

Appendix H
USFWS Consultation



Memorandum

DATE: November 10, 2017

TO: Matt Accardi, Assistant General Counsel and Certifying Officer
Bureau of Environmental Review and Assessment
Governor's Office of Storm Recovery

FROM: Tara Stewart, Biologist
Natural Resource Management, Louis Berger

**SUBJECT: USFWS Section 7 Consultation Summary
Rebuild by Design: Living with the Bay
Hempstead Lake State Park Project**

Louis Berger is assisting GOSR with environmental review of the Living with the Bay (LWTB) Hempstead Lake State Park Project (the Project). As part of the environmental review, Louis Berger biologists reviewed the Project to determine whether species under U.S. Fish and Wildlife Service (USFWS) jurisdiction may be present at the Project site and/or adversely impacted by proposed Project activities. The purpose of this memorandum is to document GOSR's consultation with USFWS and compliance with Section 7 of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), as well as the Migratory Bird Treaty Act of 1918 (MBTA) (40 Stat. 755, as amended; 16 U.S.C. 703-712), and the Bald and Golden Eagle Protection Act of 1940 (BGEPA) (54 Stat. 240, as amended; 16 U.S.C. 668-668c).

Louis Berger, in coordination with GOSR, reviewed the Project and found that the Project may affect, but is not likely to adversely affect (NLTA) the ESA, MBTA, and BGEPA species under USFWS jurisdiction. USFWS protected northern long-eared bats (NLEB) and migratory birds, including bald eagle, are expected to occur within the Project area. Forested areas in the Project area may provide potential summer habitat for northern long-eared bats, but there are no records of northern long-eared bat maternity roost trees or hibernacula within the vicinity of the Project area. There are no documented breeding bald eagles within the Project area; however, observations of transient bald eagles within the Project area have been documented. Tree removal associated with the Project would result in a reduction and fragmentation of potential habitat for northern long-eared bat and migratory birds. However, potential impacts to these species would be minimized by limiting all tree removal activities to between November 1 and March 31, which would avoid the active season/roosting season for northern long-eared bat and the migratory bird breeding season. Additionally, tree removal would be minimized in the design to the greatest extent practicable, and trees to be protected from cutting would be clearly demarcated to prevent unnecessary clearing. Forested habitat would remain available throughout the

Park. Additionally, the Project would result in beneficial impacts on wildlife habitat through improvements to water quality and existing aquatic habitat, as well as a net increase in wetland habitat.

On July 11, 2017, GOSR submitted a letter to Mr. Steven Papa at the USFWS Long Island Ecological Services Field Office documenting the findings of the Section 7 review and the NL/TAA determination (see Attachment 1). The letter requested acknowledgement from USFWS that it had no objections to this determination and stated that if USFWS does not respond within 30 days from submittal of the letter GOSR may presume that its determination for Project is informed by the best available information and its project responsibilities under Section 7 of the ESA have been fulfilled.

In an August 9, 2017, email, Mr. Papa requested that GOSR submit a Northern Long-Eared Bat 4(d) Rule Streamlined Consultation Form for the Project. GOSR submitted the form to USFWS on August 22, 2017 (see Attachment 2). The streamlined consultation framework for the NLEB allows federal agencies to rely upon the USFWS January 5, 2016, intra-Service Programmatic Biological Opinion (BO) on the final 4(d) rule for the NLEB for section 7(a)(2) compliance by: (1) notifying the USFWS that an action agency will use the streamlined framework; (2) describing the project with sufficient detail to support the required determination; and (3) enabling the USFWS to track effects and determine if reinitiating consultation is required per 50 CFR 402.16. By signing this form, GOSR determined that the Project may affect the NLEB, but that any resulting incidental take of the NLEB is not prohibited by the final 4(d) rule. As stated on the form, if the USFWS does not respond within 30 days from submittal of the form, the action agency (GOSR) may presume that its determination is informed by the best available information and that its project responsibilities under 7(a)(2) with respect to the NLEB are fulfilled through the USFWS January 5, 2016, Programmatic BO.

In subsequent email correspondence between October 11 and October 20, 2017 with Mr. Papa (see Attachment 3), USFWS stated that GOSR has met its Section 7 obligations regarding the NLEB, and that no consultation was required regarding migratory birds other than that the Project should not result in a take. Therefore, GOSR should presume that its determination for the Project is informed by the best available information and its project responsibilities under Section 7 of the ESA have been fulfilled.

ATTACHMENTS

ATTACHMENT 1



**Governor's Office of
Storm Recovery**

ANDREW M. CUOMO
Governor

LISA BOVA-HIATT
Executive Director

July 11, 2017

Mr. Steven T. Papa
United States Fish and Wildlife Service
Long Island Ecological Services Field Office
340 Smith Road
Shirley, NY 11967

Re: Section 7 Project Review - Effect Determination
Rebuild by Design: Living with the Bay
Hempstead Lake State Park Project
USWFS Consultation Code: 05E1LI00-2017-SLI-0529

Dear Mr. Papa:

In June 2013, the United States Department of Housing and Urban Development (HUD) initiated Rebuild by Design (RBD), a professional design competition to respond to Superstorm Sandy's devastation in the northeast region of the United States and promote a design-led approach to proactive planning for long-term resilience and climate change adaption. The Living with the Bay (LWTB) Project was selected as one of the projects to be implemented using Community Development Block Grant-Disaster Recovery (CDBG-DR) funding as well as other public and private-sector funding sources. The Governor's Office of Storm Recovery (GOSR), an office of New York State Homes and Community Renewal (HCR), in cooperation with the New York State Housing Trust Fund Corporation (HTFC), is responsible for the direct administration of the HUD CDBG-DR program in New York State and is conducting an environmental review of the above referenced Project.

LWTB provides a comprehensive suite of potential interventions intended to provide long-term resilience and climate change adaption for Nassau County communities within the Mill River Watershed. The Hempstead Lake State Park Project (Proposed Project) is one component of LWTB, and is the subject of an Environmental Assessment (EA) currently being prepared. GOSR is the responsible entity under the National Environmental Policy Act (NEPA) and related laws for the environmental review of the Proposed Project. GOSR is also the lead agency pursuant to the State Environmental Quality Review Act (SEQRA) and related laws for the environmental review of the Proposed Project.

The purpose of this letter is to provide the U.S. Fish and Wildlife Service (USFWS) notice of the Proposed Project and to document compliance with Section 7 of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 et seq.), as well as the Migratory Bird Treaty Act of 1918 (MBTA) (40 Stat. 755, as amended; 16 U.S.C. 703-712), and the Bald and Golden Eagle Protection Act of 1940 (BGEPA) (54 Stat. 240, as amended; 16 U.S.C. 668-668c). As discussed below, GOSR reviewed the Proposed Project and found that the Proposed Project may affect, but is not likely to adversely affect the ESA, MBTA, and BGEPA species under USFWS jurisdiction. This letter requests acknowledgement from the USFWS that it has received our determination regarding the Proposed Project, and that USFWS has no objections to this determination.

PROJECT DESCRIPTION

Hempstead Lake State Park (the “Park”) is a 521-acre multi-use facility in the Town of Hempstead (see attached Figures 1 and 2). The Park is located on the northern end of the Mill River watershed and includes the largest body of fresh water in Nassau County, Hempstead Lake, as well as several smaller ponds including: Northeast (NE) Pond; Northwest (NW) Pond; McDonald Pond; South Pond; and Schodack Pond. The Park also contains one of the largest continuous tracks of forested land in southern Nassau County. The Park includes 20 tennis courts, children’s playgrounds, basketball courts, bridle trails for horseback riding, biking and hiking trails, picnic areas and a carousel. Trails run through the park connecting to the amenities and along the two roadways and Hempstead Lake shore. Unmarked trails traverse the area between Northeast and Northwest ponds, as well as among South Pond, McDonald Pond, and Hempstead Lake.

The Proposed Project consists of four components (see attached Figures 2a, 2b, and 2c) intended to improve stormwater management, enhance natural ecosystems, provide connectivity among diverse populations, enhance safety, and promote education programs at the Park. The Proposed Project components are as follows: “Dams, Gatehouse and Bridges;” “Northwest and Northeast Ponds;” “Environmental Education and Resiliency Center;” and “Greenways, Gateways and Waterfront Access.”

- The Dams, Gatehouses and Bridges component would restore the operation of the dams and associated water flow control infrastructure within the Park to improve stormwater management, including dam improvements to meet current regulatory standards, gatehouse repairs, and installation of pedestrian bridges over park waterways.
- The Northeast and Northwest Ponds component would involve the installation of floatables catchers and sediment basins at pond inlets, as well as creation of stormwater filtering wetlands and dredging of the ponds to remove debris, improve water quality and increase impoundment capacity. Approximately 4.18 acres of primarily degraded forested and emergent wetlands would be removed, and approximately 8.18 acres of filtering wetlands would be created, for a net gain of approximately 4.0 acres.
- The Environmental Education and Resiliency Center component would comprise construction of a new, two-story, approximately 8,000-square-foot building west of Lakeside Drive. The focus of the Education and Resiliency Center would be on environmental

stewardship and climate change adaptation resiliency.

- The Greenways, Gateways and Waterfront Access component would comprise expansion and improvement to the existing path system within the park, including connection points to the surrounding neighborhoods, as well as installation of observation areas, piers, and kayak launches along Hempstead Lake.

Up to 3,105 trees at various locations throughout the Proposed Project area would be removed for wetland creation/enhancement, dam improvements, and enhancement and expansion of visitor access to the waterfront and trails. Tree removal is primarily proposed along the Hempstead Lake Dam and South Pond Dam and in the approximately five acres of upland forest and 2.2 acres of wetland forest in the Northeast and Northwest Pond areas.

ESA, MIGRATORY BIRD TREATY ACT, AND BALD AND GOLDEN EAGLE PROTECTION ACT SPECIES

The USFWS was contacted through the Information, Planning, and Conservation System (IPaC) regarding the potential presence of species under the jurisdiction of the USFWS within the Proposed Project area. The IPaC Trust Resources Report is included as Attachment 2, and the USFWS Official Species List is included as Attachment 3. According to the USFWS IPaC Trust Resource Report and Official Species Lists, the following six listed species may occur in the Proposed Project area and/or may be affected by the proposed project: sandplain gerardia (*Agalinis acuta* – endangered), seabeach amaranth (*Amaranthus pumilus* – threatened), piping plover (*Charadrius melodus* – threatened), red knot (*Calidris canutus rufa* – threatened), roseate tern (*Sterna dougallii* – endangered), and northern long-eared bat (*Myotis septentrionalis* – threatened). These species' habitat requirements include the following:

- Sandplain gerardia: pine-barrens grasslands; remnant grasslands
- Seabeach amaranth: sparsely vegetated upper beach zone
- Red knot: mudflats with abundant food such as horseshoe crab eggs
- Piping plover: wide, flat, open, sandy beaches with limited vegetation and limited human disturbance
- Roseate tern: open water for fishing and barrier-island nesting colony areas free of predators and human disturbance
- Northern long-eared bat: abundant stands of trees with sufficient bark crevices and snags for roosting

The USFWS Trust Resources Report also indicates that there are twenty-seven species of migratory birds that are protected by the MBTA and the BGEPA that could potentially be affected by the Proposed Project. Bald eagles (*Haliaeetus leucocephalus*) have been observed in the Proposed Project area, but no breeding eagles have been documented in the area

A request for species records within the vicinity of the Proposed Project area was sent to the New York State Natural Heritage Program (NYSNHP). A response letter from NYSNHP dated June 30, 2017 (included as Attachment 4), does not indicate records of any ESA species under UFSWS jurisdiction within the Proposed Project area.

ANALYSIS AND DETERMINATION OF EFFECTS

According to the USFWS IPaC Trust Resource Report and Official Species List of threatened and endangered species, there are six listed species under USFWS jurisdiction that may potentially occur with the Proposed Project area, and twenty-seven migratory birds of concern that could potentially be affected by the Proposed Project. There is no critical habitat designated within the Proposed Project area.

ESA – Based on species’ habitat requirements, sandplain gerardia, seabeach amaranth, red knot, piping plover, and roseate tern are not expected to occur in the Proposed Project area. Forested areas in the Proposed Project area may provide potential summer habitat for northern long-eared bats. Summer habitat for northern long-eared bats consists of a wide variety of forested habitats where they roost, forage, and travel. The Proposed Project area is not located within the vicinity of known or assumed northern long-eared bat hibernacula or maternity roosts. Based on information from the USFWS Long Island Field Office, the nearest known maternity roost is located on Brookhaven National Lab property, located more than 40 miles east of the Proposed Project area. NYSNHP does not indicate records of NLEB, Indiana bat, or any other ESA species under USFWS jurisdiction within the vicinity of the Proposed Project area.

Tree removal associated with the Proposed Project would result in a reduction and fragmentation of potential northern long-eared bat summer roosting, foraging, and travel habitat. However, if present in the Proposed Project area, northern long-eared bats would likely use the large, intact woodlands south of Hempstead Lake, which would remain undisturbed. Tree removal would be minimized in the design to the greatest extent practicable, and trees to be protected from cutting would be clearly demarcated to prevent unnecessary clearing. Potential impacts would also be minimized by limiting all tree removal activities to between November 1 and March 31, outside of the active season/roosting season. Outside of the active season, northern long-eared bats are in hibernation and would not be directly affected by tree removal activities, thereby avoiding any prohibited incidental take. GOSR has determined that the Proposed Project may affect, but is not likely to adversely affect northern long-eared bat.

MBTA – Similar to the impact on northern long-eared bats, tree removal associated with the Proposed Project would result in the permanent loss and fragmentation of forest habitat for migratory birds. However, similar habitat would remain available to migratory birds in the Park. Additionally, the November 1 to March 31 tree clearing window proposed to protect northern long-eared bats would avoid the migratory bird breeding season, which occurs between April 1 and August 31. It is anticipated that passerine birds may temporarily leave the area during construction due to noise and disturbance. GOSR has determined that the Proposed Project may affect, but is not likely to adversely affect migratory birds.

BGEPA – Bald eagles have been observed in the Proposed Project area; breeding eagles have not been documented in the area. As with other migratory birds, tree removal associated with the Proposed Project would result in loss of bald eagle habitat, particularly the forested habitat along the shoreline. Foraging bald eagles may temporarily avoid the area during construction due to noise and disturbance. Forested habitat would remain available in the Park, and no known breeding

bald eagle would be affected. GOSR has determined that the Proposed Project may affect, but is not likely to adversely affect bald eagle.

CONCLUSION

According to the USFWS IPaC Trust Resource Report and list of threatened and endangered species, there are six listed species that potentially occur with the project area – sandplain gerardia, seabeach amaranth, red knot, piping plover, roseate tern and the northern long eared bat. There is no critical habitat designated within the Proposed Project area. There are twenty-seven migratory birds of concern, including bald eagle, that may occur within the vicinity of the Proposed Project area.

Based on species' habitat requirements, northern long-eared bats and migratory birds, including bald eagle, are expected to occur in the Proposed Project area. There are no records of northern long-eared bat maternity roost trees or hibernacula within the vicinity of the Proposed Project area. There are no documented breeding bald eagles within the Proposed Project area; however, observations of transient bald eagles within the Proposed Project area have been documented.

Tree removal associated with the Proposed Project would result in a reduction and fragmentation of potential habitat for northern long-eared bat and migratory birds. Potential impacts to these species would be minimized by limiting all tree removal activities to between November 1 and March 31, which would avoid the active season/roosting season for northern long-eared bat and the migratory bird breeding season. Additionally, tree removal would be minimized in the design to the greatest extent practicable, and trees to be protected from cutting would be clearly demarcated to prevent unnecessary clearing. Forested habitat would remain available throughout the Park.

Implementation of the Proposed Project is conditioned upon issuance of applicable federal and state permits and would be constructed in accordance with federal and state permit conditions that may further protect these species. Additionally, the Proposed Project would result in beneficial impacts on wildlife habitat through improvements to water quality and existing aquatic habitat, as well as a net increase in wetland habitat. Fish, benthic invertebrates, and waterfowl and waterbirds that use the ponds in the Park and the downstream waters of Mill River would benefit from improved water and sediment quality that may result from enhanced wetland filtration, sediment capture, and removal of floatables that come from the upper watershed and flow out to Hewlett Bay.

GOSR has determined that the Proposed Project may affect, but is not likely to adversely affect species within USFWS jurisdiction protected under the ESA, MBTA, and BGEPA. This letter requests acknowledgement from USFWS that it has no objections to this determination. If USFWS does not respond within 30 days from submittal of this letter, then GOSR may presume that its determination for Proposed Project is informed by the best available information and its project responsibilities under Section 7 of the ESA have been fulfilled. GOSR understands that the USFWS presumes that all activities would be implemented as described herein. GOSR will promptly report any departures from the described activities to the Long Island Field Office.

If you have any questions, please feel free to contact me at (212) 480-6265 or matt.accardi@stormrecovery.ny.gov. Thank you for your consideration and cooperation.

Sincerely,



Matt Accardi, Assistant General Counsel, Certifying Officer
Bureau of Environmental Review and Assessment
Governor's Office of Storm Recovery
25 Beaver Street, 5th Floor
New York, NY 10004

Enclosures:

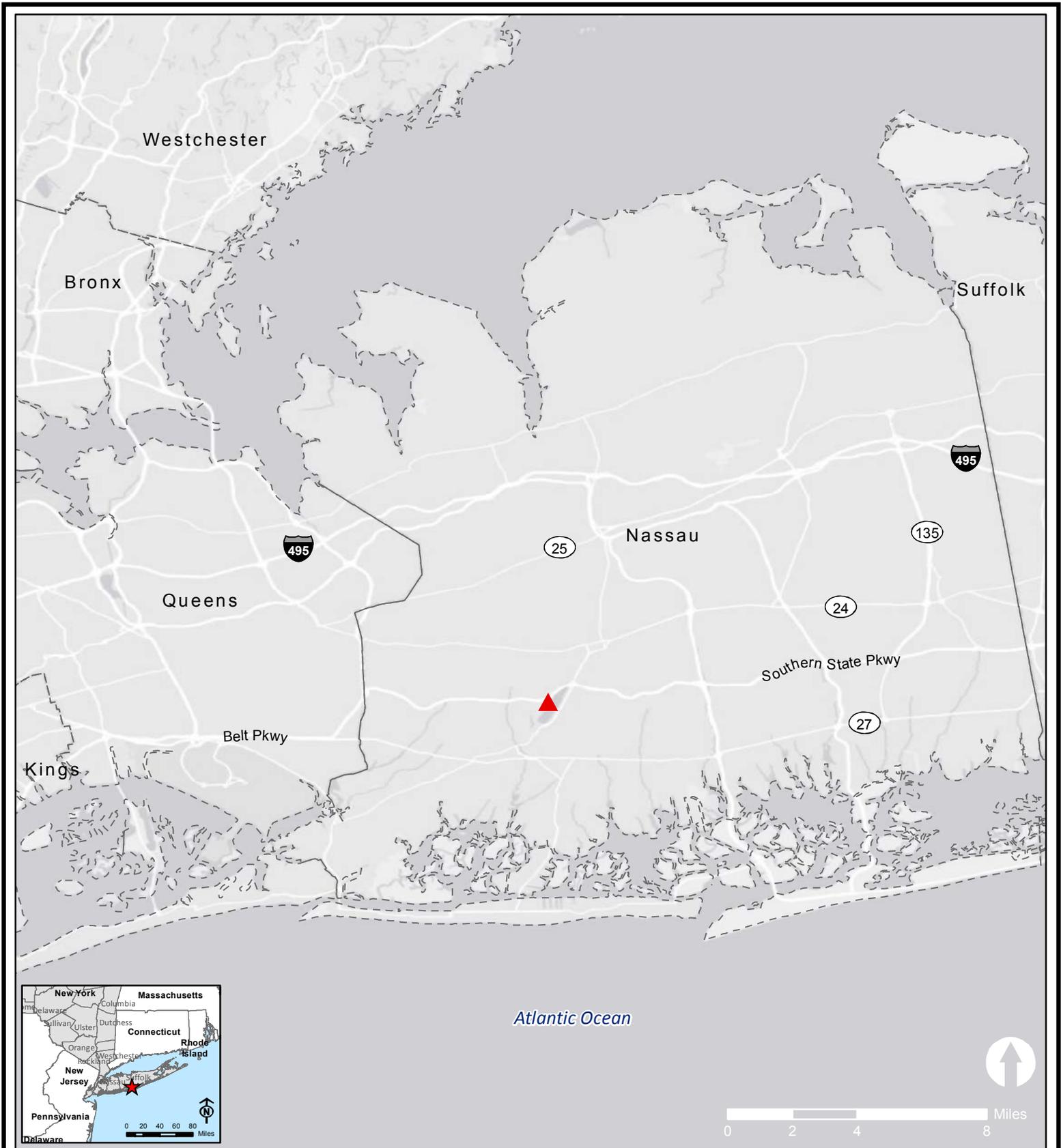
Attachment 1: Figures

Attachment 2: IPaC Trust Resources Report

Attachment 3: USFWS Official Species List

Attachment 4: NYSNHP Response

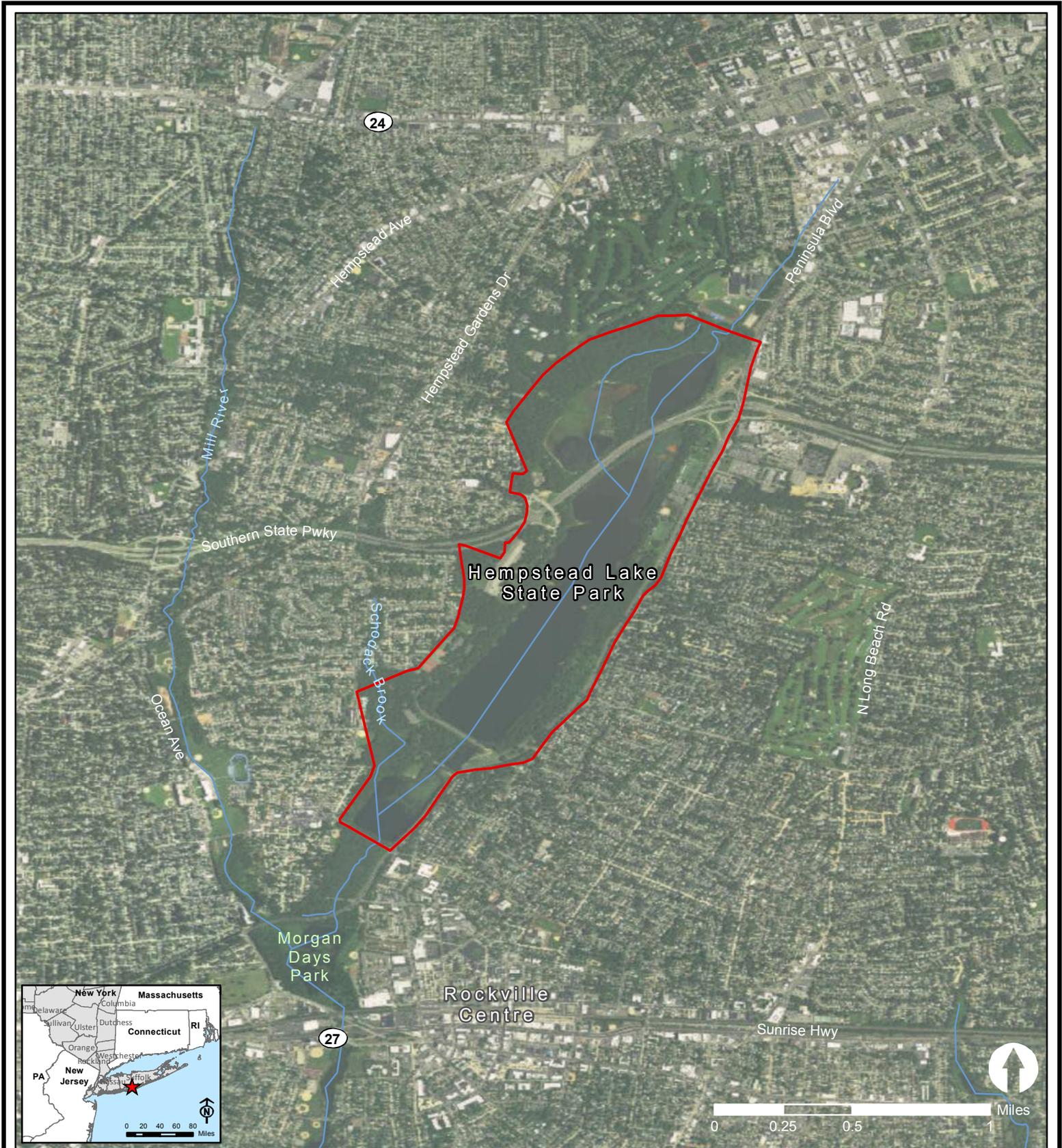
ATTACHMENT 1



-  Project Location
-  County Boundary

Figure 1
Regional Location

Hempstead Lake State Park



 Project Boundary

Figure 2
Project Area

Hempstead Lake State Park

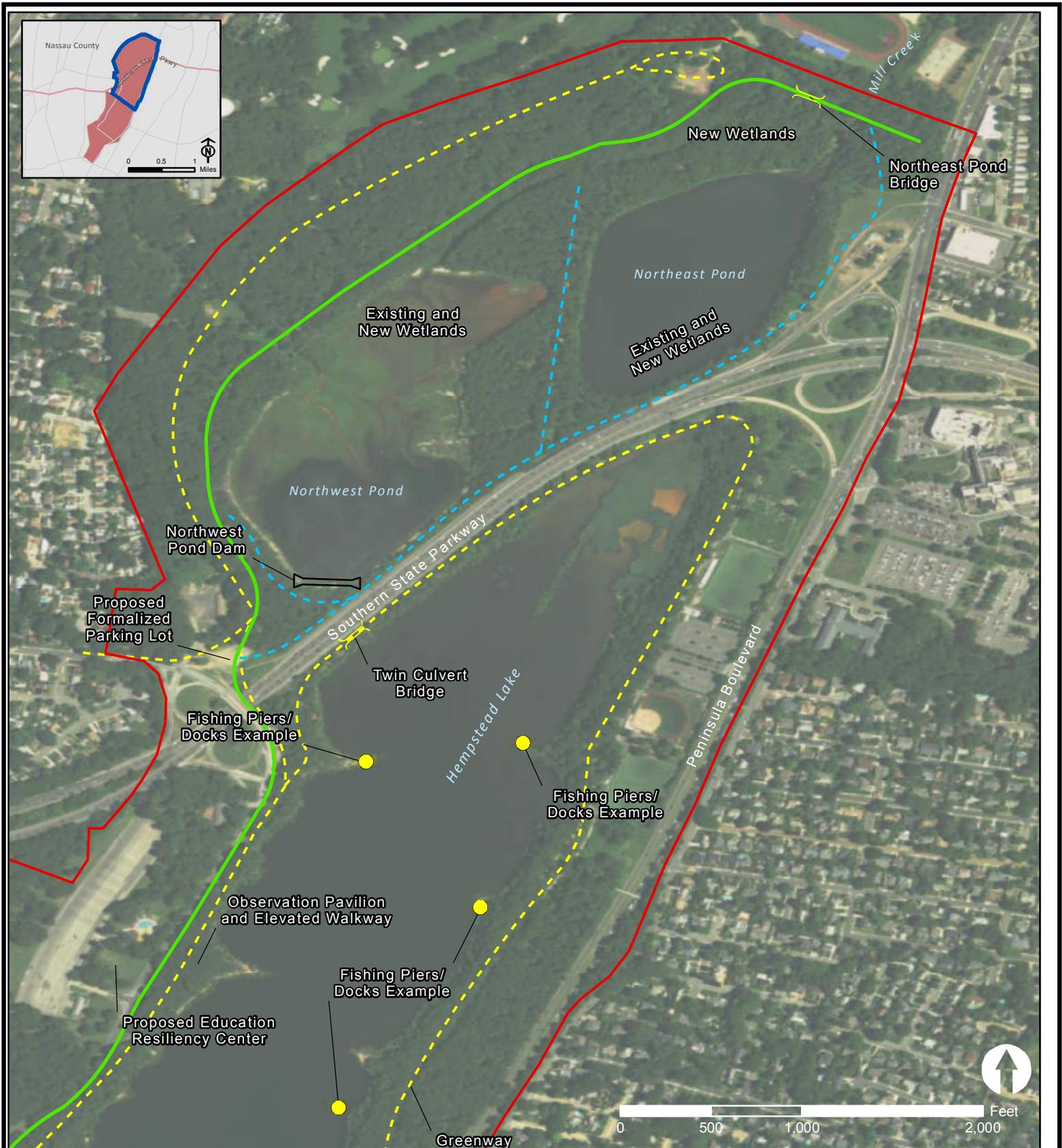
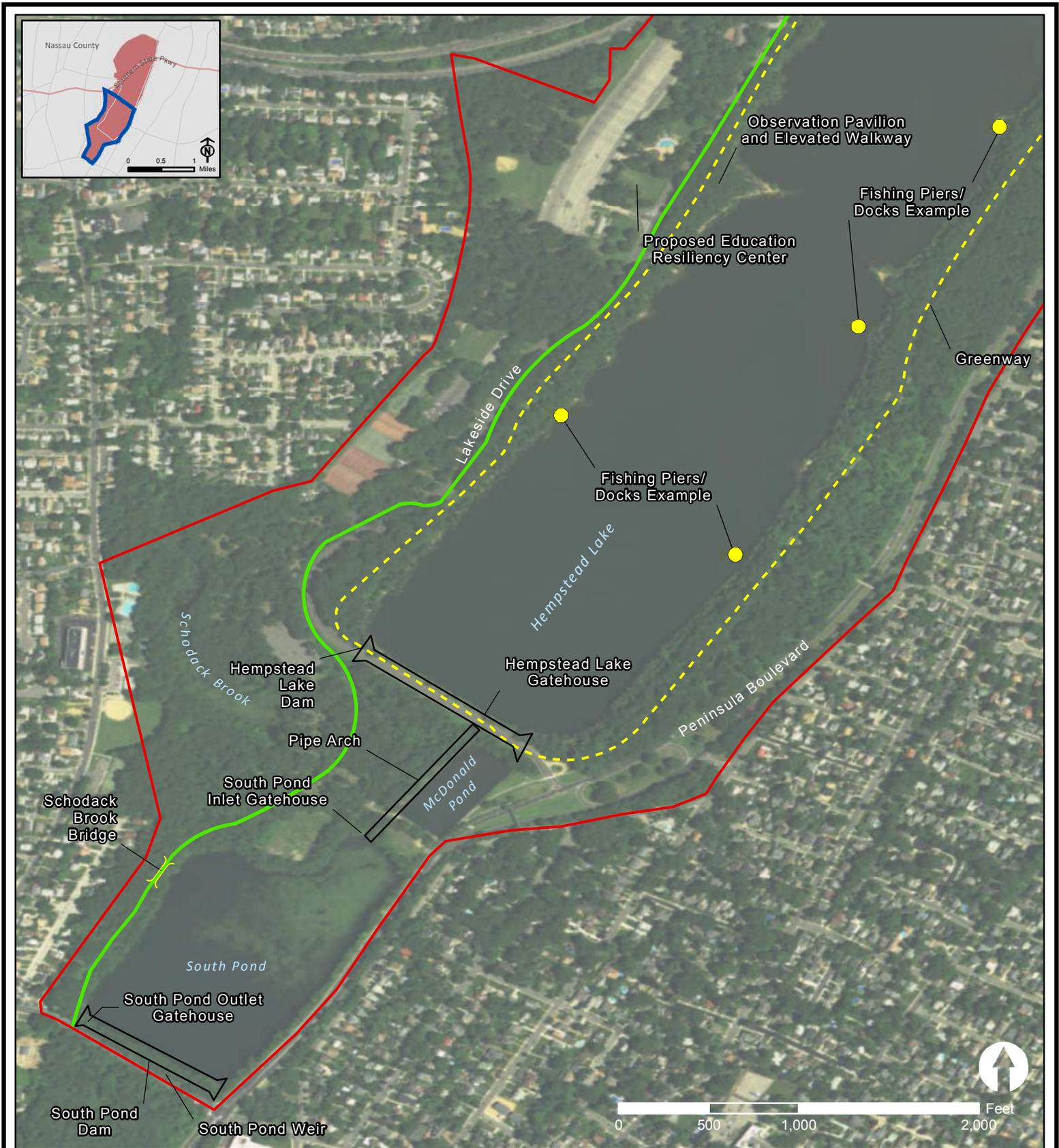


Figure 2a
Site Plan, North

Hempstead Lake State Park

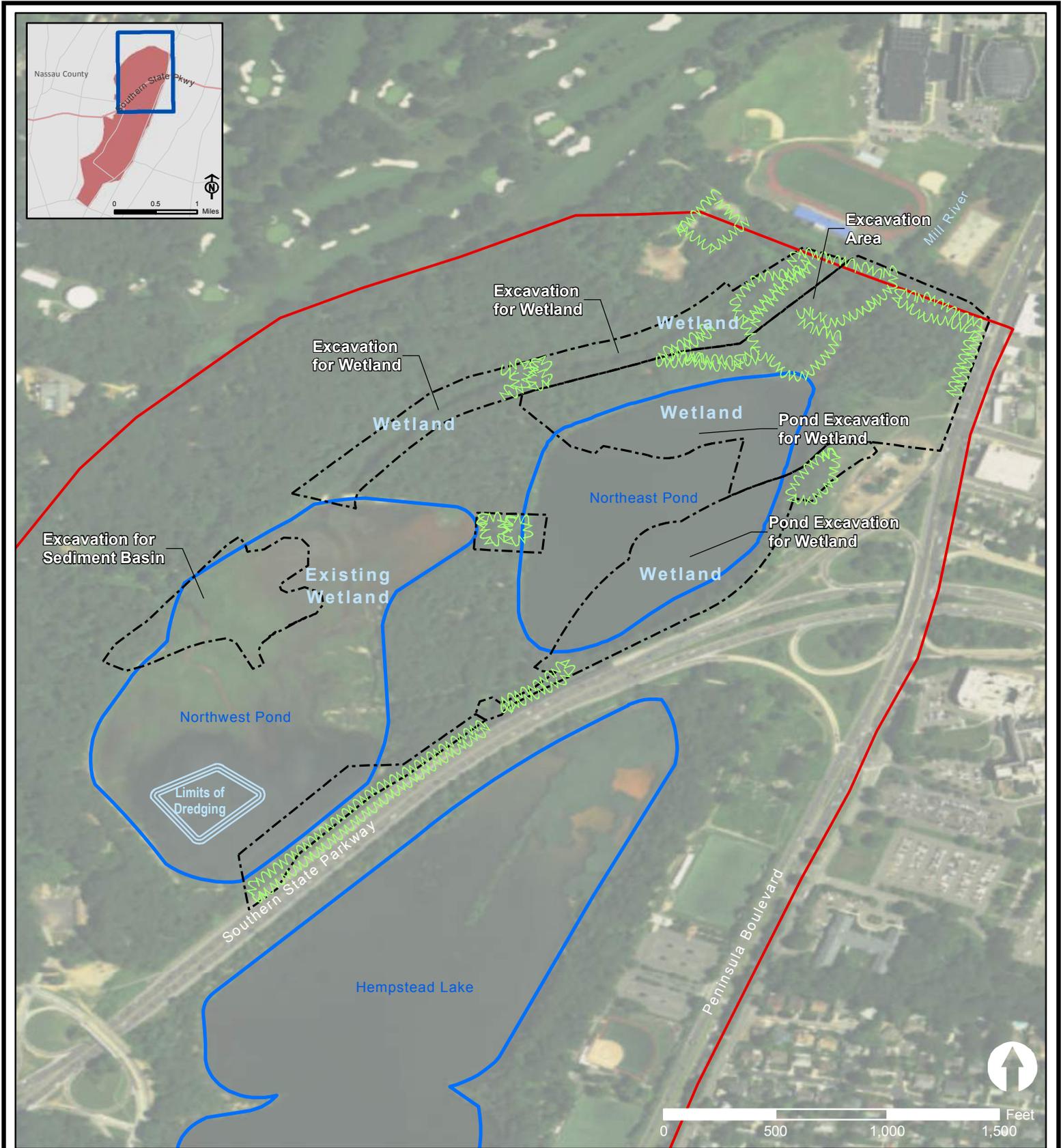
-  Bridge
-  Proposed Dock/Fishing Pier/Kayak Launch Walkway
-  Proposed Greenway
-  Proposed Wetland/Minor Trail
-  Proposed Hiking, Cycling, and Bridle Path
-  Project Boundary



-  Bridge
-  Proposed Dock/Fishing Pier/Kayak Launch Walkway
-  Proposed Greenway
-  Proposed Wetland/Minor Trail
-  Proposed Hiking, Cycling, and Bridle Path
-  Project Boundary

Figure 2b
Site Plan, South

Hempstead Lake State Park



- Project Boundary
- Limits of Disturbance
- Dredging
- Tree Removal Area
- Waterbody

Source: USGS; U.S. Fish and Wildlife Service; National Wetland Index; NYS GIS Clearinghouse; NYS Department of Environmental Conservation; ESRI World Imagery; ESRI Street Map

Figure 2c

Northern Ponds Project Components

Hempstead Lake State Park



ATTACHMENT 2

IPaC

U.S. Fish & Wildlife Service

IPaC resource list

This report is an automatically generated list of species and other resources such as critical habitat (collectively referred to as *trust resources*) under the U.S. Fish and Wildlife Service's (USFWS) jurisdiction that are known or expected to be on or near the project area referenced below. The list may also include trust resources that occur outside of the project area, but that could potentially be directly or indirectly affected by activities in the project area. However, determining the likelihood and extent of effects a project may have on trust resources typically requires gathering additional site-specific (e.g., vegetation/species surveys) and project-specific (e.g., magnitude and timing of proposed activities) information.

Below is a summary of the project information you provided and contact information for the USFWS office(s) with jurisdiction in the defined project area. Please read the introduction to each section that follows (Endangered Species, Migratory Birds, USFWS Facilities, and NWI Wetlands) for additional information applicable to the trust resources addressed in that section.

Location

Nassau County, New York



Local office

Long Island Ecological Services Field Office

☎ (631) 286-0485

📠 (631) 286-4003

340 Smith Road
Shirley, NY 11967

Endangered species

This resource list is for informational purposes only and does not constitute an analysis of project level impacts.

The primary information used to generate this list is the known or expected range of each species. Additional areas of influence (AOI) for species are also considered. An AOI includes areas outside of the species range if the species could be indirectly affected by activities in that area (e.g., placing a dam upstream of a fish population, even if that fish does not occur at the dam site, may indirectly impact the species by reducing or eliminating water flow downstream). Because species can move, and site conditions can change, the species on this list are not guaranteed to be found on or near the project area. To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

Section 7 of the Endangered Species Act **requires** Federal agencies to "request of the Secretary information whether any species which is listed or proposed to be listed may be present in the area of such proposed action" for any project that is conducted, permitted, funded, or licensed by any Federal agency. A letter from the local office and a species list which fulfills this requirement can **only** be obtained by requesting an official species list from either the Regulatory Review section in IPaC (see directions below) or from the local field office directly.

For project evaluations that require USFWS concurrence/review, please return to the IPaC website and request an official species list by doing the following:

1. Draw the project location and click CONTINUE.
2. Click DEFINE PROJECT.
3. Log in (if directed to do so).
4. Provide a name and description for your project.
5. Click REQUEST SPECIES LIST.

Listed species

¹ are managed by the [Endangered Species Program](#) of the U.S. Fish and Wildlife Service.

1. Species listed under the [Endangered Species Act](#) are threatened or endangered; IPaC also shows species that are candidates, or proposed, for listing. See the [listing status page](#) for more information.

The following species are potentially affected by activities in this location:

Birds

NAME	STATUS
Piping Plover <i>Charadrius melodus</i> There is a final critical habitat designated for this species. Your location is outside the designated critical habitat. https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/1864	Threatened
Roseate Tern <i>Sterna dougallii dougallii</i> No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/2083	Endangered

Flowering Plants

NAME	STATUS
Sandplain Gerardia <i>Agalinis acuta</i> No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/8128	Endangered
Seabeach Amaranth <i>Amaranthus pumilus</i> No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/8549	Threatened

Mammals

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. https://ecos.fws.gov/ecp/species/9045	Threatened

Critical habitats

Potential effects to critical habitat(s) in this location must be analyzed along with the endangered species themselves.

THERE ARE NO CRITICAL HABITATS AT THIS LOCATION.

Migratory birds

Certain birds are protected under the Migratory Bird Treaty Act

¹ and the Bald and Golden Eagle Protection Act².

Any activity that results in the take (to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of migratory birds or eagles is prohibited unless authorized by the U.S. Fish and Wildlife Service

³. There are no provisions for allowing the take of migratory birds that are unintentionally killed or injured.

Any person or organization who plans or conducts activities that may result in the take of migratory birds is responsible for complying with the appropriate regulations and implementing appropriate conservation measures.

1. The [Migratory Birds Treaty Act](#) of 1918.
2. The [Bald and Golden Eagle Protection Act](#) of 1940.
3. 50 C.F.R. Sec. 10.12 and 16 U.S.C. Sec. 668(a)

Additional information can be found using the following links:

- Birds of Conservation Concern <http://www.fws.gov/birds/management/managed-species/birds-of-conservation-concern.php>
- Conservation measures for birds <http://www.fws.gov/birds/management/project-assessment-tools-and-guidance/conservation-measures.php>
- Year-round bird occurrence data <http://www.birdscanada.org/birdmon/default/datasummaries.jsp>

The migratory birds species listed below are species of particular conservation concern (e.g. [Birds of Conservation Concern](#)) that may be potentially affected by activities in this location. It is not a list of every bird species you may find in this location, nor a guarantee that all of the bird species on this list will be found on or near this location. Although it is important to try to avoid and minimize impacts to all birds, special attention should be made to avoid and minimize impacts to birds of priority concern. To view available data on other bird species that may occur in your project area, please visit the [AKN Histogram Tools](#) and [Other Bird Data Resources](#). To fully determine any potential effects to species, additional site-specific and project-specific information is often required.

NAME	SEASON(S)
American Bittern <i>Botaurus lentiginosus</i> https://ecos.fws.gov/ecp/species/6582	On Land: Breeding
American Oystercatcher <i>Haematopus palliatus</i> https://ecos.fws.gov/ecp/species/8935	On Land: Year-round
Bald Eagle <i>Haliaeetus leucocephalus</i> https://ecos.fws.gov/ecp/species/1626	On Land: Year-round
Black Skimmer <i>Rynchops niger</i> https://ecos.fws.gov/ecp/species/5234	On Land: Breeding
Black-billed Cuckoo <i>Coccyzus erythrophthalmus</i> https://ecos.fws.gov/ecp/species/9399	On Land: Breeding
Blue-winged Warbler <i>Vermivora pinus</i>	On Land: Breeding

Canada Warbler <i>Wilsonia canadensis</i>	On Land: Breeding
Fox Sparrow <i>Passerella iliaca</i>	On Land: Wintering
Gull-billed Tern <i>Gelochelidon nilotica</i> https://ecos.fws.gov/ecp/species/9501	On Land: Breeding
Hudsonian Godwit <i>Limosa haemastica</i>	At Sea: Migrating
Least Bittern <i>Ixobrychus exilis</i> https://ecos.fws.gov/ecp/species/6175	On Land: Breeding
Least Tern <i>Sterna antillarum</i>	On Land: Breeding
Marbled Godwit <i>Limosa fedoa</i> https://ecos.fws.gov/ecp/species/9481	On Land: Wintering
Peregrine Falcon <i>Falco peregrinus</i> https://ecos.fws.gov/ecp/species/8831	On Land: Wintering
Pied-billed Grebe <i>Podilymbus podiceps</i>	On Land: Year-round
Prairie Warbler <i>Dendroica discolor</i>	On Land: Breeding
Purple Sandpiper <i>Calidris maritima</i>	On Land: Wintering
Red Knot <i>Calidris canutus rufa</i> https://ecos.fws.gov/ecp/species/1864	On Land: Wintering
Rusty Blackbird <i>Euphagus carolinus</i>	On Land: Wintering
Saltmarsh Sparrow <i>Ammodramus caudacutus</i>	On Land: Breeding
Seaside Sparrow <i>Ammodramus maritimus</i>	On Land: Year-round

Short-eared Owl <i>Asio flammeus</i> https://ecos.fws.gov/ecp/species/9295	On Land: Wintering
Snowy Egret <i>Egretta thula</i>	On Land: Breeding
Upland Sandpiper <i>Bartramia longicauda</i> https://ecos.fws.gov/ecp/species/9294	On Land: Breeding
Willow Flycatcher <i>Empidonax traillii</i> https://ecos.fws.gov/ecp/species/3482	On Land: Breeding
Wood Thrush <i>Hylocichla mustelina</i>	On Land: Breeding
Worm Eating Warbler <i>Helmitheros vermivorum</i>	On Land: Breeding

What does IPaC use to generate the list of migratory bird species potentially occurring in my specified location?

Landbirds:

Migratory birds that are displayed on the IPaC species list are based on ranges in the latest edition of the National Geographic Guide, Birds of North America (6th Edition, 2011 by Jon L. Dunn, and Jonathan Alderfer). Although these ranges are coarse in nature, a number of U.S. Fish and Wildlife Service migratory bird biologists agree that these maps are some of the best range maps to date. These ranges were clipped to a specific Bird Conservation Region (BCR) or USFWS Region/Regions, if it was indicated in the 2008 list of Birds of Conservation Concern (BCC) that a species was a BCC species only in a particular Region/Regions. Additional modifications have been made to some ranges based on more local or refined range information and/or information provided by U.S. Fish and Wildlife Service biologists with species expertise. All migratory birds that show in areas on land in IPaC are those that appear in the 2008 Birds of Conservation Concern report.

Atlantic Seabirds:

Ranges in IPaC for birds off the Atlantic coast are derived from species distribution models developed by the National Oceanic and Atmospheric Association (NOAA) National Centers for Coastal Ocean Science (NCCOS) using the best available seabird survey data for the offshore Atlantic Coastal region to date. NOAA/NCCOS assisted USFWS in developing seasonal species ranges from their models for specific use in IPaC. Some of these birds are not BCC species but were of interest for inclusion because they may occur in high abundance off the coast at different times throughout the year, which potentially makes them more susceptible to certain types of development and activities taking place in that area. For more refined details about the abundance

and richness of bird species within your project area off the Atlantic Coast, see the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other types of taxa that may be helpful in your project review.

About the NOAANCCOS models: the models were developed as part of the NOAANCCOS project: [Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf](#). The models resulting from this project are being used in a number of decision-support/mapping products in order to help guide decision-making on activities off the Atlantic Coast with the goal of reducing impacts to migratory birds. One such product is the [Northeast Ocean Data Portal](#), which can be used to explore details about the relative occurrence and abundance of bird species in a particular area off the Atlantic Coast.

All migratory bird range maps within IPaC are continuously being updated as new and better information becomes available.

Can I get additional information about the levels of occurrence in my project area of specific birds or groups of birds listed in IPaC?

Landbirds:

The [Avian Knowledge Network \(AKN\)](#) provides a tool currently called the "Histogram Tool", which draws from the data within the AKN (latest, survey, point count, citizen science datasets) to create a view of relative abundance of species within a particular location over the course of the year. The results of the tool depict the frequency of detection of a species in survey events, averaged between multiple datasets within AKN in a particular week of the year. You may access the histogram tools through the [Migratory Bird Programs AKN Histogram Tools](#) webpage.

The tool is currently available for 4 regions (California, Northeast U.S., Southeast U.S. and Midwest), which encompasses the following 32 states: Alabama, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia, and Wisconsin.

In the near future, there are plans to expand this tool nationwide within the AKN, and allow the graphs produced to appear with the list of trust resources generated by IPaC, providing you with an additional level of detail about the level of occurrence of the species of particular concern potentially occurring in your project area throughout the course of the year.

Atlantic Seabirds:

For additional details about the relative occurrence and abundance of both individual bird species and groups of bird species within your project area off the Atlantic Coast, please visit the [Northeast Ocean Data Portal](#). The Portal also offers data and information about other taxa besides birds that may be helpful to you in your project review. Alternately, you may download the bird model results files underlying the portal maps through the NOAANCCOS [Integrative Statistical Modeling and Predictive Mapping of Marine Bird Distributions and Abundance on the Atlantic Outer Continental Shelf project](#) webpage.

Facilities

Wildlife refuges

Any activity proposed on [National Wildlife Refuge](#) lands must undergo a 'Compatibility Determination' conducted by the Refuge. Please contact the individual Refuges to discuss any questions or concerns.

THERE ARE NO REFUGES AT THIS LOCATION.

Fish hatcheries

THERE ARE NO FISH HATCHERIES AT THIS LOCATION.

Wetlands in the National Wetlands Inventory

Impacts to [NWI wetlands](#) and other aquatic habitats may be subject to regulation under Section 404 of the Clean Water Act, or other State/Federal statutes.

For more information please contact the Regulatory Program of the local [U.S. Army Corps of Engineers District](#).

This location overlaps the following wetlands:

FRESHWATER EMERGENT WETLAND

[PEMFx](#)

[PEM1F](#)

[PEM1E](#)

FRESHWATER FORESTED/SHRUB WETLAND

[PFO1C](#)

[PFO1Ax](#)

[PFO1E](#)

FRESHWATER POND

[PUBHx](#)

[PUB/FO1Hh](#)

[PUB/FO1H](#)

[PUBFx](#)

LAKE

[L1UBHh](#)

A full description for each wetland code can be found at the National Wetlands Inventory website: <https://ecos.fws.gov/ipac/wetlands/decoder>

Data limitations

The Service's objective of mapping wetlands and deepwater habitats is to produce reconnaissance level information on the location, type and size of these resources. The maps are prepared from the analysis of high altitude imagery. Wetlands are identified based on vegetation, visible hydrology and geography. A margin of error is inherent in the use of imagery; thus, detailed on-the-ground inspection of any particular site may result in revision of the wetland boundaries or classification established through image analysis.

The accuracy of image interpretation depends on the quality of the imagery, the experience of the image analysts, the amount and quality of the collateral data and the amount of ground truth verification work conducted. Metadata should be consulted to determine the date of the source imagery used and any mapping problems.

Wetlands or other mapped features may have changed since the date of the imagery or field work. There may be occasional differences in polygon boundaries or classifications between the information depicted on the map and the actual conditions on site.

Data exclusions

Certain wetland habitats are excluded from the National mapping program because of the limitations of aerial imagery as the primary data source used to detect wetlands. These habitats include seagrasses or submerged aquatic vegetation that are found in the intertidal and subtidal zones of estuaries and nearshore coastal waters. Some deepwater reef communities (coral or tubercid worm reefs) have also been excluded from the inventory. These habitats, because of their depth, go undetected by aerial imagery.

Data precautions

Federal, state, and local regulatory agencies with jurisdiction over wetlands may define and describe wetlands in a different manner than that used in this inventory. There is no attempt, in either the design or products of this inventory, to define the limits of proprietary jurisdiction of any Federal, state, or local government or to establish the geographical scope of the regulatory

programs of government agencies. Persons intending to engage in activities involving modifications within or adjacent to wetland areas should seek the advice of appropriate federal, state, or local agencies concerning specified agency regulatory programs and proprietary jurisdictions that may affect such activities.

**Not for
consultation**

ATTACHMENT 3



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Long Island Ecological Services Field Office
340 Smith Road
Shirley, NY 11967
Phone: (631) 286-0485 Fax: (631) 286-4003

In Reply Refer To:

May 17, 2017

Consultation Code: 05E1LI00-2017-SLI-0529

Event Code: 05E1LI00-2017-E-01049

Project Name: Living with the Bay Resiliency - Hempstead Lake State Park EA

Subject: List of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 et seq.).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 et seq.), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the

human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2) (c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 et seq.), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Long Island Ecological Services Field Office
340 Smith Road
Shirley, NY 11967
(631) 286-0485

Project Summary

Consultation Code: 05E1LI00-2017-SLI-0529

Event Code: 05E1LI00-2017-E-01049

Project Name: Living with the Bay Resiliency - Hempstead Lake State Park EA

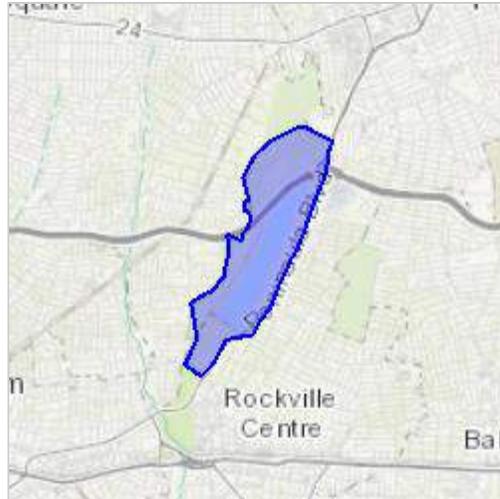
Project Type: Federal Grant / Loan Related

Project Description: In June 2013, the United States Department of Housing and Urban Development (HUD) initiated Rebuild by Design (RBD), a competition to respond to Superstorm Sandy's devastation in the northeast region of the United States and promote a design-led approach to pro-active planning for long-term resilience and climate change adaptation. The Nassau County Living with the Bay Project (LWTB) was selected as one of the projects to be implemented using Community Development Block Grant – Disaster Recovery (CDBG-DR) funding as well as other public and private-sector funding sources. LWTB provides a comprehensive suite of potential interventions intended to provide long-term resilience and climate change adaptation for Nassau County communities within the Mill River Watershed. The Hempstead Lake State Park Project is one component of LWTB, and is the subject of an Environmental Assessment (EA) currently being prepared. The project would improve Hempstead Lake State Park's existing water management infrastructure, restore approximately 2.5 acres of emergent wetland and construct approximately 8 acres of new emergent wetland, and provide new educational and recreational amenities. The project involves the restoration of dams and associated water flow control infrastructure within the Park; installation of floatable catchers and sediment basins at pond inlets and the creation of filtering wetlands and pond excavation/dredging to mitigate ongoing bank erosion, improve water quality, expand aquatic habitat, and increase impoundment capacity; expansion and improvement of the existing path system and waterfront access within the Park; and construction of a new, single-story Environmental Education and Resiliency Center.

Project Location:

Approximate location of the project can be viewed in Google Maps:

<https://www.google.com/maps/place/40.68085350989297N73.64211134321019W>



Counties: Nassau, NY

Endangered Species Act Species

There is a total of 6 threatened, endangered, or candidate species on your species list. Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species. See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area. Please contact the designated FWS office if you have questions.

Mammals

NAME	STATUS
Northern Long-eared Bat (<i>Myotis septentrionalis</i>) No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened

Birds

NAME	STATUS
<p>Piping Plover (<i>Charadrius melodus</i>)</p> <p>Population: except Great Lakes watershed</p> <p>There is a final critical habitat designated for this species. Your location is outside the designated critical habitat.</p> <p>Species profile: https://ecos.fws.gov/ecp/species/6039</p>	Threatened
<p>Red Knot (<i>Calidris canutus rufa</i>)</p> <p>No critical habitat has been designated for this species.</p> <p>Species profile: https://ecos.fws.gov/ecp/species/1864</p>	Threatened
<p>Roseate Tern (<i>Sterna dougallii dougallii</i>)</p> <p>Population: northeast U.S. nesting pop.</p> <p>No critical habitat has been designated for this species.</p> <p>Species profile: https://ecos.fws.gov/ecp/species/2083</p>	Endangered

Flowering Plants

NAME	STATUS
<p>Sandplain Gerardia (<i>Agalinis acuta</i>)</p> <p>No critical habitat has been designated for this species.</p> <p>Species profile: https://ecos.fws.gov/ecp/species/8128</p>	Endangered
<p>Seabeach Amaranth (<i>Amaranthus pumilus</i>)</p> <p>No critical habitat has been designated for this species.</p> <p>Species profile: https://ecos.fws.gov/ecp/species/8549</p>	Threatened

Critical habitats

There are no critical habitats within your project area.

ATTACHMENT 4

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Division of Fish and Wildlife, New York Natural Heritage Program
625 Broadway, Fifth Floor, Albany, NY 12233-4757
P: (518) 402-8935 | F: (518) 402-8925
www.dec.ny.gov

June 30, 2017

Matt Accardi
Governor's Office of Storm Recovery
25 Beaver Street, 5th Floor
New York, NY 10004

Re: Hempstead Lake State Park Project (Nassau County Living with the Bay Project)
County: Nassau Town/City: Hempstead

Dear Mr. Accardi:

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to the above project.

Enclosed is a report of rare or state-listed animals and plants, and significant natural communities that our database indicates occur at Hempstead Lake State Park.

For most sites, comprehensive field surveys have not been conducted; the enclosed report only includes records from our database. We cannot provide a definitive statement as to the presence or absence of all rare or state-listed species or significant natural communities. Depending on the nature of the project and the conditions at the project site, further information from on-site surveys or other sources may be required to fully assess impacts on biological resources.

The presence of the plants and significant natural community identified in the enclosed report may result in this project requiring additional review. For further information on these biological resources of Hempstead Lake State Park, please contact the NYS State Parks Long Island Regional Office, (631) 669-1000. For information regarding permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), contact the NYS DEC Region 1 Office, Division of Environmental Permits, as listed at www.dec.ny.gov/about/39381.html.

Sincerely,



Nicholas Conrad
Information Resources Coordinator
New York Natural Heritage Program



The following rare plants and significant natural communities have been documented at Hempstead Lake State Park.

We recommend that potential onsite and offsite impacts of the proposed project on these species or communities be addressed as part of any environmental assessment or review conducted as part of the planning, permitting and approval process, such as reviews conducted under SEQRA. Field surveys of the project site may be necessary to determine the status of a species at the site, particularly for sites that are currently undeveloped and may still contain suitable habitat. Final requirements of the project to avoid, minimize, or mitigate potential impacts are determined by the lead permitting agency or the government body approving the project.

The following significant natural communities are considered significant from a statewide perspective by the NY Natural Heritage Program. They are either occurrences of a community type that is rare in the state, or a high quality example of a more common community type. By meeting specific, documented criteria, the NY Natural Heritage Program considers these community occurrences to have high ecological and conservation value.

COMMON NAME

HERITAGE CONSERVATION STATUS

Wetland/Aquatic Communities

Coastal Plain Pond Shore

Rare Community Type

Hempstead Lake, area just south of Southern State Parkway: This is a large moderately diverse pond shore with invasive plants at the edge in a small natural area surrounded by dense urban development.

3574

The following plants are listed as Endangered or Threatened by New York, and so are a vulnerable natural resource of conservation concern.

COMMON NAME

SCIENTIFIC NAME

NY STATE LISTING

HERITAGE CONSERVATION STATUS

Fringed Boneset

Eupatorium torreyanum

Threatened

Imperiled in NYS

Hempstead Lake, east shore just south of Southern State Parkway, 2001-07-17: This plant is located along the edge of a reservoir and a "coastal plain pond shore". Along this edge, there is a small build-up of sand that has reached a height of approximately 0.5 meters above the water. This plant is restricted to the open, drier sections of the sand mound.

8137

Weak Rush

Juncus debilis

Endangered

Critically Imperiled in NYS

Hempstead Lake, west shore, 2004-09-28: The plants are on a sandy moist shoreline of a large pond where water levels fluctuate.

11400

Slender Crabgrass

Digitaria filiformis

Endangered

Critically Imperiled in NYS

Historical record only: Hempstead Lake, east side, 1903.

8111

This report only includes records from the NY Natural Heritage database.

If any rare plants or animals are documented during site visits, we request that information on the observations be provided to the New York Natural Heritage Program so that we may update our database.

Information about many of the rare animals and plants in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, from NatureServe Explorer at www.natureserve.org/explorer, and from USDA's Plants Database at <http://plants.usda.gov/index.html> (for plants).

Information about many of the natural community types in New York, including identification, dominant and characteristic vegetation, distribution, conservation, and management, is available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org. For descriptions of all community types, go to www.dec.ny.gov/animals/97703.html for Ecological Communities of New York State.

ATTACHMENT 2

Northern Long-Eared Bat 4(d) Rule Streamlined Consultation Form

Federal agencies should use this form for the optional streamlined consultation framework for the northern long-eared bat (NLEB). This framework allows federal agencies to rely upon the U.S. Fish and Wildlife Service's (USFWS) January 5, 2016, intra-Service Programmatic Biological Opinion (BO) on the final 4(d) rule for the NLEB for section 7(a)(2) compliance by: (1) notifying the USFWS that an action agency will use the streamlined framework; (2) describing the project with sufficient detail to support the required determination; and (3) enabling the USFWS to track effects and determine if reinitiation of consultation is required per 50 CFR 402.16.

This form is not necessary if an agency determines that a proposed action will have no effect to the NLEB or if the USFWS has concurred in writing with an agency's determination that a proposed action may affect, but is not likely to adversely affect the NLEB (i.e., the standard informal consultation process). Actions that may cause prohibited incidental take require separate formal consultation. Providing this information does not address section 7(a)(2) compliance for any other listed species.

Information to Determine 4(d) Rule Compliance:

YES NO

Information to Determine 4(d) Rule Compliance:	YES	NO
1. Does the project occur wholly outside of the WNS Zone ¹ ?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Have you contacted the appropriate agency ² to determine if your project is near known hibernacula or maternity roost trees?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Could the project disturb hibernating NLEBs in a known hibernaculum?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Could the project alter the entrance or interior environment of a known hibernaculum?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. Does the project remove any trees within 0.25 miles of a known hibernaculum at any time of year?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. Would the project cut or destroy known occupied maternity roost trees, or any other trees within a 150-foot radius from the maternity roost tree from June 1 through July 31.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

You are eligible to use this form if you have answered yes to question #1 **or** yes to question #2 **and** no to questions 3, 4, 5 and 6. The remainder of the form will be used by the USFWS to track our assumptions in the BO.

Agency and Applicant³ (Name, Email, Phone No.):

Matt Accardi, Assistant General Counsel, Certifying Officer
 Bureau of Environmental Review and Assessment
 Governor's Office of Storm Recovery
 25 Beaver Street, 5th Floor
 New York, NY 10004
 (212) 480-6265
 matt.accardi@stormrecovery.ny.gov

Project Name:

Rebuild by Design: Living with the Bay - Hempstead Lake State Park Project

Project Location (include coordinates if known):

Hempstead Lake State Park is located in West Hempstead, Nassau County, New York. The Park is roughly bound by the Hempstead Golf and Country Club to the north, Lakeview Avenue to the south, Peninsula Boulevard to the east, and Woodfield Road to the west. The coordinates are: Latitude 40°41'18.05"N, Longitude 73°38'19.11"W

¹ <http://www.fws.gov/midwest/endangered/mammals/nleb/pdf/WNSZone.pdf>

² See <http://www.fws.gov/midwest/endangered/mammals/nleb/nhisites.html>

³ If applicable - only needed for federal actions with applicants (e.g., for a permit, etc.) who are party to the consultation.

Basic Project Description (provide narrative below or attach additional information):

The project consists of four components intended to improve stormwater management, enhance natural ecosystems, provide connectivity among diverse populations, enhance safety, and promote education programs at the Park. The project components are as follows:

- The Dams, Gatehouses and Bridges component would restore the operation of the dams and associated water flow control infrastructure within the Park to improve stormwater management, including dam improvements to meet current regulatory standards, gatehouse repairs, and installation of pedestrian bridges over park waterways.
- The Northeast and Northwest Ponds component would involve the installation of floatables catchers and sediment basins at pond inlets, as well as creation of stormwater filtering wetlands and dredging of the ponds to remove debris, improve water quality and increase impoundment capacity.
- The Environmental Education and Resiliency Center component would comprise construction of a new, two-story, approximately 8,000-square-foot building west of Lakeside Drive. The focus of the Education and Resiliency Center would be on environmental stewardship and climate change adaptation resiliency.
- The Greenways, Gateways and Waterfront Access component would comprise expansion and improvement to the existing path system within the park, including connection points to the surrounding neighborhoods, as well as installation of observation areas, piers, and kayak launches along Hempstead Lake.

Up to 3,105 trees at various locations throughout the Proposed Project area would be removed for wetland creation/enhancement, dam improvements, and enhancement and expansion of visitor access to the waterfront and trails. Tree removal is primarily proposed along the Hempstead Lake Dam and South Pond Dam and in the approximately five acres of upland and wetland forests in the Northeast and Northwest Pond areas.

General Project Information

YES NO

General Project Information	YES	NO
Does the project occur within 0.25 miles of a known hibernaculum?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the project occur within 150 feet of a known maternity roost tree?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the project include forest conversion ⁴ ? (if yes, report acreage below)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Estimated total acres of forest conversion	10.93	
If known, estimated acres ⁵ of forest conversion from April 1 to October 31	0	
If known, estimated acres of forest conversion from June 1 to July 31 ⁶	0	
Does the project include timber harvest? (if yes, report acreage below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Estimated total acres of timber harvest		
If known, estimated acres of timber harvest from April 1 to October 31		
If known, estimated acres of timber harvest from June 1 to July 31		
Does the project include prescribed fire? (if yes, report acreage below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Estimated total acres of prescribed fire		
If known, estimated acres of prescribed fire from April 1 to October 31		
If known, estimated acres of prescribed fire from June 1 to July 31		
Does the project install new wind turbines? (if yes, report capacity in MW below)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Estimated wind capacity (MW)		

⁴ Any activity that temporarily or permanently removes suitable forested habitat, including, but not limited to, tree removal from development, energy production and transmission, mining, agriculture, etc. (see page 48 of the BO).

⁵ If the project removes less than 10 trees and the acreage is unknown, report the acreage as less than 0.1 acre.

⁶ If the activity includes tree clearing in June and July, also include those acreage in April to October.

Agency Determination:

By signing this form, the action agency determines that this project may affect the NLEB, but that any resulting incidental take of the NLEB is not prohibited by the final 4(d) rule.

If the USFWS does not respond within 30 days from submittal of this form, the action agency may presume that its determination is informed by the best available information and that its project responsibilities under 7(a)(2) with respect to the NLEB are fulfilled through the USFWS January 5, 2016, Programmatic BO. The action agency will update this determination annually for multi-year activities.

The action agency understands that the USFWS presumes that all activities are implemented as described herein. The action agency will promptly report any departures from the described activities to the appropriate USFWS Field Office. The action agency will provide the appropriate USFWS Field Office with the results of any surveys conducted for the NLEB. Involved parties will promptly notify the appropriate USFWS Field Office upon finding a dead, injured, or sick NLEB.

Signature:  _____

Date Submitted: August 22, 2017

ATTACHMENT 3

From: [Papa, Steve](#)
To: [Accardi, Matt \(STORMRECOVERY\)](#)
Cc: laurie_boullianne@fws.gov; [Carey, Jonathan](#)
Subject: Re: Hempstead Lake State Park ESA
Date: Friday, October 20, 2017 8:47:12 AM

External

Yes. I believe you have fulfilled your section 7 obligations. thanks

Steven T. Papa
U.S. Fish and Wildlife Service
Long Island Field office
340 Smith Rd
Shirley, NY 11967
(631) 286-0485 (tel)
(631) 286-4003 (fax)
Steve_Papa@fws.gov

"I only wish that besides protecting the songsters...we also protect the birds of the seashore..."

- **T. Roosevelt**

On Fri, Oct 20, 2017 at 8:33 AM, Accardi, Matt (STORMRECOVERY)
<Matt.Accardi@stormrecovery.ny.gov> wrote:

Hi Steve,

I am following up to see whether we can call our consultation under Section 7 complete.

Thank you,

Matt

From: Accardi, Matt (STORMRECOVERY)
Sent: Wednesday, October 11, 2017 2:34:14 PM
To: Papa, Steve
Cc: laurie_boullianne@fws.gov; Jonathan Carey
Subject: Re: Hempstead Lake State Park ESA

Thank you Steve.

It seems like one last correspondence from your office is needed to show that GOSR completed its Section 7 responsibilities by way of our seasonal limitations to tree removal, completed Rule 4d Streamlined Consultation Form for the Northern Long Eared Bat, and the letter sent to you providing our effect determination for the applicable species.

Regarding the East Side Coastal Resiliency Project: GOSR is not involved with this project. New York City, specifically the Departments of Design and Construction, Parks and Recreation, and Mayor's Office of Recovery and Resiliency are responsible for implementing this HUD Rebuild by Design Project. It is my understanding that Carrie Grassi would be the best person to reach out to at NYC. Carrie's email address is cgrassi@cityhall.gov.

Best,

Matt

From: Papa, Steve <steve_papa@fws.gov>
Sent: Wednesday, October 11, 2017 7:45 AM
To: Accardi, Matt (STORMRECOVERY)
Cc: laurie_boullianne@fws.gov; Jonathan Carey
Subject: Re: Hempstead Lake State Park ESA

ATTENTION: This email came from an external source. Do not open attachments or click on links from unknown senders or unexpected emails.

Hi Matt,

Let me double check on the ESA end of things. There is no consultation for migratory birds per se, other than the project should not result in the taking of migratory birds as per the Migratory Bird Treaty Act.

Also, can you update me on the East Side Coastal Resiliency Project?

Thanks

Steve

Steven T. Papa
U.S. Fish and Wildlife Service
Long Island Field office
[340 Smith Rd](#)
[Shirley, NY 11967](#)
(631) 286-0485 (tel)
631) 286-4003 (fax)
Steve_Papa@fws.gov

"I only wish that besides protecting the songsters...we also protect the birds of the seashore..."

- **T. Roosevelt**

On Thu, Oct 5, 2017 at 6:26 PM, Accardi, Matt (STORMRECOVERY)
<Matt.Accardi@stormrecovery.ny.gov> wrote:

Hi Steve,

Following up on this one again.

Thanks,

Matt

From: Papa, Steve <steve_papa@fws.gov>
Sent: Thursday, September 14, 2017 8:11:06 AM
To: Accardi, Matt (STORMRECOVERY)
Cc: laurie_boullianne@fws.gov; Jonathan Carey
Subject: Re: Hempstead Lake State Park ESA

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thanks, Matt. I am reviewing this and your other submissions today.

Steve

Steven T. Papa
U.S. Fish and Wildlife Service
Long Island Field office
[340 Smith Rd](#)
[Shirley, NY 11967](#)
(631) 286-0485 (tel)
631) 286-4003 (fax)
Steve_Papa@fws.gov

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- **T. Roosevelt**

On Wed, Sep 13, 2017 at 7:10 PM, Accardi, Matt (STORMRECOVERY)
<Matt.Accardi@stormrecovery.ny.gov> wrote:

Steve,

I am following up on my previous email seeking your guidance on whether we can consider this consultation complete. I believe that we are covered with respect to NLEB via the attached Streamline Consultation form. However, it is not clear whether our may affect, not likely to adversely affect determination regarding migratory birds is acceptable.

Thank you for your assistance,

Matt

From: Accardi, Matt (STORMRECOVERY)
Sent: Tuesday, August 22, 2017 1:23 PM

To: Papa, Steve
Cc: laurie_boullianne@fws.gov; Jonathan Carey
Subject: Re: Hempstead Lake State Park ESA

Hi Steve,

Please find the attached Streamlined Consultation Form for NLEB. Since we came to a may affect determination on several migratory birds, in addition to NLEB, would you kindly provide a response that we can incorporate in our record. This would help us complete our environmental review of the project with time to make the tree-clearing window.

Thank you much,

Matt

From: Papa, Steve <steve_papa@fws.gov>
Sent: Wednesday, August 9, 2017 10:16:50 AM
To: Accardi, Matt (STORMRECOVERY)
Subject: Re: Hempstead Lake State Park ESA

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Apologize for that. Please see the following link. You can adopt the checklist for your project and submit to us. Under the established procedures, the Service does not respond unless we have any questions or if there are other "may affect" species.

Steve

Steven T. Papa
U.S. Fish and Wildlife Service
Long Island Field office
[340 Smith Rd](#)
[Shirley, NY 11967](#)
(631) 286-0485 (tel)
631) 286-4003 (fax)
Steve_Papa@fws.gov

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- **T. Roosevelt**

On Wed, Aug 9, 2017 at 8:30 AM, Accardi, Matt (STORMRECOVERY)
<Matt.Accardi@stormrecovery.ny.gov> wrote:

Thank you Steve. The "no effect" box is checked on the acknowledgement form. Our determination is "may affect, not likely to adversely affect."

From: Papa, Steve <steve_papa@fws.gov>
Sent: Wednesday, August 9, 2017 8:07:43 AM
To: Accardi, Matt (STORMRECOVERY); Laurie Boullianne
Subject: Hempstead Lake State Park ESA

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see attached.

Steven T. Papa
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Long Island Field office
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[\(631\) 286-0485](#) (tel)
631) 286-4003 (fax)
Steve_Papa@fws.gov

"I only wish that besides protecting the songsters...we also protect the birds of the seashore..."

- **T. Roosevelt**



United States Department of the Interior



FISH AND WILDLIFE SERVICE
Long Island Ecological Services Field Office
340 Smith Road
Shirley, NY 11967-2258
Phone: (631) 286-0485 Fax: (631) 286-4003

In Reply Refer To:

October 01, 2018

Consultation Code: 05E1LI00-2017-SLI-0529

Event Code: 05E1LI00-2019-E-00001

Project Name: Living with the Bay Resiliency - Hempstead Lake State Park EA

Subject: Updated list of threatened and endangered species that may occur in your proposed project location, and/or may be affected by your proposed project

To Whom It May Concern:

The enclosed species list identifies threatened, endangered, proposed and candidate species, as well as proposed and final designated critical habitat, that may occur within the boundary of your proposed project and/or may be affected by your proposed project. The species list fulfills the requirements of the U.S. Fish and Wildlife Service (Service) under section 7(c) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*).

New information based on updated surveys, changes in the abundance and distribution of species, changed habitat conditions, or other factors could change this list. Please feel free to contact us if you need more current information or assistance regarding the potential impacts to federally proposed, listed, and candidate species and federally designated and proposed critical habitat. Please note that under 50 CFR 402.12(e) of the regulations implementing section 7 of the Act, the accuracy of this species list should be verified after 90 days. This verification can be completed formally or informally as desired. The Service recommends that verification be completed by visiting the ECOS-IPaC website at regular intervals during project planning and implementation for updates to species lists and information. An updated list may be requested through the ECOS-IPaC system by completing the same process used to receive the enclosed list.

The purpose of the Act is to provide a means whereby threatened and endangered species and the ecosystems upon which they depend may be conserved. Under sections 7(a)(1) and 7(a)(2) of the Act and its implementing regulations (50 CFR 402 *et seq.*), Federal agencies are required to utilize their authorities to carry out programs for the conservation of threatened and endangered species and to determine whether projects may affect threatened and endangered species and/or designated critical habitat.

A Biological Assessment is required for construction projects (or other undertakings having similar physical impacts) that are major Federal actions significantly affecting the quality of the human environment as defined in the National Environmental Policy Act (42 U.S.C. 4332(2) (c)). For projects other than major construction activities, the Service suggests that a biological evaluation similar to a Biological Assessment be prepared to determine whether the project may affect listed or proposed species and/or designated or proposed critical habitat. Recommended contents of a Biological Assessment are described at 50 CFR 402.12.

If a Federal agency determines, based on the Biological Assessment or biological evaluation, that listed species and/or designated critical habitat may be affected by the proposed project, the agency is required to consult with the Service pursuant to 50 CFR 402. In addition, the Service recommends that candidate species, proposed species and proposed critical habitat be addressed within the consultation. More information on the regulations and procedures for section 7 consultation, including the role of permit or license applicants, can be found in the "Endangered Species Consultation Handbook" at:

<http://www.fws.gov/endangered/esa-library/pdf/TOC-GLOS.PDF>

Please be aware that bald and golden eagles are protected under the Bald and Golden Eagle Protection Act (16 U.S.C. 668 *et seq.*), and projects affecting these species may require development of an eagle conservation plan (http://www.fws.gov/windenergy/eagle_guidance.html). Additionally, wind energy projects should follow the wind energy guidelines (<http://www.fws.gov/windenergy/>) for minimizing impacts to migratory birds and bats.

Guidance for minimizing impacts to migratory birds for projects including communications towers (e.g., cellular, digital television, radio, and emergency broadcast) can be found at: <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/towers.htm>; <http://www.towerkill.com>; and <http://www.fws.gov/migratorybirds/CurrentBirdIssues/Hazards/towers/comtow.html>.

We appreciate your concern for threatened and endangered species. The Service encourages Federal agencies to include conservation of threatened and endangered species into their project planning to further the purposes of the Act. Please include the Consultation Tracking Number in the header of this letter with any request for consultation or correspondence about your project that you submit to our office.

Attachment(s):

- Official Species List
-

Official Species List

This list is provided pursuant to Section 7 of the Endangered Species Act, and fulfills the requirement for Federal agencies to "request of the Secretary of the Interior information whether any species which is listed or proposed to be listed may be present in the area of a proposed action".

This species list is provided by:

Long Island Ecological Services Field Office
340 Smith Road
Shirley, NY 11967-2258
(631) 286-0485

Project Summary

Consultation Code: 05E1LI00-2017-SLI-0529

Event Code: 05E1LI00-2019-E-00001

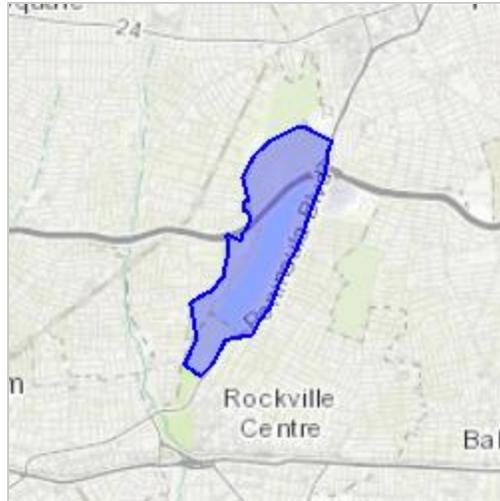
Project Name: Living with the Bay Resiliency - Hempstead Lake State Park EA

Project Type: Federal Grant / Loan Related

Project Description: In June 2013, the United States Department of Housing and Urban Development (HUD) initiated Rebuild by Design (RBD), a competition to respond to Superstorm Sandy's devastation in the northeast region of the United States and promote a design-led approach to pro-active planning for long-term resilience and climate change adaptation. The Nassau County Living with the Bay Project (LWTB) was selected as one of the projects to be implemented using Community Development Block Grant – Disaster Recovery (CDBG-DR) funding as well as other public and private-sector funding sources. LWTB provides a comprehensive suite of potential interventions intended to provide long-term resilience and climate change adaptation for Nassau County communities within the Mill River Watershed. The Hempstead Lake State Park Project is one component of LWTB, and is the subject of an Environmental Assessment (EA) currently being prepared. The project would improve Hempstead Lake State Park's existing water management infrastructure and provide new educational and recreational amenities. The project involves the restoration of dams and associated water flow control infrastructure within the Park; installation of floatables catchers and sediment basins at pond inlets and the creation of filtering wetlands and pond excavation/dredging to mitigate ongoing bank erosion, improve water quality, expand aquatic habitat, and increase impoundment capacity; expansion and improvement of the existing path system and waterfront access within the Park; and construction of a new, single-story Environmental Education and Resiliency Center. On-site wetland creation and habitat enhancement is proposed to mitigate any unavoidable impacts to wetlands and open water.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/40.68085350989297N73.64211134321019W>



Counties: Nassau, NY

Endangered Species Act Species

There is a total of 6 threatened, endangered, or candidate species on this species list.

Species on this list should be considered in an effects analysis for your project and could include species that exist in another geographic area. For example, certain fish may appear on the species list because a project could affect downstream species.

IPaC does not display listed species or critical habitats under the sole jurisdiction of NOAA Fisheries¹, as USFWS does not have the authority to speak on behalf of NOAA and the Department of Commerce.

See the "Critical habitats" section below for those critical habitats that lie wholly or partially within your project area under this office's jurisdiction. Please contact the designated FWS office if you have questions.

-
1. [NOAA Fisheries](#), also known as the National Marine Fisheries Service (NMFS), is an office of the National Oceanic and Atmospheric Administration within the Department of Commerce.

Mammals

NAME	STATUS
Northern Long-eared Bat <i>Myotis septentrionalis</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/9045	Threatened

Birds

NAME	STATUS
Piping Plover <i>Charadrius melodus</i> Population: [Atlantic Coast and Northern Great Plains populations] - Wherever found, except those areas where listed as endangered. There is final critical habitat for this species. Your location is outside the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/6039	Threatened
Red Knot <i>Calidris canutus rufa</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/1864	Threatened
Roseate Tern <i>Sterna dougallii dougallii</i> Population: northeast U.S. nesting pop. No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2083	Endangered

Flowering Plants

NAME	STATUS
Sandplain Gerardia <i>Agalinis acuta</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/8128	Endangered
Seabeach Amaranth <i>Amaranthus pumilus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/8549	Threatened

Critical habitats

THERE ARE NO CRITICAL HABITATS WITHIN YOUR PROJECT AREA UNDER THIS OFFICE'S JURISDICTION.
