

STATE OF NEW YORK
DEPARTMENT OF PUBLIC SERVICE

In the Matter of the Application of Hecate Energy Greene 1 LLC, Hecate Energy Greene 2 LLC, and Hecate Energy Greene 3 LLC,

-for-

a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 of the Public Service Law for Construction of a Solar Generating Facility located in the Town of Coxsackie, Greene County

NYSDPS Case No.17-F-0619

Brief on Exceptions
Submitted on behalf of
the Saving Greene citizens' group

Dated: August 26, 2021

Submitted on behalf of Saving Greene by:



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I. STATEMENT OF THE CASE

Pursuant to the Notice of Schedule for Filing Exceptions issued in the above-captioned proceeding by the Secretary of the New York State Public Service Commission, Saving Greene respectfully submits this Brief on Exceptions to take exception to some of the recommended findings and conclusions addressed in the Recommended Decision of Presiding Examiners James Costello and Ashley Moreno, Administrative Law Judges of the Department of Public Service ("DPS"), and Associate Examiner Molly T. McBride, Administrative Law Judge of the Department of Environmental Conservation ("DEC").

This Brief on Exceptions is submitted on behalf of Saving Greene. The content of this Brief is intended to compliment Saving Greene's individual comments on the Recommended Decision, which are being submitted by the group separately.

II. PROCEDURAL HISTORY

On October 13, 2017, the Co-Applicants, Hecate Energy Greene 1 LLC, Hecate Energy Greene 2 LLC, and Hecate Energy Greene 3 LLC, filed a Preliminary Involvement Program (PIP) Plan. DPS provided comments to the Co-Applicants on November 13, 2017, in which Hecate Energy finalized its PIP on December 12, 2017.

On May 28, 2018, the Co-Applicants submitted its Preliminary Scoping Statement (PSS), originally proposing to construct a 50 megawatt (MW) photovoltaic (PV) solar electric generating facility on 933 acres of land within the Town of Coxsackie and the Village of Coxsackie on three individual parcels. The PSS was later revised to eliminated Greene County #2 site from the project.

The Applicant filed its formal application for the Project on December 27, 2019. The current proposal for the Facility is a 50-megawatt PV solar electric generating facility proposed to be located in the Town of Coxsackie, Greene County, on approximately 827 acres of primarily agricultural land.

On August 16, 2021, a Recommended Decision was issued by the Presiding Examiners James Costello and Ashley Moreno, and Associate Examiner Molly T. McBride. Ultimately, the Recommended Decision found that the Siting Board should deny a Certificate of Environmental Compatibility and Public Need to the Co-Applicant because "the record does not support a

finding that the Facility will comply with applicable substantive local law.”¹

Saving Greene ultimately agrees that the Certificate of Environmental Compatibility and Public Need should be denied. However, in addition to those reasons cited in the Recommended Decision, there are additional issues that have not been properly addressed or adequately acknowledged in the Recommended Decision that further support denial of this project.

Saving Greene has status to participate in this review as a local party. Saving Greene is a grass-roots citizens' group comprised of neighbors to the proposed project site, citizens of Coxsackie, and other stakeholders and persons concerned about the impacts of this proposed project. Saving Greene has actively participated during this process in its comments to the PSS, stipulations, and public hearing.

III. SAVING GREENE'S BASIC POSITION

Saving Greene is a Coxsackie-based, grass roots citizens' group concerned about the potential adverse impacts of the proposed Hecate Energy 50 MW solar energy generation project. Saving Greene supports solar energy generation, but advocates the sensible, intelligent and sensitive siting of generation facilities so as to minimize adverse impacts to the environment & localities. Saving Greene represents the interests of group members and supporters, the ranks of which include project site neighbors, stakeholders, persons concerned about the environment, and persons concerned about Coxsackie and its future.

The location that the Co-Applicants have selected for this project is particularly ill-suited. Although there is a close proximity to a connection to the grid, in all other respects, it is an extremely poor and detrimental location to site a 50 MW solar energy generation facility. Endangered and threatened species, species of special concern, rare grassland habitat, wetlands, surface waters, prime agricultural soils and soils of statewide significance, and sweeping, pastoral valley vistas together outweigh the convenience to the Co-Applicants of the site's proximity to the grid. New York's desire as a statewide community to achieve our renewable energy goals does not mean that sensible and ecologically sensitive land use planning should be thrown out the window.

The Siting Board has the responsibility to thoroughly examine the compatibility of this

¹ Recommended Decision, dated August 16, 2021, Presiding Examiners James Costello and Ashley Moreno, Administrative Law Judges of the DPS, and Associate Examiner Molly T. McBride, Administrative Law Judge of the DEC, at page 106.

Facility. The purpose of Article 10 was to create "one-stop shopping" for permit applicants for electricity generation facilities. Hence, as part of Article 10, the responsibility for review and evaluation of the environmental impacts and health and safety impacts of a proposed facility has been placed in the hands of the Siting Board. That responsibility is important. And it is important that the responsibility be discharged diligently, in good faith and with an appropriate value placed on our environment.

There can be no doubt that the interests of the people of the State will be served well by a robust development of clean, renewable energy resources within the State. But the pursuit of this goal does not mean that solar energy generation is appropriate anywhere and everywhere it is proposed.

Although, the State Environmental Quality Review Act (SEQRA) may not apply here, a component of the Article 10 review is an environmental assessment that will fulfill, albeit through a different process, the same goals which the Legislature sought to advance through SEQRA.²

The State Legislature said in § 8-0101 of the State Environmental Conservation Law (ECL):

It is the purpose of this act to declare a state policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and enhance human and community resources; and to enrich the understanding of the ecological systems, human and community resources important to the people of this state.³

And in ECL § 8-0103, the State Legislature expressed the following about the value of our environment, about the public interest in protecting the environment, and the goals that the Legislature wanted to achieve in enacting legislation to protect our environment:

It is the intent of the legislature that all agencies conduct their affairs with the awareness that they are stewards of the air, water, land and living resources, and that they have an obligation to protect the environment for the use and enjoyment of this and future generations.⁴

With these statements by the Legislature, the critical importance of environmental protection and preservation as a public interest is established with certitude. And while SEQRA

² NYS Public Service Law § 164, see also, 16 NYCRR § 86.5.

³ NYS Environmental Conservation Law § 8-0101. (Emphasis Added)

⁴ NYS Environmental Conservation Law § 8-0103(8). (Emphasis Added)

does not apply in this review per se, the public interest in environmental protection remains alive and well and an integral part of this process. It is up to the Siting Board to help our solar energy generation capacity grow sensibly, while at the same time considering and valuing the important public interest in protecting and preserving our environment.

Saving Greene urges the Siting Board to deny a Certificate of Environmental Compatibility and Public Need to the Co-Applicants because this location is not sensible to the development of solar energy, and will have severe and detrimental consequences to the surrounding environment, habitat, and local community.

IV. SAVING GREENE'S EXCEPTIONS

A. The Certificate of Environmental Compatibility and Public Need Should be Denied to the Co-Applicants Because of the Impacts that Cannot be Mitigated to the Grassland Habitat.

The Application documents identifies 12 bird and bat species identified near the facility area that are classified as either New York State (NYS) endangered species, threatened species, or as species of special concern.⁵ This establishes that there is a remarkable concentration of at-risk species in the area in and around the lands upon which the Applicant wants to site this project. Unfortunately, the Recommended Decision focuses only on the wintering habitat of the Short-eared Owl, a New York State endangered species, and the Northern Harrier, a New York State threatened species, and recommends that the Siting Board find sufficient mitigation is achieved by limiting construction activities between October 31 and April 1, or otherwise conduct surveys for any grassland bird species during that time.⁶

This is insufficient to properly alleviate the damage that will be caused to the grassland birds and their habitat.

The ecological value of the habitat in the Cocksackie Flats where this project is proposed, and the extent of that habitat, is documented in detail in the Greene County Grassland Habitat Management Plan⁷. The lands proposed for siting this Facility are located in this rare and prime

⁵ Habitat Assessment and Preliminary Impact Determination, at page 8.

⁶ Recommended Decision, dated August 16, 2021, at page 37.

⁷ Strong, K., R. VanSchaack, and I. Haeckel. 2014. *Greene County Grassland Habitat Management Plan*. Greene County Soil and Water Conservation District and Greene County Habitat Advisory Committee. Cairo, NY.
<https://static1.squarespace.com/static/5b30492f96d45595ed16d644/t/5bd8c90c8a922dd4155a656c/1540933909758/GreeneCountyGrasslandPlanFINAL6-20-2014.pdf>

grassland habitat area, where both the Short-eared Owl and the Northern Harrier have been observed. Not only that, but given the wide habitat range of these birds, the entire Facility area could drastically impair both species' habitat and existence. Both the Short-eared Owl and Northern Harrier, like other grassland birds, require large acreage of open and contiguous grassland.⁸

The Greene County Grassland Habitat Management Plan was initiated by the Greene County Soil and Water Conservation District, and involved guidance from, and participation with, the Greene County Habitat Advisory Committee, a Committee comprised of different stakeholders including state and federal agencies, local municipalities, planners, sportsmen, and conservation organizations. One of the purposes of this plan is to help encourage cooperative environmental planning for future development in eastern Greene County, which is accomplished through the careful study of the importance of the local grassland habitat and area.⁹

This particular area, known as the Cocksackie Flats, consists of the grasslands in Cocksackie, New Baltimore, and Athens. It is "one of the only four key wintering areas for the Short-eared Owl in the Hudson Valley, and supports more Harriers on a consistent basis than any other site north or west of the Hudson Valley."¹⁰ Thus, the importance of this habitat is self-evident. This area must receive very careful scrutiny before any project is approved that could severely limit or impact the open area of the habitat range.

The Grassland Habitat Management Plan includes several maps in its discussion. Two of these maps, seen on pages 53 and 54, show observations of the Short-eared Owl and the Northern Harrier. A copy of these maps are attached as Appendix A and B, respectively.¹¹ As indicated from these maps, the Facility Area, even with the alternative layouts proposed,

⁸ Strong, K., R. VanSchaack, and I. Haeckel. 2014. *Greene County Grassland Habitat Management Plan*. Greene County Soil and Water Conservation District and Greene County Habitat Advisory Committee. Cairo, NY. at page 12.

⁹ Strong, K., R. VanSchaack, and I. Haeckel. 2014. *Greene County Grassland Habitat Management Plan*. Greene County Soil and Water Conservation District and Greene County Habitat Advisory Committee. Cairo, NY. at page 10.

¹⁰ Strong, K., R. VanSchaack, and I. Haeckel. 2014. *Greene County Grassland Habitat Management Plan*. Greene County Soil and Water Conservation District and Greene County Habitat Advisory Committee. Cairo, NY. at page 10.

¹¹ These maps were also provided in Grant & Lyons comments on behalf of Saving Greene, to the PIP, dated May 25, 2018, on pages 4-5.

includes a substantial area where both species have been observed.

Both the Short-eared Owl and the Northern Harrier rely on large, open lands, with low, grassy vegetation, suitable low nesting sites, and accessible meadow vole habitat.¹² Simply halting construction during a set of months or surveying the area during construction is inadequate to protect the ecological value of this area, and to mitigate the impacts to the grassland birds, who will experience loss or alteration of habitat for migration, hunting, foraging, nesting, brood rearing, fledging and other portions of life cycles of species disturbed by the construction arrays of panels that will fragment the large, open area of the Cocksackie Flats.¹³

This rare habitat area must be conserved and protected. Siting a large solar field in this prime and critical habitat of both an endangered species and a threaten species cannot be permitted, and cannot be entertained. The site upon which this project is proposed is one of extraordinary ecological value and richness. The Siting Board is obligated to protect those ecological and natural resources, and must deny the Certificate of Environmental Compatibility and Public Need due to the destruction and loss of the Grassland Habitat.

B. The Certificate of Environmental Compatibility and Public Need Should be Denied to the Co-Applicants Because of the Lack of Compliance with the Town of Cocksackie Local Laws.

The Recommended Decision notes that the project does not comply with local laws, but issues a findings that recommends the Siting Board grant the Co-Applicants waiver to the local laws.¹⁴ The Recommended Decision is based on the fact that the Flint Mine application (Case 18-F-0087 : Application of Flint Mine Solar LLC for a Certificate of Environmental Compatibility and Public Need Pursuant to Article 10 for Construction of a Solar Electric Generating Facility Located in the Towns of Cocksackie and Athens, Greene County, hereinafter referred to as “Flint Mine”) received similar waivers, and thus, this project would likely support a findings to grant the waivers to the local law.

However, such waivers should not be granted to this project, particularly due to the recent Flint Mine approvals.

¹² Strong, K., R. VanSchaack, and I. Haeckel. 2014. *Greene County Grassland Habitat Management Plan*. Greene County Soil and Water Conservation District and Greene County Habitat Advisory Committee. Cairo, NY. at page 30-32.

¹³ Comments by Norbert Quenzer, attached to Saving Greene’s comment to Preliminary Scoping Statement, Exhibit B, dated July 3, 2018, at page 3.

¹⁴ Recommended Decision, dated August 16, 2021, at page 97.

The Town of Coxsackie Solar Energy Collection Systems law (Ch. 167) restricts utility scale solar facilities to the Commercial (C) and Industrial (I) Zoning Districts. Utility scale solar is prohibited in all other zoning districts in the Town, including the Rural Residential (RR) District in which virtually all of the Co-Applicant's project is located. However, with the granting of the Certificate to the nearby Flint Mine project, also located in Coxsackie, the Town's desire to maintain a rural community has been completely ignored and disregarded.

The application of local ordinances is extraordinarily important. As is shown clearly by Nan Stolzenburg's memo, which has been attached to Saving Greene's comment to Preliminary Scoping Statement, Exhibit A, dated July 3, 2018, a tremendous effort has gone into planning in the area in which this proposed project site lies.¹⁵ This puts a premium on the matter of compliance with local laws and plans. Granting the Co-Applicants a waiver not to comply with local laws and plans will effectively and unjustly sweep all that local and regional planning effort under the rug. The choice to ignore local planning efforts and laws would fly directly into the face of local and regional efforts to intelligently plan and shape a vision for how the community has chosen to grow and develop.

In the world of land use planning, a comprehensive plan is how a municipality sets forth its vision for itself, for how it wants to grow. As a complement, zoning laws are the tool that implements that vision. The Town of Coxsackie's choice to prohibit utility scales in the Rural Residential Zoning District comports with the stated purposes in the Town of Coxsackie Zoning Law for the Rural Residential (RR) Zoning District. It says:

This area of the Town allows for low-density residential development that is reflective of the rural character of the area. This district allows for agricultural uses, low-density residential development, and limited rural commercial and institutional uses.¹⁶

The use proposed by the Co-Applicants, which is industrial in both nature and scale, is not consistent with the Town's purpose for Rural Residential (RR) District. In addition, the location that the Co-Applicants have chosen for this project is also rife with natural and ecological resources which are worthy of protection from degradation by large-scale commercial uses. The rare grasslands habitat, wetlands and surface waters underscore the reasons for prohibiting uses like this one.

¹⁵ Comments by Nan Stolzenburg, attached to Saving Greene's comment to Preliminary Scoping Statement, Exhibit B, dated July 3, 2018.

¹⁶ Town of Coxsackie Zoning Law, § 201-13.

The Town's Solar Energy Collection Systems law¹⁷, which prohibits utility scale solar facilities in this area, recognizes the value of solar energy as a clean, readily available and renewable energy source. But that Section of the law also explains the Town's need to protect the interests of the Town. Section 167-2 of the Town of Coxsackie's Zoning Law explains that the law seeks to promote solar energy generation systems in Coxsackie, but also to ensure that such systems will not have a significant adverse impact on the environment or on the aesthetic qualities and character of the Town, and to protect areas of economic and agricultural significance to the Town.

Furthermore, in addition to the glare provision, there are additional provisions of the local law that are not addressed in the Recommended Decision, and which the facility fails to comply.

Article VI of the Town of Coxsackie Zoning Law, is entitled "Natural Resources Protection Standards." In particular, § 201-43 entitled "Purpose," sets forth the Town's purpose in adopting and requiring those standards. The purpose of those natural resource protection standards is to provide special controls over land use and development located in critical ecological landscapes identified by the Town of Coxsackie. The standards and procedures are designed to identify, protect, conserve, enhance, restore, and maintain significant natural features and the ecological connections between them. As mentioned above, the Coxsackie Flats is a natural resource that must be protected, and one that is not adequately preserved by the proposed conditions.

The Town of Coxsackie also protects wildlife habitat. Zoning Law § 201-50 is entitled "Wildlife Habitat" and says:

Areas that contain wildlife and wildlife species are a natural resource of local, statewide, national and global significance. Wildlife play important roles in maintaining ecosystems through ecological interactions, such as predation, pollination and seed dispersal, as well as provide valuable educational and recreational opportunities. Wildlife populations can only be sustained if adequate measures are taken to maintain the habitats they require and the ecological connections between them. Habitat protection enables wildlife to persist in a region as well as enabling the continuation of vital natural processes. Poorly planned land development has fragmented ecosystems.

As discussed above with regard to the unique Grasslands habitat located in Coxsackie, it is already known that a significant portion of the project lands are located that unique and

¹⁷ Chapter 167, Town of Coxsackie Town Code.

important habitat area. Moreover, that area is known as habitat for the Short-eared Owl (an endangered species) and the Northern Harrier (a threatened species).

The uniqueness and local and Statewide importance of the natural resources on the proposed project sites and surrounding areas, and the local commitment to natural resource protection, together demands that compliance with local regulation for this project should receive extraordinary consideration as part of this review process. The Siting Board should respect the Town of Coxsackie's desires for development in its community, particularly after the Flint Mine project has already been approved nearby, and deny the Certificate of Environmental Compatibility and Public Need. To grant yet another waiver to the Town of Coxsackie local land use law is a disservice to the Town of Coxsackie's vision for itself and its citizens.

C. The Certificate of Environmental Compatibility and Public Need Should be Denied to the Co-Applicants Because of the Impacts to Prime Farmland Soils.

Prime farmland soils are recognized by both New York State and the USDA as crucial to continued agricultural activity and sustainability of our farms and are the best land for producing food, feed, fiber forage and oilseed crops. NYS Agriculture and Markets Law § 25-aa establishes that:

It is the declared policy of the state to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products.

The Recommended Decision supports a finding that impact to prime farmland soil is only temporary, and that such lands will be restored once the facility has reached its end of life.¹⁸ However, this inadequately addresses the impacts to farming, and fails to mitigate the short and long impacts to farming.

Solar development will remove land from agricultural production for the duration of the life of the facility. Some of the soils that would be lost are prime farmland soils, and the majority are soils of statewide importance. Hence, the loss of these soils to agriculture for the life of this facility would be significant. Even if it is returned after the life of the Facility, that does not account for the immediate impact of losing that farmland for the duration of the life of the facility.

Loss of farmland is a local issue and one which affects the community as a whole, not

¹⁸ Recommended Decision, dated August 16, 2021, at page 66.

just the farmer on whose land the project would be located. The loss of farmland has many implications for local and regional food production, the economy, and even the economic health of the farmer. There is no actual experience or previous knowledge as to the long-term soil preservation implications. Neither have the long-term impact of removal of the supports and buried electrical conduits and other soil disturbances been evaluated. At best, it is unclear whether agriculture can be maintained coincident to large scale solar facilities. The Siting Board should deny Certificate of Environmental Compatibility and Public Need due to the impact on prime farmland that will be removed and disrupted during the life of the facility.

D. The Certificate of Environmental Compatibility and Public Need Should be Denied to the Co-Applicants Because of the Cumulative Impacts of the Nearby Approved Flint Mine Facility.

A nearby facility in the Town of Coxsackie was recently approved by the Siting Board for Flint Mine. Both the Co-Applicants and the Recommended Decision gloss over this enormous factor that the Town of Coxsackie is already subject to a 100 MW Facility. This cannot be ignored.

The Town of Coxsackie, which has stated that utility-scale solar energy facilities are not appropriate and not permitted within the RR Zoning District, and now potentially subject to two utility-scale solar energy facilities. To ignore the prospect that granting a Certificate of Environmental Compatibility and Public Need to the Co-Applicants ignores the change that this facility would bring to the feel of its neighborhood. Instead of farmland, neighbors to the panels and travelers on Adams Road and Farm to Market Road will see fences and row upon row of panels. The difference to the feel of that landscape is pronounced. A natural vista is replaced with mechanical structures on an industrial scale. The Recommended Decision fails to take into account the threat to community character that is faced to the Town of Coxsackie if another Certificate of Environmental Compatibility and Public Need is granted here.

The Siting Board should deny the Certificate of Environmental Compatibility and Public Need because of the cumulative impacts of both this facility and the approved facility for Flint Mine.

V. CONCLUSION

The siting of these projects should be sensible, sensitive and intelligent. Siting these facilities in places which threaten to damage some of our most important and rare environmental resources is bad public policy and does not serve the public interest. It is up to the Siting Board to help our solar energy generation capacity grow sensibly, while at the same


time considering and valuing the important public interest in protecting and preserving our environment. The responsibility of the Siting Board is to balance the commendable goal of developing clean, renewable electricity generation capacity, with a good faith protection our environment and important environmental resources. The location that the Co-Applicants has selected for this project is particularly ill-suited. Endangered and threatened species, species of special concern, rare grassland habitat, wetlands, surface waters, prime agricultural soils and soils of statewide significance, and sweeping, pastoral valley vistas together must be protected. For all the reasons set forth above, we urge this Siting Board to deny the Certificate of Environmental Compatibility and Public Need.

Dated: Rhinebeck, New York
August 26, 2021

Respectfully submitted by Attorneys for Saving Greene.

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Appendix A

The Grassland Habitat Management Plan, Short-eared Owl winter survey observation

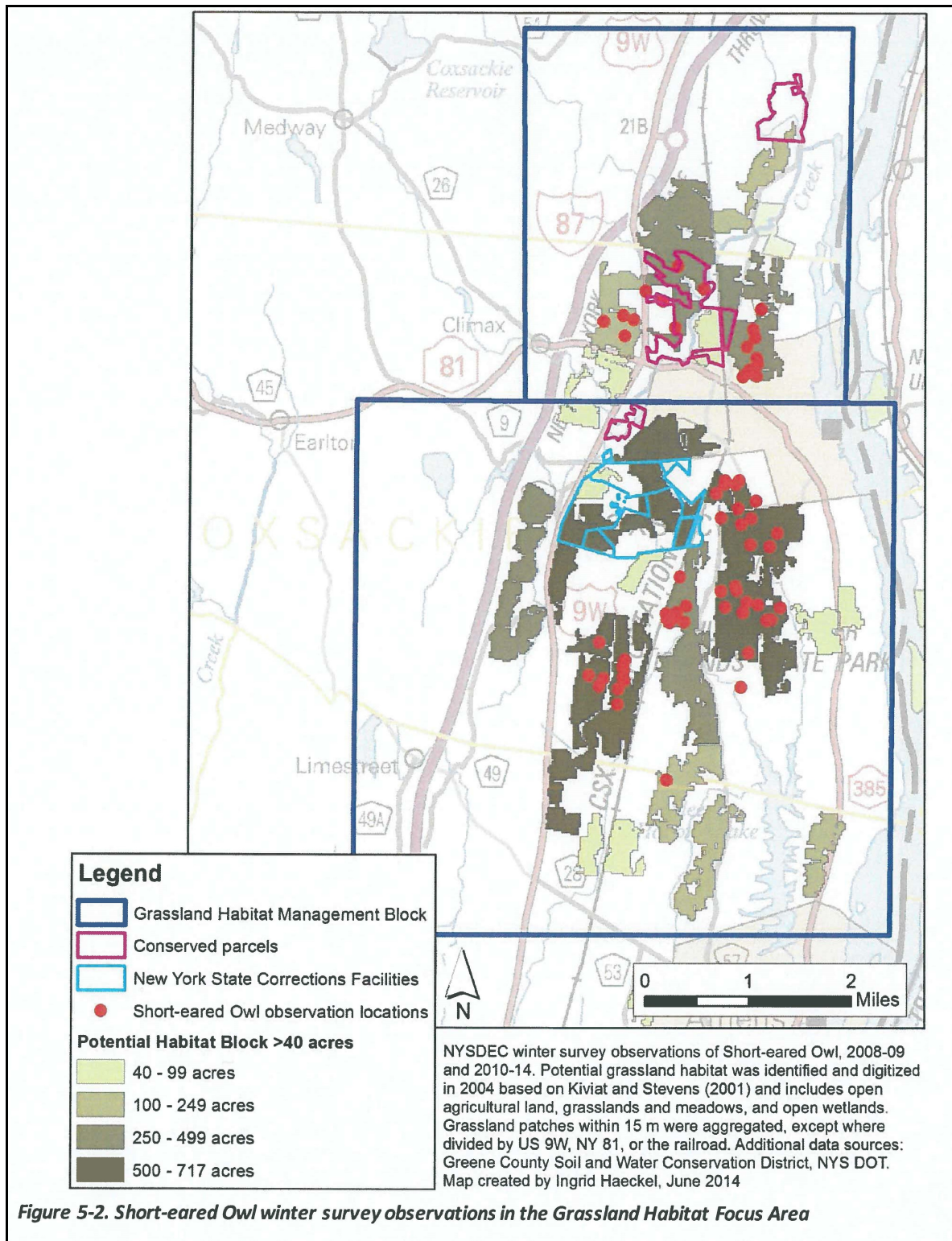


Figure 5-2. Short-eared Owl winter survey observations in the Grassland Habitat Focus Area

Appendix B

The Grassland Habitat Management Plan, Northern Harrier winter survey observation

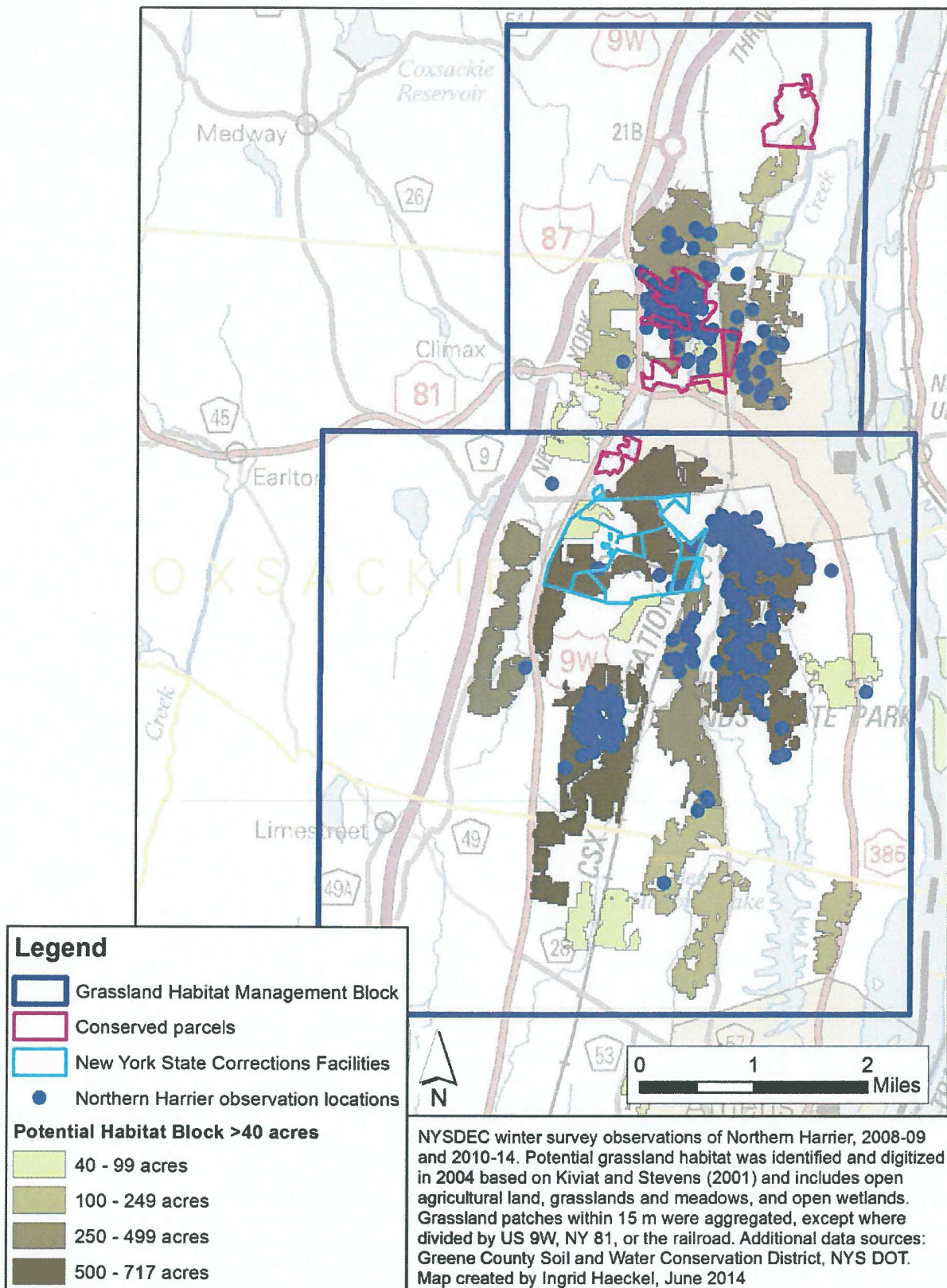


Figure 5-3. Northern Harrier winter survey observations in the Grassland Habitat Focus Area