

Appendix 22-9:
Agency Correspondence



2801 Wehrle Dr., Suite 8
Williamsville, NY 14221

T 716.204.9543
TRCcompanies.com

April 24, 2019

NY Natural Heritage Program-Information Services
Attn: Andrea Chaloux, Environmental Review Specialist
NYSDEC
625 Broadway, 5th Floor
Albany, NY 12233-4757
Sent online via NaturalHeritage@dec.ny.gov

**Re: Excelsior Energy Center Project, Town of Byron, Genesee County, New York
Project Review Request**

Dear Ms. Chaloux:

Excelsior Energy Center, LLC (Excelsior Energy Center), proposes to construct the Excelsior Energy Center Project (the Project) in the Town of Byron, Genesee County, New York (Figure 1). The proposed Project will consist of an approximately 280 megawatt (MW) solar energy center located on land leased or purchased from owners of private property (Figure 1). Proposed components include commercial-scale solar arrays, access roads, buried (and possibly overhead) electric collection lines, and electrical interconnection facilities. The final solar array specification, as well as locations of arrays, will be finalized as part of micro-siting efforts.

Excelsior Energy Center plans to submit an application to the NYS Board on Electric Generation Siting and the Environment in pursuit of a Certificate of Environmental Compatibility and Public Need to construct the Project under Article 10 of the Public Service Law (PSL). This request is being made in order to help prepare the Article 10 Application. To support this application, we request a review and confirmation of the latest NY Natural Heritage Program Information Service records for the presence of rare or state-listed plants or animals, significant natural communities, or other significant habitats in the vicinity of the Project.

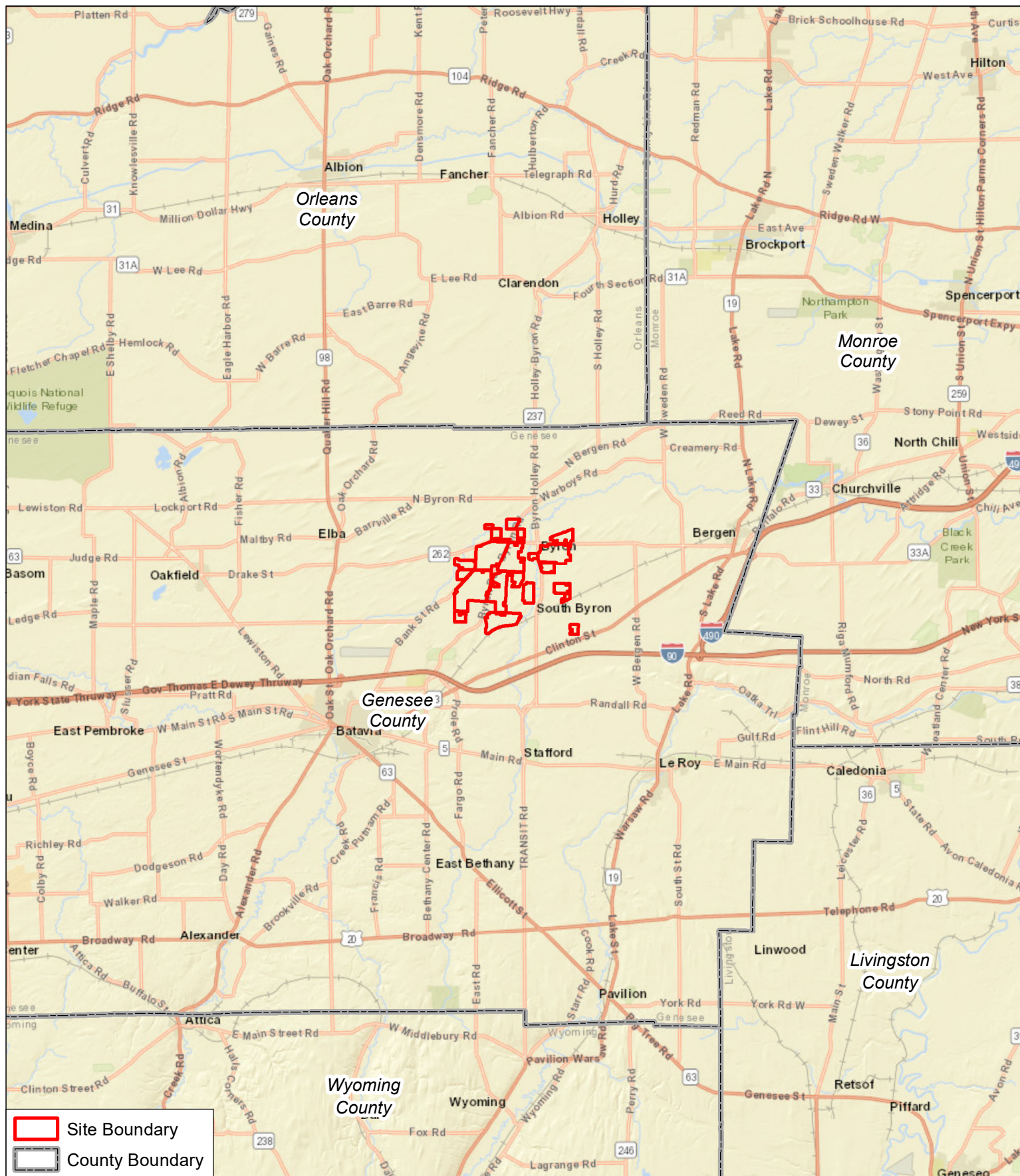
If you have any questions regarding the Project or the request herein, please contact me at TRC by calling (716) 221-4128 or via email at kmccormick@trccompanies.com.

Sincerely,

A handwritten signature in dark ink, appearing to read "Kaitlin McCormick", is written above the printed name.

Kaitlin McCormick, M.B.A., CEP, PMP
Senior Project Manager

cc: William Boer, NextEra
Enclosures: Figure 1. Location Map



Regional Project Location Excelsior Energy Center Town of Byron, Genesee County, New York

0 2 4 Miles



FIGURE 1 MARCH 2019



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

May 29, 2019

Kaitlin McCormick
TRC
2801 Wehrle Drive, Suite 8
Williamsville, NY 14221

Re: Excelsior Energy Center Project
County: Genesee Town/City: Byron

Dear Ms. McCormick:

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 in the vicinity of the project site.

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.

Our database is 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.

The presence of the plants and animals identified in the enclosed report may result in this project requiring additional review or permit conditions. For further guidance, and for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the NYS DEC Region 8 Office, Division of Environmental Permits, at dep.r8@dec.ny.gov, (585) 226-5400.

Sincerely,



Andrea Chaloux
Environmental Review Specialist
New York Natural Heritage Program



**The following state-listed animals have been documented
in the vicinity of the project site.**

The following list includes animals that are listed by NYS as Endangered, Threatened, or Special Concern; and/or that are federally listed or are candidates for federal listing.

For information about any permit considerations for the project, please contact the NYSDEC Region 8 Office, Division of Environmental Permits, at dep.r8@dec.ny.gov.

A listing of Regional Offices is at <http://www.dec.ny.gov/about/558.html>.

The following species has been documented within 1 mile of the project site.

<i>COMMON NAME</i>	<i>SCIENTIFIC NAME</i>	<i>NY STATE LISTING</i>	<i>FEDERAL LISTING</i>
Birds			
Bald Eagle <i>Breeding</i>	<i>Haliaeetus leucocephalus</i>	Threatened	15092

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 listed animals in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, and from NYSDEC at www.dec.ny.gov/animals/7494.html.



**The following rare plants, rare animals, and significant natural communities
have been documented in the vicinity of the project site.**

We recommend that potential 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 SEQR. 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 animal, while not listed by New York State as Endangered or Threatened, is rare in New York and is of conservation concern.

COMMON NAME	SCIENTIFIC NAME	NY STATE LISTING	HERITAGE CONSERVATION STATUS
Freshwater Mussels			
Rainbow	<i>Villosa iris</i>	Unlisted	Imperiled in NYS
Spring Creek, Black Creek, and Bigelow Creek, 2010-08-31.			

15399

The following natural community is considered significant from a statewide perspective by the NY Natural Heritage Program. It is either an example 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 this community occurrence to have high ecological and conservation value.

COMMON NAME	SCIENTIFIC NAME	NY STATE LISTING	HERITAGE CONSERVATION STATUS
Wetland/Aquatic Communities			
Northern White Cedar Swamp			High-quality Occurrence of Rare Community Type
Within 0.5 mile of the project site.			

5921

This report only includes records from the NY Natural Heritage database. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. 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.

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.



**The following rare plants and rare animals have
historical records
in the vicinity of the project site.**

The following rare plants and animals were documented in the vicinity of the project site at one time, but have not been documented there since 1979 or earlier, and/or there is uncertainty regarding their continued presence. There is no recent information on these plants and animals in the vicinity of the project site and their current status there is unknown. In most cases the precise location of the plant or animal in this vicinity at the time it was last documented is also unknown.

If suitable habitat for these plants or animals is present in the vicinity of the project site, it is possible that they may still occur there. We recommend that any field surveys to the site include a search for these species, particularly at sites that are currently undeveloped and may still contain suitable habitat.

COMMON NAME	SCIENTIFIC NAME	NYS LISTING	HERITAGE CONSERVATION STATUS
Vascular Plants			
Woodland Agrimony	<i>Agrimonia rostellata</i>	Threatened	Imperiled in NYS
1979-07-20: Route 33 Wetland. Swampy area draining into both Black Creek and Oatka Creek in low moist to swampy silver maple woods.			

1141

This report only includes records from the NY Natural Heritage database. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. 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.

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).

July 22, 2020

U.S. Fish and Wildlife Service
New York Field Office
3817 Luker Road
Cortland, NY 13045

**Re: Online Project Review Request, Excelsior Energy Center, LLC,
Excelsior Energy Center Project, Town of Byron, Genesee County, New
York, Consultation Tracking Number 05E1NY00-2019-SLI-1707**

We have reviewed the above-referenced project using the New York Field Office's online project review process and have followed all guidance and instructions in completing the review. We completed our review on June 6, 2019 and obtained an updated species list on July 22, 2020 and are submitting our project review package in accordance with the instructions for further review.

Excelsior Energy Center, LLC, proposes to construct a large-scale solar project across 60 separate tax parcels surrounding the Town of Byron, in Genesee County, New York (the Project) (see Figure 1). The Project Site is approximately 3,418 acres in total, of which approximately 1,500 to 2,000 acres will be developed for the Project. The proposed Project will consist of an approximately 280 megawatt (MW) solar energy center with a 20 MW/4 hour duration energy storage system located on land leased or purchased from owners of private property. Proposed components include commercial-scale solar arrays, access roads, buried (and possibly overhead) electric collection lines, and electrical interconnection facilities. The final solar array specification, as well as locations of arrays, will be finalized as part of ongoing engineering efforts.

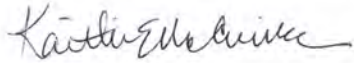
The information derived from this data request will support environmental due diligence for the Project as it moves through New York State's Article 10 permitting process.

The Project Site consists of approximately 3,072 acres of agricultural land, 101 acres of forested area, 90 acres of developed land, and 155 acres of mapped wetland according to the National Land Cover Database (NLCD). Of the 3,418-acre Project Site, approximately 178 acres were identified as wetland during a wetland and stream delineation conducted by TRC Companies from May 28, 2019 through June 20, 2019 (see Figure 2). Figure 3 contains a map showing land cover designations from the NLCD. Attachment A includes representative photographs of the Project Site.

The enclosed Project review package provides the information about the species considered in our review, and the species conclusions table included in the package identifies our determinations for the resources that may be affected by the Project (see Attachment B). Our correspondence with the New York Natural Heritage Program (NYNHP) is included in Attachment C. The USFWS IPaC Official Species list is included as Attachment D. For additional information, please contact me at the address listed above.

If you have any questions regarding the Project or the request herein, please contact me at TRC by calling (716) 221-4128 or via email at kmccormick@trccompanies.com.

Sincerely,

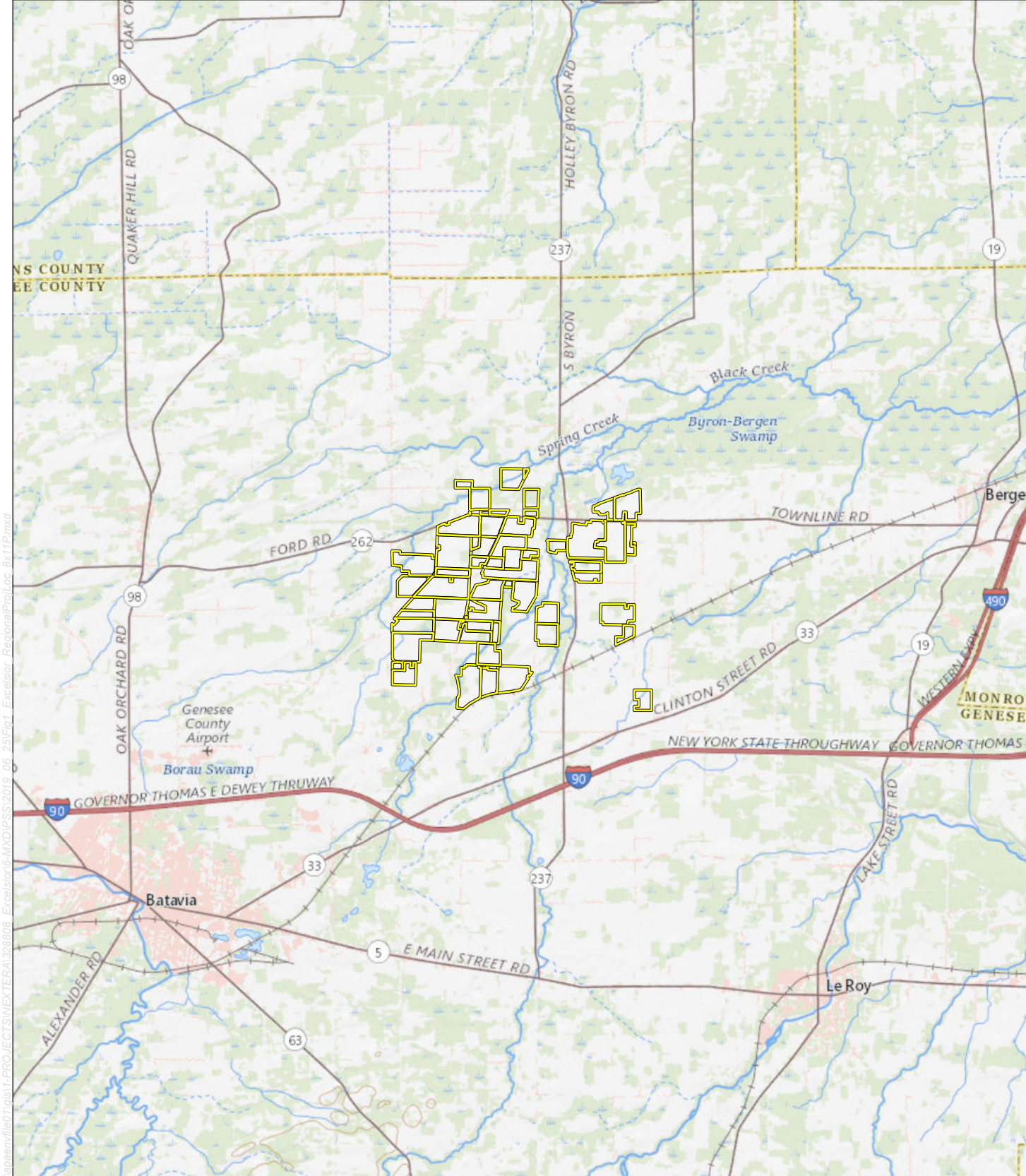
A handwritten signature in black ink, appearing to read "Kaitlin McCormick".

Kaitlin McCormick, M.B.A., CEP, PMP
Senior Project Manager

Figures: Figure 1. Site Location Map
 Figure 2. Delineated Wetlands and Streams
 Figure 3. NLCD Map

Attachments: Attachment A. Photograph Log
 Attachment B. Species Conclusion Table
 Attachment C. NYNHP Correspondence
 Attachment D. USFWS IPaC Official Species List and Updated List

FIGURES

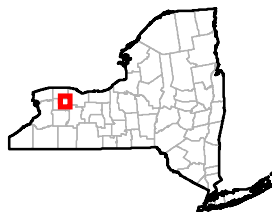


Project Area



0 1 2
Miles

MAP LOCATION



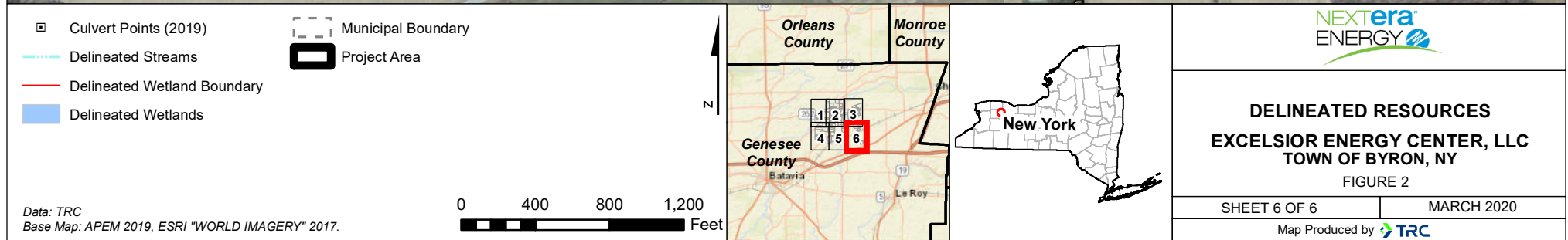
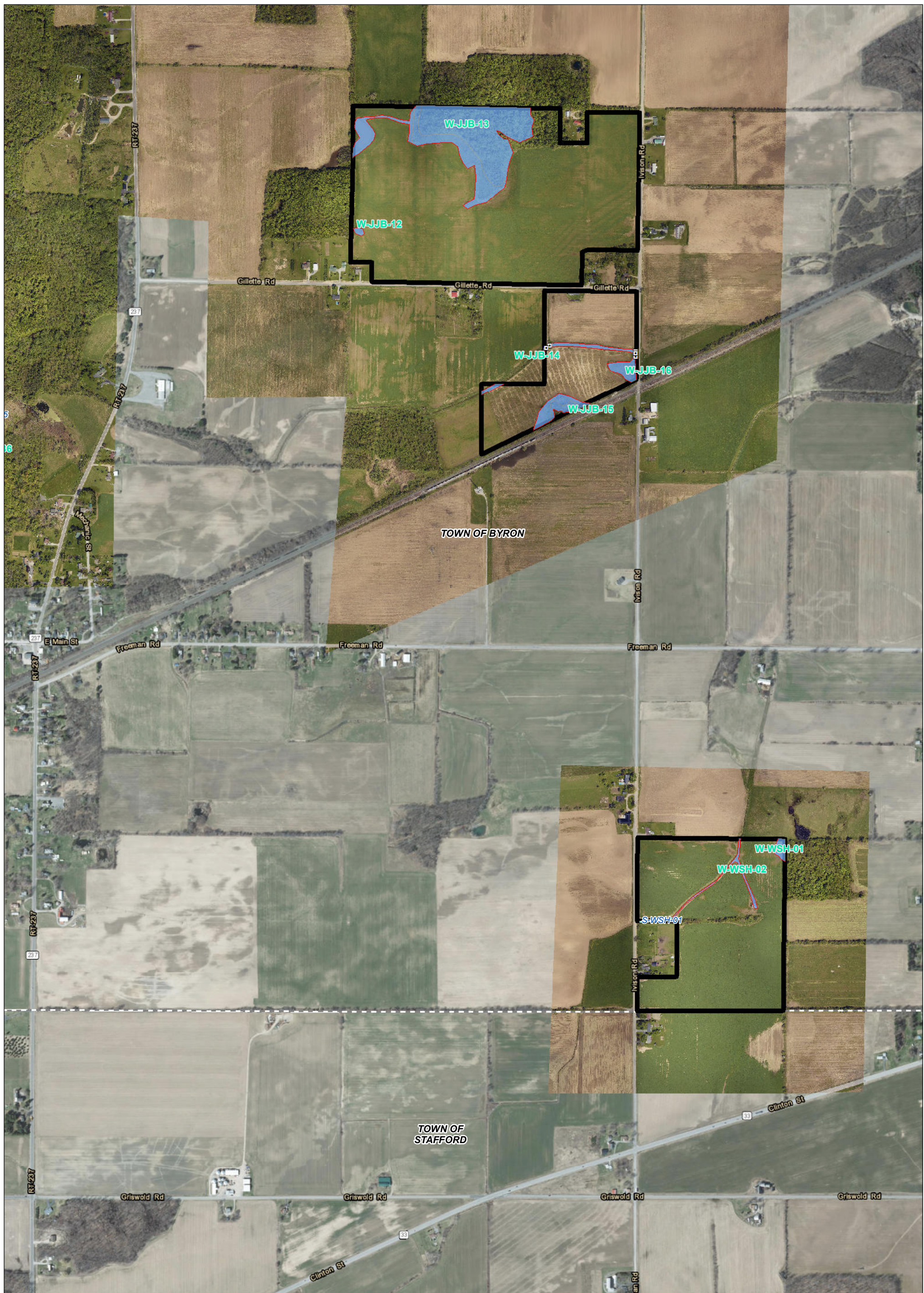
REGIONAL PROJECT LOCATION
EXCELSIOR
ENERGY CENTER, LLC
TOWN OF BYRON, GENESSEE COUNTY, NY

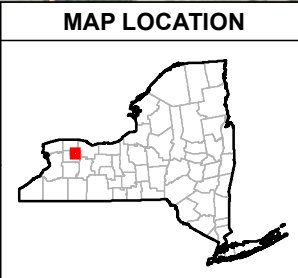
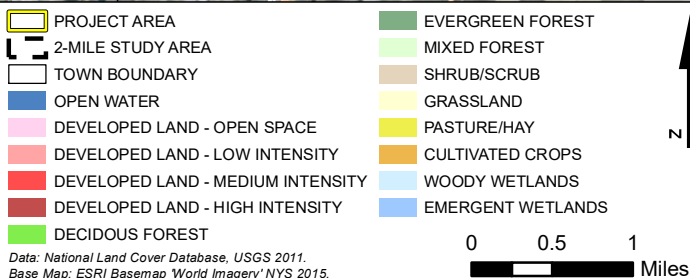
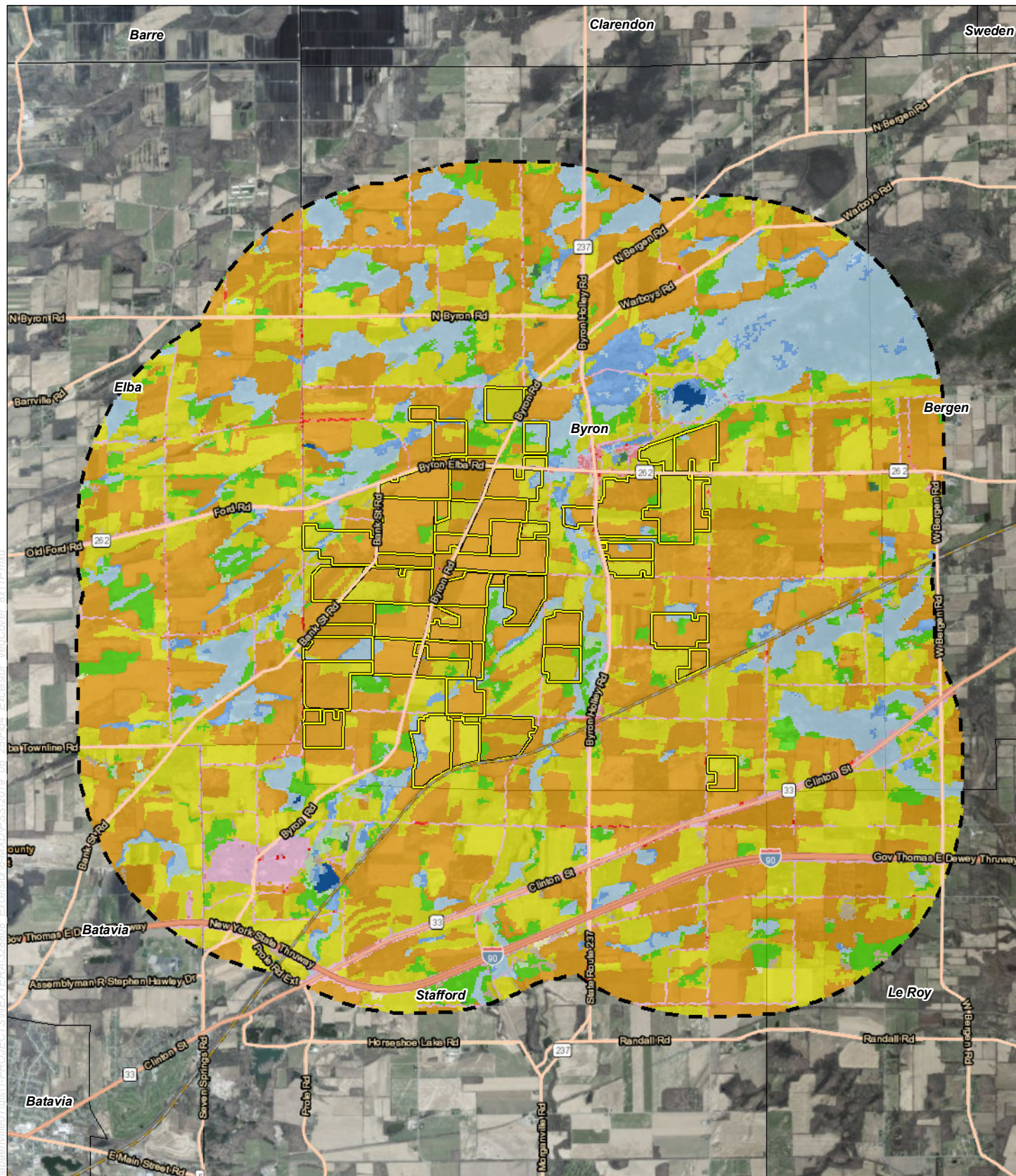
FIGURE 1

MARCH 2020

Map Produced by TRC

Base Map: USGS National Map, 2018





**EXISTING VEGETATED COVER
IN THE STUDY AREA**

**EXCELSIOR
ENERGY CENTER, LLC**
TOWN OF BYRON, GENESEE COUNTY, NY

FIGURE 3	MARCH 2020
Map Produced by	

ATTACHMENT A
REPRESENTATIVE PHOTOGRAPH LOG



Photo 1. Intermittent Stream within PFO wetland in the northern section of the Project Site. 5/28/19



Photo 2. Characteristic PFO wetland in the northern section of the Project Site. 5/28/19



Photo 3. Upland agricultural field in the northeastern corner of the Project Site, representative of much of the agriculture throughout the Project. 5/29/19



Photo 4. Intermittent stream feature surrounded by forested upland. 5/29/19



Photo 5. View east along maintained powerline right of way within a PSS wetland in the northeastern corner of the Project Site. 5/30/19



Photo 6. PEM wetland within and disturbed agricultural field typical of agricultural PEM. 5/31/19



Photo 7. Drain tile outlet creating intermittent stream within a PEM wetland. 5/31/16



Photo 8. Black Creek, a perennial NYSDEC class-C stream running through the central part of the Project Site.
5/31/19



Photo 9. Intermittent stream formed by a drain tile outlet in a successional agricultural field. 6/10/19



Photo 10. Northern view of Linear PEM wetland swale between agricultural fields. 6/11/2019



Photo 11. Bigelow Creek, a NYSDEC class-C perennial stream in the south central portion of the Project Site.
6/11/19



Photo 12. PAB wetland formed by an abandoned beaver dam complex on Bigelow Creek. 6/11/19



Photo 13. PEM wetland surrounding PAB beaver dam wetland complex in the south-central portion of the Project Site. 6/11/19



Photo 14. Farm/cow pond in the southcentral portion of the Project Site. 6/12/19



Photo 15. Inundated PEM wetland in an agricultural field in the south-central portion of the Project Site. 6/12/19



Photo 16. Northern white cedar swamp located in the north central portion of the Project Site. 6/7/19



Photo 17. Inundated PFO with trees showing moss trimlines and physiological adaptations in their root systems.
6/5/19



Photo 18. Ephemeral stream located in the southern portion of the Project Site. 6/18/19



Photo 19. NYSDEC mapped Class C(T) stream in the western portion of the Project Site. 6/6/19



Photo 20. PUB wetland pond located within a PFO wetland in the western-central portion of the Project Site.
6/4/19

ATTACHMENT B
SPECIES CONCLUSION TABLE

Species/Community Conclusions Table

Project Name: Excelsior Energy Center, LLC
Excelsior Energy Center

Date: July 22, 2020

Species/ Community Name	Status	Comments from NYNHP	Potential Habitat Present?	Species Present ?	ESA / Eagle Act Determination	Preferred Species Habitat	Project Effect on Species/Habitat
Bald Eagle (<i>Haliaeetus leucocephalus</i>)	NYS – Threatened Federal – Unlisted	The species has been documented within one mile of the Project Site.	Yes	Likely	Not likely to adversely effect	<p>Bald eagles live near rivers, lakes, and marshes where they can find fish, their staple food. Bald eagles will also feed on waterfowl, turtles, rabbits, snakes, other small animals, and carrion.</p> <p>Bald eagles choose the tops of large trees to build nests, which they often enlarge each year. They may also nest in cliffs or on the ground in treeless regions. Bald eagles generally avoid areas with human activity and perch in either deciduous or coniferous trees.</p>	It is unlikely that the proposed Project will impact bald eagles. The Project will be located almost entirely within fields that are currently in active agricultural cover. There will likely be some additional noise during construction; however, post-construction actions at the Project will be comparable to existing noise levels associated with agricultural operations.

Species/ Community Name	Status	Comments from NYNHP	Potential Habitat Present?	Species Present ?	ESA / Eagle Act Determination	Preferred Species Habitat	Project Effect on Species/Habitat
Eastern Massasauga (rattlesnake) (<i>Sistrurus catenatus</i>)	NYS – Endangered Federal – Threatened	No Record	Yes	Unlikely	No effect	Massasaugas live in wet areas including wet prairies, marshes, and low areas along rivers and lakes. In many areas massasaugas also use adjacent uplands during part of the year. They often hibernate in crayfish burrows but may also be found under logs and tree roots or in small mammal burrows. In New York, peatlands are a crucial portion of eastern massasauga habitat as they are needed for hibernation and gestation. Eastern massasauga use different habitat seasonally. In the spring and fall, snakes are typically found in wet meadow habitats. Snakes move upland during the summer months in search of prey. During the winter, these snakes hibernate individually in sphagnum	The eastern massasauga requires a specific wetland habitat. Potential habitat was only observed in one wetland in the Project Site associated with a Northern White Cedar Swamp community. The NYNHP does not indicate any recent or known records of the species in the Project Area. Project development will not impact the wetland in question; therefore, impacts to the species or potential primary habitat are not expected.

Species/ Community Name	Status	Comments from NYNHP	Potential Habitat Present?	Species Present ?	ESA / Eagle Act Determination	Preferred Species Habitat	Project Effect on Species/Habitat
						hummocks and root systems where the soil is saturated, but not inundated.	
Houghton's Goldenrod (<i>Solidago houghtonii</i>)	NYS – Endangered Federal – Endangered	No Records	No	Unlikely	No effect	Houghton's goldenrod typically grows on interdunal wetland, consisting of moist sandy beaches and shallow depressions between low sand ridges along shorelines. The fluctuating water levels of the Great Lakes play a role in maintaining this unique goldenrod. During high water years, colonies of Houghton's goldenrod may be submerged. When water levels recede, some plants survive the inundation and new seedlings establish on the moist sand.	A field delineation of wetland features in May and June of 2019 identified approximately 178 acres of forested, emergent, and scrub/shrub wetlands none of which meet the habitat requirements for Houghton's goldenrod. The NYNHP does not indicate any recent or known records of the species in the vicinity of the Project Area. Project development is only anticipated to impact minimal wetland acreage within the Project Area; therefore, impacts to the species or potential habitat are not expected.
Northern White Cedar Swamp	NYS – Unlisted	High-Quality Occurrence of Rare	Yes	Yes	No effect	Northern white cedar swamps are rich conifer or mixed swamps that occur on	A field delineation of wetland features in May and June 2019 identified

Species/ Community Name	Status	Comments from NYNHP	Potential Habitat Present?	Species Present ?	ESA / Eagle Act Determination	Preferred Species Habitat	Project Effect on Species/Habitat
	Federal – Unlisted	Community Type				<p>organic soils in cool, poorly drained depressions in central and northern New York and along lakes and streams in the northern half of the state. These swamps are often spring-fed or enriched by seepage of cold, minerotrophic groundwater, resulting in a stable water table and continually saturated soils. The characteristic tree is northern white cedar (<i>Thuja occidentalis</i>), which makes up more than 30% of the canopy cover; characteristic short shrubs include dwarf raspberry and red osier dogwood. The surface of the peatland typically has small mounds and depressions called hummocks and hollows that are formed by decaying downed trees and tip-up mounds. Mosses and liverworts are diverse and</p>	<p>approximately 178 acres of forested, emergent, and scrub/shrub wetlands. Of the wetlands identified, one was confirmed to be a Northern White Cedar Swamp community. Project development will not impact the wetland in question; therefore, impacts to this community are not expected.</p>

Species/ Community Name	Status	Comments from NYNHP	Potential Habitat Present?	Species Present ?	ESA / Eagle Act Determination	Preferred Species Habitat	Project Effect on Species/Habitat
						abundant.	
Rainbow mussel (<i>Villosa iris</i>)	NYS – Unlisted Federal – Unlisted	Designated Rare in New York. Heritage Conservation Status- Imperiled in NYS.	Yes	Likely	No effect	<p>This species lives in riffles along the edges of emerging vegetation in gravel and sand, and in moderate to strong current. It becomes most numerous in clean, well-oxygenated stretches at depths of less than three feet. It is most abundant in small to medium-sized rivers but can also be found in inland lakes.</p> <p>The species was recorded in Spring Creek, Black Creek, and Bigelow Creek on 8/31/2010; these streams flow through the project site.</p>	<p>A field delineation of stream and aquatic features in May and June of 2019 identified 29,403 linear feet of streams within the project site. Of those, 20,535 feet are part of perennial streams, which are suitable habitat for rainbow mussels.</p> <p>Project development is not anticipated to permanently impact any stream or aquatic features within the Project Area. It may be necessary to improve existing or create new stream crossings for access roads within the Project area, however if necessary this will be done by using Best Management Practices for stream crossing. Therefore, impacts to the species or potential habitat</p>

Species/ Community Name	Status	Comments from NYNHP	Potential Habitat Present?	Species Present ?	ESA / Eagle Act Determination	Preferred Species Habitat	Project Effect on Species/Habitat
							are not expected.
Woodland agrimony (<i>Agrimonia rostellata</i>)	NYS – Threatened Federal – Unlisted	Imperiled in NYS. Last documented in the area on 7/20/1979.	Yes	Likely	No effect	Woodland agrimony is found in multiple habitat types: rich mesic forests, forested gorge slopes cutting through calcareous bedrock, streambanks in rich forests, forested slopes adjacent to streams, forested limestone benches, dry oak woods, wooded pastures on rich soil, shrub thickets, and other mesic sites that are typically wooded and on calcareous soils. Woodland agrimony can also be found in moist rich woods, oak-hickory woods, sandy clearings, thickets, and open woods.	The Project will require limited tree clearing as the site is predominantly within active agricultural fields. Woodland agrimony's primary habitat is in forested communities. Therefore, no impacts to the species or potential habitat are expected.

ATTACHMENT C
NYNHP CORRESPONDENCE



2801 Wehrle Dr., Suite 8
Williamsville, NY 14221

T 716.204.9543
TRCcompanies.com

April 24, 2019

NY Natural Heritage Program-Information Services
Attn: Andrea Chaloux, Environmental Review Specialist
NYSDEC
625 Broadway, 5th Floor
Albany, NY 12233-4757
Sent online via NaturalHeritage@dec.ny.gov

**Re: Excelsior Energy Center Project, Town of Byron, Genesee County, New York
Project Review Request**

Dear Ms. Chaloux:

Excelsior Energy Center, LLC (Excelsior Energy Center), proposes to construct the Excelsior Energy Center Project (the Project) in the Town of Byron, Genesee County, New York (Figure 1). The proposed Project will consist of an approximately 280 megawatt (MW) solar energy center located on land leased or purchased from owners of private property (Figure 1). Proposed components include commercial-scale solar arrays, access roads, buried (and possibly overhead) electric collection lines, and electrical interconnection facilities. The final solar array specification, as well as locations of arrays, will be finalized as part of micro-siting efforts.

Excelsior Energy Center plans to submit an application to the NYS Board on Electric Generation Siting and the Environment in pursuit of a Certificate of Environmental Compatibility and Public Need to construct the Project under Article 10 of the Public Service Law (PSL). This request is being made in order to help prepare the Article 10 Application. To support this application, we request a review and confirmation of the latest NY Natural Heritage Program Information Service records for the presence of rare or state-listed plants or animals, significant natural communities, or other significant habitats in the vicinity of the Project.

If you have any questions regarding the Project or the request herein, please contact me at TRC by calling (716) 221-4128 or via email at kmccormick@trccompanies.com.

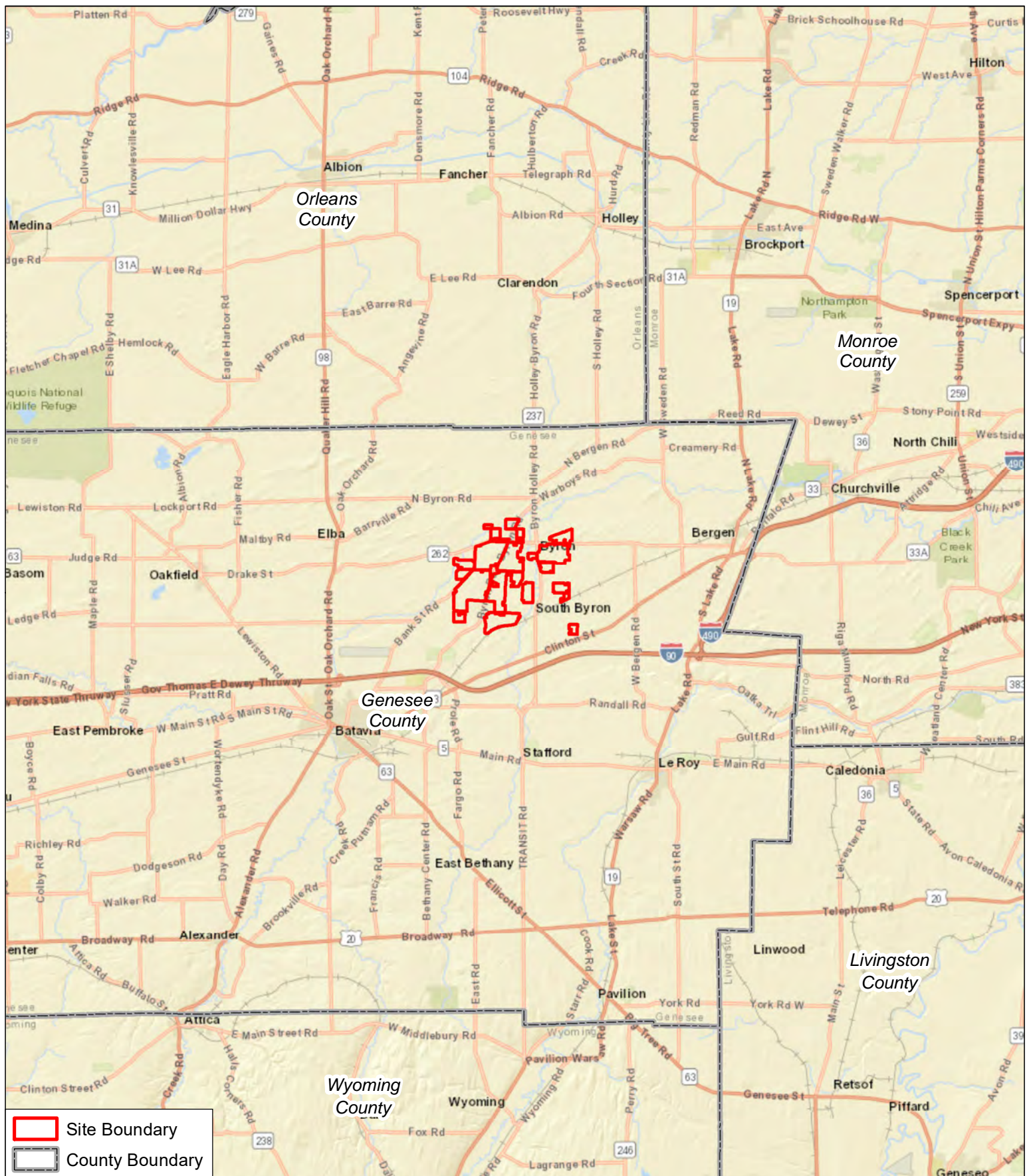
Sincerely,

A handwritten signature in black ink, appearing to read "Kaitlin McCormick", is written over a light blue circular stamp.

Kaitlin McCormick, M.B.A., CEP, PMP
Senior Project Manager

cc: William Boer, NextEra

Enclosures: Figure 1. Location Map



Regional Project Location Excelsior Energy Center Town of Byron, Genesee County, New York

0 2 4 Miles



FIGURE 1 MARCH 2019



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

May 29, 2019

Kaitlin McCormick
TRC
2801 Wehrle Drive, Suite 8
Williamsville, NY 14221

Re: Excelsior Energy Center Project
County: Genesee Town/City: Byron

Dear Ms. McCormick:

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 in the vicinity of the project site.

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.

Our database is 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.

The presence of the plants and animals identified in the enclosed report may result in this project requiring additional review or permit conditions. For further guidance, and for information regarding other permits that may be required under state law for regulated areas or activities (e.g., regulated wetlands), please contact the NYS DEC Region 8 Office, Division of Environmental Permits, at dep.r8@dec.ny.gov, (585) 226-5400.

Sincerely,



Andrea Chaloux
Environmental Review Specialist
New York Natural Heritage Program





**The following state-listed animals have been documented
in the vicinity of the project site.**

The following list includes animals that are listed by NYS as Endangered, Threatened, or Special Concern; and/or that are federally listed or are candidates for federal listing.

For information about any permit considerations for the project, please contact the NYSDEC Region 8 Office, Division of Environmental Permits, at dep.r8@dec.ny.gov.

A listing of Regional Offices is at <http://www.dec.ny.gov/about/558.html>.

The following species has been documented within 1 mile of the project site.

<i>COMMON NAME</i>	<i>SCIENTIFIC NAME</i>	<i>NY STATE LISTING</i>	<i>FEDERAL LISTING</i>
Birds			
Bald Eagle <i>Breeding</i>	<i>Haliaeetus leucocephalus</i>	Threatened	15092

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 listed animals in New York, including habitat, biology, identification, conservation, and management, are available online in Natural Heritage's Conservation Guides at www.guides.nynhp.org, and from NYSDEC at www.dec.ny.gov/animals/7494.html.



**The following rare plants, rare animals, and significant natural communities
have been documented in the vicinity of the project site.**

We recommend that potential 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 SEQR. 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 animal, while not listed by New York State as Endangered or Threatened, is rare in New York and is of conservation concern.

COMMON NAME	SCIENTIFIC NAME	NY STATE LISTING	HERITAGE CONSERVATION STATUS
Freshwater Mussels			
Rainbow	<i>Villosa iris</i>	Unlisted	Imperiled in NYS
Spring Creek, Black Creek, and Bigelow Creek, 2010-08-31.			

15399

The following natural community is considered significant from a statewide perspective by the NY Natural Heritage Program. It is either an example 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 this community occurrence to have high ecological and conservation value.

COMMON NAME	SCIENTIFIC NAME	NY STATE LISTING	HERITAGE CONSERVATION STATUS
Wetland/Aquatic Communities			
Northern White Cedar Swamp			High-quality Occurrence of Rare Community Type
Within 0.5 mile of the project site.			

5921

This report only includes records from the NY Natural Heritage database. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. 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.

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.



**The following rare plants and rare animals have
historical records
in the vicinity of the project site.**

The following rare plants and animals were documented in the vicinity of the project site at one time, but have not been documented there since 1979 or earlier, and/or there is uncertainty regarding their continued presence. There is no recent information on these plants and animals in the vicinity of the project site and their current status there is unknown. In most cases the precise location of the plant or animal in this vicinity at the time it was last documented is also unknown.

If suitable habitat for these plants or animals is present in the vicinity of the project site, it is possible that they may still occur there. We recommend that any field surveys to the site include a search for these species, particularly at sites that are currently undeveloped and may still contain suitable habitat.

COMMON NAME	SCIENTIFIC NAME	NYS LISTING	HERITAGE CONSERVATION STATUS
Vascular Plants			
Woodland Agrimony	<i>Agrimonia rostellata</i>	Threatened	Imperiled in NYS
1979-07-20: Route 33 Wetland. Swampy area draining into both Black Creek and Oatka Creek in low moist to swampy silver maple woods.			

1141

This report only includes records from the NY Natural Heritage database. For most sites, comprehensive field surveys have not been conducted, and we cannot provide a definitive statement as to the presence or absence of all rare or state-listed species. 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.

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).

ATTACHMENT D

USFWS IPaC OFFICIAL SPECIES LIST AND UPDATED LIST



United States Department of the Interior

FISH AND WILDLIFE SERVICE
New York Ecological Services Field Office

3817 Luker Road
Cortland, NY 13045-9385

Phone: (607) 753-9334 Fax: (607) 753-9699

<http://www.fws.gov/northeast/nyfo/es/section7.htm>



In Reply Refer To:

July 22, 2020

Consultation Code: 05E1NY00-2019-SLI-1707

Event Code: 05E1NY00-2020-E-11266

Project Name: Excelsior Energy Center Project

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 (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*). This list can also be used to determine whether listed species may be present for projects without federal agency involvement. 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 ESA, 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 site 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. If listed, proposed, or candidate species were identified as potentially occurring in the project area, coordination with our office is encouraged. Information on the steps involved with assessing potential impacts from projects can be found at: <http://www.fws.gov/northeast/nyfo/es/section7.htm>

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 Services 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 ESA. 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:

New York Ecological Services Field Office

3817 Luker Road

Cortland, NY 13045-9385

(607) 753-9334

Project Summary

Consultation Code: 05E1NY00-2019-SLI-1707

Event Code: 05E1NY00-2020-E-11266

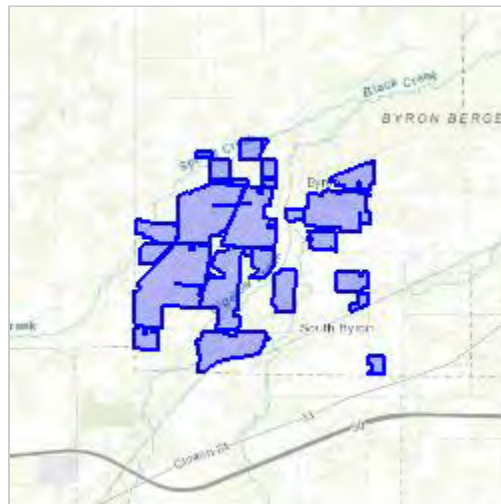
Project Name: Excelsior Energy Center Project

Project Type: POWER GENERATION

Project Description: Excelsior Energy Center, LLC, is proposing to build and operate the Excelsior Energy Center Project in the Town of Byron, Genesee County, New York. It will be located on land leased or purchased from owners of private property. Proposed components include commercial-scale solar arrays, access roads, buried (and possibly overhead) electric collection lines, and electrical interconnection facilities.

Project Location:

Approximate location of the project can be viewed in Google Maps: <https://www.google.com/maps/place/43.044077673500055N78.08684112535347W>



Counties: Genesee, NY

Endangered Species Act Species

There is a total of 2 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.

Reptiles

NAME	STATUS
Eastern Massasauga (=rattlesnake) <i>Sistrurus catenatus</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/2202	Threatened

Flowering Plants

NAME	STATUS
Houghton's Goldenrod <i>Solidago houghtonii</i> No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/5219 Species survey guidelines: https://ecos.fws.gov/ipac/guideline/survey/population/1003/office/52410.pdf	Threatened

Critical habitats

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