NORTH Dakota | Game and Fish

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December 29, 2023

ND Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

Subject: Oliver Wind IV Energy Center and 345 kV Transmission Line Project
Oliver and Mercer Counties, ND

Mr. Kahl,

The North Dakota Game and Fish Department (Department) has been in discussion with NextEra Energy Inc. regarding wind energy development in North Dakota for many years. We were first made aware of this particular project as part of Red Butte Wind back in 2019 but were introduced to it as its own project in March of 2023. The project consists of up to 73 wind turbines and 19.5 miles of new transmission line.

Oliver Wind IV falls within areas of medium value to wildlife and habitat (Attachment 1). This is primarily due to the large amounts of grasslands within the area (Attachment 2). Because of this, planning a project and siting associated roads and infrastructure to avoid important wildlife resource areas, such as unbroken native grasslands, can be difficult in this particular project area. However, these measures are essential for sustaining the integrity of these valuable natural systems. NextEra has taken several steps to avoid and minimize impacts; we commend them for this. However, a project cannot be evaluated based solely on its avoidance and minimization efforts alone. When impacts are not able to be avoided and occur despite determined efforts, additional attention to address and balance the specific diminution to this community's wildlife resources (reduction of production potential), as well as to reduce mounting project-by-project residual impacts overall, is recommended as basic due diligence. Therefore, NextEra and the Department worked on a final impact analysis to determine likely impacts after minimization efforts and a recommended approach for habitat restoration if voluntary offsets should be pursued.

Based on this analysis, NextEra has voluntarily committed to offsetting 665 acres of grassland habitat. In the past, the Department has worked closely with developers and their chosen third-party contractors on the delivery of voluntary offset projects to ensure the correct acreage of restoration, proper seed mixes, appropriate management techniques, etc. (Attachment 3). New state law (NDCC 49-22-09.2. Mitigating Environmental Impacts.) directs that when a developer "elects to provide a payment to mitigate the environmental impact of the construction or operation of an energy conversion or transmission facility, the payment must be made to the ND Agriculture Commissioner who shall deposit the payment into the environmental impact mitigation fund", which has oversight by the Federal Environmental Law Impact Review Committee. Nevertheless, despite this additional oversight, the Department, as the agency responsible for managing and safeguarding the state's public wildlife resource, will continue to use the same standards and approach for recommending and evaluating the offset specifications for appropriately addressing specific residual wildlife impacts. If those standards are not met, we are responsible for

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documenting and reporting the unaddressed impacts. It is essential for the public's resource that all parties strive to ensure that wildlife impacts are properly offset.

The Department believes, based on the impact analysis, that NextEra's commitment to restoring 665 acres of grasslands would sufficiently offset impacts to wildlife. Further, the Department is committed to providing technical assistance as needed to the Department of Agriculture to ensure the successful completion of these restorations (Attachment 4).

Lastly, the Department has one final comment of concern. Nearly 31% of the nation-wide Sharp-tailed Grouse population falls within North Dakota and declines to the state's population will likely lead to range-wide population declines. Sharp-tailed Grouse are a high-valued upland game bird, and because research indicated that prairie grouse may be adversely affected by energy development, the Department recommends that turbines be placed outside of nesting habitat (planted or native grasslands) that falls within buffer zones encompassing a 2-mile radius from known leks. When this is unavoidable, the Department recommends timing restrictions to minimize impacts during leking and nesting season. These timing restrictions are meant to be a last resort if a turbine cannot be located outside of the 2-mile buffer. In this project, however, 14 turbines placed in nesting habitat fall within that 2-mile buffer of 6 active leks (Attachment 5). It is unlikely that timing restrictions alone will have much effect on protecting the leks. In lieu of moving the turbines, the Department recommends that NextEra commit to a minimum of 5 years post-construction monitoring so that we may gain a better understanding of how high densities of turbines within the buffer zone might impact the success of leks and sharp-tailed grouse nests.

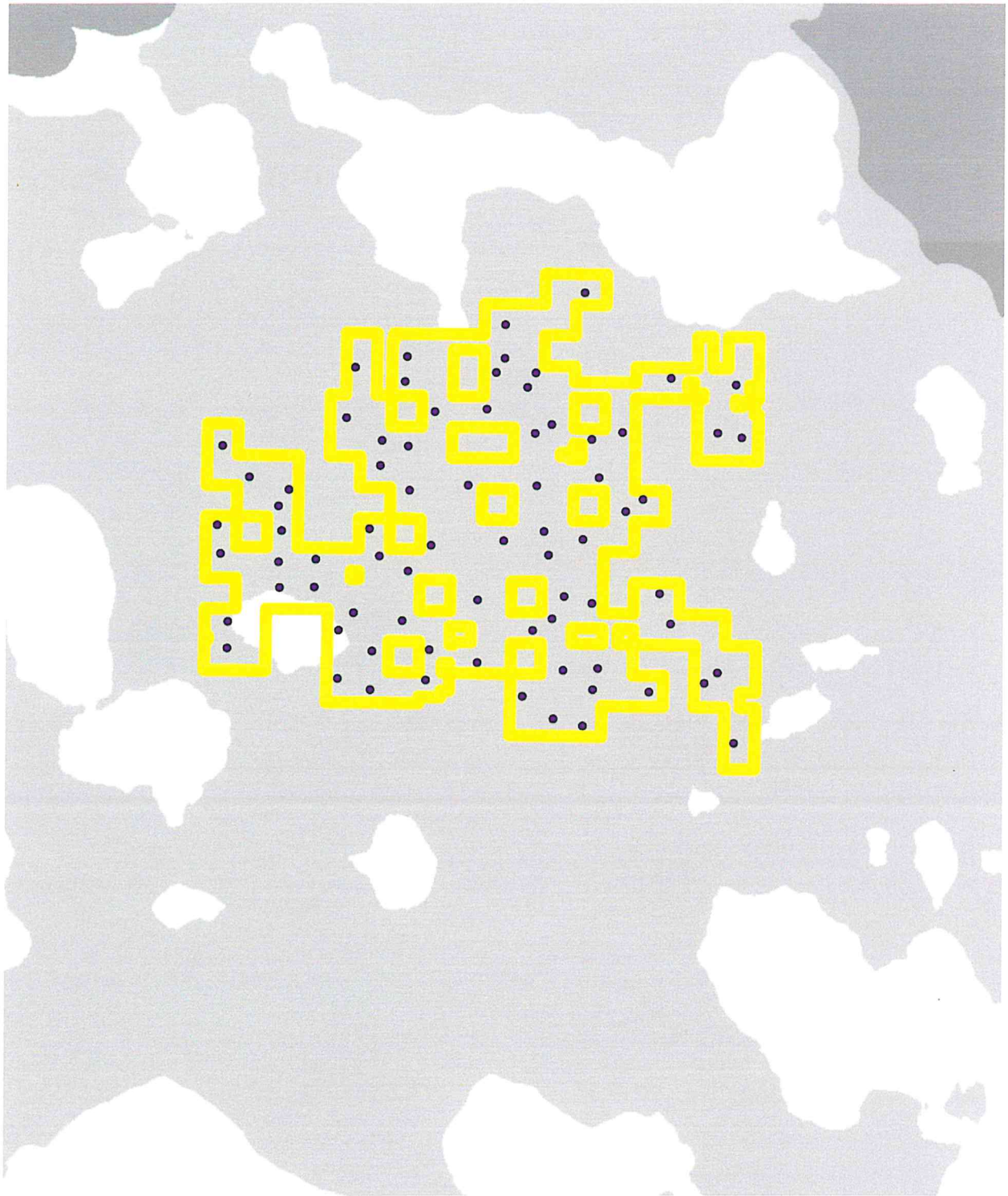
We are appreciative of NextEra's efforts to address the Department's concerns, as well as the Department of Agriculture's interest to see that wildlife impacts are appropriately addressed and offset. We look forward to working with all interested parties to ensure successful development with minimal impacts to wildlife and the state's hunting heritage.

Sincerely,

Greg Link
Chief, Conservation and Communications Division

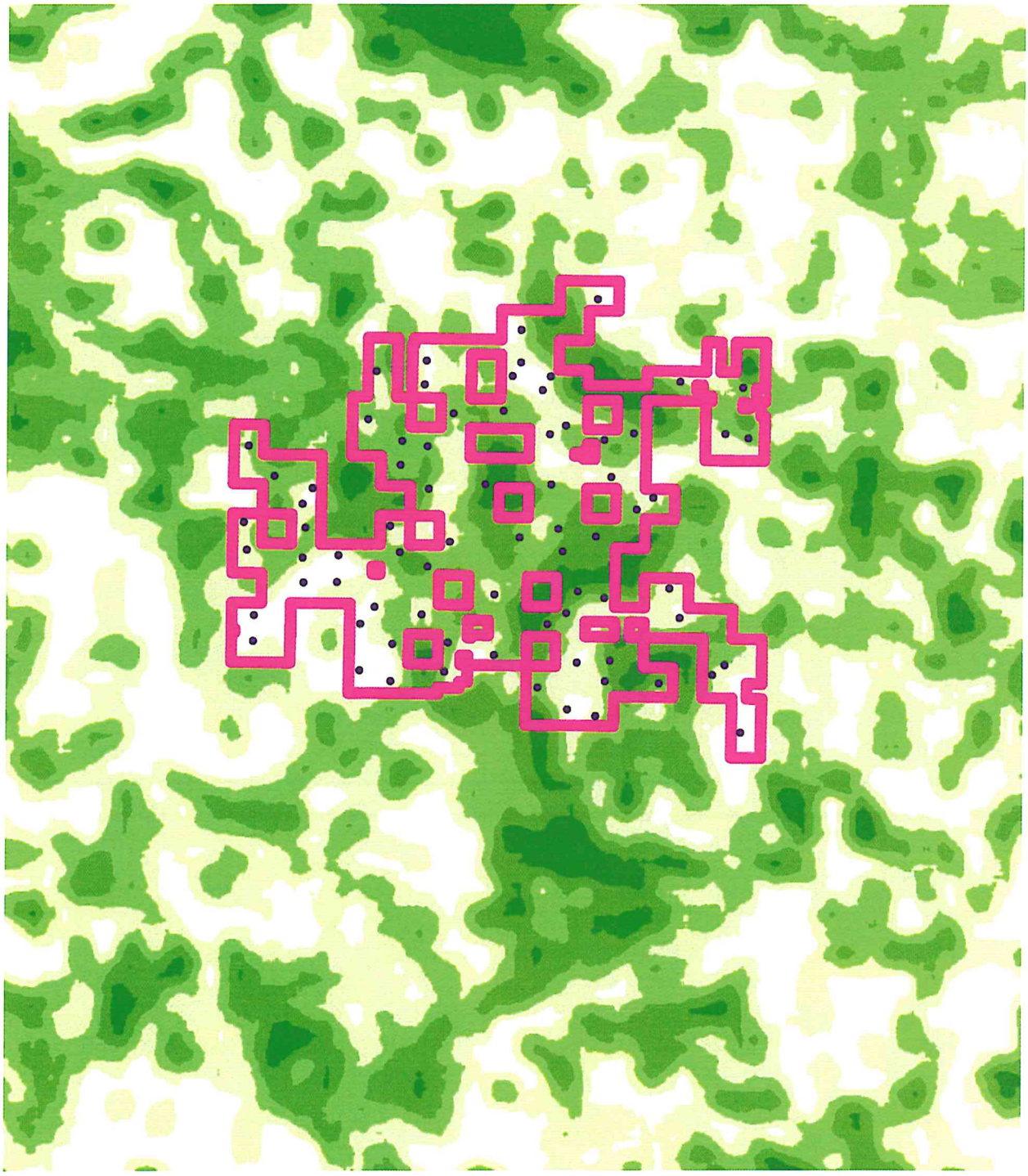
Cc: Dina Brown, NextEra Energy Inc.
Joseph Bialke, ND Department of Agriculture
Luke Toso, U.S. Fish and Wildlife Service

Attachment 1. Key Native Wildlife Habitat Areas.



This Figure shows the project boundary and turbines along with the key native wildlife habitat areas. Areas of highest risk are depicted in dark gray, lowest risk in white, and medium risk is the soft gray which makes up most of the image.

Attachment 2. Native Grasslands



This Figure shows the project boundary and turbines along with grassland density (highest=darkest green to lowest=white).

Governor Doug Burgum | Director Jeb Williams | Deputy Director Scott A. Peterson

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Attachment 1.

Grass/Legume Stand Evaluation

Name: | Clear Worksheet | Date:
Transect No: | Tract / Field #:
Completed By: | Legal Desc: | Sect: | Twshp | Range

Species and/or Variety	Plants / Square Foot Plot 1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	Total	Average Plants/ SqFt
1																											
2																											
3																											
4																											
5																											
6																											
7																											
8																											
9																											
10																											
11																											
12																											
13																											
14																											
15																											
Totals Per Count																											

Indicate how field was sampled:

Seeding Direction
Total Acres

Total number of plots:
Average Density (plant/sq. foot):
Plant Vigor: Low ☐ Medium ☐ High ☐
Weed Competition:

N

Comments:

Recommendations to Cooperator:

Guidelines:

- → Sample in a systematic and uniform manner
- → Minimum of 10 plots for each 10 acres or less of field size
- → Avoid areas that may have been double-seeded
- → Sample perpendicular or diagonal to drill rows
- → Use a 1 square foot frame (12 in. X 12 in.) or count parallel drill rows:

Recommended Minimum Seeded Species Densities:

Practices 512, 550: (3 - 5 plants per square foot)
Practice 327 : (1 - 2 plants per square foot)

Use the lower limit for rhizomatous species; upper limit for bunch-type or mixtures) Refer to the "Herbaceous Vegetation Establishment Guide" for additional guidance.

Row spacing	No. of rows	Length
6 inches	2 rows	12.0 inches
7 inches	2 rows	10.3 inches
8 inches	2 rows	9.0 inches

I certify that the above stand evaluation is documented per NRCS practice specifications.

NRCS Evaluator Signature: | Date:

Click and drag with your mouse the feature you want from the patterns below:

Transect Number & Lines	Field layout
T 1 T 2 T 3 T 4 T 5 T 6	

Attachment 2: