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APPENDIX I  
ADDITIONAL INVOLVED AND INTERESTED  
AGENCY COMMENTS FOR AMENDED FEIS AND  
ENDANGERED SPECIES STUDY

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**APPENDIX I-1**  
**USF&WS COMMENT LETTER**  
September 20, 2024

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# United States Department of the Interior

## FISH AND WILDLIFE SERVICE

Long Island Office  
340 Smith Road  
Shirley, New York 11967



September 20, 2024

Sylwia Ner-Karas  
Senior Environmental Scientist  
Nelson, Pope, and Voorhis, LLC  
70 Maxess Road  
Melville, NY 11747

Dear Sylwia Ner-Karas:

This letter provides the U.S. Fish and Wildlife Service's (Service) comments on the proposed Suffolk Technology Park at Pinelawn Memorial Cemetery, Wyandanch, NY, and its potential effects on the northern long-eared bat (*Myotis septentrionalis*; federally endangered), migratory birds, and other sensitive species and habitats. Our comments are provided under our authorities under the Endangered Species Act (ESA; 87 Stat. 884, as amended; 16 U.S.C. 1531 et seq), Migratory Bird Treaty Act (MBTA; 16 U.S.C. 703 et seq) and Bald and Golden Eagle Protection Act (BGEPA; 16 U.S.C. 668 et seq).

### **Coordination History**

The project consultant, Nelson, Pope, and Voorhis, LLC., completed an online project review via the Service's Information for Planning and Consultation (IPaC; Code 2024-0087538) website on May 8, 2024. A determination that the proposed project 'may affect' the northern long-eared bat and a notice that further consultation was needed with the Long Island Field Office (LIFO) was part of that review, as well as notification of the presence of other listed or candidate threatened and endangered species that may be present in the project area.

Via on-going coordination, the Service was informed that approximately 58.79 acres (ac) of trees will be cleared from the property (Nelson, Pope, and Voorhis, LLC., August 7, 2024, electronic correspondence). Nelson, pope, and Voorhis, LLC., also informed the Service that the Town of Babylon is preparing a draft environmental impact statement (DEIS) and will forward a copy to our office for review once it is released.

### **Project Description**

Bristol Suffolk LLC (the "Applicant") is proposing the creation of a new zoning district the Planned Industrial Park - II ("PIP-II") zoning district, and a change of zone for 100.1 ac of the subject property (described hereafter) to the PIP-II zoning district. The subject property is a 111.39-ac site, owned by Pinelawn Cemetery, located on the north side of Long Island Avenue, east of Little East Neck Road in the Hamlet of Wyandanch, Town of Babylon, Suffolk County, New York. The property, which is currently vacant and partially wooded, is further identified as

Suffolk County Tax Map District 100; Section 38; Block 1; Lot 1 and is zoned A – Residence zoning district. The project includes the subdivision by the Town of Babylon Town Board of a 11.28 ac parcel of the subject property to be retained by Pinelawn Cemetery and remain undeveloped as well as site plan approval by the Town of Babylon Planning Board for the proposed development on the remaining 100.1 ac. Specifically, the Applicant seeks to subdivide the subject property into two lots (Lot 1 at 100.1 ac and Lot 2 at 11.28 ac) and change the zone of Lot 1 to the newly proposed Planned Industrial Park-II (PIP-II) zoning district to allow for the development of Lot 1 with a business/technology park campus. This business/technology park, hereafter known as “Suffolk Technology Park” will be available to a diverse pool of tenants and a wide mix of technology, business, and light industrial users for office, warehouse, and other light industrial uses. Lot 1 would be developed under a long term (99-year) ground lease to allow for development of the property as a well-planned and coordinated technology, business and industrial park, which may be reverted back to cemetery use following conclusion of the lease. Lot 2 would retain the existing residential zoning and existing cemetery use.

### **Project Area Species and Habitat Characteristics**

Overall, the proposed project is located on land characterized by mixed pitch pine-scrub oak forest and open fields. It is bordered by developed open space, primary and secondary roads, a cemetery, and residential development. According to the New York Natural Heritage Program (NYNHP) the site contains a pitch-scrub oak plant community that is classified as regionally and globally rare. The site has also supported vulnerable and imperiled moth and vascular plant species throughout its history (NYNHP, *in litt.*, November 20, 2023.). Additional discussion about this habitat community and species which may be present in the project area is provided below.

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#### **Northern Long-Eared and Tri-colored Bats**

The proposed project is located within the range of the northern long-eared bat and the tricolored bat (*Perimyotis subflavus*), which is proposed for listing. Specifically, the project area is within the buffer zone of three known northern long-eared bat detections. During the spring, summer and fall seasons, the northern long-eared bat requires suitable foraging, roosting, traveling (between summer and winter habitat) and swarming habitat with appropriate conditions for maternity colony members. For survival and reproduction at the individual level, the northern long-eared bat requires access to food and water resources when not hibernating, along with suitable habitat throughout its annual life cycle.

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#### **Monarch Butterfly**

This species is currently a candidate species for listing, but the Service anticipates a listing decision in September 2024. As noted at the end of this letter, we recommend that you periodically check in with the Service about the status of this species, so that you can adequately ensure that the proposed project plans address any potential adverse impacts to the species and its habitats.

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Adult monarch butterflies are large and conspicuous, with bright orange wings surrounded by a black border and covered with black veins. The black border has a double row of white spots,

present on the upper side of the wings. Adult monarchs are sexually dimorphic, with males having narrower wing venation and scent patches. The bright coloring of a monarch serves as a warning to predators that eating them can be toxic.

During the breeding season, monarchs lay their eggs on their obligate milkweed host plant (primarily *Asclepias* spp.), and larvae emerge after two to five days. Larvae develop through five larval instars (intervals between molts) over a period of 9 to 18 days, feeding on milkweed and sequestering toxic chemicals (cardenolides) as a defense against predators. The larva then pupates into a chrysalis before emerging 6 to 14 days later as an adult butterfly. There are multiple generations of monarchs produced during the breeding season, with most adult butterflies living approximately two to five weeks; overwintering adults enter into reproductive diapause (suspended reproduction) and live six to nine months.

In many regions where monarchs are present, monarchs breed year-round. Individual monarchs in temperate climates, such as eastern and western North America, undergo long distance migration, and live for an extended period of time. In the fall, in both eastern and western North America, monarchs begin migrating to their respective overwintering sites. This migration can take monarchs distances of over 3,000 kilometers (km) and last for over two months. In early spring (February-March), surviving monarchs break diapause and mate at the overwintering sites before dispersing. The same individuals that undertook the initial southward migration begin flying back through the breeding grounds and their offspring start the cycle of generational migration over again.

### Migratory Birds

A review of avian species list for the project site found on the Service's website at [IPaC: Home \(fws.gov\)](http://IPaC: Home (fws.gov)) reveals a number of species that may be present in the project area:

- Bald eagle *Haliaeetus leucocephalus* Breeds Oct 15 to Aug 31 (NYS threatened)
- Blue-winged warbler *Vermivora cyanoptera* Breeds May 1 to Jun 30
- Bobolink *Dolichonyx oryzivorus* Breeds May 20 to Jul 31
- Canada warbler *Cardellina canadensis* Breeds May 20 to Aug 10
- Chimney swift *Chaetura pelagica* Breeds Mar 15 to Aug 25
- Prairie warbler *Setophaga discolor* Breeds May 1 to Jul 31
- Rusty blackbird *Euphagus carolinus* Breeds elsewhere
- Scarlet tanager *Piranga olivacea* Breeds May 10 to Aug 10
- Wood thrush *Hylocichla mustelina* Breeds May 10 to Aug 31

The MBTA prohibits the taking, killing, possession, transportation, and importation of migratory birds, their eggs, parts, and nests, except when specifically authorized by the Service. The word "take" is defined as "to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect." The unauthorized taking of birds is legally considered a "take" under the MBTA and is a violation of the law. Neither the MBTA nor its implementing regulations, 50 CFR Part 21, provide for permitting of "incidental take" of migratory birds that may be killed or injured by development projects. Under the provisions of the MBTA, the unauthorized take of migratory birds is a strict liability criminal offense that does not require knowledge or specific intent on the part of the offender. As such, even when engaged in an

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otherwise legal activity where the intent is not to kill or injure migratory birds, violations can occur if bird death or injury results. The proposed project would result in the removal and fragmentation of breeding and stopover habitat for migratory birds. Care should be taken to avoid take of any of the above species during their breeding or migration seasons.

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#### *Bald and Golden Eagle Protection Act*

As noted above, the IPaC review noted bald eagle as potentially within the project area. The Bald and Golden Eagle Protection Act provides criminal penalties for persons who "take, possess, sell, purchase, barter, offer to sell, purchase or barter, transport, export or import, at any time or any manner, any bald eagle ... [or any golden eagle], alive or dead, or any part (including feathers), nest, or egg thereof." The Act defines "take" as "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb." Regulations further define "disturb" as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, 1) injury to an eagle, 2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or 3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior." In addition to immediate impacts, this definition also covers effects that result from human-induced alterations initiated around a previously used nest site during a time when eagles are not present, if, upon the eagle's return, such alterations agitate or bother an eagle to a degree that interferes with or interrupts normal breeding, feeding, or sheltering habits, and causes injury, death or nest abandonment.

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#### **Sensitive Habitats**

##### *Pine Barrens*

Pine barrens are typically found on acidic, well-drained, sandy soils of the Coastal Plain in southern New England, Long Island, and New Jersey, as well as in more limited inland areas on glacio-lacustrine (glacial lake) and glacio-fluvial (glacial river) sandplains and shallow soils on ridgetops. Pine barrens are distinctive for their dry pine, oak and heath communities that occur in a humid temperate climate which, at other sites, is typically dominated by deciduous forests. Within the region, these communities have in common a tree layer of pure pitch pine or pitch pine and mixed oaks, and understory dominated by ericaceous (heath) shrubs, and a sparse herbaceous layer. Pine barren habitats on Long Island contain regionally rare wetland and upland communities supporting the highest diversity of rare species in New York State and are extremely important as groundwater recharge areas. The New York Natural Heritage Program recognizes pitch pine-scrub oak barrens as significant and rare communities with high ecological and conservation value. Although Pinelawn Cemetery is not part of the greater Long Island Pine Barrens habitat complex, it is noted in the Service's 1997 Significant Habitats and Habitat Complexes of the New York Bight Watershed report (USFWS 1997) as one of three areas outside of the core pine barrens area that contain sizable examples of pitch pine-scrub oak barren communities on Long Island.

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#### **Approach to Project Reviews and Potential Effects of the Action on Listed and Proposed Bat Species**

The LIFO is incorporating habitat loss and any proposed habitat mitigation measures in our evaluation of a project’s direct and indirect impacts to the species on Long Island. While lethal impacts to the northern long-eared bats are not anticipated, if the project sponsor agrees to conduct tree removal between December 1 and February 28, there remains the potential effects of the permanent removal of potentially suitable roosting and foraging habitat for the species in an area already exhibiting forest habitat fragmentation.

The permanent removal or reduction in forest cover may result in loss of suitable roosting or foraging habitat, resulting in longer flights between suitable roosting and foraging habitats due to habitat fragmentation, fragmentation of maternity colony networks, and injury such as adult and pup mortality. Impacts from forest habitat removal may be significant when removal of roosting habitat occurs in a highly fragmented landscape with small, disconnected populations, as there is a higher probability of removing roosts or causing loss of connectivity between roosting and foraging habitat.

Habitat removal any time of year, including winter, can result in additional impacts depending upon factors such as cumulative habitat loss from multiple projects, the location and landscape context of the projects, our current understanding, or well-supported inferences regarding species’ presence and use of the area. Ultimately, there can be a cascade of effects where loss of roosts leads to colony fragmentation which leads to smaller colonies, which, in turn, can result in reduced thermoregulation and information sharing, and increased energy expenditure. On an individual level, roost removal can lead to reduced pregnancy success, pup survival, and adult survival. Loss of roosts, foraging habitat, or travel corridors potentially lead to displacement, increased flight and increased energy expenditure, resulting in the same reductions in individual fitness and survival.

Given that the proposed project will result in the removal of most of the forest habitat and development of most of the project area, we anticipate that there will be potential adverse impacts to foraging and roosting habitats. In such cases where there is no federal nexus, the Service notes the availability of the section 10(a)(1)(B) incidental take process of the ESA to our non-federal partners and project sponsors for their consideration following their own internal review of the impacts to the species. Guidance for determining whether an incidental permit may be appropriate can be found on this website [Habitat Conservation Plans | U.S. Fish & Wildlife Service \(fws.gov\)](https://www.fws.gov/habitat-conservation-plans).

### **Conservation and Mitigation Planning**

This section provides preliminary recommendations of the Service to conserve plant and wildlife resources identified above.

At this time, the project proponent has a land mitigation plan that preserves about six percent of the property in its natural state. It is the policy of the Service to seek to work with project proponents to mitigate losses of fish, wildlife, plants, their habitats, and uses thereof resulting from proposed actions. The hierarchy for the Service’s mitigation policy is first considering avoidance, then minimization, and then compensatory measures. Our policy also entails recommendations such as avoiding high value habitats, achieving no net loss of habitat, applying landscape conservation (see USFWS 2023). Given the diminishing state of forested and grassland habitats through development, resulting in loss and fragmentation of these habitats, we

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look forward to reviewing the project proponents' complete DEIS and mitigation alternatives, and then providing additional comments in accordance with our mitigation policy.

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### *Monarch Butterfly*

The Service recommends the following conservation efforts for monarch butterflies that preserve habitat and avoid disturbance to the species:

1. Survey the project area prior to construction for existing milkweed. If found, avoid clearing milkweed from May 15 through September 30 when monarch caterpillars may be present.
2. To the greatest extent feasible incorporate insecticide free milkweed and native flowering plants for monarch caterpillars and butterflies to feed on into the landscaping plan.
3. When feasible, maintenance of landscaping should occur between October 1 and May 15 when monarchs are overwintering.
4. Provide a firm commitment that herbicides will not be used for maintenance and extend this conservation measure to all portions of the project area where milkweed is likely to occur.

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### *Migratory Birds*

The link, below, provides information about effective measures that should be employed at all project development sites nationwide as applicable and practicable with the goal of avoiding and minimizing impacts to birds and their habitats. These measures are grouped into three categories: General, Habitat Protection, and Stressor Management. These measures include information only related to federal regulations and laws, and do not encompass state and local regulations and laws. [Nationwide Avoidance & Minimization Measures for Birds | FWS.gov](#).

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### *Bald Eagle*

Prior to project construction a survey should be done to identify any bald eagles and existing active or inactive eagle nests in the project area. In the event a bald eagle and/or nest are found within the project area, please halt work and contact this office for further consultation. Additional information on bald eagle permit rules and regulations can be found at [Service Improves Permit Process to Benefit Bald and Golden Eagles | U.S. Fish & Wildlife Service \(fws.gov\)](#)

### **Conclusion**

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As project planning progresses, we recommend that you check our website used for the Long Island and New York Field Office at <https://www.fws.gov/office/new-york-ecological-services-field/new-york-project-reviews> and the Service's Information and Planning for Conservation at [IPaC: Home \(fws.gov\)](#) regularly from the date of this letter to ensure that listed species presence/probable absence information for the proposed project is current. Since we are anticipating additional coordination on this project, this is to inform you that this letter does not exempt the project sponsor or Federal agency from obtaining approvals or permits that may be required by State and/or Federal agencies. Further, any new information regarding the proposed

project and its potential to impact listed species should be coordinated with the staff at the LIFO, as well as with the New York State Department of Environmental Conservation.

Thank you for the opportunity to provide these comments. If you have any questions, or require further assistance please contact Steve Papa ([Steve\\_Papa@fws.gov](mailto:Steve_Papa@fws.gov)) or Hugh O'Connor ([Hugh\\_Oconnor@fws.gov](mailto:Hugh_Oconnor@fws.gov)) of the Long Island Field Office.

Sincerely,

Ian Drew  
Field Supervisor

cc: NYSDEC, Stony Brook, NY (M. Gibbons)

### References Cited

U.S. Fish & Wildlife Service. 2023. Mitigation Policy Appendix 1, 501 FW 2, May 2023.

\_\_\_\_\_. 1997. Significant Habitats and Habitat Complexes of the New York Bight Watershed. Coastal Ecosystem Program, Charlestown, Rhode Island.