

MILL POINT SOLAR I PROJECT

ConnectGen Montgomery County LLC

Matter No. 23-00034

Net Conservation Benefit Plan

Revised August 2024

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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 (Revised Figure 1). The Facility will be developed on 2,479.1 acres (ac) of leased, private land (Facility Site) (Revised 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 statelisted species, **BEGIN CONFIDENTIAL INFORMATION <**

> END CONFIDENTIAL INFORMATION as issued by the Office of Renewable Energy Siting (ORES) in their Determination of Occupied Habitat, Incidental Take, and Net Conservation Benefit (Revised 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 Revised 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 ORES 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 ORES 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. ORES provided a determination of August 3, 2023 for the Facility. On July 15, 2024, the Applicant provided ORES with a memo outlining the Amendment of the Application and the potential of increased impacts to occupied habitat. On July 31, 2024 ORES provided a new Take Determination for the Facility which is also included in Revised Appendix 12-5.

The July 31, 2024, determination on occupied habitat, incidental take, and net conservation benefit letter indicated the Facility Site contains the following:

- 1,097.61 ac of occupied wintering habitat for BEGIN CONFIDENTIAL INFORMATION <
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- 478.28 ac of occupied wintering habitat for BEGIN CONFIDENTIAL INFORMATION <
- Other known state-listed species occurrences within the Facility Site include BEGIN
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 A NCBP is required for the take of occupied wintering grassland bird habitat for BEGIN CONFIDENTIAL INFORMATION < END CONFIDENTIAL INFORMATION

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 Revised 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.

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During WGRS conducted in 2020-2021, **BEGIN CONFIDENTIAL INFORMATION <** > END CONFIDENTIAL INFORMATION 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 **BEGIN CONFIDENTIAL INFORMATION <** > END **CONFIDENTIAL INFORMATION** activity located in the **BEGIN CONFIDENTIAL INFORMATION** < > END CONFIDENTIAL INFORMATION 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 or birds exhibiting low, meandering flights over open habitat while scanning the ground. 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 **BEGIN CONFIDENTIAL INFORMATION** < > END CONFIDENTIAL INFORMATION portion of the Facility Site. The habitat surrounding BEGIN CONFIDENTIAL INFORMATION < > END CONFIDENTIAL INFORMATION where the Mill Point Solar I Project Net Conservation Benefit Plan Page 5

activity was concentrated, was comprised of BEGIN CONFIDENTIAL INFORMATION <

END CONFIDENTIAL INFORMATION While roosting was suspected in this area, no confirmed roost location was identified. S e e Appendix 12-3 of Revised Exhibit 12 of the 94-c Application for the 2020-2021 State-Listed Wintering G r a s s l a n d Raptor Survey Report and Figures.

WGRS were conducted by WSP the following winter in 2021-2022. Thirty-nine observations of BEGIN CONFIDENTIAL INFORMATION < > END CONFIDENTIAL **INFORMATION** were reported during regular surveys. No incidental observations were recorded. Twenty-three of the 39 observations were of individuals exhibiting foraging behaviors. One female BEGIN CONFIDENTIAL INFORMATION < > END CONFIDENTIAL **INFORMATION** 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. BEGIN CONFIDENTIAL INFORMATION < > END CONFIDENTIAL INFORMATION observations were widely distributed throughout the Facility Site, with observations primarily occurring in **BEGIN CONFIDENTIAL INFORMATION <** > END CONFIDENTIAL INFORMATION with some limited use of BEGIN CONFIDENTIAL **INFORMATION** < See Appendix 12-4 of Revised 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 **BEGIN CONFIDENTIAL INFORMATION < Second Sec**

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Mill Point Solar I Project Net Conservation Benefit Plan



> END CONFIDENTIAL INFORMATION were documented on nine occasions at two locations during WGRS in the winter of 2020-2021. Activity was primarily concentrated around BEGIN CONFIDENTIAL INFORMATION < > END CONFIDENTIAL INFORMATION in the BEGIN CONFIDENTIAL INFORMATION < </p>

> END CONFIDENTIAL INFORMATION 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 BEGIN CONFIDENTIAL INFORMATION
 > END CONFIDENTIAL INFORMATION at this same location, could indicate a potential roost location in the vicinity of Point BEGIN CONFIDENTIAL INFORMATION < > END CONFIDENTIAL INFORMATION See Appendix 12-3 of Revised Exhibit 12 of the 94-c Application for the 2020-2021 Winter Raptor Survey Report.

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

2.3 Existing Habitat Conditions

Mill Point Solar I Project Net Conservation Benefit Plan 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 (Revised Figure 3).

2.3.1 Breeding Habitat

Four BEGIN CONFIDENTIAL INFORMATION < box 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 BEGIN CONFIDENTIAL INFORMATION < > END CONFIDENTIAL INFORMATION 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 BEGIN CONFIDENTIAL INFORMATION < CONFIDENTIAL INFORMATION 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 Revised Figure 3, occupied wintering habitat for **BEGIN CONFIDENTIAL INFORMATION < END CONFIDENTIAL INFORMATION** is located in multiple portions of the Facility Site, while occupied habitat for **BEGIN CONFIDENTIAL INFORMATION** < short-eared owl is located in the **BEGIN CONFIDENTIAL INFORMATION** <

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2.4 Estimated Take of Occupied Habitat

Based on the WSCR, the BBS, the WGRS, and ORES's occupied habitat and take determination dated July 31, 2024, the Facility will be impacting 1,097.61 ac of occupied wintering **BEGIN CONFIDENTIAL INFORMATION** <

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 Mill Point Solar I Project Net Conservation Benefit Plan Page 8 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 **BEGIN CONFIDENTIAL INFORMATION** <

- Total area of Wintering Occupied Habitat Taken: 1,097.61 ac
 - 478.28 ac of BEGIN CONFIDENTIAL INFORMATION < > > END CONFIDENTIAL INFORMATION
 - 619.33 ac of BEGIN CONFIDENTIAL INFORMATION <

Habitat Type	Species	Estimated Take Acreage	Estimated Mitigation Acreage
BEGIN CONFIDENTIAL INFORMATION		478.28 acres	95.66 acres
	> END CONFIDENTIAL	619.33 acres	123.86 acres
	Total:	1,097.61 acres	219.52 acres
Totals may differ due to rounding.			

Table 1. Estimate Take of Occupied Habitat

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, Mill Point Solar I Project

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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, shorteared 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 availably 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.

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%

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

¹Walston 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 **BEGIN CONFIDENTIAL INFORMATION < END CONFIDENTIAL INFORMATION** 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 NYSlisted 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 ORES 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 constructionrelated 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

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- 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 ORES. 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-exiting grassland vegetative conditions by re-grading and re-seeding with an appropriate native see 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 ORES, 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 ORES 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 ORES, 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 ORES 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 ORES; and

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

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 ORES 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 property 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 **BEGIN CONFIDENTIAL INFORMATION** < **END CONFIDENTIAL INFORMATION** within the Facility Site (Revised 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-funded mitigation via an agreement with a third-party mitigation provider for 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 219.52 ac of wintering habitat (Section 2.4).

The above-described mitigation is proposed to be implemented by the Applicant via a third-party mitigation provider 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 reevaluated 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 provider Mill Point Solar I Project Net Conservation Benefit Plan Page 16 to pursue alternatives to ensure a net conservation benefit for the take of occupied habitat, as described above.

4.2 Mitigation

The Applicant is actively pursuing off-site permittee-funded mitigation options via third-party mitigation providers, which will be finalized and approved prior to construction of the Facility, or the Applicant 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. If neither an off-site third-party mitigation site nor a Mitigation Bank Fund is achievable, the Applicant may pursue other off-site permittee-implemented mitigation options which will be managed and implemented directly by the Applicant.

4.2.1 Site Selection

The mitigation site selection process will consider 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 Mill Point Solar I Project Net Conservation Benefit Plan Page 17 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 not currently considering on-site mitigation options. Currently, based on the proposed layout of the Facility, landowner participation, and the above required site selection criteria, there are no readily available on-site parcels within the Facility Site that are available for mitigation. The mitigation site selection will prioritize site(s) that meet one or more of the criteria presented in Section 4.2.1.

4.3.2 Offsite Mitigation

The Applicant is actively pursuing off-site permittee-funded mitigation options via third-party mitigation providers that will supply mitigation site(s) 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 on-site 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 off-site to maximize successful mitigation results for the BEGIN CONFIDENTIAL INFORMATION <

4.3.3 Additional Mitigation Site(s)

If for some reason the off-site permittee-funded mitigation option does not meet mitigation requirements, the Applicant will look for 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 Site Selection, Survey, and Habitat Improvements

Whether the Applicant secures off-site mitigation via a third-party mitigation provider or performs off-site permittee-implemented mitigation, the Applicant, or its designated contractor will identify land, secure the rights to, and conduct due diligence efforts on acreage sufficient to provide the

required mitigation acres. General vegetation surveys will be performed to identify existing site characteristics and to inform site management processes. The survey will serve as a baseline for reference during monitoring events.

Initial vegetation management will be performed in the first year following the commencement of construction to establish suitable habitat conditions for the target species. Initial site enhancement work will focus on removing unwanted vegetation such as trees, shrubs, and invasive species to facilitate the growth of native grasses that provide habitat to the target species and increase connectivity of grassland habitat. Vegetation/trees would be cut low enough and/or removed to permit brush hogging. Removing the hedgerows and woody vegetation improves grassland habitat by increasing connectivity with other fields, increasing the size of contiguous grassland patches, and by removing potential predator corridors.

Initial management actions may include the following practices:

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

This initial site enhancement will prepare the mitigation site(s) for continued maintenance. Continued habitat improvements and site management processes are discussed below.

4.4.2 Vegetation Maintenance and Monitoring

The mitigation site(s) will be managed to maintain grassland habitat and prevent ecological succession. 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. For the duration of the permit, after initial site enhancement work, mitigation site(s) will be left undisturbed during the wintering season (November 1st-March 31st) and the nesting season (April 23rd-August 15th) to avoid impacts or disturbance to bird activity.

Management of the mitigation site(s) will be completed in 6-year rotations. Rotational mowing will be completed every three years, with roughly one-third of the mitigation site(s) being mowed

between of August 16th and October 31st of each year. As such, each section of the mitigation site(s) will be mowed twice in each 6-year interval. To prevent the succession of woody vegetation, following NYSDEC's Best Management Practices for Grassland Birds (NYSDEC, [*n.d.*]a), vegetation will be cut to a height of 6-12 inches using a brush-hog or similar rotary-blade mower, and at least one third of cuttings will be left on the fields to provide coverage for target species, winter foraging habitat for birds as well as to attract moles, voles, and other prey for raptors and owls. 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. If and where necessary, block mowing or spot mowing is to be utilized to target problem areas and create a more heterogeneous vegetation structure.

Mowing will be performed upon verification that target species utilizing the mitigation site(s) have fully fledged. Rotational mowing ensures that there is vegetation of different heights and densities in each section of the mitigation site(s) at any given time providing various stages of succession across the mitigation site(s) to support optimal habitat conditions for all species targeted in the Plan. This variety of habitat is expected to increase species diversity and encourage utilization of the mitigation site(s) by the target species. For example, **BEGIN CONFIDENTIAL INFORMATION** 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. **BEGIN CONFIDENTIAL INFORMATION < 1000 END CONFIDENTIAL INFORMATION Accurrence** in medium to tall vegetation (40-60-cm) and medium forb cover (20%).

At the end of each 6-year interval, more intensive management practices such as woody vegetation management via brush hogging and invasive plant species treatment will be performed if required to ensure success. Also, during Year 6, the entirety of the mitigation site(s) will be mowed to set-back succession and initiate a new management cycle.

A schedule for habitat surveys, ongoing monitoring, and reporting will be included in the Final Net Conservation Benefit Plan to be submitted as Pre-Construction Compliance Filing. A monitoring report will be prepared annually for the life of the 94-c Permit. Monitoring ensures compliance of the mitigation site(s) with the approved NCBP, documents site conditions, and helps determine if adaptive management is needed. Invasive species levels will be noted,

utilizing the monitoring events to document the presence of invasive species that may pose a threat to the habitat value for the target species. Spot management to control invasive plant species (glossy buckthorn, pale and black swallowwort, Canada thistle, Phragmites, etc.) will be applied as needed.

Biologists conducting the 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 monitoring will be included in a Monitoring Report following each monitoring event which will be available to NYSDPS and ORES upon request. For the monitoring that will occur during the first management cycle, consultation with the NYSDPS and ORES will be conducted to determine future management and monitoring actions.

4.4.3 Monitoring Report

Conditions observed during site 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; Mill Point Solar I Project Net Conservation Benefit Plan
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- 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). Monitoring Reports will describe current conditions, note any deficiencies observed at the mitigation site(s), and will recommend corrective actions.

The effectiveness of any corrective actions will be evaluated during subsequent monitoring events and will be reported in their affiliated 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. During the first vegetation management cycle (6 years), the Applicant will consult with the NYSDPS and ORES 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, or its designated contractor, according to an Implementation Agreement that:

- Identifies all parties that will be involved in the Plan, with parties 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 parties identified pursuant to the first bullet of this subsection.

As mitigation site(s) have not yet been finalized, a Final Implementation Agreement will be provided to NYSDPS and ORES prior to commencement of construction.

4.6.1 Involved and Responsible Parties

It is anticipated that the Applicant will not be the owner of the mitigation site(s) as the Applicant is pursuing an off-site permittee-funded mitigation option managed by a third-party mitigation provider . The Applicant will enter into an agreement with a third-party mitigation provider to identify, secure the rights to, and conduct due diligence efforts on land suitable for the Project's mitigation requirements. Management and monitoring activities will also be performed by the third-party mitigation provider, their contractors, or by site landowners under direction of the third-party provider . Identification of all parties involved in the Plan relating to funding and implementation the Plan clearly identified in the Final Implementation Agreement, as attached to the Final NCBP, prior to commencement of construction as provided as a pre-construction compliance filing.

4.6.2 Implementation Timeline

Implementation of NCBP will commence in the first growing season following initiation of construction activities and monitoring and maintenance will continue 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 6 years. The monitoring that will occur during the preliminary site management in the first year will establish baseline conditions. Monitoring will be performed each year during the first vegetation management cycle (6 years) and then each year that vegetation management occurs.

An estimated implementation schedule is outlined in Table 3 below.

Year	Activity	Timing	Notes
0	Preliminary Site Management and Vegetation Monitoring	Between Aug. 16 – Oct. 31	
1	Spot treatment for invasives		
2	Spot treatment for invasives		

Table 3. Estimated Vegetation Management Implementation Schedule

Year	Activity	Timing	Notes
3	Mowing (1/3 of Site)	Between Aug. 16 – Oct. 31	
	Vegetation Monitoring	Post-mowing	
4	Mowing (1/3 of Site)	Between Aug. 16-Oct. 31	lf mowing sections are halved, wait to mow until Year 5.
	Vegetation Monitoring	Post-mowing	
	Mowing (1/3 of Site)	Between Aug. 16-Oct. 31	
5	Vegetation Monitoring	Post-mowing	
6	Succession Set-back Mowing (Entire Site)	Between Aug. 16-Oct. 31	New management cycle begins
	Vegetation Monitoring	Post-mowing	
10-12	Repeat Years 3-5 Vegetation Management & Monitoring		lonitoring

4.6.3 Funding

The Applicant will provide the necessary funding for the implementation of the NCBP. The Applicant will enter into an agreement with a third-party mitigation provider to provide the mitigation site(s) and ongoing monitoring and management, and reporting to satisfy ORES requirements.

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Figure 1. Regional Facility Location



REDACTED -- Matter No. 23-00034 -- ConnectGen Montgomery County LLC

Figure 2. Facility Layout



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Figure 3. Estimated Take of Occupied Habitat

