

Appendix C – T & E Species Inquiries



ingalls & associates, LLP
engineers/surveyors

December 11, 2007

NYS Department of Environmental Conservation
Division of Fish, Wildlife & Marine Resources
New York Natural Heritage Program
625 Broadway, 5th floor
Albany, New York 12233-4757

Attn: Ms. Jean Pietrusiak, Information Services

**Re: Endangered or Threatened Species
McChesney Ave Development**
Town of Brunswick, Rensselaer County
State of New York

Dear Ms. Pietrusiak:

As part of project environmental review, we are required to address the potential presence of endangered or threatened species at the subject property.

In support of our review of potential endangered/threatened species, we request that you review your existing database for any such species know to occur in the vicinity of the subject project. Attached please find a site location map (South Troy & Averill Park USGS Quads).

We are, at this time, conducting a due diligence assessment of this property at the request of our client, for potential future use. Response at your earliest convenience would be appreciated.

If you have any questions, please call me at 393-7725 ext. 110.

Sincerely,

Ingalls & Associates, LLP

Tanna D. Le Gere

Attachment: Site Location Map

New York State Department of Environmental Conservation
Division of Fish, Wildlife & Marine Resources
New York Natural Heritage Program
625 Broadway, Albany, New York 12233-4757
Phone: (518) 402-8935 • FAX: (518) 402-8925



Alexander B. Grannis
Commissioner

December 31, 2007

Tanna D. Le Gere
Ingalls & Associates
2603 Guilderland Ave.
Schenectady, NY 12306

Dear Ms. Le Gere:

In response to your recent request, we have reviewed the New York Natural Heritage Program database with respect to an Environmental Assessment for the proposed McChesney Avenue Development, site as indicated on the map you provided, located in the Town of Brunswick, Rensselaer County.

We have no records of known occurrences of rare or state-listed animals or plants, significant natural communities, or other significant habitats, on or in the immediate vicinity of your site.

The absence of data does not necessarily mean that rare or state-listed species, natural communities or other significant habitats do not exist on or adjacent to the proposed site. Rather, our files currently do not contain any information which indicates their presence. For most sites, comprehensive field surveys have not been conducted. For these reasons, we cannot provide a definitive statement on the presence or absence of rare or state-listed species, or of significant natural communities. This information should not be substituted for on-site surveys that may be required for environmental assessment.

Our databases are continually growing as records are added and updated. If this proposed project is still under development one year from now, we recommend that you contact us again so that we may update this response with the most current information.

This response applies only to known occurrences of rare or state-listed animals and plants, significant natural communities and other significant habitats maintained in the Natural Heritage Data bases. Your project may require additional review or permits; for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the appropriate NYS DEC Regional Office, Division of Environmental Permits, at the enclosed address.

Sincerely,

Tara Seoane, Information Services
NY Natural Heritage Program

Encs.

cc: Reg. 4, Wildlife Mgr.



Rensselaer County

Federally Listed Endangered and Threatened Species and Candidate Species

This list represents the best available information regarding known or likely County occurrences of Federally-listed and candidate species and is subject to change as new information becomes available.

<u>Common Name</u>	<u>Scientific Name</u>	<u>Status</u>
Bald eagle ¹	<i>Haliaeetus leucocephalus</i>	D
Indiana bat (S) ²	<i>Myotis sodalis</i>	E
Shortnose sturgeon ³	<i>Acipenser brevirostrum</i>	E

Status Codes: E=Endangered T=Threatened P=Proposed C=Candidate D=Delisted

W=Winter S=Summer

¹ The bald eagle was delisted on August 8, 2007. While there are no ESA requirements for bald eagles after this date, the eagles continue to receive protection under the Bald and Golden Eagle Protection Act (BGEPA). Please follow the Service's May 2007 Bald Eagle Management Guidelines to determine whether you can avoid impacts under the BGEPA for your projects. If you have any questions, please contact the endangered species branch in our office.

² While Indiana bats could be present in this county, we do not have any specific roost information to date and they are in such small numbers that is unlikely that they would be present and impacted by any specific proposed projects. This determination may change once we have conducted spring emergence or mistnetting studies for the Albany County hibernaculum.

³ Primarily occurs in Hudson River. Principal responsibility for this species is vested with the National Oceanic and Atmospheric Administration/Fisheries.

Information current as of: 12/11/2007

[Print Species List](#)



United States Department of the Interior

FISH AND WILDLIFE SERVICE



New York Field Office
3817 Luker Road, Cortland, NY 13045
Phone: (607) 753-9334
Fax: (607) 753-9699

Long Island Field Office
3 Old Barto Rd., Brookhaven, NY 11719
Phone: (631) 776-1401
Fax: (631) 776-1405

Endangered Species Act List Request Response Cover Sheet

This cover sheet is provided in response to a search of our website* for information regarding the potential presence of species under jurisdiction of the U.S. Fish and Wildlife Service (Service) within a proposed project area.

Attached is a copy of the New York State County List of Threatened, Endangered, and Candidate Species for the appropriate county(ies). The database that we use to respond to list requests was developed primarily to assist Federal agencies that are consulting with us under Section 7(a)(2) of the Endangered Species Act (ESA) (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*). Our lists include all Federally-listed, proposed, and candidate species known to occur, as well as those likely to occur, in specific counties.

The attached information is designed to assist project sponsors or applicants through the process of determining whether a Federally-listed, proposed, or candidate species and/or “critical habitat” may occur within their proposed project area and when it is appropriate to contact our offices for additional coordination or consultation. You may be aware that our offices have provided much of this information in the past in project-specific letters. However, due to increasing project review workloads and decreasing staff, we are now providing as much information as possible through our website. We encourage anyone requesting species list information to print out all materials used in any analyses of effects on listed, proposed, or candidate species.

The Service routinely updates this database as species are proposed, listed, and delisted, or as we obtain new biological information or specific presence/absence information for listed species. If project proponents coordinate with the Service to address proposed and candidate species in early stages of planning, this should not be a problem if these species are eventually listed. However, we recommend that both project proponents and reviewing agencies retrieve from our online database an *updated* list every 90 days to append to this document to ensure that listed species presence/absence information for the proposed project is *current*.

Reminder: Section 9 of the ESA prohibits unauthorized taking** of listed species and applies to Federal and non-Federal activities. For projects not authorized, funded, or carried out by a Federal agency, consultation with the Service pursuant to Section 7(a)(2) of the ESA is not required. However, no person is authorized to “take**” any listed species without appropriate authorizations from the Service. Therefore, we provide technical assistance to individuals and agencies to assist with project planning to avoid the potential for “take**,” or when appropriate, to provide assistance with their application for an incidental take permit pursuant to Section 10(a)(1)(B) of the ESA.

Additionally, endangered species and their habitats are protected by Section 7(a)(2) of the ESA, which requires Federal agencies, in consultation with the Service, to ensure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of critical habitat. An assessment of the potential direct, indirect, and cumulative impacts is required for all Federal actions that may affect listed species.

For instance, work in certain waters of the United States, including wetlands and streams, may require a permit from the U.S. Army Corps of Engineers (Corps). If a permit is required, in reviewing the application pursuant to the Fish and Wildlife Coordination Act (48 Stat. 401, as amended; 16 U.S.C. 661 *et seq.*), the Service may concur, with or without recommending additional permit conditions, or recommend denial of the permit depending upon potential adverse impacts on fish and wildlife resources associated with project construction or implementation. The need for a Corps permit may be determined by contacting the appropriate Corps office(s).*

For additional information on fish and wildlife resources or State-listed species, we suggest contacting the appropriate New York State Department of Environmental Conservation regional office(s) and the New York Natural Heritage Program Information Services.*

Since wetlands, ponds, streams, or open or sheltered coastal waters may be present in the project area, it may be helpful to utilize the National Wetlands Inventory (NWI) maps as an initial screening tool. However, they may or may not be available for the project area. Please note that while the NWI maps are reasonably accurate, they should not be used in lieu of field surveys for determining the presence of wetlands or delineating wetland boundaries for Federal regulatory purposes. Online information on the NWI program and digital data can be downloaded from Wetlands Mapper, http://wetlands.fws.gov/mapper_tool.htm.

Project construction or implementation should not commence until all requirements of the ESA have been fulfilled. After reviewing our website and following the steps outlined, we encourage both project proponents and reviewing agencies to contact our office to determine whether an accurate determination of species impacts has been made. If there are any questions about our county lists or agency or project proponent responsibilities under the ESA, please contact the New York or Long Island Field Office Endangered Species Program at the numbers listed above.

Attachment (county list of species)

*Additional information referred to above may be found on our website at:
<http://www.fws.gov/northeast/nyfo/es/section7.htm>

** Under the Act and regulations, it is illegal for any person subject to the jurisdiction of the United States to *take* (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these), import or export, ship in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any endangered fish or wildlife species and most threatened fish and wildlife species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. "Harm" includes any act which actually kills or injures fish or wildlife, and case law has clarified that such acts may include significant habitat modification or degradation that significantly impairs essential behavioral patterns of fish or wildlife.

On March 31, 2009 a biologist from Ingalls & Associates, LLP evaluated the Dunkin Meadows site in Brunswick, NY for the potential presence of Bald Eagle (*Haliaeetus leucocephalus*) foraging and nesting Habitat. Bald eagles are protected by the Bald and Golden Eagle Protection Act (16 U.S.C. 668-668c) 1940, Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712), and are listed as a threatened species by the New York State Department of Environmental Conservation (NYSDEC). Bald eagles typically nest on coasts, rivers, and large lakes or reservoirs. The nests are usually built in evergreens 30-60' in height, and nesting sites are re-used. They are known to forage from up to a mile from nest sites. Eagles typically eat fish but will take small mammals when available. Despite their appearance they are actually fairly timid and prefer to nest away from human habitation and disturbance¹.

There is a small (< 1 acre) manmade pond that originates near the intersection of McChesney Avenue and McChesney Avenue extension. This pond has several large oak trees on its southeastern bank ranging from 10-15' in height. On a ridge approximately 200-300 yards southeast from the pond is a row of white pine (*Pinus strobus*) trees. These pines are 20-30' in height and show signs of heavy wind damage with broken and missing limbs. Birds observed during this site visit include red-winged blackbird (*Agelaius phoeniceus*), Canada geese (*Branta canadensis*), common merganser (*Mergus merganser*), mourning dove (*Zenaida macroura*), song sparrow (*Melospiza melodia*), killdeer (*Charadrius vociferus*), blue jay (*Cyanocitta cristata*), American robin (*Turdus migratorius*), black-capped chickadee (*Poecile atricapilla*), and red-tailed hawk (*Buteo jamaicensis*).

It is our opinion that this site does not provide sufficient bald eagle nesting habitat. While pines do exist on this site that could be of sufficient size the pond located on the property is too small to support these birds. The Hudson River is approximately 3 miles from the site and is the closest body of water large enough to provide nesting and foraging opportunities. The presence of development in and around the site is also a limiting factor. There are several residences and commercial buildings within direct vicinity to this site that would make it undesirable. While eagles could potentially forage in the pond it is not believed that they use this site for that purpose. The proposed project will have no effect on bald eagles.

¹ Ehrlich, P. R., Dobkin, D. S. & Wheye, D. 1988. The birder's handbook. New York: Fireside Simon & Schuster Inc. 785p.
U.S. Fish & Wildlife Service. 2007. National Bald Eagle Management Guidelines. 25p.