



SOMERSET SOLAR, LLC

MATTER NO. 22-00026

§900-2.13 Exhibit 12 Revised

New York State Threatened and Endangered Species

CONTENTS

| | |
|--|---|
| EXHIBIT 12 THREATENED AND ENDANGERED SPECIES | 1 |
| 12(a) Wildlife Site Characterization Report..... | 2 |
| 12(b) Pre-Application Wildlife Survey Reports..... | 2 |
| 12(c) ORES Determination on Occupied Habitat | 4 |
| 12(d) Avoidance and Minimization Measures in Facility Design | 5 |
| 12(e) De minimis Impact Submission for Threatened and Endangered Grassland Bird Species | 7 |
| 12(f) Net Conservation Benefit Plan | 7 |
| References..... | 8 |

TABLES

| | |
|---|---|
| Table 12-1. Summary of Potential Endangered, Threatened, and Species of Concern in New York State within or near the Facility, Niagara County, New York. | 0 |
|---|---|

APPENDICES

| | |
|--|--|
| Appendix 12-A. Wildlife Site Characterization Report | |
| Appendix 12-B. Spring Breeding Bird Survey Report | |
| Appendix 12-C. Wintering Grassland Raptor Survey | |
| Appendix 12-D. Threatened and Endangered Species Agency Correspondence | |
| Appendix 12-E. Occupied Habitat Field by Field Memorandum | |
| Appendix 12-F. Preliminary Draft Net Conservation Benefit Plan | |

ACRONYM LIST

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| § | Section |
| AES | The AES Corporation, Inc. |
| Applicant | Somerset Solar, LLC |
| BBS | Breeding Bird Survey |
| NCBP | Net Conservation Benefit Plan |
| NYCRR | New York Codes, Rules and Regulations |
| NYNHP | New York National Heritage Program |
| NYS | New York State |
| NYSDEC | New York State Department of Environmental Conservation |
| NYSDPS | New York State Department of Public Service |
| ORES | Office of Renewable Energy Siting |
| SSC | Species of Special Concern |
| SWDA | Solid Waste Disposal Area |
| Tetra Tech | Tetra Tech, Inc. |
| USCs | Uniform Standards and Conditions |
| WGRS | Wintering Grassland Raptor Survey |
| WSCR | Wildlife Site Characterization Report |

GLOSSARY TERMS

| | |
|------------------------|--|
| Applicant | Somerset Solar, LLC, a subsidiary of The AES Corporation, Inc. (AES), the entity seeking a siting permit for the Facility Site from the Office of Renewable Energy Siting (ORES) under Section (§) 94-c of the New York State Executive Law. |
| Application | Application under §94-c of the New York State Executive Law for review by the ORES for a Siting Permit. |
| Facility | The proposed components to be constructed for the collection and distribution of energy for the Somerset Solar Facility, which includes solar arrays, inverters, electric collection lines, and the collection substation. |
| Facility Site | The limit of disturbance (LOD) that will be utilized for construction and operation of the Facility, which totals about 700 acres on the Project Parcels in the Town of Somerset, Niagara County, New York (Figure 2-1). |
| Project Parcels | The parcels that are currently under agreement with the Applicant and Landowner, totaling about 1,784 acres in the Town of Somerset, Niagara County, New York, on which the Facility Site will be sited (Figure 3-1). |
| Project Site | The acreage of the Project Parcels under agreement between the Applicant and the Landowner, consisting of approximately 1,396 acres, in which the Applicant has performed diligence, surveys and assessments in support of Facility design and layout. |

EXHIBIT 12 THREATENED AND ENDANGERED SPECIES

This exhibit addresses the requirements specified in 19 New York Codes, Rules and Regulations (NYCRR) Section (§) 900-2.13 regarding New York State (NYS) threatened and endangered species.

Through correspondence with the New York National Heritage Program (NYNHP), NYS Department of Environmental Conservation (NYSDEC), and U.S. Fish and Wildlife Service, it was determined that the approximately 1,396-acre Project Site has the potential to support the following listed species: bald eagle (*Haliaeetus leucocephalus*), short-eared owl (*Asio flammeus*), and northern harrier (*Circus hudsonius*). As part of Facility consultation process with the Office of Renewable Energy Siting (ORES), Breeding Bird Surveys (BBS) and Wintering Grassland Raptor Survey (WGRS) were conducted on the Project Site as requested; which documented the occurrence of all three of these species. Consultation with ORES indicated that the Facility is located within 0.25 mile of a known bald eagle nest. The Facility is unlikely to impact this species or disturb the active nest, as the Facility has been designed to avoid a greater than 660-foot buffer around the nest (an approximate 1,200-foot distance between nest and limit of disturbance is provided), and forestland located between the Facility Site and the nest will be retained to provide a visual buffer throughout construction and operation. To further avoid and minimize potential impacts to bald eagles, construction activities will adhere to the Uniform Standards and Conditions (USCs), §900-6.4(o)(6)(i) and (ii). Consultation with ORES also identified 114.8 acres of the Project Site as occupied wintering habitat for northern harrier, and a Preliminary Draft Net Conservation Benefit Plan (NCBP) has been prepared as part of their request; the location of the mitigation site has been identified; however landowner agreements are still being negotiated. The NCBP will be finalized with ORES as part of the Siting Permit process and compliance filing requirements.

The repurposing of the industrialized area of the Facility Site north of Route 18 has allowed for siting a substantial amount of Facility infrastructure on previously disturbed industrial lands associated with the former coal plant, Somerset Station. Additionally, sensitive habitats present on the Project Site (aquatic and forested habitats) are avoided by further siting solar arrays primarily in agricultural fields, minimizing construction disturbances, including tree/shrub clearing and grubbing; adhering to designated construction limits and species-specific time of year restrictions; and avoiding off-limit sensitive areas. The Facility has been designed to comply with 19 NYCRR §900-2.13 and the USCs, and impacts related to NYS threatened and endangered species have been avoided and minimized to the maximum extent practicable.

12(a) Wildlife Site Characterization Report

On behalf of Somerset Solar, LLC (the Applicant), Tetra Tech, Inc. (Tetra Tech) prepared a Wildlife Site Characterization Report (WSCR) that was submitted to the ORES and NYSDEC in April 2021 (Appendix 12-A). The report provides a summary of existing public information, reports from regulatory agencies, and the results of project-specific field surveys on wildlife species, including threatened and endangered species, which have been documented or could utilize habitats within the Project Site. The report provides a summary of desktop data, consistent with Subpart 900-1.3(g)(1). Several field studies conducted prior to the development of the WSCR are summarized, including key observations and results from the Facility's:

- Spring BBS (Appendix 12-B); and
- WGRS (Appendix 12-C).

Therefore, the WSCR includes a summarization of the site-specific field data collected in regard to threatened and endangered species in addition to the desktop data analysis. Additional information for wildlife surveys completed as part of the pre-application process are discussed in section 12(b) of this exhibit below.

According to the NYNHP database search (dated March 26, 2021; Appendix B in Appendix 12-A, attached) there were no records of rare or NYS-listed animals, plants, or significant natural communities identified for the Project Site; however, this review identified a bald eagle nest as occurring within 0.25-mile of the Project Site.

12(b) Pre-Application Wildlife Survey Reports

As part of the pre-application process, a BBS (Appendix 12-B; Tetra Tech 2021a) and WGRS (Appendix 12-C; Tetra Tech 2021b) were completed for the Project Site. This section provides a brief synopsis of the results of these studies, as they pertain to the presence of federal and/or NYS listed species. Prior to the initiation of the field studies, the Applicant prepared and submitted a Breeding Bird Study Plan to NYSDEC (Appendix 12-D), which was approved to be conducted in accordance with existing NYSDEC guidelines for grassland bird surveys (NYSDEC 2015a, NYSDEC 2015b). Both reports were submitted to and accepted by ORES in consultation with NYSDEC, for purposes of the review required by §900-1.3(g)(5), and the ORES' final determination of occupied habitat, incidental take and net conservation benefit required by §900-1.3(g)(7).

With respect to listed bat habitat, the Applicant conducted a desktop review of Bat Conservation International and the NYSDEC websites to determine potential presence of listed bat species at

the Project Site or surrounding vicinity (Appendix 12-A). Results of this review determined Indiana bat (*Myotis sodalist*) does not occur in Niagara County. Additionally, results did not identify any northern long-eared bat (*Myotis septentrionalis*) maternity roost trees within 150 feet of the Project Site, or hibernacula within 0.25-mile of the Project Site.

Breeding Bird Survey

Eight rounds of morning breeding bird surveys were conducted between May 20 and July 2, 2021. A total of 16 point-count locations were established within anticipated development areas for the Facility, with 14 points located in row crop agricultural habitat and two points located in maintained old fields located on the former coal plant site. A total of 11 hours of survey effort were completed for this survey.

Throughout the survey, a total of 128 point-count surveys were completed, over which 87 species were observed. Of the 87 species observed, the five most abundant species accounted for 43% of the total birds detected, which included red-winged blackbird (*Agelaius phoeniceus*), European starling (*Sturnus vulgaris*), barn swallow (*Hirundo rustica*), northern cardinal (*Cardinalis cardinalis*), and Canada goose (*Branta canadensis*). None of these are NYS-listed species.

Breeding bird surveys identified two NYS-listed species within the Project Site: the NYS-endangered peregrine falcon (*Falco peregrinus*) and the NYS-threatened bald eagle. Five NYS Species of Special Concern (SSC) were identified within the Project Site including: common nighthawk (*Chordeiles minor*), Cooper's hawk (*Accipiter cooperii*), grasshopper sparrow (*Ammodramus savannarum*), horned lark (*Eremophila alpestris*), and vesper sparrow (*Pooecetes gramineus*). Figures and data tables are available in the full BBS report, included herein as Appendix 12-B.

Wintering Grassland Raptor Survey

The WGRS was conducted from January 8 through April 5, 2021. Four stationary points and 16 driving points were surveyed, with a total of 67.5 hours of survey effort completed.

Few raptors were observed during the stationary surveys, with a total of 23 sightings of six species, including three NYS-listed species: northern harrier, short-eared owl, and bald eagle. There were 149 sightings of seven raptor species recorded during the driving surveys. Northern harrier consisted of 19 observations, ranging from one to three individuals per sighting, all of which were observed in the vicinity of the solid waste landfill (Solid Waste Disposal Area [SWDA] I; see Figure 3-11, Map 6 and 7) located north of the

Project Site. The noted behavior of each sighting was documented and included multiple observations of harriers foraging over the SWDA I landfill. No roosting was observed.

One observation of the short-eared owl, a NYS endangered species, occurred during stationary surveys. This species was a target species along with northern harrier for the WGRS protocol. In addition to the single short-eared owl sighting and the 23 northern harrier sightings, other raptor species sightings included 62 red-tailed hawk (*Buteo jamaicensis*), 13 rough-legged hawk (*Buteo lagopus*), eight bald eagle, 54 turkey vulture (*Cathartes aura*), nine American kestrel (*Falco sparverius*), and two Cooper's hawk (*Accipiter cooperii*). Additional details regarding observations of the WGRS are provided in Appendix 12-C.

12(c) ORES Determination on Occupied Habitat

ORES and the Applicant held a WSCR review meeting on May 27, 2021, which included discussion on the differences in the analyses on occupied habitat. Based on the pre-application Consultation for the Facility conducted with ORES and ORES' review of the results of the Facility's WSCR submitted in April 2021, ORES provided a letter dated May 27, 2021 to the Applicant which included their initial findings regarding the presence of occupied habitat within the Project Site. On November 16, 2021, ORES requested an analysis of potential occupied habitat, for which the Applicant provided a Field-by-Field memorandum to ORES on February 15, 2022. It was the Applicant's and their consultant's (Tetra Tech) opinion that suitable habitat for northern harrier does not exist at the Project Site. The potential for the Project Site to contain occupied habitat for northern harrier was further discussed with ORES and NYSDEC representatives in a conference call held on March 14, 2022. Open areas of the Project Site identified by ORES were discussed, including their suitability to provide occupied habitat for this species. A revised memorandum was submitted to ORES on April 11, 2022 (Appendix 12-E) that incorporated feedback received from NYSDEC regarding their position that the fields would be considered occupied habitat, and included information that because the fields would be used for staging during the decommissioning process, that these fields be removed from consideration as occupied habitat. The memoranda provided information and photographic documentation that established the disturbed condition of the Project Site, which consists of a dormant industrial site, with a legacy of industrial and ongoing decommissioning activities. On June 23, 2022 ORES issued their determination which included the following information for the below indicated habitat and species (Appendix 12-D).

Northern long-eared bat (*Myotis septentrionalis*) – Federally threatened and NYS threatened

The Project Site was noted as not being within 1.5 miles of a known maternity roost site, nor was it located within 5 miles of a hibernaculum site.

Indiana bat (*Myotis sodalis*) – Federally endangered and NYS endangered

The Project Site was noted as not being within 2.5 miles from a known maternity roost site, nor was it located within 2.5 miles of a hibernaculum site or bachelor colony.

Bald eagle (*Haliaeetus leucocephalus*)– NYS threatened

ORES noted that the Project Site is within 0.25 mile of a known bald eagle nest. To avoid and minimize potential impacts to bald eagles, construction will adhere to the USCs §900-6.4(o)(6)(i) and (ii).

Grassland Birds

In its determination received on June 23, 2022 (Appendix 12-D), ORES determined that the Project Site overlaps with occupied wintering habitat for northern harrier, with an estimated 114.8 acres anticipated to be adversely impacted by the Facility. In response to this finding, the Applicant has drafted a Preliminary Draft NCBP that provides for conservation of suitable habitat for northern harrier at a nearby site (see section 12(f) of this exhibit).

To avoid and minimize impacts to occupied grassland habitat, construction will adhere to the USCs §900-6.4 (o)(3)(i)-(vii). To mitigate impacts to occupied grassland habitat, the Applicant will adhere to the USCs, §900-6.4(o)(3)(viii) and (ix).

12(d) Avoidance and Minimization Measures in Facility Design

Based on ORES's final determination of occupied habitat, the Facility is anticipated to impact approximately 114.8 acres of wintering northern harrier habitat. The Applicant does not anticipate any unavoidable potential impacts to other NYS threatened, endangered or SSC during construction or operation of the Facility (Table 12-1). SWDA I where northern harrier was observed during field surveys is located outside the Project Site and will not be impacted by construction activities, with the exception of short-term noise impacts that will occur during active construction periods.

To avoid and minimize impacts to northern harrier, the Applicant will comply with the USCs outlined in §900-6.4(o)(3)(i)-(vii). The following measures will also be implemented:

- Prior to construction, supervisory construction personnel will be instructed and trained on the measures to be implemented for protection of wildlife resources. Instruction will include: (1) applicable federal and NYS laws regarding avian protection; (2) the importance of these resources, and (3) the purpose and necessity of protecting them. This information will be disseminated to applicable contractor personnel, including new personnel that enter the construction process for the Facility after construction is initiated, to ensure that all appropriate staff members are aware of the correct procedures and responsibilities for identifying and reporting wildlife observations and incidences.
- Construction vehicles will be restricted from unnecessarily driving and parking outside the planned limits of disturbance.
- During construction and operation activities, the Applicant will set speed limits on access roads to ensure safe and efficient traffic flow, thus minimizing risk of wildlife injury or mortality due to traffic collision.

Noise impacts to northern harrier that may utilize SWDA I for foraging during active construction periods, would be short-term. No impacts to northern harrier or their use of SWDA I during long-term operation of the Facility would occur. The Applicant's avoidance and minimization, and conservation measures are further outlined in the Preliminary Draft NCBP included as Appendix 12-F.

Table 12-1 provides a list of field observations of wildlife observed on the Project Site during survey efforts and agency correspondence received from NYNHP as part of data request submitted as part of the pre-Application survey and planning process (NYNHP 2021).

Table 12-1. Summary of Potential Endangered, Threatened, and Species of Concern in New York State within or near the Facility, Niagara County, New York.

| Common Name | Scientific Name | Status | Notes on Presence and Suitable Habitat | Data within 5 Year in Facility Area? | Avoidance and Minimization Measures |
|------------------|---------------------------------|--------|--|--------------------------------------|---|
| Birds | | | | | |
| Golden eagle | <i>Aquila chrysaetos</i> | SE | Not present. | Yes | Not present, none proposed. |
| Peregrine falcon | <i>Falco peregrinus</i> | SE | Observed during BBS. Limited suitable habitat present. | Yes | Suitable habitat currently present primarily consists of tall, man-made structures (i.e., smokestack for the former coal plant and supporting buildings and infrastructure) that may be attractive to falcon species for nesting. An indirect benefit of decommissioning the former coal plant and removal of all tall, man-made structures, will reduce the attractiveness of the Facility Site and areas in proximity to nesting by falcon species, including peregrine falcon. |
| Bald eagle | <i>Haliaeetus leucocephalus</i> | ST | Reported in eBird and ACBC; documented by NYNHP; observed during BBS and WGRS; suitable habitat present. | Yes | Compliance with §900-6.4(o)(6), Facility Construction and Maintenance, Threatened and Endangered Species (avoid and minimize impacts to bald eagles) |

| Common Name | Scientific Name | Status | Notes on Presence and Suitable Habitat | Data within 5 Year in Facility Area? | Avoidance and Minimization Measures |
|---------------------|------------------------------|--------|--|--------------------------------------|--|
| Henslow's sparrow | <i>Centronyx henslowii</i> | ST | Not present. | Yes | Not present, none proposed. An indirect benefit to this species is anticipated via establishment of a NCBP mitigation area within grassland habitat for take of occupied wintering northern harrier habitat. |
| Northern harrier | <i>Circus hudsonius</i> | ST | Reported in eBird and ACBC; observed during WGRS; approximately 114.8 acres of occupied habitat may be impacted. | Yes | Compliance with §900-6.4(o)(3), Facility Construction and Maintenance, Threatened and Endangered Species (grassland birds and their habitat); development and implementation of a NCBP (Appendix 12-F). |
| American bittern | <i>Botaurus lentiginosus</i> | SSC | Not present. | Yes | Not present, no mitigation required or proposed for species of special concern. |
| Common loon | <i>Gavia immer</i> | SSC | Not present. | Yes | Not present, no mitigation required or proposed for species of special concern. |
| Cooper's hawk | <i>Accipiter cooperii</i> | SSC | Reported in eBird and ACBC; observed during BBS; limited suitable habitat present. | Yes | Not present, no mitigation required or proposed for species of special concern. |
| Grasshopper sparrow | <i>Ammodramus savannarum</i> | SSC | Reported in eBird; observed during BBS; suitable habitat present. | Yes | Not present, no mitigation required or proposed for species of special concern. An indirect benefit to this species is anticipated via establishment of a NCBP mitigation area within grassland habitat for |

| Common Name | Scientific Name | Status | Notes on Presence and Suitable Habitat | Data within 5 Year in Facility Area? | Avoidance and Minimization Measures |
|---------------------|-----------------------------|--------|--|--------------------------------------|--|
| | | | | | take of occupied wintering northern harrier habitat. |
| Horned lark | <i>Eremophila alpestris</i> | SSC | Reported in eBird and ACBC; observed during BBS; suitable habitat present. | Yes | Not present, no mitigation required or proposed for species of special concern. |
| Northern goshawk | <i>Accipiter gentilis</i> | SSC | Not present. | Yes | Not present, no mitigation required or proposed for species of special concern. |
| Red-shouldered hawk | <i>Buteo lineatus</i> | SSC | Not present. | Yes | Not present, no mitigation required or proposed for species of special concern. An indirect benefit to this species is anticipated via establishment of a NCBP mitigation area within grassland habitat for take of occupied wintering northern harrier habitat, which would increase the abundance of available prey species. |
| Sharp-shinned hawk | <i>Accipiter striatus</i> | SSC | Not present. | Yes | Not present, no mitigation required or proposed for species of special concern. |
| Vesper sparrow | <i>Pooecetes gramineus</i> | SSC | Reported in eBird; observed during BBS; suitable habitat present. | Yes | Not present, no mitigation required or proposed for species of special concern. An indirect benefit to this species is anticipated via establishment of a NCBP mitigation area within grassland habitat for take of occupied wintering northern harrier habitat. |

| Common Name | Scientific Name | Status | Notes on Presence and Suitable Habitat | Data within 5 Year in Facility Area? | Avoidance and Minimization Measures |
|-------------------------|-------------------------------|--------|---|--------------------------------------|-------------------------------------|
| Mammals | | | | | |
| Indiana bat | <i>Myotis sodalis</i> | FE, SE | Per ORES, no known maternity roosts located within 2.5 miles of the Project Site; no known hibernaculum located within 2.5 miles of the Project Site. | Yes | Not present, none proposed. |
| Northern long-eared Bat | <i>Myotis septentrionalis</i> | FT, ST | Per ORES, no known maternity roosts located within 1.5 miles of the Project Site; no known hibernaculum located within 5 miles of the Project Site. | Yes | Not present, none proposed. |

Key: BBS – Breeding Bird Survey, FE – Federal Endangered, FT – Federal Threatened, NCBP – Net Conservation Benefit Plan, NYNHP – New York Natural Heritage Program, ORES – Office of Renewable Energy Siting, SE – New York State Endangered, ST – New York State Threatened, SSC – New York State Species of Concern, ACBC – Audubon Christmas Bird Count, WGRS – Wintering Grassland Raptor Survey.

References, as cited in Appendix 12-A: Audubon 2018; eBird 2021; NYSDEC 2021a, 2021b; Tetra Tech 2021a, 2021b; USFWS 2021a, 2021b.

The following avoidance and minimization measures will be implemented during Facility construction and maintenance periods to protect special status grassland bird species known or having the potential to occur at the Facility Site.

§94-c, §900-6.4 Facility Construction and Maintenance

(o) Threatened and Endangered Species

(3) For facilities that will have more than a de minimis impact on NYS threatened or endangered grassland birds, the permittee shall implement the following as part of the NCBP:

- i. The permittee shall implement environmental monitoring immediately prior to and during construction in the occupied habitat to search for NYS threatened or endangered species occurrence based on the species' seasonal windows for presence.
- ii. If active nests of the NYS threatened or endangered species are found within the occupied habitat, then the permittee shall coordinate with the New York State Department of Public Service (NYSDPS) and the ORES to adjust the limits of disturbance and/or adjust the construction schedule to avoid work in the area until nesting has been completed.
- iii. To avoid direct impacts to NYS threatened or endangered grassland bird species, the following work windows apply for all ground disturbance and construction-related activities, including restoration and equipment/component staging, storage, and transportation, within occupied habitat:

(a) In NYS threatened or endangered grassland bird occupied breeding habitat, work shall be conducted only between August 16 and April 22;

(b) In NYS threatened or endangered grassland bird occupied wintering habitat, work shall be conducted only between April 1 and November 14;

(c) In areas of the facility where both breeding and wintering occupied habitat occurs, work shall be conducted only between August 16 and November 14, and between April 1 and 22.

- iv. If fields within identified occupied breeding habitat are planted with row crops (e.g., corn, beans, or vegetables) in the farming season prior to the commencement of facility construction and such fields were historically used for row crops during at least one of the prior five (5) years, these fields will not be subject to the construction timing restrictions set forth in subparagraphs (iii)(a) and (c) of this paragraph.
- v. If the permittee has identified construction activities that must occur between November 15 and March 31 in identified NYS threatened or endangered grassland bird occupied wintering habitat, or between April 23 and August 15 in identified NYS threatened or endangered grassland bird occupied breeding habitat outside of row crop areas described above, the occupied habitat area(s) proposed for active construction shall be assessed by an on-site environmental monitor or biologist who shall conduct surveys for NYS threatened or endangered grassland bird species. The surveys shall occur weekly until construction activities have been completed in the occupied habitat area, unless otherwise agreed to by the ORSE. If no NYS threatened or endangered grassland bird species are detected during the survey, the area shall be considered clear for seven (7) days, when another survey shall be performed. If NYS threatened or endangered grassland bird species are detected, the permittee shall comply with subdivision (o)(7) of this section.
- vi. All temporary disturbance or modification of established grassland vegetation communities that occurs as a result of facility construction, restoration, or maintenance activities shall be restored utilizing a native, naturalized, non-invasive herbaceous seed mix or the pre-existing grassland vegetative conditions by re-grading and re-seeding with an appropriate native, naturalized, non-invasive seed mix after disturbance activities are completed, unless returning to agricultural production or otherwise specified by the landowner. These temporarily disturbed or modified areas include all areas within the facility site that do not have impervious cover, such as temporary roads, material and equipment staging and storage areas, and electric line rights of way.
- vii. The permittee shall implement the avoidance and minimization measures

identified in §900-2.13 of this Part and the other conditions herein to minimize potential take of the species.

- viii. To the extent that the ORES has determined that the facility would result in impacts to grassland bird occupied habitat requiring mitigation, the permittee shall pay the required mitigation fee commensurate with the actual acreage of occupied habitat taken into the Endangered and Threatened Species Mitigation Bank Fund with the sole purpose to conserve habitat of similar or higher quality or otherwise achieve a net conservation benefit to the impacted species.
- ix. 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).

The following avoidance and minimization measures will be implemented during Facility construction and maintenance periods to avoid and minimize impacts to bald eagle, for which a nest is known to occur within 0.25 mile of the Facility Site.

§94-c, §900-6.4 Facility Construction and Maintenance

(o) Threatened and Endangered Species

- (6) To avoid and minimize impacts to bald eagles, the permittee shall implement the following:
 - i. If, at any time during construction and operation of the facility, an active bald eagle nest or roost is identified within the facility site, the NYSDPS and the ORES shall be notified within forty-eight (48) hours of discovery and prior to any disturbance of the nest or immediate area. An area one

quarter (0.25) mile for nests without a visual buffer and six hundred sixty (660) feet in radius for nests with a visual buffer from the nest tree shall be posted and avoided to the maximum extent practicable until notice to continue construction at that site is granted by the NYSDPS and the ORES.

ii. Tree removal is not allowed:

(a) Within six hundred sixty (660) feet from an active nest during breeding season (January 1 – September 30);

(b) Within one quarter (0.25) mile from an important winter roost during the wintering period (December 1 – March 31); or

(c) Of overstory trees within three hundred thirty (330) feet of an active nest at any time.

12(e) De minimis Impact Submission for Threatened and Endangered Grassland Bird Species

The Facility does not meet the criteria outlined in §900.2-13 to qualify for a de minimis impact submission for threatened and endangered grassland bird species. Therefore, this section is not applicable.

12(f) Net Conservation Benefit Plan

A Preliminary Draft NCBP for impacts to wintering northern harrier habitat (occupied habitat) is attached as Appendix 12-F. The Applicant has committed to achieve a net conservation benefit to the species by self-mitigating in coordination with ORES to conserve approximately 25 acres of land suitable for providing wintering habitat for northern harrier. A mitigation site location has been identified to specifically address Facility impacts to wintering habitat identified for northern harrier, as described in Appendix 12-F. Landowner negotiations are in progress for the proposed mitigation site, and finalization of the NCBP, including establishment of landowner agreements will occur as part of ORES' Application review process. The final NCBP will be provided prior to initiating construction, as a compliance filing.

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