



November 18, 2020

**VIA ELECTRONIC MAIL**

Commissioner Katie Dykes  
Connecticut Dept. of Energy and Env'tl. Protection  
79 Elm Street  
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Email: Katie.Dykes@ct.gov

**RE: Sierra Club Supplemental Comments Regarding Eversource Application for Section 401 Water Quality Certification for Pomfret to Killingly Pipeline Project**

Commissioner Dykes:

The Sierra Club respectfully submits the following supplement to its comments dated June 9, 2020, June 30, 2020, and October 7, 2020 concerning the Eversource Application for Section 401 Water Quality Certification for the Pomfret to Killingly Pipeline Project.

In its prior comments, Sierra Club identified adverse impacts to several state-listed endangered species that would be caused by the proposed project, including adverse impacts to the Northern long-eared owl.<sup>1</sup> Sierra Club subsequently provided a declaration signed by Andy Rzeznikiewicz, Land Manager for the Connecticut Audubon Society, providing detailed information regarding his observation of Northern long-eared owls in the project area from March to May 2020.<sup>2</sup> Enclosed please find an additional declaration from Aaron Bourque, a Teacher-Naturalist with the Connecticut Audubon Society, who also observed the Northern long-eared owls from March to May of 2020.

In his declaration, Mr. Bourque provides a detailed log of his observation of Northern long-eared owls flying over the Wyndham Land Trust Duck Marsh Preserve in the evenings from March 8 through May 3, 2020.<sup>3</sup> He also provides several photographs he took

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<sup>1</sup> Sierra Club Comments on Eversource Application for Section 401 Water Quality Certification for Pomfret to Killingly Pipeline Project (June 9, 2020), at 12-13; Sierra Club Supplemental Comments Regarding Eversource Application for Section 401 Water Quality Certification for Pomfret to Killingly Pipeline Project (June 30, 2020) at 2-3.

<sup>2</sup> See Declaration of Andy Rzeznikiewicz, September 29, 2020.

<sup>3</sup> See Declaration of Aaron Bourque, November 10, 2020.

documenting the presence of the owls in the preserve.<sup>4</sup> Mr. Bourque notes in his declaration that these owl sightings occurred during the peak of the Long-eared owl's breeding season; while he was unable to confirm breeding activity, he believes the owls were likely breeding in the area.<sup>5</sup>

As Sierra Club highlighted in its initial comments and associated expert report prepared by Downstream Strategies, noise and construction traffic from the proposed project could reduce the foraging efficiency of owls in the area, which depend almost entirely on sound to hunt for prey.<sup>6</sup> Such disturbance could drive the owls from the habitat entirely, effectively resulting in habitat loss.<sup>7</sup> Sierra Club noted that the damage to the wetland ecosystems crossed by the pipeline, and the species those ecosystems support—including the Northern long-eared owl—would be a loss of a designated use inconsistent with the Connecticut Water Quality Standards.<sup>8</sup>

Sierra Club reiterates that under General Statutes of Connecticut Section 26-310(c), an administrative agency must request an exemption from the commissioner of DEEP if a project authorized by that agency will “threaten the continued existence of any endangered or threatened species or result in the destruction or adverse modification of habitat designated as essential to such species.”<sup>9</sup> Given that in order for a species to be considered endangered under Connecticut law there must be “no more than five occurrences in the state,”<sup>10</sup> with “occurrence” defined as “a population of a species breeding and existing within the same ecological community,”<sup>11</sup> Sierra Club anticipates that the habitat in the project area is likely essential to the survival of the Northern long-eared owl in Connecticut. Thus, DEEP staff would be required to obtain from you, Commissioner, an exemption under Section 26-310(c) for threatening the Northern long-eared owl before granting certification to the proposed pipeline under Section 401 of the Clean Water Act.

Sierra Club further reiterates that Eversource's current NDDDB Determination is dated July 31, 2019 and was valid for one year. Because construction on the project did not begin before July 31, 2020, a NDDDB Determination renewal will be necessary. Given that Northern long-eared owls were documented in the project area consistently over several months this year,

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<sup>4</sup> *Id.*

<sup>5</sup> Bourque Declaration, at 7.

<sup>6</sup> Downstream Strategies, Potential Impacts from Eversource's Proposed Pomfret to Killingly Pipeline Project (June 3, 2020), at 20.

<sup>7</sup> *Id.*

<sup>8</sup> See generally Sierra Club comments dated June 9, 2020. See also Regulations of Connecticut State Agencies, §§ 22a-426-1 to 22a-426-9.

<sup>9</sup> Conn. Gen. Stat. § 26-310 (c).

<sup>10</sup> Conn. Gen. Stat. § 26-304 (7).

<sup>11</sup> Conn. Gen. Stat. § 26-304 (15).

and as recently as May 2020,<sup>12</sup> Sierra Club urges that this state-listed endangered species be included in any updated NDDB Determination.

Respectfully submitted,

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Attachment: Declaration of Aaron Bourque

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<sup>12</sup> Bourque Declaration, at 1; Rzeznikiewicz Declaration, at 1.

### DECLARATION OF AARON BOURQUE

1. My name is Aaron Bourque. The facts set forth in this declaration are based on my personal knowledge and my review of publicly available information.
2. I am an employee of the Connecticut Audubon Society. I began work with the organization as a volunteer in 2014 and became employed as a Teacher-Naturalist in 2018. In my role as Teacher-Naturalist I lead environmental education programs for K-12 classes that come to the Connecticut Audubon Society's Center at Pomfret on field trips. Our programming primarily focuses on bird science and ecology, and bird banding. Depending on the group, I lead bird walks, allow the students to observe bird banding and teach the scientific process for bird banding, and teach students about bird beaks and biology. I also conduct bird banding studies for the Audubon to track migration patterns.
3. In addition to my employment with the Audubon, I have been employed as a Connecticut Bird Atlas Point Count Technician since the summer of 2019. In this role, I have surveyed sections of the state for bird species, identifying birds based on sight and sound and observing for evidence of breeding behaviors such as building nests, carrying food or nesting material, and singing. I have conducted this work every day for the past two summers in the eastern third of the state.
4. My first sighting of a Northern long-eared owl on the Duck Marsh Preserve was on March 8, 2020. I continued seeing the owls on the preserve several times a week until May 5, 2020.
5. To observe the owls, we parked in the parking lot and walked up the road into the large opening in the field and stood at the top of the hill and waited there. The approximate coordinates of this location are: 41°53'18.6"N 71°56'07.8"W.

6. The proposed pipeline route runs from east to west directly through the field where we observed the owls. The owls were flying right over the pipeline route, and I observed them landing on posts marking the location of the existing pipeline.
7. I did not know immediately that we were observing Long-eared owls because we had seen Short-eared owls at the same location in Winter 2018, so I assumed we had seen Short-eared owls again. However, I took photographs and realized later that we had in fact observed Long-eared owls. I was able to identify the Long-eared owl by coloration in the face and the length of the ear tufts. Some nights I also observed Short-eared owls with the Long-eared owls. I had not previously seen this number of owls in the area.
8. Once I realized we had seen Long-eared owls I tried to observe them as much as possible. From early April to the first week of May I went out to observe them at least once a week, and sometimes two to three times a week—ten times in total.
9. I generally saw between one and five Long-eared owls each night I was looking for them with the exception of two or three nights when I was not able to see any owls. On average we would see around four Long-eared owls in a given night.
10. We usually spotted the Long-eared owls about 20 minutes after sunset. The owls would fly low through the farmland or high over us and over the road. It appeared that they were lifting off from the trees nearby, where they were likely roosting, to hunt in the fields. Most nights we saw the owls fly over us into the fields, but some nights we also saw them perched on fenceposts or trees or birdhouses.

11. Below please find a log detailing my Long-eared and Short-eared owl sightings at the preserve:

Date and Time Period	Number of Long-eared owls observed	Number of Short-eared owls observed
3/8/2020 7:45-8:00 pm	1	1
4/4/2020 7:20-8:00 pm	2	2
4/6/2020 7:25-8:23 pm	4	1
4/8/2020 7:10-8:00 pm	4	1
4/11/2020 7:40-8:20 pm	4	2
4/15/2020 7:40-8:05 pm	4	0
4/25/2020 7:41-8:21 pm	5	0
5/2/2020 4:55-5:50 am	1	0
5/3/2020 7:30-8:35 pm	2	0
5/5/2020 7:40-8:40 pm	1	0

12. Several fellow birders came to observe the owls, including Phil Rusch, Dave Provencher, and Andy Rzeznikiewicz. On the busiest nights there were approximately 6-10 people there. I did not publicly disclose these owl sightings for fear of drawing crowds that might disturb the owls, but trusted birders were invited to come see the owls. Others did input some of the sightings on e-bird, an online platform where birders can contribute bird sighting information including location and photographic documentation.<sup>1</sup> Sightings of between one and four Long-eared owls were entered on eBird for three nights between March 27 and April 16, 2020.<sup>2</sup>
13. I documented the owls via photograph. I captured the following photos of Long-eared owls on the Duck Marsh Preserve—dates and approximate time of each photo are noted.

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<sup>1</sup> See Ebird.org, Wyndham Land Trust--Duck Marsh Preserve, <https://ebird.org/hotspot/L6812273> (listing bird sightings reported at the Wyndham Land Trust Duck Marsh Preserve).

<sup>2</sup> See Ebird.org, Wyndham Land Trust--Duck Marsh Preserve.

14. The below two photographs depict a Long-eared owl perched on a birdhouse and were taken on April 6, 2020 between 7:30 pm and 7:55 pm (the period in which we observed the owls that evening).



15. The below photograph depicts a Long-eared owl in the grass on April 4, 2020, taken between 7:20 pm and 8:00 pm.



16. The below photograph depicts a Long-eared owl flying on April 25<sup>th</sup>, taken between 8:03 pm and 8:07pm.



17. The below photograph depicts a Long-eared owl perched on a fence post, taken on May 3 at 8:20pm.



18. In late April we tried to confirm that the Long-eared owls were breeding in the area, but we were not able to find evidence of nesting. Breeding season for Long-eared owls begins at the end of February and is most prevalent from early March through early May, so the owls were in the preserve at exactly the right time to be breeding. It is possible the owls were late in their migration and were not breeding, but it would have been quite late for them to be migrating and our sightings extended through the peak of their normal breeding season.

19. This coming winter we will be surveying the area more frequently to look for the Long-eared owls in the preserve. The habitat is right for them and there are sufficient food sources here so I believe that they will come back.
20. I declare under the law of Connecticut that the foregoing is true and correct.

Date: 11/10/2020

A handwritten signature in black ink, appearing to read "Aaron Bourque", written in a cursive style.

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Aaron Bourque