



United States Department of the Interior



FISH AND WILDLIFE SERVICE
300 Westgate Center Drive
Hadley, MA 01035-9589

April 25, 2018

Mr. Travis Glazier
Director, Office of the Environment
County of Onondaga
John H. Mulroy Civic Center
421 Montgomery Street – 14th Floor
Syracuse, New York 13202

Dear Mr. Glazier:

The U.S. Fish and Wildlife Service (Service) has reviewed the information presented by the County of Onondaga (County) in a January 26, 2018 letter, and on a subsequent conference call on February 9, 2018. This information pertained to the proposed extension of the Loop the Lake Trail at Onondaga Lake, Onondaga County, New York and the seasonal aggregation of roosting bald eagles (*Haliaeetus leucocephalus*) at this site. According to the details provided, the proposed Loop the Lake Trail Extension Project (Project) will involve the construction of a recreational, paved, non-motorized trail onto Murphy's Island, a 40 acre parcel of land located at the lake's southeast corner. The trail will be approximately 10-12 feet wide, with a two-foot shoulder on either side. The exact course of the trail is not yet determined.

Murphy's Island also serves as a winter roost site and concentration area for bald eagles. Bald eagles likely gather at this site because the warm outflow from the nearby Metro Wastewater Treatment Facility provides open water and allows bald eagles the opportunity to forage during winter months. As many as 39 eagles have been reported at the roost during winter. There are no known nests on the island. The surrounding land use is highly developed and features frequent and varied human activity, including rail traffic along three lines immediately adjacent to Murphy's Island, commercial activity at the neighboring Destiny USA mall, vehicle traffic on Hiawatha Boulevard, and pedestrian traffic on Creek Walk Trail.

Applicable Federal Statute, Regulation, and Guidance

Under the Bald and Golden Eagle Protection Act (BGEPA; 16 U.S.C. 668 et seq.), take of bald eagles is prohibited unless otherwise permitted by the Service. BGEPA defines take to include

“pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, molest or disturb.” In turn, BGEPA’s implementing regulations define (50 CFR 22.3) disturb as

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.

As further explained in the Service’s 2007 National Bald Eagle Management Guidelines (USFWS 2007),

[h]uman activities near or within communal roost sites may prevent eagles from feeding or taking shelter, especially if there are not other undisturbed and productive feeding and roosting sites available. Activities that permanently alter communal roost sites and important foraging areas can altogether eliminate the elements that are essential for feeding and sheltering eagles. Where a human activity agitates or bothers roosting or foraging bald eagles to the degree that causes injury or substantially interferes with breeding, feeding, or sheltering behavior and causes, or is likely to cause, a loss of productivity or nest abandonment, the conduct of the activity constitutes a violation of the Eagle Act’s prohibition against disturbing eagles.

Consultation Framework

The proximity of the Murphy’s Island roost to existing foot, car, and train traffic indicates the visiting eagles are acclimated to a high level of human activity. However, we agree with the County that the proposed Project merits additional consideration, specifically those elements of the Project that may alter habitat on Murphy’s Island and influence the pattern and magnitude of human activity in that area. We provide the following comments and technical guidance, pursuant to our authorities under BGEPA, to assist the County in developing conservation measures that protect roosting eagles by avoiding and minimizing potential disturbance. These comments are neither an authorization of the Project nor an authorization to take eagles under BGEPA.

Unlike the Endangered Species Act of 1973 (87 Stat. 884, as amended; 16 U.S.C. 1531 *et seq.*), BGEPA does not include formal provisions related to consultation. Nonetheless, it is the practice of our office to provide input and recommendation where invited to assist project proponents in mitigating effects to eagles. Where impacts to eagles cannot be reasonably mitigated and disturbance is likely, the Service may recommend a proponent submit a permit

application for authorization to incidentally take eagles while performing otherwise lawful activities. Standards for such permitting are set out in 50 CFR 22.26.

Following Service guidance in these matters and submitting a permit application for incidental take of eagles are both voluntary acts.

Considerations and Recommendations

The two forms of disturbance potentially relevant to the Project are disruption of normal feeding and sheltering behavior. Bald eagles typically establish roosts near seasonally and interannually consistent sources of food. These roosts shelter eagles between feeding bouts, and at night, protect against exposure to wind and precipitation. Research also suggests the social aspect of roosts facilitates more efficient foraging.

We suggest the County implement the following measures to ensure the continued integrity of this roost site and enable bald eagles to feed and shelter during winter:

- Retain all overstory trees on Murphy's Island¹
- Construct the trail outside the December 15 to March 15 winter roosting season
- Restrict access to the trail between December 15 and March 15
- Retain low and mid-story vegetation where possible to help buffer the roost from prevailing winds

If the County can commit to these measures, we believe that roosting bald eagles are unlikely to be disturbed, and therefore, would not recommend the County submit an application for incidental take of eagles.

Further, we suggest the County engage stakeholders and communicate the County's efforts to make the Project compatible with bald eagles roosting at Murphy's Island. We also recommend displaying education materials at the project site to help the public understand the ecology and significance of roosting bald eagles. Lastly, we also advise the County to continue consultation with the New York State Department of Environmental Conservation (NYSDEC) on these matters and heed any subsequent determinations and recommendations from NYSDEC.

We acknowledge and appreciate the County's efforts to coordinate with the Service in the interest of bald eagles and the BGEPA. Thank you for consulting with our office on the Project. If you require additional information or assistance, please contact me at 413-253-8577 or thomas_wittig@fws.gov.

¹ The Service is working with the U.S. Environmental Protection Agency, New York State Department of Environmental Conservation and Honeywell regarding the remediation of Murphy's Island and will be submitting recommendations for very limited tree removal in the most highly contaminated areas.

Sincerely,

Thomas Wittig,
USFWS Northeast Eagle Coordinator

cc: NYSDEC, Syracuse, New York (Bonnie Parton)
NYSDEC, Cortland, New York (Thomas Bell)
USFWS, Cortland, New York (Sandra Doran, Anne Secord)
USFWS, Hadley, Massachusetts (Bryan Kluever)