Sullivan, Tim <tim_r_sullivan@fws.gov>

BE text

Doran, Sandra <sandra_doran@fws.gov> Wed, Apr 2, 2014 at 2:02 PM
To: Tim Sullivan <tim_r_sullivan@fws.gov>

Hi Tim, I am not sure if we had this language in the first paragraph was included in a previous letter, but... use if you wish.. The rest, I massaged a little.

Bald and Golden Eagle Protection Act (BGEPA) (16 U.S.C. 668-668d) and the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703-712; Ch. 128; July 13, 1918; 40 Stat. 755).

Bald eagles (*Haliaeetus leucocephalus*) were federally delisted in 2007, but remain protected under the MBTA, the BGEPA, and by the state of New York (State) as a threatened species. The BGEPA defines "take" as to "pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest or disturb" (16 U.S.C. 668c; 50 CFR 22.3). The Service's National Bald Eagle Management Guidelines (Guidelines), which can be found at http://www.fws.gov/northeast/ecologicalservices/eagle.html, were developed to assist landowners in project planning and to minimize impacts to bald eagles, particularly where construction activities may constitute "disturbance." The BGEPA regulations (50 CFR 22.3) define "disturb" as "to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause: (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."

We understand that at least two bald eagle nests are known to occur within 0.5 mile of the proposed pipeline. The Service's guidelines recommend that activity between the nest and the nearest foraging area be minimized and that activities be kept as far away from nest trees as possible. If loud and disruptive activities (i.e., blasting) are proposed, we recommend that they be conducted outside the breeding season (see guidelines (Category H). A 660 foot buffer should be maintained between all construction activity and the nests. and landscape buffers, such as forested areas, should be maintained to provide a visual screen between blasting activities and the nests. If these recommendations cannot be implemented during construction or if new nests are identified in the vicinity of the project, please contact the Service to see if a BGEPA permit is required.

For additional information on bald eagles in New York, please visit the Service's website* and the NYSDEC website at http://www.dec.ny.gov/animals/7068.html. Any additional information regarding the proposed project and its potential to impact bald eagles should also be transmitted to this office, and the NYSDEC Wildlife Diversity Unit at 518) 402-8859 or by writing to the NYSDEC, 625 Broadway, Albany, NY 12233.

*http://www.fws.gov/midwest/eagle/

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