



SOMERSET SOLAR, LLC

MATTER NO. 22-00026

§900-2.13 Exhibit 12

New York State Threatened and Endangered Species

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Acronym List

§	Section
AES	The AES Corporation, Inc.
Applicant	Somerset Solar, LLC
BBS	Breeding Bird Survey
NCBP	Net Conservation Benefit Plan
NYCRR	New York Codes, Rules and Regulations
NYNHP	New York National Heritage Program
NYS	New York State
NYSDEC	New York State Department of Environmental Conservation
ORES	Office of Renewable Energy Siting
SSC	Species of Special Concern
SWDA	Solid Waste Disposal Area
Tetra Tech	Tetra Tech, Inc.
USCs	Uniform Standards and Conditions
WGRS	Wintering Grassland Raptor Survey
WSCR	Wildlife Site Characterization Report

Glossary Terms

Applicant	Somerset Solar, LLC, a subsidiary of The AES Corporation, Inc. (AES), the entity seeking a siting permit for the Facility Site from the Office of Renewable Energy Siting (ORES) under Section (§) 94-c of the New York State Executive Law.
Application	Application under §94-c of the New York State Executive Law for review by the ORES for a Siting Permit.
Facility	The proposed components to be constructed for the collection and distribution of energy for the Somerset Solar Facility, which includes solar arrays, inverters, electric collection lines, and the collection substation.
Facility Site	The limit of disturbance (LOD) that will be utilized for construction and operation of the Facility, which totals about 696 acres on the Project Parcels in the Town of Somerset, Niagara County, New York (Figure 2-1).
Project Parcels	The parcels that are currently under agreement with the Applicant and Landowner, totaling about 1,784 acres in the Town of Somerset, Niagara County, New York, on which the Facility Site will be sited (Figure 3-1).
Project Site	The acreage of the Project Parcels under agreement between the Applicant and the Landowner, consisting of approximately 1,396 acres, in which the Applicant has performed diligence, surveys and assessments in support of Facility design and layout.

EXHIBIT 12 THREATENED AND ENDANGERED SPECIES

This exhibit addresses the requirements specified in 19 New York Codes, Rules and Regulations (NYCRR) Section (§) 900-2.13 regarding New York State (NYS) threatened and endangered species.

Through correspondence with the New York National Heritage Program (NYNHP), NYS Department of Environmental Conservation (NYSDEC), and U.S. Fish and Wildlife Service, it was determined that the approximately 1,396-acre Project Site has the potential to support the following listed species: bald eagle (*Haliaeetus leucocephalus*), short-eared owl (*Asio flammeus*), and northern harrier (*Circus hudsonius*). As part of Facility consultation process with the Office of Renewable Energy Siting (ORES), Breeding Bird Surveys (BBS) and Wintering Grassland Raptor Survey (WGRS) were conducted on the Project Site as requested; which documented the occurrence of all three of these species. Consultation with ORES indicated that the Facility is located within 0.25 mile of a known bald eagle nest. The Facility is unlikely to impact this species or disturb the active nest, as the Facility has been designed to avoid a greater than 660-foot buffer around the nest (an approximate 1,200-foot distance between nest and limit of disturbance is provided), and forestland located between the Facility Site and the nest will be retained to provide a visual buffer throughout construction and operation. To further avoid and minimize potential impacts to bald eagles, construction activities will adhere to the Uniform Standards and Conditions (USCs), §900-6.4(o)(6)(i) and (ii). Consultation with ORES also identified 114.8 acres of the Project Site as occupied wintering habitat for northern harrier, and a Preliminary Draft Net Conservation Benefit Plan (NCBP) has been prepared as part of their request; the location of the mitigation site is still being negotiated with landowners. The NCBP will be finalized with ORES as part of the Siting Permit process and compliance filing requirements.

The repurposing of the industrialized area of the Facility Site north of Route 18 has allowed for siting a substantial amount of Facility infrastructure on previously disturbed industrial lands associated with the former coal plant, Somerset Station. Additionally, sensitive habitats present on the Project Site (aquatic and forested habitats) are avoided by further siting solar arrays primarily in agricultural fields, minimizing construction disturbances, including tree/shrub clearing and grubbing; adhering to designated construction limits and species-specific time of year restrictions; and avoiding off-limit sensitive areas. The Facility has been designed to comply with 19 NYCRR §900-2.13 and the USCs, and impacts related to NYS threatened and endangered species have been avoided and minimized to the maximum extent practicable.

12(a) Wildlife Site Characterization Report

On behalf of Somerset Solar, LLC (the Applicant), Tetra Tech, Inc. (Tetra Tech) prepared a Wildlife Site Characterization Report (WSCR) that was submitted to the ORES and NYSDEC in April 2021 (Appendix 12-A). The report provides a summary of existing public information, reports from regulatory agencies, and the results of project-specific field surveys on wildlife species, including threatened and endangered species, which have been documented or could utilize habitats within the Project Site. The report provides a summary of desktop data, consistent with Subpart 900-1.3(g)(1). Several field studies conducted prior to the development of the WSCR are summarized, including key observations and results from the Facility's:

- Spring BBS (Appendix 12-B); and
- WGRS (Appendix 12-C).

Therefore, the WSCR includes a summarization of the site-specific field data collected in regard to threatened and endangered species in addition to the desktop data analysis. Additional information for wildlife surveys completed as part of the pre-application process are discussed in section 12(b) of this exhibit below.

According to the NYNHP database search (dated March 26, 2021; Appendix B in Appendix 12-A, attached) there were no records of rare or NYS-listed animals, plants, or significant natural communities identified for the Project Site; however, this review identified a bald eagle nest as occurring within 0.25-mile of the Project Site.

12(b) Pre-Application Wildlife Survey Reports

As part of the pre-application process, a BBS (Appendix 12-B; Tetra Tech 2021a) and WGRS (Appendix 12-C; Tetra Tech 2021b) were completed for the Project Site. This section provides a brief synopsis of the results of these studies, as they pertain to the presence of federal and/or NYS listed species. Prior to the initiation of the field studies, the Applicant prepared and submitted a Breeding Bird Study Plan to NYSDEC (Appendix 12-D), which was approved to be conducted in accordance with existing NYSDEC guidelines for grassland bird surveys (NYSDEC 2015a, NYSDEC 2015b). Both reports were submitted to and accepted by ORES in consultation with NYSDEC, for purposes of the review required by §900-1.3(g)(5), and the ORES' final determination of occupied habitat, incidental take and net conservation benefit required by §900-1.3(g)(7).

With respect to listed bat habitat, the Applicant conducted a desktop review of Bat Conservation International and the NYSDEC websites to determine potential presence of listed bat species at

the Project Site or surrounding vicinity (Appendix 12-A). Results of this review determined Indiana bat (*Myotis sodalist*) does not occur in Niagara County. Additionally, results did not identify any northern long-eared bat (*Myotis septentrionalis*) maternity roost trees within 150 feet of the Project Site, or hibernacula within 0.25-mile of the Project Site.

Breeding Bird Survey

Eight rounds of morning breeding bird surveys were conducted between May 20 and July 2, 2021. A total of 16 point-count locations were established within anticipated development areas for the Facility, with 14 points located in row crop agricultural habitat and two points located in maintained old fields located on the former coal plant site. A total of 11 hours of survey effort were completed for this survey.

Throughout the survey, a total of 128 point-count surveys were completed, over which 87 species were observed. Of the 87 species observed, the five most abundant species accounted for 43% of the total birds detected, which included red-winged blackbird (*Agelaius phoeniceus*), European starling (*Sturnus vulgaris*), barn swallow (*Hirundo rustica*), northern cardinal (*Cardinalis cardinalis*), and Canada goose (*Branta canadensis*). None of these are NYS-listed species.

Breeding bird surveys identified two NYS-listed species within the Project Site: the NYS-endangered peregrine falcon (*Falco peregrinus*) and the NYS-threatened bald eagle. Five NYS Species of Special Concern (SSC) were identified within the Project Site including: common nighthawk (*Chordeiles minor*), Cooper's hawk (*Accipiter cooperii*), grasshopper sparrow (*Ammodramus savannarum*), horned lark (*Eremophila alpestris*), and vesper sparrow (*Pooecetes gramineus*). Figures and data tables are available in the full BBS report, included herein as Appendix 12-B.

Wintering Grassland Raptor Survey

The WGRS was conducted from January 8 through April 5, 2021. Four stationary points and 16 driving points were surveyed, with a total of 67.5 hours of survey effort completed.

Few raptors were observed during the stationary surveys, with a total of 23 sightings of six species, including three NYS-listed species: northern harrier, short-eared owl, and bald eagle. There were 149 sightings of seven raptor species recorded during the driving surveys. Northern harrier consisted of 19 observations, ranging from one to three individuals per sighting, all of which were observed in the vicinity of the solid waste landfill (Solid Waste Disposal Area [SWDA] I; see Figure 3-11, Map 6 and 7) located north of the

Project Site. The noted behavior of each sighting was documented and included multiple observations of harriers foraging over the SWDA I landfill. No roosting was observed.

One observation of the short-eared owl, a NYS endangered species, occurred during stationary surveys. This species was a target species along with northern harrier for the WGRS protocol. In addition to the single short-eared owl sighting and the 23 northern harrier sightings, other raptor species sightings included 62 red-tailed hawk (*Buteo jamaicensis*), 13 rough-legged hawk (*Buteo lagopus*), eight bald eagle, 54 turkey vulture (*Cathartes aura*), nine American kestrel (*Falco sparverius*), and two Cooper's hawk (*Accipiter cooperii*). Additional details regarding observations of the WGRS are provided in Appendix 12-C.

12(c) ORES Determination on Occupied Habitat

ORES and the Applicant held a WSCR review meeting on May 27, 2021, which included discussion on the differences in the analyses on occupied habitat. Based on the pre-application Consultation for the Facility conducted with ORES and ORES' review of the results of the Facility's WSCR submitted in April 2021, ORES provided a letter dated May 27, 2021 to the Applicant which included their initial findings regarding the presence of occupied habitat within the Project Site. On November 16, 2021, ORES requested an analysis of potential occupied habitat, for which the Applicant provided a Field-by-Field memorandum to ORES on February 15, 2022. It was the Applicant's and their consultant's (Tetra Tech) opinion that suitable habitat for northern harrier does not exist at the Project Site. The potential for the Project Site to contain occupied habitat for northern harrier was further discussed with ORES and NYSDEC representatives in a conference call held on March 14, 2022. Open areas of the Project Site identified by ORES were discussed, including their suitability to provide occupied habitat for this species. A revised memorandum was submitted to ORES on April 11, 2022 (Appendix 12-E) that incorporated feedback received from NYSDEC regarding their position that the fields would be considered occupied habitat, and included information that because the fields would be used for staging during the decommissioning process, that these fields be removed from consideration as occupied habitat. The memoranda provided information and photographic documentation that established the disturbed condition of the Project Site, which consists of a dormant industrial site, with a legacy of industrial and ongoing decommissioning activities. On June 23, 2022 ORES issued their determination which included the following information for the below indicated habitat and species (Appendix 12-D).

Northern long-eared bat (*Myotis septentrionalis*) – Federally threatened and NYS threatened

The Project Site was noted as not being within 1.5 miles of a known maternity roost site, nor was it located within 5 miles of a hibernaculum site.

Indiana bat (*Myotis sodalis*) – Federally endangered and NYS endangered

The Project Site was noted as not being within 2.5 miles from a known maternity roost site, nor was it located within 2.5 miles of a hibernaculum site or bachelor colony.

Bald eagle (*Haliaeetus leucocephalus*)– NYS threatened

ORES noted that the Project Site is within 0.25 mile of a known bald eagle nest. To avoid and minimize potential impacts to bald eagles, construction will adhere to the USCs §900-6.4(o)(6)(i) and (ii).

Grassland Birds

In its determination received on June 23, 2022 (Appendix 12-D), ORES determined that the Project Site overlaps with occupied wintering habitat for northern harrier, with an estimated 114.8 acres anticipated to be adversely impacted by the Facility. In response to this finding, the Applicant has drafted a Preliminary Draft NCBP that provides for conservation of suitable habitat for northern harrier at a nearby site (see section 12(f) of this exhibit).

To avoid and minimize impacts to occupied grassland habitat, construction will adhere to the USCs §900-6.4 (o)(3)(i)-(vii). To mitigate impacts to occupied grassland habitat, the Applicant will adhere to the USCs, §900-6.4(o)(3)(viii) and (ix).

12(d) Avoidance and Minimization Measures in Facility Design

Based on ORES's final determination of occupied habitat, the Facility is anticipated to impact approximately 114.8 acres of wintering northern harrier habitat. The Applicant does not anticipate any unavoidable potential impacts to other NYS threatened, endangered or SSC during construction or operation of the Facility. SWDA I where northern harrier was observed during field surveys is located outside the Project Site and will not be impacted by construction activities, with the exception of short-term noise impacts that will occur during active construction periods.

To avoid and minimize impacts to northern harrier, the Applicant will comply with the USCs outlined in §900-6.4(o)(3)(i)-(vii). The following measures will also be implemented:

- Prior to construction, supervisory construction personnel will be instructed and trained on the measures to be implemented for protection of wildlife resources. Instruction will include: (1) applicable federal and NYS laws regarding avian protection; (2) the importance of these resources, and (3) the purpose and necessity of protecting them. This information will be disseminated to applicable contractor personnel, including new personnel that enter the construction process for the Facility after construction is initiated, to ensure that all appropriate staff members are aware of the correct procedures and responsibilities for identifying and reporting wildlife observations and incidences.
- Construction vehicles will be restricted from unnecessarily driving and parking outside the planned limits of disturbance.
- During construction and operation activities, the Applicant will set speed limits on access roads to ensure safe and efficient traffic flow, thus minimizing risk of wildlife injury or mortality due to traffic collision.

Noise impacts to northern harrier that may utilize SWDA I for foraging during active construction periods, would be short-term. No impacts to northern harrier or their use of SWDA I during long-term operation of the Facility would occur. The Applicant's avoidance and minimization, and conservation measures are further outlined in the Preliminary Draft NCBP included as Appendix 12-F.

12(e) De minimis Impact Submission for Threatened and Endangered Grassland Bird Species

The Facility does not meet the criteria outlined in §900.2-13 to qualify for a de minimis impact submission for threatened and endangered grassland bird species. Therefore, this section is not applicable.

12(f) Net Conservation Benefit Plan

A Preliminary Draft NCBP for impacts to wintering northern harrier habitat (occupied habitat) is attached as Appendix 12-F. The Applicant has committed to achieve a net conservation benefit to the species by self-mitigating in coordination with ORES to conserve approximately 25 acres of land suitable for providing wintering habitat for northern harrier. A tentative location for the mitigation site has been identified, that would co-locate the mitigation site on lands also set aside for the Hemlock Ridge Solar project. The location of the mitigation site is still under negotiation with the landowners, and finalization of the NCBP will occur as part of ORES' Application review process. The final NCBP will be provided prior to initiating construction, as a compliance filing.

References

New York State Department of Environmental Conservation (NYSDEC). 2015a. DRAFT Survey Protocol for State-listed Wintering Grassland Raptor Species.

NYSDEC. 2015b. Draft Survey Protocol for State-listed Breeding Grassland Bird Species. Prepared by New York State Department of Environmental Conservation, Division of Fish and Wildlife.

Tetra Tech, Inc. (Tetra Tech) 2021a. Wintering Grassland Raptor Survey, AES Somerset Solar Project, Niagara County, New York. June 22, 2021.

Tetra Tech. 2021b. Breeding Bird Survey, AES Somerset Solar, Niagara County, New York. August 16, 2021.