

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Environmental Permits, Region 3

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**Department of  
Environmental  
Conservation**

February 8, 2021

Mallory Smith  
GEI Consultants, Inc. P.C.  
13-1 Trumansburg Road, Suite N  
Ithaca, NY 14850

**Re: 381 N. Highland Ave. Energy Storage Site  
Town of Ossining, Westchester County  
DEC Application ID No. 3-5542-00199/00001-2  
Article 24 Freshwater Wetlands and Article 11 Threatened and Endangered  
Species**

Dear Mallory Smith:

The New York State Department of Environmental Conservation (DEC) has reviewed your request for review under Article 11 Threatened & Endangered Species Act and Article 24 Freshwater Wetlands for the 381 N. Highland Avenue Energy Storage Site. The initial submission was received October 6, 2020; the Department's first response letter was sent December 28, 2020; and the second submission was received January 6, 2021. I apologize for the delay in response.

## **Article 11 Threatened and Endangered Species**

As indicated in the Department's first response letter, dated December 28, 2020, the site is located within or near documented occurrences of Bald eagle, *Haliaeetus leucocephalus* (NYS-listed threatened). The Department has reviewed the additional information submitted January 6, 2020, and has determined the following:

- **Nesting Bald Eagles:** Based on the distance from the documented bald eagle nest, the existing land uses in the vicinity of the eagle nest, and the information provided within the document 381 N Highland Ave NYSDEC Bald Eagle Concurrence 1.6.21 regarding the expected noise levels; the Department does not anticipate direct adverse impacts to the nesting bald eagles.
- **Wintering Bald Eagles:**
  - Since there is no tree removal proposed, as indicated by the submitted information, no impacts to wintering bald eagles are anticipated as a result of tree removal.
  - However, the Department **cannot** rule out the possibility of noise-related impacts to wintering bald eagles from the construction activity. Therefore, in order to avoid direct adverse impacts to this species, construction activities must take place between **April 1 and November 31**. If construction activities must take place between December 1 and March 31, additional information and further review will be required.



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-OVER PLEASE -

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- Based upon the expected noise levels produced by facility operation as indicated in the provided document; the facility operation noise levels will be below the noise level at which impacts would be expected. Therefore, no direct adverse impacts are anticipated to wintering bald eagles from facility operation.

Please note the following information, which was previously provided in the Department's response letter, dated December 28, 2020:

#### **Article 24 Freshwater Wetlands**

The project site is located near to NYSDEC Freshwater Wetland H-4, Class 2. DEC Bureau of Ecosystem Health has reviewed the project plans; and has determined that an Article 24 Freshwater Wetlands Permit is not required for this proposal.

#### **SPDES Stormwater (Construction)**

If project activities will disturb over 1 acre of land, the project sponsor must obtain coverage under the current SPDES General Permit (GP-0-20-001) for Stormwater Discharge from Construction Activities, and a Stormwater Pollution Prevention Plan (SWPPP) must be developed which conforms to the requirements of the General Permit. As the Town of Ossining is an MS4 community (Municipal Separate Storm Sewer System), the Town is responsible for review and acceptance of the SWPPP. Please be aware that the MS4 Acceptance Form must be submitted to the Department. Authorization for coverage under the SPDES General Permit is not granted until the Department issues any other necessary DEC permits.

#### **Cultural Resources**

We have reviewed the statewide inventory of archaeological resources maintained by the New York State Museum and the New York State Office of Parks, Recreation, and Historic Preservation. These records indicate that the project is located within an area considered to be sensitive with regard to archaeological resources. For more information, please visit the New York State Office of Historic Preservation website at <http://www.nysparks.com/shpo/>.

#### **Coastal Management Zone**

This project is located within the Coastal Management Zone. If the Department had individual permit approvals for this project, the Department would review it in accordance with Coastal Management Program requirements. For additional information about the Coastal Management Zone, please contact the NYS Department of State, 518-474-6000.

#### **FEMA Floodplains/Floodways**

The project site indicated is located within a Federal Emergency Management Agency (FEMA) Floodplain/Floodway. The project sponsor should contact the local municipality to determine if any additional jurisdictions are applicable to the proposal.

#### **Other**

Please note that this letter only addresses the requirements for the following permits from the Department: Protection of Waters, State-listed Species, and Freshwater Wetlands. Other permits from this Department or other agencies may be required for projects conducted on this property now or in the future. Also, regulations applicable to the location subject to this determination

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occasionally are revised and you should, therefore, verify the need for permits if your project is delayed or postponed. This determination regarding the need for permits will remain effective for a maximum of one year unless you are otherwise notified. Applications may be downloaded from our website at [www.dec.ny.gov](http://www.dec.ny.gov) under "Programs" then "Division of Environmental Permits."

Additionally, please note that this letter does not relieve the project sponsor of the responsibility of obtaining any necessary permits or approvals from other agencies or local municipalities. If significant modifications are proposed to the above referenced scope of work/plans, please contact the Department for additional review. If you have any additional comments or questions regarding the above, please contact me at [katherine.coffin@dec.ny.gov](mailto:katherine.coffin@dec.ny.gov), or at (845) 256-3158.

Sincerely,

*Katherine Coffin*

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Katherine Coffin  
Division of Environmental Permits  
Region 3, Telephone No. (845) 256-3158

Ecc: Susan Booth-Binczik, DEC Wildlife  
Lisa Masi, DEC Wildlife  
Angela Schimizzi, DEC Marine Resources  
Town of Ossining Clerk (Waterfront Advisory Committee)

**NOTE: Regarding erosion/sedimentation control requirements:**

Stormwater discharges require a State Pollutant Discharge Elimination System (SPDES) Stormwater permit from this Department if they either:

- occur at industrial facilities and contain either toxic contaminants or priority pollutants OR
- result from construction projects involving the disturbance of 5000 square feet or more of land within the NYC Department of Environmental Protection East of Hudson Watershed or for proposed disturbance of 1 acre or more of land outside the NYC DEP Watershed

Your project may be covered by one of two Statewide General Permits or may require an individual permit. For information on stormwater and the general permits, see the DEC website at <http://www.dec.ny.gov/chemical/8468.html>.

For construction permits, if this site is within an MS4 area (Municipal Separate Storm Sewer System), the stormwater plan must be reviewed and accepted by the municipality and the MS-4 Acceptance Form must be submitted to the Department. If the site is not within an MS4 area and other DEC permits are required, please contact the regional Division of Environmental Permits.