

Agricola Wind Project

Permit Application No. 23-03002

1100-2.13 Exhibit 12

NYS Threatened or Endangered Species

Revision 1

TABLE OF CONTENTS

EXHIBIT 12 NYS THREATENED OR ENDANGERED SPECIES.....	1
(a) Wildlife Site Characterization Report	1
(b) Pre-Application Wildlife Survey Reports.....	2
(c) Determination of Occupied Habitat at the Facility Site	5
(d) Avoidance, Minimization Measures, and Unavoidable Potential Impacts to NYS Threatened, Endangered, or Species of Special Concern.....	5
(e) Proof of De Minimis Impacts to NYS Threatened or Endangered Grassland Birds or Their Habitat	12
(f) Net Conservation Benefit Plan.....	12
REFERENCES	14

LIST OF APPENDICES

Appendix 12-A:	Wildlife Site Characterization Report - REDACTED
Appendix 12-B:	Threatened and Endangered Species Agency Correspondence - REDACTED
Appendix 12-C:	Spring Raptor Migration Survey Report - REDACTED
Appendix 12-D:	Fall Raptor Migration Report - REDACTED
Appendix 12-E:	Breeding Bird Survey Reports - REDACTED
Appendix 12-F:	Winter Raptor Survey Report - REDACTED
Appendix 12-G:	Office's Determination as to the Existence of Occupied Habitat - REDACTED
Appendix 12-H:	Net Conservation Benefit Plan - REDACTED - Revision 1

EXHIBIT 12 NYS THREATENED OR ENDANGERED SPECIES

(a) Wildlife Site Characterization Report

On behalf of the Applicant, Environmental Design & Research, Landscape Architecture, Engineering & Environmental Services, D.P.C. (EDR) prepared a Wildlife Site Characterization (WSC) Report, in accordance with Title 16 New York Codes, Rules and Regulations (16 NYCRR) Section 1100-1.3(g)(1), summarizing existing publicly available information on bird, bat, and other wildlife species at the proposed Facility Site and surrounding area (Appendix 12-A). The WSC Report also provides an analysis of the occurrence, and potential for occurrence, of New York State (NYS) listed endangered species, threatened species, and species of special concern (SSC) within 5 miles of the Facility. Information on the existing wildlife resources within 5 miles of the Facility was obtained from publicly available sources, agency correspondence, field reconnaissance, and the results of site-specific surveys conducted by EDR on behalf of the Applicant. Specific information regarding wildlife resources in the vicinity of the Facility and associated information sources are provided in Appendix 12-A.

A total of 16 state listed endangered, threatened, or special concern species have been documented in the vicinity of the Facility Site within the last five years, and a detailed evaluation of habitat suitability for these state listed species is presented in the WSC Report. As identified in the WSC Report, the Facility Site is unlikely to contain suitable breeding or wintering habitat for the following six state listed bird species identified within the vicinity of the Facility: **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] > **END CONFIDENTIAL INFORMATION**¹ The Facility Site may

contain suitable habitat for nine state listed bird species, including **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

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State listed endangered, threatened, or special concern bat species identified during pre-application agency consultations as occurring within 40 miles of the Facility Site include **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

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INFORMATION In addition, the U.S. Fish and Wildlife Service (USFWS) Information for Planning and Consultation (IPaC) system identifies **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

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¹ A number of redactions have been included in the public version of this Exhibit at the request of ORES. ORES has asserted that these redactions are necessary for any information relating to the names, habitat, or locations of species currently listed as endangered, threatened, or special concern when used in reference to a facility.

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Exhibit 11 provides a more detailed discussion of the Facility's impact on wildlife habitats, including important landscape features. Descriptions of each landscape feature within the 5-mile Study Area and the state listed species likely to utilize these resources are provided in the WSC Report (Appendix 12-A). A preliminary WSC Report and the associated geographic information system (GIS) shapefiles and mapping were provided to the Office of Renewable Energy Siting and Electric Transmission (ORES) in July 2021. The Applicant and ORES held a pre-application consultation meeting in August 2021, and the Applicant also received an initial pre-application WSC consultation letter from ORES. A revised WSC Report was subsequently provided to ORES on October 24, 2023, in accordance with 16 NYCRR Section 1100-1.3(g)(2). Following the submittal of the revised WSC Report, ORES provided an updated pre-application WSC consultation letter on January 8, 2024. This letter provided initial findings regarding the presence of occupied habitat at and in the vicinity of the Facility Site and acknowledged field studies that were previously completed or that were underway (Appendix 12-B).

(b) Pre-Application Wildlife Survey Reports

On behalf of the Applicant, EDR conducted spring raptor migration surveys for the Facility in 2021 (Appendix 12-C). Fall raptor migration surveys were also conducted in 2021 (Appendix 12-D). Breeding bird studies were conducted during the spring and early summer of 2022 and 2023 (Appendix 12-E). Winter raptor surveys were conducted during the 2023-2024 wintering season (Appendix 12-F). Additionally, EDR is currently conducting eagle point count surveys for the Facility following federal guidance. The results of these wildlife surveys were intended to inform the Applicant in the development of the Facility and assist ORES, in consultation with the NYS Department of Environmental Conservation (NYSDEC), in their determination of whether occupied habitat for state listed endangered and/or threatened species exists within the Facility Site in accordance with the requirements of Article VIII. The pre-application avian studies are summarized in the following sections.

Spring Raptor Migration Surveys

EDR conducted spring raptor migration surveys in 2021 to identify and document raptor species that may pass by or through the Facility Site during the spring migration season. These studies were designed based on the 2016 NYSDEC *Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects* (NYSDEC, 2016), and surveys were conducted from stationary survey locations with representative views of the area including the Facility Site (Appendix 12-C).

Surveys were conducted by EDR at two locations between March 3 and May 25, 2021, for a total of 26 surveys. Surveys were conducted at each station once per week between 8:00 a.m. and until at least two hours prior to sunset. A total of 477 raptors of 10 different species were recorded. **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

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A Spring Raptor Migration Survey Species Summary was provided to ORES in July 2021 (Appendix 12-B). The full Spring Raptor Migration Survey Report is included with this Application as Appendix 12-C.

Fall Raptor Migration Surveys

EDR conducted fall raptor migration surveys to identify and document raptor species that may pass by or through the Facility Site during the fall migration season. This study was designed based on the 2016 NYSDEC *Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects* (NYSDEC, 2016), and surveys were conducted from stationary survey locations with representative views of the area including the Facility Site (Appendix 12-D).

Surveys were conducted by EDR between August 17 and December 14, 2021. Surveys were conducted once per week between 8:00 a.m. and until at least two hours prior to sunset. Two survey locations were visited 18 times each during the season, totaling 36 surveys. A total of 416 raptors of 10 different species were recorded throughout the season. **BEGIN CONFIDENTIAL INFORMATION <** [REDACTED]

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The Fall Raptor Migration Survey Report was provided to ORES on January 25, 2022, and is included with this Application as Appendix 12-D.

Breeding Bird Surveys

EDR conducted breeding bird surveys in 2022 and 2023 to identify and document bird species that utilize habitat within the Facility Site during the spring and summer for breeding. These studies focused on open field areas that could potentially be used by grassland bird species, including state listed species (Appendix 12-E).

Initial breeding bird surveys were conducted by EDR between May 5 and July 21, 2022, based on the NYSDEC 2022 *Survey Protocol for State-listed Breeding Grassland Bird Species* (NYSDEC, 2022) and feedback provided by ORES. The 2022 study included 138 point count locations. Five-minute point count surveys were conducted on 42 different days, and each point count location was surveyed up to 10 times. A total of 4,383 individuals of 80 different bird species were recorded within 100 meters of point count locations.

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Additional breeding bird surveys were conducted by EDR between May 2 and July 21, 2023 based on the NYSDEC 2022 *Survey Protocol for State-listed Breeding Grassland Bird Species* (NYSDEC, 2022) and feedback provided by ORES. The 2023 study included 74 point count locations. Five-minute point count surveys were conducted on 35 different days, during which each point count location was surveyed up to 10 times. A total of 2,395 individuals of 62 different species were recorded within 100 meters of point count locations.

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The 2022 Breeding Bird Survey Report was provided to ORES on October 13, 2022. The 2023 Breeding Bird Survey Report was provided to ORES on March 26, 2024. These reports are included with this Application as Appendix 12-E.

Winter Raptor Surveys

EDR conducted winter raptor surveys to document the presence and use patterns of raptor species within the Facility Site during the winter season and to identify specific habitat areas used by state listed raptor species, including roost sites and foraging areas. This study focused on open field areas that could potentially be used by wintering grassland bird species, including state listed raptor species (Appendix 12-F).

Winter raptor surveys were conducted by EDR between November 13, 2023, and April 8, 2024, and were designed based on the August 2021 NYSDEC *Survey Protocol for State-listed Wintering Grassland Raptor Species* (NYSDEC, 2021) and feedback provided by ORES. A total of 26 evening survey stations and 15 daytime driving stops were established for this effort. Over the course of the survey period, 495 evening stationary surveys and 20 sets of daytime driving surveys were conducted. A total of 597 raptors of 12 different species were recorded throughout the season. BEGIN CONFIDENTIAL INFORMATION < [REDACTED]

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The Winter Raptor Survey Report was provided to ORES on July 11, 2024. The Winter Raptor Survey Report is included with this Application as Appendix 12-F.

Eagle Point Count Surveys

EDR is currently conducting eagle point count surveys to evaluate seasonal eagle activity within the Facility Site following federal guidance. Eagle point count surveys began on August 23, 2023, and will continue each month for up to two years in consultation with the USFWS. The study was designed based on the USFWS *Eagle Conservation Plan Guidance, Module 1 – Land-based Wind Energy, Version 2* (USFWS, 2013) and comments provided by USFWS staff. Threatened and endangered species observation data recorded through July 24, 2024, have been provided to ORES, and additional study results will be provided to ORES once the study has concluded prior to Facility construction.

(c) Determination of Occupied Habitat at the Facility Site

The WSC Report (Appendix 12-A), Spring Raptor Migration Survey Report (Appendix 12-C), Fall Raptor Migration Survey Report (Appendix 12-D), Breeding Bird Survey Reports (Appendix 12-E), and Winter Raptor Survey Report (Appendix 12-F), as described previously in Sections (a) and (b), were provided to ORES along with associated GIS shapefiles to facilitate pre-application consultations and inform a Determination of Occupied Habitat, Incidental Take, and Net Conservation Benefit (Determination) for the Facility. In addition, the Applicant also provided an Estimated Occupied Habitat Memorandum detailing the Applicant's initial estimate of the locations and extent of occupied habitat to ORES on July 25, 2024 (Appendix 12-B). The Estimated Occupied Habitat Memorandum also included the Applicant's initial estimate of potential impacts to NYS endangered and threatened species and associated occupied habitat. In accordance with 16 NYCRR Section 1100-1.3(g)(6), the Applicant then participated in a meeting with ORES staff on August 22, 2024, to discuss the results of the surveys, preliminary estimates of occupied habitat, the current Facility design, potential Facility-related impacts, and requirements for a Net Conservation Benefit Plan (NCBP). Following the meeting, the Applicant provided additional information to ORES on September 6, 2024, in the form of a technical memorandum (Response to Draft Occupied Habitat Take Determination; refer to Appendix 12-B).

Subsequent to these submittals and the occupied habitat meeting, ORES provided a Determination for the Facility on October 17, 2024, **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

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>**END CONFIDENTIAL INFORMATION** The Determination is provided in Appendix 12-G.

(d) Avoidance, Minimization Measures, and Unavoidable Potential Impacts to NYS Threatened, Endangered, or Species of Special Concern

Upon review of the WSC Report and results of the avian field surveys, ORES has concluded that the Facility is sited within **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

[REDACTED] >**END CONFIDENTIAL INFORMATION** In addition, ORES has determined that the operation of the Facility will result in the incidental take of **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

[REDACTED] >**END CONFIDENTIAL INFORMATION** Although some

of the ORES-identified impacts to NYS threatened and endangered species are unavoidable, the Applicant has implemented (or will implement) a variety of avoidance and minimization measures and has developed an NCBP to provide a net conservation benefit to these affected species. To avoid and minimize impacts to

NYS threatened and endangered species, the Facility will be required to adhere to applicable Uniform Standards and Conditions indicated in 16 NYCRR Section 1100-6.4(o).

Avoidance and Minimization Measures

The following efforts have been (or will be) implemented during the Facility planning and design, construction and restoration, and operations and maintenance phases to avoid and minimize impacts to state listed bird species to the extent practicable, given the many other siting constraints inherent in the development of a wind energy generation project:

Facility Planning and Design

- The Applicant consulted with ORES, NYSDEC, and USFWS on multiple occasions during the pre-application process regarding potential impacts to threatened or endangered bird species and appropriate studies to evaluate potential impacts to threatened or endangered bird species (refer to Appendix 12-B).
- Most Facility components were sited in regularly disturbed areas primarily used for agricultural row crop (e.g., corn, soybean) production, which typically represent lower-quality habitat than grass-dominated areas. This represents impact minimization for state listed grassland bird species including **BEGIN CONFIDENTIAL INFORMATION** <[REDACTED]> **END CONFIDENTIAL INFORMATION** The placement of most Facility components in regularly disturbed agricultural areas also represents impact minimization for state listed forest bird SSC including **BEGIN CONFIDENTIAL INFORMATION** <[REDACTED]> **END CONFIDENTIAL INFORMATION** as well as state listed wetland bird SSC including **BEGIN CONFIDENTIAL INFORMATION** <[REDACTED]> **END CONFIDENTIAL INFORMATION** These SSC do not typically nest in agricultural fields.
- Some Facility wind turbines were placed near the edges of open field areas to minimize impacts to grassland bird occupied habitat. This represents impact minimization for state listed grassland bird species including **BEGIN CONFIDENTIAL INFORMATION** <[REDACTED]> **END CONFIDENTIAL INFORMATION**
- Some Facility components were sited along the boundary of open fields near wooded areas to minimize impacts to grassland bird occupied habitat. This represents impact minimization for state listed grassland bird species including **BEGIN CONFIDENTIAL INFORMATION** <[REDACTED]> **END CONFIDENTIAL INFORMATION**
- Some access roads throughout the Facility Site were sited to follow existing farm roads to avoid or minimize impacts to grassland bird occupied habitat. This represents impact minimization for state listed grassland bird species including **BEGIN CONFIDENTIAL INFORMATION** <[REDACTED]> **END CONFIDENTIAL INFORMATION**

- Linear Facility components were co-located where possible to reduce impacts to grassland bird occupied habitat. This represents impact minimization for state listed grassland bird species including **BEGIN CONFIDENTIAL INFORMATION**<[REDACTED]>**END CONFIDENTIAL INFORMATION**
- The majority of Facility electrical collection lines will be installed underground, thereby minimizing possible collision and electrocution risk to raptors. This represents impact minimization for **BEGIN CONFIDENTIAL INFORMATION**<[REDACTED]>**END CONFIDENTIAL INFORMATION**
- Wherever possible, the Applicant sited Facility components to prioritize avoidance of wetlands and streams, which can represent higher-quality wildlife habitat. This represents impact minimization for **BEGIN CONFIDENTIAL INFORMATION**<[REDACTED]>**END CONFIDENTIAL INFORMATION** and other bird species associated with wetlands and streams.
- Facility wind turbines were sited more than 1,000 feet from state listed species nests identified within the Facility Site during the breeding bird surveys. This represents impact minimization for **BEGIN CONFIDENTIAL INFORMATION**<[REDACTED]>**END CONFIDENTIAL INFORMATION**
- A field containing a suspected **BEGIN CONFIDENTIAL INFORMATION**<[REDACTED]>**END CONFIDENTIAL INFORMATION** location is no longer within the Facility Site. This represents impact minimization for this species.

Construction and Restoration

- In accordance with the requirements of 16 NYCRR Section 1100-6.4(o)(3), the Facility will avoid or minimize ground disturbance and construction-related activities within occupied habitat during certain periods as follows:
 - In areas of grassland bird occupied breeding habitat, work will be conducted between August 16 and April 22 to the extent practicable.
 - In areas of grassland bird occupied wintering habitat, work will be conducted between April 1 and November 14 to the extent practicable.
- In accordance with the requirements of 16 NYCRR Section 1100-6.4(o)(3)(v), when ground disturbance and construction-related activities must occur within grassland bird occupied breeding habitat between April 23 and August 15, and within grassland bird occupied wintering habitat between November 15 and March 31, an environmental monitor or biologist will conduct weekly surveys for NYS threatened or endangered grassland bird species. These work window limitations, and the presence of an environmental monitor throughout the Facility construction and restoration phases, will also benefit breeding grassland, forest, and wetland bird SSC that were identified within the Facility Site **BEGIN CONFIDENTIAL INFORMATION**<[REDACTED]>**END CONFIDENTIAL INFORMATION**

- The Applicant will submit an Environmental Monitoring Plan with pre-construction compliance filings, and will hire an independent, third-party environmental monitor to oversee compliance with environmental commitments and siting permit requirements pursuant to 16 NYCRR Section 1100-6.4(b)(1).
- The environmental monitor will be present during all construction and restoration activities to record and report all observations of NYS threatened or endangered species consistent with 16 NYCRR Section 1100-6.4(o)(7) requirements.
- The Applicant will implement appropriate agency notification procedures and protection measures in the event that active nests of a federal or NYS threatened or endangered bird species **BEGIN CONFIDENTIAL INFORMATION** <[REDACTED]> **END CONFIDENTIAL INFORMATION**, or any dead or injured federal or NYS threatened or endangered bird species, or eggs or nests thereof, are discovered within the Facility Site during facility construction or maintenance, consistent with the requirements of 16 NYCRR Section 1100-6.4(o)(8).
- If an active nest is discovered within the Facility Site prior to or during construction and the Facility may result in adverse impacts to the nest, then the Facility will adjust the construction schedule to avoid work in that location until nesting has been completed.
- All temporarily disturbed grassland vegetation communities will be re-graded to pre-construction contours and reseeded with a native or naturalized grassland seed mix (unless returning to agricultural use or otherwise specified by the landowner).
- The Facility will implement the measures indicated in 16 NYCRR Section 1100-6.4(o)(6) to avoid and minimize impacts to the **BEGIN CONFIDENTIAL INFORMATION** <[REDACTED]> **END CONFIDENTIAL INFORMATION** during the construction and restoration phase.

Operations and Maintenance

- In accordance with 16 NYCRR Section 1100-6.4(o)(8)(i), if, during the life of the Facility, an active nest of a federal or NYS threatened or endangered bird species is discovered incidentally within the Facility Site, the Facility will notify the NYS Department of Public Service (NYSDPS) and ORES within 48 hours of discovery and prior to any further disturbance around the nest, roost, or area where the species were seen exhibiting any breeding or roosting behavior. An area at least 500 feet in radius around the active nest shall be posted and avoided until notice to continue maintenance activities is granted by ORES.
- The Facility will implement the measures indicated in 16 NYCRR Section 1100-6.4(o)(6) to avoid and minimize impacts to the **BEGIN CONFIDENTIAL INFORMATION** <[REDACTED]> **END CONFIDENTIAL INFORMATION** during the operations and maintenance phase.

The following efforts have been (or will be) implemented during the Facility planning and design, construction and restoration, and operations and maintenance phases to avoid and minimize impacts to state listed bat species to the extent practicable, given the many other siting constraints inherent in the development of a wind energy generation project:

Facility Planning and Design

- As indicated in the ORES Determination, the Facility will not be sited or located within **BEGIN CONFIDENTIAL INFORMATION**<[REDACTED]>**END CONFIDENTIAL INFORMATION** Because the Facility is not located within these distances relative to state listed bat species occurrences, the Applicant assumes that there will be no impact to occupied habitat for **BEGIN CONFIDENTIAL INFORMATION**<[REDACTED]>**END CONFIDENTIAL INFORMATION**, and that the restrictions for tree clearing activities indicated in 16 NYCRR Section 1100-6.4(o)(4)(iii)(c) would not be applicable for the Facility. However, the Applicant will continue to consult with the appropriate agencies regarding requirements for listed bat species.
- Most Facility components were placed in open areas, which represents impact minimization for forest-associated bat species.
- Linear Facility components were co-located where possible to reduce impacts to forestland. This represents an impact minimization for forest-associated bat species.
- Wherever possible, the Applicant sited Facility components to prioritize avoidance of wetlands and streams, which can represent higher-quality wildlife habitat. This represents impact minimization for bat species.

Construction and Restoration

- Erosion, sedimentation, and pollution controls will be developed and implemented during construction to protect water quality in wetlands and streams. This represents impact minimization for bat species.
- During the construction and restoration phase, if an active NYS threatened or endangered bat species maternity colony roost tree (or structure) is discovered within the Facility Site by construction staff, the NYSDPS and ORES will be notified within 48 hours of discovery and a 500-foot radius around the colony will be posted and avoided until notice to continue maintenance related activities is granted by the NYSDPS or ORES. Following an incidental discovery of a bat maternity colony by construction staff or their consultants, the Facility will submit a re-evaluation of the potential impacts of the Facility on listed bat species to the NYSDPS and ORES.

Operations and Maintenance

- Consistent with the Article VIII uniform standards and conditions, the Facility will implement curtailment from July 1 through October 1 when wind speeds are at or below 5.5 meters per second (m/s) and temperatures are at or above 10° Celsius (50° Fahrenheit) from 30 minutes before sunset to 30 minutes after sunrise. Curtailment will be on an individual turbine basis and will be determined by weather conditions as measured by each individual weather station on the turbine nacelle. This represents impact minimization for **BEGIN CONFIDENTIAL INFORMATION**<[REDACTED]>**END CONFIDENTIAL INFORMATION** and other

bat species. Multiple studies show that strategic seasonal turbine curtailment can reduce all bat fatalities by between 50% and 80% and potentially higher, depending on the cut-in speed used and the bat species that typically occur at a given site (Arnett et al., 2011; Baerwald et al., 2009; Martin et al., 2017). **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

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- During the operations and maintenance phase, if an active state listed endangered or threatened bat species maternity colony roost tree (or structure) is discovered within the Facility Site by operations staff, the NYSDPS and ORES will be notified within 48 hours of discovery and a 500-foot radius around the colony will be posted and avoided until notice to continue maintenance related activities is granted by the NYSDPS or ORES. Following an incidental discovery of a bat maternity colony by operations staff or their consultants, the Facility will submit a re-evaluation of the potential impacts of the Facility on listed bat species to the NYSDPS and ORES.
- Ultrasonic acoustic bat deterrent systems and/or other similar technologies may be employed at wind turbines during Facility operation.

Unavoidable Potential Impacts

As stated previously, ORES provided a Determination on October 17, 2024, which indicated that the Facility was estimated to adversely impact **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

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>**END CONFIDENTIAL**

INFORMATION Some of these same occupied habitat areas may also be used by SSC including **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] >**END**

CONFIDENTIAL INFORMATION Additional details regarding the acreage of unavoidable impacts to habitats used by NYS threatened or endangered grassland bird species are provided in Appendices 12-G and 12-H. Additional details regarding the acreage of unavoidable impacts to open upland, terrestrial cultural, forested upland, and open wetland communities that may be used by grassland bird SSC, forest bird SSC, and wetland bird SSC are presented in Exhibit 11. ORES has also indicated that the operation of the Facility will result in the incidental take of **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED]

>**END CONFIDENTIAL INFORMATION**

Adverse modification of occupied habitat for **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** was calculated by ORES by comparing the areas with proposed wind turbine locations and other Facility components, and associated indirect impact buffer areas established by the NYSDEC in other NYS wind energy generation project proceedings, to areas with identified occupied habitat (based on avian observation data collected at the Facility). Generally, if more than 25 acres of open occupied habitat will remain in a given field following wind turbine or other aboveground component installation, then the remaining habitat would not be considered adversely modified. Conversely, if less than 25 acres of open occupied habitat will remain in a given field post-construction, then ORES typically considers the remnant field area to be adversely modified because it would no longer be of sufficient size to support these species. **BEGIN CONFIDENTIAL INFORMATION** < [REDACTED] > **END CONFIDENTIAL INFORMATION** Refer to the NCBP included as Appendix 12-H for more information.

Although the Applicant has designed the Facility to avoid and minimize impacts to ORES-identified occupied habitat and state listed wildlife species, the remaining impacts will be unavoidable, largely due to the many other siting constraints associated with the development of a wind energy generation project. The parcels that comprise the Facility Site represent a community of landowners who are willing and interested in hosting the Facility, but only under very specific circumstances that are compatible with their preferences. Parcels outside the Facility Site were typically not available for development; therefore, it was not possible to shift Facility components to other areas, even if they would otherwise be suitable for hosting Facility components or allow for further avoidance or minimization of impacts. Landowners agreeing to host Facility components typically have detailed requirements regarding where infrastructure can and cannot be located on their land so that they can continue to utilize portions of their property for activities like farming. Similarly, some landowners may be willing to host certain Facility components, but not others. Additionally, even if landowners are amenable to a shift in Facility components, such a change is often not possible given the setbacks and zoning requirements of the local municipalities and/or other sensitive resource constraints, which reduce flexibility for Facility design shifts. As discussed in other Exhibits of this Application, the Applicant has shifted Facility components to avoid other sensitive resources during Facility design, in addition to avoiding areas of occupied habitat, to the extent practicable. Therefore, the only Facility layout alternative available to the Applicant is often to not locate Facility components on a particular property at all, which would undermine both the economic viability of the Facility and NYS's ability to meet the renewable energy and greenhouse gas emission reduction goals of the Climate Leadership and Community Protection Act (CLCPA, 2020).

NYS policy and laws—most notably the CLCPA—require the development of renewable energy projects to significantly increase generating capacity from renewable sources, meet clean energy goals, and combat climate change (CLCPA, 2020). The Facility has been designed to avoid and minimize impacts to environmental resources to the extent practicable, while also making a meaningful contribution to renewable energy generation in NYS and furthering well-established policy goals. As many policymakers,

scientists, and developers are aware, climate change represents one of the most significant threats to a wide variety of wildlife species, potentially threatening two-thirds of North American bird species with extinction (National Audubon Society, 2019). Thus, any unavoidable impacts to bird species and their habitats from development of renewable energy projects, such as the proposed Facility, must be balanced against the environmental threats to those species and their habitats posed by a failure address and mitigate climate change.

(e) Proof of De Minimis Impacts to NYS Threatened or Endangered Grassland Birds or Their Habitat

The Determination issued by ORES on October 17, 2024, and the level of impact to state listed grassland birds and their habitat, are discussed in the previous sections.

(f) Net Conservation Benefit Plan

The Applicant has developed an NCBP for the Facility in accordance with 16 NYCRR Section 1100-6.4(o). The NCBP is included as Appendix 12-H. As stated in 16 NYCRR Section 1100-6.4(o)(3)(ix), permittee-implemented habitat conservation (i.e., physical mitigation) may be proposed to mitigate for unavoidable impacts to occupied grassland bird habitat, with 0.2 acres of mitigation for every 1.0 acre of occupied grassland bird wintering habitat determined to be taken, and 0.4 acres of mitigation for every 1.0 acre of occupied grassland bird breeding habitat determined to be taken.

The Applicant began with a search of the Facility Site and its vicinity to identify potential mitigation areas. This search included outreach to participating landowners, as well as outreach to landowners with properties adjacent to the Facility Site. Despite discussions with multiple landowners over the course of several months, these efforts were unsuccessful, indicating that it will not be practicable to find land or on-site mitigation within or near the Facility Site. Typically, landowners were uninterested in leasing or selling their land and/or were unwilling to restrict land uses to the degree required for mitigation. Therefore, the Applicant is working with a third-party mitigation provider to identify suitable land parcels for mitigation elsewhere in NYS in order to attain the required mitigation acreage. Additional information for the proposed mitigation parcel(s) and the proposed mitigation area(s) will be identified in a subsequent version of the NCBP. However, if the option becomes available prior to Facility construction, the Applicant may instead elect to pay a mitigation fee into the Endangered and Threatened Species Mitigation Bank Fund.

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[REDACTED] >END CONFIDENTIAL INFORMATION The NCBP includes: (1) detailed information regarding the avoidance and minimization measures taken by the Applicant to reduce impacts to state listed species covered by the NCBP; (2) the calculations of acreage or credits (i.e., number of individuals) necessary to mitigate potential effects of the Facility on each covered species; (3) the approach proposed for mitigation; (4) the anticipated mitigation management and monitoring efforts; and (5) information regarding implementation and financing of the proposed mitigation measures. Implementation of the NCBP will provide a positive benefit to each of the affected species, as outlined in Appendix 12-H.

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Baerwald, E.F., J. Edworthy, M. Holder, and R.M.R. Barclay. 2009. *A large-scale mitigation experiment to reduce bat fatalities at wind energy facilities*. *Journal of Wildlife Management* 73(7): 1077-1081.

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