



Memorandum

To: Fort Edward Solar, LLC

From: Michael Newhouse, WSP USA Inc

Date: October 27, 2025

Re: Avian Memorandum Fort Edward Solar Project, Washington County, New York

xc: Sara Prizzi, Johanna Pedersen, Morgan Roy (Boralex), James Muscato, Austin Scarborough (Young/Sommer), Michael Morgante, Carl Sadowski, Erik Lacoste (WSP)

1. PROJECT DESCRIPTION

Fort Edward Solar, LLC (the Applicant), is proposing to construct and operate the Fort Edward Solar Project (the Facility, a 100-megawatt (MW) solar facility in the town of Fort Edward in Washington County, New York. On August 22, 2024, the Applicant submitted an Application to the Office of Renewable Energy Siting and Electric Transmission (ORES) pursuant to Article VIII of the New York State Public Service Law and ORES regulations. On January 17, 2025 following a significant redesign of the Facility (Fall 2024 Redesign) to reduce impacts to sensitive resources, the Applicant requested to amend the application, and ORES granted a Minor Application Amendment on February 3, 2025. On July 28, 2025, ORES issued a Draft Permit to Fort Edward pursuant to Article VIII of the Public Service Law and its implementing regulations at 16 New York Codes, Rules and Regulations (NYCRR) Parts 1100-1 through 1100-15.

On behalf of the Applicant, WSP USA Inc. (WSP) prepared this memorandum in response to Grassland Bird Trust's (GBT) Petition for Full Party Status, and Statement of Issues for Adjudication filed on October 6, 2025. This memorandum addresses the following issues presented in the Fort Edward Solar Avian Impact and Mitigation Assessment prepared by GBT:

- Value of Proposed Project Site for Grassland Birds
- Impacts of Proposed Project on Grassland Birds
- No Proof that Proposed Mitigation Provides a Net Conservation Benefit
- Default Permit Conditions are Insufficient to Mitigate Impacts to Grassland birds in the Wildlife Management Area (WMA)

The Applicant evaluated lands within the preliminary Facility Site through extensive desktop and field surveys to identify threatened and endangered species (T&E) and other sensitive resources. The preliminary Facility Site included 36 parcels of land totaling 2,492 acres. As a result of the Fall 2024 Redesign, the Applicant reduced the Limit of Disturbance (LOD) by 146 acres by removing design components from parcels with suitable habitat for T&E species, specifically including parcels directly bordering the WMA. The final footprint for the Facility consists of 32 participating parcels totaling 1,828 acres, a LOD of 527 acres including a temporary laydown area to be used only during construction, and a fenced area of 484 acres.

The Facility Site was designed to include locations suitable for component placement, focusing on flat, open, and appropriately oriented land for the panels, while avoiding sensitive resources. The Applicant continued to assess the resources within the Facility Site to prevent and reduce impacts on sensitive resources, including T&E species. Where avoidance is not possible due to constraints (e.g., topography, land ownership, wetlands, or to accommodate setbacks from roads and residences), potentially “occupied habitat” was identified in some areas within the Facility Site. ORES defines “occupied habitat” as areas where species have either been historically documented or observed during onsite surveys engaging in essential behaviors such as breeding, foraging, or roosting. Based on this definition and certain ecological assumptions (e.g. bird behavior in terms of essential behavior [direct flight vs foraging flight]), ORES designated portions of the Facility Site as “occupied habitat.”

As a result of ORES’s determination of potentially occupied habitat within the Facility Site, as discussed in Revised Exhibit 12, New York State Threatened or Endangered Species, ORES determined a “take” of 513.52 acres of Northern Harrier (*Circus hudsonius*) breeding occupied habitat, 487.07 acres of Northern Harrier wintering occupied habitat, and 487.07 acres of Short-eared Owl (*Asio flammeus*) wintering occupied habitat. To avoid double counting co-occurring occupied habitat, ORES has determined that the Facility constitutes a take of 567.08 acres of occupied habitat (513.52 acres of breeding occupied habitat and 53.56 acres of wintering occupied habitat). The regulations compensate for impacts that cannot be avoided or further minimized, the Applicant is required to mitigate those potential impacts. The Applicant submitted a Net Conservation Benefit Plan (NCBP), per the requirements of the regulation setting forth the proposed mitigation for the Facility of 216.12 acres. The NCBP meets the requirements of 16 NYCRR § 1100-6.4(o) to demonstrate that the proposed mitigation will result in a net conservation benefit on each of the affected species and other applicable requirements to fund and execute the proposed mitigation for the life of the Facility. The NCBP indicates that the Applicant is collaborating with a local grassland bird advocacy organization and has signed an Option to Purchase on two land parcels, totaling 286.50 acres of grassland bird habitat, located within and adjacent to the Facility Site that will specifically be used to provide a net conservation benefit to the species potentially impacted by the Facility. Per the requirements of 16 NYCRR § 1100-6.4(o)(3)(ix), the Applicant is proposing a permittee-implemented grassland bird habitat conservation in lieu of payment of a mitigation fee. The Applicant will conserve 216.12 acres of grassland habitat to provide a net conservation benefit for the Northern Harrier and Short-eared Owl for development of the Facility. The land identified by the Applicant for mitigation is located adjacent to the Washington County Grasslands WMA and within the Fort Edward Grasslands Important Bird Area (IBA), and will expand a large, continuous grassland conservation area for grassland bird species.

2. VALUE OF THE GRASSLANDS

The Washington County Grassland Bird Conservation Center (GBCC) is a 102,233-acre expanse identified by the New York State Department of Environmental Conservation (NYSDEC) and is designated to support grassland bird populations described in the Grassland Bird Strategy for Grassland Bird Habitat Management and Conservation 2022-2027 (NYSDEC 2022). This region, as well as additional locations outlined in Attachment B, provides habitat for several New York grassland species, including the Short-eared Owl and Northern Harrier, both of which rely on open fields and meadows for foraging and nesting. The Washington County GBCC, and conservation areas it contains, are described below.

2.1. Environmental Areas:

1) The Washington County GBCC is one of eight state-wide grassland conservation centers identified in the Grassland Bird Strategy for Grassland Bird Habitat Management and Conservation (NYSDEC 2022). To qualify as a GBCC, the location must consist of an area 25,000 acres in size or greater that contains two of three conditions:

- At least 30 percent of the GBCC consists of grass or open field, as classified by the National Land Cover Database (NLCD), +/- 5 percent.
 - This condition applies to the Washington County GBCC.
- Area contains a grassland anchor field that meets either of the following conditions: the anchor land must be in permanent conservation status; and, either contain 250 contiguous acres or two, 125-acre fields of managed lands.
 - This condition applies to the Washington County GBCC.
- Area contains at least 1,625 acres of grassland already managed under BMPs for grassland birds.
 - This condition does not apply to the Washington County GBCC.

The Washington County GBCC qualifies as a GBCC by means of the following factors:

- The Washington County GBCC covers approximately 102,233 acres of land, with 38,848 acres (or 38 percent) consisting of grassland habitat (NYSDEC 2022).
- The Washington County GBCC contains a 478-acre anchor field referred to as the Washington County Grasslands. The anchor field is currently managed by New York State (see WMA below).

It is important to note that while the Facility is located within the boundaries of the GBCC, the Facility components will be located in active agriculture fields, such as pasturelands, hay fields, and cultivated croplands. As such, these fields have historically been subject to agricultural practices as determined by each landowner or crop type, including planting, harvesting, and tilling schedules, regardless of their location within the GBCC. This farming schedule is consistent with agricultural lands outside of the GBCC, including those that contain ORES identified bird occupied habitat. Therefore, impacts to agricultural fields identified by ORES as occupied habitat within the GBCC should be mitigated to the same extent as impacts to identified occupied habitat outside of the GBCC.

The proposed Facility would impact 567.08 acres or less than 1 percent (0.6 percent) of the 102,233-acres GBCC and 1.45 percent of 38,848 acres of grass or open field habitat within the GBCC.. As stated in Section 1, the Applicant has submitted a NCBP in compliance with regulatory requirements for the Facility's proposed mitigation. The ORES-approved NCBP outlines that impacts will be mitigated by managing a 216-acre conservation easements within the GBCC, dedicated to grassland bird conservation throughout the Facility's lifespan.

- 2) New York State WMA are state-owned lands that are administered and managed by the NYSDEC Division of Fish and Wildlife. A 478-acre WMA is located within the Washington County GBCC. The Facility has been carefully redesigned to completely avoid the WMA. Facility modifications and redesigns also removed components from three parcels directly adjacent to and northeast of the WMA, relieving potential edge effects. The nearest Facility components are located approximately 900 feet west of the southwest corner of the WMA, while there are none located north of the WMA. The nearest Facility components located to the west and east of the WMA are 2,300 feet and 1,630 feet, respectively. The modifications to the Facility design also maintain existing grassland and forested habitat corridors between the WMA and surrounding GBCC areas on all sides. See Attachment B for spatial details.

The proposed mitigation area identified in the NCBP would effectively connect to and expand the 478-acre WMA to 694 acres (a 31 percent increase in size).

- 3) The Fort Edward Grasslands IBA is a 13,000-acre area located completely within the GBCC and surrounds the WMA (see Attachment B). Several parcels containing Facility components were eliminated during the redesign process due to their proximity to the IBA. The Applicant's second redesign in the Fall of 2024 included removal of two fenced arrays totaling 87 acres approximately 100 feet east of the WMA, and one 53 acre fenced array approximately 100 feet southwest of the WMA. The removal of these parcels from the Facility design maintains connectivity between the WMA and IBA grasslands to the north. Based on the updated design, the Facility would potentially impact 567 acres of occupied habitat, which equates to 4.4 percent of the 13,000-acre IBA.

As noted in the Washington County GBCC section above, agricultural lands within the IBA are subject to landowner control and agricultural schedules. However, as noted previously, impacts will be mitigated through an ORES-approved NCBP, which is designed to provide a net conservation benefit to affected grassland birds by conserving 216 acres of grassland habitat. The proposed mitigation lands are located entirely within the IBA, which will be managed for grassland birds for the life of the Facility.

- 4) The New York Natural Heritage Program has identified a Raptor Wintering Conservation Area (RWCA) that, while smaller in size, closely aligns with the IBA's requirements. Agricultural lands within both the RWCA and IBA follow landowner farming schedules, however, facility impacts are mitigated by managing a 216-acre conservation easements, mostly situated within the RWCA. Demonstrating Compliance: Fort Edward Solar Project's Adherence to ORES Regulations

2.2. Grassland Birds on the Proposed Project Site and Vicinity

GBT asserts that ORES regulations take an artificial approach to species conservation needs when assessed for project documentation. However, Article VIII establishes a comprehensive framework for the review and permitting of major renewable energy facilities. The regulations identify the studies, surveys, and assessments that an applicant must conduct and submit in support of its application. The Applicant has complied with those regulations, including submitting a Wildlife Site Characterization Report (WSC), that was accepted by ORES.

The WSC was completed using a combination of: (1) existing information obtained from publicly available sources, including reports, published literature, on-line databases, and geographic information system data per the proposed 16 NYCRR 1100-1.3(g)(1); and (2) wildlife surveys performed as part of Project development before preparing the WSC (WSP 2021). GBT states that the species list in the WSC did not include NYSDEC-listed Species of Greatest Conservation Need (SGCN) or High Priority SGCN. Canada Warbler (*Cardellina canadensis*) and Bobolink (*Dolichonyx oryzivorus*), two SGCN species were included in Table 3-1, a list of potentially occurring species derived from the USFWS IPaC website, which is commonly used when creating WSC reports. In addition, Eastern Meadowlark (*Sturnella magna*), a SGCN species was detected during Wintering Grassland Raptor surveys and Breeding Bird Surveys and included in the final reports for each.

All necessary grassland bird surveys were completed in accordance with ORES requirements and state environmental regulations. Breeding Bird Surveys were completed in the 2021 and 2022 breeding season, and Wintering Grassland Raptor surveys were completed in the winter of 2020 and 2021. Survey results were consistent with those of identical surveys WSP has conducted for other utility-scale solar development projects across the state. Survey reports presenting gathered data were completed and submitted to ORES, who acknowledged receipt of the survey reports and deemed them adequate for evaluating mitigation requirements for potential project impacts. ORES has determined the mitigation requirements for project impacts based on current regulations and the Applicant's thorough assessment of the Facility Site for sensitive grassland bird species. Their final determination and recommended mitigation requirements are based on the current limits of disturbance (LOD) of the Facility Site. A final Jurisdictional Determination Letter was issued by ORES on March 20, 2025, which remains in effect for five years.

ORES determined that the Facility would result in the take of Short-eared Owl (state endangered) and Northern Harrier (state threatened) occupied habitat; the Applicant proposed mitigation in the form of a conservation easements adjacent to the WMA for occupied habitat impacts. The Applicants proposed mitigation site will not only provide a net conservation benefit to State-listed T&E species, but for all grassland bird species, including SGCN birds.

The results of the breeding bird surveys identified three state-listed species within the Facility Site. Initially, implementation of the proposed Facility would have included potential impacts to breeding occupied habitat for Sedge Wren (*Cistothorus stellaris*), Upland Sandpiper (*Bartramia longicauda*), and Northern Harrier. However, the Applicant modified the Facility design to minimize impacts to habitat suitable for state-listed grassland bird species. As a result of these redesigns, potential impacts to breeding occupied habitat for Sedge Wren and Upland Sandpiper were completely removed and the Facility design changes have reduced potential impacts to breeding occupied habitat for Northern Harrier by approximately 37 percent.

Wintering Grassland Raptor surveys identified two state-listed species within the Facility Site. The initial proposed Facility design would have included impacts to wintering occupied habitat for Short-eared Owl and Northern Harrier. Through Facility redesigns, the Applicant reduced the potential impacts to wintering occupied habitat for the Northern Harrier and Short-eared Owl by approximately 33 percent.

3. IMPACTS OF PROPOSED PROJECT ON GRASSLAND BIRDS

The assertion that agricultural fields used as pasture lands or hay production are equal in quality to native forests, shrubland, and wetlands is simply untrue when analyzed on a terrestrial habitat quality level. GBT quotes from the Applicant's Exhibit 11 (Terrestrial Ecology) that "Facility components have been sited to minimize impacts to wildlife habitat by siting solar arrays in agricultural fields used as pasture or to produce hay to the maximum extent practicable. This will minimize the impacts to higher-quality wildlife habitat, including forests, shrublands, and some wetlands." The purpose of Exhibit 11 is to examine potential impacts to terrestrial vegetation and wildlife resources associated with construction and operation of the Facility, while Exhibit 12 details wildlife site characterization, completed pre-construction surveys (i.e. Wintering Grassland Raptor, Breeding bird, and Potential Occurrence of T&E species surveys), occupied habitat determination, avoidance and minimization measures, and the Applicant's NCBP.

The conservation value of active agricultural fields is contingent on farmer use of those fields, such as harvesting schedules or planting regimes, which may not be sustainable or guaranteed long-term. Though some grassland bird species may benefit from agricultural pastures and hayfields, these habitats are ecologically simplified and lack structural diversity, native plant composition, and ecological processes found in forests, shrublands, non-agricultural fields, and wetlands. Many T&E bird species depend on complex, undisturbed habitats for nesting, foraging, and shelter—conditions that may not be met in agricultural landscapes. Due to this lack of habitat complexity and potential scheduling inconsistencies, the use of active agricultural fields limits the lands' reliability as a mitigation measure. Instead, a NCBP that follows a consistent maintenance schedule designed to benefit grassland bird species (i.e., a single harvest following the breeding season as proposed by the Applicant) would enhance an agricultural field's ability to encourage and support breeding grassland bird species.

3.1. Habitat Loss

While the studies cited by GBT provide insights into the impact of solar array installations on grassland birds, their applicability to New York State is limited. The articles referenced (DeVault et al. 2014) utilize research conducted in Arizona, Colorado, and Ohio; regions with distinct ecological conditions, climate, and grassland ecosystems that differ markedly from those found in New York. Differences in vegetation types, land management practices, and the presence of local bird species mean that results observed in other jurisdictions may not accurately reflect those within New York grassland habitats. Therefore, drawing direct conclusions about the effects of solar development on grassland birds in New York based solely on these studies may be misleading. Scientific studies have indicated that research is limited and highlights the need for further research to fully understand the interactions between solar energy infrastructure, particularly photovoltaic (PV) panels, and grassland bird species (REWI 2023, Young et al. 2025, Hathcock 2018).

While some preliminary findings suggest that certain species may tolerate or even utilize habitats near solar arrays, the long-term ecological impacts remain uncertain (REWI 2023). Key questions persist regarding how solar development influences breeding success, foraging behavior, habitat selection, and migratory patterns of grassland-dependent birds. Given the increasing expansion of utility-scale solar projects across open landscapes that often overlap with critical bird habitats, it is essential to conduct comprehensive, site-specific studies to determine impacts. These investigations will help determine whether and under what conditions grassland birds and solar facilities can

sustainably coexist, and will inform best practices for siting, design, and habitat mitigation to minimize ecological disruption.

The U.S. Geological Survey, New York Cooperative Fish and Wildlife Research Unit at Cornell University is currently conducting pre-construction grassland bird monitoring on site using acoustic recording units, point counts and vegetation surveys for the 2-3 year period prior to construction. The intention is to continue monitoring during operation to compare pre- and post-construction data for bird presence, abundance and behavior across the Facility Site to better understand the impact of solar development on grassland birds across multiple spatial and temporal scales. To contribute to similar studies, the Applicant has indicated within their NCBP a commitment to conducting bird monitoring to improve understanding of how solar development influences grassland bird species and their habitat use.

GBT's contention that the Facility is located in a "significant portion of the southern extent of the IBA" is belied by the fact that the Facility represents 4 percent of the IBA. And, as detailed in Section 2.1 above, the proposed mitigation area identified in the NCBP would effectively expand the 478-acre WMA to 694 acres (a 31 percent increase in size) while maintaining corridors between the WMA and surrounding GBCC.

3.2. Habitat Alteration

The assertion that the Facility does not sufficiently address grassland habitat fragmentation is misleading and disregards critical elements of the Applicant's siting approach. The Applicant considered habitat connectivity by removing project components that were adjacent to the WMA and prioritizing that the Facility Site design maintains large, contiguous grassland fields, specifically those exceeding 25 acres in size, which NYSDEC and ORES indicate as the minimum threshold required for most grassland bird species to successfully breed and forage. This design consideration reflects a deliberate effort to preserve functional habitat corridors and minimize ecological disruption.

While it is acknowledged that all solar development results in some degree of habitat loss, the impacts to sensitive species can be significantly reduced through thoughtful siting and design. By avoiding critical habitat features, maintaining open field connectivity, and integrating mitigation measures (as shown in Attachment B), the Applicant has demonstrated a commitment to minimizing ecological impacts and supporting long-term conservation goals.

3.3. Collision with Facility Infrastructure

While concerns have been raised about the potential for bird collisions with solar panels at the proposed Facility, available evidence suggests that such incidents may not be as significant as claimed. The phenomenon known as the "lake effect," where birds mistake reflective solar panels for water bodies, has been hypothesized as a contributing factor, particularly for aquatic species. GBT's cited figure of 11.6 bird fatalities per megawatt per year (Smallwood 2022) from facilities in the southern California desert cannot be directly applied to solar projects in New York State due to substantial differences in habitat, bird species composition, vegetation, and site-specific conditions. Also, more recent multi-regional studies suggest that collisions at PV solar facilities are rare. One study recorded thousands of avian interactions with solar panels, and no birds were recorded colliding with panels (Hamada et al. 2023). In another study, over 17,000 bird observations were recorded with zero confirmed collision events. In that same study, researchers

observed birds using the underside of solar panels to forage, nest, and roost, suggesting that solar farms may even provide habitat benefits for certain bird species (Wolf 2024).

The lack of published data on solar facility impacts in New York and the broader eastern United States means that assumptions about collision risks are largely speculative. The Facility's careful siting and design modifications, which prioritize the avoidance and preservation of important habitats for state-listed species, further reduce the likelihood of meaningful collision impacts. Further research has found that patterns in avian mortality at PV solar facilities are species-specific and dependent on the landscape in which the facility is located—meaning to the extent it exists, the “lake effect” is unlikely to cause high avian mortality at most facilities since they lack the specific species and landscape features that may be contributing to the effect (Kosciuch et al. 2021).

GBT correctly notes that transmission lines can contribute to significant bird mortality. However, the current site layout incorporates underground collector lines rather than overhead transmission lines to help minimize impacts on wildlife. The Applicant evaluated these risks during the siting and design process and concluded that underground infrastructure would pose fewer threats to sensitive habitats (e.g. wetlands) and wildlife species (e.g. raptors), thereby aligning the project with conservation best practices.

3.4. Displacement

The fact that displacement of species by development occurs is obvious but hardly ignored or minimally considered during the permitting phase of a project. ORES requires developers to submit NCBPs when unavoidable impacts could occur to threatened or endangered species occupied habitat prior to the issuance of a siting permit. An NCBP must demonstrate that the project will result in a net conservation benefit and not just avoid harm. Therefore, the Applicant has developed an NCBP that includes a mitigation property adjacent to the WMA. The mitigation property is known to support Short-eared Owl, Northern Harrier, Eastern Meadowlark (*Sturnella magna*), and Savannah Sparrow (*Passerculus sandwichensis*), as witnessed by the Applicant and GBT biologists during a field visit to the site in April 2024.

While displacement of species occurs for every project, comparing the effects of wind development projects that displaced bird species in Wisconsin and the United Kingdom should not be used to correlate the displacement effects of solar development projects in New York State agricultural fields. As noted above in section 3.1, in 2024 the U.S. Geological Survey New York Cooperative Fish and Wildlife Research Unit at Cornell University began conducting pre-construction grassland bird monitoring on site using acoustic recording units, point counts and vegetation surveys for the 2-3 year period prior to construction. The intention is to continue monitoring during operation to compare pre- and post-construction data for bird presence, abundance and behavior across the Facility Site which will provide more clarity of the impact of solar development on displacement of grassland birds.

3.5. Cumulative Impacts

The claim that the proposed Facility is likely to displace more birds than predicted based on home range calculations is highly speculative and lacks empirical support. While it is true that solar development alters land use, there is currently limited research confirming consistent patterns of wildlife displacement, particularly for grassland bird species. The ecological response to solar infrastructure is complex and varies depending on species behavior, habitat quality, and project design. As some studies show low wildlife mortality from solar projects, with many species safely coexisting with solar facilities (American Clean Power 2025).

The benefits of solar energy production on wildlife and habitat include reducing air pollution, greenhouse gas emissions, and water use and pollution. Additional benefits may include reduced long-term soil and water runoff, increased shading, land conservation that prevents permanent land conversion due to sprawl or other commercial uses, water conservation and improved water quality, soil restoration and carbon sequestration, and the creation of habitat for various species of wildlife. Negative impacts from solar projects are limited, especially when compared to global climate change, which is one of the greatest threats to wildlife and their habitats (Jay 2023).

The assertion that diffuse distribution of solar arrays across a large area inherently increases displacement risk oversimplifies the issue and ignores the role of thoughtful siting. The Applicant has taken deliberate steps to minimize impacts by maintaining connectivity between large grassland fields and avoiding fragmentation of habitat critical to grassland birds. Without robust, site-specific data demonstrating that such configurations lead to greater displacement, conclusions about widespread negative impacts remain conjectural. More research is needed to understand these dynamics before drawing definitive claims about displacement of grassland birds due to solar development.

4. NO PROOF THAT PROPOSED MITIGATION PROVIDES A NET CONSERVATION BENEFIT

GBT's claim that the Applicant would need to conserve substantially more land in order to provide a net conservation benefit contradicts established ecological research and regulatory guidance (see Section 5.0). The Applicant has proposed a mitigation strategy in the documents submitted as part of the Article VIII application, including the NCBP, based on the requirements set forth in the Article VIII regulations. The Fort Edward project is not the first project going through the Article VIII permitting process that has occupied habitat for grassland birds that requires mitigation. Therefore, this project should not be held to higher mitigation criteria due to the project location. The Applicant's intention is to provide the mitigation requirement outlined in the Article VIII regulations and work directly with GBT for long-term maintenance of the property to provide a large, suitable grassland habitat that will be preserved for the life of the Facility and beyond.

4.1. Proposed Net Conservation Benefit Plan Contains Misleading Statements and Does Not Comply with ASA Easements and Regulations

The Applicant respectfully disagrees with the assertion that no evidence has been provided demonstrating compliance of the draft NCBP with the Agricultural Stewardship Association (ASA) easements or the New York State Department of Agriculture and Markets regulations. The draft NCBP includes detailed documentation outlining how the proposed mitigation measures align with the terms and intent of the ASA easements, including the preservation of agricultural viability and ecological value. However, the Applicant understands that the ASA has rejected the latest NCBP

and stated that as currently proposed agricultural practices would still be inconsistent with the easements' terms. The Applicant continues to work collaboratively with the ASA, ORES, and NYSDEC to explore a solution that supports the conservation of grassland bird habitat while maintaining the agricultural productivity of the land.

While ASA's September 29, 2025, comment letter expresses concern regarding the proposed use of the mitigation land, this does not constitute a final or binding determination of non-compliance. The Applicant continues to work in good faith with ASA to address outstanding concerns and remains committed to identifying a mutually agreeable path forward that honors the conservation objectives of the easements while fulfilling the requirements of the Article VIII permitting process.

Regarding the involvement of the grassland bird advocacy group (GBT), the Applicant acknowledges that no formal agreement has been executed to date. However, the statement in the NCBP referencing collaboration was intended to reflect ongoing discussions and expressed interest from GBT in potentially participating in long-term stewardship of the mitigation land. The Applicant fully recognizes that any future role for GBT would be contingent upon the successful negotiation of a management contract and the transfer of land ownership, as well as alignment with best practices for grassland bird conservation. These conditions are clearly understood and will be incorporated into any final agreements. Additionally, the easements referenced by ASA allows for the implementation of grassland birds mitigation pursuant to the definition of Agricultural Use. "Agricultural Use" is defined as activities necessary to, "be actively enrolled in any federal or state or local program whose intent is to temporarily suspend (for a specified period of one or more years or crop seasons) the production of Crops, Livestock and Livestock Products for the stipulated purpose of soil and water conservation, wildlife habitat, or similar conservation purpose." Refer to the Applicant's Issues Statement Response for additional information related to the Applicant's compliance with the ASA easements.

In summary, the Applicant maintains that the draft NCBP remains viable and compliant and continues to pursue collaborative solutions with all stakeholders to establish the successful implementation of conservation measures that meet regulatory, agricultural, and ecological goals.

4.2. There is Insufficient Information to Evaluate Likelihood of Success

The assertion that the Applicant's proposed mitigation parcels are not feasible due to the lack of data is not accurate. For example, the Applicant conducted a wintering grassland raptor study with a view of the proposed mitigation parcels, where both Northern Harrier and Short-eared Owls were observed flying to and hunting within the parcels. The Applicant did not have access to the parcels at the time of the breeding bird survey that was conducted for the project. However, a site visit was later conducted on the proposed mitigation parcels at the onset of the 2024 breeding season, described below.

During a site visit on April 18, 2024, attended by representatives from GBT, several key grassland bird species were directly observed on the mitigation parcels. Notably, the group documented two Short-eared Owls, one Northern Harrier, one Eastern Meadowlark, and six Savannah Sparrows, species that are indicative of suitable habitat conditions and conservation potential. It is important to note that, at the time of the site visit, the agricultural easement and associated practices were already in place, contributing to habitat conditions suitable for grassland bird species. While the proposed mitigation parcels currently support such habitat through its agricultural use, it is likely functioning as an ecological sink. The Applicant's goal is to collaborate with the ASA and New York State Department of Agriculture and Markets to identify a solution that both complies with

the terms of the agricultural easement and enhances the parcels' ecological value, ultimately transforming it into an ecological source for grassland birds.

These findings affirm the viability of the mitigation parcels for grassland bird conservation and directly support the objectives outlined in the Applicant's NCBP. The Applicant remains committed to working with stakeholders to ensure the plan meets both ecological, agricultural, and regulatory standards. The viability of the mitigation parcels will be confirmed in the final NCBP.

GBT asserts that there is no evidence that mowing once per year after August 15, as stated in the NCBP, would benefit grassland bird species or grassland habitat. However, NYSDEC recommends that mowing be avoided between April 23 and August 15 to protect ground-nesting birds, particularly grassland species (NYSDEC 2022). These dates are supported by nesting data collected as part of the Breeding Bird Atlas II project. Examples of bird species that nest in grassland habitat include Northern Harrier, which nested between April 19 (on eggs) through August 1 (fledged young), Savannah Sparrow, which nested between May 11 and July 23, and Eastern Meadowlark, which nested between May 9 and August 13 (NYSDEC 2022b). According to NYSDEC and conservation partners, mowing or bush-hogging fields between April 23 and August 15 can destroy active nests and disrupt essential breeding behaviors such as foraging, nesting, and raising young. Therefore, delaying mowing until after August 15 helps allow fledglings to safely leave the nest and that habitat remains intact during the most sensitive part of their life cycle.

4.3. Proposed Management Could Be Detrimental to Harrier Breeding

The claim that the Applicant's proposed management is detrimental to breeding Northern Harrier overlooks several critical facts. While concerns have been raised regarding the compatibility of the proposed use with existing agricultural easements, the Applicant is actively engaged in negotiations with the ASA to develop agricultural practices that support both easements compliance and ecological objectives. Specifically, the Applicant is working to implement land management strategies that promote nesting success for grassland bird species, including the state-listed Northern Harrier.

It is also important to clarify that current agricultural operations on the mitigation parcels involve mowing more than once per year, which may limit habitat suitability for nesting birds and may actually be an ecological sink. The Applicant's goal is to revise these practices in collaboration with ASA to better align with conservation priorities.

Furthermore, only 157 acres of the proposed mitigation area are currently under ASA's easements which are restricted to conform with the agricultural easements. The remaining 59 acres would be managed in accordance with the NYSDEC Strategy for Grassland Bird Habitat Management and Conservation 2022-2027 (NYSDEC 2022), which are specifically designed to support grassland bird habitat conservation. These efforts demonstrate the Applicant's continued commitment to developing a viable, science-based mitigation strategy that meets both regulatory, agricultural, and ecological standards.

4.4. Habitat May Become Less Suitable for Harrier Breeding

GBT's claim that the Applicant's conservation strategy would reduce broader connectivity of continuous grassland area fails to account for key aspects of the Facility's siting and mitigation planning. While it is acknowledged that development will impact some areas of suitable grassland

bird habitat, the Applicant has taken deliberate steps to minimize these effects. Most notably by removing all project components from abutting the NYSDEC WMA. Additionally, the proposed mitigation parcels are strategically positioned to enhance habitat connectivity by linking 216 acres of newly conserved land to the existing 478-acre protected WMA. This expanded conservation footprint not only offsets potential impacts but also strengthens the long-term viability of habitat for priority species such as the Short-eared Owl and Northern Harrier.

GBT asserts that the proposed mitigation parcels are bordered by solar arrays and forested areas, thereby limiting continuous grassland connectivity. However, this characterization is not entirely accurate. The forested area lies to the west of the parcels and occupies only a small portion of its boundary. While it is true that some Facility components are adjacent to the parcels, substantial open areas to the south and east maintain strong connectivity with surrounding grassland habitats, as illustrated in Attachment B. Also shown in Attachment B, the solar array layout is not continuous, allowing grassland connectivity and a pathway for grassland bird movement. Additionally, the claim presumes that solar panels act as a barrier to avian movement, particularly for raptors, which is not completely supported by current research. Observational studies have documented raptors flying over and interacting with landscapes containing solar infrastructure. Notably, Cypher et al. (2019) documents that raptors do not avoid PV solar facilities; in fact, some species were observed nesting and foraging in nearby habitats. For another example, WSP conducted a two-year post-construction wintering grassland raptor study for a small, distributed generation project in New York State. Both Northern Harriers and Short-eared Owls were observed exhibiting essential behaviors immediately adjacent to the solar panels and were observed flying directly over the panels to move from one open area to another (WSP, in preparation).

In summary, the Applicant's Facility design and mitigation strategy goals were to balance development with ecological stewardship. By removing project components from abutting sensitive areas, providing habitat connectivity through strategic mitigation, and engaging with partners to improve land management practices, the Facility supports long-term viability for grassland bird populations while providing a renewable energy source to help combat climate change.

4.5. Mitigation Fee Option is the Most Detrimental Option

The Applicant is actively pursuing acquisition of the mitigation parcels with the intention to transfer ownership to GBT, ensuring long-term conservation stewardship. The parcels, currently under negotiation with the ASA, represent an ideal mitigation opportunity due to its strategic location and existing grassland habitat. If an agreement among stakeholders is reached, conserving this land would deliver a net conservation benefit for grassland bird species, including the Northern Harrier and Short-eared Owl. The Applicant understands the conservation concerns that the Facility brings to this important bird area and is diligently working to provide mitigation to conserve suitable grassland habitat and a net conservation benefit to grassland species within the IBA region of Washington County.

While current agricultural mowing practices on the parcels do encourage nesting by grassland birds, they also inadvertently reduce nesting success by disrupting critical breeding periods, removing valuable habitat, and potentially a direct take of grassland nesting birds. The Applicant is committed to working with ASA to revise these practices in a way that supports successful reproduction and long-term habitat viability, along with meeting the requirements of the agricultural easements. This proactive approach demonstrates a clear commitment to meaningful conservation outcomes and directly addresses the concerns raised by GBT.

Regarding the assertion that additional grassland habitat must be conserved to achieve a net conservation benefit, it is important to note that the Applicant has fulfilled the requirements established under Article VIII of the ORES regulations Title 16 of NYCRR §1100-6.4(o)(3)(ix). The methodology used to develop the mitigation ratio is outlined in the following section.

5. ORES MITIGATION RATIOS DO NOT PROVIDE A NET CONSERVATION BENEFIT

As GBT noted, the Facility, like other renewable energy developments in New York, is subject to ORES regulations, which mandate permittee-responsible mitigation when impacts to state-listed T&E grassland bird species exceed a de minimis threshold. The ORES regulation NYCRR 16§§ 1100-6.4(o)(3)(ix) reads as follows:

If the permittee proposes a NCBP involving permittee-implemented grassland bird habitat conservation in lieu of payment of a mitigation fee pursuant to subparagraph (viii) of this paragraph, the required mitigation ratio shall be 0.4 acres of mitigation for every acre of occupied grassland bird breeding habitat determined to be taken and 0.2 acres of mitigation for every acre of occupied grassland bird wintering habitat determined to be taken. These mitigation requirements are based upon multiplying impacts by the ratios described above and dividing impacts by five lifecycles of habitat succession (e.g., a 30-year mitigation project term and 5-year timeframe in which unmanaged grassland would naturally succeed into scrub/shrub habitat, minus one lifecycle to provide a net conservation benefit).

In accordance with these regulations, ratios of 0.4 (2:1) for occupied breeding habitat and 0.2 (1:1) for occupied wintering habitat were applied. These mitigation ratios established by ORES and previously NYSDEC are grounded in the understanding that, without active management, grassland areas naturally progress toward woody vegetation dominance within approximately five years, reducing their suitability for grassland-dependent species. In the absence of active management practices such as mowing, grazing, or prescribed burns, open grassland areas tend to undergo natural succession gradually transitioning toward dominance by woody vegetation. The Spring Island Trust notes that within five to six years of no grassland management, sapling trees will begin to populate fields and eventually shade out low-growing herbaceous plants and shrubs (Spring Island Trust 2025). This shift may significantly reduce the habitat's suitability for grassland-dependent bird species, many of which require large, open fields with minimal shrub or tree encroachment to successfully breed, forage, and nest. The Applicant's mitigation planning reflects these requirements and is designed to provide a net conservation benefit for the affected T&E species.

The mitigation process and determination of the number of acres needed for the life of a project to achieve a net conservation benefit was first outlined in direct testimony by NYSDEC staff in 2019 as part of an Article 10 case. During the testimony, NYSDEC stated the following regarding that project:

An equivalent of 1,711.2 acres (based on a ratio of 3:1 [for breeding season impacts]) of quality grassland habitat must be managed to mitigate for impacts to the habitat of Upland Sandpiper and Northern Harrier.

To calculate the amount of land that must be mitigated for, we first applied a 3:1 ratio to the amount of impacted occupied habitat. This equates to 1,711.2 acres (570.4 acres multiplied by 3) needed to mitigate for impacts to breeding Upland Sandpiper and Northern Harrier habitat. The 3:1 ratio for calculating the amount of mitigation required to offset impacts to breeding T&E grassland bird species accounts for the possibility that the target species may not colonize the mitigation area and successfully rear young. Creating new breeding habitat or managing grassland not currently occupied by T&E species, particularly if areas are intended for use by multiple species, has inherent uncertainty in the success of such mitigation. Upland Sandpiper and Northern Harrier require large, contiguous areas of quality grassland habitat for foraging and nesting, and a 3:1 ratio better ensures that enough suitable habitat is made available to provide a net conservation benefit for impacts to these species.

The Department is not stating that the Applicant must acquire the total [occupied habitat acreage] at the onset of the project and continue to maintain it for the life of the project to achieve net conservation benefit. Rather, the net conservation benefit can be accomplished by conserving and properly maintaining a lesser amount of land for the life of the project. The total amount of land and time that it must be managed depends on several factors, including the: (i) existing condition of the target parcel(s) to be managed (whether currently in a condition suitable for use by the target species, or need to be restored to quality grassland condition); (ii) expected amount of time it would take, absent management, for grassland habitat in the area to transition to a condition that is predominately unsuitable for use by the target species (years of habitat suitability) (for this Project, the Department has determined this to be five years); and (iii) number of years the Project is expected to be operational (life of the Project). (NYSDEC 2019)

In the same direct testimony by NYSDEC staff (NYSDEC 2019), the following examples were provided for possible approach for mitigating impacts on T&E grassland species for that proposed wind project:

Ex.1: For a project with a 30-year life, habitat suitability duration of 5 years, and 1,711.2 acres of required mitigation, 342.2 acres of land must be managed for 30 years. This is determined by dividing the life of the project by the years of habitat suitability to derive the number of “successional lifecycles” during the project lifetime. This is reduced by one, to account for no net conservation benefit occurring during the first “lifecycle.” The result is then divided into the total required mitigation acreage.

30 years divided by 5 years = 6 lifecycles
6 lifecycles minus 1 period = 5 lifecycles
1,711.2 acres divided by 5 lifecycles = 342.2 acres

Ex. 2: For a project with a 20-year rated life, habitat suitability duration 5 years, and 1,711.2 acres of required mitigation, 570.4 acres of land must be managed for 20 years.

20 years divided by 5 years = 4 lifecycles
4 lifecycles minus 1 period = 3 lifecycles
1,711.2 acres divided by 3 lifecycles = 570.4 acres

Therefore, winter season impacts (1:1) are six lifecycles minus 1 period for 5 lifecycles, which is 1/5 or 0.2 of the original amount. For NYSDEC’s approach, breeding season impacts (3:1 in the above example) are six lifecycles minus 1 period for 5 lifecycles, which is 1/5 or 0.2 of the original amount multiplied by three for 0.6. After NYSDEC used a 2:1 ratio for the breeding season in

several solar site cases, ORES used the same 2:1 ratio rather than 3:1 for their regulations, , thus it is 0.4 for breeding season impacts. The regulatory framework developed by ORES is applied consistently throughout New York State, requiring all projects, regardless of their geographic location, to meet standardized criteria for assessing and mitigating potential impacts on T&E species.

These ORES ratios were based on successional lifecycles and represent 1:1 for winter season impacts and 2:1 for breeding season impacts. They are equivalent to this same approach, for a 30-year project.

Applying this to the Facility, ORES determined there to be [487.07] acres of wintering occupied habitat and [513.52] acres of breeding season occupied habitat. Note that where acres were deemed occupied for both winter and breeding season, the higher number associated with breeding season was used.

- 53.56 acres multiplied by 0.2 = 10.71 acres required for winter season mitigation
- 513.52 acres multiplied by 0.4 = 205.41 acres required for breeding season mitigation
- This resulted in a total of 216.12 (10.71 + 205.41) acres of mitigation required.

The claims that the mitigation ratios do not constitute a net benefit are not consistent with past practice and regulations from the regulatory agencies. Also, the claim that the Fort Edward Facility is using a ratio of less than 1:1 is not accurate based on information directly from ORES and the NYSDEC. ORES, in coordination with the NYSDEC, has concluded that the mitigation standards outlined in Section 1100-6.4(o)(3)(ix) of the regulations are sufficient to yield a net conservation benefit for grassland bird species (ORES n.d.). These standards are designed to offset the ecological impacts of solar development within habitats critical to both breeding and wintering grassland birds. This approach was designed to provide a net conservation benefit while balancing feasibility, land availability, and long-term habitat management. The 2:1 impact-to-mitigation ratio, when divided by five (to reflect habitat succession), yields effective mitigation ratios of 0.4 for breeding habitat and 0.2 for wintering habitat. This approach is not only scientifically grounded but also more ecologically robust than the 1:1 ratio requested by GBT. The adjustment accounts for the time-lag inherent in habitat recovery and ensures that restored or managed lands reach functional maturity before being credited toward mitigation. In contrast, a flat 1:1 ratio fails to incorporate habitat development timelines and may overestimate the immediate conservation value of newly established sites.

The claim that additional grassland habitat must be conserved for the Fort Edward Facility due to habitat quality is inconsistent with precedent established under the Article VIII permitting process. As noted by Grassland Bird Trust (GBT), several solar projects have been proposed in Jefferson County, which contains a GBCC similar to Washington County. This is accurate, and notably, one such project, Tracy Solar is located within an IBA and received permit approval from ORES. Tracy Solar involved a documented impact of 117 acres of breeding habitat and 47.85 acres of wintering habitat. Despite its location within an IBA, ORES and NYSDEC concluded that applying a 2:1 mitigation ratio for breeding habitat and a 1:1 ratio for wintering habitat was sufficient to achieve a net conservation benefit for grassland bird species.

Therefore, applying a higher mitigation standard for the Fort Edward Facility would be excessive and inconsistent with other permitted projects located in IBAs within New York State. The existing

framework provides a more nuanced and biologically meaningful pathway to achieving long-term conservation goals.

This mitigation process has been in place for many years and has been used for many development projects, including solar and wind facilities. GBT's assertion that the mitigation process is inadequate and that the Facility should be subject to a heightened standard solely due to its location within an IBA lacks both legal merit and practical justification. The regulatory framework established by ORES applies uniformly across New York State, ensuring that all projects, regardless of location, adhere to consistent criteria for evaluating and mitigating impacts to T&E species. Singling out the Fort Edward Facility for additional scrutiny based solely on its geographic context disregards the equitable application of state regulations and undermines the integrity of the permitting process.

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