Appendix N. Bald Eagle Field Reconnaissance Survey Memorandum

EDR

Memorandum

To:	Lisa Masi, New York State Department of Environmental Conservation
From:	Laurie Reynolds, Senior Environmental Analyst Gregory S. Liberman, Principal
Date:	January 4, 2023
Reference:	Champlain Hudson Power Express Bald Eagle Field Reconnaissance Survey - **REDACTED**
EDR Project No:	21075

1.0 Introduction

Champlain Hudson Power Express, LLC And CHPE Properties, Inc. (collectively referred to as the Certificate Holders) are planning to develop the Champlain Hudson Power Express Project, a ±339-mile high voltage direct current underground and underwater transmission line (the Project) running from Montreal, Quebec, to Queens, New York. It will bring 1,250 megawatts of renewable energy into New York by May 2026, to reduce the state's dependency on fossil fuels and associated carbon emissions. At the request of the Certificate Holders, Environmental Design & Research, D.P.C. (EDR) has prepared this memorandum to document the results of the bald eagle (*Haliaeetus leucocephalus*) field reconnaissance survey, conducted on December 2, 2022and previously documented bald eagle occupied habitat associated with Segments 12 and 16 of the Project alignment (**Figure 1**).

2.0 Summary of Findings

Based on the results of the field survey and a desktop analysis, no bald eagle nests were identified within 660 feet of proposed construction activities, and previously documented nests are no longer present. Therefore, there are no anticipated direct impacts to bald eagle habitat. Furthermore, based on an analysis of ambient noise conditions, any bald eagles in the project vicinity would have been habituated to noise disturbance of the surrounding developed environment. Therefore, construction activities associated with Segment 12 and the Stony Point transitional HDD would be unlikely to result in disturbance or incidental take of bald eagles in the vicinity of construction. Details and further discussion on the findings can be reviewed in Section 6.0.

3.0 Segment 12 Approach and Methodology

To support the development of the Project EM&CPs, updated information on rare, threatened, endangered species was requested and obtained from the New York Natural Heritage Program (NYNHP) in March, April, and June 2022. The NYNHP response letters dated April 22, 2022 and July 26, 2022 indicated several records of nesting bald eagles within one mile of the Segment 12 Project alignment as well as nesting bald eagles

within 100 yards and wintering bald eagles within 200 yards of the Segment 16 Project alignment. Stony Point and the adjacent Hudson River are also documented regular locations for wintering bald eagles. Bald eagles are listed in New York State as threatened and are protected under the Environmental Conservation Law § 11-0535 and 6 New York Codes of Rules and Regulations (NYCRR) Part 182. In addition, the Bald and Golden Eagle Protection Act of 1940 and the Migratory Bird Treaty Act prohibit the take of bald eagles, including their parts, nests, or eggs.

For more detailed information of the Project's proximity to previously documented bald eagle occupied habitat, NYSDEC provided the Certificate Holders with spatial information of previously documented occupied habitat of state-listed threatened and endangered species on April 20, 2022 under a non-disclosure agreement. Subsequently, NYSDEC provided previously documented bald eagle nest location data on October 19, 2022 and known bald eagle wintering roost area data on November 14, 2022.

Based on a review of the NYSDEC data, construction activities associated with Segments 12 and 16 of the Project alignment are proposed in the immediate vicinity of previously documented bald eagle breeding and wintering habitat. More specifically, a review of NYSDEC's previously documented bald eagle nest data identified six nest locations within one mile of the Segment 12 alignment, two of which occur within 660 feet of the alignment and limits of work (LOW) for Segments 12 and 16 (see Nests #1 and #2 in **Figure 2**). Based on the information provided by NYSDEC, one of the identified nests was first observed in 2015 and last surveyed in 2020. The other nest was first observed in 2021 with no subsequent surveys reported. In addition, one wintering roost area is located approximately 1,305 feet (0.24 mile) from the Segment 12 LOW and approximately 735 feet (0.14 mile) from the Segment 16 HDD. The roost area was first observed in 1998 and the last survey of this area occurred in 2009.

To further evaluate the Project's potential to impact bald eagles, EDR conducted a desktop evaluation and a field reconnaissance survey of portions of the LOWs for Segments 12 and 16 and in the vicinity of NYSDEC documented nesting locations, on behalf of the Certificate Holders. Results of this evaluation are detailed in the following sections.

4.0 Desktop Evaluation

4.1 Existing Visual Barrier

According to a baseline review of aerial imagery, topography, and land use classifications, both of the NYSDEC previously documented nests located closest to the proposed LOW have an existing visual barrier between the nest locations and the proposed LOW in the form of a forested hillside.

4.2 Surrounding Land Uses and Noise Sources

Land uses within 0.25 mile of the previously documented nest locations and known wintering roost area include state parkland, a quarry, a railroad, residential and commercial development, and a marina on the Hudson River shoreline. Activities and potential noise sources associated with these land uses are described

in the following sections. **Figure 1** presents existing site conditions surrounding Segment 12 and Segment 16 construction and NYSDEC-identified bald eagle locations.

4.2.1 Stony Point Battlefield Park

The surrounding landscape is predominantly comprised of state parkland at Stony Point Battlefield Park, which is used year-round in recreation. The park includes a historic lighthouse, picnic areas, and features a museum and visitor center. The park also offers tours, demonstrations, and exhibits on the Battle of Stony Point, including reenactments of 18th century miliary life and cannon and musket firings.[1] Existing park driveways and ancillary buildings and residences are present as close as 165 and 260 feet from the two previously documented eagle nests. The park is open to the public year-round, and it appears that bald eagles at the previously documented nest or wintering roost area have tolerated noise and disturbance from motorized vehicles, non-motorized recreation, and existing development within 660 feet, and in some cases within 330 feet, during both the breeding and wintering seasons.

4.2.2 Tompkins Cove Quarry

The Tompkins Cove Quarry, owned by Tilcon New York, Inc., occurs within 350 feet of the nearest documented nest location. The quarry was formerly used in limestone mining and supplied crushed stone for construction to the surrounding area, New York City, and Long Island. The property is comprised of a 110-acre open pit, a primary crusher, and a secondary processing mill. The quarry ceased mining operations in 2012 and is currently used as an industrial workspace and material storage, such as salt for snow plowing operations.

4.2.3 Railroad

An active CSX railroad line occurs approximately 750 feet east of the two documented bald eagle nest locations and just 45 feet west of the Stony Point wintering roost area. This rail line is used in freight transportation and train density varies from 8 to 24 trains depending on the day of the week.

4.2.4 Residential and Commercial Development

Residential and commercial developments occur approximately 980 to 1,000 feet from the NYSDEC previously documented nest locations. Common noise sources in residential and commercial environments may include but not limited to cars, motorcycles, heavy trucks, lawnmowers, snow blowers, dogs and other animals.

4.2.5 Marina

Finally, it is important to note that the Hudson River has long been used in commercial, recreational, and passenger shipping traffic. Several marinas occur along both shorelines of the Hudson River

[1] NYSOPRHP. Stony Point Battlefield State Historic Site. Available online at: https://parks.ny.gov/historic-sites/stonypointbattlefield/details.aspx#hours-of-operation

and within 0.25 mile of bald eagle wintering roost areas, which is closer than NYSDEC's recommended distance buffer for new marina or boat dock construction. Specifically, the Stony Point Bay Marina, owned and operated by USA Marina and Boat Club, occurs approximately 575 feet south of the documented Stony Point wintering roost area. Per to NYS Navigation Law Section 44, pleasure vessels may not be operated in a manner which exceeds noise levels of 75 dBA when underway or 90 dBA when subjected to a stationary test (NYSOPRHP, 2001).

5.0 Summary of Field Reconnaissance Survey

A field reconnaissance survey was conducted by EDR biologists on December 2, 2022 to confirm the presence of the NYSDEC previously documented nests and wintering roost area, evaluate existing surrounding visual barriers, and obtain an understanding of baseline noise levels and sources. The field reconnaissance survey was conducted at Stony Point, New York with a specific focus on the transition area between Segment 12 and Segment 16 and areas of the Project LOWs that occur within 0.25 mile of the NYSDEC previously documented nest locations and wintering roost area (referred to hereafter as the "Study Area") (see **Figure 2**).

EDR biologists visually scanned the documented nest locations and surrounding habitat using binoculars with 8x to 10x magnification and a spotting scope to aid in the observation and identification of birds and nests. Biologists also listened for the calls of bald eagles as well as sources of existing noise in the surrounding landscape. For any bald eagle observations, detailed location and behavioral information was recorded.

The results of the field reconnaissance survey are discussed in the following sections. Photographs collected during the survey are provided in **Attachment 1**. **Figure 3** depicts photograph locations and on-site observations.

5.1 Existing Visual Barrier

The Study Area is largely comprised of deciduous forestland with some smaller areas of successional shrubland and disturbed or developed land. The NYSDEC previously documented nest locations were at the apex of a knoll within the Stony Point Battlefield Park. EDR biologists confirmed that the existing woodlot and hillslope provides a natural visual barrier between the LOW and the previously documented nest locations.

5.2 Field Verification of Previously Documented Eagle Nest Locations

EDR biologists were unable to locate bald eagle or other raptor nests at the GPS coordinates provided by the NYSDEC. In addition, EDR did not identify any new nests within an approximately 330-foot radius of the previously documented nest locations. While surveying the Stony Point Battlefield Park property, EDR biologists spoke with the Park Manager who informed the biologists that both bald eagle nests had fallen prior to December 2021 and no new eagle nests have been observed since. As noted above, the previously documented nest locations were located at the apex of a knoll adjacent to the Hudson River which is subject

to high winds. As indicated in the USFWS Northeast Project Screening Form (2020), bald eagle nests may not always survive from one season to the next, and it is relatively common for nests to fall apart or be blown down by high winds.

5.3 Other Nest Observations

EDR biologists did identify one unoccupied nest in the northern portion of the Study Area at the forested edge of the Tompkins Cove Quarry that may be a potential large raptor nest (see Figure 3). However, the identified nest does not match the description of a bald eagle nest and is anticipated to belong to a red-tailed hawk (*Buteo jamaicensis*), or a great horned owl (*Bubo virginianus*) based on the following characteristics of the identified nest and species observations that have been documented nearby:

- The nest is approximately 18-30 inches in diameter and 6-15 inches in height.
- Most structural sticks are approximately 1 inch or less in diameter.
- The height of the nest is approximately 40-70 feet above the ground.
- Position of nest is within a fork of the tree near the trunk.
- The nest was built within a deciduous tree (species unconfirmed).
- Red-tailed hawk observations have been documented nearby:
    - A red-tailed hawk nest with young was documented in eBird on July 15, 2021 to the northwest or northeast of the Stony Point Battlefield Park entrance.
    - Many other red-tailed hawk observations were reported on eBird throughout 2022, including during the breeding season.
- Great horned owl observations have also been documented nearby:
    - According to the Stony Point Battlefield Park Manager, a great horned owl has been heard vocalizing approximately 1,000 feet southwest of the identified nest. A pair was also recorded on eBird in the vicinity of the Study Area on December 20, 2020.

Red-tailed hawk nests are typically less than half the size of bald eagle nests (USFWS, 2021). Great horned owls also frequently use the former nests of other animals, most commonly red-tailed hawk nests (USFWS, 2021).

5.4 Bald Eagle Observations

EDR biologists observed one adult bald eagle in the Study Area during the field reconnaissance survey. The bird was seen soaring with over 50 black vultures (*Coragyps atratus*) and one common raven (*Corvus corax*) and rose to about 300 feet above ground level before gliding to the north out of sight. No bald eagle perching, roosting, foraging, nest building, or nest maintenance activities were observed in the Study Area.

5.5 Ambient and Proposed Noise Conditions

Existing noise sources included motorized landscaping equipment (e.g., lawn mower) within the Stony Point Battlefield Park, vehicle traffic from adjacent public roadways, dogs barking, and other noises typical in residential environments. Additionally, the trains along the CSX railroad were observed several times throughout the duration of the field reconnaissance survey, with a train horn sounding each time a train crossed under the bridge in Stony Point Battlefield Park. Under the Train Horn Rule (49 CFR Part 222), locomotive engineers must begin to sound train horns at least 15 seconds, and no more than 20 seconds,

in advance of all public grade crossings. The maximum volume level for the train horn is 110 decibels which is a new requirement. The minimum sound level remains 96 decibels (USDOT Federal Railroad Administration, 2013).

6.0 Details of Findings

Overall, the results of EDR's December 2022 field reconnaissance survey do not indicate that there is active bald eagle nesting within the Study Area. Rather, no bald eagle nests currently exist within 660 feet of proposed construction activities, and previously documented nests no longer appear to be present. Based on discussions with the Stony Point Battlefield Park Manager, high winds may have resulted in the nests blowing down prior to December 2021 and the nests have not been rebuilt since. In addition, EDR documented numerous sources of existing noise and disturbance in close proximity to the previously documented breeding and wintering locations, indicating that bald eagle use of previously documented nests exhibited tolerance. As compared to existing ambient noise of locomotives (85-110 dB), lawnmowers (95 dB), and railroad horns (110 dB), it is anticipated that proposed construction activities would be similar to or less disruptive than existing sources of noise in the surrounding landscape[2]. Any new nest building by bald eagles within 660 feet of proposed Segment 12 or Stony Point transitional HDD construction would only further indicate that the birds are tolerant of developed environments and associated noise disturbance. Furthermore, construction of Segment 16 transitional HDD is anticipated to begin in September 2023 and Segment 12 construction will begin thereafter. All construction activities will be short term in duration ranging from 2 days (installation of erosion and sediment control measures) to approximately one month (HDD installation) depending on the activity. Therefore, given these considerations it is anticipated that construction activities associated with Segments 12 and 16 of the Project would be unlikely to result in significant adverse impacts to bald eagles or their habitat.

6.1 Potential Measures to Avoid Impacts to Future Nesting at Documented Locations

The following minimization measures may be recommended, in consultation with USFWS and NYSDEC staff:

- Conduct a pre-construction survey for new bald eagle nests at least one week prior to the commencement of any construction occurring within the breeding season.

In the event that a new bald eagle nest is identified during construction of the Facility, immediate notification (within 48 hours) to the New York State Department of Public Service (NYSDPS) and NYSDEC would be required for guidance on whether it is necessary to further avoid or minimize the potential for disturbance.

[2] Proposed construction activities associated with Segment 12 and/or the Stony Point transitional HDD may include selective tree clearing, installation of erosion and sediment controls, horizontal directional drilling, transition vault and duct bank installation, cable pulling and splicing and restoration activities. Noise associated with activities are expected to range from 73 to 96 dBA.

6.2 Additional Best Management Practices

In accordance with Section 16.2 of the CHPE Best Management Practices Document (CHPE BMP Document), the Certificate Holders will implement the following measures:

- Environmental training for contractors and construction crews will include training on the identification of bald eagles and location of nests. Construction personnel will be instructed to report any sightings of potential eagle nests that were not previously identified by the NYS Natural Heritage Program; and
- If any previously unidentified eagle nests are discovered, the Certificate Holders will report findings to the NYS Natural Heritage Program as soon as possible and consult with the NYSDEC and USFWS for guidance to avoid and/or minimize the potential for disturbance, if needed.

In addition, the Certificate Holders will consult with NYSDEC annually for updated nest location data.

References

eBird. 2021a. Hotspots. Cornell Lab of Ornithology, Ithaca, New York. Available at: https://ebird.org/hotspots (Accessed December 2022).

eBird. 2021b. New York State Breeding Bird Atlas III. Cornell Lab of Ornithology, Ithaca, New York. Available at: https://ebird.org/atlasny (Accessed December 2022).

NYSDEC. 2022. Species-specific Guidance for Endangered and Threatened Animal Species Permitting for Bald Eagles. Available online: https://www.dec.ny.gov/docs/wildlife_pdf/baeaguidance.pdf

NYSOPRHP. 2001. Vessel Noise Laws. Available online at: https://parks.ny.gov/documents/recreation/boating/VesselNoiseLaws.pdf

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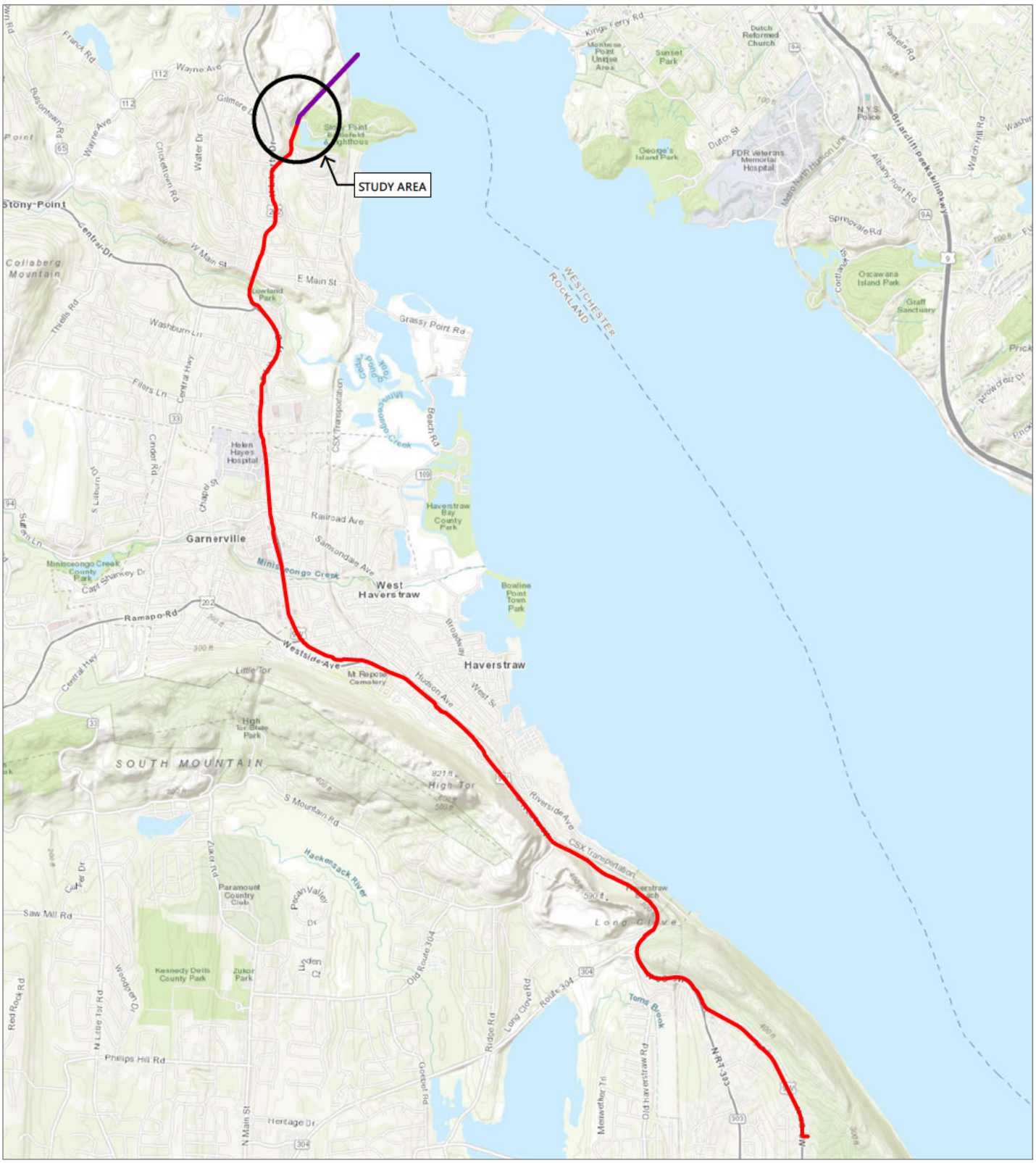
Figure 1. Regional Location Map



CHPE EM&CP

Rockland County

Segment 16

Segment 12

0 1,000 2,000 4,000

Feet

Prepared January 4, 2023

Basemap Esri ArcGIS Online World Topographic Map* map service.

EDR

1

View northeast along existing park driveway toward Limit of Work.

2

View east of existing visual buffer between Limit of Work and documented nesting area.

Champlain Hudson Power Express

Bald Eagle Reconnaissance

Town of Stony Point, Rockland County, New York

3

View east of slope leading up to the documented nesting area.

4

View north towards documented nest area.

Champlain Hudson Power Express

Bald Eagle Reconnaissance

Town of Stony Point, Rockland County, New York

5

View looking up the tree at documented nest location #1.

6

View looking up the tree at documented nest location #2.

Champlain Hudson Power Express

Bald Eagle Reconnaissance

Town of Stony Point, Rockland County, New York

7

View southeast of large potential raptor nest at the edge of the quarry.

8

Spotting scope view southeast of large potential raptor nest.

Champlain Hudson Power Express

Bald Eagle Reconnaissance

Town of Stony Point, Rockland County, New York