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June 11, 2024

VIA E-MAIL AND FEDERAL EXPRESS

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

Re: Otter Tail Power Company
Amend – Ashtabula Wind I Upgrade
Siting Application – Barnes County
Case No. PU-23-252

Dear Mr. Kahl:

Enclosed for filing in connection with the above-referenced matter are an original and six (6) copies of this letter and the following documents, submitted by Otter Tail Power Company ("Otter Tail"):

1. Sound Level Assessment Report;

2. One letter from the State Historical Society of North Dakota, dated May 22, 2024;

3. Two Property Line Setback Waiver Agreements (Burchill (Turbine 62) and Svenningsen (Turbines 34, 35, and 36)); and

4. A Road Setback Variance and Building Permit from Barnes County.

At the time the North Dakota Public Service Commission ("Commission") issued its Order, dated October 24, 2023, in the above-referenced matter, Otter Tail had obtained sound waivers from the owners of three residences (*see* Appendix A (Acoustic Assessment Results and Sound Waivers) to Exhibit A (Environmental and Regulatory Compliance Memorandum) filed with the Certification of Timothy J. Rogelstad Docket Item #1). Otter Tail was also seeking sound waivers from the owners of two additional residences; however, Otter Tail does not anticipate obtaining any additional sounds waivers for the project. The previously filed Sound Level Assessment Report accounted for the waivers received, and demonstrates compliance with the Commission's sound avoidance area requirement in NDAC § 69-06-08-01(4) at the two residences for which waivers were not obtained (i.e., Receptors F11 and A284) using sound reduction technology (*see id.*). Although a sound waiver was obtained for Receptor A176 and A170, use of sound reduction technology on nearby turbines resulted in a modeled sound level of below 45 dBA.

At the time of the Commission's Order, Otter Tail was in the process of obtaining property line setback waivers from two landowners for four turbines. Both property line setback waivers have been obtained and are enclosed. Additionally, Otter Tail was in the process of obtaining a road setback variance from Barnes County for one turbine. Barnes County granted the variance on September 19, 2023, and a copy is enclosed.

Electronic versions of the enclosures and this letter were submitted to the Commission today via e-mail.

If you have any questions, please let me know.

Sincerely,

Mollie M. Smith

MOLLIE M. SMITH

MMS/82291266
Enclosures

cc: Lisa McFarland (w/ enclosures, via e-mail)
Bryce Haugen (w/ enclosures, via e-mail)

SOUND LEVEL ASSESSMENT REPORT

Otter Tail Ashtabula Wind Repower Project
Barnes County, North Dakota

Prepared for:

Atwell, LLC
311 North Main
Ann Arbor, Michigan 48104

Prepared by:

Epsilon Associates, Inc.
3 Mill & Main Place, Suite 250
Maynard, MA 01754

May 24, 2024

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1.0 EXECUTIVE SUMMARY

The Ashtabula Wind Energy Center Repowering Project (the Project) is an existing wind park in Barnes County, North Dakota that is planned to be repowered by Otter Tail Power Company (Otter Tail). Atwell has retained Epsilon Associates, Inc. (Epsilon) to conduct a sound level assessment for this Project. This report presents the results of the sound level modeling from the proposed repower in Barnes County.

This sound level assessment includes computer modeling to predict worst-case future L_{eq} sound levels from the Project, and a comparison of operational sound levels to the North Dakota Administrative Code Energy Conversion Facility Siting Criteria of 45 dBA within 100 feet of an inhabited residence or community building. Additionally, receptors that have signed noise waivers with Otter Tail Power have been compared to the Waiver criterion of 50 dBA within 200 feet of the inhabited residence. Sound level modeling was conducted for all Otter Tail Ashtabula Wind Repower wind turbines.

The L_{eq} sound levels modeled at receptors in Barnes County ranged from 28 to 49 dBA. The highest L_{eq} sound level modeled at a receptor that has signed a waiver with Otter Tail is 49 dBA. The highest L_{eq} sound level modeled at a receptor that has not signed a waiver with Otter Tail is 45 dBA. Using the mitigation described in this report, the L_{eq} sound levels at all receptors without a signed waiver are at or below the limit of 45 dBA within 100 feet of an inhabited residence. Therefore, the Project meets the State's regulations with respect to sound.

2.0 INTRODUCTION

The proposed repower Project will consist of 32 repowered wind turbines. The proposed wind turbines are all GE 1.6MW units with a rotor diameter of 91 meters and a hub height of 80 meters. Figure 2-1 shows the locations of the 32 wind turbines in Barnes County over aerial imagery.

A detailed discussion of sound from wind turbines is presented in a white paper prepared by the Renewable Energy Research Laboratory.[1] A few points are repeated herein. Wind turbine sound can originate from two different sources: mechanical sound from the interaction of turbine components, and aerodynamic sound produced by the flow of air over the rotor blades. Prior to the 1990's, both were significant contributors to wind turbine sound. However, recent advances in wind turbine design have greatly reduced the contribution of mechanical sound. Aerodynamic sound has also been reduced from modern wind turbines due to slower rotational speeds and changes in materials of construction. Aerodynamic sound, in general, is broadband (has contributions from a wide range of frequencies). It originates from encounters of the wind turbine blades with localized airflow inhomogeneities and wakes from other turbine blades and from airflow across the surface of the blades, particularly the front and trailing edges. Aerodynamic sound generally increases with increasing wind speed up to a certain point, then typically remains constant, even with higher wind speeds. However, sound levels in general also increase with increasing wind speed with or without the presence of wind turbines.

This report presents the findings of a sound level modeling analysis for the Project. The Project wind turbines were modeled in CadnaA using sound data from GE technical reports. The results of this analysis are found within this report.

[1] Renewable Energy Research Laboratory, Department of Mechanical and Industrial Engineering, University of Massachusetts at Amherst, Wind Turbine Acoustic Noise, June 2002, amended January 2006.

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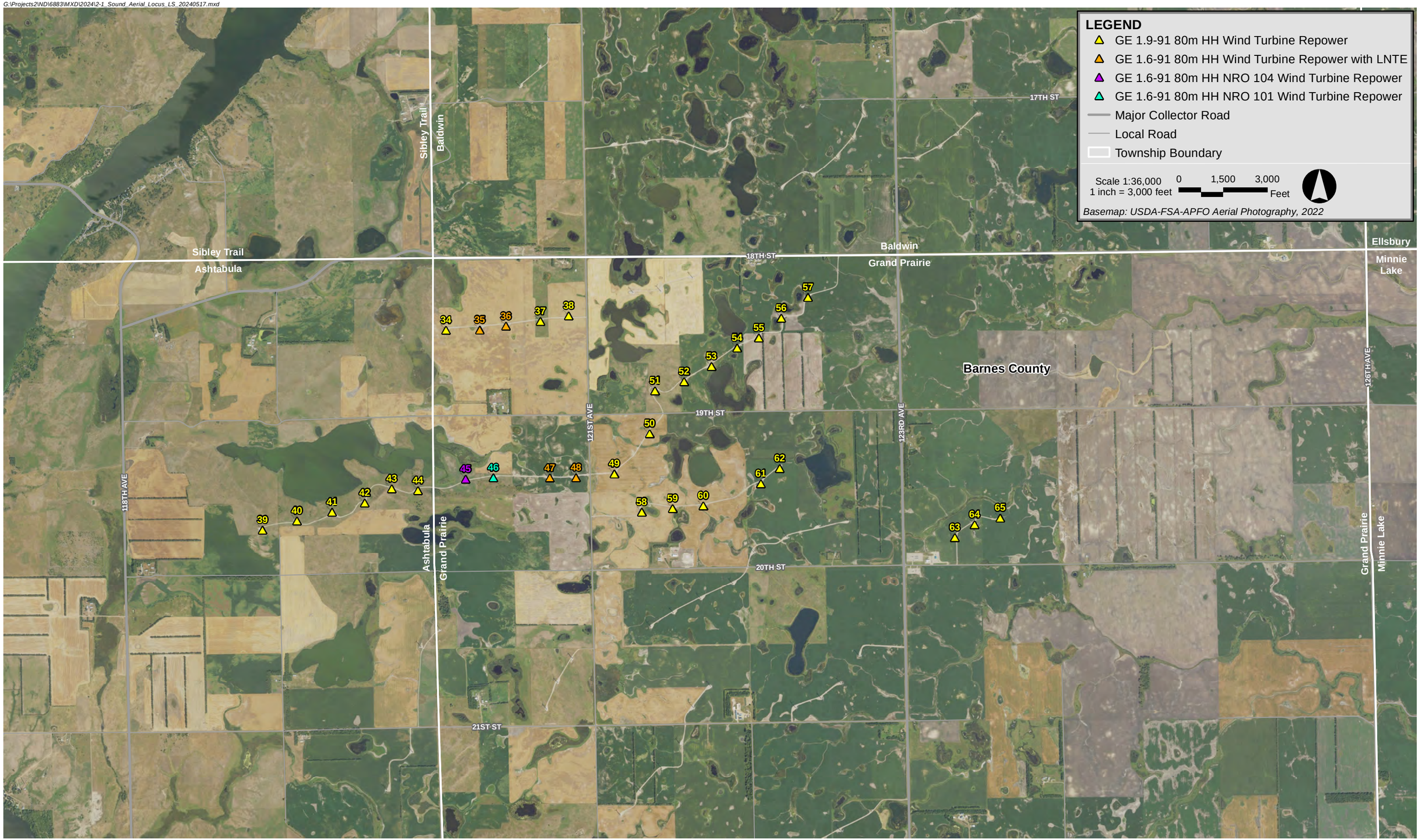

Ashtabula Repower **Barnes County, North Dakota**

Epsilon Associates Inc.

Figure 2-1
Aerial Locus

3.0 SOUND TERMINOLOGY

There are several ways in which sound levels are measured and quantified. All of them use the logarithmic decibel (dB) scale. The following information defines the sound level terminology used in this analysis.

The decibel scale is logarithmic to accommodate the wide range of sound intensities found in the environment. A property of the decibel scale is that the sound pressure levels of two or more separate sounds are not directly additive. For example, if a sound of 50 dB is added to another sound of 50 dB, the total is only a 3-decibel increase (53 dB), which is equal to doubling in sound energy, but not equal to a doubling in decibel quantity (100 dB). Thus, every 3-dB change in sound level represents a doubling or halving of sound energy. The human ear does not perceive changes in the sound pressure level as equal changes in loudness. Scientific research demonstrates that the following general relationships hold between sound level and human perception for two sound levels with the same or very similar frequency characteristics[2]:

- 3 dB increase or decrease results in a change in sound that is just perceptible to the average person,
- 5 dB increase or decrease is described as a clearly noticeable change in sound level, and
- 10 dB increase or decrease is described as twice or half as loud.

Another mathematical property of decibels is that if one source of sound is at least 10 dB louder than another source, then the total sound level is simply the sound level of the higher-level source. For example, a sound source at 60 dB plus another sound source at 47 dB is equal to 60 dB.

A sound level meter (SLM) that is used to measure sound is a standardized instrument.[3] It contains "weighting networks" (e.g., A-, C-, Z-weightings) to adjust the frequency response of the instrument. Frequencies, reported in Hertz (Hz), are detailed characterizations of sounds, often addressed in musical terms as "pitch" or "tone". The most commonly used weighting network is the A-weighting because it most closely approximates how the human ear responds to sound at various frequencies. The A-weighting network is the accepted scale used for community sound level measurements; therefore, sounds are frequently reported as detected with a sound level meter using this weighting. A-weighted sound levels emphasize middle frequency sounds (i.e., middle pitched – around 1,000 Hz), and de-emphasize low and high frequency sounds. These sound levels are reported in decibels designated as "dBA". The C-weighting network has a nearly flat response for frequencies between 63 Hz and 4,000 Hz and is noted as dBC. Z-weighted sound levels are measured sound levels without any weighting curve and are otherwise referred

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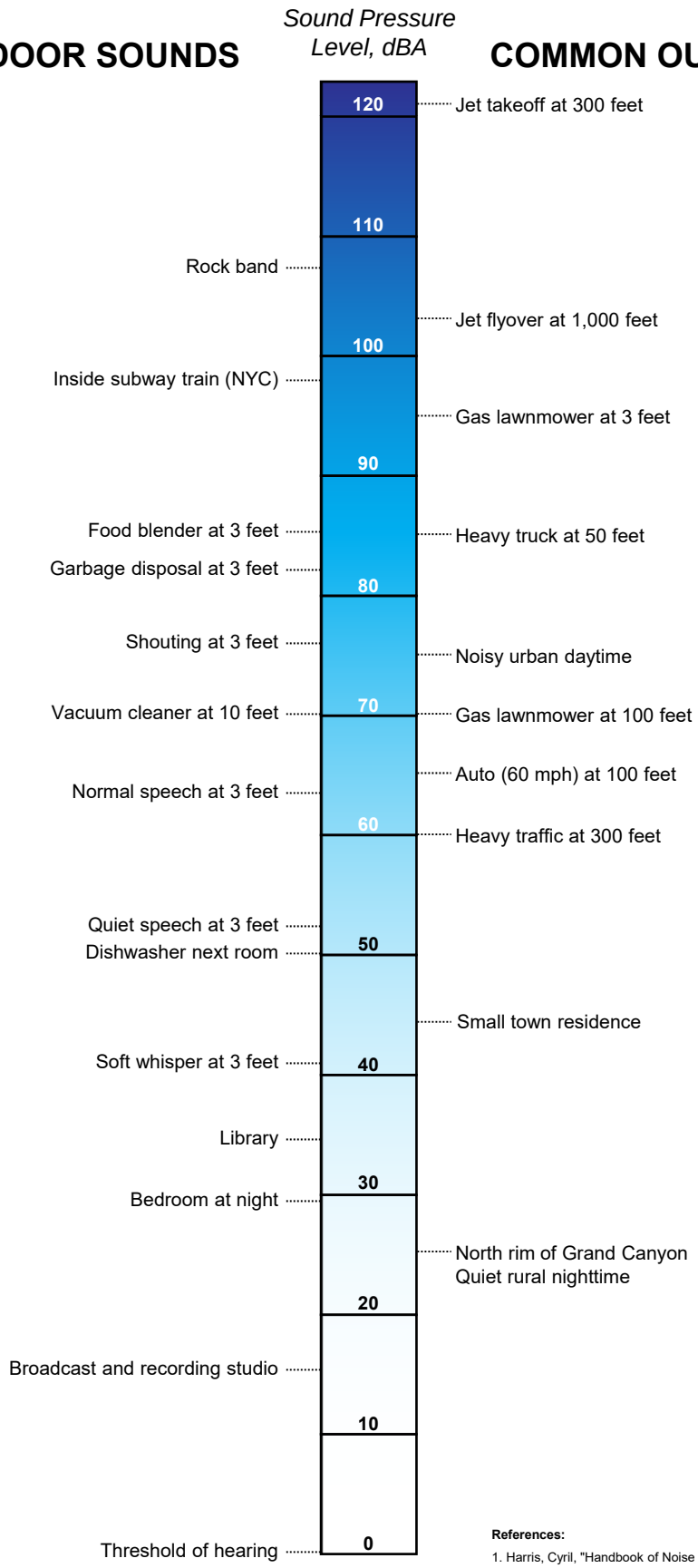
[2] Bies, David, and Colin Hansen. 2009. *Engineering Noise Control: Theory and Practice*, 4th Edition. New York: Taylor and Francis.

[3] *American National Standard Electroacoustics – Sound Level Meters – Part 1: Specifications,* ANSI S1.4-2014 (R2019), published by the Standards Secretariat of the Acoustical Society of America, Melville, NY.

to as “unweighted”. Sound pressure levels for some common indoor and outdoor environments are shown in Figure 3-1.

Because the sounds in our environment vary with time they cannot simply be described with a single number. Two methods are used for describing variable sounds. These are exceedance levels and the equivalent level, both of which are derived from some number of moment-to-moment A-weighted sound level measurements. Exceedance levels are values from the cumulative amplitude distribution of all the sound levels observed during a measurement period. Exceedance levels are designated L_n, where n can have a value between 0 and 100 in terms of percentage. The L_{eq} is a sound level metric that is commonly reported in community sound level monitoring and is utilized in this report. The L_{eq} is described in further detail below.

- L_{eq}, the equivalent level, is the level of a hypothetical steady sound that would have the same energy (*i.e.,* the same time-averaged mean square sound pressure) as the actual fluctuating sound observed. The equivalent level is designated L_{eq} and is typically A-weighted. The equivalent level represents the time average of the fluctuating sound pressure, but because sound is represented on a logarithmic scale and the averaging is done with linear mean square sound pressure values, the L_{eq} is mostly determined by loud sounds if there are fluctuating sound levels.



References:

1. Harris, Cyril, "Handbook of Noise Acoustical Measurements and Noise Control", p 1-10., 1998
2. "Controlling Noise", USAF, AFMC, AFDTC, Elgin AFB, Fact Sheet, August 1996
3. California Dept. of Trans., "Technical Noise Supplement", Oct, 1998

Figure 3-1

Common Indoor and Outdoor Sound Levels

4.0 NOISE REGULATIONS

4.1 Federal Regulations

There are no federal community noise regulations applicable to this Project.

4.2 North Dakota State Regulations

The Project, located in North Dakota, is required to comply with the following sound requirement:

Section 69-06-08-01 Energy Conversion Facility Siting Criteria

4. Additional avoidance areas for wind energy conversion facilities. A wind energy conversion facility site must not include a geographic area where, due to operation of the facility, the sound levels within one hundred feet of an inhabited residence or a community building will exceed forty-five dBA. The sound level avoidance area criteria may be waived in writing by the owner of the occupied residence or the community building.

4.3 Local Regulations

There are no local community noise regulations applicable to this Project.

Therefore, modeling receptors were evaluated in this analysis against the 45 dBA limit.

5.0 MODELED SOUND LEVELS

5.1 Sound Sources

5.1.1 Project Wind Turbines

The sound level analysis for the Project includes 32 wind turbines. These 32 wind turbines are depicted in Figure 5-1. The array consists of one (1) wind turbine model: the GE 1.6-91 at a hub height of 80-meters. Wind turbines 35, 36, 47, and 48 will have Low Noise Trailing Edge (LNTE) blades. Wind turbine 45 will be in Noise Reduced Operations (NRO) 104 mode. Wind turbine 46 will be in Noise Reduced Operations (NRO) 101 mode. The GE 1.6-91 wind turbines have a rotor diameter of 91 meters. Technical reports from GE[4,5] were provided to Epsilon which documented the expected sound power levels associated with the GE 1.6-91.

5.2 Modeling Methodology

The sound impacts associated with the proposed wind turbines were predicted using the CadnaA sound level calculation software developed by DataKustik GmbH. This software uses the ISO 9613-2 international standard for sound propagation.[6] The benefits of this software are a more refined set of computations due to the inclusion of topography, ground attenuation, multiple building reflections (if applicable), drop-off with distance, and atmospheric absorption. The CadnaA software allows for octave band calculation of sound from multiple sources as well as computation of diffraction.

Inputs and significant parameters employed in the model are described below and summarized in Table 5-1 below.

- *Project Array:* This analysis is for the wind turbine array provided to Epsilon on December 20, 2022. The Project array is identified in Figure 5-1. The wind turbine coordinates are provided in Appendix A.

- *Modeling Receptor Locations:* A modeling receptor dataset dated January 26, 2023 was provided to Epsilon. The dataset included 316 receptors. This dataset was clipped such that only receptors within 1.5 miles of an Otter Tail Ashtabula wind turbine were included in the analysis. Atwell provided additional information indicating if each receptor was inhabited or uninhabited. Atwell also provided information of a new construction residential building in the Project area. The resulting 21 inhabited receptors were input to the CadnaA model. All modeling receptors were input as discrete points at a height of 1.5 meters above ground level to mimic the ears of a typical standing

[4] General Electric Company, Technical Documentation Wind Turbine Generator Systems 1.6-91 – 60 Hz Product Acoustic Specifications, Rev. 03, 2021.

[5] General Electric Company, Technical Documentation Wind Turbine Generator Systems 1.6-91 RePower with LNTE – 60 Hz Product Acoustic Specifications, Rev. 03, 2021.

[6] *Acoustics – Attenuation of sound during propagation outdoors – Part 2: General method of calculation,* International Standard ISO 9613-2:1996 (International Organization for Standardization, Geneva, Switzerland, 1996).

person. In order to provide robust modeling coverage of each inhabited location, additional modeling locations were included offset by 100 feet away (or 200 feet for receptors with signed waivers) from the center point of the receptor in each of the four cardinal directions (north, south, east and west). Therefore, each inhabited location was evaluated at a total of five locations; the center point of the receptor itself, and at the four offset locations on land 100 feet (or 200 feet for receptors with signed waivers) from the receptor. This resulted in a total of 105 receptors. The center points of the modeled locations (receptors) are shown in Figure 5-1. Details of each modeling location are presented in Appendix B.

- *Modeling Grid:* A modeling grid with 20-meter spacing was calculated for the entire Project Area and the surrounding region. The grid was modeled at a height of 1.5 meters above ground level for consistency with the discrete modeling points. This modeling grid allowed for the creation of sound level isolines.

- *Terrain Elevation:* Elevation contours for the modeling domain were directly imported into CadnaA which allowed for consideration of terrain shielding where appropriate. The terrain height contour elevations for the modeling domain were generated from elevation information derived from the National Elevation Dataset (NED) developed by the U.S. Geological Survey.

- *Source Sound Levels:* Sound power levels used in the modeling were described in Section 5.1. Documentation from GE provided levels that represent "worst-case" operational sound level emissions for the Project's proposed wind turbines were input into the model.

- *Meteorological Conditions:* A temperature of 10°C (50°F) and a relative humidity of 70% was assumed in the model.

- *Ground Attenuation:* Spectral ground absorption was calculated using a G-factor of 0 which corresponds to "hard ground" consisting of a hard ground surface. The model, consistent with the standard, allows inputs between 0 (hard ground) and 1 (porous ground). This is a conservative approach as the vast majority of the area is actually agricultural.

Octave band sound power levels corresponding to the highest available wind turbine broadband sound power level for each wind turbine type were input into CadnaA to model wind turbine generated L_{eq} sound pressure levels during conditions when worst-case sound power levels are expected. Sound pressure levels were modeled at 105 receptors representing 21 inhabited locations within the vicinity of the Project. In addition to modeling at discrete points, sound levels were also modeled throughout a large grid of points, each spaced 20 meters apart to allow for the generation of sound level isolines.

Several modeling assumptions inherent in the ISO 9613-2 calculation methodology, or selected as conditional inputs by Epsilon, were implemented in the CadnaA model to ensure conservative results (i.e., higher sound levels), and are described below:

- All modeled sources were assumed to be operating simultaneously and at the design wind speed corresponding to the greatest sound level impacts.

- As per ISO 9613-2, the model assumed favorable conditions for sound propagation, corresponding to a moderate, well-developed ground-based temperature inversion, as might occur on a calm, clear night or equivalently downwind propagation.

- Meteorological conditions assumed in the model (T=10°C/RH=70%) were selected to minimize atmospheric attenuation in the 500 Hz and 1 kHz octave bands where the human ear is most sensitive.

- No additional attenuation due to tree shielding, air turbulence, or wind shadow effects was considered in the model.

Table 5-1 Summary of Key Sound Level Modeling Inputs

Modeling Parameter	Description / Value
Wind Turbine Array	Provided by Atwell
Terrain	U.S.G.S. Data
Wind Turbine Sound Power Levels	GE Specifications Documentation
Meteorological Conditions	T=10°C / RH=70%
Ground Absorption Factor	0

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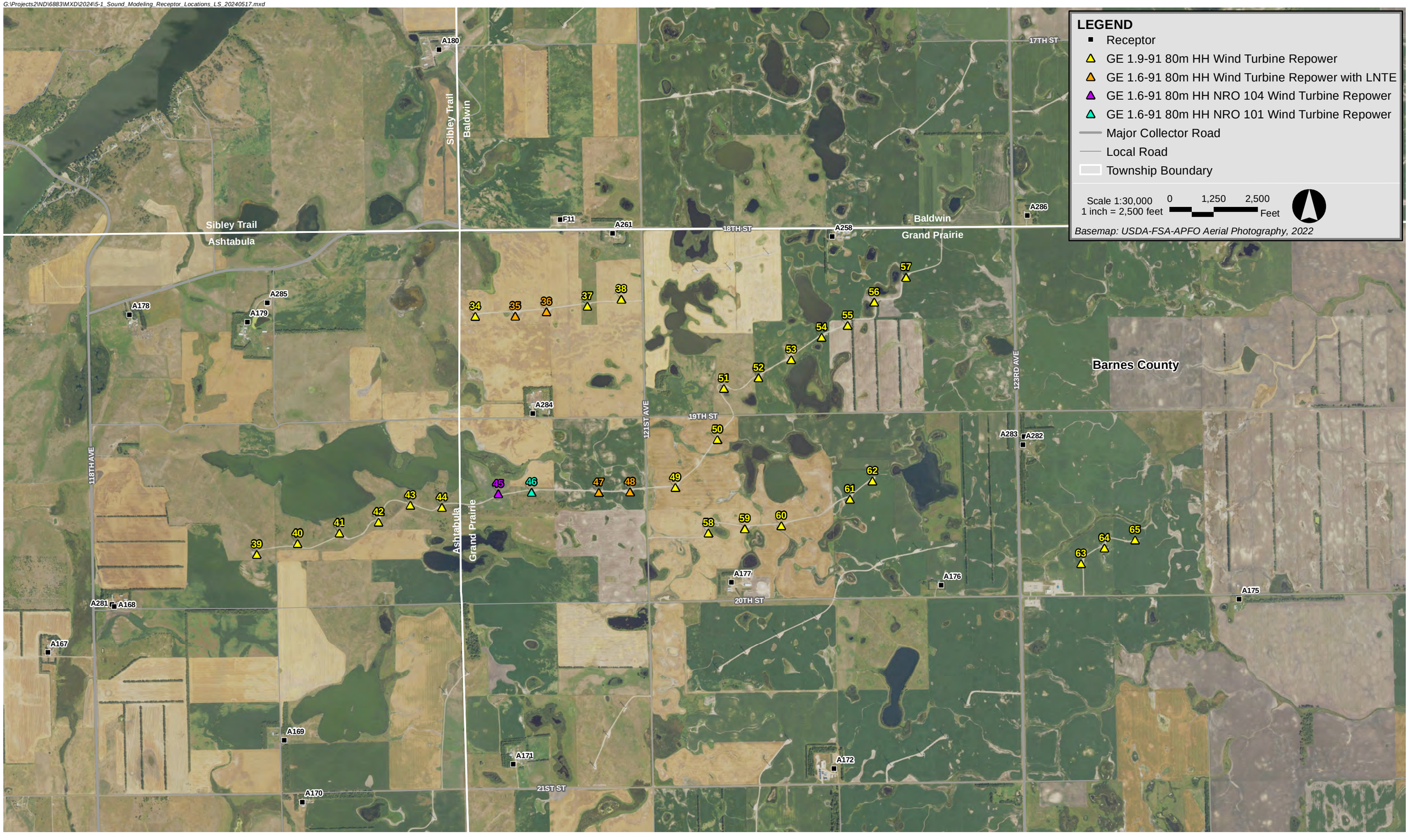

Ashtabula Repower **Barnes County, North Dakota**

Epsilon Associates Inc.

Figure 5-1
Sound Level Modeling Locations

5.3 Sound Level Modeling Results

All modeled sound levels, as output from CadnaA are A-weighted equivalent sound levels (L_{eq}, dBA). Table B-1.1 in Appendix B shows the predicted broadband (dBA) sound levels at the 21 receptors and their additional offset locations modeled for the Project. The broadband L_{eq} sound levels range from 28 to 49 dBA. These sound levels represent the worst-case future L_{eq} sound levels produced by the Project wind turbines. The maximum modeled sound level of 49 dBA occurs at receptor A177, which has signed a waiver with Otter Tail Power. The highest modeled sound level at a receptor which has not signed a waiver with Otter Tail Power is 45 dBA, which occurs at receptor A284. Table B-1.2 in Appendix B shows the predicted sound levels sorted from high to low.

In addition to the discrete modeling points, L_{eq} sound level isolines generated from the modeling grid are presented in Figure 5-2.

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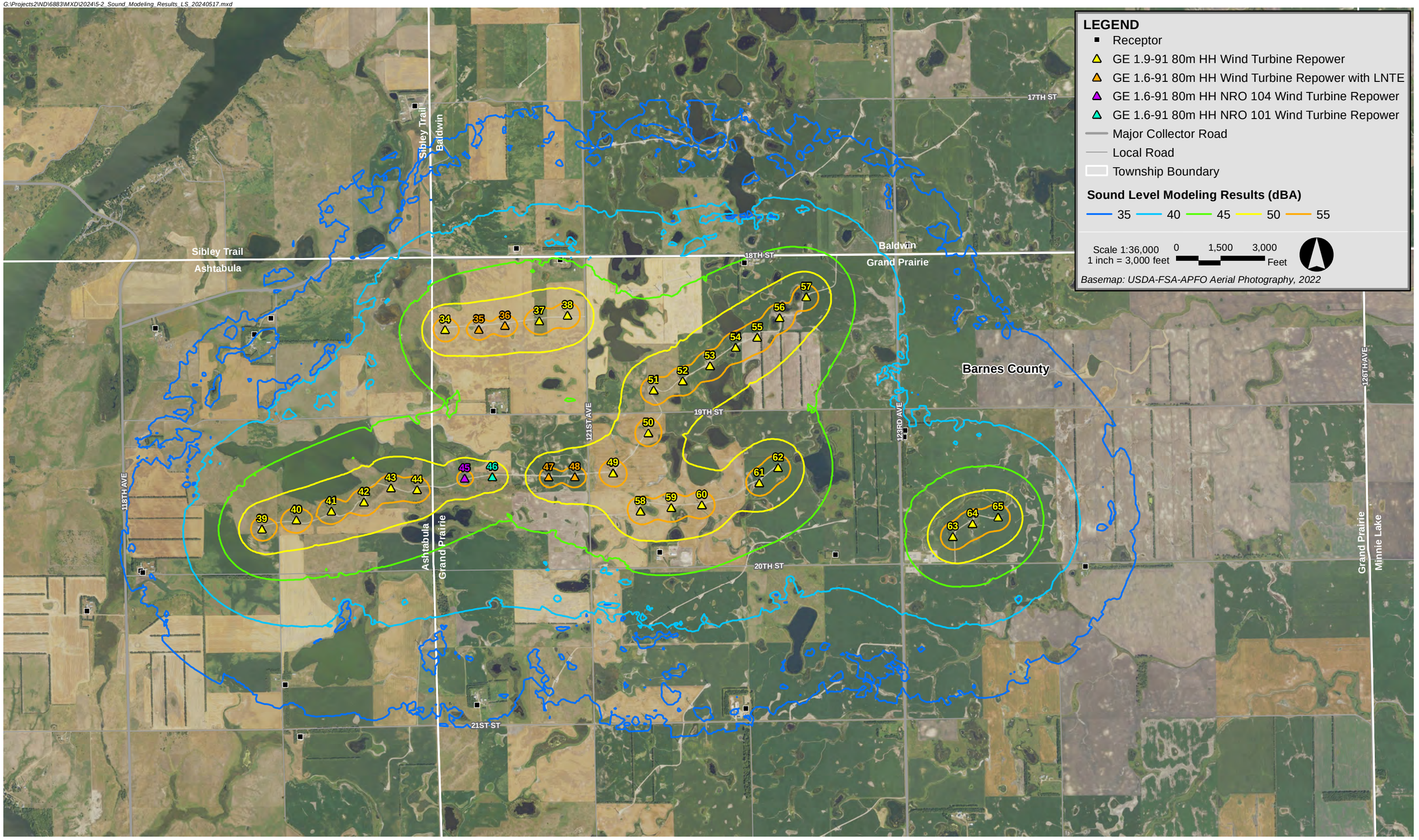

Ashtabula Repower **Barnes County, North Dakota**

Epsilon ASSOCIATES INC.

Figure 5-2
Sound Level Modeling Results

6.0 EVALUATION OF SOUND LEVELS

The Project is subject to the requirements contained in the North Dakota Energy Conversion Facility Siting Criteria**.** Sound levels from operation of the Project are limited by these regulations to 45 dBA within 100 feet of an inhabited residence or community building. Additionally, sound levels from the operation of the Project are limited to 50 dBA within 200 feet of an inhabited residence for any location with a signed Noise Waiver with Otter Tail Power. All modeled sound levels, as output from CadnaA and presented in Appendix B, are A-weighted equivalent sound levels (L_{eq}, dBA). These levels may be used in evaluating measured sound pressure levels over typical averaging durations, (i.e., ten (10) minutes or one (1) hour).

A review of Table B-1.2 in Appendix B shows the highest sound level within 100 feet of an inhabited residence that has not signed a waiver with Otter Tail Power in this analysis to be 45 dBA. This occurs at Receptor A284. The results also show that the highest sound level within 200 feet of an inhabited residence that has signed a waiver with Otter Tail Power in this analysis to be 49 dBA. This occurs at Receptor A177. Therefore, the Project is in compliance with the North Dakota Administrative Code Energy Conversion Facility Siting Criteria with respect to sound.

7.0 CONCLUSIONS

A comprehensive sound level modeling assessment was conducted for the Otter Tail Ashtabula Wind Repower Project within Barnes County, North Dakota. Sound levels resulting from the operation of all 32 Project wind turbines were calculated at 105 modeling receptors, and isolines were generated from a grid encompassing the area surrounding the wind turbines. The predicted L_{eq} sound levels at all receptors in the study area ranged from 28 to 49 dBA. Predicted sound levels at all receptor locations that have not signed a waiver with Otter Tail Power are all at or below the state limit of 45 dBA within 100 feet of an inhabited residence. Predicted sound levels at all receptor locations that have signed waivers with Otter Tail Power are below the waiver limit of 50 dBA within 200 feet of an inhabited residence. Thus, the Project meets the requirements with respect to sound in the regulations.

Appendix A
Sound Source Coordinates

Table A-1: Wind Turbine Coordinates

Wind Turbine ID	Wind Turbine Type	Hub Height (m)	Coordinates NAD83 UTM Zone 14N (meters)	
			X (Easting)	Y (Northing)
34	GE 1.6-91	80	578932.82	5221992.08
35	GE 1.6-91	80	579281.66	5221996.74
36	GE 1.6-91	80	579554.22	5222033.96
37	GE 1.6-91	80	579909.88	5222083.20
38	GE 1.6-91	80	580204.73	5222142.76
39	GE 1.6-91	80	577033.81	5219922.21
40	GE 1.6-91	80	577389.11	5220015.87
41	GE 1.6-91	80	577751.91	5220109.20
42	GE 1.6-91	80	578092.09	5220202.81
43	GE 1.6-91	80	578370.79	5220350.98
44	GE 1.6-91	80	578644.17	5220332.15
45	GE 1.6-91	80	579135.63	5220450.17
46	GE 1.6-91	80	579423.66	5220465.14
47	GE 1.6-91	80	580007.59	5220461.87
48	GE 1.6-91	80	580280.68	5220465.57
49	GE 1.6-91	80	580674.80	5220504.04
50	GE 1.6-91	80	581040.63	5220920.28
51	GE 1.6-91	80	581095.28	5221365.84
52	GE 1.6-91	80	581397.21	5221458.57
53	GE 1.6-91	80	581683.19	5221618.11
54	GE 1.6-91	80	581946.11	5221810.81
55	GE 1.6-91	80	582172.02	5221914.08
56	GE 1.6-91	80	582404.05	5222117.37
57	GE 1.6-91	80	582681.70	5222332.42
58	GE 1.6-91	80	580960.93	5220108.14
59	GE 1.6-91	80	581278.71	5220145.50
60	GE 1.6-91	80	581597.15	5220172.33
61	GE 1.6-91	80	582192.98	5220402.74
62	GE 1.6-91	80	582388.15	5220561.06
63	GE 1.6-91	80	584203.29	5219842.09
64	GE 1.6-91	80	584406.18	5219978.13
65	GE 1.6-91	80	584670.83	5220048.37

Appendix B

Sound Level Modeling Results - Tabular

Table B-1.1: Sound Level Modeling Results Sorted by Receptor ID

Receptor ID	Signed Waiver	Coordinates UTM NAD83 Zone 14N		Project Only L_{eq} Sound Level (dBA)
		X (m)	Y (m)	
A167	No	575218.28	5219071.08	33
A167-E	No	575248.75	5219071.47	33
A167-S	No	575218.67	5219040.61	33
A167-W	No	575187.82	5219070.69	32
A167-N	No	575217.90	5219101.55	33
A168	No	575774.24	5219489.86	35
A168-E	No	575804.71	5219490.25	36
A168-S	No	575774.63	5219459.40	35
A168-W	No	575743.77	5219489.47	35
A168-N	No	575773.85	5219520.33	36
A169	No	577273.49	5218307.23	36
A169-E	No	577303.95	5218307.62	36
A169-S	No	577273.88	5218276.76	36
A169-W	No	577243.02	5218306.83	36
A169-N	No	577273.09	5218337.69	36
A170	Yes	577430.75	5217768.83	30
A170-E	Yes	577461.22	5217769.23	28
A170-S	Yes	577431.15	5217738.36	33
A170-W	Yes	577400.29	5217768.43	29
A170-N	Yes	577430.36	5217799.30	34
A171	No	579265.26	5218098.36	36
A171-E	No	579295.73	5218098.76	36
A171-S	No	579265.67	5218067.89	36
A171-W	No	579234.79	5218097.95	36
A171-N	No	579264.85	5218128.82	36
A172	No	582053.38	5218060.04	35
A172-E	No	582083.85	5218060.46	35
A172-S	No	582053.81	5218029.57	35
A172-W	No	582022.92	5218059.62	35
A172-N	No	582052.96	5218090.51	35
A175	No	585576.54	5219534.46	38
A175-E	No	585607.01	5219534.90	38
A175-S	No	585576.98	5219504.00	38
A175-W	No	585546.08	5219534.03	39
A175-N	No	585576.10	5219564.93	38
A176	Yes	582984.79	5219656.29	42
A176-E	Yes	583015.26	5219656.71	41
A176-S	Yes	582985.22	5219625.82	41
A176-W	Yes	582954.32	5219655.86	42
A176-N	Yes	582984.36	5219686.75	42
A177	Yes	581161.73	5219680.59	48

Table B-1.1: Sound Level Modeling Results Sorted by Receptor ID

Receptor ID	Signed Waiver	Coordinates UTM NAD83 Zone 14N		Project Only L_{eq} Sound Level (dBA)
		X (m)	Y (m)	
A177-E	Yes	581222.67	5219681.01	48
A177-S	Yes	581162.14	5219619.65	47
A177-W	Yes	581100.78	5219680.18	48
A177-N	Yes	581161.31	5219741.54	49
A178	No	575927.34	5222008.56	29
A178-E	No	575957.81	5222008.95	30
A178-S	No	575927.73	5221978.10	29
A178-W	No	575896.88	5222008.17	29
A178-N	No	575926.95	5222039.03	30
A179	No	576953.92	5221944.49	36
A179-E	No	576984.39	5221944.89	35
A179-S	No	576954.32	5221914.02	35
A179-W	No	576923.46	5221944.09	36
A179-N	No	576953.53	5221974.96	36
A180	No	578619.96	5224316.01	34
A180-E	No	578650.43	5224316.41	34
A180-S	No	578620.37	5224285.54	34
A180-W	No	578589.50	5224315.61	34
A180-N	No	578619.56	5224346.48	34
A258	Yes	582039.11	5222688.12	45
A258-E	Yes	582069.58	5222688.54	46
A258-S	Yes	582039.54	5222657.65	46
A258-W	Yes	582008.65	5222687.70	45
A258-N	Yes	582038.69	5222718.59	45
A261	Yes	580127.81	5222718.05	45
A261-E	Yes	580158.28	5222718.46	45
A261-S	Yes	580128.22	5222687.58	46
A261-W	Yes	580097.34	5222717.64	45
A261-N	Yes	580127.40	5222748.52	38
A281	No	575795.70	5219471.50	36
A281-E	No	575826.17	5219471.89	36
A281-S	No	575796.09	5219441.04	35
A281-W	No	575765.24	5219471.12	35
A281-N	No	575795.32	5219501.97	36
A282	No	583697.45	5220879.28	41
A282-E	No	583727.92	5220879.71	41
A282-S	No	583697.88	5220848.81	42
A282-W	No	583666.98	5220878.85	41
A282-N	No	583697.02	5220909.74	41
A283	No	583706.45	5220948.40	41
A283-E	No	583736.91	5220948.83	41

Table B-1.1: Sound Level Modeling Results Sorted by Receptor ID

Receptor ID	Signed Waiver	Coordinates UTM NAD83 Zone 14N		Project Only L_{eq} Sound Level (dBA)
		X (m)	Y (m)	
A283-S	No	583706.88	5220917.93	41
A283-W	No	583675.98	5220947.97	41
A283-N	No	583706.02	5220978.87	41
A284	No	579433.58	5221148.89	45
A284-E	No	579464.05	5221149.29	45
A284-S	No	579433.99	5221118.42	45
A284-W	No	579403.11	5221148.48	45
A284-N	No	579433.17	5221179.35	45
A285	No	577126.46	5222111.93	37
A285-E	No	577156.93	5222112.33	37
A285-S	No	577126.85	5222081.46	37
A285-W	No	577095.99	5222111.54	37
A285-N	No	577126.06	5222142.40	37
A286	No	583735.28	5222871.02	38
A286-E	No	583765.74	5222871.45	38
A286-S	No	583735.71	5222840.55	38
A286-W	No	583704.81	5222870.59	38
A286-N	No	583734.85	5222901.49	38
F11	No	579672.00	5222836.00	44
F11-E	No	579702.48	5222836.00	44
F11-S	No	579672.00	5222866.48	44
F11-W	No	579641.52	5222836.00	44
F11-N	No	579672.00	5222805.52	43

Table B-1.2: Sound Level Modeling Results Sorted by Sound Level

Receptor ID	Signed Waiver	Coordinates UTM NAD83 Zone 14N		Project Only L_{eq} Sound Level (dBA)
		X (m)	Y (m)	
A177-N	Yes	581161.31	5219741.54	49
A177	Yes	581161.73	5219680.59	48
A177-W	Yes	581100.78	5219680.18	48
A177-E	Yes	581222.67	5219681.01	48
A177-S	Yes	581162.14	5219619.65	47
A258-S	Yes	582039.54	5222657.65	46
A261-S	Yes	580128.22	5222687.58	46
A258-E	Yes	582069.58	5222688.54	46
A258	Yes	582039.11	5222688.12	45
A284	No	579433.58	5221148.89	45
A284-E	No	579464.05	5221149.29	45
A284-S	No	579433.99	5221118.42	45
A284-W	No	579403.11	5221148.48	45
A284-N	No	579433.17	5221179.35	45
A261-W	Yes	580097.34	5222717.64	45
A258-W	Yes	582008.65	5222687.70	45
A261	Yes	580127.81	5222718.05	45
A258-N	Yes	582038.69	5222718.59	45
A261-E	Yes	580158.28	5222718.46	45
F11-S	No	579672.00	5222866.48	44
F11-E	No	579702.48	5222836.00	44
F11	No	579672.00	5222836.00	44
F11-W	No	579641.52	5222836.00	44
F11-N	No	579672.00	5222805.52	43
A176-N	Yes	582984.36	5219686.75	42
A176-W	Yes	582954.32	5219655.86	42
A282-S	No	583697.88	5220848.81	42
A176	Yes	582984.79	5219656.29	42
A282-E	No	583727.92	5220879.71	41
A282-N	No	583697.02	5220909.74	41
A282	No	583697.45	5220879.28	41
A283-S	No	583706.88	5220917.93	41
A283-W	No	583675.98	5220947.97	41
A283	No	583706.45	5220948.40	41
A283-N	No	583706.02	5220978.87	41
A283-E	No	583736.91	5220948.83	41
A282-W	No	583666.98	5220878.85	41
A176-E	Yes	583015.26	5219656.71	41
A176-S	Yes	582985.22	5219625.82	41
A175-W	No	585546.08	5219534.03	39
A286-W	No	583704.81	5222870.59	38

Table B-1.2: Sound Level Modeling Results Sorted by Sound Level

Receptor ID	Signed Waiver	Coordinates UTM NAD83 Zone 14N		Project Only L_{eq} Sound Level (dBA)
		X (m)	Y (m)	
A286-S	No	583735.71	5222840.55	38
A286	No	583735.28	5222871.02	38
A175-N	No	585576.10	5219564.93	38
A286-N	No	583734.85	5222901.49	38
A261-N	Yes	580127.40	5222748.52	38
A286-E	No	583765.74	5222871.45	38
A175	No	585576.54	5219534.46	38
A175-S	No	585576.98	5219504.00	38
A175-E	No	585607.01	5219534.90	38
A285-E	No	577156.93	5222112.33	37
A285-S	No	577126.85	5222081.46	37
A285	No	577126.46	5222111.93	37
A285-W	No	577095.99	5222111.54	37
A285-N	No	577126.06	5222142.40	37
A169-N	No	577273.09	5218337.69	36
A169	No	577273.49	5218307.23	36
A169-E	No	577303.95	5218307.62	36
A179-W	No	576923.46	5221944.09	36
A169-W	No	577243.02	5218306.83	36
A169-S	No	577273.88	5218276.76	36
A179	No	576953.92	5221944.49	36
A281-E	No	575826.17	5219471.89	36
A281-N	No	575795.32	5219501.97	36
A171-N	No	579264.85	5218128.82	36
A168-E	No	575804.71	5219490.25	36
A168-N	No	575773.85	5219520.33	36
A179-N	No	576953.53	5221974.96	36
A171	No	579265.26	5218098.36	36
A171-E	No	579295.73	5218098.76	36
A171-W	No	579234.79	5218097.95	36
A281	No	575795.70	5219471.50	36
A171-S	No	579265.67	5218067.89	36
A168	No	575774.24	5219489.86	35
A179-S	No	576954.32	5221914.02	35
A281-S	No	575796.09	5219441.04	35
A168-S	No	575774.63	5219459.40	35
A281-W	No	575765.24	5219471.12	35
A168-W	No	575743.77	5219489.47	35
A172-N	No	582052.96	5218090.51	35
A172-E	No	582083.85	5218060.46	35
A179-E	No	576984.39	5221944.89	35

Table B-1.2: Sound Level Modeling Results Sorted by Sound Level

Receptor ID	Signed Waiver	Coordinates UTM NAD83 Zone 14N		Project Only L_{eq} Sound Level (dBA)
		X (m)	Y (m)	
A172	No	582053.38	5218060.04	35
A172-S	No	582053.81	5218029.57	35
A172-W	No	582022.92	5218059.62	35
A170-N	Yes	577430.36	5217799.30	34
A180-S	No	578620.37	5224285.54	34
A180	No	578619.96	5224316.01	34
A180-W	No	578589.50	5224315.61	34
A180-E	No	578650.43	5224316.41	34
A180-N	No	578619.56	5224346.48	34
A170-S	Yes	577431.15	5217738.36	33
A167-E	No	575248.75	5219071.47	33
A167-N	No	575217.90	5219101.55	33
A167	No	575218.28	5219071.08	33
A167-S	No	575218.67	5219040.61	33
A167-W	No	575187.82	5219070.69	32
A178-N	No	575926.95	5222039.03	30
A170	Yes	577430.75	5217768.83	30
A178-E	No	575957.81	5222008.95	30
A178	No	575927.34	5222008.56	29
A178-S	No	575927.73	5221978.10	29
A178-W	No	575896.88	5222008.17	29
A170-W	Yes	577400.29	5217768.43	29
A170-E	Yes	577461.22	5217769.23	28

May 22, 2024

Angelique Theriot
SEARCH
angelique.theriot@searchinc.com

SHSND Ref.: 23-0256 PU-23-252 in Barnes County, North Dakota

Dear Angelique,

From your submission on behalf of Atwell, LLC and Atwell's previous submissions on behalf of Otter Tail Power for the repower of the Ashtabula I Wind farm, it is our understanding that SHSND Ref: 23-0256 Ashtabula I Wind Upgrade Project involves replacing blades, hubs, and gear boxes on 32 existing wind turbines, which will result in an increase to the total height of the turbines. After reviewing the cultural resources survey of the additional area of potential effect, it is our determination that there are no additional adverse effects to significant sites from this project provided it takes place in the location and in the manner described in the documentation.

Thank you for the opportunity to review this project under North Dakota cultural resources consultation. This letter does not serve as federal agency consultation or SHPO consultation for compliance with Section 106 of the National Historic Preservation Act of 1966, as amended, (36 CFR Part 800), or the National Environmental Policy Act, as amended, (42 U.S.C. §§ 4321- 4347).

If you have any questions, please contact Lorna Meidinger, Lead Historic Preservation Specialist at lbmeidinger@nd.gov or (701) 328-2089.

Sincerely,

for William D. Peterson, PhD
Director, State Historical Society of North Dakota

23-0256

DOCUMENT NUMBER **299171**

COUNTY RECORDER BARNES SEAL COUNTY STATE OF NORTH DAKOTA

299171
1 of 8

Return To: ATWELL-GROUP
7100 E PLEASANT VALLEY RD STE
INDEPENDENCE OH 44131-5559

Fee: $ 65.00 **299171**
OFFICE OF COUNTY RECORDER County of Barnes, North Dakota
I hereby certify that the within instrument was filed in this office on 08/01/2023 at 11:36 AM and was duly recorded.

Jody Hoff **County Recorder**
By Jodi Nelson **Deputy**

PREPARED BY AND
AFTER RECORDING RETURN TO:
Otter Tail Power Company
PO Box 496, Fergus Falls
Minnesota 56538
Attention: Bryce Haugen
(218) 739-8385

THIS SETBACK WAIVER AGREEMENT (this "**Agreement**"), is dated and effective as of July 26, 2023 ("**Effective Date**"), by and between Perry J. Burchill and Kathy L. Burchill, as Co-Trustees of the Perry J. Burchill Revocable Living Trust Agreement dated June 19, 2019, and Perry J. Burchill and Kathy L. Burchill, as Co-Trustees of the Kathy L. Burchill Revocable Living Trust Agreement dated June 19, 2019 ("**Owner**") with a mailing address of 12199 21st Street SE, Luverne, North Dakota 58056, and Otter Tail Power Company, a Minnesota corporation ("**Grantee**"), with a mailing address of PO Box 496, Fergus Falls, Minnesota 56538.

RECITALS:

A. Owner is the owner of that certain real property located in Barnes County, North Dakota, as more particularly described on the attached Exhibit A ("**Owner Property**").

B. Grantee owns, operates, and maintains a wind energy generation facility ("**Project**") on certain real property located adjacent to and in the vicinity of the Owner Property (collectively, the "**Project Property**").

C. Grantee intends to install new turbine technology on the Project, which includes new, longer turbine blades ("**Project Upgrades**"). The Project's turbine locations will not change, but the Project Upgrades will increase the overall height of the turbines (due to the increased blade length) and result in one or more turbine(s) on Project Property being within 1.1 times the height of the turbine from a property line of the Owner Property.

D. Owner is willing to grant to Grantee a setback waiver for the Owner Property as it relates to Grantee's Project on the Project Property, as set forth below.

Return To: ATWELL-GROUP
7100 E PLEASANT VALLEY RD STE
INDEPENDENCE OH 44131-5559

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree that the Recitals set forth above are hereby incorporated into the Agreement and further agree as follows:

1. **Setback Waiver**. North Dakota Century Code Section 49-22-05.1(4) and North Dakota Administrative Code Section 69-06-08-01(2)(a)(5) provide that a turbine shall be 1.1 times the turbine's height from the property line of a nonparticipating landowner ("**Property Line Setback**"), unless the setback is waived by written agreement. Owner agrees to and hereby does waive the Property Line Setback with respect to the Project, and supports the North Dakota Public Service Commission granting a variance to Grantee for the Project with respect to the Property Line Setback as it relates to the Owner Property.

2. **Cooperation**. Owner agrees to not publicly oppose or otherwise object to the Project and to execute and deliver such reasonably requested documents and take such action as may be reasonably requested by Grantee to carry out the purposes and intent of this Agreement.

3. **Term of Agreement**. The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2105.

4. **Consideration**. The consideration for this Agreement is set forth on the attached Exhibit B, which Exhibit B shall be removed before recording this Agreement in the official real property records of the county in which the Owner Property is located. Owner and Grantee agree that such removal of Exhibit B prior to recording shall not affect the validity of this Agreement.

5. **Termination**. Grantee shall have the right, at any time during the Term, to terminate this Agreement as to all or any part of the Owner Property by providing written notice to Owner. Following any such termination, Grantee is authorized to file a release of this Agreement in the official real property records of the county in which the Owner Property is located.

6. **Authority; Title**. Owner represents and warrants that it is the sole owner of the Owner Property in fee simple and has the full and unrestricted right and authority to execute and deliver this Agreement and to grant to Grantee the waiver and other rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so, and all persons having any ownership or interest in the Owner Property have signed this Agreement on behalf of Owner.

7. **Assignment**. Grantee shall have the right at any time, without need for consent from Owner, to assign or convey all or any portion of this Agreement to an assignee or assignees, on an exclusive or nonexclusive basis, or to mortgage or collaterally assign all or any part of its interest in the Agreement and its rights under the Agreement to any entity (each a "**Mortgagee**" and collectively, "**Mortgagees**"). Grantee may mortgage or encumber any part of Grantee's rights and interests under the Agreement without the need for consent from Owner, provided that any such mortgage attaches only to Grantee's rights and does not otherwise attach to the Owner

Return To: ATWELL-GROUP
7100 E PLEASANT VALLEY RD STE
INDEPENDENCE OH 44131-5559

Property. Owner shall have the right to sell, convey, or transfer its interest in the Owner Property, or a portion thereof, without the need for consent from Grantee, provided that Owner shall, prior to any such sale, conveyance, or other transfer, give written notice to Grantee thereof, which notice shall include the name, address, and telephone number of the proposed transferee.

8. **Notice**. All communications required or permitted by this Agreement shall be given in writing by personal delivery (confirmed by courier delivery service) or first-class U.S. mail, postage prepaid, return receipt requested, certified, addressed as follows:

If to Owner:

Perry & Kathy L. Burchill
12199 21st Street SE
Luverne, ND 58056
Phone: 701-840-1776 / 701-840-1734
E-mail: kathyburchill@~~yahoo.com~~ ymail.com

If to Grantee:

Otter Tail Power Company
Attn: Bryce Haugen
PO Box 496
Fergus Falls, Minnesota 56538
Phone: 218-739-8385
E-mail: bhaugen@otpco.com

Any party may change its address for purposes of this paragraph by giving notice of such change to the other parties in the manner provided in this Section 8. Any notice provided for herein shall become effective only upon actual receipt by the party to whom it is given, unless such notice is mailed by certified mail, return receipt requested, in which case it shall be deemed to be received five (5) business days after the date mailed.

9. **Recording**. Owner and Grantee agree that this Agreement may be recorded by Grantee in the official real property records of the county in which the Owner Property is located.

10. **Miscellaneous**. This Agreement shall be governed by the laws of the State of North Dakota. This Agreement constitutes the entire agreement between Grantee and Owner with respect to the subject matter hereof and supersedes any and all prior oral or written understandings, representations or statements among the parties with respect to the subject matter hereof. This Agreement may not be amended except in a writing executed by both parties. This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. Nothing herein shall be deemed to create a joint venture or partnership between parties hereto. In the event of breach of this Agreement, Grantee shall be entitled to all remedies provided at law or in equity, including injunctive relief. The prevailing party in any action arising out of, or in connection with, this Agreement shall be entitled to be reimbursed its costs and expenses, including reasonable attorney fees, by the non-prevailing party. NEITHER PARTY SHALL BE

Return To: ATWELL-GROUP
7100 E PLEASANT VALLEY RD STE
INDEPENDENCE OH 44131-5559

ENTITLED TO, AND OWNER AND GRANTEE HEREBY WAIVE ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.

[Signature pages follow.]

Return To: ATWELL-GROUP
7100 E PLEASANT VALLEY RD STE
INDEPENDENCE OH 44131-5559

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have signed this Agreement as of the Effective Date.

OWNER: **Perry J. Burchill and Kathy L. Burchill, as Co-Trustees of the Perry J. Burchill Revocable Living Trust Agreement dated June 19, 2019**

By: Perry J. Burchill
Name: **Perry J. Burchill**
Its: Co-Trustee

By: Kathy L. Burchill
Name: **Kathy L. Burchill**
Its: Co-Trustee

STATE OF ND)
) ss.
COUNTY OF Barnes)

On this 26 day of July, 2023, before me, the undersigned officer, personally appeared **Perry J. Burchill and Kathy L. Burchill,** as Co-Trustees of the Perry J. Burchill Revocable Living Trust Agreement dated June 19, 2019, known to me or satisfactorily proven to be the persons whose name is subscribed to the within instrument, and acknowledged that they executed the same for the purpose therein contained.

Witness my hand and official seal.

Debra A Eggert
Notary Public ND
(State)
My commission expires: 11-4-2025

DEBRA A. EGGERT
Notary Public
State of North Dakota
My Commission Expires Nov. 4, 2025

Return To: ATWELL-GROUP
7100 E PLEASANT VALLEY RD STE
INDEPENDENCE OH 44131-5559

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have signed this Agreement as of the Effective Date.

OWNER: Perry J. Burchill and Kathy L. Burchill, as Co-Trustees of the Kathy L. Burchill Revocable Living Trust Agreement dated June 19, 2019

By: Perry J. Burchill
Name: **Perry J. Burchill**
Its: Co-Trustee

By: Kathy L. Burchill
Name: **Kathy L. Burchill**
Its: Co-Trustee

STATE OF ND)
) ss.
COUNTY OF Barnes)

On this 26 day of July, 2023, before me, the undersigned officer, personally appeared **Perry J. Burchill and Kathy L. Burchill,** as Co-Trustees of the Kathy L. Burchill Revocable Living Trust Agreement dated June 19, 2019, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he/she/they executed the same for the purpose therein contained.

Witness my hand and official seal.

DEBRA A. EGGERT
Notary Public
State of North Dakota
My Commission Expires Nov. 4, 2025

Debra A Eggert
Notary Public 11-4-2025 ND
(State)
My commission expires: _____

Return To: ATWELL-GROUP
7100 E PLEASANT VALLEY RD STE
INDEPENDENCE OH 44131-5559

GRANTEE:

OTTER TAIL POWER COMPANY,
a Minnesota corporation

By: Bryce C. Haugen
Name: Bryce C. Haugen
Title: Energy Developer

STATE OF MINNESOTA)
) ss.
COUNTY OF Otter Tail)

The foregoing instrument was acknowledged before me this 1st day of August, 2023 by Bryce Haugen as the Energy Dev. for Otter Tail Power Company, a Minnesota corporation, on behalf of the corporation.

Connie M. Darling
Notary Public

CONNIE M. DARLING
Notary Public-Minnesota
My Commission Expires Jan 31, 2026

Return To: ATWELL-GROUP
7100 E PLEASANT VALLEY RD STE
INDEPENDENCE OH 44131-5559

EXHIBIT A

Legal Description of the Owner Property

The following described property located in Prairie Township, Barnes County, North Dakota:

Parcel 1:

The following described land located in Prairie Township, Barnes County, North Dakota:

That portion of the Northwest Quarter (NW ¼) of Section Nine (9), in Township One Hundred Forty-Two (142) North, of Range Fifty-Seven (57) West of the Fifth Principal Meridian, Barnes County, North Dakota, more particularly described as follows: Beginning at a point in the northwest corner of said Section 9, and thence running east on the section line 160 rods, thence south 100 rods parallel with the west section line of said section on the quarter line, thence west 160 rods parallel with the north section line of said section, thence north 100 rods on the section line of said section to the point of beginning,

Tax Identification Number: 13-0920200

DOCUMENT NUMBER **299147**

COUNTY RECORDER BARNES SEAL COUNTY STATE OF NORTH DAKOTA

299147
1 of 8

Return To: ATWELL-GROUP
7100 E PLEASANT VALLEY RD STE
INDEPENDENCE OH 44131-5559

Fee: $ 65.00 **299147**
OFFICE OF COUNTY RECORDER County of Barnes, North Dakota
I hereby certify that the within instrument was filed in this office on 07/25/2023 at 2:07 PM and was duly recorded.

Jody Hoff **County Recorder**

By Jodi Nelson **Deputy**

PREPARED BY AND
AFTER RECORDING RETURN TO:
Otter Tail Power Company
PO Box 496, Fergus Falls
Minnesota 56538
Attention: Bryce Haugen
(218) 739-8385

THIS SETBACK WAIVER AGREEMENT (this "**Agreement**"), is dated and effective as of July 24, 2023 ("**Effective Date**"), by and between Larry L. Svenningsen, a married individual ("**Owner**") with a mailing address of 12041 19th Street SE, Luverne, North Dakota 58056, and Otter Tail Power Company, a Minnesota corporation ("**Grantee**"), with a mailing address of PO Box 496, Fergus Falls, Minnesota 56538.

RECITALS:

A. Owner is the owner of that certain real property located in Barnes County, North Dakota, as more particularly described on the attached Exhibit A ("**Owner Property**").

B. Grantee owns, operates, and maintains a wind energy generation facility ("**Project**") on certain real property located adjacent to and in the vicinity of the Owner Property (collectively, the "**Project Property**").

C. Grantee intends to install new turbine technology on the Project, which includes new, longer turbine blades ("**Project Upgrades**"). The Project's turbine locations will not change, but the Project Upgrades will increase the overall height of the turbines (due to the increased blade length) and result in one or more turbine(s) on Project Property being within 1.1 times the height of the turbine from a property line of the Owner Property.

D. Owner is willing to grant to Grantee a setback waiver for the Owner Property as it relates to Grantee's Project on the Project Property, as set forth below.

Return To: ATWELL-GROUP
7100 E PLEASANT VALLEY RD STE
INDEPENDENCE OH 44131-5559

AGREEMENT:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree that the Recitals set forth above are hereby incorporated into the Agreement and further agree as follows:

1. **Setback Waiver.** North Dakota Century Code Section 49-22-05.1(4) and North Dakota Administrative Code Section 69-06-08-01(2)(a)(5) provide that a turbine shall be 1.1 times the turbine's height from the property line of a nonparticipating landowner ("**Property Line Setback**"), unless the setback is waived by written agreement. Owner agrees to and hereby does waive the Property Line Setback with respect to the Project, and supports the North Dakota Public Service Commission granting a variance to Grantee for the Project with respect to the Property Line Setback as it relates to the Owner Property.

2. **Cooperation.** Owner agrees to not publicly oppose or otherwise object to the Project and to execute and deliver such reasonably requested documents and take such action as may be reasonably requested by Grantee to carry out the purposes and intent of this Agreement.

3. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2105.

4. **Consideration.** The consideration for this Agreement is set forth on the attached Exhibit B, which Exhibit B shall be removed before recording this Agreement in the official real property records of the county in which the Owner Property is located. Owner and Grantee agree that such removal of Exhibit B prior to recording shall not affect the validity of this Agreement.

5. **Termination.** Grantee shall have the right, at any time during the Term, to terminate this Agreement as to all or any part of the Owner Property by providing written notice to Owner. Following any such termination, Grantee is authorized to file a release of this Agreement in the official real property records of the county in which the Owner Property is located.

6. **Authority; Title.** Owner represents and warrants that it is the sole owner of the Owner Property in fee simple and has the full and unrestricted right and authority to execute and deliver this Agreement and to grant to Grantee the waiver and other rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so, and all persons having any ownership or interest in the Owner Property have signed this Agreement on behalf of Owner.

7. **Assignment.** Grantee shall have the right at any time, without need for consent from Owner, to assign or convey all or any portion of this Agreement to an assignee or assignees, on an exclusive or nonexclusive basis, or to mortgage or collaterally assign all or any part of its interest in the Agreement and its rights under the Agreement to any entity (each a "**Mortgagee**" and collectively, "**Mortgagees**"). Grantee may mortgage or encumber any part of Grantee's rights and interests under the Agreement without the need for consent from Owner, provided that any such mortgage attaches only to Grantee's rights and does not otherwise attach to the Owner

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Property. Owner shall have the right to sell, convey, or transfer its interest in the Owner Property, or a portion thereof, without the need for consent from Grantee, provided that Owner shall, prior to any such sale, conveyance, or other transfer, give written notice to Grantee thereof, which notice shall include the name, address, and telephone number of the proposed transferee.

8. **Notice**. All communications required or permitted by this Agreement shall be given in writing by personal delivery (confirmed by courier delivery service) or first-class U.S. mail, postage prepaid, return receipt requested, certified, addressed as follows:

If to Owner:

Larry L. Svenningsen
12041 19th Street SE
Luverne, ND 58056
Phone: 701-845-0503
E-mail: burchillfarms@ictc.com

If to Grantee:

Otter Tail Power Company
Attn: Bryce Haugen
PO Box 496
Fergus Falls, Minnesota 56538
Phone: 218-739-8385
E-mail: bhaugen@otpco.com

Any party may change its address for purposes of this paragraph by giving notice of such change to the other parties in the manner provided in this Section 8. Any notice provided for herein shall become effective only upon actual receipt by the party to whom it is given, unless such notice is mailed by certified mail, return receipt requested, in which case it shall be deemed to be received five (5) business days after the date mailed.

9. **Recording**. Owner and Grantee agree that this Agreement may be recorded by Grantee in the official real property records of the county in which the Owner Property is located.

10. **Miscellaneous**. This Agreement shall be governed by the laws of the State of North Dakota. This Agreement constitutes the entire agreement between Grantee and Owner with respect to the subject matter hereof and supersedes any and all prior oral or written understandings, representations or statements among the parties with respect to the subject matter hereof. This Agreement may not be amended except in a writing executed by both parties. This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. Nothing herein shall be deemed to create a joint venture or partnership between parties hereto. In the event of breach of this Agreement, Grantee shall be entitled to all remedies provided at law or in equity, including injunctive relief. The prevailing party in any action arising out of, or in connection with, this Agreement shall be entitled to be reimbursed its costs and expenses, including reasonable attorney fees, by the non-prevailing party. NEITHER PARTY SHALL BE

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ENTITLED TO, AND OWNER AND GRANTEE HEREBY WAIVE ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.

[Signature pages follow.]

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IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties have signed this Agreement as of the Effective Date.

OWNER: Larry L. Svenningsen, a married individual

By: Larry L. Svenningsen
Name: **Larry L. Svenningsen**

STATE OF ND)
) ss.
COUNTY OF Barnes)

On this 20th day of July, 2023, before me, the undersigned officer, personally appeared **Larry L. Svenningsen,** as a married individual, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purpose therein contained.

Witness my hand and official seal.

Jill Pederson
Notary Public ND
(State)
My commission expires: 10/3/26

Jill Pederson
Notary Public
State of North Dakota
My Comm. Expires 10/3/2026

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CONSENT OF SPOUSE

The undersigned spouse is joining this Agreement to acknowledge and accept its contents and to ratify the Agreement as applicable to the spouse's interest in the Owner Property.

By: Carmen Svenningsen
Printed Name: **Carmen Svenningsen**

STATE OF ND)
) ss.
COUNTY OF Barnes)

On this 20th day of July, 2023, before me, the undersigned officer, personally appeared **Carmen Svenningsen,** as spouse of Larry L. Svenningsen, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument, and acknowledged that she executed the same for the purpose therein contained.

Witness my hand and official seal.

Jill Pederson
Notary Public ND
(State)
My commission expires: 10/3/23

Jill Pederson
Notary Public
State of North Dakota
My Comm. Expires 10/3/2026

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GRANTEE:

OTTER TAIL POWER COMPANY,
a Minnesota corporation

By: _____
Name: Bryce C. Haugen
Title: Energy Developer

STATE OF MINNESOTA)
) ss.
COUNTY OF Wilkin)

The foregoing instrument was acknowledged before me this 24th day of July, 2023 by Bryce Haugen as the Energy Developer for Otter Tail Power Company, a Minnesota corporation, on behalf of the corporation.

_____
Kristi L Bakken
Notary Public

KRISTI L BAKKEN
Notary Public
Minnesota
My Commission Expires
Jan 31, 2024

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EXHIBIT A

Legal Description of the Owner Property

The following described property located in Grand Prairie Township, Barnes County, North Dakota:

Parcel 1:

The following described land located in Grand Prairie Township, Barnes County, North Dakota:

The Southwest Quarter (SW ¼) of Section Six (6), in Township One Hundred Forty-Two (142), Range Fifty-Seven (57), Barnes County, North Dakota.

Tax Identification Number: 13-0630300

Barnes County Variance Permit

PERMIT NO.
011-23

OWNER: Otter Tail Power Company

ADDRESS OF OWNER: 215 S Cascade St Fergus Falls MN 56537

LOCATION OF BUILDING SITE: Multiple sites see attached

Variance Permit for 32 wind turbines for 412' tip height and 1 location for closer than 1.25 setback from roads

DATE ISSUED: 09/19/2023 This permit is valid for 2 years from date of issued if change in use

Jessica Jenrich

Jessica Jenrich
Barnes County Zoning Administrator

Barnes County
BUILDING PERMIT

PERMIT NO.
064-23

OWNER__ Otter Tail Power Company_____

ADDRESS OF OWNER_215 S Cascade St Fergus Falls MN 56537_____

LOCATION OF BUILDING SITE__ Multiple sites see attached_____

TYPE OF BUILDING__ Wind Turbines repower_____

DATE ISSUED__09/19/2023_____ This permit is valid for 1 year from date of issue

Jessica Jenrich

Jessica Jenrich
Barnes County Zoning Administrator
Please Notify Jenrich if project is delayed