



South Ripley
SOLAR PROJECT

ConnectGen Chautauqua County LLC

South Ripley Solar Project

Matter No. 21-00750

900-2.13 Exhibit 12

NYS Threatened or Endangered Species

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EXHIBIT 12 NYS THREATENED OR ENDANGERED SPECIES

(a) Wildlife Site Characterization Report

On behalf of the Applicant, Environmental Design & Research, Landscape Architecture, Engineering & Environmental Services, D.P.C (EDR) prepared a Wildlife Site Characterization (WSC) Report, in accordance with § 900-1.3(g)(1) of the 94-c regulations, summarizing existing public information on bird, bat, and other wildlife species at the proposed Facility and surrounding area (Appendix 12-A). The WSC Report also provides an analysis of the occurrence, and potential for occurrence, of New York State (NYS) listed threatened or endangered species, or species of conservation concern in the vicinity of the Facility Area¹. In addition, prior to the development of the WSC Report, the Applicant consulted with federal and New York State agencies (e.g., New York State Department of Environmental Conservation [NYSDEC], New York Natural Heritage Program [NYNHP], and United States Fish and Wildlife Service [USFWS]) with respect to wildlife species in the vicinity of the Facility Area. As a result of these consultations, it was determined that Facility-specific avian surveys to determine the potential presence of rare grassland species should be conducted, which resulted in an on-site Winter Raptor Survey in the winter of 2019/2020 and an on-site Breeding Bird Survey in the spring of 2020. Therefore, the specific information regarding wildlife resources in the vicinity of the Facility presented in the WSC Report was obtained from a combination of publicly available data, agency correspondence, and site-specific field surveys.

The Facility is in a rural area dominated by agricultural and forested lands. Information reviewed in the WSC Report suggests that the Facility Area includes a wildlife community dominated by relatively common species that are typically found in agricultural and forested habitats. According to publicly available databases, 10 state-listed species have been documented in the vicinity of the Facility Area within the last five years, including the following species:

- short-eared owl (*Asio falmmeus*),
- northern harrier (*Circus cyaneus*),
- bald eagle (*Haliaeetus leucocephalus*),
- pied-billed grebe (*Podilymbus podiceps*),
- osprey (*Pandion haliaetus*),
- Cooper's hawk (*Accipiter cooperii*),
- sharp-shinned hawk (*Accipter striatus*),
- red-shouldered hawk (*Buteo lineatus*),
- northern goshawk (*Accipter gentilis*), and

¹ For the purposes of this Exhibit, results of the WSC and avian survey reports are documented within the broader Facility Area, which is defined in the Article 10 South Ripley Solar Preliminary Scoping Statement as "the land area being considered to potentially host the South Ripley Solar Project". The Facility Site is a smaller area comprised of portions of parcels within the Facility Area that have been sited to host Facility components.

- northern long-eared bat (*Myotis septentrionalis*).

The WSC Report and associated shapefiles and mapping were provided to the Office of Renewable Energy Siting (ORES) on February 3, 2021.

(b) Pre-construction Survey Reports

On behalf of the Applicant, EDR conducted an on-site Winter Raptor Survey during the winter of 2019/2020 (Appendix 12-B) and an on-site Breeding Bird Survey during the spring of 2020 (Appendix 12-C) within the Facility Area. The results of these surveys are intended to inform the Applicant during the development and design of the Facility, as needed, and also to assist ORES and NYSDEC in their review of the proposed Facility in accordance with the requirements of the 94-c regulations.

Prior to conducting the winter raptor surveys, EDR submitted a Winter Raptor Survey Workplan to the NYSDEC for review and comment in November 2019. The winter raptor surveys for the South Ripley Solar Project were conducted in accordance with the 2014 *NYSDEC Draft Project Applicant Survey Protocol for State Listed Wintering Grassland Raptor Species*, as well as the Winter Raptor Survey Workplan and associated comments received from the NYSDEC. Surveys were conducted by qualified EDR biologists within the Facility Area from late November 2019 through the end of March 2020. Throughout the winter season, a total of 62 individual raptors were observed including seven observations of northern harriers (a state-listed threatened species), five observations of bald eagles (a state-listed threatened species), and one observation of sharp-shinned hawk (a species of special concern). In addition, a total of 29 other non-raptor avian species were observed, including two species identified by NYSDEC as species of greatest conservation need (SGCN) (American kestrel and American woodcock). As detailed in the Winter Raptor Survey Report (Appendix 12-B), field observations of the state-listed threatened raptors totaled less than 0.5 percent of the total survey effort, which indicates low use of the Facility Area. Furthermore, observations of these species did not regularly occur in any one area which suggests a lack of consistent or repeated use of the Facility Area. Based on the results of this survey, EDR concluded that the Facility Area does not contain occupied habitat for wintering state-listed threatened or endangered raptor species. The Winter Raptor Survey Report and associated GIS shapefiles were provided to NYSDEC on May 22, 2020, and to ORES on October 2, 2020.

Breeding bird surveys within the Facility Area were designed in accordance with the 2015 *NYSDEC Survey Protocol for State-listed Breeding Grassland Bird Species*. The scope of these surveys was defined in a Breeding Bird Survey Work Plan that was submitted for NYSDEC staff review and comment in May 2020. The purpose of the breeding bird survey was to identify and document avian species that utilize habitats within the Facility Area during the breeding season and focused primarily on open field areas that could potentially be used by grassland bird species (including

state-listed species). The surveys were conducted by qualified EDR biologists from early June 2020 through the end of July 2020. A total of 235 point count surveys were conducted over a period of nine weeks, and a total of 2,530 individual birds representing 81 different species were recorded within 100 meters of point count locations. An additional seven species were recorded before or after timed point count surveys, beyond 100 meters, and/or incidentally between points. No state-listed threatened or endangered species were observed within the Facility Area. Two species listed as species of special concern (Cooper's hawk and grasshopper sparrow) were recorded during the surveys. Based on the results of the on-site breeding bird surveys, EDR concluded that the Facility Area does not contain occupied habitat for breeding state-listed threatened or endangered avian species. The Breeding Bird Survey Report and associated GIS shapefiles were provided to NYSDEC on September 11, 2020 and to ORES on October 2, 2020.

(c) Determination of Occupied Habitat at the Facility Site

The WSC Report, Winter Raptor Survey Report, and Breeding Bird Survey Report, as summarized above, were provided to ORES and NYSDEC along with associated GIS maps and shapefiles. In consultation with NYSDEC, ORES provided its final Determination of Occupied Habitat, Incidental Take, and Net Conservation Benefit on April 19, 2021, which indicates that no occupied habitat of NYS threatened or endangered species are present at the Facility Site. A copy of the ORES final determination letter is provided in Appendix 12-D. A summary of the determination findings with respect to grassland birds, bald eagle, and northern long-eared bat is provided below.

Grassland Birds

Upon review of the WSC report and results of the avian field surveys, ORES concluded that there is no occupied habitat for state-listed threatened or endangered grassland bird species within the Facility Area and that the Project will not result in adverse impacts to these species.

Bald Eagles

Upon review of the WSC report and results of the avian field surveys, ORES concluded in the April 19, 2021 final determination letter that there are no known bald eagle nests within the Facility Site. Subsequent correspondence with ORES (email correspondence dated March 23, 2021) identified two newly documented bald eagle nests that are located approximately 0.2 to 0.3 miles from the Project. Due to the separating distance and the presence of a visual barrier between these nests and the nearest proposed Facility components, ORES concluded that the Project is not anticipated to result in any impacts to bald eagles.

Construction and operation of the Facility will comply with the Uniform Standards and Conditions outlined in Section 900-6.4 (o)(6)(i)(ii) of the 94-c regulations to avoid and minimize any potential impacts to bald eagles.

Northern Long-eared Bat

Upon review of the WSC report, ORES concluded that there are no known NLEB maternity roosts within 1.5 miles of the Facility Area or hibernaculum within 5 miles of the Facility Area. To avoid and minimize potential impacts to NLEB, construction and operation of the Facility will comply with the Uniform Standards and Conditions outlined in Section 900-6.4 (o)(4)(iii)(c) of the 94-c regulations.

(d) Avoidance, Minimization Measures, and Unavoidable Potential Impacts to NYS Threatened, Endangered, or Species of Special Concern

The April 19, 2021 ORES final determination letter indicates that the Project results in no take of listed species, and neither mitigation funding nor a Net Conservation Benefit Plan is required (Appendix 12-D). Thus, this section is not applicable.

(e) Proof of De Minimis Impacts to NYS Threatened or Endangered Grassland Birds or their Habitat

ORES, in consultation with NYSDEC, determined that the Project will have no impact on state-listed threatened or endangered grassland bird species and that no occupied habitat for these species occurs within the Facility Site. Thus, this section is not applicable.

(f) Net Conservation Benefit Plan

ORES, in consultation with NYSDEC, determined that construction and operation of the Facility will not adversely impact any state-listed threatened or endangered species or their habitat, therefore a Net Conservation Benefit Plan is not required. Thus, this section is not applicable.

REFERENCES

NYSDEC. 2015b. Species of Greatest Conservation Need (SGCN). Available at: <https://www.dec.ny.gov/animals/9406.html> (Accessed February 2021).