



MILL POINT SOLAR I PROJECT
ConnectGen Montgomery County LLC

Matter No. 23-00034

Net Conservation Benefit Plan

Table of Contents

| | | |
|-------|--|----|
| 1.0 | Introduction | 1 |
| 1.1 | Facility Overview | 1 |
| 1.2 | Purpose of the Net Conservation Benefit Plan | 1 |
| 2.0 | Species Pursuant to This Plan | 3 |
| 2.1 | Background | 3 |
| 2.2 | Species Specifics and Survey Results | 4 |
| 2.2.1 | ██████████ | 4 |
| 2.2.2 | ██████████ | 6 |
| 2.3 | Existing Habitat Conditions | 7 |
| 2.3.1 | Breeding Habitat | 7 |
| 2.3.2 | Wintering Habitat | 7 |
| 2.4 | Estimated Take of Occupied Habitat | 7 |
| 2.5 | Population Impacts Assessment | 8 |
| 3.0 | Avoidance and Minimization | 10 |
| 4.0 | Mitigation Measures | 15 |
| 4.1 | Net Conservation Benefit | 15 |
| 4.2 | Mitigation | 16 |
| 4.2.1 | Site Selection | 16 |
| 4.3 | Proposed Mitigation Sites | 16 |
| 4.3.1 | Onsite Mitigation | 17 |
| 4.3.2 | Offsite Mitigation | 17 |
| 4.3.3 | Additional Mitigation Site(s) | 17 |
| 4.4 | Implementation & Monitoring Plan | 17 |
| 4.4.1 | Habitat Improvements | 17 |
| 4.4.2 | Vegetation Maintenance and Monitoring | 18 |
| 4.4.3 | Monitoring Report | 19 |
| 4.5 | Adaptive Management | 20 |

| | | |
|-------|--|----|
| 4.6 | Implementation Agreement..... | 20 |
| 4.6.1 | Involved and Responsible Parties | 21 |
| 4.6.2 | Implementation Timeline | 21 |
| 4.6.3 | Funding..... | 22 |
| 5.0 | References..... | 23 |

Tables

Table 1. Estimate Take of Occupied Habitat

Table 2. Estimated Annual Avian Mortality from Anthropogenic Sources in the U.S.

Table 3. Estimated Vegetation Management Implementation Schedule

Figures

Figure 1. Regional Facility Location

Figure 2. Facility Layout

Figure 3. Estimated Take of Occupied Habitat

1.0 Introduction

1.1 Facility Overview

ConnectGen Montgomery County LLC (Applicant) proposes the construction of a 250-megawatt photovoltaic (PV) solar energy generation facility (Facility) called “Mill Point Solar I Project” located in the Town of Glen, Montgomery County, New York (Figure 1). The Facility will be developed on 2,479.1 acres (ac) of leased, private land (Facility Site) (Figure 2). Facility components will include utility-scale solar arrays, access roads, buried AC medium voltage collector circuits, and electrical interconnection facilities (i.e., a collection substation and point of interconnection (POI) switchyard). The proposed collection substation and POI switchyard will be located on land within the Facility Site. This Net Conservation Benefit Plan (NCBP, the “Plan”) provides information required in accordance with the requirements of Section 900-2.13 of Section 94-c Regulations.

1.2 Purpose of the Net Conservation Benefit Plan

The NCBP has been prepared for the Mill Point Solar I Facility to describe conservation actions proposed by the Applicant that when implemented, will result in a net conservation benefit to New York State (NYS) threatened and endangered species that may be impacted by the Facility. This Plan is developed in support of the Mill Point Solar I 94-c Application and as required by the 94-c regulations:

- Under Section 900-1.3 (g) (6): *Within thirty (30) days of submittal of the draft survey reports, the agencies and the applicant shall review the results of the habitat assessment(s) and survey(s) and the current facility design. The agencies and the applicant shall also discuss the requirements for the Net Conservation Benefit Plan, if applicable.*
- Under Section 900-1.3 (g) (8): *The applicant shall provide the approved wildlife site characterization report, habitat assessment and/or survey reports, and Net Conservation Benefit Plan (if required) in the siting permit application as provided in section 900-2.13 of this Part.*
- Under Section 900-2.13 (f): *For a facility that would adversely impact any NYS threatened or endangered species or their habitat, a copy of a Net Conservation Benefit Plan prepared in compliance with section 900-6.4 (o) of this Part.*

The Facility is anticipated to adversely impact (i.e., “take”) occupied breeding habitat of two state-

listed species, [REDACTED] as issued by the Office of Renewable Energy Siting (ORES or the Office) in their Determination of Occupied Habitat, Incidental Take, and Net Conservation Benefit (Appendix 12-5). The purpose of this document is to outline actions proposed by the Applicant that will result in a net conservation benefit for listed species during Facility construction and operation. A net conservation benefit is achieved when the adverse impacts of the Facility on a protected species or its occupied habitat will be offset by the positive impacts anticipated from the mitigation measures proposed (New York State Department of Environmental Conservation [NYSDEC], *[n.d.]d*). Within this Plan are a proposed suite of avoidance, minimization, and mitigation measures, which will be reviewed by ORES for feasibility and efficacy to achieve a positive impact to the species. The NCBP also provides an initial proposal for vegetation monitoring and adaptive management.

2.0 Species Pursuant to This Plan

2.1 Background

The New York Natural Heritage Program (NYNHP) was consulted to request a review and confirmation of the latest NYNHP records for the presence of rare or state-listed plants, animals, significant natural communities, or other significant habitats in the vicinity of the Facility. A response was received on June 24, 2020, indicating no known occurrences of state-listed species, including grassland bird species, within vicinity of the Facility Site. Based on this response, wintering grassland raptor surveys (WGRS) were conducted in the winter of 2020-2021 by TRC and in the winter of 2021-2022 by WSP. Breeding bird surveys (BBS) were conducted in 2021 by TRC. The results of these surveys are summarized in Exhibit 12 of the Section 94-c Application and associated appendices.

A pre-application consultation letter was received from ORES dated May 25, 2021. A Wildlife Site Characterization Report (WSCR) was prepared pursuant to Section 900-1.3(g)(1). Per Section 900-1.3(g)(2), the draft WSCR was submitted to the NYSDEC and the Office on April 6, 2021. A meeting between the Applicant and associated representatives, the NYSDEC, and ORES was held virtually on May 25, 2021, to discuss the WSCR and pre-application consultation letter.

The Applicant submitted multiple preliminary Occupied Habitat datasets in 2021 and 2022 leading to the submittal of an Occupied Habitat & Estimated Take Memo and Field-by-Field Analysis on May 1, 2023. A subsequent Occupied Habitat & Take Conference was held with ORES on June 23, 2023, to discuss the draft determination of occupied habitat and take issued by the Office on June 15, 2023. On behalf of the Applicant, on July 21, 2023, TRC provided a supplemental memo to ORES regarding the estimate of occupied habitat for state-listed species, attached as Appendix 12-6 of the Mill Point Solar I 94-c Application.

The August 3, 2023, determination on occupied habitat, incidental take, and net conservation benefit letter indicated the Facility Site contains the following:

- 1,051.67 ac of occupied wintering habitat for [REDACTED].
- 432.34 ac of occupied wintering habitat for [REDACTED].
- Other known state-listed species occurrences within the Facility Site include [REDACTED]
[REDACTED]

[REDACTED]

- A NCBP is required for the take of occupied wintering grassland bird habitat for [REDACTED].

2.2 Species Specifics and Survey Results

WGRS were conducted within the Facility Site November 16, 2020 to March 31, 2021 by TRC and November 15, 2021 to April 14, 2022 by WSP. BBS were conducted from May 24, 2021 to July 13, 2021 by TRC. The total results of these surveys are summarized in Exhibit 12 of the Mill Point Solar I 94-c Application and associated appendices (i.e., Appendix 12-1 Wildlife Site Characterization Report; Appendix 12-2 Grassland Breeding Bird Survey Report; and Appendix 12-3 State-Listed Wintering Grassland Raptor Survey Report); however, species-specific results are summarized below.

2.2.1 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

During WGRS conducted in 2020-2021, [REDACTED] were observed 37 times, of which, five observations were recorded incidentally to regular surveys. Observations were widely distributed throughout the Facility Site, with observations at eight of 11 stationary survey locations, however, there were concentrations of [REDACTED] activity located in the [REDACTED] section. Recorded behaviors included hunting, circling, and gliding. Males and females were recorded in the same observation on five occasions. Nearly half of all observations (15 observations) were of hunting or foraging individuals, with surveyors noting active pursuit of prey items on [REDACTED]. The presence of multiple individuals at or around dusk, flying low to or landing on the ground, may indicate a roost location in the vicinity of stationary (S) survey location [REDACTED] in the [REDACTED] portion of the Facility Site. The habitat surrounding [REDACTED], where the activity was concentrated, was comprised of [REDACTED]. While roosting was suspected in this area, no confirmed roost location was identified. See Appendix 12-3 of Exhibit 12 of the 94-c Application for the 2020-2021 State-Listed Wintering Grassland Raptor Survey Report and Figures.

WGRS were conducted by WSP the following winter in 2021-2022. Thirty-nine observations of [REDACTED] were reported during regular surveys. No incidental observations were recorded. Twenty-three of the 39 observations were of individuals exhibiting foraging behaviors. One female [REDACTED] was observed flying low to the ground and landing behind a hedgerow, remaining there for the remainder of the survey period, suggesting a potential roost site. [REDACTED] observations were widely distributed throughout the Facility Site, with observations primarily occurring in [REDACTED], with some limited use of [REDACTED]. See Appendix 12-4 of Exhibit 12 for the 2021-2022 State-listed Wintering Grassland Raptor Survey Report.

Grassland BBS conducted from May through July 2021, recorded four observations of [REDACTED]. All individuals were recorded to the [REDACTED] of the Facility Site, from Survey Points (Points) [REDACTED], in parcels that are no longer included in the Facility layout. See Appendix 12-2 of Exhibit 12 for the 2021 Grassland Breeding Bird Survey Report.

2.2.2 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] were documented on nine occasions at two locations during WGRS in the winter of 2020-2021. Activity was primarily concentrated around [REDACTED] in the [REDACTED] portion of the Facility Site. Individuals were observed exhibiting foraging, hunting, circling, and flapping behavior. Multiple individuals in a single location, and the presence of [REDACTED] at this same location, could indicate a potential roost location in the vicinity of Point [REDACTED]. See Appendix 12-3 of Exhibit 12 of the 94-c Application for the 2020-2021 Winter Raptor Survey Report.

[REDACTED] were observed on three occasions during WGRS conducted by WSP in 2021-2022. Two individuals were observed during regular surveys and one was an incidental observation. Two observations were of birds exhibiting direct flights or perching in trees or
Mill Point Solar I Project
Net Conservation Benefit Plan

hedgerows, and one individual was identified by vocalization only. See Appendix 12-4 of Exhibit 12 of the 94-c Application for the 2021-2022 Winter Raptor Survey Report.

2.3 Existing Habitat Conditions

Based on species' habitat preferences, the results of the WGRS surveys and BBS, and agency consultation (NYNHP, NYSDEC, and ORES), portions of the Facility Site can be considered occupied habitat for the two listed bird species mentioned above (Figure 3).

2.3.1 Breeding Habitat

Four [REDACTED] observations were recorded during grassland BBS in 2021. None of these individuals exhibited essential behaviors. It is likely that these individuals use this habitat for foraging or to travel between other roosting and foraging locations. Furthermore, all observations of [REDACTED] occurred in parcels that are no longer included in the Facility Site and are not in close proximity to the existing layout. Additionally, no observations of [REDACTED] were recorded at the Facility Site during grassland BBS. Therefore, no occupied breeding bird habitat is located in the Facility Site.

2.3.2 Wintering Habitat

As shown on Figure 3, occupied wintering habitat for [REDACTED] is located in multiple portions of the Facility Site, while occupied habitat for [REDACTED] is located in the [REDACTED] portion of the Facility Site.

2.4 Estimated Take of Occupied Habitat

Based on the WSCR, the BBS, the WGRS, and ORES's occupied habitat and take determination dated August 2023, the Facility will be impacting 1,051.7 ac of occupied wintering [REDACTED] and [REDACTED] habitat and will have no impact on breeding habitat for either species (see Table 1 and Figures 3 and 4).

Per Section 900-6.4 (o)(3)(ix) of the Universal Standards and Conditions (USCs), mitigation would be implemented at a ratio of 0.2 ac for every acre of occupied grassland bird breeding habitat determined to be taken. These mitigation requirements are based upon multiplying impacts by the ratios above and dividing impacts by 5 lifecycles of habitat succession (e.g., a 30-year mitigation Facility term and 5-year timeframe in which unmanaged grassland would naturally succeed into scrub/shrub habitat, minus one lifecycle to provide a net conservation benefit).

The Facility Site layout was compared with the extent of occupied habitat for state-listed wintering grassland raptors to determine the total acreage of occupied habitat impacted (“take”). The impacted areas of “take” were then multiplied by the ratio above to determine the total ac of mitigation required to provide a net conservation benefit for the take of habitat for [REDACTED]. The extent of occupied habitat, “take” of occupied habitat, and subsequent ac to be mitigated is estimated at:

- Total area of Wintering Occupied Habitat Taken: 1,051.7 ac
 - 432.3 ac of [REDACTED] habitat
 - 619.3 ac of [REDACTED] only wintering habitat

Table 1. Estimate Take of Occupied Habitat

| Habitat Type | Species | Estimated Take Acreage | Estimated Mitigation Acreage |
|------------------------------------|------------|------------------------|------------------------------|
| [REDACTED] | [REDACTED] | 432.3 acres | 86.5 acres |
| [REDACTED] | [REDACTED] | 619.3 acres | 123.9 acres |
| Total: | | 1,051.7 acres | 210.3 acres |
| Totals may differ due to rounding. | | | |

2.5 Population Impacts Assessment

Habitat loss is the primary driver of population declines in the two state-listed species documented within the Facility Site. Regionally, grassland habitat continues to decline as a result of farmland abandonment and development (Morgan & Burger, 2008). Populations of grassland breeding birds are among the steepest declining in North America with a 53% population loss since 1970 (Rosenberg et al., 2019). Among grassland breeding birds in NYS, all but northern harrier, horned lark (*Eremophilus alpestris*) and vesper sparrow (*Pooecetes gramineus*) indicate significant negative trends from 2005-2015 (Sauer et al., 2017). Data suggests that in the northeast region, populations are increasing in New York (Sauer et al., 2017). However, populations across eastern North America indicate less significant trends with Henslow’s sparrow, northern harrier, short-eared owl, and upland sandpiper (*Bartramia longicauda*) exhibiting non-significant negative trends over the same time period (Sauer et al., 2017). The recovery of some species in NYS, specifically the northern harrier, has prompted the NYSDEC to propose downlisting the species from threatened to special concern (NYSDEC, 2019).

There are relatively few studies quantifying the effects of utility-scale solar projects on biodiversity. The currently available peer-reviewed publications on renewable energy, including solar, are insufficient to thoroughly assess the impact of utility-scale solar projects on wildlife populations (Lovich and Ennen, 2011). Impacts to birds are the most well-studied, though even this research is limited. The two types of direct impacts to birds from utility-scale solar projects occur in the form of burning and collisions (Walston et al., 2016), however, burning is specific to concentrated solar power systems and does not apply to PV solar which is the predominant, if not exclusive type found in the northeast. Mortality studies are inherently lacking with specific reference to utility-scale ground-mounted solar. Of studies which investigated direct impacts to birds from solar facilities, all were conducted on facilities in the southwestern United States and therefore, are not directly analogous to projects in the northeast, which contain significantly different habitat, species assemblages, and associated population trends.

One study by Walston et al. (2016) estimated bird mortality from solar facilities in comparison to other anthropogenic sources of bird mortality. The table from their study is shown in Table 2 below.

Table 2. Estimated Annual Avian Mortality from Anthropogenic Sources in the U.S.

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

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

Walston and the Argonne Lab reviewed synthesized data from seven utility-scale solar facilities

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

It is also important to note that due to climate change many bird species, including short-eared owl and northern harrier, could lose significant portions of their ranges because of rising temperatures. According to Audubon scientists, climate change is the number one threat to U.S. birds (Audubon, 2014). To combat that threat, solar and other green energy projects must proceed. An Audubon article states:

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

Due to threats from climate change, including increased wildfire events and spring heat waves, short-eared owls are projected to lose an estimated 30% of their North American breeding range and 3% of their wintering range. Northern harriers will experience even more significant impacts, including 39% of their breeding range and 8% of their wintering range (Audubon, 2021). This Facility plays an important part in combating climate change and thereby, adding to the protection of these bird species.

3.0 Avoidance and Minimization

The Applicant sited the Facility to avoid or minimize impacts to sensitive features, specifically wetlands, streams, and forested areas, as well as siting within previously disturbed parcels, to the maximum extent practicable. Additionally, the Applicant revised the Facility layout to completely

avoid [REDACTED] breeding habitat identified during the 2021 grassland BBS. Although habitat modification could not be entirely avoided, the Applicant attempted to maximize use of contiguous parcels to reduce the overall footprint of the Facility. Additionally, the Applicant has made a concerted effort to co-locate Facility components, where feasible, to reduce the Facility footprint. However, impacts to agricultural areas, which constitute the majority of habitat available for grassland birds, are unavoidable.

Per Section 900-6.4 (o) (3), for facilities that will have more than a *de minimis* impact on NYS-listed threatened or endangered grassland birds, impacts to listed grassland species during Facility construction will be avoided and/or minimized through the following measures:

- Environmental monitoring will be implemented immediately prior to and during construction in occupied habitat to search for NYS-listed threatened or endangered species occurrence based on the species' seasonal windows for presence.
- If active nests of the NYS-listed threatened or endangered species are found within occupied habitat, then the Applicant will coordinate with the New York State Department of Public Service (NYSDPS) and the Office to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed.
- To avoid direct impacts to NYS-listed threatened or endangered grassland bird species, the following work windows will be applied for all ground disturbance and construction-related activities, including restoration and equipment/component staging, storage, and transportation, within occupied habitat:
 - – In NYS threatened or endangered grassland bird occupied wintering habitat, work shall be conducted only between April 1 and November 14.
- If fields within identified occupied breeding habitat are planted with row crops (e.g., corn, beans, or vegetables) in the farming season prior to the commencement of Facility construction and such fields were historically used for row crops during at least one of the prior 5 years, these fields will not be subject to the construction timing restrictions mentioned above.
- If construction activities that must occur between April 23 and August 15 in identified NYS-listed threatened or endangered grassland bird-occupied breeding habitat outside the row crop areas described above, the occupied habitat area(s) proposed for active construction will be assessed by an onsite Environmental Monitor (EM) or biologist, who will conduct

surveys for NYS-listed threatened or endangered grassland bird species. The surveys will occur weekly until construction activities have been completed in the occupied habitat area, unless otherwise agreed to by the Office. If no NYS-listed threatened or endangered grassland bird species are detected during the survey, the area will be considered clear for 7 days, when another survey will be performed. If NYS-listed threatened or endangered grassland bird species are detected, the Applicant will comply with subdivision (o)(7) of the USCs, as described below.

- All temporary disturbance or modification of established grassland vegetation communities that occurs as a result of Facility construction, restoration, or maintenance activities will be restored using a native herbaceous seed mix or the pre-existing grassland vegetative conditions by re-grading and re-seeding with an appropriate native seed mix after disturbance activities are completed, unless returning to agricultural production or otherwise specified by the landowner. These temporarily disturbed or modified areas include all areas within the Facility Site that do not have impervious cover, such as temporary roads, material, and equipment staging and storage areas, and electric line rights-of-way.

Per Section 900-6.4 (o)(7) of the USCs, during construction and restoration of the Facility, the Applicant will maintain a record of all observations of NYS-listed threatened or endangered species as follows:

- *Construction:* During construction the onsite EM will be responsible for recording all occurrences of NYS-listed threatened or endangered species within the Facility Site. All occurrences will be reported in a biweekly monitoring report submitted to the NYSDPS, with a copy to the Office, and such reports will include the information described in the “*Reporting Requirements*” section below. If a NYS-listed threatened or endangered species is demonstrating breeding behavior, it will be reported to the NYSDPS and the Office within 48 hours.
- *Restoration:* After construction is complete, incidental observations of any NYS-listed threatened or endangered species will be documented and reported to the NYSDPS, with a copy to the Office, in accordance with the reporting requirements as described below.
- *Reporting Requirements:* All reports of NYS-listed threatened or endangered species will include the following information:

- Species;
- Number of individuals;
- Age and sex of individuals (if known);
- Observation date(s) and time(s);
- Global Positioning System (GPS) coordinates of each individual observed (if operation and maintenance staff do not have a GPS available, the report will include the nearest solar panel array and crossroads location);
- Behavior(s) observed;
- Identification and contact information of the observer(s); and
- The nature of and distance to any facility construction, maintenance, or restoration activity.

Per Section 900-6.4 (o)(8) of the USCs, if an active nest of a federal or NYS-listed threatened or endangered bird species, excluding bald eagles, is discovered (by the EM or other Designated Agent) within the Facility Site during construction or operations, the following actions will be taken:

- The NYSDPS and the Office will be notified within 48 hours of discovery and prior to any further disturbance around the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior;
- An area at least 500 feet in radius around the active nest will be posted and avoided until notice to continue construction, ground clearing, grading, maintenance, or restoration activities are granted by the Office; and
- The active nest(s) or nest tree(s) will not be approached under any circumstances unless authorized by the Office.

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

- Species;

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

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

4.0 Mitigation Measures

4.1 *Net Conservation Benefit*

As previously discussed, occupied wintering habitat was identified for [REDACTED] within the Facility Site (Figure 3). Construction of the proposed Facility may result in adverse habitat modification (i.e., a “take”) of occupied habitat for the listed species above. Section 94-c requires that mitigation for incidental take of a listed species must result in a positive benefit to that species.

Per Section 900-(o)(3)(viii) of the USCs, an applicant can pay a mitigation fee commensurate with the actual acreage of occupied habitat taken into the Endangered and Threatened Species Mitigation Bank Fund with the sole purpose to conserve habitat of similar or higher quality or otherwise achieve a net conservation benefit to the impacted species, or an applicant can propose permittee-implemented mitigation. For the Mill Point Solar I Project, the Applicant is proposing a NCBP involving permittee-implemented grassland bird habitat conservation in lieu of payment of a mitigation fee per Section 900-(o)(3)(ix). As previously discussed, the required mitigation ratio will be 0.2 ac for every acre of occupied wintering habitat for the two listed species with occupied habitat in the Facility Site. The estimated mitigation acreage for the Facility based on these ratios is 210.3 ac of wintering habitat (Section 2.4).

The above-described mitigation is proposed to be implemented by the Applicant or a designated agent for the entire life of the Facility (30 years) over multiple management cycles on the mitigation site(s). Grassland habitat is by nature ephemeral, requiring continued setting back of succession to maintain a grass-dominated system (NYSDEC, [n.d.]b). By implementing multiple cycles of habitat management, the Applicant will sustain this early-successional habitat and achieve a net conservation benefit over time to offset continued habitat loss occurring elsewhere through succession and development.

If at any point over the duration of the mitigation to be implemented by the Applicant, one or more of the species described in this Plan are downlisted, the area of occupied habitat will be re-evaluated to reflect only listed species. The acreage for mitigation efforts will subsequently be updated to include only the acreage of occupied habitat for listed species. Additionally, if for some reason the permittee-implemented NCBP is no longer feasible, the Applicant would work with the mitigation provider to pursue an alternative site to provide a net conservation benefit for the take

of occupied habitat, as described above.

4.2 Mitigation

The Applicant is actively pursuing off-site mitigation options which will be finalized prior to construction of the Facility, or they will negotiate a mitigation fee to be provided on a one-time basis to the Endangered and Threatened Species Mitigation Bank Fund to provide a net conservation benefit for the take of occupied habitat.

4.2.1 Site Selection

The mitigation site selection process is ongoing, and the Applicant is considering the following attributes of each potential mitigation site, prioritizing sites that meet one or more criteria:

- Meets the mitigation acreage amount and appropriate mitigation ratio;
- Is 25 ac or larger in size;
- Preferably is adjacent to other suitable grassland habitat that may already be protected (i.e., conservation easement; deed restriction) to allow for connectivity to larger protected habitat;
- Is within or adjacent to occupied habitat for one or more of the target species;
- Is within or adjacent to a focus area such as NYSDEC-designated Wintering Raptor Concentration Area or Grassland Focus Area, or an Audubon-designated Important Bird Area;
- Landowner is a willing participant (putting the land in an easement or deed restrictions) or land is for sale and can be protected for the life of the Facility or longer;
- There is limited tree clearing needed for initial site management to limit potential impacts to other species; and
- It is within the same NYSDEC Region (Region 6) as the Facility, if possible.

Once a site or sites are selected, the mitigation land will either be put into a conservation easement, lease, or deed restriction and the site(s) will require commitment to active and adaptive management for successful mitigation for the life of the Facility.

4.3 Proposed Mitigation Sites

4.3.1 Onsite Mitigation

The Applicant is currently in the process of actively pursuing on- and/or off-site mitigation options. The mitigation site selection process is ongoing and is prioritizing sites that meet one or more of the criteria presented in Section 4.2.1.

4.3.2 Offsite Mitigation

The Applicant is currently in the process of actively pursuing on- and/or off-site mitigation options with an environmental mitigation provider. The mitigation site selection process is ongoing and is prioritizing sites that meet one or more of the criteria presented in Section 4.2.1. Off-site mitigation options are preferable in cases that lack availability of suitable habitat onsite that isn't already sited for panels, collection, or other aboveground components. Off-site mitigation options may also be preferable in cases where an agreement is unable to be reached with landowners due to restrictions associated with mitigation sites. In the case of the Facility Site, it was determined that the most effective suitable grassland habitat would occur offsite to maximize successful mitigation results for the [REDACTED]

4.3.3 Additional Mitigation Site(s)

If for some reason the proposed mitigation site(s) do not meet mitigation requirements or negotiations with the landowner(s) cannot be finalized, the Applicant will look for an additional mitigation site(s) that follow the guidelines in Section 4.2.1 and in consultation with NYSDPS as necessary.

4.4 *Implementation & Monitoring Plan*

4.4.1 Habitat Improvements

After approval of the NCBP, the proposed mitigations area(s) will undergo preliminary site management, if necessary. Depending on the existing conditions of the mitigation area(s), some land may have woody vegetation, hedgerows, shrubs, and trees that would need to be removed to increase connectivity of grassland habitat and promote herbaceous growth. Vegetation/trees would be cut low enough and/or removed to permit brush hogging. Removing the hedgerows and woody vegetation would improve grassland habitat by increasing connectivity with other fields, increasing the size of contiguous grassland patches, and by removing potential predator corridors.

This initial site enhancement will prepare the mitigation site(s) for continued maintenance. Existing

conditions at the mitigation areas and initial site improvements will be documented with photographs and a memo will be submitted to the NYSDPS and ORES. Continued habitat improvements and management are discussed below.

4.4.2 Vegetation Maintenance and Monitoring

The mitigation area(s) may require continual management to maintain grassland habitat. Following NYSDEC's Best Management Practices for Grassland Birds (NYSDEC, [n.d.]a), mitigation areas may be mowed to a height of 6 to 12 in to prevent the succession of woody vegetation. Mowing of acres to be managed as wintering grassland bird habitat will be restricted to April 1 to October 31 to avoid impacts or disturbance to wintering bird activity. Attempts will be made to conduct mowing later in this window (after August 16) to avoid disturbance or destruction during the breeding season. To provide winter foraging habitat for birds as well as attract moles, voles, and other prey for raptors and owls, at least 1/3 of the mowed vegetation will be chopped up and left on site after each mowing. If possible, mowing will start in the center of the section and will be cut in a circular fashion towards the outer edge, allowing birds and other wildlife to flush away from the mower. Where practicable, block mowing or spot mowing is to be utilized to target problem areas and create a more heterogeneous vegetation structure.

Mowing is anticipated to be the primary means of habitat management to maintain and/or create available grassland habitat and prevent succession of woody vegetation. Mowing will occur on a rotational schedule in sections of mitigation area(s) every 3 to 5 years, (hereafter "management cycle") following the preliminary site management. As recommended in the NYSDEC Best Management Practices for Grassland Birds (NYSDEC, [n.d.]a), each mitigation area will be divided in half or in thirds (depending on the size), and one portion (a half or a third) will be mowed during Year 3 within the first management cycle. The remaining sections (either the remaining half or remaining two thirds) will be mowed in Year 4 and Year 5, or in Year 5. During Year 6, the entirety of the mitigation area will be mowed to set-back succession and initiate a new management cycle. This rotational mowing schedule will allow for various stages of succession resulting in variable vegetation heights across the mitigation area(s) to support optimal habitat conditions for all species targeted by mitigation. [REDACTED] have a higher tolerance for shrub cover (1-5%) and occur more frequently in fields with taller vegetation (>60-cm) than other grassland nesting birds. [REDACTED] also shows a higher probability of occurrence in medium to tall vegetation (40-60-cm) and medium forb cover (20%).

planting, harvesting, driving, or by any other mechanized means from November 1 to March 31 on the portions of the mitigation area(s) managed for wintering grassland birds.

Routine vegetation monitoring will occur each year that mowing occurs (every 3 to 5 years for the life of the Facility). Vegetation monitoring will occur after mowing is completed to document site conditions and help determine if the mowing schedule needs to be adjusted. Spot management to control invasive plant species (glossy buckthorn, pale and black swallowwort, Canada thistle, Phragmites, etc.) will be applied as needed.

Biologists conducting vegetation monitoring will document the following:

- General site conditions via qualitative summaries and photographs (ideally taken at the same point locations each year of monitoring);
- Status of the mowing maintenance;
- Any listed species observed, especially focal species;
- Any evidence of site disturbance from snowmobiles, ATVs, or other vehicle traffic;
- The presence and quantity of invasive species if present; and
- Any other items of importance observed while on the mitigation site.

The information collected during vegetation monitoring will be included in a Monitoring Report following each monitoring event and submitted to the NYSDPS and the Office. Vegetation monitoring will occur during the first management cycle, after which consultation with the NYSDPS and the Office will be conducted to determine future management and monitoring actions.

4.4.3 Monitoring Report

A summary report will be submitted to NYSDPS with a copy to ORES following each year of monitoring. Conditions observed during the vegetation monitoring will be summarized in the Monitoring Reports along with any necessary recommendations for corrective actions.

The Monitoring Reports will contain:

- A restatement of the goals and objectives for the mitigation site(s);
- A summary of and full presentation of the data collected;
- A summary and assessment of the vegetation management/mowing activities;

- Representative photographs;
- A description of management activities and corrective actions implemented, if applicable;
- An assessment of the degree to which goals and objectives are being met;
- Recommended actions needed to correct problems or deficiencies, if applicable; and
- A narrative summary of the results and conclusions of the monitoring.

4.5 Adaptive Management

In response to observations made through monitoring, periodic adjustments to mitigation actions may be required to achieve desired outcomes (i.e., adaptive management). The Monitoring Reports will describe current conditions, note any deficiencies observed at the mitigation area(s), and will recommend corrective actions.

The effectiveness of any corrective actions will be evaluated during subsequent monitoring and will be reported in Monitoring Reports. Monitoring Reports will recommend any changes to the monitoring schedule that may be necessary following the identification of deficiencies and the implementation of corrective measures. After the first vegetation management and monitoring cycle, the Applicant will consult with the NYSDPS and the Office to determine if changes to the management/monitoring schedule/activities are needed in order to achieve the objectives of management.

4.6 Implementation Agreement

This NCBP will be implemented by the Applicant according to an Implementation Agreement that:

- Identify all persons that will be involved in implementing the endangered and threatened species mitigation Plan, with individuals responsible for funding and implementing the Plan clearly identified;
- Specifically identify the timeline for implementation of measures required by the Plan; and,
- Include an indication of the financial and technical capability and commitment to fund and execute such management, maintenance, and monitoring for the life of the facility/term of the siting permit be signed by all involved persons identified pursuant to the first bullet of this subsection.

As mitigation site(s) have not been finalized, this Implementation Agreement will be provided once final to NYSDPS as part of Facility compliance with this Plan.

4.6.1 Involved and Responsible Parties

It is anticipated that the Applicant will be the owner of the mitigation parcel(s) and/or will provide funding for an easement or deed restriction on the mitigation parcel(s) and/or funds for land held and managed by a land trust organization. Management activities will be performed by contractors hired by the Applicant, the land trust organization holding the conservation easement(s), or by participating landowners under direction of the Applicant. A table outlining the final involved and responsible parties will be included in the Implementation Agreement.

4.6.2 Implementation Timeline

The Applicant will implement this Plan in the first growing season following initiation of construction activities and will continue implementation for the life of the Facility. The preliminary site management will occur during the first year of implementation, followed by vegetation management every 3 to 5 years. Vegetation monitoring will occur during the preliminary site management to establish baseline conditions and then each year that vegetation management occurs. An estimated implementation schedule is outlined in Table 3 below.

Table 3. Estimated Vegetation Management Implementation Schedule

| Year | Activity | Start | End | Notes |
|------|---|---|-----|--|
| 0 | Preliminary Site Management and Vegetation Monitoring | Before April 23 or between Aug. 15-Oct. 1 | | |
| 1 | Spot treatment for invasives | | | |
| 2 | Spot treatment for invasives | | | |
| 3 | Mowing (1/3 to 1/2 of Site) | Before April 23 or between Aug. 15-Oct. 1 | | |
| | Vegetation Monitoring | Post-mowing | | |
| 4 | Mowing (1/3 of Site) | Before April 23 or between Aug. 15-Oct. 1 | | If mowing sections are halved, wait to mow until Year 5. |
| | Vegetation Monitoring | Post-mowing | | |
| | Mowing (1/3 to 1/2 of Site) | Before April 23 or between Aug. 15-Oct. 1 | | |

| Year | Activity | Start | End | Notes |
|-------|---|---|-----|-----------------------------|
| 5 | Vegetation Monitoring | Post-mowing | | |
| 6 | Preliminary Site Management and Vegetation Monitoring | Before April 23 or between Aug. 15-Oct. 1 | | New management cycle begins |
| 10-12 | Repeat Years 3-5 Vegetation Management & Monitoring | | | |

4.6.3 Funding

The Applicant will provide the necessary funding for the implementation of this Plan. Funding will be provided throughout the life of the Facility for preliminary site management, vegetation maintenance, vegetation monitoring and reporting, and initial mitigation site(s) purchase, if applicable. The Applicant is committed to providing funding for the implementation of all components of this Plan.

5.0 References

Audubon. 2014. Audubon's Bird and Climate Change Report.
<http://climate.audubon.org/sites/default/files/Audubon-Birds-Climate-Report-v1.2.pdf>.
Accessed September 2023.

Audubon. 2021. Survival By Degrees: 389 Species on the Brink.
<https://www.audubon.org/climate/survivalbydegrees>. Accessed September 2023.

Lovich, J. E., & Ennen, J. R. (2011). Wildlife conservation and solar energy development in the desert southwest, United States. *BioScience*, 61(12), 982-992.

Morgan, M., & Burger, M. (2008). A plan for conserving grassland birds in New York: Final report to the New York State Department of Environmental Conservation (NYSDEC) under contract# C005137. Audubon New York, Ithaca.

New York Codes, Rules and Regulations (NYCRR). The Official Compilation of Codes, Rules, and Regulations of the State of New York. Title 6. NYSDEC. Chapter I. Fish and Wildlife. Subchapter J. Miscellaneous Regulations. Part 182 Endangered and Threatened Species of Fish and Wildlife; Species of Special Concern; Incidental Take Permits.

NYCRR. Chapter XVIII, Title 19 of NYCRR Part 900. Office of Renewable Energy Siting (ORES). Regulations Implementing Section 94-c of the Executive Law.

NYSDEC ([n.d.]a). Best Management Practices for Grassland Birds. Available at:
<https://www.dec.ny.gov/pubs/86582.html>. Accessed September 2023.

NYSDEC ([n.d.]b). Grassland Bird Habitat and Ecology. Available at:
<https://www.dec.ny.gov/pubs/87218.html>. Accessed September 2023.

NYSDEC ([n.d.]d). New York's Endangered Species Regulations.
<https://www.dec.ny.gov/animals/68645.html>. Accessed September 2023.

NYSDEC. (2019). Pre-proposal for Part 182—Listing of Endangered, Threatened, and Special Concern Species. Available at: <https://www.dec.ny.gov/regulations/34113.html>. Accessed September 2023.

North American Bird Conservation Initiative [NABCI]. 2022. The State of North America's Birds 2022. Environment and Climate Change Canada: Ottawa, Ontario. 8 pages. www.stateofthebirds.org. Accessed September 2023.

Sánchez-Zapata, J. A., Clavero, M., Carrete, M., DeVault, T. L., Hermoso, V., Losada, M. A., ... & Donázar, J. A. (2016). Effects of renewable energy production and infrastructure on wildlife. In *Current trends in wildlife research* (pp. 97-123). Springer, Cham.

Sauer, J., Niven, D., Hines, J., Ziolkowski Jr, D., Pardieck, K. L., Fallon, J. E., & Link, W. (2017). The North American breeding bird survey, results and analysis 1966-2015.

Smithson-Stanely, L., and Bergstrom, L. 2017. Audubon. Why Solar Power Is Good for Birds. <https://www.audubon.org/news/why-solar-power-good-birds>. Accessed September 2023.

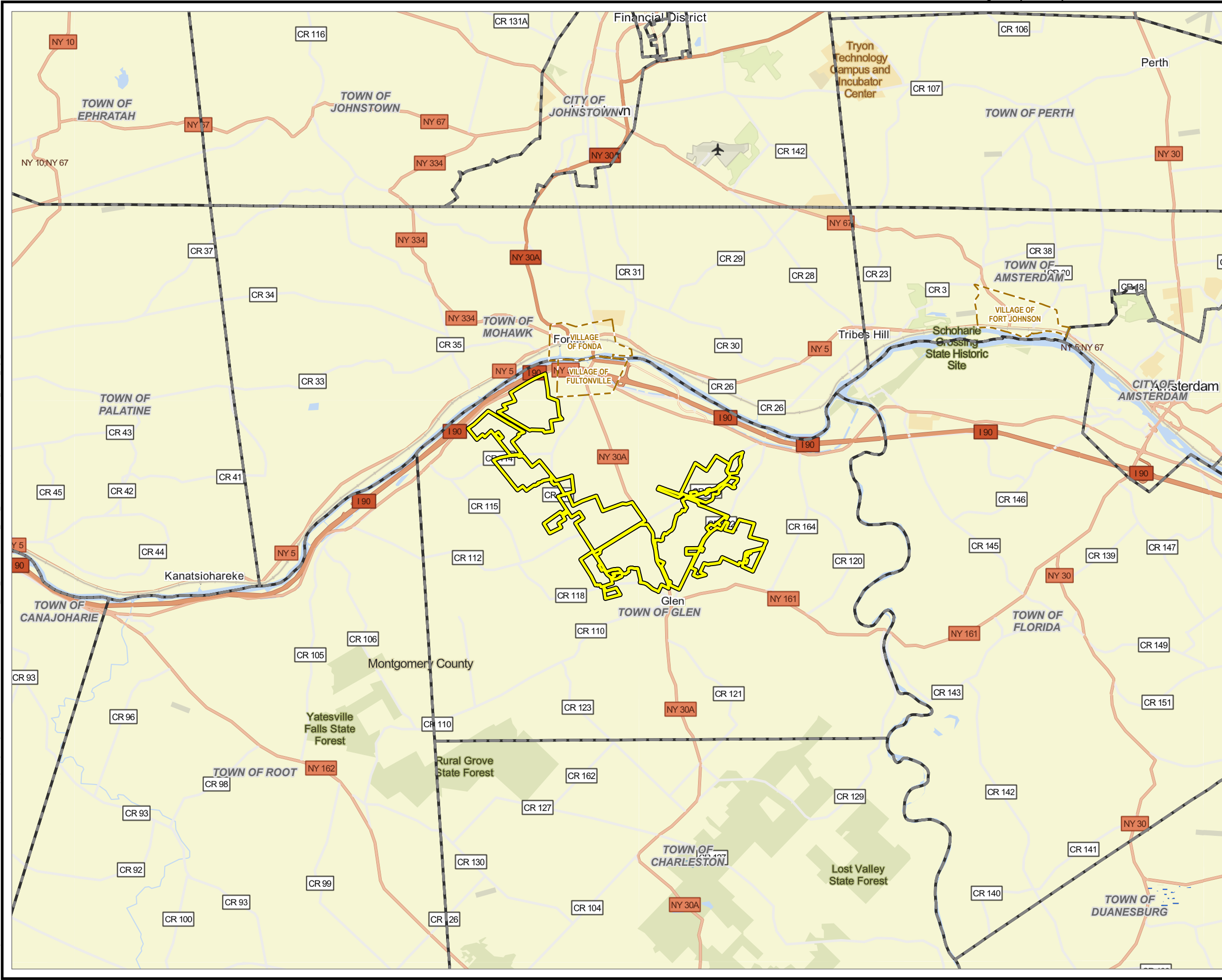
[REDACTED]




Walston, Jr., L. J., Rollins, K. E., LaGory, K. E., Smith, K. P., & Meyers, S. A. (2016). A preliminary assessment of avian mortality at utility-scale solar energy facilities in the United States. *Renewable Energy*, 92, 405-414.

Walston, Jr., L. J., Rollins, K. E., Smith, K. P., LaGory, K. E., Sinclair, K., Turchi, C., ... & Souder, H. (2015). A review of avian monitoring and mitigation information at existing utility-scale solar facilities

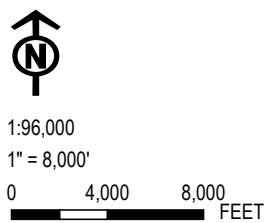
Figure 1. Regional Facility Location

Coordinate System: NAD 1983 StatePlane New York East FIPS 3101 Feet, Map Rotation: 0
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-  FACILITY SITE
-  VILLAGE BOUNDARY
-  TOWN BOUNDARY

BASE MAP: ESRI OPENSTREETMAP BASEMAP.
 DATA SOURCES: ESRI, USGS, NYGIS, TRC.




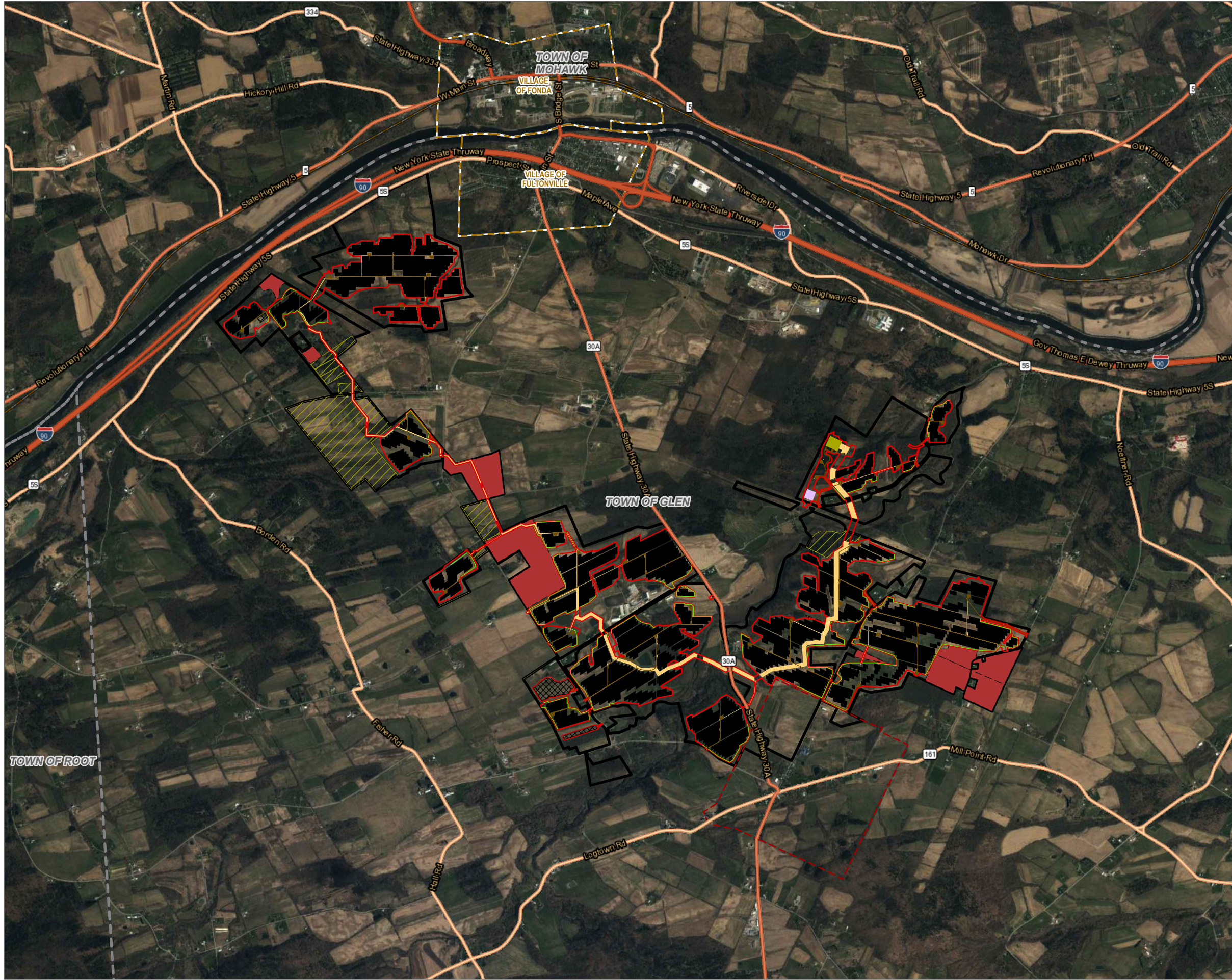
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|---|-----------------------------|
| PROJECT: CONNECTGEN MONTGOMERY COUNTY LLC MILL POINT SOLAR I TOWN OF GLEN, MONTGOMERY COUNTY, NY | |
| TITLE: REGIONAL FACILITY LOCATION | |
| DRAWN BY: A. KAILAS | PROJ. NO.: 411360.1000.0000 |
| CHECKED BY: C. PEARCE | FIGURE 1 |
| APPROVED BY: T. KONDAK | |
| DATE: SEPTEMBER 2023 | |
|  | |
| 3 CORPORATE DRIVE SUITE 202 CLIFTON PARK, NY 12065 PHONE: 518.348.1190 | |
| FILE: | Mill_Point_NCBP.aprx |

Figure 2. Facility Layout



- FACILITY SITE
 - VILLAGE BOUNDARY
 - TOWN BOUNDARY
 - FACILITY EXCLUSION AREAS
 - COLLECTION LAND
 - HAMLET ZONING DISTRICT
- FACILITY COMPONENT**
- ACCESS ROADS
 - ARRAY PANELS
 - COLLECTION STATION
 - COLLECTION TRENCH
 - FENCE LINE 1FT
 - INVERTERS
 - LANDSCAPING
 - LAYDOWN AREA
 - POI/SWITCHYARD
 - POLES
 - LIMIT OF DISTURBANCE

BASE MAP: ESRI WORLD IMAGERY BASEMAP, 3/30/2022.
 DATA SOURCES: ESRI, USGS, NYGIS, TRC.



1:36,000
 1" = 3,000'
 0 1,500 3,000 FEET



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|---|-----------------------------|
| PROJECT: CONNECTGEN MONTGOMERY COUNTY LLC MILL POINT SOLAR I TOWN OF GLEN, MONTGOMERY COUNTY, NY | |
| TITLE: FACILITY LAYOUT | |
| DRAWN BY: A. KAILAS | PROJ. NO.: 411360.1000.0000 |
| CHECKED BY: C. PEARCE | FIGURE 2 |
| APPROVED BY: T. KONDAK | |
| DATE: DECEMBER 2023 | |
| | |
| 3 CORPORATE DRIVE SUITE 202 CLIFTON PARK, NY 12065 PHONE: 518.348.1190 | |
| FILE: | Mill_Point_NCBP.prx |

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Figure 3. Estimated Take of Occupied Habitat

Coordinate System: NAD 1983 StatePlane New York East FIPS 3101 Feet, Map Rotation: 0
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BASE MAP: ESRI WORLD IMAGERY BASEMAP, 3/30/2022.
DATA SOURCES: ESRI, USGS, NYGIS, TRC.



1:36,000
1" = 3,000'



PROJECT: **CONNECTGEN MONTGOMERY COUNTY LLC
MILL POINT SOLAR I
TOWN OF GLEN, MONTGOMERY COUNTY, NY**

TITLE: **ESTIMATED TAKE OF OCCUPIED HABITAT**

| | |
|------------------------|-----------------------------|
| DRAWN BY: A. KAILAS | PROJ. NO.: 411360.1000.0000 |
| CHECKED BY: C. PEARCE | FIGURE 3 |
| APPROVED BY: T. KONDAK | |
| DATE: DECEMBER 2023 | |

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|--|---|
| | 3 CORPORATE DRIVE SUITE 202 CLIFTON PARK, NY 12065 PHONE: 518.348.1190 |
| | FILE: Mill_Point_NCBP.aprx |