



"VARIETY IN HUNTING AND FISHING"

NORTH DAKOTA GAME AND FISH DEPARTMENT

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March 17, 2020

Mr. Steven Kahl
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480

SUBJECT: Northern Divide Wind Energy Center and 345 kV Transmission Line Project
Burke and Mountrail Counties, ND

Dear Mr. Kahl,

The North Dakota Game and Fish Department (Department) has been in continued discussion with NextEra Energy Resource, LLC (NextEra) since 2016, regarding wind energy development in Burke County. The original project proposed, known as Burke County Wind Energy Center (BCWEC), was sited within the Missouri Coteau, a landscape consisting of substantial amounts of intact native prairie and a tremendously high concentration of wetlands. This unique blend of native habitats makes the area extremely important to wildlife, including several of North Dakota's Species of Conservation Priority such as the Northern Pintail, Sprague's Pipit, and Sharp-tailed Grouse. Due to this area's unique nature and significance, the Department, from the onset of project consultation, expressed substantial concern regarding the BCWEC's location selection. Subsequently, the ND Public Service Commission denied BCWEC's permit application in June 2019 for these very reasons.

As a result of this denial, project proponents initiated heightened coordination and collaboration with the Department beginning in July 2019. To develop a more responsibly sited project, Northern Divide Wind Energy Center (NDWEC) was created. During routine meetings and dialogue since that time, we've witnessed NextEra's increased attention to our recommendations and a renewed desire, through its subsidiary Northern Divide Wind, LLC (Northern Divide Wind), to avoid, minimize, and offset measures for key native habitats. As documented in October 1, 2019 and October 23, 2019 letters, Northern Divide Wind has taken several positive steps to reduce and defray the impact of the NDWEC project, such as shifting the project boundary; thereby, decreasing the project area by approximately 50%. As recommended, Northern Divide Wind has relocated 44 and removed 3 of the original 81 turbines. All turbines

have been moved away from key Northern Pintail breeding habitat, and most importantly, all have been relocated off and away from unbroken grassland sites. Through these efforts, the potential impacts to important wildlife resources, resulting from NDWEC's new lay-out, are considerably reduced as compared to the original BCWEC.

Although greatly improved, not all the project's potential impacts could be avoided. Similar to the originally proposed BCWEC location, the majority of the proposed NDWEC project area remains within the Northern Missouri Coteau, the same native grassland-wetland rich landscape which contains some of the highest wetland densities in North America. As presented in all our prior letters regarding the BCWEC, the unique grassland and wetland mosaic of the Missouri Coteau not only provides essential resources for many resident species, but functions as important stopover habitat to numerous wetland-dependent migratory birds as well. Because of this, there is a higher degree of displacement risk associated with development in this landscape area, as compared to other areas within the state.

In our review and analysis of potential impacts to wildlife, the Department quantifies both direct habitat loss and indirect wildlife displacement associated with wind energy development. To do this, we look to the best available science, specifically research conducted in North Dakota, on avoidance and displacement of prairie pothole region avian species due to wind development: Loesch et al. 2013, Shaffer and Buhl 2016, and Schaffer et al. 2019. In its most recently updated and published work, Schaffer et al. 2019 predicts an average rate of 18% displacement by five waterfowl species within a half mile of turbines, and an avoidance and 53% displacement rate by seven grassland bird species within 300 meters from turbines by the 5th year post-construction.

By using the parameters within these studies, the predicted indirect impacts can be estimated for both grassland birds and breeding ducks, indicator species that reflect the use of habitats for a variety of other species. As initially provided in an October 1, 2019 letter and later modified in an ensuing letter of October 23, 2019, Northern Divide Wind has taken this information, quantified predicted impacts, and committed to a voluntary offset package for restoration of the following habitat features for the life of the project:

- 100 native grassland-acres
- 196 wetland-acres or 98 two-acre basins

As stated above, we acknowledge Northern Divide Wind has taken the Department's recommendations seriously, resulting in significant impact avoidance and minimization. Despite these positive efforts to alter boundary and relocate turbines for the modified NDWEC project, it was not possible to completely avoid indirect impacts. Northern Divide Wind has, however, voluntarily committed to address these unavoidable wildlife impacts, resulting from the project, by facilitating native grassland and wetland restoration activities on private land in the Missouri Coteau. With new insight and understanding of the importance of this area to wildlife, Northern Divide Wind has also committed to avoid future wind development in the Northern Missouri Coteau (see attachment).

We appreciate Northern Divide Wind's efforts to address the Department's concerns. These efforts demonstrate their commitment to pursue wind development in a more responsible manner, on this project and in the future.

Sincerely,



Greg Link

Chief, Conservation and Communications Division

Cc: Dustin Jones, NextEra Energy
Drew Becker, U.S. Fish and Wildlife Service

Loesch, C. R., J. A. Walker, R. E. Reynolds, J. S. Gleason, N. D. Niemuth, S. E. Stephens, and M. A. Erickson. 2013. Effect of wind energy development on breeding duck densities in the Prairie Pothole Region. *Journal of Wildlife Management* 77:587–598.

Shaffer, J. A., and D. A. Buhl. 2016. Effects of wind-energy facilities on grassland bird distributions. *Conservation Biology* 30:59–71.

Shaffer, J. A., Loesch, C. R., and Buhl, D. A. 2019. Estimating offsets for avian displacement effects of anthropogenic impacts. *Ecological Applications* 29(8): e01983. [10.1002/eap.1983](https://doi.org/10.1002/eap.1983)

**Cooperative Agreement
and
Memorandum of Understanding
between
North Dakota Game and Fish Department
and
Northern Divide Wind, LLC**

This Cooperative Agreement and Memorandum of Understanding (“MOU”), dated March 12, 2020, is between North Dakota Game and Fish Department (“NDGFD”) and Northern Divide Wind, LLC (“Northern Divide Wind”), an indirect, wholly-owned subsidiary of NextEra Energy Resources, LLC (NDGFD and Northern Divide Wind, jointly the “Parties”).

This MOU addresses potential wildlife impacts caused by the proposed Northern Divide Wind Project (the “Project”), a 200-megawatt wind energy conversion facility and associated transmission line located in Burke and Mountrail Counties, North Dakota. Northern Divide Wind intends to pursue a Certificate of Site Compatibility and Certificate of Corridor Compatibility and Route Permit from the North Dakota Public Service Commission (“PSC”) in spring 2020. Northern Divide Wind will own, construct and operate the Project.

Since July of 2019, Northern Divide Wind has been in close consultation with the NDGFD on advancing the Project through avoidance, minimization, mitigation and/or offset measures with respect to potential environmental impacts. The Parties agree that the purpose and effort of this collaboration is essential to balance responsible wind energy development with protection and conservation of the State’s wildlife and native habitat resources.

The Parties recognize the geologic region and landscape in which the Project area lies is of significant value to numerous “Species of Conservation Priority” outlined in the NDGFD State Wildlife Action Plan. This significance results from the high concentration of unbroken grassland and wetlands in the Northern Missouri Coteau. Intending to avoid disturbance to unbroken grassland and wetlands, and to reduce impacts to avian use of these habitats, Northern Divide Wind has closely consulted and coordinated with the NDGFD to decrease the Project area size and modify numerous turbine locations.

These efforts by Northern Divide Wind to avoid and reduce wildlife impacts are substantial and noteworthy. However, residual impacts are still predicted, such as the displacement of both grassland- and wetland-dependent birds, according to Loesch *et al.* 2013, Shaffer and Buhl 2016, and Shaffer *et al.* 2019.

Therefore, Northern Divide Wind further voluntarily commits to:

- Mark the entire Project transmission line with bird flight diverters to avoid the potential for collisions as per the Avian Power Line Interaction Committee Suggested Practices;
- Execute an agreement with one or more “turn-key” offset providers to restore habitat that is equivalent to the estimated displacement of birds inhabiting wetlands and unbroken grassland in close proximity to Project turbines. With guidance from NDGFD, it will be the responsibility of the offset provider(s) to restore approximately 196 wetland-acres (98 2-acre basins) and 100 native grassland-acres within the Missouri Coteau as defined by Bryce *et al.* 1996.

In addition, NextEra Energy Resources, LLC agrees to avoid further development in the Northern Missouri Coteau as defined by Bryce *et al.* 1996.

The NDGFD recognizes Northern Divide Wind's efforts to minimize adverse impacts. This MOU, and all voluntary commitments made herein, are contingent upon Northern Divide Wind meeting two milestones:

- (1) erecting the first turbine, and
- (2) completing Project construction.

Thirty (30) days prior to Milestone 1, Northern Divide Wind will execute an agreement with the offset provider(s). At Milestone 2, Northern Divide Wind and the offset provider(s) will confirm final offsets and the offset provider(s) will assume responsibility for final offset delivery. All offsets, both wetland and grassland restorations, are expected to be delivered within 5 years after Milestone 2. The offset acres will take place on private land with willing landowners compensated financially for the initial habitat establishment and subsequent transition into appropriate use within their operations.

Northern Divide Wind may reasonably modify offset estimates should unforeseen circumstances during construction result in significant Project changes (e.g., reduction in turbine number or change in turbine locations).

MOU respectfully submitted and agreed to this 12th day of March 2020,

Northern Divide Wind, LLC and NextEra Energy Resources, LLC



John Di Donato
Vice President

MOU acknowledged and agreed to this ___ day of March 2020

North Dakota Department of Game and Fish



Terry Steinwand
Director