



United States Department of the Interior



FISH AND WILDLIFE SERVICE

Caribbean Ecological Services
Field Office
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In Reply Refer to:
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Mr. Tom Wheeler
Chairman
Federal Communication Commission
445 12th Street, S.W.
Washington, DC 20554

Mr. Carlos Collazo
President
Soluwise Technology Solutions
P.O. Box 998
Guaynabo, PR 00970-0998

Re: Lluveras Telecommunication Site -
Sabana Grande

Dear Messrs. Wheeler and Collazo:

This letter is regarding the project Lluveras Telecommunication Facilities to install a 120 foot tall telecommunication tower in a parcel of land (200 m²) at Susúa Ward in the municipality of Sabana Grande, Puerto Rico. Recently, we received new information regarding land clearance activities and possible adverse effects to federally listed species and its habitat as part of the above referenced project. Our comments are provided under the Endangered Species Act (ESA)(87 Stat. 884, as amended; 16 United States Code 1531 et seq.).

On January 14, 2013, the U.S. Fish and Wildlife Service's Caribbean Ecological Services Field Office notified the Chairman of the Federal Communications Commission (FCC) that a Blanket Clearance Letter (BCL) had been developed to facilitate the evaluation of communication towers in the Caribbean. This BCL indicated that projects that meet the following criteria would not need to further consult under Section 7 of the ESA:

- a. The proposed tower design is not more than 250 feet tall;
- b. The tower does not require the use of guy wires; and
- c. It is located on urbanized areas and vacant lots covered by grasslands and disturbed scrubs (deprived of forested habitat).

On February 1, 2013, we received an information package from Soluwise Technology Solutions (Soluwise) about the project stated above. The information indicated the tower would be located in an area where the vegetation had already been cleared, and that no additional clearing was required.

Based on that information, on March 18, 2103, we determined that the project qualified for the BCL for Communication Towers because no adverse effects to federally-listed were anticipated. Therefore, no further consultation under Section 7 of the ESA was necessary. However, we recently became aware that the information provided to the Service by Soluwise was not accurate. The project described in the package sent to us for evaluation does not correspond to the project under construction.

On February 26, 2015, we received communication from Mr. Luis O. García Mercado from *Coalición Pro Salud y Ambiente de Susúa y Arenas*, providing new information regarding the project site. He claimed that land clearing activities conducted for the project resulted in possible adverse effects to the federally endangered Puerto Rican nightjar (*Caprimulgus noctitherus*) and its habitat within the Lluveras Telecommunication site. In addition, Mr. García submitted a report on a survey they conducted for the species, which documented the presence of the Puerto Rican nightjar within the vicinity of the area where the tower will be installed. Mr. García also provided a copy of a report of an investigation conducted by the Puerto Rico Senate, dated September 26, 2014, regarding the project stated above. The alleged deforestation is also described in the report prepared by the Puerto Rico Senate. The presence of the Puerto Rican nightjar in the area was confirmed by the Puerto Rican Ornithological Society (SOPI in Spanish) in March 2015. The Service has reviewed aerial photos of the site available in the Internet and observed that in fact, additional area was deforested after the issuance of the BCL.

From the review of the information provided to the Service by Mr. García, we have determined that a forested area was cleared after we had issued the BCL. This action is in contradiction of the information submitted to us by Soluwise on February 1, 2013. Also, there is information documenting the occurrence of a federally listed species within the project's premises. Based on this significant new information, we have determined that the Lluveras Telecommunication Tower project does not meet the criteria established in the BCL for Communication Towers. The project described to us in the February 1, 2013, package is not the same project under construction. Therefore, we are notifying that this project is not covered under Section 7 of the ESA, as the BCL is not applicable to the project Soluwise is now undertaking.

Be advised that Section 9 of the ESA prohibits take (i.e., to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct) of threatened and endangered species listed under the ESA. Take also includes significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering (50 CFR 17.3). In addition, it is the Service's policy to not conduct after-the-

fact Section 7 consultations. Therefore, since the BCL does not cover the project under construction, the FCC is no longer in compliance with Section 7 of the ESA if an authorization was granted. Also, be advised that Soluwise and any other party involved may be subject to law enforcement actions from the Service should take of federally listed species occurs as part to the project activities.

In the case this project has a Federal Nexus, and Soluwise plans to modify additional habitat (e.g., construction of a new access road or expansion of the project site), it is the responsibility of the Federal Action Agency to initiate consultation with the Service under Section 7 of the ESA. As a reminder, Section 7 of the ESA requires that all Federal agencies (i.e., Action Agency) ensure the actions permitted, funded, or carried out by that agency will not adversely modify and/or will not jeopardize the continued existence of federally-listed species. Hence, when federal funds or permits are needed for a proposed action that may affect a listed species or its designated critical habitat, a consultation under Section 7 should be initiated with the Service.

If you have any additional question regarding this communication, please contact Marelisa Rivera, Deputy Field Supervisor, at 787-851-7297.

Sincerely yours,


Edwin E. Muñiz
Field Supervisor

oamr/jcb/mtr

cc:
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