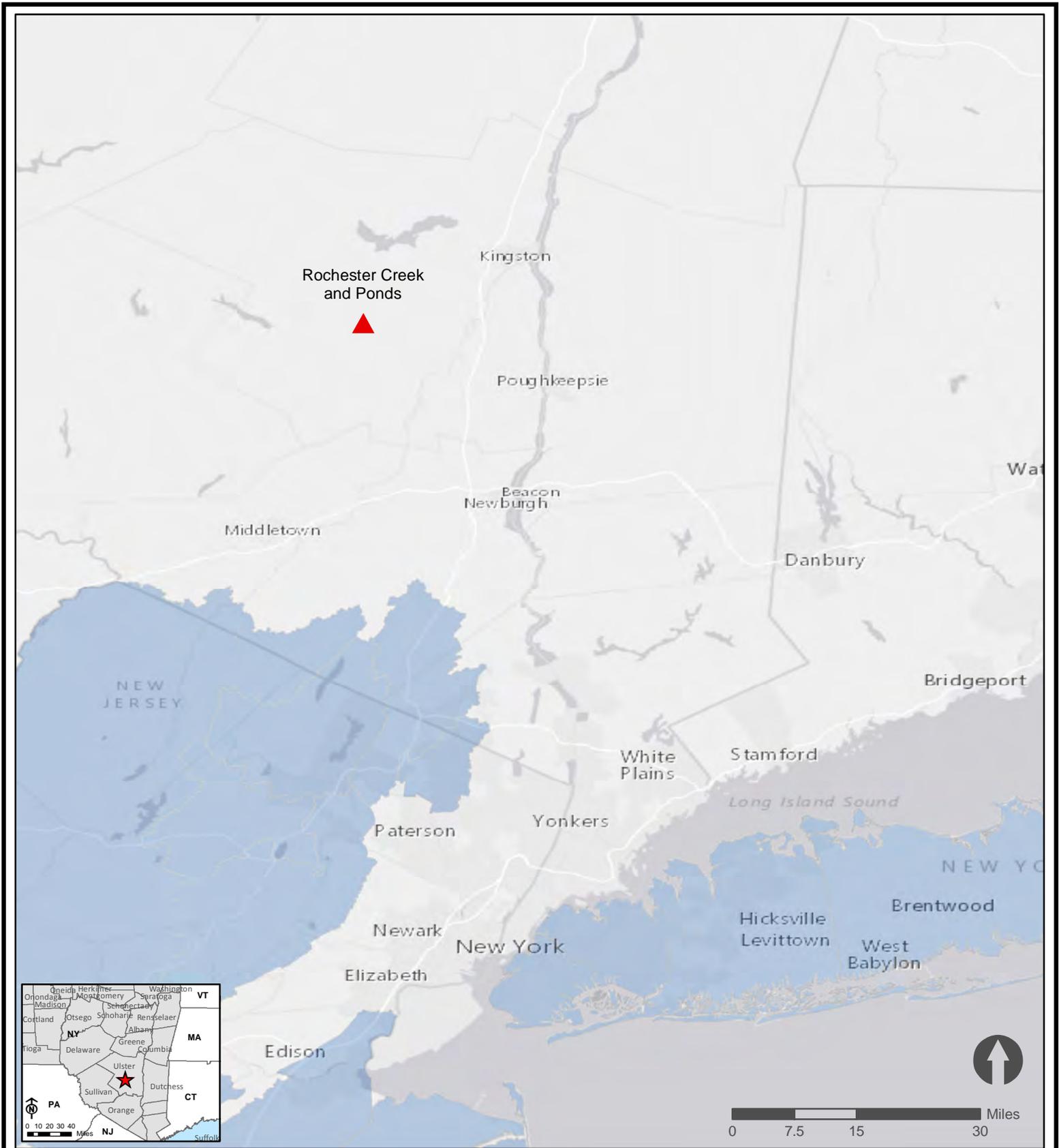
-  Project Location
-  Potential EJ Area

Figure 11
Potential EJ Areas

Rochester Creek Mitigation

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets; NYS Dept. of State; NYS Department of Environmental Conservation; U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map





- ▲ Project Location
- Sole Source Aquifer

Figure 12
Sole Source Aquifers

Rochester Creek Mitigation

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets; NYS Dept. of State; NYS Department of Environmental Conservation; U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map



APPENDIX A - DEC, NHP AND U.S. FISH AND WILDLIFE SERVICE CONSULTATION

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, New York Natural Heritage Program
625 Broadway, Fifth Floor, Albany, NY 12233-4757
P: (518) 402-8935 | F: (518) 402-8925
www.dec.ny.gov

November 21, 2017

Lori Shirley
Governor's Office of Storm Recovery
30-40 State St., Hampton Plaza
Albany, NY 12207

Re: Rochester Creek, Moony Pond, and South Pond Mitigation and Dam Rehabilitation
County: Ulster Town/City: Rochester

Dear Ms. Shirley:

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 the project 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 NYS DEC Region 3 Office, Division of Environmental Permits, at dep.r3@dec.ny.gov, (845) 256-3054.

Sincerely,



Nicholas Conrad
Information Resources Coordinator
New York Natural Heritage Program

1447



Governor's Office of Storm Recovery

ANDREW M. CUOMO
Governor

LISA BOVA-HIATT
Executive Director

November 16, 2017

NY Natural Heritage Program - Information Services
NYS DEC
625 Broadway, 5th Floor
Albany, NY 12233-4757
VIA EMAIL: NaturalHeritage@dec.ny.gov

**Re: Request for Information
Rochester Creek and Ponds Mitigation, Ulster County, NY**

To whom it may concern:

The Governor's Office of Storm Recovery (GOSR), an office of the New York State Homes and Community Renewal's (NYSHCR) Housing Trust Fund Corporation, was established to aid the statewide recovery of disaster-affected communities in New York State. GOSR is administering a U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant for Disaster Recovery (CDBG-DR), including the New York Rising Community Reconstruction (NYRCR) Program. GOSR is conducting an environmental review of the above referenced project which is being considered for funding through the NYRCR Program.

The Town of Rochester is proposing a mitigation project to address dam erosion at two ponds located off the banks of Rochester Creek in Ulster County, New York (see Figure 1). Rochester Creek is approximately 11 miles in length and is a tributary to Rondout Creek, which is itself a tributary of the Hudson River. The project area begins at Moony Pond, located approximately 0.6 miles downstream of the Boodlehole Road Bridge, and extends approximately 0.5 mile downstream to include South Pond. During Hurricane Irene and Tropical Storm Lee, dams holding Moony and South Ponds in place were severely eroded. In the event of another 100-year storm, these dams will be at risk of failure, resulting in uncontrolled release of impounded water and sediment into Rochester Creek, and causing extensive damage to the creek and to downstream properties.

At Moony Pond, the earthen dam holding the pond in place is registered with the NYS DEC Inventory of Dams as a Hazard Code A. It is also registered as a federal dam. The lower half of the dam separating the pond from the creek has been subjected to erosion due to stream flow in Rochester Creek. Within the lower extent of the dam, approximately 250 linear feet has been severely eroded and water is actively seeping through the dam. Continued erosion, in combination with hydrostatic pressure from the

pond, will potentially result in catastrophic failure of the dam and spontaneous draining of the pond into the creek, which would first, cause flooding of residences downstream, and second, cause potential failure of berm infrastructure at the South Pond location.

The proposed project would address potential failure of the Moony Pond berm through the following measures:

- Drain the pond by cutting a V-shaped notch in the retaining berm facing Rochester Creek
- Remove the current riser structure, outlet structure, and piping
- Allow the basin to drain in a controlled manner into Rochester Creek
- Filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek.

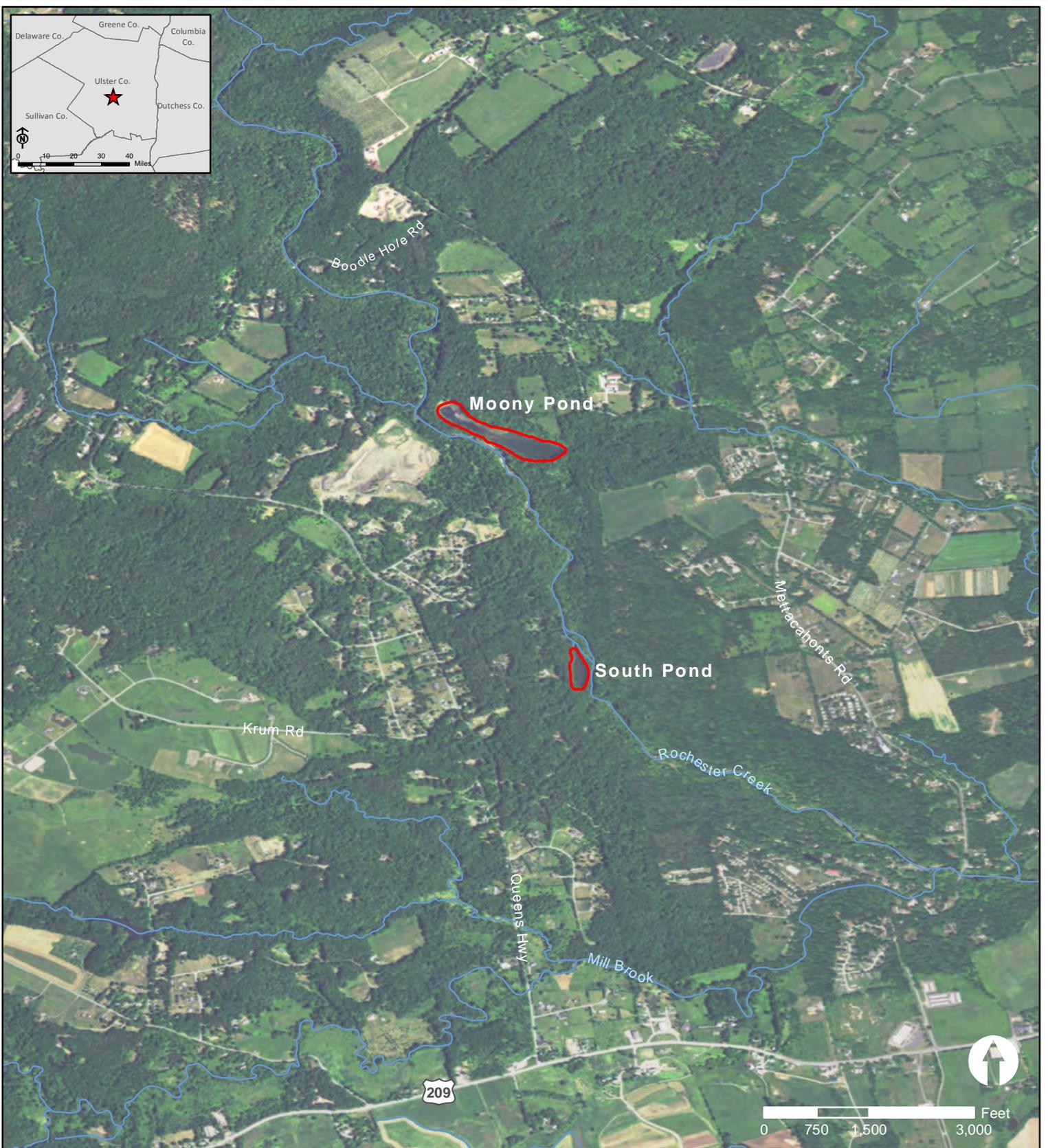
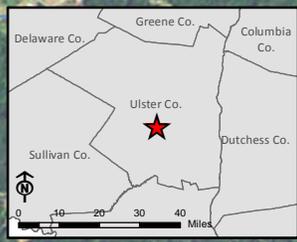
The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek. Areas downstream and adjacent to the notch will be regraded to shallow slopes to inhibit erosion that would result in sediments entering Rochester Creek. These measures would result in the removal of approximately 90 percent of the pond's water impoundment. The remaining water level would be maintained at the lowest elevation of the pond through natural surface water run-off and via the intermittent tributary. A rock sill will be installed to maintain this impoundment for the purpose of creating a wetland habitat. For areas of the impoundment that will remain dry, native plant species will be planted.

Repairs to South Pond would be similar to those described for Moony Pond, with the pond being drained through removal of part of the berm. An appropriately sized channel will be constructed to convey flows from the pond to Rochester Creek. Like Moony Pond, a rock sill will be installed to maintain this impoundment for the purpose of creating a wetland habitat, and native plant species will be planted. The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek.

GOSR is contacting your office for assistance in identifying the potential presence of any rare or federal and/or state threatened, endangered, proposed or candidate species in the vicinity of the proposed project. In addition, information regarding the presence of any other species or habitats of special concern in the vicinity of the proposed project is also requested. If you have any questions, please feel free to contact me at (518) 474-0755. Thank you for your consideration and cooperation.

Sincerely,

Lori A. Shirley
Director and Certifying Officer



 Project Boundary

Figure 1
Project Area

Rochester Creek
and Ponds

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits & Pollution Prevention

625 Broadway, 4th Floor, Albany, New York 12233-1750

P: (518) 402-9167 | F: (518) 402-9168 | deppermitting@dec.ny.gov

www.dec.ny.gov

August 22, 2016

Mr. Thomas J. King
Governor's Office of Storm Recovery
99 Washington Avenue
Suite 1224
Albany, NY 12260

RE: Rochester Rondout Creek and Tributaries
Town of Rochester, Ulster County

Dear Mr. King:

We received your jurisdictional inquiry request for Rochester Rondout Creek and located at sections of Rochester and Rondout Creeks in the Town of Rochester, Ulster County. It is our understanding that

• **Phase I: Topographical Survey and H&H Studies** – the first phase will begin with topographical surveys of Rochester and Rondout Creeks, followed by H&H studies of the surveyed areas. The portion of the H&H study concentrating on Rochester Creek will encompass an area of the creek that intersects with Mettakahonts Road, thence generally southeast to the creek's confluence with Rondout Creek and intersection with NY Route 209, which is a major north-south thoroughfare in Ulster County. The study area for Rondout Creek will commence at that point and continue generally westward, adjacent to NY Route 209 the point where the creek makes a sharp bend and continues on a southwest course away from the Village of Accord. The overall H&H study will determine the most effective and feasible methods for restoring and improving the damaged streams. Upon completion of the modeling and analysis of the waterways, engineers will present the town with solutions, recommendations, and options that may be undertaken to make the needed improvements. It is anticipated that activities ranging from channel restoration to armoring of the creek banks to prevent further erosion as well as effecting riparian repair will result from the studies.

Phase II: Implementation –

It is anticipated that study recommendations accepted and implemented by the town will provide long-term benefits through permanent flood mitigation, ensure continued access to population centers by residents affected by the two creeks, provide for improved emergency response times, improve the health and biodiversity of the affected waterways, and provide increased recreational and economic opportunities within the town. Further, it is the position of the town that the improvements will result in reduced costs for maintenance and repair of the creeks and channels, which will be the responsibility of the town to maintain and operate.

Based on our understanding of the project and review of the NY Rising Application dated May 2015, we have the following comments on the project:



FRESHWATER WETLANDS

Protection of Waters: A stream is located within your project/site. The following provides a summary of the stream(s)/pond(s) within the project/site:

Name	Class	Waters Index Number
<u>Rochester Creek</u>	<u>A(TS)</u>	<u>H-139-14-20</u>
<u>Rondout Creek</u>	<u>B</u>	<u>H-139-14</u>
<u> </u>	<u> </u>	<u> </u>

An Article 15, Protection of Waters Permit, pursuant to 6NYCRR Part 608 is required for any disturbance to the bed and banks of these streams.

Please note that **any project undertaken shall not result in the degradation or contravening of water quality standards of the stream.** Activities resulting in sedimentation and/or turbid waters may constitute a violation of water quality standards and the Environmental Conservation Law (ECL). Care needs to be taken to stabilize the disturbed areas promptly after construction, and all necessary precautions be taken to prevent contamination of the stream by silt, sediment, fuels, solvents, lubricants, or any other pollutant associated with the project.

Stormwater Permit: If your project will disturb more than one acre of land, you must comply with the State Pollutant Discharge Elimination System (SPDES) Phase II regulations for Stormwater Discharges Associated with Construction Activities. Information regarding the SPDES General Permit for Stormwater Discharges can be found on the Department's website at: <http://www.dec.ny.gov/chemical/8468.html>.

STATE-LISTED SPECIES

We have reviewed the available information in the New York Natural Heritage Program database on known occurrences of rare or state-listed animals and plants, significant communities and other significant habitats. No records of known occurrences were found in the (immediate) vicinity of the project/site.

All threatened or endangered species are subject to regulation under Article 11, Title 5 of the Environmental Conservation Law and a permit is required for a taking of that species pursuant to 6 NYCRR Part 182. Besides death of individuals, taking includes harassment, interference with essential behaviors, and adverse modification of habitat. Additional information on the proposal will be required for a determination on the need for a permit.

The absence of data does not necessarily mean that any other rare or state-listed species, natural communities or other significant habitats do not exist on or adjacent to the proposed site. Rather, our files currently do not contain information which 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 sources may be required to fully assess impacts on biological resources.

CULTURAL RESOURCES

Your project/site appears to be located within an area of potential historical or archeological significance. If approvals/permits are needed from this Department, we may require consultation with the Office of Parks, Recreation and Historic Preservation (OPRHP) in order to better evaluate this project's impact to these resources.

For more information, please visit the New York State Office of Historic Preservation website at <http://www.nysparks.com/shpo/>.

OTHER

Work in certain wetlands and other waters of the United States may require a permit from the U.S. Army Corps of Engineers (USACOE). If a USACOE permit is required, the Department may need to make a determination that discharges from the proposed activities will comply with the applicable effluent limitations, water quality standards, and any other applicable conditions of the State Law. A Water Quality Certification, pursuant to Section 401 of the Federal Clean Water Act, may be required from this Department for impacts to federally regulated wetlands. Please contact the Department for further details. It is recommended that you contact the Corps at (518) 266-6350 to discuss their permitting requirements.

Please note that this letter only addresses the requirements for the following permits from the Department:

Protection of Waters

Other permits from this Department or other agencies may be required for projects conducted on this property now or in the future. Also, regulations applicable to the location subject to this determination occasionally are revised and you should, therefore, verify the need for permits if your project is delayed or postponed. This determination regarding the need for permits will remain effective for a maximum of one year unless you are otherwise notified. Applications may be downloaded from our website at www.dec.ny.gov under "Programs" then "Division of Environmental Permits."

Please contact this office if you have questions regarding the above information. Thank you.

Sincerely,

May O'Malley

May O'Malley
Division of Environmental Permits
may.omalley@dec.ny.gov
518-402-9154

Cc: NYSDEC Region 3 Environmental Permits



**Governor's Office of
Storm Recovery**

ANDREW M. CUOMO
Governor

December 1, 2017

Robyn Niver
Endangered Species Biologist
U.S. Fish and Wildlife Service
New York Ecological Services Field Office (Region 5)
3817 Luker Road
Cortland, NY 13045

Re: Section 7 Project Review - Effect Determination
Rochester Creek and Ponds Mitigation Project, Ulster County, NY
USFWS Consultation Code: 05E1NY00-2016-SLI-2385

Dear Ms. Niver,

The Governor's Office of Storm Recovery (GOSR), an office of the New York State Homes and Community Renewal's (NYSHCR) Housing Trust Fund Corporation, was established to aid the statewide recovery of disaster-affected communities in New York State. GOSR is administering a U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant for Disaster Recovery (CDBG-DR), including the New York Rising Community Reconstruction (NYRCR) Program. The Rochester Creek and Ponds Mitigation Project (the Proposed Project) is being considered for funding through the NYRCR Program, and is the subject of an Environmental Assessment (EA) currently being prepared. GOSR is the responsible entity under the National Environmental Policy Act (NEPA) and related laws for the environmental review of the Proposed Project. GOSR is also the lead agency pursuant to the State Environmental Quality Review Act (SEQRA) and related laws for the environmental review of the Proposed Project.

The purpose of this letter is to provide the U.S. Fish and Wildlife Service (USFWS) notice of the Proposed Project and to document compliance with Section 7 of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), as well as the Migratory Bird Treaty Act of 1918 (MBTA) (40 Stat. 755, as amended; 16 U.S.C. 703-712), and the Bald and Golden Eagle Protection Act of 1940 (BGEPA) (54 Stat. 240, as amended; 16 U.S.C. 668-668c). As discussed below, GOSR reviewed the Proposed Project and found that the Proposed Project may affect, but is not likely to adversely affect the ESA species under USFWS jurisdiction. This letter requests acknowledgement from the USFWS that it has received our determination regarding the Proposed Project, and that USFWS has no objections to this determination.

PROJECT DESCRIPTION

The Town of Rochester is proposing a mitigation project to address berm erosion at two ponds located off the banks of Rochester Creek in Ulster County, New York (see Attachment 1). Rochester Creek is approximately 11 miles in length and is a tributary to Rondout Creek, which is itself a tributary of the Hudson River. The Proposed Project area begins at Moony Pond, located approximately 0.6 miles downstream of the Boodlehole Road Bridge, and extends approximately 0.5 mile downstream to include South Pond. Photographs of existing condition are included as Attachment 2.

During Hurricane Irene and Tropical Storm Lee, berms holding Moony and South Ponds in place were severely eroded. In the event of another 100-year storm, these berms would be at risk of failure, resulting in uncontrolled release of impounded water and sediment into Rochester Creek, and causing extensive damage to the creek and to downstream properties.

At Moony Pond, the earthen berm holding the pond in place is registered with the NYS DEC Inventory of Dams as a Hazard Code A. It is also registered as a federal dam. The lower half of the berm separating the pond from the creek has been subjected to erosion due to stream flow in Rochester Creek. Within the lower extent of the berm, approximately 250 linear feet has been severely eroded and water is actively seeping through the berm. Continued erosion, in combination with hydrostatic pressure from the pond, would potentially result in catastrophic failure of the berm and spontaneous draining of the pond into the creek, which would first, cause flooding of residences downstream, and second, cause potential failure of berm infrastructure at the South Pond location.

The proposed project would address potential failure of the Moony Pond berm through the following measures:

- Drain the pond by cutting a V-shaped notch in the retaining berm facing Rochester Creek
- Remove the current riser structure, outlet structure, and piping
- Allow the basin to drain in a controlled manner into Rochester Creek
- Filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek.

The V-notch opening would be left open, which would allow a normal flow of water into Rochester creek. Areas downstream and adjacent to the notch will be regraded to shallow slopes to inhibit erosion that would result in sediments entering Rochester Creek. These measures would result in the removal of approximately 90 percent of the pond's water impoundment. The remaining water level would be maintained at the lowest elevation of the pond through natural surface water run-off and via the intermittent tributary. A rock sill would be installed to maintain this impoundment for the purpose of creating a wetland habitat. For areas of the impoundment that would remain dry, native plant species would be planted.

Repairs to South Pond would be similar to those described for Moony Pond, with the pond being drained through removal of part of the berm. An appropriately sized channel would be constructed to convey flows from the pond to Rochester Creek. Like Moony Pond, a rock sill would be installed to maintain this impoundment for the purpose of creating a wetland habitat, and native plant species

would be planted. The V-notch opening would be left open, which would allow a normal flow of water into Rochester creek.

ESA, MIGRATORY BIRD TREATY ACT, AND BALD AND GOLDEN EAGLE PROTECTION ACT SPECIES

The USFWS was contacted through the Information, Planning, and Conservation System (IPaC) regarding the potential presence of species under the jurisdiction of the USFWS within the Proposed Project area. The USFWS Trust Resources Report is included as Attachment 3 and the Official Species List is included as Attachment 4. According to the USFWS IPaC Trust Resource Report and Official Species Lists, the following three listed species may occur in the Proposed Project area and/or may be affected by the Proposed Project: Indiana bat (*Myotis sodalists*) endangered), northern long-eared bat (*Myotis septentrionalis* – threatened), and bog turtle (*Clemmys mühlenbergii* – threatened). These species' habitat requirements include the following:

- Indiana bat: During the winter Indiana bats hibernate in abandoned mines and limestone caves. In the summer they may be found in riparian and flood plain forests in crevices, under the loose bark of trees, and in tree cavities. Riparian and floodplain areas are important areas for foraging.
- Northern long-eared bat: Northern long-eared bats spend winter hibernating in caves and mines. During summer, northern long-eared bats roost singly or in colonies within abundant stands of trees underneath bark, in cavities, or in crevices of both live and dead trees, using tree species based on suitability to retain bark or provide cavities or crevices for roosting.
- Bog turtle: Bog turtles occur in wetlands, typically spring-fed with shallow surface water or saturated soils present year-round. Usually a bottom substrate of permanently saturated organic or mineral soils is present. Dominant vegetation within suitable bog turtle habitat includes low grasses and sedges often with a scrub-shrub wetland component. Some forested wetland habitats, such as red maple, tamarack, and cedar swamps, are suitable given hydrology, soils and/or historic land use. Suitable hydrology and soils are the primary determinants of potentially suitable bog turtle habitat. Suitable hydrology, soils and vegetation are necessary to provide the critical wintering sites (soft muck, peat, burrows, root systems of woody vegetation) and nesting habitats (open areas with tussocky or hummocky vegetation) for bog turtle.

The USFWS IPaC Trust Resources Report also indicates that there are seventeen species of migratory birds that are protected by the MBTA and the BGEPA that could potentially be affected by the Proposed Project. Bald eagles (*Haliaeetus leucocephalus*) are not listed in the IPaC Trust Resources Report for the Proposed Project Area.

A request for species records within the vicinity of the Proposed Project area was sent to the New York State Natural Heritage Program (NYSNHP). A response letter from NYSNHP dated November 21, 2017 (included as Attachment 5), does not indicate records of NLEB, Indiana bat,

bog turtle, or any other ESA species under USFWS jurisdiction within the vicinity of the Proposed Project area. Additionally, there are no records of rare or state-listed animals or plants, or significant natural communities at the Proposed Project site or in its immediate vicinity.

ANALYSIS AND DETERMINATION OF EFFECTS

According to the USFWS IPaC Trust Resource Report and Official Species List of threatened and endangered species, there are three listed species under USFWS jurisdiction that may potentially occur with the Proposed Project area, and seventeen migratory birds of concern that could potentially be affected by the Proposed Project. There is no critical habitat designated within the Proposed Project area.

ESA – Based on species' habitat requirements described above, suitable bog turtle habitat is not present within the Proposed Project area. There are no mapped wetlands regulated by NYSDEC within or near either pond. According to the National Wetland Inventory, both ponds are mapped as freshwater ponds and Rochester Creek is mapped as riverine habitat. An area to the north and across Rochester Creek from the South Pond is mapped as freshwater forested/shrub wetland but this area is not within the Proposed Project area. The Proposed Project area consists of bermed ponds surrounded by upland forest. No work would occur within any wetland that could potentially provide suitable bog turtle habitat.

Forested areas in the Proposed Project area may provide potential summer habitat for Indiana and northern long-eared bats. Summer habitat for Indiana and northern long-eared bats consists of a wide variety of forested habitats where they roost, forage, and travel. The Proposed Project area is not located within the vicinity of known or assumed Indiana or northern long-eared bat hibernacula or maternity roosts. According to email correspondence with NYSDEC biologist Amanda Bailey, the Proposed Project area is not located in any occupied habitat for either bat species, and is about 5 miles from the nearest buffer (meaning about 10 miles from the nearest hibernacula).

Approximately 0.90 acre of selective tree removal is proposed at Moony Pond. Tree species present along the berm mainly consist of eastern cottonwood (*Populus deltoides*) and American sycamore (*Platanus occidentalis*), with a few small white ash (*Fraxinus americana*) trees. The proposed construction haul road would be placed along an existing forest road and thus minimal tree clearing is anticipated. The general tree composition along this forest road includes sugar maple (*Acer saccharum*) and suffering eastern red cedars (*Juniperus virginiana*).

Approximately 0.79 acre of selective tree clearing is proposed for the South Pond berm mitigation and to accommodate the construction entrance road. Tree species along the proposed haul roads and the area of the berm is predominantly red oak (*Quercus rubra*), eastern hemlock (*Tsuga canadensis*) and red maple (*Acer rubrum*).

Tree removal associated with the Proposed Project would result in a slight reduction of potential Indiana and northern long-eared bat summer roosting, foraging, and travel habitat. However, large, intact woodlands surrounding the ponds would remain undisturbed. Tree removal would be minimized in the design to the greatest extent practicable, and trees to be protected from cutting

would be clearly demarcated with bright orange construction fencing and flagging to prevent unnecessary clearing. Potential impacts would also be minimized by limiting all tree removal activities to between November 1 and March 31, outside of the active season/roosting season. Outside of the active season, Indiana and northern long-eared bats are in hibernation and would not be directly affected by tree removal activities, thereby avoiding any prohibited incidental take. GOSR has determined that the Proposed Project may affect, but is not likely to adversely affect Indiana and northern long-eared bat.

MBTA – Similar to the impact on ESA-listed bats, tree removal associated with the Proposed Project would result in the loss of habitat (approximately 1.7 acres of tree removal) for migratory birds. However, similar habitat would remain available to migratory birds in the remaining surrounding forests. Additionally, the November 1 to March 31 tree clearing window proposed to protect Indiana and northern long-eared bats would avoid the migratory bird breeding season, which occurs between April 1 and August 31. It is anticipated that passerine birds may temporarily leave the Proposed Project area during construction due to noise and disturbance. GOSR has determined that the Proposed Project may affect, but is not likely to adversely affect migratory birds.

BGEPA – Bald eagles are not listed in the USFWS Trust Resources Report of NYSNHP as occurring within the Proposed Project Area. Should a bald eagle occur near the Proposed Project area, it would likely temporarily avoid the area during construction due to noise and disturbance. Forested habitat would remain available, and no known breeding bald eagle would be affected. GOSR has determined that the Proposed Project would have no effect on bald eagle.

CONCLUSION

According to the USFWS IPaC Trust Resource Report and list of threatened and endangered species, there are three listed species that potentially occur with the project area – Indiana bat, northern long-eared bat, and bog turtle. There is no critical habitat designated within the Proposed Project area. There are seventeen migratory birds of concern that may occur within the vicinity of the Proposed Project area.

Based on species' habitat requirements, suitable habitat for Indiana and northern long-eared bats and migratory birds, are expected to occur in the Proposed Project area. There are no records of Indiana or northern long-eared bat maternity roost trees or hibernacula within the vicinity of the Proposed Project area, and according to NYSDEC the Proposed Project area is not located in any occupied habitat for either bat species. Bald eagles are not known to occur within the Project Area, and there are no documented breeding bald eagle within the vicinity.

Approximately 1.7 acres of tree removal associated with the Proposed Project would result in a reduction of potential habitat for Indiana and northern long-eared bat, as well as for migratory birds. Potential direct impacts to these species would be minimized by limiting all tree removal activities to between November 1 and March 31, which would avoid the active season/roosting season for Indiana and northern long-eared bat and the migratory bird breeding season. Additionally, tree removal would be minimized in the design to the greatest extent practicable, and

trees to be protected from cutting would be clearly demarcated to prevent unnecessary clearing. Forested habitat would remain available within and surrounding the Proposed Project Area.

Implementation of the Proposed Project is conditioned upon issuance of applicable federal and state permits and would be constructed in accordance with federal and state permit conditions. The Proposed Project would mitigate future flooding and associated dangers to health and welfare of local residents. Additionally, wetland habitat would be created as a result of the Proposed Project.

GOSR has determined that the Proposed Project may affect, but is not likely to adversely affect species within USFWS jurisdiction protected under the ESA. This letter requests acknowledgement from USFWS that it has no objections to this determination. If USFWS does not respond within 30 days from submittal of this letter, then GOSR may presume that its determination for Proposed Project is informed by the best available information and its project responsibilities under Section 7 of the ESA have been fulfilled. GOSR understands that the USFWS presumes that all activities would be implemented as described herein. GOSR will promptly report any departures from the described activities or schedules to the New York Ecological Services Field Office. Should a delay in the Proposed Project result in tree removal activities being scheduled during the active season/roosting season for Indiana and northern long-eared bats, GOSR will immediately contact USFWS to determine if a bat survey should be conducted.

If you have any questions, please feel free to contact me at (518) 474-0755 or Lori.Shirley@nyscr.org. Thank you for your consideration and cooperation.

Sincerely,



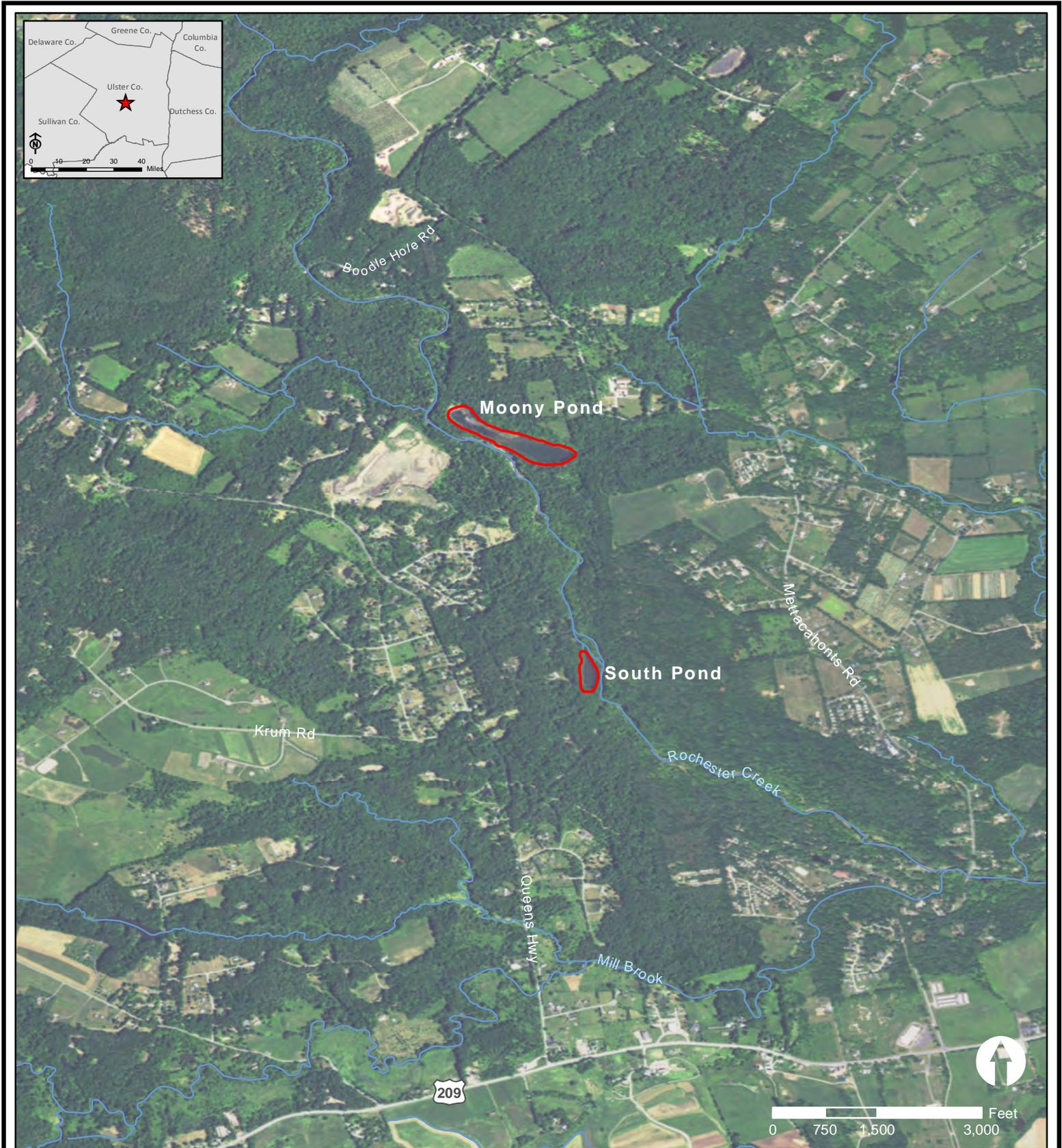
Lori A. Shirley
Director and Certifying Officer, Bureau of Environmental Review and Assessment
Governor's Office of Storm Recovery
25 Beaver Street, 5th Floor
New York, NY 10004

Attachments:

- Attachment 1: Proposed Project Area Location
- Attachment 2: Proposed Project Area Photographs
- Attachment 3: USFWS Trust Resources Report
- Attachment 4: USFWS Official Species List
- Attachment 5: NYSNHP Response

ATTACHMENTS

ATTACHMENT 1



 Project Boundary

Figure 1
Project Area

Rochester Creek
and Ponds

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets;
NYS Dept. of State; NYS Department of Environmental Conservation;
U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map

ATTACHMENT 2

Proposed Project Area Photographs



Moony Pond existing conditions



South Pond existing conditions

ATTACHMENT 3

IPaC Information for Planning and Consultation U.S. Fish & Wildlife Service

IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

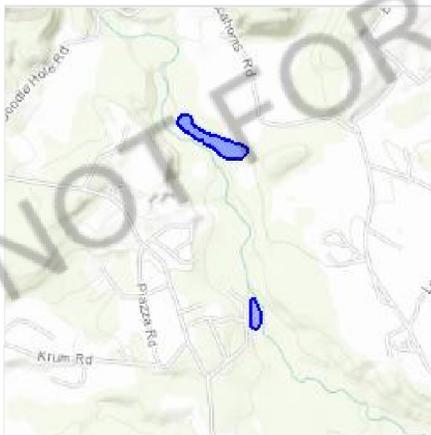
Project information

NAME

Rochester Creek and Ponds Mitigation

LOCATION

Ulster County, New York

**DESCRIPTION**

The

Town of Rochester is proposing a mitigation project to address dam erosion at two ponds located off the banks of Rochester Creek in Ulster County, New York. The proposed project would address potential failure of the Moony Pond berm through the following measures: drain the pond by cutting a V-shaped notch in the retaining berm facing Rochester Creek; remove the current riser structure, outlet structure, and piping; allow the basin to drain in a controlled manner into Rochester Creek; filter drainage flows prior to entry into the creek

through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek. Repairs to South Pond would be similar to those described for Moony Pond, with the pond being drained through removal of part of the berm. An appropriately sized channel will be constructed to convey flows from the pond to Rochester Creek. Like Moony Pond, a rock sill will be installed to maintain this impoundment for the purpose of creating a wetland habitat, and native plant species will be planted. The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek. Additionally, flood induced erosion at the lower reaches of Rochester Creek have significantly eroded agricultural lands on the south bank of the creek. It is recommended that riparian improvements, limited to planting native species of ground cover and trees suitable to arresting erosion, be conducted on a spot basis to address the Town's concerns in these areas.

Local office

New York Ecological Services Field Office

☎ (607) 753-9334

📠 (607) 753-9699

3817 Luker Road

Cortland, NY 13045-9349

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

Endangered species

This resource list is for informational purposes only and does not constitute an analysis of project level impacts.

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population, even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can **only** be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by doing the following:

1. Log in to IPaC.
2. Go to your My Projects list.
3. Click PROJECT HOME for this project.
4. Click REQUEST SPECIES LIST.

Listed species

¹ are managed by the [Ecological Services Program](#) of the U.S. Fish and Wildlife Service.

1. Species listed under the [Endangered Species Act](#) are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the [listing status page](#) for more information.

The following species are potentially affected by activities in this location:

Mammals

NAME	STATUS
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location is outside the critical habitat. https://ecos.fws.gov/ecp/species/5949	Endangered

Northern Long-eared Bat *Myotis septentrionalis* Threatened
 No critical habitat has been designated for this species.
<https://ecos.fws.gov/ecp/species/9045>

Reptiles

NAME	STATUS
Bog Turtle <i>Clemmys muhlenbergii</i> No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/6962	Threatened

Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

THERE ARE NO CRITICAL HABITATS AT THIS LOCATION.

Migratory birds

Certain birds are protected under the Migratory Bird Treaty Act

¹ and the Bald and Golden Eagle Protection Act².

Any activity that results in the take (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of migratory birds or eagles is prohibited unless authorized by the U.S. Fish and Wildlife Service

³. There are no provisions for allowing the take of migratory birds that are unintentionally killed or injured. Any person or organization who plans or conducts activities that may result in the take of migratory birds is responsible for complying with the appropriate regulations and implementing appropriate conservation measures, as described [below](#).

1. The [Migratory Birds Treaty Act](#) of 1918.
2. The [Bald and Golden Eagle Protection Act](#) of 1940.
3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

Additional information can be found using the following links:

- Birds of Conservation Concern <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Measures for avoiding and minimizing impacts to birds <http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>

- Nationwide conservation measures for birds

<http://www.fws.gov/migratorybirds/pdf/management/nationwidestandardconservationmeasures.pdf>

The birds listed below are [USFWS Birds of Conservation Concern](#) that might be affected by activities in this location. The list does not contain every bird you may find in this location, nor is it guaranteed that all of the birds on the list will be found on or near this location. To get a better idea of the specific locations where certain species have been reported and their level of occurrence, please refer to resources such as the [E-bird data mapping tool](#) (year-round bird sightings by birders and the general public) and [Breeding Bird Survey](#) (relative abundance maps for breeding birds). Although it is important to try to avoid and minimize impacts to all birds, special attention should be given to the birds on the list below. To get a list of all birds potentially present in your project area, visit the [E-bird Explore Data Tool](#).

NAME	BREEDING SEASON
Black-billed Cuckoo <i>Coccyzus erythrophthalmus</i> https://ecos.fws.gov/ecp/species/9399	Breeds May 15 to Oct 10
Black-capped Chickadee <i>Poecile atricapillus praticus</i>	Breeds Apr 10 to Jul 31
Bobolink <i>Dolichonyx oryzivorus</i>	Breeds May 20 to Jul 31
Canada Warbler <i>Wilsonia canadensis</i>	Breeds May 20 to Aug 10
Cerulean Warbler <i>Dendroica cerulea</i> https://ecos.fws.gov/ecp/species/2974	Breeds Aug 20 to Jul 20
Eastern Whip-poor-will <i>Antrostomus vociferus</i>	Breeds May 1 to Aug 20
Golden-winged Warbler <i>Vermivora chrysoptera</i> https://ecos.fws.gov/ecp/species/8745	Breeds May 1 to Jul 20
Henslow's Sparrow <i>Ammodramus henslowii</i> https://ecos.fws.gov/ecp/species/3941	Breeds May 1 to Aug 31
Kentucky Warbler <i>Oporornis formosus</i>	Breeds Apr 20 to Aug 20
Long-eared Owl <i>asio otus</i> https://ecos.fws.gov/ecp/species/3631	Breeds Mar 1 to Jul 15
Northern Saw-whet Owl <i>Aegolius acadicus</i>	Breeds Mar 1 to Jul 31
Prairie Warbler <i>Dendroica discolor</i>	Breeds May 1 to Jul 31

Red Crossbill <i>Loxia curvirostra</i> https://ecos.fws.gov/ecp/species/8743	Breeds Dec 20 to Oct 15
Red-headed Woodpecker <i>Melanerpes erythrocephalus</i>	Breeds May 10 to Sep 10
Rusty Blackbird <i>Euphagus carolinus</i>	Breeds elsewhere
Wood Thrush <i>Hylocichla mustelina</i>	Breeds May 10 to Aug 31
Yellow-bellied Sapsucker <i>sphyrapicus varius</i> https://ecos.fws.gov/ecp/species/8792	Breeds May 10 to Jul 15

Probability of Presence Summary

The graphs below provide our best understanding of when birds of concern are most likely to be present in your project area. This information can be used to tailor and schedule your project activities to avoid or minimize impacts to birds.

Probability of Presence (■)

Each green bar represents the bird's relative probability of presence in your project's counties during a particular week of the year. (A year is represented as 12 4-week months.) A taller bar indicates a higher probability of species presence. The survey effort (see below) can be used to establish a level of confidence in the presence score. One can have higher confidence in the presence score if the corresponding survey effort is also high.

How is the probability of presence score calculated? The calculation is done in three steps:

1. The probability of presence for each week is calculated as the number of survey events in the week where the species was detected divided by the total number of survey events for that week. For example, if in week 12 there were 20 survey events and the Spotted Towhee was found in 5 of them, the probability of presence of the Spotted Towhee in week 12 is 0.25.
2. To properly present the pattern of presence across the year, the relative probability of presence is calculated. This is the probability of presence divided by the maximum probability of presence across all weeks. For example, imagine the probability of presence in week 20 for the Spotted Towhee is 0.05, and that the probability of presence at week 12 (0.25) is the maximum of any week of the year. The relative probability of presence on week 12 is $0.25/0.25 = 1$; at week 20 it is $0.05/0.25 = 0.2$.
3. The relative probability of presence calculated in the previous step undergoes a statistical conversion so that all possible values fall between 0 and 10, inclusive. This is the probability of presence score.

To see a bar's probability of presence score, simply hover your mouse cursor over the bar.

Breeding Season (■)

Yellow bars denote when the bird breeds in the Bird Conservation Region(s) in which your project lies. If there are no yellow bars shown for a bird, it does not breed in your project area.

Survey Effort (l)

Vertical black lines superimposed on probability of presence bars indicate the number of surveys performed for that species in the counties of your project area. The number of surveys is expressed as a range, for example, 33 to 64 surveys.

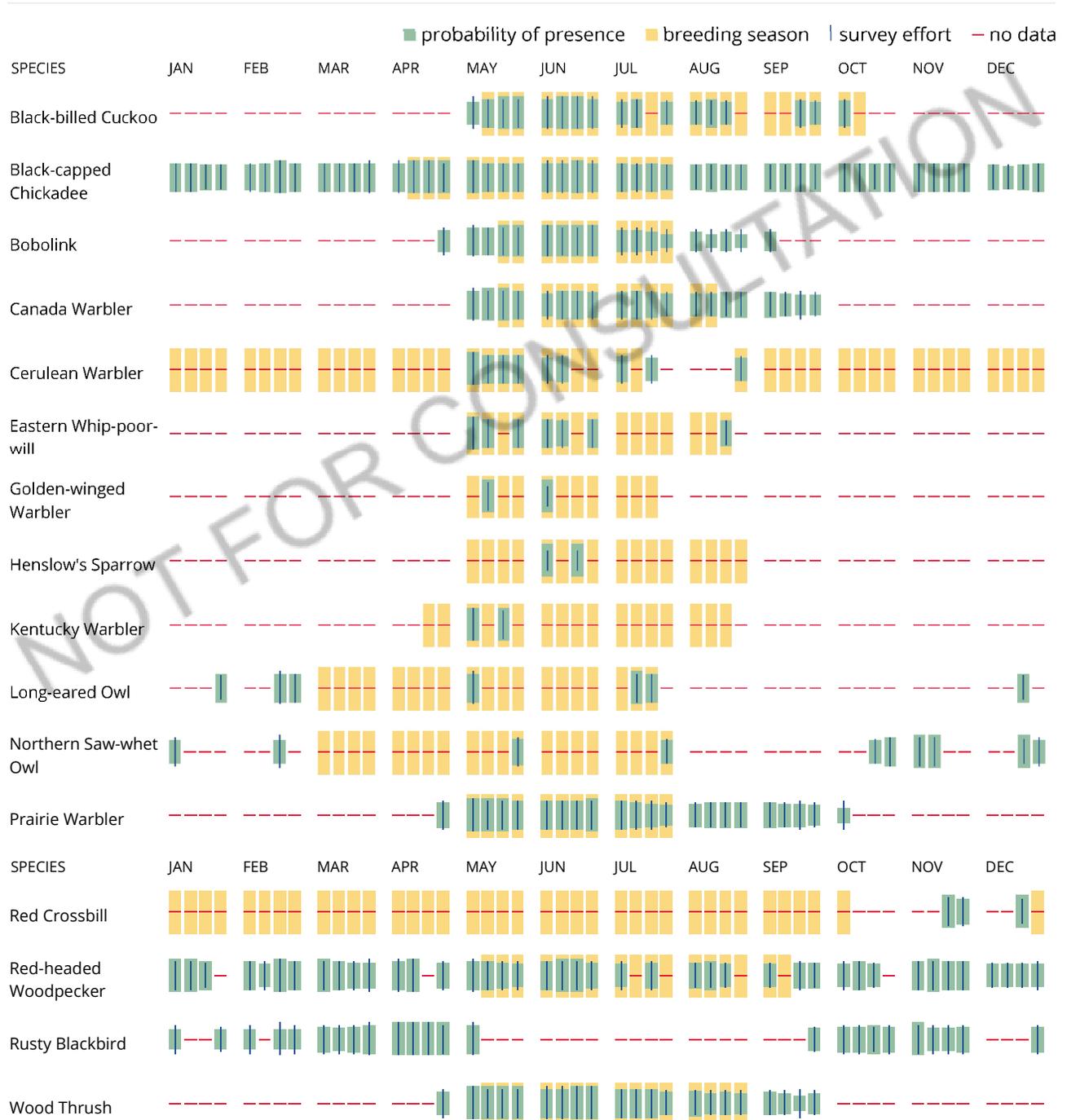
To see a bar's survey effort range, simply hover your mouse cursor over the bar.

No Data (-)

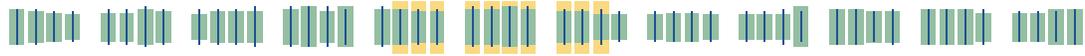
A week is marked as having no data if there were no survey events for that week.

Survey Timeframe

Surveys from only the last 10 years are used in order to ensure delivery of currently relevant information.



Yellow-bellied
Sapsucker



Tell me more about conservation measures I can implement to avoid or minimize impacts to migratory birds.

[Nationwide Conservation Measures](#) describes measures that can help avoid and minimize impacts to all birds at any location year round. Such measures are particularly important when birds are most likely to occur in the project area. To see when birds are most likely to occur in your project area, view the Probability of Presence Summary. Special attention should be made to look for nests and avoid nest destruction during the breeding season. The best information about when birds are breeding can be found in [Birds of North America \(BNA\) Online](#) under the "Breeding Phenology" section of each species profile. Note that accessing this information may require a [subscription](#). [Additional measures](#) and/or [permits](#) may be advisable depending on the type of activity you are conducting and the type of infrastructure or bird species present on your project site.

What does IPaC use to generate the migratory birds potentially occurring in my specified location?

The Migratory Bird Resource List is comprised of USFWS [Birds of Conservation Concern \(BCC\)](#) that might be affected by activities in your project location. These birds are of priority concern because it has been determined that without additional conservation actions, they are likely to become candidates for listing under the [Endangered Species Act \(ESA\)](#).

The migratory bird list generated for your project is derived from data provided by the [Avian Knowledge Network \(AKN\)](#). The AKN data is based on a growing collection of [survey, banding, and citizen science datasets](#). The AKN list represents all birds reported to be occurring at some level throughout the year in the counties in which your project lies. That list is then narrowed to only the Birds of Conservation Concern for your project area.

Again, the Migratory Bird Resource list only includes species of particular priority concern, and is not representative of all birds that may occur in your project area. Although it is important to try to avoid and minimize impacts to all birds, special attention should be made to avoid and minimize impacts to birds of priority concern. To get a list of all birds potentially present in your project area, please visit the [E-bird Explore Data Tool](#).

What does IPaC use to generate the probability of presence graphs for the migratory birds potentially occurring in my specified location?

The probability of presence graphs associated with your migratory bird list are based on data provided by the [Avian Knowledge Network \(AKN\)](#). This data is derived from a growing collection of [survey, banding, and citizen science datasets](#).

Probability of presence data is continuously being updated as new and better information becomes available.

How do I know if a bird is breeding, wintering, migrating or present year-round in my project area?

To see what part of a particular bird's range your project area falls within (i.e. breeding, wintering, migrating or year-round), you may refer to the following resources: The [The Cornell Lab of Ornithology All About Birds Bird Guide](#), or (if you are unsuccessful in locating the bird of interest there), the [Cornell Lab of Ornithology Neotropical Birds guide](#). If a bird entry on your migratory bird species list indicates a breeding season, it is probable the bird breeds in your project's counties at some point within the time-frame specified. If "Breeds elsewhere" is indicated, then the bird likely does not breed in your project area.

Facilities

National Wildlife Refuge lands

Any activity proposed on lands managed by the [National Wildlife Refuge](#) system must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGE LANDS AT THIS LOCATION.

Fish hatcheries

THERE ARE NO FISH HATCHERIES AT THIS LOCATION.

Wetlands in the National Wetlands Inventory

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

This location overlaps the following wetlands:

FRESHWATER POND

[PUBHh](#)

A full description for each wetland code can be found at the National Wetlands Inventory website:

<https://ecos.fws.gov/ipac/wetlands/decoder>

Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

Data exclusions

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

NOT FOR CONSULTATION

ATTACHMENT 4



United States Department of the Interior



FISH AND WILDLIFE SERVICE

New York Ecological Services Field Office

3817 Luker Road

Cortland, NY 13045-9349

Phone: (607) 753-9334 Fax: (607) 753-9699

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

In Reply Refer To:

November 15, 2017

Consultation Code: 05E1NY00-2018-SLI-0409

Event Code: 05E1NY00-2018-E-01217

Project Name: Rochester Creek and Ponds Mitigation

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). 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(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

New York Ecological Services Field Office
3817 Luker Road
Cortland, NY 13045-9349
(607) 753-9334

Project Summary

Consultation Code: 05E1NY00-2018-SLI-0409

Event Code: 05E1NY00-2018-E-01217

Project Name: Rochester Creek and Ponds Mitigation

Project Type: DAM

Project Description: The Town of Rochester is proposing a mitigation project to address dam erosion at two ponds located off the banks of Rochester Creek in Ulster County, New York. The proposed project would address potential failure of the Moony Pond berm through the following measures: drain the pond by cutting a V-shaped notch in the retaining berm facing Rochester Creek; remove the current riser structure, outlet structure, and piping; allow the basin to drain in a controlled manner into Rochester Creek; filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek.

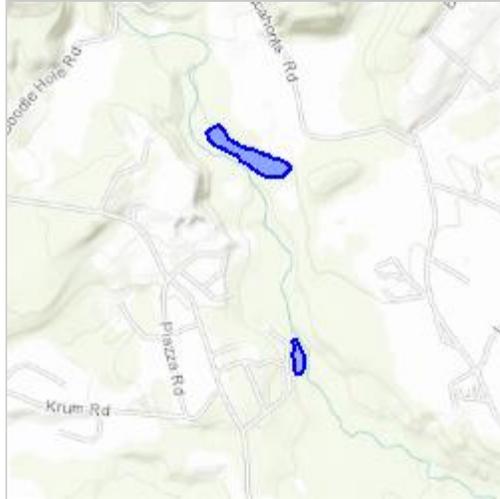
Repairs to South Pond would be similar to those described for Moony Pond, with the pond being drained through removal of part of the berm. An appropriately sized channel will be constructed to convey flows from the pond to Rochester Creek. Like Moony Pond, a rock sill will be installed to maintain this impoundment for the purpose of creating a wetland habitat, and native plant species will be planted. The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek.

Additionally, flood induced erosion at the lower reaches of Rochester Creek have significantly eroded agricultural lands on the south bank of the creek. It is recommended that riparian improvements, limited to planting native species of ground cover and trees suitable to arresting erosion, be conducted on a spot basis to address the Town's concerns in these areas.

Project Location:

Approximate location of the project can be viewed in Google Maps:

<https://www.google.com/maps/place/41.814058109980124N74.26512000040228W>



Counties: Ulster, NY

Endangered Species Act Species

There is a total of 3 threatened, endangered, or candidate species on this 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. See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

Mammals

NAME	STATUS
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened

Reptiles

NAME	STATUS
Bog Turtle <i>Clemmys muhlenbergii</i> Population: Wherever found, except GA, NC, SC, TN, VA No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6962 Species survey guidelines: https://ecos.fws.gov/ipac/guideline/survey/population/182/office/52410.pdf Habitat assessment guidelines: https://ecos.fws.gov/ipac/guideline/assessment/population/182/office/52410.pdf	Threatened

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

ATTACHMENT 5

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, New York Natural Heritage Program
625 Broadway, Fifth Floor, Albany, NY 12233-4757
P: (518) 402-8935 | F: (518) 402-8925
www.dec.ny.gov

November 21, 2017

Lori Shirley
Governor's Office of Storm Recovery
30-40 State St., Hampton Plaza
Albany, NY 12207

Re: Rochester Creek, Moony Pond, and South Pond Mitigation and Dam Rehabilitation
County: Ulster Town/City: Rochester

Dear Ms. Shirley:

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 the project 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 NYS DEC Region 3 Office, Division of Environmental Permits, at dep.r3@dec.ny.gov, (845) 256-3054.

Sincerely,



Nicholas Conrad
Information Resources Coordinator
New York Natural Heritage Program



United States Department of the Interior

FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045



December 21, 2017

Ms. Lori A. Shirley
Director & Certifying Officer
Bureau of Environmental Review & Assessment
Governor's Office of Storm Recovery
NYS Homes & Community Renewal
38-40 State Street, 408N, Hampton Plaza
Albany, NY 12207

Dear Ms. Shirley:

This responds to your December 1, 2017, letter regarding the proposed Rochester Creek and Ponds Mitigation Project located in the Town of Rochester, Ulster County, New York. We understand that U.S. Department of Housing and Urban Development's (HUD) funding may be involved with the proposed project.

As you are aware, Federal agencies have responsibilities under section 7 of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to consult with the U.S. Fish and Wildlife Service (Service) regarding projects that may affect federally listed species or designated critical habitat, and confer with the Service regarding projects that are likely to jeopardize federally proposed species and/or adversely modify proposed critical habitat. We understand that NYS Homes & Community Renewal (NYSHCR) has been designated HUD's non-federal representative for the purposes of completing informal consultation pursuant to section 7(a)(2) of the ESA.

On behalf of HUD, the NYSHCR determined the proposed project may affect, but is not likely to adversely affect, the federally listed endangered Indiana bat (*Myotis sodalis*) or federally listed threatened northern long-eared bat (*Myotis septentrionalis*). Given the project location, small amount of tree removal (<2 acres), and conservation measure to conduct all tree removal between November 1 and March 31, we concur with your determination. The NYSHCR also determined the project will result in no impacts to the federally listed threatened bog turtle (*Clemmys [=Glyptemys] muhlenbergii*) as there is no suitable habitat in the area. We have no further comments on this species.

No further coordination or consultation under the ESA is required with the Service at this time. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of federally listed and proposed endangered and threatened species in New York is available for your information. Until the proposed project is complete, we recommend that you check our website regularly to ensure that listed species presence/absence information for the proposed project is current.*

Any new information regarding the proposed project and its potential to impact listed species should be coordinated with both this office and with the New York State Department of Environmental Conservation.

In addition to the above-referenced determinations regarding federally listed or proposed species, you have also determined that the project will result in no effects to the bald eagle (*Haliaeetus leucocephalus*). As you are aware, bald eagles have been delisted pursuant to the ESA, but remain protected under the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-712), the Bald and Golden Eagle Protection Act (54 Stat. 250, as amended; 16 U.S.C. 668 *et seq.*), and by the State of New York. If eagles are found within the project area, we recommend that the project sponsor follow the Bald Eagle Management Guidelines found on our website.

Thank you for coordinating with us. We appreciate the opportunity to review this project. Please contact Robyn Niver at 607-753-9334 if there are any questions. Future correspondence with us on this project should reference project file 16I2385.

Sincerely,



David A. Stilwell
Field Supervisor

*Additional information referred to above may be found on our website at:
<http://www.fws.gov/northeast/nyfo/es/section7.htm>.

cc: NYSDEC, New Paltz, NY (Env. Permits)



**Governor's Office of
Storm Recovery**

ANDREW M. CUOMO
Governor

April 10, 2018

Robyn Niver
Endangered Species Biologist
U.S. Fish and Wildlife Service
New York Ecological Services Field Office (Region 5)
3817 Luker Road
Cortland, NY 13045

Re: Section 7 Project Review – **Follow up** to December 1, 2017 Effect Determination
Rochester Creek Mitigation Project, Town of Rochester, Ulster County, NY
USFWS Consultation Code: 05E1NY00-2016-SLI-2385

Dear Ms. Niver,

The Governor's Office of Storm Recovery (GOSR), operating under the auspices of the New York State Homes and Community Renewal's (NYSHCR) Housing Trust Fund Corporation, was established to aid the statewide recovery of disaster-affected communities in New York State. GOSR is administering a U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant for Disaster Recovery (CDBG-DR), including the New York Rising Community Reconstruction (NYRCR) Program. The environmental review for projects funded under the NYRCR Program are processed on a case by case basis in accordance with the United States Fish and Wildlife Service (USFWS) New York Field Office's online project review process. The project described herein was analyzed pursuant to Section 7 of the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d); and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat 755).

The purpose of this letter is to provide the U.S. Fish and Wildlife Service – New York Field Office (USFWS) a follow up to GOSR's December 1, 2017 consultation of the proposed project, due to the fact that the proposed winter tree clearing could not be met. We are requesting concurrence from the U.S. Fish and Wildlife Service that the Rochester Creek Mitigation Project may affect, but is not likely to adversely affect the Indiana bat and the northern long-eared bat. This letter requests acknowledgement from the USFWS that it has received our determination regarding the Proposed Project, and that USFWS has no objections to this determination.

PROJECT DESCRIPTION

As described in GOSR's initial consultation, the Town of Rochester is proposing a mitigation project to address berm erosion at two ponds located off the banks of Rochester Creek in Ulster County, New York (see **Attachment 1**). Rochester Creek is approximately 11 miles in length and is a tributary to Rondout Creek, which is itself a tributary of the Hudson River. The Proposed Project area begins at Moony Pond, located approximately 0.6 miles downstream of the Boodlehole Road Bridge, and extends approximately 0.5 mile downstream to include South Pond. Photographs of existing condition are included as **Attachment 2**.

During Hurricane Irene and Tropical Storm Lee, berms holding Moony and South Ponds in place were severely eroded. In the event of another 100-year storm, these berms would be at risk of failure, resulting in uncontrolled release of impounded water and sediment into Rochester Creek, and causing extensive damage to the creek and to downstream properties.

The proposed project would address potential failure of the Moony Pond and South Pond berms through the following measures:

- Drain the ponds by cutting a V-shaped notch in the retaining berm facing Rochester Creek
- Remove current riser structures, outlet structures, and piping
- Allow the basins to drain in a controlled manner into Rochester Creek
- Filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek.

ENDANGERED SPECIES ACT, MIGRATORY BIRD TREATY ACT, AND BALD AND GOLDEN EAGLE PROTECTION ACT SPECIES

The USFWS was contacted through the Information, Planning, and Conservation System (IPaC) regarding the potential presence of species under the jurisdiction of the USFWS within the Proposed Project area. The USFWS Trust Resources Report is included as **Attachment 3** and the Official Species List is included as **Attachment 4**. According to the USFWS Official Species Lists, there is no critical habitat for federally protected threatened and endangered species in the Project area. A response letter from the New York State Natural Heritage Program (NYSNHP) dated November 21, 2017 (included as **Attachment 5**) stated that NYSNHP has no records of rare or state-listed animals or plants, or significant natural communities at the Proposed Project site or in its immediate vicinity. The Official Species List for the Project area indicates that there are 17 species of migratory birds protected under the Migratory Bird Treaty Act and/or the Bald and Golden Eagle Protection Act that could potentially be affected by the proposed Project. According to the USFWS IPaC Trust Resource Report and Official Species Lists, three listed species may occur in the Proposed Project area and/or may be affected by the Proposed Project: Indiana bat (*Myotis sodalists*) endangered), northern long-eared bat (*Myotis septentrionalis* – threatened), and bog turtle (*Clemmys muhlenbergii* – threatened).

DETERMINATIONS- NO CHANGE

Migratory Birds and Bald Eagles:

GOSR determined that there will be **no adverse impact to migratory birds** as a result of the Project. There are no known breeding bald eagles within the vicinity of the Project area; therefore, GOSR determined that there will be **no adverse impacts to breeding bald eagles** as a result of the Project. If eagles are found in the area, GOSR will follow the USFWS Bald Eagle Management Guidelines.

Bog turtle: GOSR determined that the proposed project will result in no impacts to the federally listed bog turtle, as there is no suitable habitat in the area.

On December 21, 2017, USFWS concurred (**Attachment 6**).

DETERMINATIONS- FOLLOW UP ON INDIANA AND NORTHERN LONG EARED BATS

Approximately 0.90 acre of selective tree removal is proposed at Moony Pond. Tree species present along the berm mainly consist of eastern cottonwood (*Populus deltoides*) and American sycamore (*Platanus occidentalis*), with a few small white ash (*Fraxinus americana*) trees. The proposed construction haul road would be placed along an existing forest road and thus minimal tree clearing is anticipated. The general tree composition along this forest road includes sugar maple (*Acer saccharum*) and suffering eastern red cedars (*Juniperus virginiana*).

Approximately 0.79 acre of selective tree clearing is proposed for the South Pond berm mitigation and to accommodate the construction entrance road. Tree species along the proposed haul roads and the area of the berm is predominantly red oak (*Quercus rubra*), eastern hemlock (*Tsuga canadensis*) and red maple (*Acer rubrum*). See **Attachment 7** for Tree Clearing Plans at both project sites.

There are no records of Indiana or northern long-eared bat maternity roost trees or hibernacula within the vicinity of the Proposed Project area, and according to NYSDEC the Proposed Project area is not located in any occupied habitat for either bat species.

GOSR's December 1, 2017 consultation anticipated that tree clearing would be conducted during the winter tree clearing period between November 1 and March 31. Due to delays in project review and design, winter tree clearing was not conducted. Therefore, GOSR submits this follow up consultation in order to move the Environmental Assessment forward so that construction can be completed during late summer 2018.

A Phase 1 Summer Habitat Assessment was conducted by Amanda Bailey (NYSDEC) on March 23, 2017 (See **Attachment 8**). At Moony Pond, she observed that there were several live trees with exfoliating bark and a number of trees with snags that could provide roosting habitat. She recommended that an acoustic survey be conducted prior to tree clearing. At South Pond, she observed that the project area was unlikely roosting habitat, but could provide foraging habitat, and recommended that an acoustic survey also conducted at this project area.

e removal associated with the Proposed Project would result in a slight reduction of potential Indiana and northern long-eared bat summer roosting, foraging, and travel habitat. However, large, intact woodlands surrounding the ponds would remain undisturbed. Tree removal would be minimized in the design to the greatest extent practicable, and trees to be protected from cutting would be clearly demarcated with bright orange construction fencing and flagging to prevent unnecessary clearing

Based on Ms. Bailey's recommendations, GOSR proposes that an acoustic survey be conducted at both Moony and South Ponds between May 15 and August 15 in accordance with the *2017 Range-wide Indiana Bat Summer Survey Guidelines, May 9, 2017*. Sampling will begin at sunset and end at sunrise each night of sampling. Recorded echolocation calls will then be analyzed. Results of acoustic surveys will be provided to the USFWS - New York Field Office within 10 days of completing the survey. If the absence of the NLEB and IB can be assumed based on the acoustic survey results, then tree clearing will be performed over the summer. If NLEB or IB presence is considered likely based on the acoustic survey results, then presence of NLEBs and/or IBs will be assumed and GOSR will coordinate with the USFWS - New York Field Office to determine the appropriate steps necessary to proceed with project implementation.

Because the Project will not impact a large area of suitable habitat relative to the surrounding landscape and acoustic surveys will be conducted with additional consultation with USFWS to be coordinated as needed, GOSR has determined that the Proposed Project **may affect, but is not likely to adversely affect** Indiana and northern long-eared bat.

GOSR has determined that the Proposed Project may affect, but is not likely to adversely affect species within USFWS jurisdiction protected under the ESA. This letter requests acknowledgement from USFWS that it has no objections to this determination. If USFWS does not respond within 30 days from submittal of this letter, then GOSR may presume that its determination for Proposed Project is informed by the best available information and its project responsibilities under Section 7 of the ESA have been fulfilled. GOSR understands that the USFWS presumes that all activities would be implemented as described herein. GOSR will promptly report any departures from the described activities or schedules to the New York Ecological Services Field Office.

If you have any questions, please feel free to contact me at (518) 474-0755 or Lori.Shirley@nyshcr.org. Thank you for your consideration and cooperation.

Sincerely,

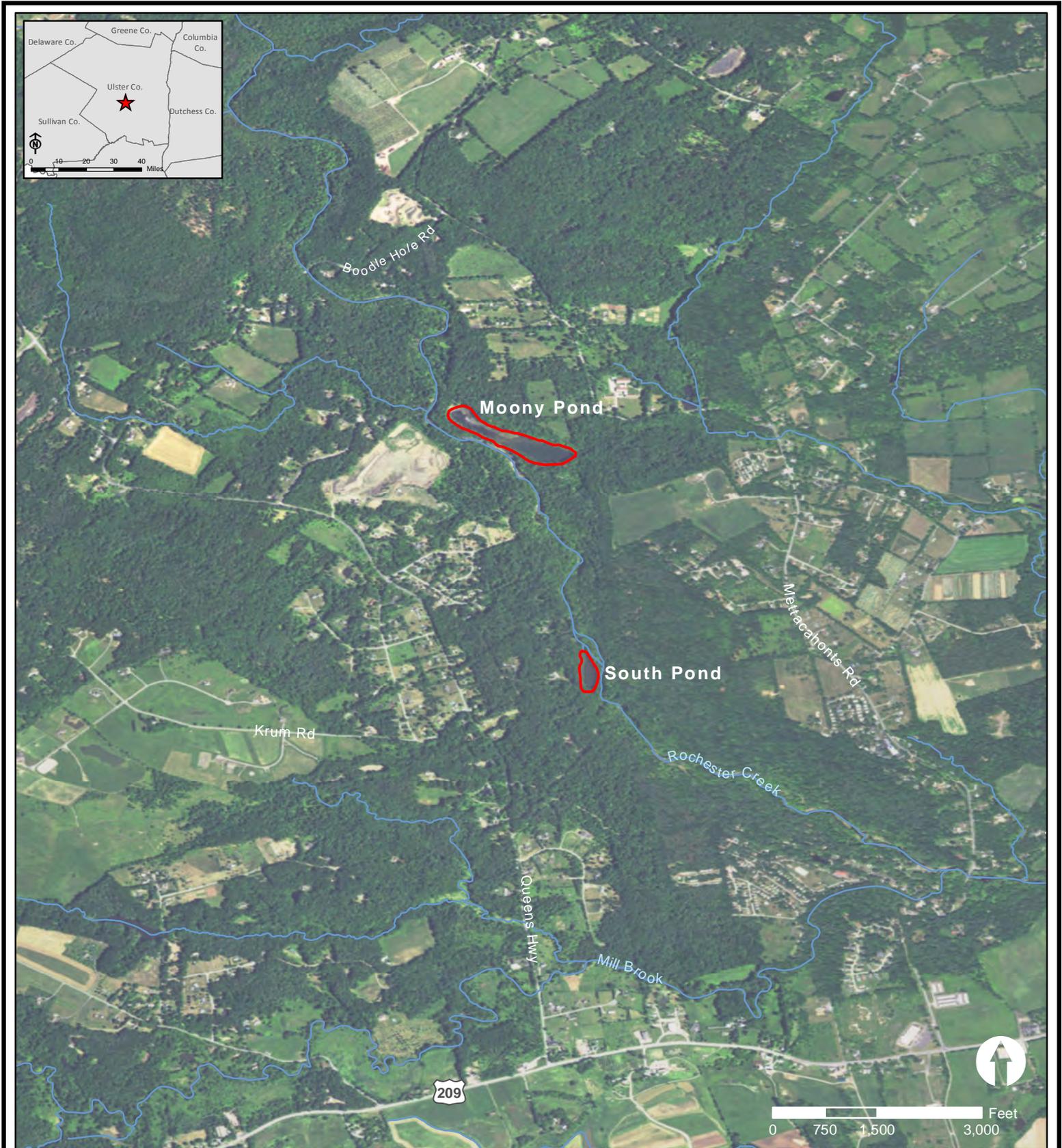


Lori A. Shirley
Director and Certifying Officer, Bureau of Environmental Review and Assessment
Governor's Office of Storm Recovery

Attachments:

- Attachment 1: Proposed Project Area Location
- Attachment 2: Proposed Project Area Photographs
- Attachment 3: USFWS Trust Resources Report
- Attachment 4: USFWS Official Species List
- Attachment 5: NYSNHP Response 11-21-2017
- Attachment 6: USFWS Response 12-21-2017
- Attachment 7: Tree Clearing Plan
- Attachment 8: Phase 1 Summer Habitat Assessment

Attachment 1. Proposed Project Area Location



 Project Boundary

Figure 1
Project Area

Rochester Creek
and Ponds

Attachment 2. Proposed Project Area Photographs



Figure 1. Moony Pond viewed from NW end



Figure 2. Rochester Creek Channel Adjacent to Moony Pond



Figure 3. South Pond from Rochester Creek



Figure 4. South Pond

Attachment 3. USFWS Trust Resources Report

Rochester Creek and Ponds Mitigation

IPaC Trust Resources Report

Generated August 25, 2016 10:58 AM MDT, IPaC v3.0.8

This report is for informational purposes only and should not be used for planning or analyzing project level impacts. For project reviews that require U.S. Fish & Wildlife Service review or concurrence, please return to the IPaC website and request an official species list from the Regulatory Documents page.



Table of Contents

- IPaC Trust Resources Report [1](#)
- Project Description [1](#)
- Endangered Species [3](#)
- Migratory Birds [5](#)
- Refuges & Hatcheries [7](#)
- Wetlands [8](#)

IPaC Trust Resources Report



NAME

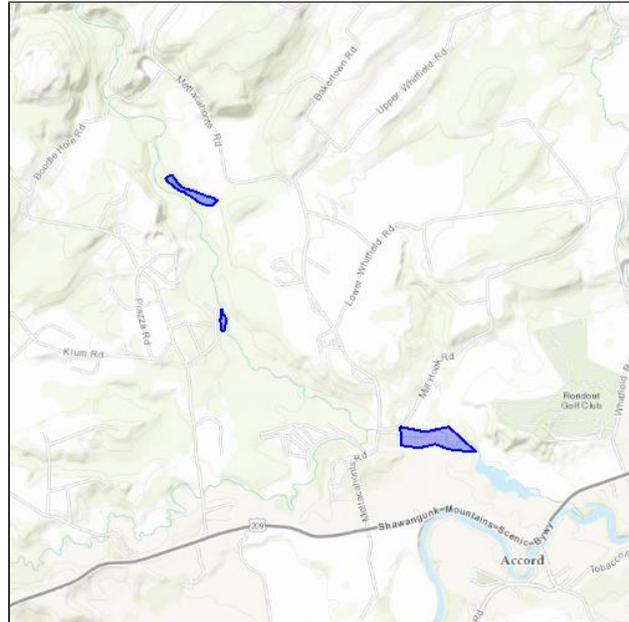
Rochester Creek and Tributaries
Immediate Repair Project

LOCATION

Ulster County, New York

DESCRIPTION

The proposed project involves the decommissioning of two ponds and riparian improvements in the upper reaches of Rochester Creek. The two ponds show high levels of flood risk to the Rochester Creek Channel and to downstream communities should the existing degraded earthen beams fail in



a future storm event. In addition, the project recommends the establishment of vegetated riparian buffers of at least 30 to 35 feet in width in areas where they do not currently exist along Rochester Creek. The establishment of these buffers would be done to provide improved physical stability of the stream as well as habitat and water quality benefits. Improvements to Rochester Creek will restore flow and capacity of the waterway, thereby reducing the risk of flooding and mitigating storm water effects. This project addresses the impact of previous storm damage from Hurricane Irene and Tropical Storm Lee through the reduction of flood risks, more efficient emergency response, and the ability to recover quickly from future storm impacts. The improvements will remove detritus and other obstructions from the creek and mitigate future flooding and associated dangers to health and welfare of the local residents. This project is also expected to have a positive effect on local tourism due to the restoration and protection of a natural resource asset.

IPAC LINK

<https://ecos.fws.gov/ipac/project/SH4OR-XCKRR-GN3LF-LZGYW-32EG5Q>

U.S. Fish & Wildlife Service Contact Information

Trust resources in this location are managed by:

New York Ecological Services Field Office

3817 Luker Road

Cortland, NY 13045-9349

(607) 753-9334

Endangered Species

Proposed, candidate, threatened, and endangered species are managed by the [Endangered Species Program](#) of the U.S. Fish & Wildlife Service.

This USFWS trust resource report is for informational purposes only and should not be used for planning or analyzing project level impacts.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list from the Regulatory Documents section.

[Section 7](#) of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency.

A letter from the local office and a species list which fulfills this requirement can only be obtained by requesting an official species list either from the Regulatory Documents section in IPaC or from the local field office directly.

The list of species below are those that may occur or could potentially be affected by activities in this location:

Mammals

Indiana Bat *Myotis sodalis* Endangered

CRITICAL HABITAT

No critical habitat has been designated for this species.

http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=A000

Northern Long-eared Bat *Myotis septentrionalis* Threatened

CRITICAL HABITAT

No critical habitat has been designated for this species.

http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=A0JE

Reptiles

Bog (=muhlenberg) Turtle *Clemmys muhlenbergii* Threatened

CRITICAL HABITAT

No critical habitat has been designated for this species.

http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=C048

Critical Habitats

There are no critical habitats in this location

Migratory Birds

Birds are protected by the [Migratory Bird Treaty Act](#) and the [Bald and Golden Eagle Protection Act](#).

Any activity that results in the take of migratory birds or eagles is prohibited unless authorized by the U.S. Fish & Wildlife Service.^[1] There are no provisions for allowing the take of migratory birds that are unintentionally killed or injured.

Any person or organization who plans or conducts activities that may result in the take of migratory birds is responsible for complying with the appropriate regulations and implementing appropriate conservation measures.

1. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

Additional information can be found using the following links:

- Birds of Conservation Concern
<http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Conservation measures for birds
<http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Year-round bird occurrence data
<http://www.birdscanada.org/birdmon/default/datasummaries.jsp>

The following species of migratory birds could potentially be affected by activities in this location:

American Bittern <i>Botaurus lentiginosus</i>	Bird of conservation concern
Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0F3	
Bald Eagle <i>Haliaeetus leucocephalus</i>	Bird of conservation concern
Season: Year-round http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B008	
Black-billed Cuckoo <i>Coccyzus erythrophthalmus</i>	Bird of conservation concern
Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0H1	
Blue-winged Warbler <i>Vermivora pinus</i>	Bird of conservation concern
Season: Breeding	
Canada Warbler <i>Wilsonia canadensis</i>	Bird of conservation concern
Season: Breeding	

Cerulean Warbler <i>Dendroica cerulea</i> Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B091	Bird of conservation concern
Golden-winged Warbler <i>Vermivora chrysoptera</i> Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0G4	Bird of conservation concern
Least Bittern <i>Ixobrychus exilis</i> Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B092	
Louisiana Waterthrush <i>Parkesia motacilla</i> Season: Breeding	Bird of conservation concern
Olive-sided Flycatcher <i>Contopus cooperi</i> Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0AN	Bird of conservation concern
Pied-billed Grebe <i>Podilymbus podiceps</i> Season: Breeding	Bird of conservation concern
Prairie Warbler <i>Dendroica discolor</i> Season: Breeding	Bird of conservation concern
Red-headed Woodpecker <i>Melanerpes erythrocephalus</i> Season: Breeding	Bird of conservation concern
Rusty Blackbird <i>Euphagus carolinus</i> Season: Wintering	Bird of conservation concern
Short-eared Owl <i>Asio flammeus</i> Season: Wintering http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0HD	Bird of conservation concern
Willow Flycatcher <i>Empidonax traillii</i> Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0F6	Bird of conservation concern
Wood Thrush <i>Hylocichla mustelina</i> Season: Breeding	Bird of conservation concern
Worm Eating Warbler <i>Helminthos vermivorum</i> Season: Breeding	Bird of conservation concern

Wildlife refuges and fish hatcheries

There are no refuges or fish hatcheries in this location

Wetlands in the National Wetlands Inventory

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

DATA LIMITATIONS

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

DATA EXCLUSIONS

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

DATA PRECAUTIONS

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

This location overlaps all or part of the following wetlands:

Freshwater Forested/shrub Wetland

[PFO1A](#)

Freshwater Pond

[PUBHh](#)

Riverine

[R3USA](#)

[R4SBC](#)

[R5UBH](#)

A full description for each wetland code can be found at the National Wetlands Inventory website: <http://107.20.228.18/decoders/wetlands.aspx>

Attachment 4. USFWS Official Species List



United States Department of the Interior



FISH AND WILDLIFE SERVICE
New York Ecological Services Field Office
3817 Luker Road
Cortland, NY 13045-9385

Phone: (607) 753-9334 Fax: (607) 753-9699

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

In Reply Refer To:

April 09, 2018

Consultation Code: 05E1NY00-2018-SLI-0409

Event Code: 05E1NY00-2018-E-05176

Project Name: Rochester Creek and Ponds Mitigation

Subject: Updated 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](#)). 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(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

New York Ecological Services Field Office

3817 Luker Road

Cortland, NY 13045-9385

(607) 753-9334

Project Summary

Consultation Code: 05E1NY00-2018-SLI-0409

Event Code: 05E1NY00-2018-E-05176

Project Name: Rochester Creek and Ponds Mitigation

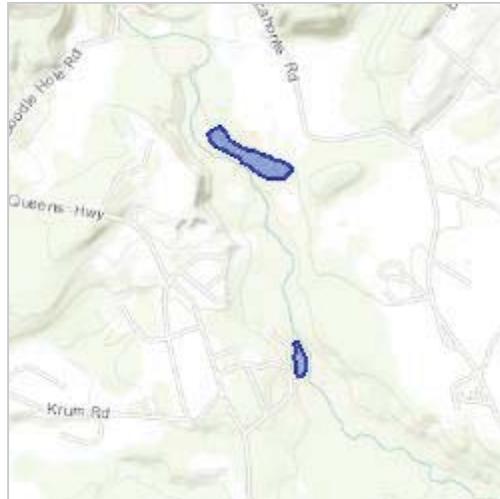
Project Type: DAM

Project Description: The Town of Rochester is proposing a mitigation project to address dam erosion at two ponds located off the banks of Rochester Creek in Ulster County, New York. The proposed project would address potential failure of the Moony Pond berm through the following measures: drain the pond by cutting a V-shaped notch in the retaining berm facing Rochester Creek; remove the current riser structure, outlet structure, and piping; allow the basin to drain in a controlled manner into Rochester Creek; filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek. Repairs to South Pond would be similar to those described for Moony Pond, with the pond being drained through removal of part of the berm. An appropriately sized channel will be constructed to convey flows from the pond to Rochester Creek. Like Moony Pond, a rock sill will be installed to maintain this impoundment for the purpose of creating a wetland habitat, and native plant species will be planted. The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek.

Additionally, flood induced erosion at the lower reaches of Rochester Creek have significantly eroded agricultural lands on the south bank of the creek. It is recommended that riparian improvements, limited to planting native species of ground cover and trees suitable to arresting erosion, be conducted on a spot basis to address the Town's concerns in these areas.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/41.814058109980124N74.26512000040228W>



Counties: Ulster, NY

Endangered Species Act Species

There is a total of 3 threatened, endangered, or candidate species on this 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.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

NAME	STATUS
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened

Reptiles

NAME	STATUS
Bog Turtle <i>Clemmys muhlenbergii</i> Population: Wherever found, except GA, NC, SC, TN, VA No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6962 Species survey guidelines: https://ecos.fws.gov/ipac/guideline/survey/population/182/office/52410.pdf Habitat assessment guidelines: https://ecos.fws.gov/ipac/guideline/assessment/population/182/office/52410.pdf	Threatened

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

Attachment 5. NYSNHP Response 11-21-2017

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, New York Natural Heritage Program
625 Broadway, Fifth Floor, Albany, NY 12233-4757
P: (518) 402-8935 | F: (518) 402-8925
www.dec.ny.gov

November 21, 2017

Lori Shirley
Governor's Office of Storm Recovery
30-40 State St., Hampton Plaza
Albany, NY 12207

Re: Rochester Creek, Moony Pond, and South Pond Mitigation and Dam Rehabilitation
County: Ulster Town/City: Rochester

Dear Ms. Shirley:

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 the project 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 NYS DEC Region 3 Office, Division of Environmental Permits, at dep.r3@dec.ny.gov, (845) 256-3054.

Sincerely,



Nicholas Conrad
Information Resources Coordinator
New York Natural Heritage Program

1447

Attachment 6. USFWS Response 12.21.17



United States Department of the Interior

FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045



December 21, 2017

Ms. Lori A. Shirley
Director & Certifying Officer
Bureau of Environmental Review & Assessment
Governor's Office of Storm Recovery
NYS Homes & Community Renewal
38-40 State Street, 408N, Hampton Plaza
Albany, NY 12207

Dear Ms. Shirley:

This responds to your December 1, 2017, letter regarding the proposed Rochester Creek and Ponds Mitigation Project located in the Town of Rochester, Ulster County, New York. We understand that U.S. Department of Housing and Urban Development's (HUD) funding may be involved with the proposed project.

As you are aware, Federal agencies have responsibilities under section 7 of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to consult with the U.S. Fish and Wildlife Service (Service) regarding projects that may affect federally listed species or designated critical habitat, and confer with the Service regarding projects that are likely to jeopardize federally proposed species and/or adversely modify proposed critical habitat. We understand that NYS Homes & Community Renewal (NYSHCR) has been designated HUD's non-federal representative for the purposes of completing informal consultation pursuant to section 7(a)(2) of the ESA.

On behalf of HUD, the NYSHCR determined the proposed project may affect, but is not likely to adversely affect, the federally listed endangered Indiana bat (*Myotis sodalis*) or federally listed threatened northern long-eared bat (*Myotis septentrionalis*). Given the project location, small amount of tree removal (<2 acres), and conservation measure to conduct all tree removal between November 1 and March 31, we concur with your determination. The NYSHCR also determined the project will result in no impacts to the federally listed threatened bog turtle (*Clemmys [=Glyptemys] muhlenbergii*) as there is no suitable habitat in the area. We have no further comments on this species.

No further coordination or consultation under the ESA is required with the Service at this time. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of federally listed and proposed endangered and threatened species in New York is available for your information. Until the proposed project is complete, we recommend that you check our website regularly to ensure that listed species presence/absence information for the proposed project is current.*

Any new information regarding the proposed project and its potential to impact listed species should be coordinated with both this office and with the New York State Department of Environmental Conservation.

In addition to the above-referenced determinations regarding federally listed or proposed species, you have also determined that the project will result in no effects to the bald eagle (*Haliaeetus leucocephalus*). As you are aware, bald eagles have been delisted pursuant to the ESA, but remain protected under the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-712), the Bald and Golden Eagle Protection Act (54 Stat. 250, as amended; 16 U.S.C. 668 *et seq.*), and by the State of New York. If eagles are found within the project area, we recommend that the project sponsor follow the Bald Eagle Management Guidelines found on our website.

Thank you for coordinating with us. We appreciate the opportunity to review this project. Please contact Robyn Niver at 607-753-9334 if there are any questions. Future correspondence with us on this project should reference project file 16I2385.

Sincerely,



David A. Stilwell
Field Supervisor

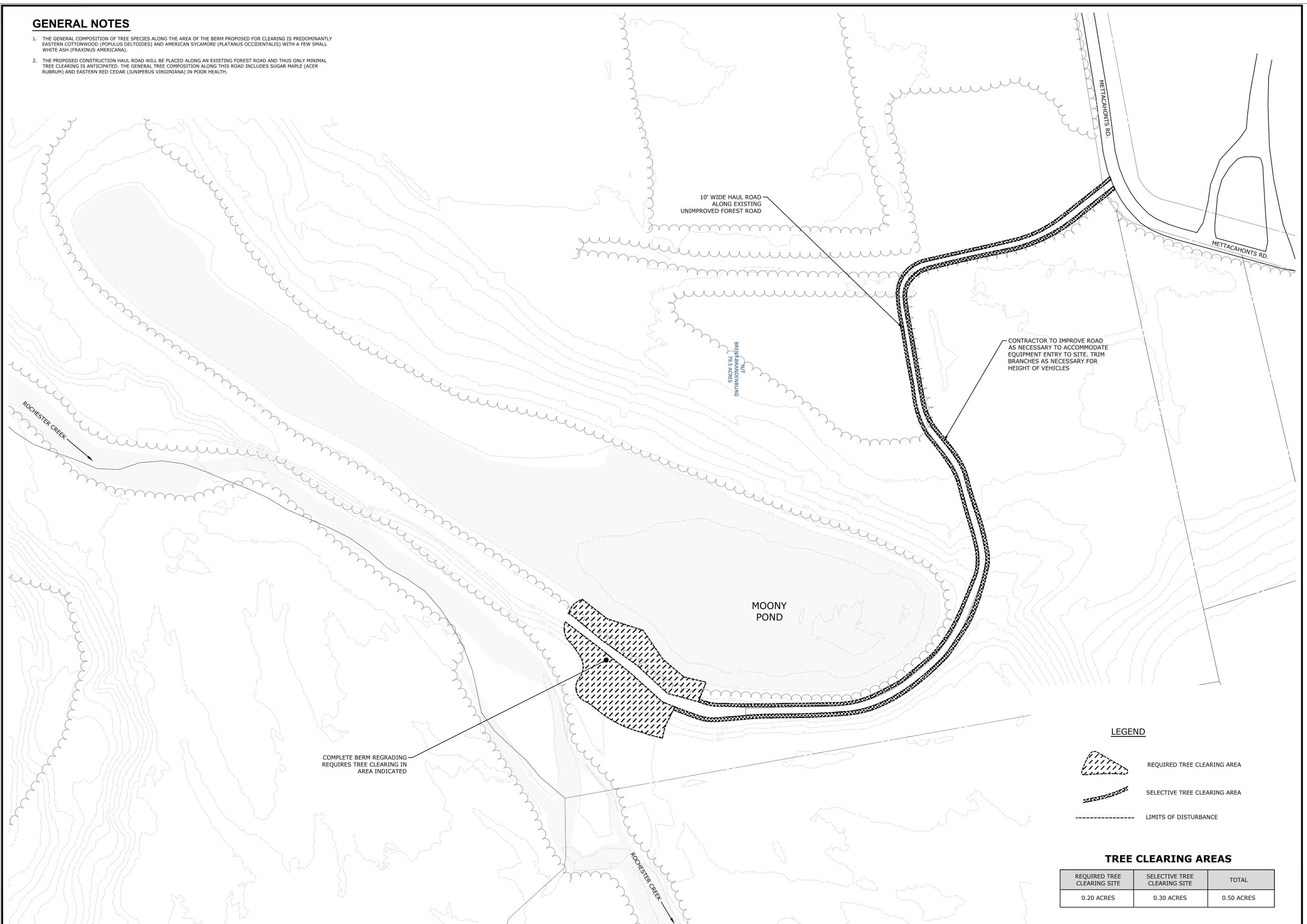
*Additional information referred to above may be found on our website at:
<http://www.fws.gov/northeast/nyfo/es/section7.htm>.

cc: NYSDEC, New Paltz, NY (Env. Permits)

Attachment 7. Tree Clearing Plan

GENERAL NOTES

1. THE GENERAL COMPOSITION OF TREE SPECIES ALONG THE AREA OF THE BERM PROPOSED FOR CLEARING IS PREDOMINANTLY EASTERN COTTONWOOD (POPULUS DELTOIDES) AND AMERICAN SYCAMORE (PLATANUS OCCIDENTALIS) WITH A FEW SMALL WHITE ASH (FRAXINUS AMERICANA).
2. THE PROPOSED CONSTRUCTION HAUL ROAD WILL BE PLACED ALONG AN EXISTING FOREST ROAD AND THUS ONLY MINIMAL TREE CLEARING IS ANTICIPATED. THE GENERAL TREE COMPOSITION ALONG THIS ROAD INCLUDES SUGAR MAPLE (ACER RUBRUM) AND EASTERN RED CEDAR (JUNIPERUS VIRGINIANA) IN POOR HEALTH.

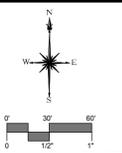


LEGEND

-  REQUIRED TREE CLEARING AREA
-  SELECTIVE TREE CLEARING AREA
-  LIMITS OF DISTURBANCE

TREE CLEARING AREAS

REQUIRED TREE CLEARING SITE	SELECTIVE TREE CLEARING SITE	TOTAL
0.20 ACRES	0.30 ACRES	0.50 ACRES



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DESCRIPTION	DATE	BY

TREE CLEARING PLAN
 ROCHESTER CREEK
 MOONY POND
 METTACAHONTS ROAD
 TOWN OF ROCHESTER, NEW YORK

MC DESIGNED	MC DRAWN	MC CHECKED
SCALE 1"=60'		
DATE JANUARY 19, 2018		
PROJECT NO. 5679-01		
SHEET NO. 02 OF 02		

TC-2

Attachment 8. Phase 1 Summer Habitat Assessment

APPENDIX A
PHASE 1 SUMMER HABITAT ASSESSMENTS

INDIANA BAT HABITAT ASSESSMENT DATASHEET

Project Name: Rochester Creek & Ponds Mitigation Project Date: 3/22/2018
 Township/Range/Section: Rochester, Ulster County, NY
 Lat Long/UTM/ Zone: 18N 561061 E // 4629346 N Surveyor: A. Bailey, M. O'Malley

Brief Project Description

This project will take down the existing berm at Moony Pond, regrade the area, and construct a rock sill on Moony Pond and South Pond with the purpose of creating a wetland.

Project Area

	Total Acres	Forest Acres		Open Acres
Project	~10.69			Majority of the project area is open pond.
Proposed Tree Removal (ac)	Completely cleared	Partially cleared (will leave trees)	Preserve acres- no clearing	
	0.63	0.30		

Vegetation Cover Types

Pre-Project	Post-Project
The project area consists primarily of 2 ponds. It also consists of the forested berm area around these ponds and Rochester Creek.	Most of the project area will retain the same cover type, although <0.93 acres will be cleared to facilitate berm repair.

Landscape within 5 mile radius

Flight corridors to other forested areas?

There are multiple flight corridors connected forested areas. The project does not affect flight corridors.

Describe Adjacent Properties (e.g. forested, grassland, commercial or residential development, water sources)

The surrounding area is a matrix of forested land and residential development. The forested areas are mostly privately owned.

Proximity to Public Land

What is the distance (mi.) from the project area to forested public lands (e.g., national or state forests, national or state parks, conservation areas, wildlife management areas)?

The project is located approximately 4.4 miles from Vernooy Kill State Forest.

APPENDIX A
PHASE 1 SUMMER HABITAT ASSESSMENTS

Use additional sheets to assess discrete habitat types at multiple sites in a project area

*Include a map depicting locations of sample sites if assessing discrete habitats at multiple sites in a project area
A single sheet can be used for multiple sample sites if habitat is the same*

Sample Site Description	
Sample Site No.(s):	1- Moony Pond

Water Resources at Sample Site				Describe existing condition of water sources: Open pond surrounded by forest.
Stream Type (# and length)	Ephemeral	Intermittent	Perennial 167 ft	
Pools/Ponds (# and size)	1 ~ 8.8 acres	Open and accessible to bats? Yes		
Wetlands (approx. ac.)	Permanent	Seasonal		

Forest Resources at Sample Site				1=1-10%, 2=11-20%, 3=21-40%, 4=41-60%, 5=61-80%, 6=81-100%
Closure/Density	Canopy (> 50')	Midstory (20-50')	Understory (<20')	
	3	3	0	
Dominant Species of Mature Trees	White pine, red maple			
% Trees w/ Exfoliating Bark	10%			
Size Composition of Live Trees (%)	Small (3-8 in)	Med (9-15 in)	Large (>15 in)	
	70	30		
No. of Suitable Snags	10			

Standing dead trees with exfoliating bark, cracks, crevices, or hollows. Snags without these characteristics are not considered suitable.

IS THE HABITAT SUITABLE FOR INDIANA BATS? Yes

Additional Comments:	
Majority of snags are small. There are also several live trees with exfoliating bark. Recommend that acoustic survey be completed in this area before clearing.	

Attach aerial photo of project site with all forested areas labeled and a general description of the habitat

Photographic Documentation: habitat shots at edge and interior from multiple locations; understory/midstory/canopy; examples of potential suitable snags and live trees; water sources



Path (selective clearing)



Path (selective clearing)



Clearing for berm restoration



Clearing for berm restoration



Clearing for berm restoration



Clearing for berm restoration



Clearing for berm restoration



Clearing for berm restoration



Clearing for berm restoration

APPENDIX A
PHASE 1 SUMMER HABITAT ASSESSMENTS

Use additional sheets to assess discrete habitat types at multiple sites in a project area

*Include a map depicting locations of sample sites if assessing discrete habitats at multiple sites in a project area
A single sheet can be used for multiple sample sites if habitat is the same*

Sample Site Description	
Sample Site No.(s): <u>2 - South Pond</u>	

Water Resources at Sample Site				Describe existing condition of water sources: The tree clearing is occurring between the flowing Rochester Creek, and the open South Pond, which is a small, still pond surrounded by forest.
Stream Type (# and length)	Ephemeral	Intermittent	Perennial 110 m	
Pools/Ponds (# and size)	1 - 1.9 acres	Open and accessible to bats? Yes		
Wetlands (approx. ac.)	Permanent	Seasonal		

Forest Resources at Sample Site				1=1-10%, 2=11-20%, 3=21-40%, 4=41-60%, 5=61-80%, 6=81-100%
Closure/Density	Canopy (> 50')	Midstory (20-50')	Understory (<20')	
	2	1	1	
Dominant Species of Mature Trees	Oak spp.			
% Trees w/ Exfoliating Bark	0	1%	0	
Size Composition of Live Trees (%)	Small (3-8 in)	Med (9-15 in)	Large (>15 in)	
	60	40		
No. of Suitable Snags	1			

Standing dead trees with exfoliating bark, cracks, crevices, or hollows. Snags without these characteristics are not considered suitable.

IS THE HABITAT SUITABLE FOR INDIANA BATS? Yes

Additional Comments:	<p>Unlikely roosting habitat (most trees are small, and most are live without exfoliating bark or cavities). However, there is the potential for foraging habitat to exist on site. Recommend that acoustic surveys be completed before clearing.</p>
-----------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Attach aerial photo of project site with all forested areas labeled and a general description of the habitat

Photographic Documentation: habitat shots at edge and interior from multiple locations; understory/midstory/canopy; examples of potential suitable snags and live trees; water sources













Governor's Office of
Storm Recovery

ANDREW M. CUOMO
Governor

June 15, 2018

Robyn Niver
Endangered Species Biologist
U.S. Fish and Wildlife Service
New York Ecological Services Field Office (Region 5)
3817 Luker Road
Cortland, NY 13045

Re: Section 7 Project Review – **Follow up** to December 1, 2017 Effect Determination
Rochester Creek Mitigation Project, Town of Rochester, Ulster County, NY
USFWS Consultation Code: 05E1NY00-2016-SLI-2385

Dear Ms. Niver,

The Governor's Office of Storm Recovery (GOSR), operating under the auspices of the New York State Homes and Community Renewal's (NYSHCR) Housing Trust Fund Corporation, was established to aid the statewide recovery of disaster-affected communities in New York State. GOSR is administering a U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant for Disaster Recovery (CDBG-DR), including the New York Rising Community Reconstruction (NYRCR) Program. The environmental review for projects funded under the NYRCR Program are processed on a case by case basis in accordance with the United States Fish and Wildlife Service (USFWS) New York Field Office's online project review process. The project described herein was analyzed pursuant to Section 7 of the Endangered Species Act (ESA) of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), the Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d); and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat 755).

The purpose of this letter is to provide the U.S. Fish and Wildlife Service – New York Field Office (USFWS) a follow up to GOSR's December 1, 2017 consultation of the proposed project, due to the fact that the proposed winter tree clearing could not be met. We are requesting concurrence from the U.S. Fish and Wildlife Service that the Rochester Creek Mitigation Project **may affect, but is not likely to adversely affect** the Indiana bat and the northern long-eared bat. This letter requests acknowledgement from the USFWS that it has received our determination regarding the Proposed Project, and that USFWS has no objections to this determination.

PROJECT DESCRIPTION

As described in GOSR's initial consultation, the Town of Rochester is proposing a mitigation project to address berm erosion at two ponds located off the banks of Rochester Creek in Ulster County, New York (see **Attachment 1**). Rochester Creek is approximately 11 miles in length and is a tributary to Rondout Creek, which is itself a tributary of the Hudson River. The Proposed Project area begins at Moony Pond, located approximately 0.6 miles downstream of the Boodlehole Road Bridge, and extends approximately 0.5 mile downstream to include South Pond. Photographs of existing condition are included as **Attachment 2**.

During Hurricane Irene and Tropical Storm Lee, berms holding Moony and South Ponds in place were severely eroded. In the event of another 100-year storm, these berms would be at risk of failure, resulting in uncontrolled release of impounded water and sediment into Rochester Creek, and causing extensive damage to the creek and to downstream properties.

The proposed project would address potential failure of the Moony Pond and South Pond berms through the following measures:

- Drain the ponds by cutting a V-shaped notch in the retaining berm facing Rochester Creek
- Remove current riser structures, outlet structures, and piping
- Allow the basins to drain in a controlled manner into Rochester Creek
- Filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek.

ENDANGERED SPECIES ACT, MIGRATORY BIRD TREATY ACT, AND BALD AND GOLDEN EAGLE PROTECTION ACT SPECIES

The USFWS was contacted through the Information, Planning, and Conservation System (IPaC) regarding the potential presence of species under the jurisdiction of the USFWS within the Proposed Project area. The USFWS Trust Resources Report is included as **Attachment 3** and the Official Species List is included as **Attachment 4**. According to the USFWS Official Species Lists, there is no critical habitat for federally protected threatened and endangered species in the Project area. A response letter from the New York State Natural Heritage Program (NYSNHP) dated November 21, 2017 (included as **Attachment 5**) stated that NYSNHP has no records of rare or state-listed animals or plants, or significant natural communities at the Proposed Project site or in its immediate vicinity. The Official Species List for the Project area indicates that there are 17 species of migratory birds protected under the Migratory Bird Treaty Act and/or the Bald and Golden Eagle Protection Act that could potentially be affected by the proposed Project. According to the USFWS IPaC Trust Resource Report and Official Species Lists, three listed species may occur in the Proposed Project area and/or may be affected by the Proposed Project: Indiana bat (*Myotis sodalists*) endangered), northern long-eared bat (*Myotis septentrionalis* – threatened), and bog turtle (*Clemmys muhlenbergii* – threatened).

DETERMINATIONS- NO CHANGE

Migratory Birds and Bald Eagles:

GOSR determined that there will be **no adverse impact to migratory birds** as a result of the Project. There are no known breeding bald eagles within the vicinity of the Project area; therefore, GOSR determined that there will be **no adverse impacts to breeding bald eagles** as a result of the Project. If eagles are found in the area, GOSR will follow the USFWS Bald Eagle Management Guidelines.

Bog turtle: GOSR determined that the proposed project will result in **no adverse impact to the federally listed bog turtle**, as there is no suitable habitat in the area.

On December 21, 2017, USFWS concurred (**Attachment 6**).

DETERMINATIONS- FOLLOW UP ON INDIANA AND NORTHERN LONG EARED BATS

Approximately 0.90 acre of selective tree removal is proposed at Moony Pond. Tree species present along the berm mainly consist of eastern cottonwood (*Populus deltoides*) and American sycamore (*Platanus occidentalis*), with a few small white ash (*Fraxinus americana*) trees. The proposed construction haul road would be placed along an existing forest road and thus minimal tree clearing is anticipated. The general tree composition along this forest road includes sugar maple (*Acer saccharum*) and suffering eastern red cedars (*Juniperus virginiana*).

Approximately 0.79 acre of selective tree clearing is proposed for the South Pond berm mitigation and to accommodate the construction entrance road. Tree species along the proposed haul roads and the area of the berm is predominantly red oak (*Quercus rubra*), eastern hemlock (*Tsuga canadensis*) and red maple (*Acer rubrum*). See **Attachment 7** for Tree Clearing Plans at both project sites.

There are no records of Indiana or northern long-eared bat maternity roost trees or hibernacula within the vicinity of the Proposed Project area, and according to NYSDEC the Proposed Project area is not located in any occupied habitat for either bat species.

GOSR's December 1, 2017 consultation anticipated that tree clearing would be conducted during the winter tree clearing period between November 1 and March 31. Due to delays in project review and design, winter tree clearing was not conducted. Therefore, GOSR submits this follow up consultation in order to move the Environmental Assessment forward so that construction can be completed during late summer 2018, after the June-July pup season.

A Phase 1 Summer Habitat Assessment was conducted by Amanda Bailey (NYSDEC) on March 23, 2017 (See **Attachment 8**). At Moony Pond, she observed that there were several live trees with exfoliating bark and a number of trees with snags that could provide roosting habitat. She recommended that an acoustic survey be conducted. At South Pond, she observed that the project area was unlikely roosting habitat, but could provide foraging habitat, and recommended that an acoustic survey also be conducted at this project area.

Based on Ms. Bailey's recommendations, GOSR and USFWS agreed that an acoustic survey be conducted at both Moony and South Ponds after May 15, 2018 in accordance with the *2017 Range-wide Indiana Bat Summer Survey Guidelines, May 9, 2017*.

An acoustic survey was performed at three sites within the project area, including the two pond locations that will be cleared, and one trail location that will be partially cleared to create an access road. Sites were monitored for 3-5 nights each, for a total of 12 successful detector nights between May 17 and May 26, 2018. Recorded files were run through Kaleidoscope Pro Bats of North America 4.3.0 automatic identification program to determine maximum likelihood estimates (MLE) for species presence on each detector night. According to these results, big brown bats (*Eptesicus fuscus*), hoary bats (*Lasiurus cinereus*), silver-haired bats (*Lasionycteris noctivagans*), and little brown bats (*M. lucifugus*) were present at all sites monitored. All individual files identified by Kaleidoscope Pro as potential Indiana bats or northern long-eared bats were manually reviewed by Amanda Bailey. While certain call sequences were compelling for both species, there were not enough high quality call sequences at any location to overturn the MLE values calculated by Kaleidoscope Pro. **Maximum likelihood estimates suggested that neither the Indiana bat nor the northern long-eared bat was present at the project location.** (See Attachment 9).

Because the Project will not impact a large area of suitable habitat relative to the surrounding landscape and tree clearing will be conducted after June-July pup season, GOSR has determined that the Proposed Project **may affect, but is not likely to adversely affect** Indiana and northern long-eared bat under the ESA. This letter requests acknowledgement from USFWS that it has no objections to this determination. If USFWS does not respond within 30 days from submittal of this letter, then GOSR may presume that its determination for Proposed Project is informed by the best available information and its project responsibilities under Section 7 of the ESA have been fulfilled. GOSR understands that the USFWS presumes that all activities would be implemented as described herein. GOSR will promptly report any departures from the described activities or schedules to the New York Ecological Services Field Office.

If you have any questions, please feel free to contact me at (518) 474-0755 or Lori.Shirley@nyshcr.org. Thank you for your consideration and cooperation.

Sincerely,



Lori A. Shirley
Director and Certifying Officer, Bureau of Environmental Review and Assessment
Governor's Office of Storm Recovery

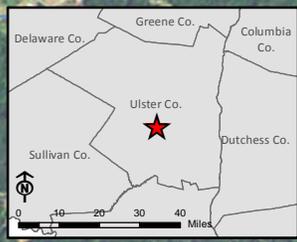
Attachments:

Attachment 1: Proposed Project Area Location

Attachment 2: Proposed Project Area Photographs

Attachment 3: USFWS Trust Resources Report
Attachment 4: USFWS Official Species List
Attachment 5: NYSNHP Response 11-21-2017
Attachment 6: USFWS Response 12-21-2017
Attachment 7: Tree Clearing Plan
Attachment 8: Phase 1 Summer Habitat Assessment
Attachment 9: Bat Acoustic Survey Report

Attachment 1. Proposed Project Area Location



 Project Boundary

Figure 1
Project Area

Rochester Creek
and Ponds

Source: U.S. Fish and Wildlife Service; Ulster County GIS Datasets; NYS Dept. of State; NYS Department of Environmental Conservation; U.S. Department of Agriculture; FEMA; ESRI World Imagery; ESRI Street Map



Attachment 2. Proposed Project Area Photographs



Figure 1. Moony Pond viewed from NW end



Figure 2. Rochester Creek Channel Adjacent to Moony Pond



Figure 3. South Pond from Rochester Creek



Figure 4. South Pond

Attachment 3. USFWS Trust Resources Report

Rochester Creek and Ponds Mitigation

IPaC Trust Resources Report

Generated August 25, 2016 10:58 AM MDT, IPaC v3.0.8

This report is for informational purposes only and should not be used for planning or analyzing project level impacts. For project reviews that require U.S. Fish & Wildlife Service review or concurrence, please return to the IPaC website and request an official species list from the Regulatory Documents page.



Table of Contents

- IPaC Trust Resources Report [1](#)
- Project Description [1](#)
- Endangered Species [3](#)
- Migratory Birds [5](#)
- Refuges & Hatcheries [7](#)
- Wetlands [8](#)

IPaC Trust Resources Report



NAME

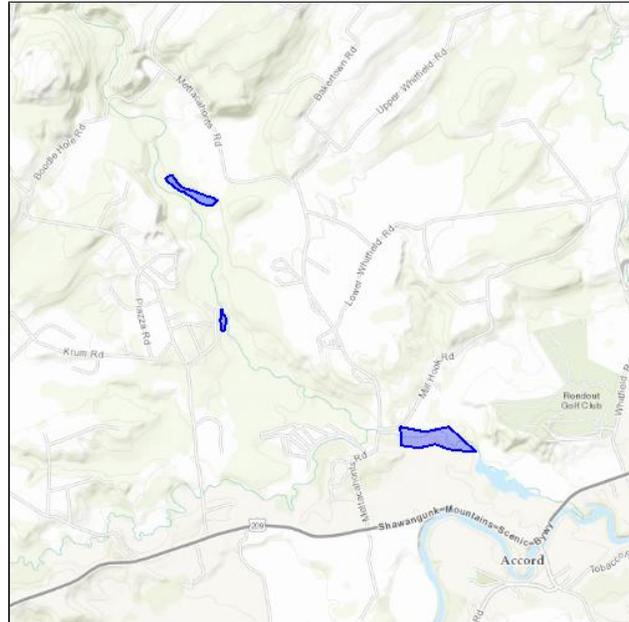
Rochester Creek and Tributaries
Immediate Repair Project

LOCATION

Ulster County, New York

DESCRIPTION

The proposed project involves the decommissioning of two ponds and riparian improvements in the upper reaches of Rochester Creek. The two ponds show high levels of flood risk to the Rochester Creek Channel and to downstream communities should the existing degraded earthen beams fail in



a future storm event. In addition, the project recommends the establishment of vegetated riparian buffers of at least 30 to 35 feet in width in areas where they do not currently exist along Rochester Creek. The establishment of these buffers would be done to provide improved physical stability of the stream as well as habitat and water quality benefits. Improvements to Rochester Creek will restore flow and capacity of the waterway, thereby reducing the risk of flooding and mitigating storm water effects. This project addresses the impact of previous storm damage from Hurricane Irene and Tropical Storm Lee through the reduction of flood risks, more efficient emergency response, and the ability to recover quickly from future storm impacts. The improvements will remove detritus and other obstructions from the creek and mitigate future flooding and associated dangers to health and welfare of the local residents. This project is also expected to have a positive effect on local tourism due to the restoration and protection of a natural resource asset.

IPAC LINK

<https://ecos.fws.gov/ipac/project/SH4OR-XCKRR-GN3LF-LZGYW-32EG5Q>

U.S. Fish & Wildlife Service Contact Information

Trust resources in this location are managed by:

New York Ecological Services Field Office

3817 Luker Road

Cortland, NY 13045-9349

(607) 753-9334

Endangered Species

Proposed, candidate, threatened, and endangered species are managed by the [Endangered Species Program](#) of the U.S. Fish & Wildlife Service.

This USFWS trust resource report is for informational purposes only and should not be used for planning or analyzing project level impacts.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list from the Regulatory Documents section.

[Section 7](#) of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency.

A letter from the local office and a species list which fulfills this requirement can only be obtained by requesting an official species list either from the Regulatory Documents section in IPaC or from the local field office directly.

The list of species below are those that may occur or could potentially be affected by activities in this location:

Mammals

Indiana Bat *Myotis sodalis* Endangered

CRITICAL HABITAT

No critical habitat has been designated for this species.

http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=A000

Northern Long-eared Bat *Myotis septentrionalis* Threatened

CRITICAL HABITAT

No critical habitat has been designated for this species.

http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=A0JE

Reptiles

Bog (=muhlenberg) Turtle *Clemmys muhlenbergii* Threatened

CRITICAL HABITAT

No critical habitat has been designated for this species.

http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=C048

Critical Habitats

There are no critical habitats in this location

Migratory Birds

Birds are protected by the [Migratory Bird Treaty Act](#) and the [Bald and Golden Eagle Protection Act](#).

Any activity that results in the take of migratory birds or eagles is prohibited unless authorized by the U.S. Fish & Wildlife Service.^[1] There are no provisions for allowing the take of migratory birds that are unintentionally killed or injured.

Any person or organization who plans or conducts activities that may result in the take of migratory birds is responsible for complying with the appropriate regulations and implementing appropriate conservation measures.

1. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

Additional information can be found using the following links:

- Birds of Conservation Concern
<http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Conservation measures for birds
<http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Year-round bird occurrence data
<http://www.birdscanada.org/birdmon/default/datasummaries.jsp>

The following species of migratory birds could potentially be affected by activities in this location:

American Bittern <i>Botaurus lentiginosus</i>	Bird of conservation concern
Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0F3	
Bald Eagle <i>Haliaeetus leucocephalus</i>	Bird of conservation concern
Season: Year-round http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B008	
Black-billed Cuckoo <i>Coccyzus erythrophthalmus</i>	Bird of conservation concern
Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0H1	
Blue-winged Warbler <i>Vermivora pinus</i>	Bird of conservation concern
Season: Breeding	
Canada Warbler <i>Wilsonia canadensis</i>	Bird of conservation concern
Season: Breeding	

Cerulean Warbler <i>Dendroica cerulea</i> Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B091	Bird of conservation concern
Golden-winged Warbler <i>Vermivora chrysoptera</i> Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0G4	Bird of conservation concern
Least Bittern <i>Ixobrychus exilis</i> Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B092	
Louisiana Waterthrush <i>Parkesia motacilla</i> Season: Breeding	Bird of conservation concern
Olive-sided Flycatcher <i>Contopus cooperi</i> Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0AN	Bird of conservation concern
Pied-billed Grebe <i>Podilymbus podiceps</i> Season: Breeding	Bird of conservation concern
Prairie Warbler <i>Dendroica discolor</i> Season: Breeding	Bird of conservation concern
Red-headed Woodpecker <i>Melanerpes erythrocephalus</i> Season: Breeding	Bird of conservation concern
Rusty Blackbird <i>Euphagus carolinus</i> Season: Wintering	Bird of conservation concern
Short-eared Owl <i>Asio flammeus</i> Season: Wintering http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0HD	Bird of conservation concern
Willow Flycatcher <i>Empidonax traillii</i> Season: Breeding http://ecos.fws.gov/tess_public/profile/speciesProfile.action?sPCODE=B0F6	Bird of conservation concern
Wood Thrush <i>Hylocichla mustelina</i> Season: Breeding	Bird of conservation concern
Worm Eating Warbler <i>Helminthos vermivorum</i> Season: Breeding	Bird of conservation concern

Wildlife refuges and fish hatcheries

There are no refuges or fish hatcheries in this location

Wetlands in the National Wetlands Inventory

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

DATA LIMITATIONS

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

DATA EXCLUSIONS

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

DATA PRECAUTIONS

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

This location overlaps all or part of the following wetlands:

Freshwater Forested/shrub Wetland

[PFO1A](#)

Freshwater Pond

[PUBHh](#)

Riverine

[R3USA](#)

[R4SBC](#)

[R5UBH](#)

A full description for each wetland code can be found at the National Wetlands Inventory website: <http://107.20.228.18/decoders/wetlands.aspx>

Attachment 4. USFWS Official Species List



United States Department of the Interior



FISH AND WILDLIFE SERVICE
New York Ecological Services Field Office
3817 Luker Road
Cortland, NY 13045-9385

Phone: (607) 753-9334 Fax: (607) 753-9699

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

In Reply Refer To:

April 09, 2018

Consultation Code: 05E1NY00-2018-SLI-0409

Event Code: 05E1NY00-2018-E-05176

Project Name: Rochester Creek and Ponds Mitigation

Subject: Updated 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](#)). 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(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

New York Ecological Services Field Office

3817 Luker Road

Cortland, NY 13045-9385

(607) 753-9334

Project Summary

Consultation Code: 05E1NY00-2018-SLI-0409

Event Code: 05E1NY00-2018-E-05176

Project Name: Rochester Creek and Ponds Mitigation

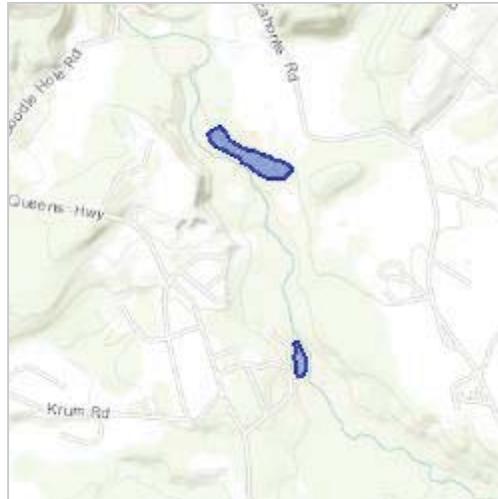
Project Type: DAM

Project Description: The Town of Rochester is proposing a mitigation project to address dam erosion at two ponds located off the banks of Rochester Creek in Ulster County, New York. The proposed project would address potential failure of the Moony Pond berm through the following measures: drain the pond by cutting a V-shaped notch in the retaining berm facing Rochester Creek; remove the current riser structure, outlet structure, and piping; allow the basin to drain in a controlled manner into Rochester Creek; filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek. Repairs to South Pond would be similar to those described for Moony Pond, with the pond being drained through removal of part of the berm. An appropriately sized channel will be constructed to convey flows from the pond to Rochester Creek. Like Moony Pond, a rock sill will be installed to maintain this impoundment for the purpose of creating a wetland habitat, and native plant species will be planted. The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek.

Additionally, flood induced erosion at the lower reaches of Rochester Creek have significantly eroded agricultural lands on the south bank of the creek. It is recommended that riparian improvements, limited to planting native species of ground cover and trees suitable to arresting erosion, be conducted on a spot basis to address the Town's concerns in these areas.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/41.814058109980124N74.26512000040228W>



Counties: Ulster, NY

Endangered Species Act Species

There is a total of 3 threatened, endangered, or candidate species on this 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.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

NAME	STATUS
Indiana Bat <i>Myotis sodalis</i> There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/5949	Endangered
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened

Reptiles

NAME	STATUS
Bog Turtle <i>Clemmys muhlenbergii</i> Population: Wherever found, except GA, NC, SC, TN, VA No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/6962 Species survey guidelines: https://ecos.fws.gov/ipac/guideline/survey/population/182/office/52410.pdf Habitat assessment guidelines: https://ecos.fws.gov/ipac/guideline/assessment/population/182/office/52410.pdf	Threatened

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.

Attachment 5. NYSNHP Response 11-21-2017

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, New York Natural Heritage Program
625 Broadway, Fifth Floor, Albany, NY 12233-4757
P: (518) 402-8935 | F: (518) 402-8925
www.dec.ny.gov

November 21, 2017

Lori Shirley
Governor's Office of Storm Recovery
30-40 State St., Hampton Plaza
Albany, NY 12207

Re: Rochester Creek, Moony Pond, and South Pond Mitigation and Dam Rehabilitation
County: Ulster Town/City: Rochester

Dear Ms. Shirley:

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 the project 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 NYS DEC Region 3 Office, Division of Environmental Permits, at dep.r3@dec.ny.gov, (845) 256-3054.

Sincerely,



Nicholas Conrad
Information Resources Coordinator
New York Natural Heritage Program

1447

Attachment 6. USFWS Response 12.21.17



United States Department of the Interior



FISH AND WILDLIFE SERVICE

3817 Luker Road
Cortland, NY 13045

December 21, 2017

Ms. Lori A. Shirley
Director & Certifying Officer
Bureau of Environmental Review & Assessment
Governor's Office of Storm Recovery
NYS Homes & Community Renewal
38-40 State Street, 408N, Hampton Plaza
Albany, NY 12207

Dear Ms. Shirley:

This responds to your December 1, 2017, letter regarding the proposed Rochester Creek and Ponds Mitigation Project located in the Town of Rochester, Ulster County, New York. We understand that U.S. Department of Housing and Urban Development's (HUD) funding may be involved with the proposed project.

As you are aware, Federal agencies have responsibilities under section 7 of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to consult with the U.S. Fish and Wildlife Service (Service) regarding projects that may affect federally listed species or designated critical habitat, and confer with the Service regarding projects that are likely to jeopardize federally proposed species and/or adversely modify proposed critical habitat. We understand that NYS Homes & Community Renewal (NYSHCR) has been designated HUD's non-federal representative for the purposes of completing informal consultation pursuant to section 7(a)(2) of the ESA.

On behalf of HUD, the NYSHCR determined the proposed project may affect, but is not likely to adversely affect, the federally listed endangered Indiana bat (*Myotis sodalis*) or federally listed threatened northern long-eared bat (*Myotis septentrionalis*). Given the project location, small amount of tree removal (<2 acres), and conservation measure to conduct all tree removal between November 1 and March 31, we concur with your determination. The NYSHCR also determined the project will result in no impacts to the federally listed threatened bog turtle (*Clemmys [=Glyptemys] muhlenbergii*) as there is no suitable habitat in the area. We have no further comments on this species.

No further coordination or consultation under the ESA is required with the Service at this time. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of federally listed and proposed endangered and threatened species in New York is available for your information. Until the proposed project is complete, we recommend that you check our website regularly to ensure that listed species presence/absence information for the proposed project is current.*

Any new information regarding the proposed project and its potential to impact listed species should be coordinated with both this office and with the New York State Department of Environmental Conservation.

In addition to the above-referenced determinations regarding federally listed or proposed species, you have also determined that the project will result in no effects to the bald eagle (*Haliaeetus leucocephalus*). As you are aware, bald eagles have been delisted pursuant to the ESA, but remain protected under the Migratory Bird Treaty Act (40 Stat. 755; 16 U.S.C. 703-712), the Bald and Golden Eagle Protection Act (54 Stat. 250, as amended; 16 U.S.C. 668 *et seq.*), and by the State of New York. If eagles are found within the project area, we recommend that the project sponsor follow the Bald Eagle Management Guidelines found on our website.

Thank you for coordinating with us. We appreciate the opportunity to review this project. Please contact Robyn Niver at 607-753-9334 if there are any questions. Future correspondence with us on this project should reference project file 16I2385.

Sincerely,



David A. Stilwell
Field Supervisor

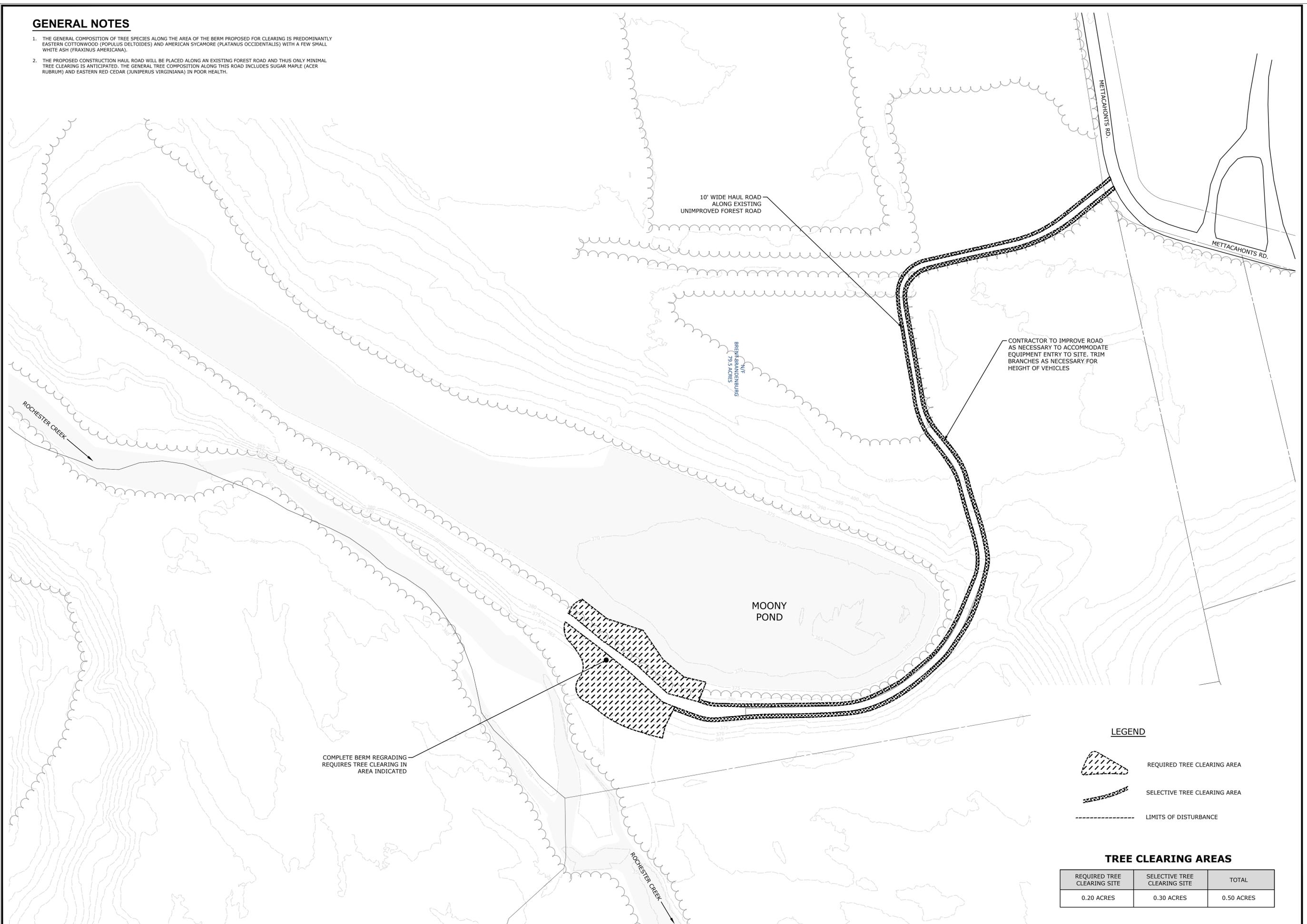
*Additional information referred to above may be found on our website at:
<http://www.fws.gov/northeast/nyfo/es/section7.htm>.

cc: NYSDEC, New Paltz, NY (Env. Permits)

Attachment 7. Tree Clearing Plan

GENERAL NOTES

1. THE GENERAL COMPOSITION OF TREE SPECIES ALONG THE AREA OF THE BERM PROPOSED FOR CLEARING IS PREDOMINANTLY EASTERN COTTONWOOD (POPULUS DELTOIDES) AND AMERICAN SYCAMORE (PLATANUS OCCIDENTALIS) WITH A FEW SMALL WHITE ASH (FRAXINUS AMERICANA).
2. THE PROPOSED CONSTRUCTION HAUL ROAD WILL BE PLACED ALONG AN EXISTING FOREST ROAD AND THUS ONLY MINIMAL TREE CLEARING IS ANTICIPATED. THE GENERAL TREE COMPOSITION ALONG THIS ROAD INCLUDES SUGAR MAPLE (ACER RUBRUM) AND EASTERN RED CEDAR (JUNIPERUS VIRGINIANA) IN POOR HEALTH.

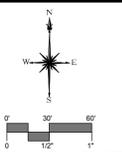


LEGEND

-  REQUIRED TREE CLEARING AREA
-  SELECTIVE TREE CLEARING AREA
-  LIMITS OF DISTURBANCE

TREE CLEARING AREAS

REQUIRED TREE CLEARING SITE	SELECTIVE TREE CLEARING SITE	TOTAL
0.20 ACRES	0.30 ACRES	0.50 ACRES



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DESCRIPTION	DATE	BY

TREE CLEARING PLAN
 ROCHESTER CREEK
 MOONY POND
 METTACAHONTS ROAD
 TOWN OF ROCHESTER, NEW YORK

MC DESIGNED	MC DRAWN	MC CHECKED
SCALE 1"=60'		
DATE JANUARY 19, 2018		
PROJECT NO. 5679-01		
SHEET NO. 02 OF 02		

TC-2

Attachment 8. Phase 1 Summer Habitat Assessment

APPENDIX A
PHASE 1 SUMMER HABITAT ASSESSMENTS

INDIANA BAT HABITAT ASSESSMENT DATASHEET

Project Name: Rochester Creek & Ponds Mitigation Project Date: 3/22/2018
 Township/Range/Section: Rochester, Ulster County, NY
 Lat Long/UTM/ Zone: 18N 561061 E // 4629346 N Surveyor: A. Bailey, M. O'Malley

Brief Project Description

This project will take down the existing berm at Moony Pond, regrade the area, and construct a rock sill on Moony Pond and South Pond with the purpose of creating a wetland.

Project Area

Project Area	Total Acres	Forest Acres		Open Acres
Project	~10.69			Majority of the project area is open pond.
Proposed Tree Removal (ac)	Completely cleared	Partially cleared (will leave trees)	Preserve acres- no clearing	
	0.63	0.30		

Vegetation Cover Types

Pre-Project	Post-Project
The project area consists primarily of 2 ponds. It also consists of the forested berm area around these ponds and Rochester Creek.	Most of the project area will retain the same cover type, although <0.93 acres will be cleared to facilitate berm repair.

Landscape within 5 mile radius

Flight corridors to other forested areas?

There are multiple flight corridors connected forested areas. The project does not affect flight corridors.

Describe Adjacent Properties (e.g. forested, grassland, commercial or residential development, water sources)

The surrounding area is a matrix of forested land and residential development. The forested areas are mostly privately owned.

Proximity to Public Land

What is the distance (mi.) from the project area to forested public lands (e.g., national or state forests, national or state parks, conservation areas, wildlife management areas)?

The project is located approximately 4.4 miles from Vernooy Kill State Forest.

APPENDIX A
PHASE 1 SUMMER HABITAT ASSESSMENTS

Use additional sheets to assess discrete habitat types at multiple sites in a project area

*Include a map depicting locations of sample sites if assessing discrete habitats at multiple sites in a project area
A single sheet can be used for multiple sample sites if habitat is the same*

Sample Site Description	
Sample Site No.(s):	1- Moony Pond

Water Resources at Sample Site			
Stream Type (# and length)	Ephemeral	Intermittent	Perennial 167 ft
Pools/Ponds (# and size)	1 ~ 8.8 acres	Open and accessible to bats? Yes	
Wetlands (approx. ac.)	Permanent	Seasonal	
Describe existing condition of water sources: Open pond surrounded by forest.			

Forest Resources at Sample Site			
Closure/Density	Canopy (> 50')	Midstory (20-50')	Understory (<20')
	3	3	0
Dominant Species of Mature Trees	White pine, red maple		
% Trees w/ Exfoliating Bark	10%		
Size Composition of Live Trees (%)	Small (3-8 in)	Med (9-15 in)	Large (>15 in)
	70	30	
No. of Suitable Snags	10		

1=1-10%, 2=11-20%, 3=21-40%, 4=41-60%,
5=61-80%, 6=81-100%

Standing dead trees with exfoliating bark, cracks, crevices, or hollows. Snags without these characteristics are not considered suitable.

IS THE HABITAT SUITABLE FOR INDIANA BATS? Yes

Additional Comments:	
Majority of snags are small. There are also several live trees with exfoliating bark. Recommend that acoustic survey be completed in this area before clearing.	

Attach aerial photo of project site with all forested areas labeled and a general description of the habitat

Photographic Documentation: habitat shots at edge and interior from multiple locations; understory/midstory/canopy; examples of potential suitable snags and live trees; water sources



Path (selective clearing)



Path (selective clearing)



Clearing for berm restoration



Clearing for berm restoration



Clearing for berm restoration



Clearing for berm restoration



Clearing for berm restoration



Clearing for berm restoration



Clearing for berm restoration

APPENDIX A
PHASE 1 SUMMER HABITAT ASSESSMENTS

Use additional sheets to assess discrete habitat types at multiple sites in a project area

*Include a map depicting locations of sample sites if assessing discrete habitats at multiple sites in a project area
A single sheet can be used for multiple sample sites if habitat is the same*

Sample Site Description	
Sample Site No.(s): <u>2 - South Pond</u>	

Water Resources at Sample Site				Describe existing condition of water sources: The tree clearing is occurring between the flowing Rochester Creek, and the open South Pond, which is a small, still pond surrounded by forest.
Stream Type (# and length)	Ephemeral	Intermittent	Perennial 110 m	
Pools/Ponds (# and size)	1 - 1.9 acres	Open and accessible to bats? Yes		
Wetlands (approx. ac.)	Permanent	Seasonal		

Forest Resources at Sample Site				
Closure/Density	Canopy (> 50')	Midstory (20-50')	Understory (<20')	1=1-10%, 2=11-20%, 3=21-40%, 4=41-60%, 5=61-80%, 6=81-100%
	2	1	1	
Dominant Species of Mature Trees	Oak spp.			
% Trees w/ Exfoliating Bark	0	1%	0	
Size Composition of Live Trees (%)	Small (3-8 in)	Med (9-15 in)	Large (>15 in)	
	60	40		
No. of Suitable Snags	1			

Standing dead trees with exfoliating bark, cracks, crevices, or hollows. Snags without these characteristics are not considered suitable.

IS THE HABITAT SUITABLE FOR INDIANA BATS? Yes

Additional Comments:	<p>Unlikely roosting habitat (most trees are small, and most are live without exfoliating bark or cavities). However, there is the potential for foraging habitat to exist on site. Recommend that acoustic surveys be completed before clearing.</p>
-----------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Attach aerial photo of project site with all forested areas labeled and a general description of the habitat

Photographic Documentation: habitat shots at edge and interior from multiple locations; understory/midstory/canopy; examples of potential suitable snags and live trees; water sources











Attachment 9. Bat Acoustic Survey Report, June 2018

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife

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www.dec.ny.gov

**Bat Acoustic Survey Report
For the
Rochester Creek and Ponds Mitigation Project Site
Ulster County, NY**

June 2018

Prepared for:
U.S. Fish & Wildlife Service
Cortland, NY

Prepared by:
Amanda Bailey
NEIWPC/NYSDEC
625 Broadway
Albany, NY 12233



Executive Summary

The Governor's Office of Storm Recovery (GOSR) is administering a U.S. Department of Housing and Urban Development (HUD) Community Development Block Grant for Disaster Recovery, including the New York Rising Community Reconstruction Program. One proposed project under this grant is the Rochester Creek and Ponds Mitigation Project, which will repair eroded berms at two ponds in Ulster County, New York. To ensure compliance with Section 7 of the Endangered Species Act of 1973, an environmental review was initiated to assess the possibility of listed species presence on the project site.

The USFWS Information, Planning, and Conservation System (IPaC) Trust Resource Report and Official Species Lists listed that the federally endangered Indiana bat (*Myotis sodalis*) and federally threatened northern long-eared bat (*Myotis septentrionalis*) may occur in the proposed project area. A Phase 1 summer habitat assessment completed by Amanda Bailey (NYSDEC/NEIWPC) found that potential roosting habitat for both species occurs on the project area (see Section 7 Project Review for Rochester Creek Mitigation Project). The purpose of this survey was to determine presence/absence of the Indiana bat and northern long-eared bat at the project site during the maternity season.

An acoustic survey was performed at three sites within the project area, including 2 pond locations that will be cleared, and one trail location that will be partially cleared to make an access road. Sites were monitored for 3-5 nights each, for a total of 12 successful detector nights between May 17th and May 26th, 2018. Recorded files were run through Kaleidoscope Pro Bats of North America 4.3.0 automatic identification program to determine maximum likelihood estimates (MLE) for species presence on each detector night. According to these results, big brown bats (*Eptesicus fuscus*), hoary bats (*Lasiurus cinereus*), silver-haired bats (*Lasionycteris noctivagans*), and little brown bats (*M. lucifugus*) were present at all sites monitored. **Maximum likelihood estimates suggested that neither the Indiana bat nor the northern long-eared bat were present at the project location.** All individual files identified by Kaleidoscope Pro as potential Indiana bats or northern long-eared bats were manually reviewed by Amanda Bailey. While certain call sequences were compelling for both species, there were not enough high quality call sequences at any location to overturn the MLE values calculated by Kaleidoscope Pro.

1. Introduction

1.1 Project background

The Town of Rochester is proposing a mitigation project to address berm erosion at two ponds located off the banks of Rochester Creek in Ulster County, New York. Rochester Creek is approximately 11 miles in length and is a tributary to Rondout Creek, which is itself a tributary of the Hudson River. The proposed project area begins at Moony Pond, located approximately 0.6 miles downstream of the Boodlehole Road Bridge, and extends approximately 0.5 mile downstream to include South Pond.

During Hurricane Irene and Tropical Storm Lee, berms holding Moony and South Ponds in place were severely eroded. In the event of another 100-year storm, these berms would be at risk of failure, resulting in uncontrolled release of impounded water and sediment into Rochester Creek, and causing extensive damage to the creek and to downstream properties.

The proposed project would address potential failure of the Moony Pond and South Pond berms through the following measures:

- Drain the ponds by cutting a V-shaped notch in the retaining berm facing Rochester Creek
- Remove current riser structures, outlet structures, and piping
- Allow the basins to drain in a controlled manner into Rochester Creek
- Filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek

1.2 Bats of New York

The Rochester Creek and Ponds project area includes portions of the ranges of nine bat species, including the federally and state endangered Indiana bat, and the federally and state threatened northern long-eared bat.

Table 1-1. List of potential bat species at the Rochester Creek and Ponds Mitigation project area.

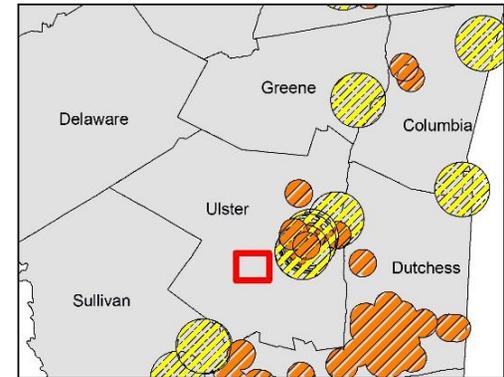
Common Name	Scientific Name (Code)	Status	Roosting Habitat
Big brown bat	<i>Eptesicus fuscus</i> (EPFU)	--	Trees, structures, caves, mines
Eastern red bat	<i>Lasiurus borealis</i> (LABO)	--	Trees
Eastern small-footed bat	<i>Myotis leibii</i> (MYLE)	SC	Rock crevices, structures
Hoary bat	<i>L. cinereus</i> (LACI)	--	Trees
Indiana bat	<i>M. sodalis</i> (MYSO)	SE, FE	Trees, structures, caves, mines
Little brown bat	<i>M. lucifugus</i> (MYLU)	--	Trees, structures, caves, mines
Northern long-eared bat	<i>M. septentrionalis</i> (MYSE)	ST, FT	Trees, structures, caves, mines
Silver-haired bat	<i>Lasionycteris noctivagans</i> (LANO)	--	Trees, structures, caves, mines
Tri-colored bat	<i>Perimyotis subflavus</i> (PESU)	--	Trees, structures, caves, mines

FE = Federally endangered, FT = Federally threatened, SE = State endangered, ST = State threatened, SC = State Species of Special Concern

NYS Resources Map

Rochester Creek and Ponds Mitigation Town of Rochester, Ulster County

Prepared by AMB on 1/10/2018



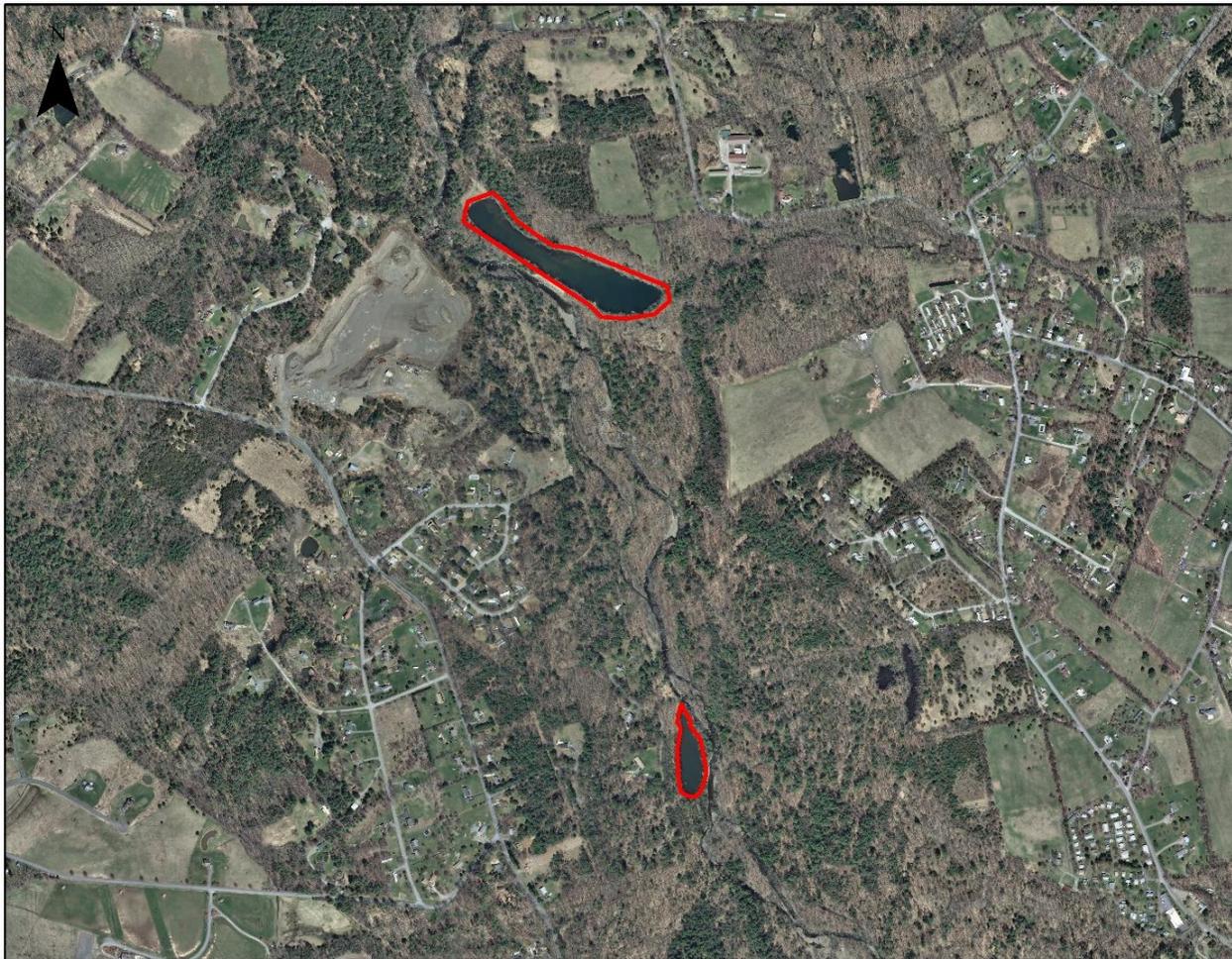
 Project Area

Bat Occurrences

 Indiana Bat

 Northern Long-eared Bat

Disclaimer: this map was prepared by the NYSDEC using the most current data available. It is deemed accurate but is not guaranteed. NYSDEC is not responsible for any inaccuracies in the data and does not necessarily endorse any interpretations or products derived from the data. This map may contain information that is considered sensitive and therefore the distribution of this map is strictly prohibited.



Department of
**Environmental
Conservation**

0 0.05 0.1 0.2 0.3 0.4
 Miles

1 inch = 1,000 feet

Figure 1-1. Map of Rochester Creek and Ponds Mitigation project site in relation to NYSDEC known Indiana bat and northern long-eared bat occurrences.

2. Methods

2.1 Acoustic Monitoring

A habitat survey conducted by Amanda Bailey on 3/22/2018 concluded that potential Indiana bat and northern long-eared bat roosting habitat existed at the project locations. To reduce the possibility for adverse impacts for either species to occur, we conducted a phase 2 acoustic survey at the South Pond and Moony Pond project sites. The total project area is approximately 10.69 acres, with tree clearing expected to impact 0.93 acres. We followed the protocol outlined in the 2018 Range-wide Indiana Bat Summer Survey Guidelines (Guidelines), which called for at least 8 detector nights at this location (USFWS 2018).

Bat acoustic surveys were performed using Wildlife Acoustics SM4Bat detectors equipped with omnidirectional SM-U1 microphones. We used the recommended manufacturer detector settings, and set the detectors to begin recording 30 minutes before sunset and stop recording 30 minutes after sunrise.

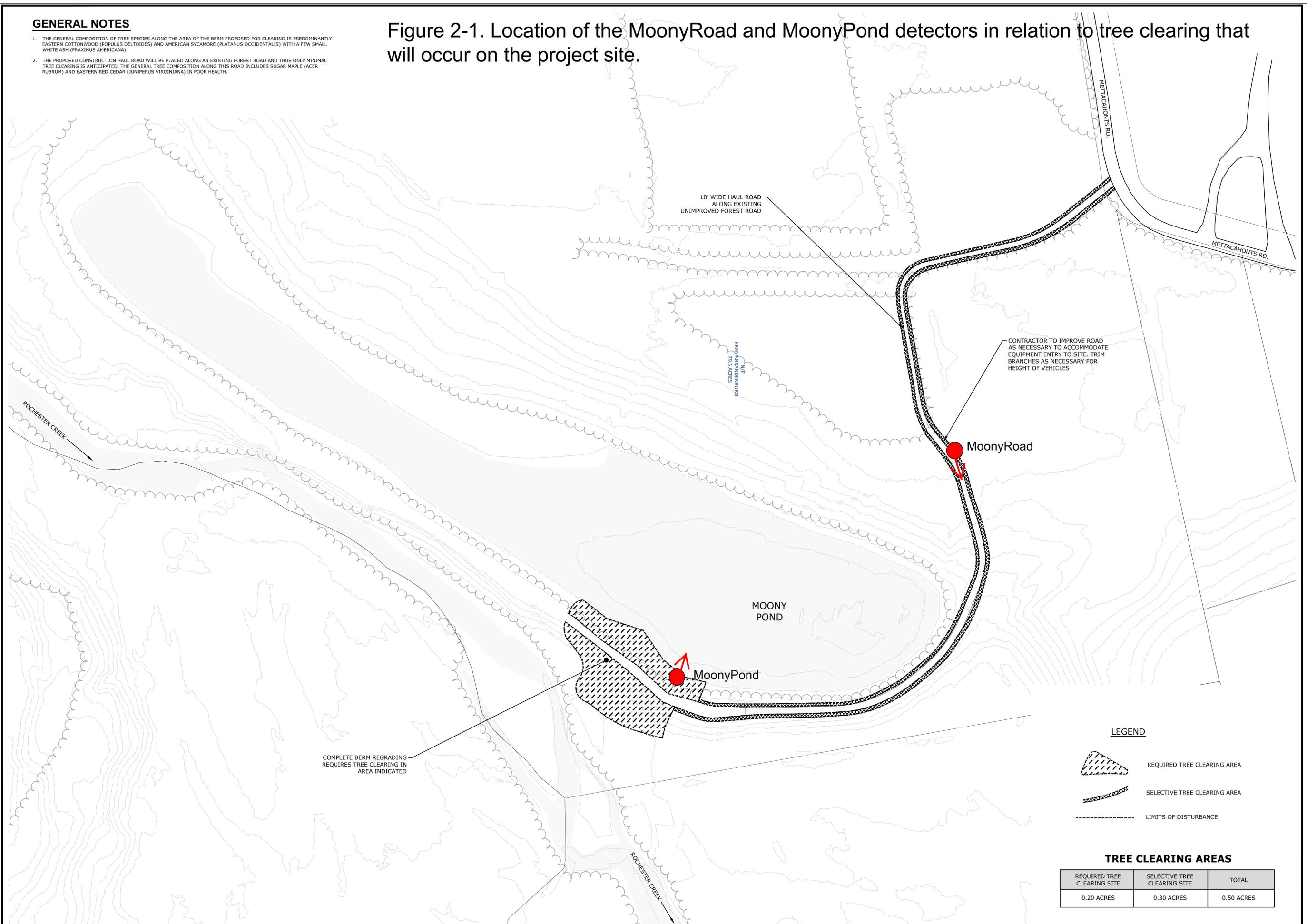
Detector locations were selected to represent different habitats that will be cleared for this project (Figures 2-1, 2-2). Detectors were placed in areas with minimum vegetation within at least 10 meters of the microphone. Microphones were mounted on a plastic painter's pole 2.5 meters from the ground, and connected to the detector using a cable. Microphones were oriented at a 45° angle from the ground. Detectors were placed in suitable habitat that were likely to capture high-quality bat call sequences: in open riparian areas (two separate ponds), and in a forest opening along a trail. Two locations (Moony Pond and Moony Road) were located less than 200m from each other; however, both areas were sampled to represent the two different habitats that will be cleared (selective clearing will occur along the trail, while complete clearing will occur near the pond). Photo-documentation of detector locations can be found in Appendix A. Prior to each survey, we tested each microphone with an ultrasonic calibrator, and conducted a finger rub test and forced recording before and after each survey to ensure that the detector was functioning properly upon deployment.

We monitored the weather on each survey night with data from the Orange County Airport weather station. We counted each night where the temperature remained above 50°F, the wind remained light, and there was no precipitation within the first 5 hours after sunset. Table 2-1 summarizes weather data from the Orange County Airport weather station for the survey period. Overall, Moony Pond and South Pond were monitored for a total of 3 and 5 nights, respectively. The memory card at Moony Pond filled up partway through the night on 5/20/2018, and so that night and the following night were not counted. Moony Road was monitored for 4 full nights (one additional night did not meet the weather requirements outlined in the Guidelines).

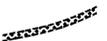
GENERAL NOTES

1. THE GENERAL COMPOSITION OF TREE SPECIES ALONG THE AREA OF THE BERM PROPOSED FOR CLEARING IS PREDOMINANTLY EASTERN COTTONWOOD (POPULUS DELTOIDES) AND AMERICAN SYCAMORE (PLATANUS OCCIDENTALIS) WITH A FEW SMALL WHITE ASH (FRAXINUS AMERICANA).
2. THE PROPOSED CONSTRUCTION HAUL ROAD WILL BE PLACED ALONG AN EXISTING FOREST ROAD AND THUS ONLY MINIMAL TREE CLEARING IS ANTICIPATED. THE GENERAL TREE COMPOSITION ALONG THIS ROAD INCLUDES SUGAR MAPLE (ACER RUBRUM) AND EASTERN RED CEDAR (JUNIPERUS VIRGINIANA) IN POOR HEALTH.

Figure 2-1. Location of the MoonyRoad and MoonyPond detectors in relation to tree clearing that will occur on the project site.

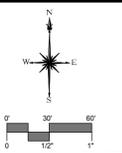


LEGEND

-  REQUIRED TREE CLEARING AREA
-  SELECTIVE TREE CLEARING AREA
-  LIMITS OF DISTURBANCE

TREE CLEARING AREAS

REQUIRED TREE CLEARING SITE	SELECTIVE TREE CLEARING SITE	TOTAL
0.20 ACRES	0.30 ACRES	0.50 ACRES



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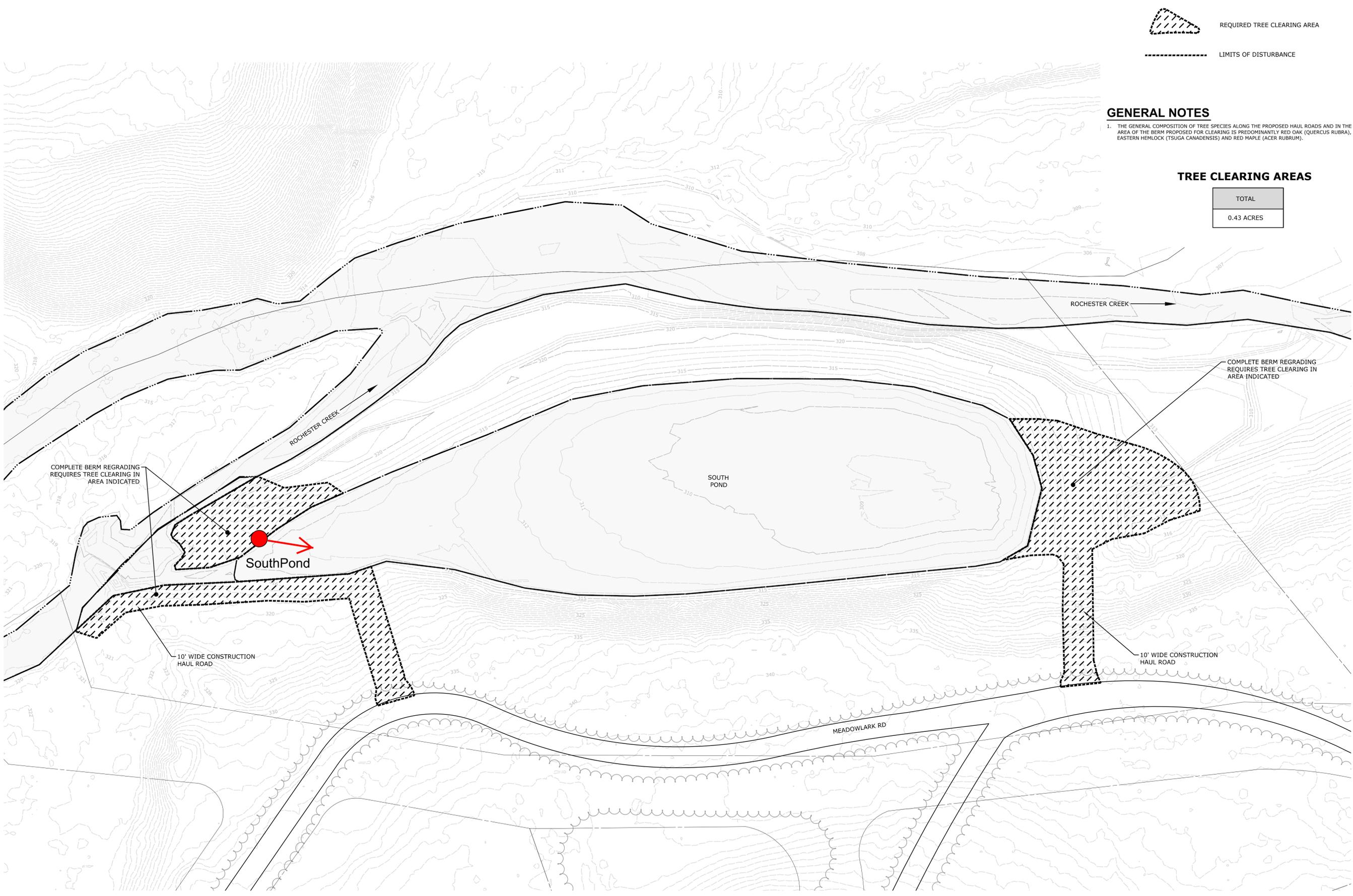
DESCRIPTION	DATE	BY

TREE CLEARING PLAN
 ROCHESTER CREEK
 MOONY POND
 METTACAHONTS ROAD
 TOWN OF ROCHESTER, NEW YORK

MC DESIGNED	MC DRAWN	MC CHECKED
SCALE 1"=60'		
DATE JANUARY 19, 2018		
PROJECT NO. 5679-01		
SHEET NO. 02 OF 02		

TC-2

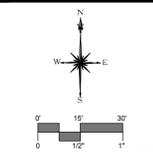
Figure 2-2. Location of the SouthPond detector in relation to tree clearing that will occur at the South Pond project site.



GENERAL NOTES
 1. THE GENERAL COMPOSITION OF TREE SPECIES ALONG THE PROPOSED HAUL ROADS AND IN THE AREA OF THE BERM PROPOSED FOR CLEARING IS PREDOMINANTLY RED OAK (QUERCUS RUBRA), EASTERN HEMLOCK (TSUGA CANADENSIS) AND RED MAPLE (ACER RUBRUM).

TREE CLEARING AREAS

TOTAL
0.43 ACRES



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DESCRIPTION	DATE	BY

TREE CLEARING PLAN
 ROCHESTER CREEK
 MOONY POND
 METTACHONTS ROAD
 TOWN OF ROCHESTER, NEW YORK

MC DESIGNED	MC DRAWN	MC CHECKED
SCALE 1"=30'		
DATE JANUARY 19, 2018		
PROJECT NO. 5679-01		
SHEET NO. 01 OF 02		

TC-1

Table 2-1. Weather data from the Orange County Airport for the Rochester Creek and Ponds survey period. Data are from first 5 hours of each survey night.

Night Surveyed	Sunset Time	Sunset Temp (°F)	Minimum Temp (°F)	Average Temp (°F)	Max Wind Speed (mph)	Precipitation	Conditions
5/17/2018	20:11	66.90	59.00	61.19	6.90	None	Clear
5/18/2018	20:12	57.90	51.10	54.32	6.90	None	Overcast
5/19/2018	20:13	54.00	53.10	53.36	Calm	None*	Overcast
5/20/2018	20:14	69.10	55.90	62.70	6.90	None	Clear
5/21/2018	20:15	65.05	55.00	59.49	3.50	None	Clear
5/22/2018	20:16	57.90	57.00	57.48	8.10	Thunderstorms	Overcast
5/23/2018	20:17	73.00	53.10	60.68	6.90	None	Clear
5/24/2018	20:18	73.90	55.00	63.24	6.90	None	Clear
5/25/2018	20:18	75.90	66.90	68.68	8.10	None	Clear
5/26/2018	20:19	73.90	69.10	71.89	5.80	None	Clear

* Light rain showers occurred from 01:42 – 02:31 (after 5 hours of sampling)

■ Night not counted due to weather

2.2 Data Analysis

All recorded bat passes were analyzed using automated species identification software approved for use by the USFWS. We used Kaleidoscope Pro (Wildlife Acoustics) with the Bats of North America (Version 4.2.0) extension as a classifier, with a sensitive setting of 0, as required by USFWS (USFWS 2018). Data was analyzed by night and by site. We considered a species present at a site if the maximum likelihood estimator for that night was significant ($p \leq 0.05$). If Kaleidoscope indicated that an Indiana bat or northern long-eared bat call sequence was recorded at a site, all *Myotis* call sequences were manually vetted by Amanda Bailey for that night.

3. Results

3.1 Acoustic Monitoring

We surveyed 3 different locations for a total of 12 successful detector nights (Table 3-1). We sampled for more than the minimum effort required by the Guidelines as a result of weather uncertainties and staff availability. The Moony Pond location was successfully surveyed on 5/17/2018, 5/18/2018, and 5/19/2018. The memory card was filled after about 2 hours of recording on 5/20/2018, and so that night was not counted. The South Pond location was successfully surveyed from 5/17/2018 – 5/21/2018. Moony Road was successfully surveyed from 5/23/2018 – 5/26/2018. The detector was originally placed on 5/22/2018, but rain and thunderstorms that evening led to us not counting the night as a successful detector night.

3.1.1 SPECIES COMPOSITION

The maximum likelihood estimates (MLE) calculated by Kaleidoscope Pro indicated that 7 different species were present at the study location (Table 3-2). After manual review of *Myotis* calls, we determined that the one eastern small-footed bat (MYSE) call recorded at the South Pond detector was actually a fragment of a call, likely the upper section of a little brown (MYLU) call, and thus removed MYSE from potential species present. We found big brown bats (EPFU), red bats (LABO), hoary bats (LACI), silver-haired bats (LANO), little brown bats (MYLU), and tri-colored bats (PESU) present on at least one of the detectors. The most commonly detected species was MYLU, followed by EPFU and LACI. Red bats were detected on only one night, as were PESU.

3.1.2 INDIANA BAT AND NORTHERN LONG-EARED BAT PRESENCE AND DISTRIBUTION

Kaleidoscope Pro did not document significant MLE values at any location on any night, leading us to conclude that neither Indiana bats nor northern long-eared bats were present at the project site. Kaleidoscope Pro did, however, identify several call sequences as listed species of bats. Two call sequences were identified by Kaleidoscope Pro as northern long-eared bat call sequences (both at the South Pond site), and 102 call sequences were identified as potential Indiana bat call sequences (potential sequences were identified at all three sites; Table 3-2). To be certain of results, these calls were manually vetted by A. Bailey. The majority of these calls were determined to be of relatively poor quality, and/or were likely MYLU call sequences (see Appendix B for more information). The two potential northern long-eared bat sequences were compelling, although presence should not be determined based on such a limited number of sequences, since bat species are capable of creating pulses that look very similar to echolocation pulses of other species, and all identification techniques can be expected to be less than 100%. There was not a sufficient number of high quality calls for either species that would justify overriding the MLEs calculated by Kaleidoscope Pro.

4. Conclusions

The results of this acoustic survey suggest that neither the Indiana bat nor the northern long-eared bat are likely present at the Rochester Creek and Ponds Mitigation project location during the summer maternity season. The site is located approximately 8.5 miles from the nearest hibernation locations in the Rosendale area, and a similar distance from the nearest known Indiana bat maternity colony. The sites, particularly both ponds, had relatively high little brown bat activity. Big brown bats, silver-haired bats, and hoary bats were detected at all sites.

Table 3-1. Detector information for acoustic monitoring on Rochester Creek and Ponds Mitigation project location.

Detector Name	Detector Model	Detector Location Description	Detector Orientation	Detector Coordinates (UTM)	Recording Dates	Survey Hours	Successful Detector Night?	Number of Files Recorded
Moony Pond	SM4Bat	Pond	NNE	561185.05 E 4629269.51 N	5/17/2018	10 hrs 25 min	Yes	1878
					5/18/2018	10 hrs 23 min	Yes	2092
					5/19/2018	10 hrs 21 min	Yes	2113
					5/20/2018	10 hrs 20 min	No	652
Moony Road	SM4Bat	Forest opening along trail	SSE	561310.18 E 4629386.41 N	5/22/2018	10 hrs 16 min	No	24
					5/23/2018	10 hrs 14 min	Yes	55
					5/24/2018	10 hrs 13 min	Yes	45
					5/25/2018	10 hrs 11 min	Yes	88
					5/26/2018	10 hrs 10 min	Yes	110
South Pond	SM4Bat	Pond	South	561337.05 E 4628423.81 N	5/17/2018	10 hrs 25 min	Yes	196
					5/18/2018	10 hrs 23 min	Yes	191
					5/19/2018	10 hrs 21 min	Yes	711
					5/20/2018	10 hrs 20 min	Yes	814
					5/21/2018	10 hrs 18 min	Yes	784

Table 3-2. Kaleidoscope Pro results by detector site, by night. Nights with significant MLE values (<0.05) for species are in green.

Detector Location	Survey Date	Species Presence: # files (MLE value)										Total
		EPFU	LABO	LACI	LANO	MYLE	MYLU	MYSE	MYSO	PESU	Unknown	
Moony Pond	5/17/2018	15 (0.00)	5 (1.00)	22 (0.00)	14 (0.01)	0 (1.00)	1613 (0.00)	0 (1.00)	37 (1.00)	3 (1.00)	184	1878
	5/18/2018	10 (0.00)	4 (1.00)	0 (1.00)	3 (0.53)	0 (1.00)	1848 (0.00)	0 (1.00)	15 (1.00)	1 (1.00)	211	2092
	5/19/2018	0 (1.00)	5 (1.00)	3 (0.00)	1 (1.00)	0 (1.00)	1768 (0.00)	0 (1.00)	10 (1.00)	0 (1.00)	327	2113
Moony Road	5/23/2018	7 (0.21)	2 (0.14)	15 (0.00)	14 (0.00)	0 (1.00)	10 (0.00)	0 (1.00)	0 (1.00)	0 (1.00)	7	55
	5/24/2018	7 (0.03)	2 (0.04)	13 (0.00)	7 (0.14)	0 (1.00)	4 (0.04)	0 (1.00)	0 (1.00)	0 (1.00)	12	45
	5/25/2018	20 (0.00)	11 (0.00)	31 (0.00)	3 (1.00)	0 (1.00)	6 (0.27)	0 (1.00)	0 (1.00)	0 (1.00)	17	88
	5/26/2018	28 (0.00)	14 (0.00)	45 (0.00)	4 (1.00)	0 (1.00)	5 (0.72)	0 (1.00)	1 (0.30)	2 (0.42)	11	110
South Pond	5/17/2018	19 (0.00)	3 (1.00)	2 (0.61)	6 (0.30)	0 (1.00)	126 (0.00)	1 (1.00)	5 (1.00)	7 (0.00)	27	196
	5/18/2018	4 (0.01)	2 (1.00)	0 (1.00)	1 (0.87)	1 (0.00)*	125 (0.00)	0 (1.00)	6 (0.98)	1 (0.95)	51	191
	5/19/2018	0 (1.00)	5 (1.00)	0 (1.00)	1 (0.01)	0 (1.00)	512 (0.00)	0 (1.00)	13 (1.00)	2 (1.00)	178	711
	5/20/2018	28 (0.00)	3 (1.00)	1 (1.00)	3 (1.00)	0 (1.00)	611 (0.00)	0 (1.00)	5 (1.00)	1 (1.00)	162	814
	5/21/2018	14 (0.00)	2 (1.00)	4 (0.04)	7 (0.08)	0 (1.00)	623 (0.00)	1 (1.00)	10 (1.00)	2 (1.00)	121	784

*This one MYLE file was manually reviewed, and determined to be a likely MYLU call that got faint, leading to just the upper fragments being analyzed.

Appendix A. Detector photographs.



Canopy above Moony Pond detector.



Detection area of Moony Pond detector.



Overview of Moony Pond detector.



South Pond detector location.



Part of the zone of detection around South Pond site (to the left is open pond).



Zone of detection at Moony road detector location.



Another view of Moony Road location.

Appendix B.

Table 1. Call sequence-level results for listed bat species recorded at the Rochester Creek and Ponds mitigation project site. This file includes Kaleidoscope Pro automatic identification information, as well as manual identification and notes provided by A. Bailey. Double-click on Appendix B in 'Attachments' to open.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
3817 Luker Road
Cortland, New York 13045



July 11, 2018

Ms. Lori A. Shirley
Certifying Officer
Governor's Office of Storm Recovery
NYS Homes & Community Renewal
38-40 State Street, 408N, Hampton Plaza
Albany, NY 12207

Dear Ms. Shirley:

This responds to your June 15, 2018, letter regarding the proposed Rochester Creek and Ponds Mitigation Project located in the Town of Rochester, Ulster County, New York. We understand that U.S. Department of Housing and Urban Development's (HUD) funding may be involved with the proposed project.

As you are aware, federal agencies, have responsibilities under section 7 of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*) to consult with the U.S. Fish and Wildlife Service (Service) regarding projects that may affect federally listed species or designated critical habitat, and confer with the Service regarding projects that are likely to jeopardize federally proposed species and/or adversely modify proposed critical habitat. We understand that NYS Homes & Community Renewal (NYSHCR) has been designated HUD's non-federal representative for the purposes of completing informal consultation pursuant to Section 7(a)(2) of the ESA.

The Service previously completed consultation with the NYSHCR on the proposed action in our December 21, 2017, letter. Since then, we understand that components of the proposed action have changed and tree clearing was not completed during the winter of 2017-2018. Therefore, acoustic surveys were conducted to assess the potential presence of the federally listed endangered Indiana bat (*Myotis sodalis*) and federally listed threatened northern long-eared bat (*Myotis septentrionalis*). We agree with the results that suggest presence of either species is unlikely¹.

On behalf of HUD, the NYSHCR determined the proposed project may affect, but is not likely to adversely affect, the Indiana bat or northern long-eared bat. Given the results of the acoustic

¹ We consider the negative results of the 2018 surveys valid for up to 5 years unless new information becomes available from other projects in the vicinity.

surveys, we concur with your determination. There are no changes to the prior determinations for other federally listed species or the bald eagle (*Haliaeetus leucocephalus*).

No further coordination or consultation pursuant to the ESA is required with the Service at this time. Should project plans change, or if additional information on listed or proposed species or critical habitat becomes available, this determination may be reconsidered. The most recent compilation of federally listed and proposed endangered and threatened species in New York is available for your information. Until the proposed project is complete, we recommend that you check our website regularly to ensure that listed species presence/absence information for the proposed project is current.*

Any additional information regarding the proposed project and its potential to impact listed species should be coordinated with both this office and with the New York State Department of Environmental Conservation.

Thank you for coordinating with us. We appreciate the opportunity to review this project. If you require additional information or assistance please contact Robyn Niver at 607-753-9334. Future correspondence with us on this project should reference project file 162835.

Sincerely,

A handwritten signature in blue ink that reads "David A. Stilwell". The signature is fluid and cursive, with the first name "David" and last name "Stilwell" clearly legible.

David A. Stilwell
Field Supervisor

*Additional information referred to above may be found on our website at:
<http://www.fws.gov/northeast/nyfo/es/section7.htm>

cc: NYSDEC, New Paltz, NY (Env. Permits)

APPENDIX B – STATE HISTORIC PRESERVATION OFFICE AND TRIBAL CONSULTATION



**Governor's Office of
Storm Recovery**

ANDREW M. CUOMO
Governor

November 17, 2017

Mr. Larry Moss
Historic Preservation Technical Specialist
New York State Office of Parks, Recreation and Historic Preservation
Division of Historic Preservation
Peebles Island
P.O. Box 189
Waterford, New York 12188-0189

Re: Section 106 Compliance for Rochester Creek and Tributaries Immediate Repair Project, Town of Rochester, Ulster County, New York

Dear Mr. Moss:

Pursuant to the Disaster Relief Appropriations Act, 2013 (Public Law 113-2) and the Housing and Community Development Act (42 U.S.C. § 5301 et seq.), the Governor's Office of Storm Recovery (GOSR), an office of New York State Homes and Community Renewal's Housing Trust Fund Corporation as a recipient of Community Development Block Grant – Disaster Recovery ("CDBG-DR") funds from the United States Department of Housing and Urban Development ("HUD"), is serving as the entity responsible for compliance with the HUD environmental review procedures set forth in 24 CFR Part 58. GOSR is acting on behalf of HUD in providing the enclosed project information and request for consultation.

GOSR processes environmental reviews for projects funded with HUD CDBG-DR on a case-by-case basis. A consultation request for the project described herein will also be sent to the following: the Delaware Nation, the Delaware Tribe of Indians, the St. Regis Mohawk Tribe, the Mohawk Nation, and the Stockbridge-Munsee Community, Band of Mohicans. In accordance with Section 106 of the National Historic Preservation Act (NHPA) of 1966, as amended (54 U.S.C. §306108), and its implementing regulations, 36 Code of Federal Regulations (CFR) Part 800, this letter serves as notification of the proposed action.

Area of Potential Effect: The project site involves two ponds located on Rochester Creek, a tributary that flows into Rondout Creek which then flows into the Hudson River, within the Town of Rochester in the south central portion of Ulster County, New York. The project area begins at Moony Pond, located approximately 0.6 miles downstream of the Boodlehole Road Bridge, and extends approximately about 0.505 miles downstream to include South Pond (see Figure 1).

Proposed Project Description: During Hurricane Irene and Tropical Storm Lee, dams holding Moony and South Ponds in place were severely eroded. In the event of another 100-year storm, these dams will be at risk of failure, resulting in uncontrolled release of impounded water and sediment into Rochester Creek, and causing extensive damage to the creek and to downstream properties.

At Moony Pond, the earthen dam holding the pond in place is registered with the NYS DEC Inventory of Dams as a Hazard Code A. It is also registered as a federal dam. The lower half of the dam separating the pond from the creek has been subjected to erosion due to stream flow in Rochester Creek. Within the lower extent of the dam, approximately 250 linear feet has been severely eroded and water is actively seeping through the dam. Continued erosion, in combination with hydrostatic pressure from the pond, will potentially result in catastrophic failure of the dam and spontaneous draining of the pond into the creek, which would first, cause flooding of residences downstream, and second, cause potential failure of berm infrastructure at the South Pond location.

The proposed project would address potential failure of the Moony Pond berm through the following measures:

- Drain the pond by cutting a V-shaped notch in the retaining berm facing Rochester Creek,
- Remove the current riser structure, outlet structure, and piping,
- Allow the basin to drain in a controlled manner into Rochester Creek.
- Filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek.

The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek. Areas downstream and adjacent to the notch will be regraded to shallow slopes to inhibit erosion that would result in sediments entering Rochester Creek. These measures would result in the removal of approximately 90 percent of the pond's water impoundment. The remaining water level would be maintained at the lowest elevation of the pond through natural surface water run-off and via the intermittent tributary. A rock sill will be installed to maintain this impoundment for the purpose of creating a wetland habitat. For areas of the impoundment that will remain dry, native plant species will be planted.

Repairs to South Pond would be similar to those described for Moony Pond, with the pond being drained through removal of part of the berm. An appropriately sized channel will be constructed to convey flows from the pond to Rochester Creek. Like Moony Pond, a rock sill will be installed to maintain this impoundment for the purpose of creating a wetland habitat, and native plant species will be planted. The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek.

The purpose of this letter is to initiate consultation pursuant to Section 106 of the NHPA per the implementing regulations at 36 Code of Federal Regulations (CFR) Part 800. GOSR respectfully requests your review of the proposed project described herein. The Louis Berger Group, Inc. (Louis Berger) is currently working for the New York Governor's Office of Storm Recovery (GOSR) to complete Section 106 and NEPA Reviews for the NY State CDBG Disaster Recovery Program. Louis Berger conducted limited desktop investigations to identify potential historic properties (archaeology and aboveground resources listed in or eligible for listing in the National Register of Historic Places [NRHP]) within the expected Area of Potential Effects (APE) for the proposed project. Sources consulted include the NY-CRIS, site photographs, aerial imagery, online street views, and Ulster County tax records. The results are presented below.

Existing Cultural Resources:

Examination of the project area in CRIS indicates the presence of one National Register listed property within 0.5 miles of the project area boundary: Schoonmaker, C. K., Stone House (USN 11113.000057)



Governor's Office of Storm Recovery

ANDREW M. CUOMO
Governor

at 294 Queens Highway in Rochester. No other previously surveyed sites are located within the project area. Moony Pond and South Pond are not within an archaeological sensitive area.

No construction date was listed in the New York State Inventory of dams for the Moony dam. However, the Moony and South Ponds are not present on a 1963 aerial photograph of the area (HistoricAerials.com).

Summary and Recommendations

One National Register listed property is within the vicinity of the project area; but not within the viewshed of project activities. No other previously surveyed architectural resources are within one-half mile of the project area. The Moony and South Ponds were constructed sometime after 1963.

Ground disturbing activities for the project are associated with regrading slopes, partial removal of berms, construction of channels from the ponds to the creek channel, and construction of sills to maintain low berms at ponds. Moony and South Pond are not within an archaeological sensitive area.

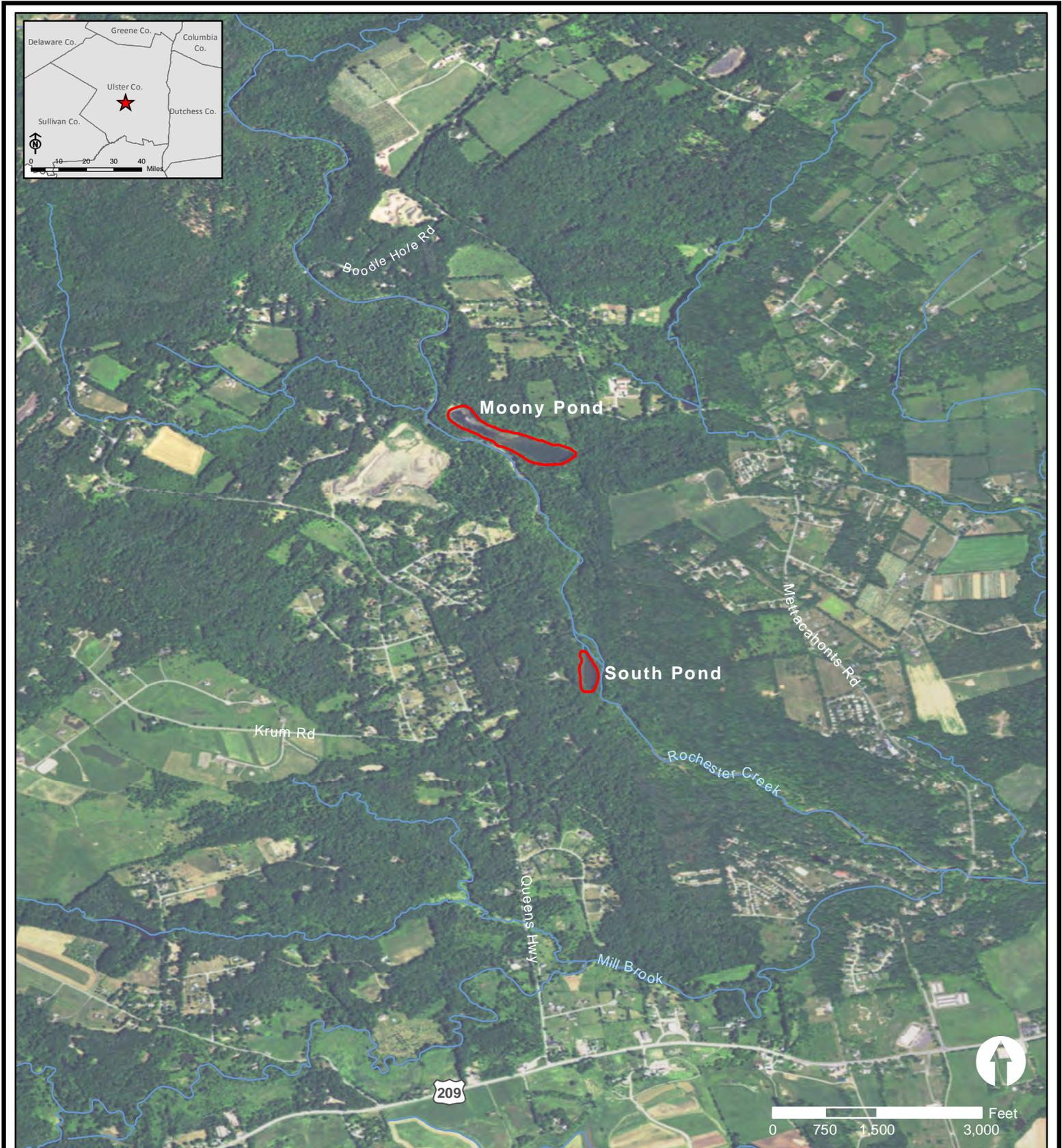
If you have any questions or require additional information regarding this request, please feel free to contact me at (518) 474-0755 or via email at lori.shirley@nyshcr.org. Thank you for your time and consideration.

Sincerely,

Lori A. Shirley
Director
Bureau of Environmental Review and Assessment
Governor's Office of Storm Recovery

Enclosures:

Figure 1: Project Location Map



 Project Boundary

Figure 1
Project Area

Rochester Creek
and Ponds



Parks, Recreation, and Historic Preservation

ANDREW M. CUOMO
Governor

ROSE HARVEY
Commissioner

December 13, 2017

Mary Barthelme
Governor's Office of Storm Recovery (GOSR)
99 Washington Ave, Suite 1224
Albany, NY 12231

Re: HTF/ GOSR/ CDBG Disaster Recovery Program- Repair Project:
Rochester Creek, South Pond & Moony Pond
Meadowlark Rd & Mettakahonts Rd, Town of Rochester/ Ulster County.
17PR07858

Dear Ms. Barthelme:

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

Based on this review, it is the opinion of SHPO that there will be No Historic Properties Affected by the proposed undertaking.

If I can be of further assistance, please contact me at (518) 268-2187 Larry.moss@parks.ny.gov

Sincerely,

Larry K Moss, Historic Preservation Technical Specialist

CC: Lori Shirley, NYSHCR

From: [Kimberly Penrod](#)
To: [Barthelme, Mary \(STORMRECOVERY\)](#)
Subject: RE: Section 106 Compliance for Rochester Creek and Tributaries Immediate Repair Project, Town of Rochester, Ulster County, New York
Date: Thursday, November 30, 2017 9:18:54 AM

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Mary,

The protection of our tribal cultural resources and tribal trust resources will take all of us working together.

We look forward to working with you and your agency.

With the information you have submitted we can concur at present with this proposed plan.

As with any new project, we never know what may come to light until work begins.

The Delaware Nation asks that you keep us up to date on the progress of this project and if any discoveries arise please contact us immediately.

Our department is trying to go as paper free as possible. If it is at all feasible for your office to send email correspondence we would greatly appreciate.

If you need anything additional from me please do not hesitate to contact me.

Respectfully,

Kim Penrod

Delaware Nation

Director, Cultural Resources/106

Archives, Library and Museum

31064 State Highway 281

PO Box 825

Anadarko, OK 73005

(405)-247-2448 Ext. 1403 Office

(405)-924-9485 Cell

kpenrod@delawarenation.com

From: Barthelme, Mary (STORMRECOVERY) [mailto:Mary.Barthelme@stormrecovery.ny.gov]

Sent: Monday, November 20, 2017 3:12 PM

To: Kimberly Penrod <kpenrod@delawarenation.com>

Cc: Shirley, Lori (NYSHCR) <Lori.Shirley@nyshcr.org>

Subject: Section 106 Compliance for Rochester Creek and Tributaries Immediate Repair Project, Town of Rochester, Ulster County, New York

Dear Kim,

Please find attached to this email a Section 106 consultation request for the above-mentioned project in New York State, Ulster County.

Please let me know if you have any questions.

Thank you,

Mary Barthelme

Mary Barthelme

Environmental and Historic Preservation Specialist

Governor's Office of Storm Recovery

99 Washington Avenue, Suite 1224, Albany NY 12260

O: [\(518\) 473-0154](tel:5184730154) | C: [\(646\) 706-6748](tel:6467066748) | F: [\(518\) 474-6102](tel:5184746102) |

Mary.Barthelme@stormrecovery.ny.gov

www.stormrecovery.ny.gov

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The Delaware Tribe of Indians of Oklahoma
Delaware Tribe Historic Preservation
P.O. Box 64
Pocono Lake, PA 18347
sbachor@delawaretribe.org

December 14, 2017

Governor's Office of Storm Recovery
New York State Homes & Community Renewal
38-40 State Street, Hampton Plaza
Albany, NY 12207

Re: Section 106 Compliance for Rochester Creek and Tributaries Immediate Repair Project, Town of Rochester, Ulster County, New York

Ms. Shirley,

Thank you for sending the Delaware Tribe additional information regarding the above referenced project. We have no objection to the proposed project. In the event a concentration of artifacts and/or in the unlikely event any human remains are accidentally unearthed during the project that all work is halted until the Delaware Tribe of Indians is informed of the inadvertent discovery and a qualified archaeologist can evaluate the find.

We appreciate your cooperation and look forward to working together on our shared interests in preserving Delaware cultural heritage. If you have any questions, feel free to contact this office by phone at (610) 761-7452 or by e-mail at sbachor@delawaretribe.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan Bachor", is written over a light-colored rectangular background.

Susan Bachor
Delaware Tribe Historic Preservation Representative

From: [Shirley.Lori \(NYSHCR\)](mailto:Shirley.Lori@NYSHCR)
To: [Barthelme.Mary \(STORMRECOVERY\)](mailto:Barthelme.Mary@STORMRECOVERY)
Subject: Fwd: Rochester Creek Immediate Repairs-SMC comment
Date: Monday, December 04, 2017 4:09:14 PM

Yay!

Sent from my iPhone

Begin forwarded message:

From: Bonney Hartley <Bonney.Hartley@mohican-nsn.gov>
Date: December 4, 2017 at 4:06:19 PM EST
To: "lori.shirley@nyshcr.org" <lori.shirley@nyshcr.org>
Cc: HistoricPres Intern <HistoricPres.Intern@MohicanSMC.onmicrosoft.com>
Subject: FW: Rochester Creek Immediate Repairs-SMC comment

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STOCKBRIDGE-MUNSEE COMMUNITY
CULTURAL RESOURCES REVIEW RESPONSE FORM

Project Details:		Received:
11/21/2017	<input type="checkbox"/> Mail <input checked="" type="checkbox"/> Email	
Project Name:	Rochester Creek Immediate Repairs	
Agency/Consultant/ Firm:	GOSR	
Proposed Project Description:	The proposed project would include: draining Mooney Pond by cutting a V-shaped notch in the retaining berm facing Rochester Creek, removal of the current riser structure, outlet structure, and piping. The project would also allow the basin to drain in a controlled manner into Rochester Creek, and filter the drainage flows prior to entry into the creek using temporary drainage basins, allowing for sediment to settle prior to the water joining the creek. Repairs to South Pond would follow a similar procedure; allowing drainage by making a notch in the existing berm.	
City, County, State:	Rochester, Ulster County NY	
Point of Contact:	Lori A. Shirley lori.shirley@nyshcr.org (518)474-0755	

Response:	
X	The project is located within our area of interest. We are not aware of cultural sites in the location and do not possess significant cultural resource concerns with this project.
0	The project is not located in our cultural area of interest; therefore, we do not have comment or need to consult further.

	We have no further comment at this time, but request to be included in future correspondence on the matter.
	We consider this project to be compliant with the Stockbridge-Munsee Tribal Historic Preservation Office's Section 106 review process, with agreed upon mitigations as detailed below:
	This site will require the on-site presence of a Tribal Cultural Resource Monitor during ground disturbing activities. Contact our office with construction schedule.
	A review fee is requested, information on which is attached. \$500 standard fee \$1,000 site visit required
	Upon initial review of your project proposal, we request further information as detailed below:
	This project has the potential to have adverse effects to historic or cultural resources which are important to our tribe. We recommend the following actions:

Additional Comments:

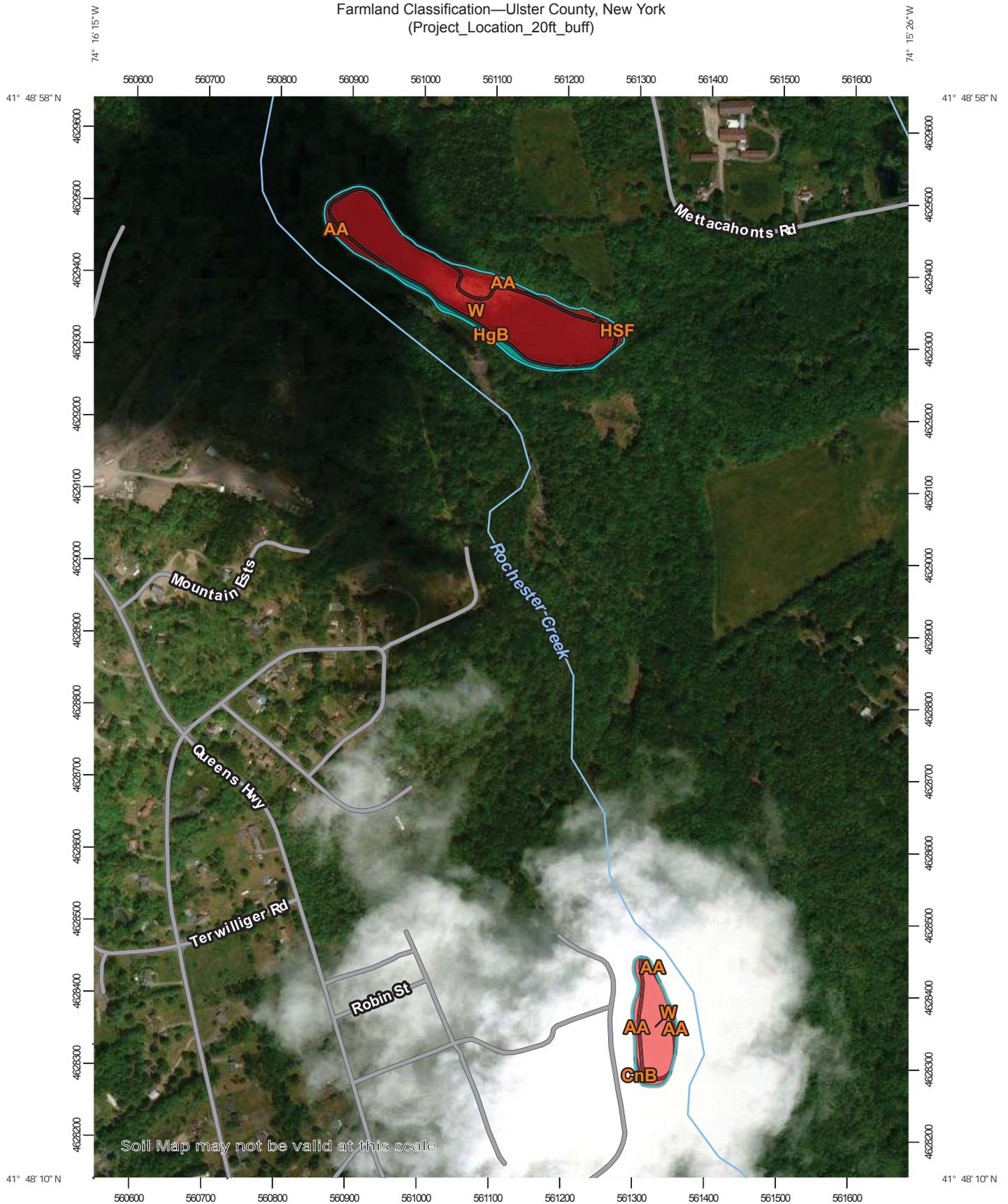
****Condition: If archeological resources or human remains are found during construction, you must immediately stop construction and notify our office immediately.**

Thank you for your consideration,

Bonney Hartley
Tribal Historic Preservation Officer
Stockbridge-Munsee Mohican Tribal Historic Preservation
Extension office
65 1st Street
Troy, NY 12180
(518) 244-3164
Bonney.Hartley@mohican-nsn.gov
www.mohican-nsn.gov

APPENDIX C - SOIL AND FARMLAND CLASSIFICATION

Farmland Classification—Ulster County, New York
(Project_Location_20ft_buff)



Map Scale: 1:7,310 if printed on A portrait (8.5" x 11") sheet.



Farmland Classification

Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
AA	Alluvial land	Not prime farmland	1.7	16.7%
CnB	Chenango gravelly silt loam, 3 to 8 percent slopes	All areas are prime farmland	0.0	0.2%
HgB	Hoosic gravelly loam, 3 to 8 percent slopes	Farmland of statewide importance	0.6	6.0%
HSF	Hoosic soils, very steep	Not prime farmland	0.1	1.3%
W	Water	Not prime farmland	7.7	75.7%
Totals for Area of Interest			10.2	100.0%

Description

Farmland classification identifies map units as prime farmland, farmland of statewide importance, farmland of local importance, or unique farmland. It identifies the location and extent of the soils that are best suited to food, feed, fiber, forage, and oilseed crops. NRCS policy and procedures on prime and unique farmlands are published in the "Federal Register," Vol. 43, No. 21, January 31, 1978.

Rating Options

Aggregation Method: No Aggregation Necessary

Tie-break Rule: Lower

APPENDIX D - FLOODPLAIN MANAGEMENT 5-STEP DECISION MAKING PROCESS

**5-STEP PROCESS IN ACCORDANCE WITH
EXECUTIVE ORDER 11988: FLOODPLAIN MANAGEMENT AND EXECUTIVE ORDER
11990: WETLANDS**

**Governor's Office of Storm Recovery
U.S. Department of Housing and Urban Development
Community Development Block Grant – Disaster Recovery**

**Rochester Creek Mitigation
Town of Rochester, NY
Ulster County, New York**

Effective Date: December 29, 2017

This Floodplain Management Plan meets the requirements of 24 CFR Part 55.20 and Executive Order 11998—Floodplain Management—for the Rochester Creek Mitigation Project (“Proposed Project”) in the Town of Rochester, Ulster County, NY. The Town of Rochester is participating in the U.S. Department of Urban Development (HUD) Community Development Block Grant Program as administered by the State of New York Action Plan for Community Development Block Grant Program – Disaster Recovery (CDBG-DR). The Proposed Project will be conducted in compliance with Executive Order 11998.

The Governor’s Office of Storm Recovery (GOSR) is conducting an evaluation as required by Executive Order 11998 in accordance with HUD regulations under 24 CFR 55.20 Subpart C - Procedures for Making Determinations on Floodplain Management and Protection of Wetlands, to determine the potential adverse impacts associated with that Project activity.

Description of Proposed Program Activities

The Town of Rochester is requesting CDBG-DR funding to address erosion at earthen berms separating two ponds, Moony Pond and South Pond, from Rochester Creek. During Hurricane Irene and Tropical Storm Lee, the earthen berms holding Moony and South Ponds in place were severely eroded. In the event of another 100-year storm, these berms will be at risk of failure, resulting in uncontrolled release of impounded water and sediment into Rochester Creek, and causing extensive damage to the creek and to downstream properties.

The proposed project would address potential failure of the Moony Pond berm through the following measures:

- Drain the pond by cutting a V-shaped notch in the retaining berm facing Rochester Creek,
- Remove the current riser structure, outlet structure, and piping,
- Allow the basin to drain in a controlled manner into Rochester Creek.
- Filter drainage flows prior to entry into the creek through use of temporary drainage basins, allowing all sediment to settle prior to the water joining the creek.

The V-notch opening will be left open, which will allow a normal flow of water into Rochester Creek. Areas downstream and adjacent to the notch will be regraded to shallow slopes to inhibit erosion that would result in sediments entering Rochester Creek. These measures would result in the removal of approximately 90 percent of the pond’s water impoundment. The remaining water level would be maintained at the lowest elevation of the pond through natural surface water run-off and via the intermittent tributary. A rock sill

will be installed to maintain this impoundment for the purpose of creating a wetland habitat. For areas of the impoundment that will remain dry, native plant species will be planted.

Repairs to South Pond would be similar to those described for Moony Pond, with the pond being drained through removal of part of the berm. An appropriately sized channel will be constructed to convey flows from the pond to Rochester Creek. Like Moony Pond, a rock sill will be installed to maintain this impoundment for the purpose of creating a wetland habitat, and native plant species will be planted. The V-notch opening will be left open, which will allow a normal flow of water into Rochester creek.

Executive Order 11998, Executive Order 11990, and Implementing Regulations

Pursuant to 24 CFR §55.12(a)(4), steps 2, 3, and 7 of the 8-step process for floodplain management do not apply to projects involving the improvement of existing nonresidential buildings and structures, in communities that are in the Regular Program of the National Flood Insurance Program (NFIP) and are in good standing, provided that the action does not meet the thresholds for “substantial improvement” under §55.2(b)(10) and that the footprint of the structure and paved areas is not significantly increased. The proposed berm repairs do not constitute “substantial improvements”. Therefore, the abbreviated 5-step process for floodplain management is followed herein.

Step ONE: Determine whether the action is located in a 100-year floodplain (or a 500-year floodplain for critical actions) or wetland.

The Proposed Project will result in temporary impacts of less than one acre of the 100-Year floodplain, as well as temporary and permanent impacts to National Wetland Inventory (NWI) mapped wetlands classified as Freshwater Pond (PUBHh). According to the FEMA Flood Insurance Rate Map (FIRM) Panels 36111C0570E and 36111C0575E, portions of South Pond are located within a Special Flood Hazard Area (100 year floodplain). Moony Pond is not located in the Special Flood Hazard Area.

While temporary floodplain and wetland impacts would result from the above-described construction activities to address berm erosion, the Proposed Project would not have any long-term impacts to floodplain management. Construction would be localized and would not be considered a substantial effort. It would occur predominately on previously disturbed land. No permanent loss of wetlands would result, and wetland integrity would be enhanced as a result of the proposed mitigation to address continuing erosion of the existing berms.

Step FOUR: Identify Potential Direct and Indirect Impacts Associated with Floodplain and Wetland Development.

GOSR has evaluated the alternatives to the Proposed Project, and has determined that the Proposed Project must take place in the floodplain and wetlands. The Proposed Project will result in temporary impacts to less than one acre of the 100-Year floodplain, as well as temporary and permanent impacts to National Wetland Inventory (NWI) mapped wetlands classified as Freshwater Pond (PUBHh). According to the FEMA Flood Insurance Rate Map (FIRM) Panels 36111C0570E and 36111C0575E, portions of South Pond are located within a Special Flood Hazard Area (100 year floodplain). Moony Pond is not located in the Special Flood Hazard Area.

Given that the Proposed Project would involve mitigation to address continuing erosion at existing berms located at Moony and South Ponds only minor, temporary, direct impacts to the floodplain are anticipated

as a result of the construction activities. These impacts will be minimized through the use of construction best management practices.

Step FIVE: Where practicable, design or modify the proposed action to minimize the potential adverse impacts to lives, property, and natural values within the floodplain and to restore, and preserve the values of the floodplain and wetlands.

Based on the scope of the project, the proposed project would not result in significant adverse impacts to flood levels, flood risk, or the flow of flood waters on the project site or surrounding areas. As proposed, all of the proposed project activities would be performed within the footprint of previous disturbance. Although South Pond is partially within the 1 percent annual chance of flood, no permanent disturbance of the floodplain would occur and no impervious surfaces would be created.

In order to avoid impacts to wetlands, the work area would be minimized and temporary fencing/barricades would be installed at the perimeter of the work area contain potential impacts to adjacent waters.

Step SIX: Re-evaluate the Proposed Action.

GOSR has reevaluated the Proposed Project and determined that the Rochester Ponds Mitigation Project is still practicable in light of its potential to temporarily adversely impact floodplain and wetland values. The proposed project would address potential failure of the pond berms through activities described above, resulting in negligible impact to wetland values. The project would reduce the risk of catastrophic failure of the berms resulting from continued erosion, in combination with hydrostatic pressure from the ponds.

GOSR has also reconsidered the alternatives discussed in Step Three and determined the best practicable alternative is the preferred alternative. There is no practicable alternative to locating the proposed action in the floodplain and wetlands.

Step EIGHT: Implement the Proposed Action.

Step eight is implementation of the proposed action. Prior to project implementation, GOSR will conduct a National Environmental Policy Act (NEPA) review in accordance with 24 CFR Part 58 and a New York State Environmental Quality Review Act (SEQR) review in accordance with 6 NYCRR Part 617.

EXHIBIT 1 Project Location Floodplain Map

