



Mill Point
SOLAR I PROJECT

ConnectGen Montgomery County LLC

Mill Point Solar I Project

Matter No. 23-00034

§ 900-2.13 Exhibit 12

NYS Threatened and Endangered Species

REDACTED

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Glossary Terms

- Applicant:** ConnectGen Montgomery County LLC (ConnectGen), a direct subsidiary of ConnectGen LLC, is the entity seeking a siting permit for the Facility from the Office of Renewable Energy Siting (ORES) under Section 94-c of the New York State (NYS) Executive Law.
- Facility:** The proposed components to be constructed for the generation, collection and distribution of energy for the Project will include: photovoltaic (PV) solar modules and their rack/support systems; direct current (DC) and communications cables connecting the panels to inverters; the inverters, with their support platforms, control electronics, and step-up transformers; buried alternate current (AC) medium voltage collector circuits; fencing and gates around each array of modules; access roads; temporary laydown/construction support areas; medium voltage-to-transmission voltage substation with associated equipment and fenced areas; a new 3-breaker ring bus point of interconnection switchyard (POI switchyard); two adjacent approximately 305 foot-long 345 kV transmission line segments to interconnect the new POI to the existing National Grid Marcy – New Scotland 345-kilovolt transmission line; and an operations and maintenance (O&M) building with parking/storage areas as well as any other improvements subject to ORES jurisdiction.
- Facility Site:** The tax parcels proposed to host the Facility, which collectively totals 2,665.59 acres.
- Point of Interconnection (POI) or POI switchyard:** A new 3-breaker ring bus point of interconnection switchyard will be constructed adjacent to the existing National Grid Marcy – New Scotland 345-kilovolt transmission line; the substation will tie into the new POI switchyard via an overhead span and deliver power produced from the Facility onto the electric grid through two overhead spans tapping the National Grid-owned Marcy – New Scotland 345-kV transmission line. The POI is located off Ingersoll Road in the northeastern portion of the Facility Site

- Limits of Disturbance (LOD):** The proposed limits of clearing and disturbance for construction of all Facility components and ancillary features are mapped as the LOD. The LOD encompasses the outer bounds of where construction may occur for the Facility, including all areas of clearing, grading, and temporary or permanent ground disturbance. This boundary includes the footprint of all major Facility components, defined work corridors, security fencing, and proposed planting modules, and incorporates areas utilized by construction vehicles and/or personnel to construct the Facility.
- Project or Mill Point Solar I** Collectively refers to permitting, construction, and operation of the Facility, as well as proposed environmental protection measures and other efforts proposed by the Applicant.
- Study Area:** In accordance with the Section 94-c Regulations, the Study Area for the Facility includes a radius of five miles around the Facility Site boundary, unless otherwise noted for a specific resource study or Exhibit. The 5-mile Study Area encompasses 96,784.84 acres, inclusive of the 2,665.59-acre Facility Site.

Acronym List

AC	Alternating current
BBS	Breeding bird survey
DC	Direct current
ERM	NYSDEC Environmental Resource Mapper
IPaC	Information for Planning and Consultation tool
kV	Kilovolt
LOD	Limits of Disturbance
NCBP	Net Conservation Benefit Plan
NLEB	Northern long-eared bat
NYCRR	New York Codes, Rules and Regulations
NYNHP	New York Natural Heritage Program
NYS	New York State
NYSDEC	New York State Department of Conservation
NYSDPS	New York State Department of Public Service
O&M	Operations and Maintenance
ORES	Office of Renewable Energy Siting
POI	Point of Interconnection
PV	Photovoltaic
USFWS	United States Fish and Wildlife Service
WGRS	Wintering grassland raptor survey
WSCR	Wildlife Site Characterization Report
WSP	WSP USA, Inc.

EXHIBIT 12 NYS THREATENED AND ENDANGERED SPECIES

12(a) Wildlife Site Characterization and Survey Reports for NYSDEC

Pursuant to 19 New York Codes, Rules and Regulations (NYCRR) Section 900-1.3(g)(1), TRC prepared a Wildlife Site Characterization Report (WSCR) for the Mill Point Solar I Project on behalf of the Applicant summarizing publicly available information documented within the last five years on birds, bats, and other wildlife species at the proposed Facility Site and surrounding area. The WSCR provides an analysis on New York State (NYS) listed threatened or endangered species, or species of concern that occur, or have the potential to occur, within the vicinity of the Facility Site. During the development of the WSCR, the Applicant consulted with NYS and federal 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 Site. On April 6, 2021, the Applicant submitted the WSCR to the Office of Renewable Energy Siting (ORES) per Section 900-1.3(g)(2). A meeting was held between the Applicant and ORES on May 25, 2021. After the meeting, ORES provided the Pre-Application Wildlife Site Characterization Consultation Letter confirming the presence of occupied habitat at the Facility and recommending supplemental field studies (e.g., grassland breeding bird surveys). The WSCR is included as Appendix 12-1.

The May 25, 2021 pre-application consultation letter from ORES (Exhibit 11, Appendix 11-3) indicated the following initial findings of occupied habitat based on the WSCR and subsequent meeting:

- The Facility Site is located **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION**
- There is mapped occupied habitat of **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** from the Facility.
- There is mapped occupied habitat of **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** of the Facility.

Based on the finding that the Facility Site overlapped with areas of mapped occupied habitat for **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION**

ORES requested additional details on the location and placement of Facility components and a description of current habitat conditions to inform their final occupied habitat determination. Grassland Breeding Bird Surveys (BBS) and State-Listed Wintering Grassland Raptor Surveys (WGRS) were recommended by ORES in all fields greater than 25 acres within the Facility Site to determine the presence or absence of state-listed avian species.

12(b) Wildlife Surveys

As requested by ORES and in accordance with Section 900-1.3(g), TRC conducted pre-construction avian surveys in support of the Application. Exhibit 12 references various survey reports drafted by TRC on behalf of the Applicant, including the Grassland BBS Report (Appendix 12-2) and State-Listed WGRS Report (Appendix 12-3). In addition, WSP USA, Inc. (WSP) conducted a WGRS (Appendix 12-4) on land adjacent to the Facility proposed for the future Mill Point Solar II Project. The WSP survey effort was within the 5-mile Study Area for Mill Point Solar I and therefore has been included as part of the Mill Point Solar I wildlife site characterization. Summaries of these surveys and reports are provided below.

Grassland Breeding Bird Survey May 2021 – July 2021

TRC conducted a pre-construction survey of grassland breeding bird species on behalf of the Applicant in order to determine the presence and site use by state-listed grassland bird species during the breeding season (late May through July). TRC's survey methodology adhered to the current at the time, NYSDEC *Draft Survey Protocol for State-listed Breeding Grassland Bird Species* (NYSDEC 2015a). A study plan for the grassland BBS was submitted to ORES on May 14, 2021 and approved on July 19, 2021 following the incorporation of ORES' June 12, 2021 feedback and comments.

TRC conducted point counts at 42 survey locations (hereafter "points") within the Facility Site between May 21, 2021 and July 14, 2021 (Study Period). The number of points fluctuated during the survey period as a result of changes in land access, survey protocols, and landcover shifts due to agricultural production. Six rounds of point count surveys were completed over the course of the Study Period, with each location visited between one and six times, resulting in a total of 155-point count surveys.

A total of 1,636 bird observations of 31 species occurred within the Facility Site during the regularly scheduled (point count) surveys. An additional 24 species were recorded incidentally (flyovers, individuals recorded during meander surveys, outside of the 100-meter point count

survey plot, or outside of grassland habitat) throughout the Study Period. The most frequently observed species during surveys was the red-winged blackbird (*Agelaius phoeniceus*) (203 individuals), comprising 30.9 percent of all birds observed. Thereafter, the most frequently observed species were the song sparrow (*Melospiza melodia*), savannah sparrow (*Passerulus sandwichensis*), bobolink (*Dolichonyx oryzivorus*), and common yellowthroat (*Geothlypis trichas*). The five most frequently observed species during regular surveys comprised 80.9 percent of all individuals observed.

In general, grassland bird observations fluctuated throughout the Study Period. The number of observations recorded was highest on June 11, 2021 (n=196). Observations were lowest on June 21, 2021 (n=27). The grassland bird community observed in the Facility Site is composed of species widely distributed in and typical of NYS. Observed species are representative of those expected where suitable grassland habitat is present.

One State-listed threatened species, **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** was documented both during surveys and incidentally. Four **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** were observed on three occasions during the Study Period; three individuals observed were recorded incidentally to surveys. No essential behaviors, nests, or evidence of breeding were observed for this species. One species of special concern, the **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** was observed on two occasions; two singing males were documented within the Facility Site. No nests or nesting behavior were observed for any listed species.

The Grassland BBS Report was submitted to ORES on September 9, 2021 and is included herein as Appendix 12-2.

State-Listed Wintering Grassland Raptor Surveys November 2020 – April 2021

TRC conducted a pre-construction survey of wintering grassland raptors on behalf of the Applicant. The objective of the WGRS was to determine the presence and site use of state-listed grassland raptor species during the winter season and assess the need for additional studies to determine impacts to these species within the Facility Site. Target species for the surveys were the short-eared owl (*Asio flammeus*) and northern harrier. Survey methodology adhered to the NYSDEC *Survey Protocol for State-Listed Wintering Grassland Raptor Surveys* (NYSDEC 2015b

Protocol). On November 6, 2020, a study plan for the WGRS was submitted to the NYSDEC and was revised per the NYSDEC's November 6 and 19, 2020 feedback. The revised study plan was submitted to the NYSDEC on December 4, 2020.

State-Listed WGRS Survey Events were conducted between November 16, 2020 to March 31, 2021. An additional Survey Event was performed between April 1 and April 15, 2021 based on observations of listed species recorded during the final two weeks of March, in accordance with the Protocol. Surveys were conducted using both rotating stationary survey points and weekly driving surveys along roads within the Facility Site, with brief counts conducted along the route in areas of grassland habitat. Stationary survey points were sited to be within or adjacent to grassland habitat within the Facility Site, with the goal of clear visibility in all directions. Rotating stationary survey points were situated no more than 1,000 meters apart for instances wherein one area of grassland habitat required multiple stationary survey points.

A total of 11 stationary survey points and a driving route consisting of 21 driving survey stops were established within the Facility Site. A total of 118 stationary surveys and 231 driving route survey stops were completed over 11 Survey Events, amounting to a total survey effort of 197.1 stationary survey hours and 16.6 driving survey hours.

Forty-eight observations of six raptor species were recorded during stationary surveys comprising a total of 425 use minutes. Overall mean use of the Facility Site by raptors during stationary surveys was 0.036 minutes. Twenty-two observations of four species were recorded during driving route surveys in the Facility Site. **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** were observed most frequently during both stationary and driving surveys. **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** accounted for 45.6 percent of stationary and 44.0 percent of driving route survey observations, respectively.

Two state-listed wintering grassland raptors were observed during the study, nine observations of **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** and 37 observations of **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** including six incidental sightings of **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION**. No **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** were observed

during daytime driving surveys. **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** were observed hunting, circling, and perching during stationary surveys. Twenty-six **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** observations were recorded during or incidental to stationary surveys, while 11 observations were recorded during or incidental to daytime driving surveys. **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** were documented hunting, soaring, and circling at multiple locations throughout the Facility Site over the course of the entire survey period. **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION**

Additionally, two state-listed species of special concern, **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** were observed. Other raptor species observed during the study (e.g., red-tailed hawk, turkey vulture) are common and widely distributed across their respective ranges.

Overall, raptor use of the Facility Site was relatively constant throughout the survey period, with observations distributed spatially and temporally throughout the Facility Site. Observations increased after snowmelt in March. Observations were recorded at all stationary locations, except for S2. As stated above, several state-listed species were documented within the Facility Site, including wintering grassland raptors. Roosting behavior was observed for both the **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** though no roost sites were confirmed.

On May 21, 2021, the State-Listed WGRS report was submitted to the NYSDEC and ORES and is included herein as Appendix 12-3.

State-Listed Wintering Grassland Raptor Surveys December 2021 – April 2022

WSP conducted a season of WGRS within the 5-mile Study Area in the winter of 2021-2022 for areas under consideration for the Mill Point Solar II Project. A study plan was prepared consistent with the NYSDEC *Draft Survey Protocol for State-Listed Wintering Grassland Raptor Surveys* (NYSDEC 2021). While WGRS typically start in November, this survey season was delayed slightly due to changes in the survey area. A study plan was submitted on February 11, 2022, and

ORES provided comments on the study plan on February 22, 2022. Surveys were conducted between December 15, 2021, to March 31, 2022. An additional survey event was performed between April 1 and April 15, 2021 based on observations of threatened and endangered species recorded during the final two weeks of March, in accordance with the Protocol.

A total of 12 stationary survey points and a driving route consisting of 12 driving survey stops were established within the Study Area. A total of 204 stationary surveys and 207 driving route survey stops were completed over 17 Survey Events, amounting to a total survey effort of 319.0 stationary survey hours and 24.1 driving survey hours during the study.

Two-hundred and three sightings of 12 raptor species were recorded across the WSP survey effort. This included two **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** observations during regular surveys and one incidental sighting, 36 **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** observations and three incidental sightings, one observation of a **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** and 37 **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** sightings. WSP surveyors recorded 152 sightings of 12 raptor species during stationary surveys. The most frequently observed species during stationary surveys was the red-tailed hawk, accounting for 43% of all observations. Fifty-one sightings of six raptor species were reported during driving surveys, with red-tailed hawk accounting for 53% of all observations.

Overall, raptor use of the survey area was relatively constant throughout the survey period, with observations distributed spatially and temporally throughout the survey area. Observations increased after snowmelt in March. Observations were recorded at all stationary locations, except for one. Several state-listed species were documented within the survey area, including wintering grassland raptors, **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** These areas are outside the Facility Site for Mill Point Solar I.

In addition, two species of special concern were observed during the surveys, **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** The six sightings of **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** and 25 sightings of **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** were

distributed evenly throughout the survey area. Again, these areas are outside the Facility Site for Mill Point Solar I Project.

On June 1, 2022, the State-Listed WGSR report was submitted to the NYSDEC and ORES and is included herein as Appendix 12-4.

12(c) ORES Determination on Occupied Habitat

The Applicant provided ORES with the WSCR, Grassland BBS Report, and WGRS Reports along with figures and shapefiles as discussed above. To facilitate ORES’ review of the survey reports, the Applicant submitted an Occupied Habitat & Estimated Take Memo and Field-by-Field Analysis on May 1, 2023 with the intent of facilitating a discussion with ORES on occupied habitat delineation within the Facility Site and to guide the siting of Facility components. On May 2, 2023, ORES confirmed receipt of the submission and requested additional shapefiles of Facility components (i.e., access roads, collection lines, laydown areas, etc.) to facilitate their review prior to consultation. The Applicant provided the requested shapefiles on May 24, 2023, which initiated scheduling of the consultation meeting. The Applicant met with ORES on June 23, 2023 for the Occupied Habitat Take Conference to discuss the draft Take Determination provided to the Applicant on June 15, 2023. During the consultation meeting, the Applicant presented two notable areas within the Facility Site where the draft Take Determination and field-by-field analysis provided by ORES differed from the Applicant’s submission. The Applicant identified several fields in the **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** of the Facility Site to be non-contiguous due to the structure and dimensions of the dividing hedgerows. Each of the fields was individually less than 25 acres in size, and therefore considered not suitable habitat. However, ORES disagreed noting that hedgerows may not restrict suitable habitat patch size during winter months or leaf-off season the same way they may during leaf-on which correlates with the breeding season. Therefore, ORES viewed the fields collectively as one field, aggregating greater than 25 acres, and therefore suitable habitat. Furthermore, ORES determined additional fields in the **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** of the Facility as occupied habitat based on a **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** observation, which in the field was recorded as a fly-through (a non-essential behavior) by the onsite biologist, but ORES deemed was a foraging observation based on the low flight height recorded (1-25 feet above ground level). The Applicant responded to the ORES consultation meeting on July 21, 2023 with a supplemental memo providing

additional photographs demonstrating densely vegetated hedgerows in the **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] [REDACTED] > END CONFIDENTIAL INFORMATION** of the Facility and a reiteration of the observing biologist’s stance that no essential behavior was associated with the fly-through observation in the **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** of the Facility. Based on this information, the Applicant reiterated that the subject fields should not be considered occupied habitat as was stated by ORES in the draft Take Determination. On August 3, 2023, per Section 900-1.3(g)(7), ORES provided the Applicant with the final Take Determination for the Facility Site, which is included herein as Appendix 12-5. The August 3, 2023 final Take Determination was consistent with ORES’ previously provided June 15, 2023 draft Take Determination.

12(d) Avoidance and Minimization Measures in Facility Design

As outlined above, the Applicant coordinated with ORES early and often with regards to potential occupied habitat. Initial coordination began on May 25, 2021 with the Pre-Application Wildlife Site Characterization Consultation and an Occupied Habitat & Take Conference was eventually held on June 23, 2023 after the Facility design was further advanced. During the interim two years, the Applicant coordinated regularly with ORES to fulfill requirements for grassland bird surveys and provide an occupied habitat and take field-by-field analysis to help inform ORES’ decision-making and further consultation. During the Occupied Habitat & Take Conference, the Applicant explained the basis for the Facility design and discussed areas where minimization occurred. The Applicant described efforts to identify occupied habitat early in the development process to support siting and design that minimizes take. Specifically, Facility constraints such as landowner driven exclusion areas, setbacks, and other sensitive resources did not allow for substantial shifts in the Facility layout to decrease take of occupied habitat.

Disturbances to occupied habitat caused by construction will be minimized to the greatest extent practicable by adhering to designated construction limits and species-specific time of year restrictions, as applicable. Detailed below are the avoidance and minimization measures that will allow for maximum avoidance of take of several of the listed species with potential to occur within the Facility Site. Potential adverse impacts are summarized in Table 12-1 below.

Table 12-1. Avoidance and Minimization Efforts for Listed-Species within the Facility Site

Species	State Status	Avoidance/ Minimization Measures	Estimated "Take" (Occupied Habitat Acreage)
<p>BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION</p>	<p>[REDACTED]</p>	<ul style="list-style-type: none"> Environmental monitoring will be implemented immediately prior to and during construction within designated occupied habitat to search for BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION occurrence based on the species' seasonal windows for presence. If active nests of BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION are found within occupied habitat, the Applicant will coordinate with the New York State Department of Public Service (NYS DPS) and ORES to adjust the limits of disturbance (LOD) and/or adjust the construction schedule to avoid work in the area until nesting is complete. Time of year restrictions: in BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION breeding habitat, excluding fields containing row crop, work will be conducted only between August 16 and April 22. If construction activities cannot be avoided during this timeframe, the occupied habitat area(s) proposed for active construction will be assessed weekly by an onsite Environmental Monitor or biologist, who will conduct surveys for the BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION 	<p>619.33</p>
<p>Wintering Raptor BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION</p>	<p>[REDACTED]</p>	<ul style="list-style-type: none"> Environmental monitoring will be implemented immediately prior to and during construction in the occupied habitat to search for wintering raptor occurrence based on the species' seasonal windows for presence. If active nests of BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION are found within occupied habitat, then the Applicant will coordinate with the NYSDPS and ORES to adjust the LOD and/or adjust the construction schedule to avoid work in the area until nesting is complete. Time of year restrictions: wintering raptor breeding habitat, excluding fields containing row crop, work will be conducted only between August 16 and April 22. If construction activities cannot be avoided during this timeframe, the occupied habitat area(s) proposed for active construction will be assessed weekly by an onsite Environmental Monitor or biologist, who will conduct surveys for the BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION 	<p>432.34</p>
<p style="text-align: right;">Total Impacted Areas</p>			<p>1,051.67</p>

Bats

BEGIN CONFIDENTIAL INFORMATION < [REDACTED]

[REDACTED]

[REDACTED] > END CONFIDENTIAL INFORMATION

Indiana Bat

According to the Determination of Occupied Habitat, Incidental Take, and Net Conservation Benefit issued by ORES on August 3, 2023, the Facility Site is not within two and a half (2.5) miles of maternity roost sites nor within 2.5 miles of a hibernaculum or bachelor colonies (Appendix 12-5). Consultation with the USFWS via IPaC did not identify presence of the Indiana bat within the vicinity of the Facility Site (Exhibit 11, Appendix 11-1).

Birds

BEGIN CONFIDENTIAL INFORMATION < [REDACTED]

[REDACTED]

[REDACTED] > END CONFIDENTIAL INFORMATION

Grassland Birds

The Facility has been sited to avoid impacts to ecologically sensitive features to the maximum extent practicable and designed to avoid and minimize impacts to wetland and forest habitats, as well as other environmentally sensitive areas. Therefore, by minimizing impacts to wetlands and forests, impacts to agricultural areas, which constitute the majority of habitat available for grassland birds, are unavoidable. Although the Applicant co-located Facility components and minimized the Project footprint where feasible to reduce the Facility impacts on agricultural lands, the Project is expected to nonetheless result in unavoidable adverse impacts to occupied habitat for one state-listed endangered species, the **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** and one state-listed threatened species, the **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION**. Therefore, a Net Conservation Benefit Plan (NCBP) has been developed and is further discussed in Section 12(f) below and included as Appendix 12-6 of this Application. The avoidance and minimization measures for the grassland bird species are outlined in the NCBP.

Other State-Listed Species

The following NYS species of special concern are confirmed to be present within the proposed Facility Site through pre-construction surveys: **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION**. As previously discussed, the Facility layout has been designed to avoid and minimize impacts to wetland and forest habitats, and culturally and historically sensitive areas. Therefore, impacts to agricultural areas, which constitute the majority of state-listed grassland bird habitat, are unavoidable. Avoidance and minimization measures for state-listed species of special concern are outlined in the NCBP (Appendix 12-6).

12(e) Facility Design Criteria for Threatened and Endangered Grassland Bird Species

Per Section 900-2.13(e) of the 94-c regulations, “For a facility to be determined to have only *de minimis* impacts to NYS threatened or endangered grassland birds or their habitat, the applicant shall submit a demonstration that the facility has been designed to meet one or more of the following criteria, as applicable.”

1. Species not present based on appropriate surveys and only impacts would be to occupied habitat based on records greater than five years old from the time of the WSCR.

2. Facility construction within occupied habitat will only impact grasslands less than 25-acres in size and do not include a recent (less than five years) confirmed nesting or roosting location.
3. Only impacts would be to occupied habitat identified for species proposed by the NYSDEC for delisting or downlisting to Special Concern.

Based on these criteria and the Determination of Occupied Habitat, Incidental Take, and Net Conservation Benefit issued by ORES, the Project does not meet these criteria and therefore is anticipated to have greater than a *de minimis* impact on occupied habitat for state-listed grassland bird species.

It is important to note that on October 25, 2019, the northern harrier was pre-proposed for downlisting by the NYSDEC under Part 182 of 6 NYCRR from threatened to special concern. Additionally, bald eagles are pre-proposed for downlisting from threatened to special concern, and osprey and sharp-shinned hawk are both pre-proposed for delisting from special concern to off list. There is currently no timeline for regulatory changes to be made to the list of endangered species. Despite these proposed changes, these species have not been issued a Notice of Adoption of regulations, and therefore do not currently apply.

12(f) Net Conservation Benefit Plan (NCBP)

Based on the occupied habitat determination, the Project will adversely impact (“take”) state-listed grassland bird habitat. Therefore, pursuant to 6 NYCRR Part 182 a NCBP has been prepared in compliance with Section 900-6.4(o) and is included as Appendix 12-6. The purpose of the NCBP is to identify and describe proposed mitigation actions to offset impacts resulting from Project development such that a net conservation benefit is achieved for each listed species impacted. The implementation of the proposed NCBP would result in a net positive conservation benefit on each of the affected species by protecting suitable habitat.

The Applicant is proposing a NCBP involving permittee-implemented grassland bird habitat conservation in lieu of payment of a mitigation fee per Section 900-6.4(o)(3)(ix), as the Applicant understands a mitigation fund per Section 900-6.4(o)(3)(ix) is not available at this time. The required mitigation ratio will be 0.2 acres for every acre of occupied wintering habitat for the **BEGIN CONFIDENTIAL INFORMATION < [REDACTED] > END CONFIDENTIAL INFORMATION** within the Facility Site. The estimated mitigation acreage for the Facility based on these ratios is 210.33 acres of wintering habitat. Because no essential nor

breeding behaviors of listed species were observed during BBS, it is anticipated that the Facility will not impact grassland breeding bird habitat. The mitigation is proposed to be implemented by the Applicant or a designated agent for the entire life of the Facility.

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 current listed species. Additionally, if for some reason the permittee-implemented NCBP is no longer feasible, the Applicant would instead negotiate a mitigation fee to be provided on a one-time basis to the Endangered and Threatened Species Mitigation Bank Fund once available, to provide a net conservation benefit for the take of occupied habitat, as described above.

12(g) References

New York State Department of Environmental Conservation (NYSDEC). 2015a. Draft Survey Protocol for State-listed Breeding Grassland Bird Species.

NYSDEC. 2015b. NYSDEC Draft Survey Protocol for State-listed Wintering Grassland Raptor Species.

NYSDEC. 2021. NYSDEC Draft Survey Protocol for State-listed Wintering Grassland Raptor Species.