

**NEW YORK STATE OFFICE OF  
RENEWABLE ENERGY SITING  
AND ELECTRIC TRANSMISSION**

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**In re the Matter of**

**Application of AGRICOLA WIND, LLC for a Major  
Renewable Energy Facility Siting Permit Pursuant to  
Article VIII of the New York State Public Service Law  
to Develop, Design, Construct, Operate, Maintain, and  
Decommission an up to 99-Megawatt (MW) Wind  
Energy Facility Located in the Towns of SCIPPIO and  
VENICE, CAYUGA COUNTY.**

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**Matter No. 23-003002**

**ALLIANCE TO PRESERVE THE FINGER LAKES' PETITION FOR FULL PARTY  
STATUS AND STATEMENT OF ISSUES FOR ADJUDICATION**

Dated: August 11, 2025  
Webster, New York

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## INTRODUCTION

Alliance to Preserve the Finger Lakes (“APFL”) submits this petition for full party status, and statement of issues for adjudication (the “Petition”), in the Office of Renewable Energy Siting and Electric Transmission (“ORES”) proceeding on the Application (the “Application”) of Agricola Wind, LLC (“Agricola” or the “Applicant”) for a Major Renewable Energy Facility Siting Permit Pursuant to Article VIII of the New York State Public Service Law to Develop, Design, Construct, Operate, Maintain, and Decommission an up to 99-Megawatt (MW) Wind Energy Facility Located in the Towns of Scipio and Venice, Cayuga County (the “Project”). The APFL requests ORES either dismiss the Application,<sup>1</sup> or grant this Petition for party status in whole or in part, and allow APFL to proceed as a full party to litigate substantive and significant issues identified herein, and any additional substantive and significant issues identified in public comments or by other prospective parties to this proceeding in their respective statements of issues for adjudication, which are incorporated herein by reference. At a minimum, should ORES deny APFL full party status, amicus party status should be granted.

The issue before ORES can be reduced to a single question: should industrial wind turbines be allowed in the Finger Lakes viewshed?<sup>2</sup>

The Finger Lakes Region of Western and Central New York is a region of unmatched beauty and tranquility with thriving tourism and agricultural industries. In recognition of the Finger Lake’s unique character and economy, since 2011 New York State has spent nearly \$1 billion on economic projects in the Finger Lakes and Central New York economic development zones.<sup>3</sup> This

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<sup>1</sup> This Petition should also be construed as a motion to dismiss the application, as certain issues raised herein warrant summary dismissal before an issues hearing is held.

<sup>2</sup> A “viewshed” is the geographical area that is visible from a location.

<sup>3</sup> Central New York Regional Development Council, Central New York Annual Report 2024, p. 5 (available at: [https://regionalcouncils.ny.gov/sites/default/files/2024-11/CNYREDC%202024%20Annual%20Report%20FINAL\\_0.pdf](https://regionalcouncils.ny.gov/sites/default/files/2024-11/CNYREDC%202024%20Annual%20Report%20FINAL_0.pdf)); Finger Lakes Regional Economic Development

money was spent on projects consistent with strategic plans that clearly and unambiguously state tourism and agriculture are pillars of the region's economic development.<sup>4</sup> As observed by the Finger Lakes Region Economic Development Council:

Tourism is a key pillar of our Region's economy, and its assets frequently overlap with quality of life assets. Creative expansion of our tourism industry and assets is intertwined with our focus on placemaking and quality of life. Our Region has bountiful natural beauty and a vibrant culture centered around agriculture, arts and entertainment, and outdoor recreation. In particular, the Region has experienced great success and recognition as an exceptional wine region, and more recently this has expanded to craft beverages more generally. However, there are many more assets the Region has to share with visitors. Tourism offers individuals and businesses a tantalizing first taste of the Region that can encourage visitors to return as residents. Many communities have already capitalized on the abundance of beauty and activities, leveraging the thriving wineries and fine-dining experiences, rich history, proximity to Niagara Falls, and outdoor recreation. A majority of respondents to the Council's quality of life survey rated the areas of "arts, culture, and tourism" and "parks, trails, and recreation" as high quality and performing well in the Region.

Finger Lakes Regional Economic Development Council, Strategic Plan Update and Challenges Competition (November 2023), p. 38.

Strategic plans issued by both the Finger Lakes and Central New York Economic Development Councils envision NO role for large scale industrial wind facilities within the Finger Lakes viewshed.<sup>5</sup> Most developers, and past renewable energy permitting agencies, have recognized the Finger Lakes as a special area, and since the most recent renewable energy push

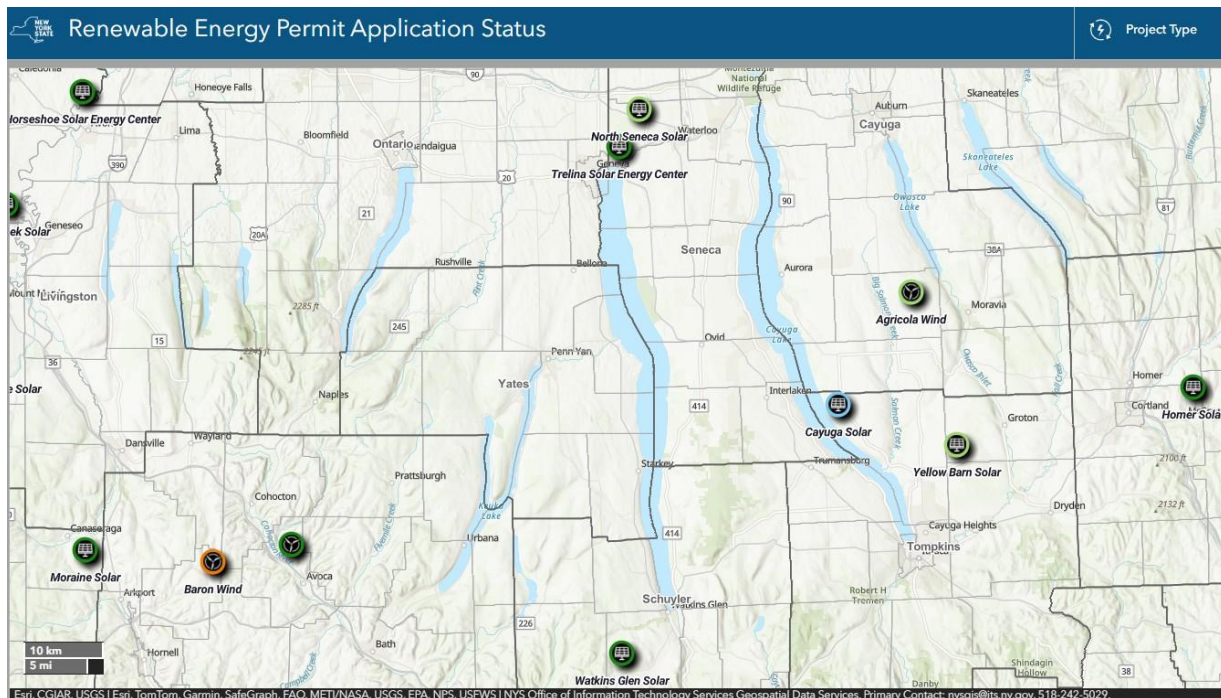
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Council, Finger Lakes Annual Report 2024, p. 5 (available at: <https://regionalcouncils.ny.gov/sites/default/files/2024-12/2024%20FLREDC%20Annual%20Report%20.pdf>),

<sup>4</sup> See e.g. Central New York Regional Economic Development Council, The CNY Ascent: Reaching New Heights 2023 Strategic Plan, pp. 29, 34-36; Finger Lakes Regional Economic Development Council, Strategic Plan Update and Challenges Competition (November 2023), p. 38.

<sup>5</sup> See *id.* The Finger Lakes Region strategic plan does prioritize training a work force necessary to maintain renewable energy facilities (small and large), but it is important to note that the Finger Lakes viewshed in does not extend throughout the entire region, and other portions of the CNY REDC region outside the Finger Lakes viewshed have seen explosive renewable energy development.

began in 2011 there have been no large scale industrial wind facilities planned that would impact the Finger Lakes viewshed. The following figure is a screenshot from a Department of Public Service ORES website demonstrating the lack of any wind energy projects on the ridges between the lakes (except, of course, Agricola Wind):



*Figure 1: Screenshot from ORES Renewable Energy Permit Application Map demonstrating no industrial wind development in areas between the Finger Lakes, available at: <https://www.arcgis.com/apps/dashboards/4841a0a133524fceb6ff1ca0d8dcaf06>*

Now, for the first time, a developer seeks to intrude upon the very heart of the Finger Lakes by placing approximately 650-foot-tall towers on the top of a ridge separating Cayuga from Owasco Lake. As demonstrated by the Applicant's own (but inadequate) visual impact analysis, this project will be clearly visible from three finger lakes:



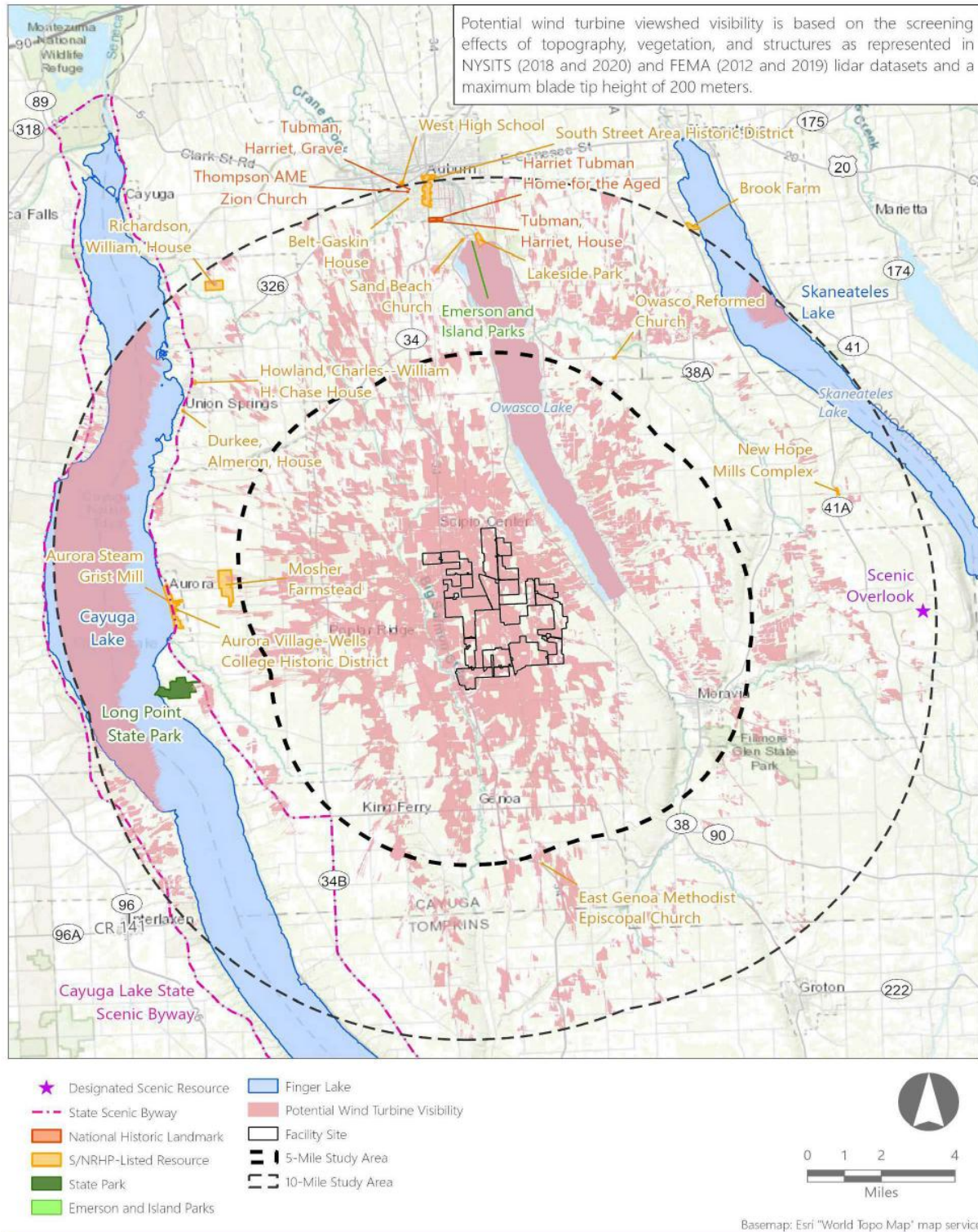


Figure 2: Application Appendix 08-A, Visual Impact Assessment, p. 74 (DMM Item No. 65), demonstrating areas from which turbine will be visible, but arbitrarily limited to a 10-mile radius of review.

Putting aside the incomprehensible decision to not study visual impacts from the entirety of Cayuga and Skaneateles Lakes (or the vineyards and wineries above their shores), Figure 2 demonstrates that the Agricola Wind project will be visible from huge swaths of the region. This visual blight is wholly inconsistent with regional development plans, the state's emphasis on supporting tourism and agritourism in the region, and the opinions of the local public.<sup>6</sup>

**Agricola Wind is potentially the most damaging and ill-conceived project ever to be submitted to ORES for review.**<sup>7</sup> For these reasons and the reasons identified below, APFL urges ORES to dismiss this application without a hearing. In the alternative to outright dismissal, a hearing must be held, and APFL requests full party status to demonstrate that there are numerous substantive and significant issues that warrant denial of the permit. ORES must not allow large scale wind energy to gain a foothold in the very heart of the Finger Lakes.

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<sup>6</sup> Many written and oral public comments already filed in this proceeding argue that wind turbines are a major, negative, and potentially disastrous intrusion into the Finger Lakes viewshed. See e.g. DMM Comment Nos 109, 106, 80, 71, 68, 61, 58, 56.

<sup>7</sup> This statement is not made lightly. Legal counsel to APFL has been involved in scores of renewable energy and transmission line siting proceedings in all regions of New York State. The level of disregard for unique local circumstances in this proceeding, by both the Applicant and ORES Staff, is unprecedented and cannot be allowed to stand. The Agricola proposal is in some ways similar to the ill-fated decision by multiple wind energy developers to surround Fort Drum with multiple wind energy facilities. This decision was strongly opposed by the military and the Fort Drum Regional Liaison Organization, and the projects were ultimately heavily modified or withdrawn. The Fort Drum and Agricola cases are similar because in both cases developers have proposed projects that would materially and substantially harm centerpieces of the local economy: in the case of Fort Drum, the Army base, and in the case of Agricola Wind, tourism and leisure. In the opinion of this legal counsel, the Agricola proposal is an even more extreme example of a project that is completely incompatible with the site selected.

## **REQUIRED CONTENTS OF PETITION FOR PARTY STATUS - RULE 1100-8.4(c)(1)**

### **I. Identification of the Proposed Parties Together with the Name, Address, Telephone Number and Email of the Person or Persons Who Will Act as Representative of the Party (1100-8.4(c)(1)(i))**

Alliance to Preserve the Finger Lakes is a local stakeholder group requesting full party status in this proceeding. APFL is spearheaded by three individuals residing in the towns of Scipio and Venice, and the group manages a Facebook group with 597 members.<sup>8</sup> The APFL is represented by Wisniewski Law PLLC and attorney Benjami E .Wisniewski, Esq. ([bew@bewlawfirm.com](mailto:bew@bewlawfirm.com)). The Firm's address is 1150 Crosspointe Ln Ste 2, Webster, New York 14580. The firm's telephone number is (585) 364-764. The firm is listed as a party representative for APFL in this proceeding.

### **II. Statement of the petitioner's interest related to the standards and conditions established by ORES for the siting, design, operation, and construction of the project (1100-8.4(c)(1)(ii))**

APFL and its members have an interest in this proceeding because they are concerned about the potential adverse impacts of the proposed Agricola Wind project on both local and regional residents. The group is concerned about turbine noise, environmental impacts such as storm water runoff, and the anticipated major impact on both the local and regional Finger Lakes viewshed and the tourism it supports.

Project documents already available on DMM indicate wind turbines will be visible from the shores of multiple Finger Lakes, as well as from the high country and vineyards between the lakes. The Agricola project represents the first significant encroachment of wind turbines into the

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<sup>8</sup> The Facebook group is available here: <https://www.facebook.com/share/g/1712rUrYsg/>



Finger Lakes watershed, and the group is concerned that neither ORES nor the Applicant are fully aware of the potential for devastating impacts to the Finger Lakes environment and economy.

For these reasons, and for the reasons set forth in APFL's Local Agency Funding Request (DMM Item No. 87), which is expressly incorporated herein, APFL has standing to seek full adjudication of the issues stated herein.

### **III. Identification of any interest relating to statutes administered by other State agencies or ORES relevant to the project (1100-8.4(c)(1)(iii))**

APFL has an interest in full application of Article 11 of the New York State Economic Development Law, which required the creation of 10 Regional Economic Development Councils to develop long-term strategic plans for economic growth in their respective regions. The law specifies that each council consists of local experts and stakeholders from businesses, academia, municipalities, and non-governmental organizations, appointed by the Governor with the advice and consent of the Senate. Members serve at the Governor's pleasure. The law defines the regions, such as the Finger Lakes and Central New York regions impacted by the Agricola Wind project, and mandates that each council develop strategic plans to guide economic growth. Section 232 of the Economic Development Law expressly contemplates coordination between Regional Economic Development Councils and other state agencies, such as ORES.

In this matter, the APFL has a strong interest in demonstrating that both Agricola Wind and ORES have completely failed to coordinate with relevant economic development councils or consider whether the proposed project is consistent with the councils' existing plans for economic development, and past spending. As demonstrated below, the Agricola Wind project is facially inconsistent with strategic plans issued by both the Finger Lakes and Central New York Economic

Development Councils and may undermine the benefits of hundreds of millions of dollars already spent by New York state to develop other industries in the region. *See* Exhibits B, C, D, E, F.

APFL also has an interest in full application of Article VIII of the New York State Public Service law, which states in relevant part,

It is the purpose of this article to consolidate the environmental review, permitting, and siting in this state of major renewable energy facilities . . . subject to this article, and to provide ORES as a single forum for the coordinated and timely review of such projects to meet the state's renewable energy goals . . . **while also ensuring the protection of the environment and consideration of all pertinent social, economic and environmental factors in the decision to permit such projects . . . .**

NY PSL § 136 (emphasis added). This provision is of paramount importance, as it mandates ORES accomplish two goals: (1) provide a venue for expedited renewable energy facility siting proceedings, while also (2) taking a hard look at numerous adverse impacts likely to arise from such facilities. Respectfully, ORES violates this mandate whenever it denies requests for party status submitted by community intervenors, local agencies and local governments.

APFL's participation as a full party to the ORES proceeding is also required pursuant to the Climate Leadership and Community Protection Act (the "CLCPA"). As stated by New York State Assembly Representative (106<sup>th</sup> District) Didi Barrett:

I also firmly believe that a balance must be found between the encouragement of large-scale renewable development and the preservation of the rural character and local economies of our communities. In its very name, the Climate Leadership and Community Protection Act (CLCPA), which I was proud to vote for, promises equity between climate-smart advances and the values of our local communities in this Home Rule state.

Letter from Didi Barrett to John Howard, March 25, 2021 (emphasis added).<sup>9</sup>

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<sup>9</sup> Available at: <http://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={4F437683-1A47-463E-8CA9-8C3AED3C3B65}>

APFL's participation as a full party in this proceeding is essential to advancing the values of the Towns of Venice and Scipio, and the broader Finger Lakes region, as required by the CLCPA. ORES violates the CLCPA's mandate for equity between climate-smart advances and the values of local communities whenever it fails to balance encouragement of large-scale renewable development against local impacts as described by local people and local government. By refusing party status to local intervenors and targeted "host" municipalities, ORES continues to ignore its mandate to balance the vanishingly small environmental benefits of any single facility against the potentially severe local impacts of such facilities.

APFL also has an interest in preservation of aesthetic resources and the agricultural economy, as expressly required by Article XIV § 4 of the New York State Constitution:

**The policy of the state shall be to conserve and protect its natural resources and scenic beauty** and encourage the development and improvement of its agricultural lands for the production of food and other agricultural products. The legislature, in implementing this policy, shall include adequate provision for the abatement of air and water pollution and of excessive and unnecessary noise, the protection of agricultural lands, wetlands and shorelines, and the development and regulation of water resources.

N.Y. Const. art. XIV, § 4 (emphasis added). As a full party to this proceeding, APFL intends to advocate for the conservation and protection of the Finger Lakes region's natural resources, scenic beauty, and prime agricultural lands.

Similarly, APFL has an interest in application of Article 25-AA Section 300 of NY Ag and Markets Law, which states:

Declaration of legislative findings and intent . . . the declared policy of the state [is] to conserve, protect and encourage the development and improvement of its agricultural land for production of food and other agricultural products. It is also the declared policy of the state to conserve and protect agricultural lands as valued natural and ecological resources which provide needed open spaces for clean airsheds, as well as for aesthetic purposes.

The constitution of the state of New York directs the legislature to provide for the protection of agricultural lands. It is the purpose of this article to provide a locally initiated mechanism for the protection and enhancement of New York state's agricultural land as a viable segment of the local and state economies and as an economic and environmental resource of major importance.

Article 25-AA Section 300 of NY Ag and Markets Law.

Also, with regard to protecting the agricultural community, APFL has an interest in holding ORES to its statutory mandate to mitigate or avoid destruction of New York State's dwindling, high quality agricultural lands. *See* NY PSL § 138(4); NY PSL § 148; 16 NYCRR § 1100-2.16.

APFL also has an interest in this proceeding pursuant to the "Green Amendment" to the New York State Constitution, which states that, "[e]ach person shall have a right to clean air and water, and a healthful environment." N.Y. Const. art. I, § 19. APFL opposes any component of the Agricola Wind project that violates residents' right to clean air, water, and healthful environment, including ORES' proposed waiver of local laws enacted by the Towns of Scipio and Venice to preserve the health, safety, and welfare of their citizens. Neither the applicant nor ORES has given due consideration to the adverse impacts of waiving local laws, or whether those impacts are appropriately mitigated or avoided by the Draft Permit, in direct violation of the Green Amendment.

Finally, APFL has an interest in the full application of Article IX of the New York State Constitution, the Home Rule Amendment, which directly vests local government with legislative and police powers that may not be over-ridden by the state legislature absent adherence to specific safeguards set forth in the constitution, and which safeguards ORES has failed to comply with in ignoring or waiving applicable town laws. As noted above, APFL incorporates by reference the

issues statements and notices of non-compliance with local law filed by the host municipalities of Venice and Scipio, if any.

**IV. Statement as to whether the petition is for full party or amicus status (1100-8.4(c)(1)(iv))**

APFL requests full party status, so it may “(i) Engage in and conduct disclosure of any other party to the proceeding; (ii) Participate at the hearing in person or through an authorized representative; (iii) Present relevant evidence and cross-examine witnesses of other parties; (iv) Present argument on issues of law and fact; (v) Initiate motions, requests, briefs or other written material in connection with the hearing, and receive all correspondence to and from the ALJ and to and from all other parties which is circulated to the parties generally; (vi) Appeal adverse rulings of the ALJ; and (vii) Exercise any other right conferred on parties by this Part or SAPA.” 19 NYCRR §1100-8.4(g)(1). In the alternative, if APFL is not awarded full party status, then amicus status is sought pursuant to 19 NYCRR §1100-8.4(g)(2). This request for party status applies to all issues raised by any prospective party in the proceeding, or in any public comment.

**V. Identification of the precise grounds for opposition or support 1100-8.4(c)(1)(iv))**

APFL opposes the award of an ORES permit to Agricola Wind LLC under the terms and conditions set forth in the Draft Permit. As set forth in more detail below, or in the issues statements and statements of noncompliance with local law submitted by the Towns of Scipio and Venice, APFL opposes the Project because:

1. The Project, as proposed and designed, does not comply with all substantive local laws and ordinances of the Towns of Scipio and Venice;

2. The Application does not contain sufficient evidence in support of the Draft Permit's proposed waivers of local laws;
3. ORES's proposals to waive local laws are not the "minimum necessary", and the Draft Permit does not mitigate the adverse impacts of waiver;
4. ORES improperly recommends waiver of local laws, without facts or analysis, in violation of SAPA, PSL Article VIII and ORES regulations;
5. ORES commits errors of fact and law and abuses its discretion in finding certain provisions of Town laws are unreasonably burdensome in light of the CLCPA targets and the environmental benefits of the proposed major renewable energy facility;
6. ORES commits errors of law by improperly relieving the applicant of its burden to demonstrate, using facts and analysis, that certain local laws are unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the proposed major renewable energy facility;
7. ORES violates non-delegation doctrine and Article IX of the state constitution by exceeding the narrow scope of its delegated power to not apply local laws;
8. ORES and the Applicant have materially overstated the environmental benefits of the proposed facility (See **Exhibit G** to this Petition, public comment of Dennis Higgins);
9. The ORES Draft Permit fails to mitigate adverse visual impacts in accordance with all applicable laws;
10. ORES and the Applicant failed to review visual impacts to Cayuga Lake, Skaneateles Lake, and their surrounding hillsides;
11. ORES failed to coordinate with, or even notify, Regional Economic Development Councils with a strong interest in the outcome of this proceeding;



12. By acquiescing to unnecessary redaction of information in the application, and by failing to provide the public with explicit guidance on how such information can be viewed in accordance with the Protective Order, ORES failed to provide meaningful opportunities for public participation in this proceeding;
13. ORES and the Applicant failed to study, or even consider, the outsized role in the Finger Lakes economy of tourism, agriculture, and agritourism, or how the Agricola Wind's major adverse visual impact may be a catastrophe for the existing local economy;
14. ORES and the Applicant failed to give any consideration to the Finger Lakes' unique geographic setting and aesthetic beauty, and the lack of any other large scale industrial wind projects in the Finger Lakes viewshed;
15. ORES and the Applicant failed to consider whether the Agricola project is consistent with existing economic development plans, or the hundreds of millions of dollars already spent by the State of New York on other, inconsistent economic initiatives in the region;
16. ORES fails to consider all pertinent environmental, social, and economic factors in approving siting of the Facility within the Town;
17. The Draft Permit does not minimize or avoid the adverse impacts of the Project to cultural resources;
18. The Application and Draft Permit fail to quantify, avoid, or mitigate impacts on agriculture or avian species;

19. The Application and Draft Permit fails to consider how installation of turbine bases could have a special and unique impact on Finger Lakes hydrology, including impacts to field drainage, lake water quality, and well water quality;
20. The Application and Draft Permit fail to address an unresolved review of the project's potential hazards to air navigation, and the impact of recent federal guidance related to that review;
21. The Application and Draft Permit fail to describe, consider, or demonstrate mitigation of potential adverse impacts to the Owasco Airfield, and the Applicant failed to have meaningful consultation with the Owasco Airfield as required by ORES regulations;
22. All grounds for opposition raised in the Town of Scipio's and the Town of Venice's Issues Statements are incorporated herein by reference; and
23. The Application and Draft Permit relies on necessary property rights that it is impossible for the Applicant to obtain (*see* Exhibit A to this Petition), and eminent domain is not available to the Applicant in this form of Article VIII proceeding;

## **VI. Statement of Issues Adjudication and Offer of Proof**

### **A. Legal Standard and Burden of Proof**

Rule 1100-8.3 sets the standard for adjudicable issues and determination of when a hearing is warranted. "[P]otential parties **shall** be provided the opportunity to file papers concerning potential substantive and significant issues." § 1100-8.3(b)(1) (emphasis added). An assigned Administrative Law Judge will "[d]etermine which issues satisfy the requirements for being adjudicable issues." § 1100-8.3(b)(5)(ii). Adjudicable issues are defined as "both substantive and

significant,” and may be proposed by any potential party or municipality. §§ 1100-8.3(c)(1)(ii)-(iv).

A substantive issue is present whenever “there is sufficient doubt about the applicant’s ability to meet the statutory or regulatory criteria applicable to the project, such that **a reasonable person** would require further inquiry.” §§ 1100-8.3(c)(2) (emphasis added). To determine if an issue is substantive, the ALJ, “shall consider the proposed issue in light of the application and related documents, the standards and conditions or siting permit, the statement of issues filed by the applicant, the content of any petitions filed for party status, the record of the issues determination and any subsequent written or oral arguments authorized by the ALJ.” *Id.*

An issue is significant when “it has the potential to result in the denial of a siting permit, a major modification to the proposed project or the imposition of significant permit conditions in addition to those proposed in the Draft Permit, including uniform standards and conditions.” §§ 1100-8.3(c)(3).

ORES cannot award a permit, or must modify a permit, if it cannot make all six of the following findings that a project:

- a) complies with Article VIII and applicable provisions of the Office’s regulations at 16 NYCRR Part 1100;
- b) complies with substantive provisions of applicable State laws and regulations;
- c) complies with substantive provisions of applicable local laws and ordinances, except those provisions the Office has elected not to apply based on a finding that they are unreasonably burdensome in view of the Climate Leadership and Community Protection Act (CLCPA) targets and the environmental benefits of the Facility;
- d) avoids, minimizes, or mitigates, to the maximum extent practicable, potential significant adverse environmental impacts of the Facility;

- e) achieves a net conservation benefit with respect to any impacted threatened or endangered species; and
- f) contributes to New York's CLCPA targets by meaningfully reducing carbon dioxide emissions.

See e.g. *Application of Prattsburgh Wind*, Siting Permit, p. 4 (DMM Item No. 208)<sup>10</sup>; PSL §§ 136, 138.

Therefore, an issue is substantive and significant, and merits adjudication, where a prospective party raises sufficient doubt about ORES ability to make the six findings stated above, such that a reasonable person would require further inquiry.

### **Sufficiency of Offer of Proof**

In analogous DEC proceedings governed by 6 NYCRR § 624.4, the DEC has stated:

**[T]he offer of proof can take the form of proposed testimony, usually that of an expert, or the identification of some defect or omission in the application.** Where the proposed testimony is competent and runs counter to the Applicant's assertions an issue is raised. **Where the intervenor proposes to demonstrate a defect in the application through cross-examination of the Applicant's witnesses, an intervenor must make a credible showing that such a defect is present and likely to affect permit issuance in a substantial way.** In all such instances a conclusory statement without a factual foundation is not sufficient to raise issues.

2004 N.Y. ENV LEXIS 18, \*10-11, 2004 N.Y. ENV LEXIS 18 (quoting *Matter of Halfmoon Water Improvement Area No. 1*, 1982 WL 25856 (N.Y. Dept. Env. Conserv., Decision of the Commissioner, 1982) (emphasis added)).

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<sup>10</sup> Available at <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B0652492-0000-C639-A1AA-BD1652ADDCB3}>

The APFL has identified numerous defects or omissions in the application, and seeks a hearing to cross-examine the Applicant and ORES in relation to the issues and omissions identified below.

### **Reasonable Person Standard**

In seeking adjudication of substantive and significant issues, “the burden of persuasion is on the potential party proposing any issue . . . to demonstrate that it is both substantive and significant . . . .” §§ 1100-8.3(c)(4). The burden of proof faced by potential parties is the “reasonable person” standard. As noted by ORES in its own Response to Comments during its original rulemaking proceeding for the Part 900 regulations:

#### **Comment**

Commenters requested removal of §900-8.3(c)(4) as it places substantial resource and financial burdens on municipalities and citizens. Commenters added that reliance on a generic permit appears to mean that the Office would always find that the project meets the requirements of statute and regulation.

For this reason, commenters added that the moving party will always have a very high, even practically impossible burden of persuasion. The commenters felt this was a greater burden for municipalities and citizens, than for deep-pocketed applicants, and harms the ability of municipalities and citizens to review project proposals. It was stated that parties should be encouraged to raise issues, and reasonable issues should be given a hearing.

#### **Discussion**

The Office recognizes that raising an issue for adjudication regarding a draft permit may be a high burden. However, as noted, Executive Law §94-c expressly limits adjudicatory hearings to substantive and significant issues regarding the draft permit. **Moreover, the regulations provide that an issue is “substantive” if there is sufficient doubt about the applicant’s ability to meet statutory or regulatory criteria applicable to the project such that a “reasonable person” would inquire further. Accordingly, the “reasonable” issue standard the commenter is advocating for is incorporated into the regulatory definition of substantive and significant.** With respect to the financial burden associated with participating in hearings under Part 900, the local agency account is intended to offset those costs. No change is warranted.

Chapter XVIII, Title 19 of NYCRR Part 900, Subparts 900-1 – 900-15, Assessment of Public Comments, Office of Renewable Energy Siting, pp 152-153 (emphasis added).<sup>11</sup>

A “reasonable person” is typically viewed as a “reasonable person of ordinary prudence,” *See* §7:2. Reasonable person standard of care, 14 N.Y.Prac., New York Law of Torts § 7:2. The inquiry therefore is what would a general member of the public think, someone without the additional legal knowledge that an Administrative Law Judge may have. It is clear from the public hearing held in this matter and the numerous comments posted on DMM that many “reasonable people” have concerns about the Applicant’s ability to meet statutory and regulatory criteria, and believe further inquiry is necessary in the form of an adjudicator hearing.

ORES’s inclusion of a reasonable person standard when determining whether an issue is substantive and significant mimics the standard used by the DEC in Rule 6 NYCRR § 624.4. When applying that Rule, the DEC has held that, “a proponent at an issues conference carries its burden with an offer of proof that raises sufficient doubt about whether applicable statutory and regulatory criteria have been met such that a reasonable person would inquire further [ ]. **This threshold inquiry is less rigorous than the summary judgment standard.**” 2004 N.Y. ENV LEXIS 87, \*11-12, 2004 N.Y. ENV LEXIS 87 (inferred citations omitted, emphasis added).

## **B. Description of Offer of Proof**

The APFL does not have sufficient financial resources to commission expert reports or testimony to serve as an offer of proof. Instead, the numerous exhibits to this document provide documentary evidence that can be entered into the evidentiary record by a lay member of the APFL

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<sup>11</sup> Available at: <https://dps.ny.gov/assessment-public-comments-draft-regulations>



should party status be granted. The attached exhibits demonstrate that there are numerous errors and omissions in the Application and Draft Permit, and that the Applicant and ORES have failed to consider the extraordinarily unique setting of this project in the heart of the Finger Lakes. A description of all exhibits follows.

**Exhibit A** is a collection of signed statements from property owners demonstrating that the Applicant cannot obtain all property rights necessary to construct and operate the proposed facility. Based on **Exhibit A** alone, the Application should be immediately dismissed. *See Matter of Hecate Energy Columbia County 1 LLC*, No. 21-02533, Decision of the Executive Director (February 6, 2024) (hereafter, “*Matter of Hecate*”) (granting motion to dismiss and denying application on grounds that the applicant could not obtain rights to a parcel of property on which facility components were proposed to be located, which necessitated an amendment of the application that was not allowed at that stage of the proceeding after a NOCA had been issued).<sup>12</sup>

**Exhibit B** is Central New York Regional Development Council’s Central New York<sup>13</sup> Annual Report 2024.<sup>14</sup> This official government report, issued in accordance with Article 11 of the New York State Economic Development Law, demonstrates that New York State has expended vast sums of money promoting specific forms of economic development in the Central New York Region; that tourism, agriculture, and agritourism are pillars of the Finger Lakes economy; and that industrial wind energy within sight of the Finger Lakes is not part of the strategic plan for economic development. The Applicant’s and ORES’s failure to consult with, or even mention the relevant Regional Economic Development Councils

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<sup>12</sup> *Matter of Hecate* is available via the following DMM link:  
<https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={30157F8D-0000-C414-B55A-E02B518665FC}>

<sup>13</sup> The Agricola Project will impact two separate regional development councils. The project itself, as well as Cayuga, Owasco, and Skaneateles Lakes are located in the Central New York development region. The western shore of Cayuga Lake and its many parks, vineyards, wineries, and other tourist draws, are located in the Finger Lakes economic development region.

<sup>14</sup> Available at: [https://regionalcouncils.ny.gov/sites/default/files/2024-11/CNYREDC%202024%20Annual%20Report%20FINAL\\_0.pdf](https://regionalcouncils.ny.gov/sites/default/files/2024-11/CNYREDC%202024%20Annual%20Report%20FINAL_0.pdf)

demonstrates that the Application and Draft Permit have failed to fully consider whether Agricola Wind is consistent with the local economy or plans for development, or how the introduction of a major source of visual blight into a tourism-centric economy is completely inconsistent with existing plans for economic development in the region.

**Exhibit C** is the Finger Lakes Regional Development Council's Annual Report 2024.<sup>15</sup> Similar to the Central New York regional report, this report demonstrates the importance of tourism to areas in the vicinity of Cayuga Lake that are likely to be impacted by the Agricola Wind Project.

**Exhibit D** is a copy of a document submitted as DMM public comment number 33, and is a report prepared by Tourism Economics, an Oxford Economics Company, entitled, "Economic Impact of Visitors in New York 2023, Finger Lakes Focus." This report demonstrates the importance of tourism in the Finger Lakes region, and demonstrates a major omission in the Application and Draft Permit as both have failed to consider or mitigate the potential for adverse impacts to the local tourism industry.<sup>16</sup>

**Exhibit E** is a copy of the most recent Strategic Plan for the Central New York Economic Development Region (2023). The plan does not contemplate any role for placing industrial wind energy facilities within the Finger Lakes viewshed in areas dominated by tourism and agricultural industries.

**Exhibit F** is a copy of the most recent Strategic Plan for the Finger Lakes Economic Development Region (2023). The plan does not contemplate any role for placing industrial wind energy facilities within the Finger Lakes viewshed in areas dominated by tourism and agricultural industries.

**Exhibit G** is a public comment submitted in this matter by Dennis Higgins (DMM Comment No.73), which demonstrates that the Application and ORES material overstate the anticipated benefits of the Agricola Wind facility in helping New York state achieve its arbitrary and unrealistic renewable energy goals.

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<sup>15</sup> Available at: <https://regionalcouncils.ny.gov/sites/default/files/2024-12/2024%20FLREDC%20Annual%20Report%20.pdf>

<sup>16</sup> A copy of the report is available via the following DMM link: <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId={B00B7F97-0000-CD39-B023-F76C791D4A72}>

Finally, for any issues raised in any public comments (oral and/or written), or any other prospective party to this proceeding, and that are not supported by Exhibits A-G of this petition, APFL will rely on the Issues Statements and Offers of Proof submitted by the Towns of Scipio and Venice which are expressly incorporated herein by reference; and any other reports or witnesses provided by any other member of the public or potential party.

**C. Issues for Adjudication and Supporting Offer of Proof**

**ISSUE 1: Whether the Agricola Wind has obtained, or can ever obtain, all property rights necessary for construction and operation of the Agricola Wind facility.**

Applicants for an ORES permit are required to demonstrate that they have obtained, or can obtain, all property rights necessary to construct and operate a proposed facility. Rule 1100-8.5(d). The issue of whether an applicant “can obtain” property rights is substantive and significant because ORES has already determined the issue is dispositive when an inability to obtain property rights is discovered after ORES has issued a Notice of Complete Application. *Matter of Hecate Energy Columbia County 1 LLC*, No. 21-02533, Decision of the Executive Director (February 6, 2024).

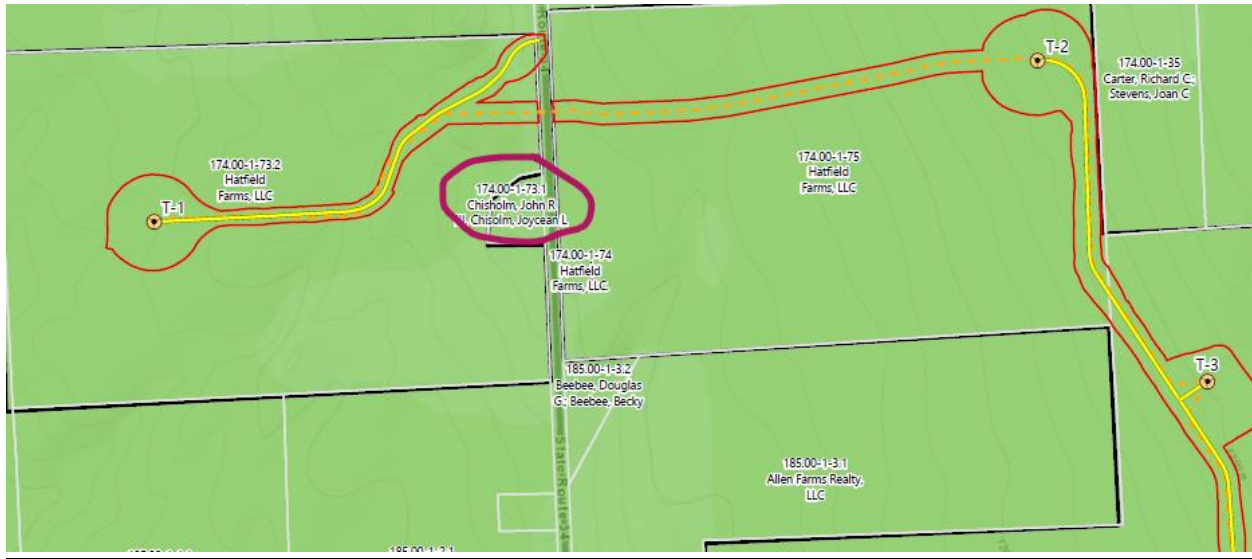
In *Matter of Hecate*, ORES granted a motion to dismiss and denied an application on grounds that the applicant could not obtain rights to a parcel of property on which facility components were proposed to be located. *Id.* The Executive Director acknowledged that an inability to obtain property rights necessitated an amendment of the application, and that an application shall not be amended after an application is deemed complete. *Id.*; Rule 1100-7.1(a).

The Executive Director ultimately dismissed the application without prejudice to refile, and before completing the issues determination procedure or holding a hearing. *Id.*

Here, the facts are strikingly similar to *Matter of Hecate*. Just as in *Matter of Hecate*, the Applicant Agricola Wind has submitted Application Exhibit 4, and related documents, which the Applicant claims are sufficient to show it has obtained or can obtain all necessary property rights. And here, just as in Agricola Wind, a prospective party has discovered late in the ORES proceeding, after a NOCA has been issued, that Agricola Wind LLC cannot obtain all property rights necessary to construct or operate the facility. *See* Exhibit A.

Exhibit A to this petition for party status is the result of the APFL's efforts to determine whether the Applicant has, or can obtain, necessary property rights. The APFL consulted with the relevant landowners to determine whether they were participating in the project, or whether they had any interest in becoming a project participant. The result of APFL's efforts is Exhibit A, which includes signed statements from landowners demonstrating that they will not enter into any agreement to convey necessary property rights to the Applicant.

For example, Aaron Picklesimer and Sarah Picklesimer are the owners of Parcel No. 174.00-1-73.1. The location of the Picklesimer's parcel is shown below on an excerpt from public version of Figure 4-1:

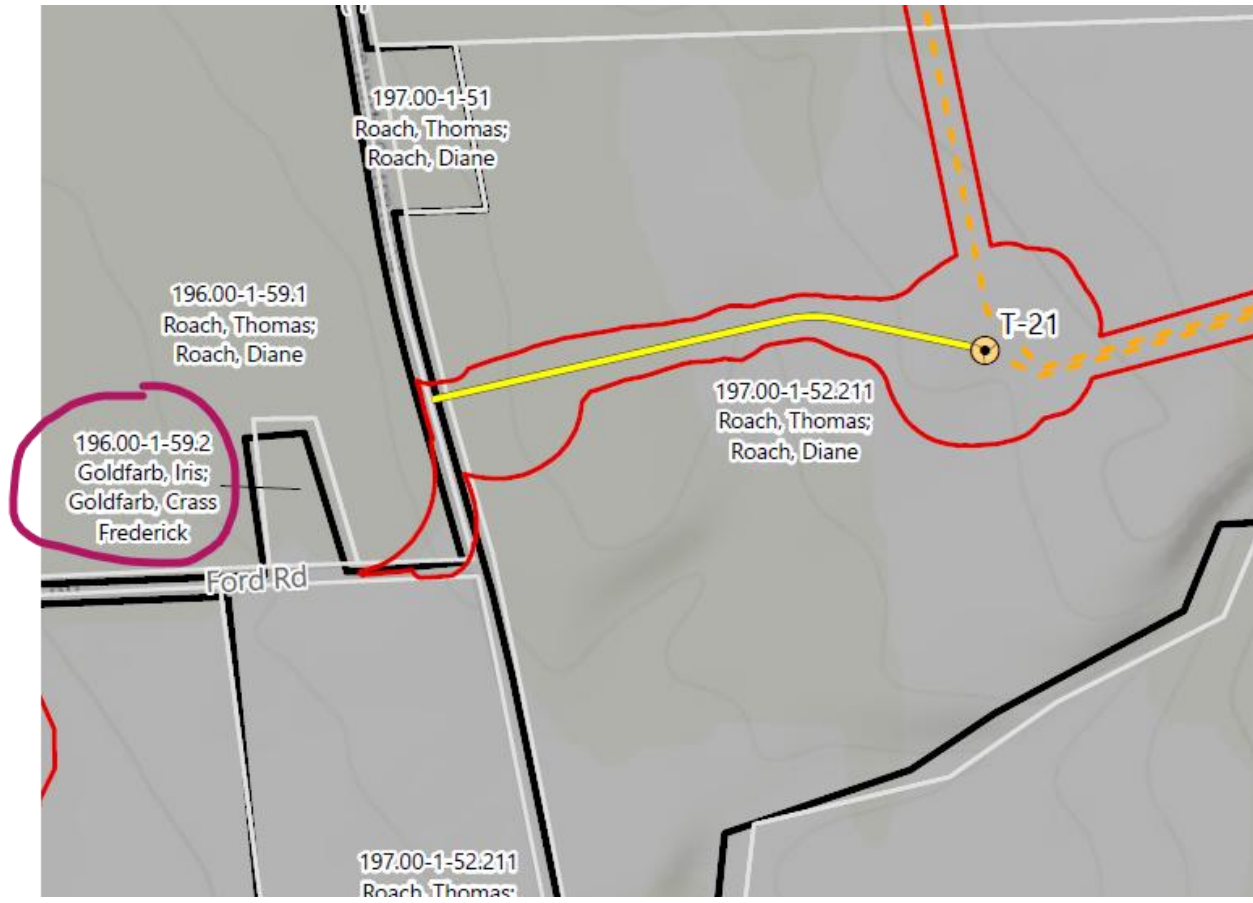


*Figure 3: excerpt from Application Exhibit 4-1, p. 1 (DMM Item No. 96).*

The Parcel was previously owned by John and Joycean Chisholm, and will be heavily impacted by turbine T-1 and T-2. Critically, Exhibit A includes a signed statement from Sarah Picklesimer stating, “I have not, and will never, enter into any Good Neighbor Agreement or any similar agreement with Agricola Wind, LLC, and I will not become a project participant in any way.” Exhibit A, p. 3. Similarly, Aaron Picklesimer states, “I will not now, and will never, enter into any agreement to become a participating property owner in the Agricola Wind Project.” *Id.* at 2.

At a minimum, the Picklesimer’s statements in Exhibit A demonstrate there is a substantive and significant issue concerning whether the Agricola Wind can obtain property interests, licenses, or agreements necessary to construct and operate Turbines T-1 and T-2. However, in accordance with *Matter of Hecate*, the demonstrated inability to obtain property rights to Parcel No. 174.00-1-73.1 requires amendment of the Application, which is impossible at this stage of the proceeding. *See* Rule 1100-8.5(d). Therefore, in accordance with *Matter of Hecate*, the Application should be immediately dismissed without prejudice.

Another property that the Applicant cannot obtain the necessary interest in is Parcel No. 196.00-1-59.2. This Parcel is owned by Iris and Crass Goldfarb. The location of the Goldfarb's parcel is shown below in an excerpt from public version of Figure 4-1:



*Figure 4: excerpt from Application Exhibit 4-1, pp. 4-5 (DMM Item No. 96).*

The property is surrounded by an intersection improvement, a laydown yard, and Wind Turbines T-21, T-22, T-23, and T-24. Critically, Exhibit A includes a signed statement from Iris Goldfarb stating, among other things, “I will not now, and will never, enter into any agreement to become a participating property owner in the Agricola Wind Project.” Exhibit A, pp. 17-18.



The property is surrounded by two intersection improvements and four Wind Turbines: T-8, T-9, T-10, and T-11. Critically, Exhibit A includes a signed statement form Laura Wallenbeck stating,

among other things, “I will not now, and will never, enter into any agreement to allow for lesser setbacks, or greater noise, visual, or any other impacts, to my propert[y]....” Exhibit A, p. 13

Another property that the Applicant cannot obtain a necessary interest in is Parcel Nos. 174.00-1-35 and 174.00-1-77. These parcels are owned by Richard Carter and Joan Stevens. The location of the parcel is shown below on an excerpt from public version of Figure 4-1:



*Figure 6: excerpt from Application Exhibit 4-1, p. 9 (DMM Item No. 96).*

The property is directly adjacent to Turbine T-2, and otherwise surrounded by Turbines T-3, T-7, and T-8. Critically, Exhibit A includes signed statements from Richard Carter and Joan Stevens stating, “I will not now, and will never, enter into any agreement to become a participating property owner in the Agricola Wind Project.” Exhibit A, pp. 8, 10.

Another property that the Applicant cannot obtain a necessary interest in is Parcel No. 186.00-1-4. This Parcel is owned by William Cox. The location of the parcel is shown below on an excerpt from public version of Figure 4-1:

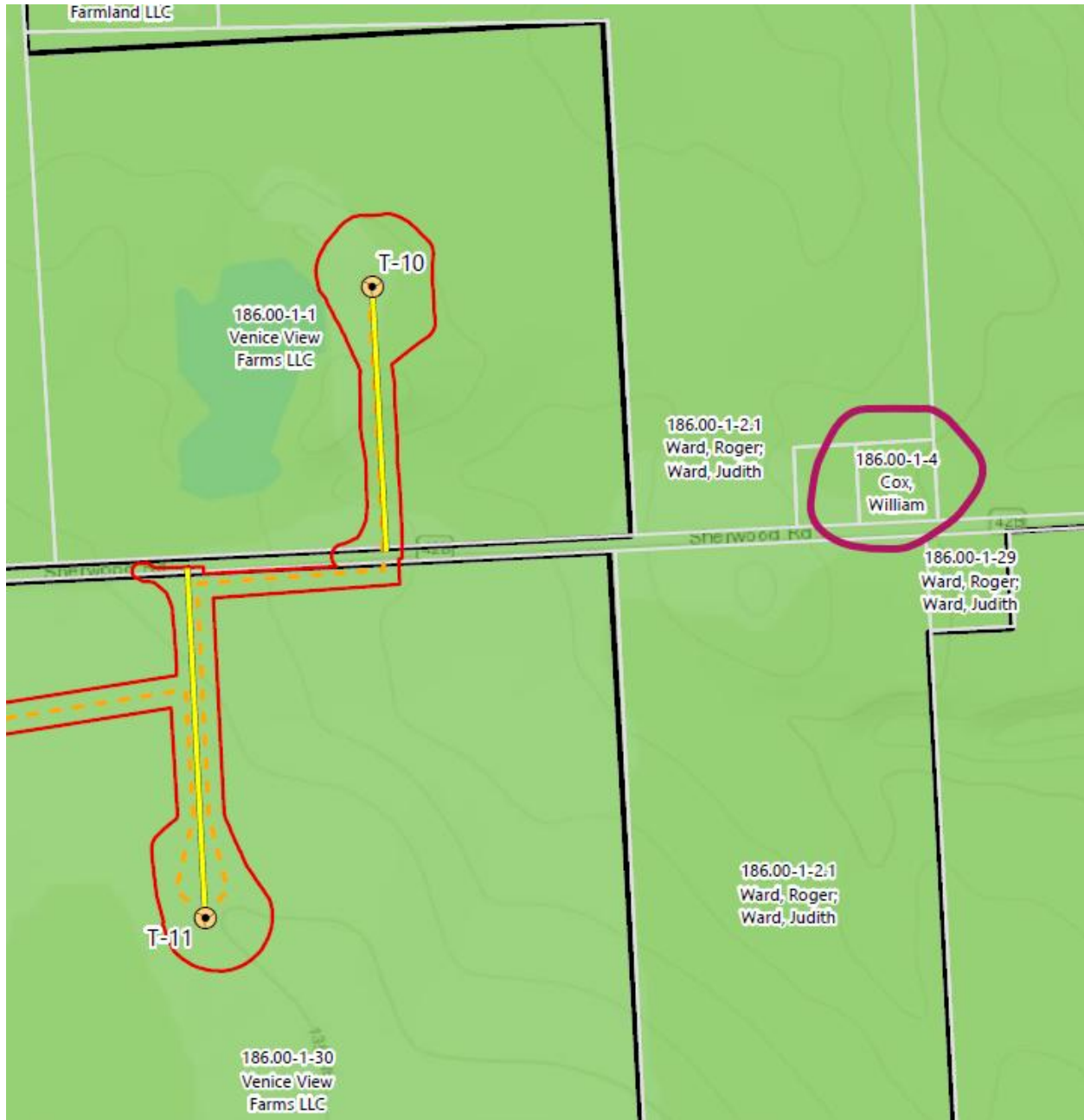


Figure 7: excerpt from Application Exhibit 4-1, pp. 8 (DMM Item No. 96).

The property is adjacent to turbine T-10 and T-11. Critically, Exhibit A includes a signed statement from William Cox stating, among other things, “I will not now, and will never, enter into any agreement to become a participating property owner in the Agricola Wind Project.” Exhibit A, p. 21-22.

Another property that the Applicant cannot obtain a necessary interest in is Parcel No. 174.00-1-31. This Parcel is currently owned by Natasha Jack-Hanlin and Mark Montgomery. The location of the parcel is shown below on an excerpt from public version of Figure 4-1:

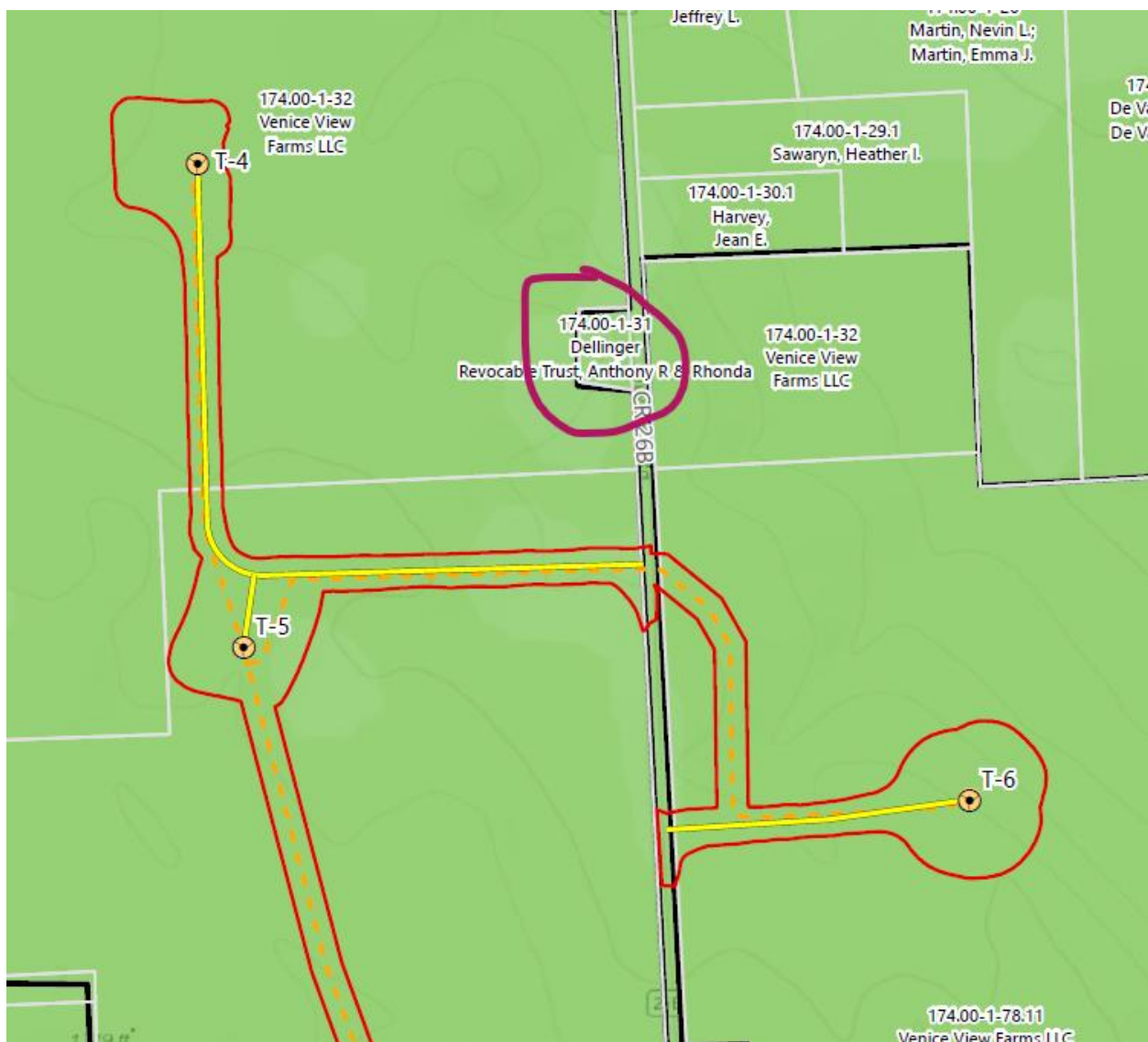


Figure 8: excerpt from Application Exhibit 4-1, pp. 10 (DMM Item No. 96).

The property is adjacent to turbines T-4, T-5, and T-6. Critically, Exhibit A includes signed statements from Natasha Jack-Hanlin and Mark Montgomery stating, among other things, “I will not now, and will never, enter into any agreement to become a participating property owner in the Agricola Wind Project.” Exhibit A, p. 23-26

Exhibit A also includes additional statements from the owners of other properties the Applicant may need to acquire an interest in, including:

- (1) Steve Patt, Hatfield Farms (Parcel Nos. 174.00-1-74 and 174.00-1-76.21);
- (2) Susan Quinn (Parcel No. 185.00-1-12.2);
- (3) Nevin L. Martin (Parcel Nos. 174.00-1-33 and 174.00-1-26);
- (4) John McLaughlin (Parcel No. 186.00-1-2.12);
- (5) Roger and Judith Ward (Parcel Nos. 186.00-1-29, 186.00-1-2.1, 186.00-1-6);
- (6) Eric Clark (Parcel Nos. 197.00-1-54.6, 197.00-1-54.116, 197.00-1-53);
- (7) Jeffrey Clark (Parcel Nos. 174.00-1-28.12, 174.00-1-28.2);
- (8) Terri Denman (Parcel No. 186.00-1-19.112);
- (9) Gary Mutchler (Parcel Nos. 185.00-1-11.1, 185.00-1-11.1, 185.00-1-6, 185.00-1-11.2, 185.00-1-11.1);
- (10) John Gulliver (Parcel No. 197.00-1-5, 197.00-1-43.11).

Any redesign of the Agricola Wind Project must account for the foregoing parcels as non-participating,

The statements contained in Exhibit A demonstrate there is a substantive and significant issue concerning whether Agricola Wind can obtain property interests, licenses, or agreements necessary to construct and operate the facility. In accordance with *Matter of Hecate*, the demonstrated inability to obtain necessary property rights requires amendment of the

Application, which is impossible at this stage of the proceeding. *See* Rule 1100-8.5(d).

Therefore, in accordance with *Matter of Hecate*, the Application should be immediately dismissed without prejudice to refile based on a redesigned project.

**ISSUE 2: Whether the Applicant acted in bad faith by submitting potentially false and misleading information to ORES as part of Application Exhibit 4.**

The information contained in Exhibit A to this petition raises a substantive and significant issue concerning whether the Applicant provided true and accurate information in Application Exhibit 4, real property. For example, in Application Appendix 4-B (DMM No. 96), the Applicant's representative asserts, without jurat, that:

2. For those parcels still under negotiation, the Applicant believes with commercially reasonable certainty that a Good Neighbor Agreement ("GNA") will be secured or can be secured prior to construction of the Facility and that such GNAs will demonstrate compliance with the setback requirements pursuant to 16 NYCRR Section 1100-2.6(b), Table 1. Further detail on the status of the Applicant's negotiations with the owners of these parcels can be found in Attachment A below.

3. The Applicant believes that it will obtain the GNAs needed as listed in Attachment A. **In the unlikely event that the Applicant is unable to obtain one or more of the GNAs needed, the Applicant has the option of relocating or eliminating the turbines impacted and/or selecting a turbine with a higher generating capacity, as identified in the Application in Exhibit 5.** The final layout will meet or exceed all Article VIII setback requirements pursuant to 16 NYCRR Section 1100-2.6(b).

Application Appendix 4-B (DMM No 96).

The above statement, in the context of Exhibit A to this Petition, raises serious questions about the veracity of information submitted to ORES by the Applicant. Exhibit A also raises the substantive and significant issue of whether the Applicant's corporate character disqualifies it



from receiving an ORES permit. *See* Public Service Commission, Application of Empire Offshore Wind LLC for a Certificate of Environmental Compatibility and Public Need, Case No. 22-T-0346, Ruling Addressing Violations of Protective Order (DMM Item No. 198), November 15, 2023 (“EOW2 is also cautioned that, as an applicant for a Certificate of Environmental Compatibility and Public Need, the Commission is evaluating not only whether the record supports the required legal findings for the grant of a Certificate, but also whether such grant is in the public interest. In so doing, **the Commission may consider the character and fitness of an applicant** to own and operate a facility in the State of New York.”); *see also Matter of Hecate*, p. 29 (“[A]pplicant’s lack of transparency regarding the [real property] parcel is relevant to any discretion to be exercised in this matter.”)

Even if the “Statement of Real Property Rights” contained in Appendix 4-B was made in good faith, it contains a damning admission that demonstrates dismissal of the application is the only appropriate remedy given the revelations contained in Exhibit A. More specifically, the Applicant has already admitted that the inability to obtain GNAs would require relocation or elimination of turbines, or selection of larger turbines with higher generation capacity. It is beyond dispute that such changes would require major amendments to the Application. Because amendment is not possible at this stage of an ORES proceeding, ORES should immediately dismiss the Application without prejudice to refile. *See Matter of Hecate*.

**ISSUE 3: Whether ORES’s acquiescence to the Applicant’s serial over-redaction of application materials deprived the public of meaningful opportunities for public participation in the Agricola Wind proceeding.**

ORES is required by law to afford a meaningful opportunity for public participation in its Article VIII proceedings. N.Y. PSL Section 146 (3)(f). Pursuant to Article VIII and its regulations, that opportunity can be provided in one of two ways: (1) oral or written commentary

on the draft permit and complete application; or (2) request for full or amicus party status to adjudicate substantive and significant issues raised by the draft permit and complete application. In this case, ORES failed to provide meaningful opportunities for the lay public to provide commentary, because ORES staff acquiesced to the Applicant's serial over-redaction of Application documents, and failed to provide the general public with sufficient information concerning the Protective Order governing this proceeding.

In this proceeding, ORES has received numerous written and oral comments complaining about the high number of redactions in Application documents. Many people have complained that the redactions make it impossible for the public to understand the impact of the project or provide informed commentary. For example, in DMM comment 96, Katherine Brundage writes, "We as residents have been provided limited information on this project, most of which is REDACTED (check out the sections on the impacts for endangered species- it's ALL redacted, every word!!!)." And in DMM comment 109, Paul Burbank writes, "I am also very concerned that many of the written materials in the permit application have been heavily redacted such that information has been withheld from the public." There are many more examples of similar comments.

This issue is substantive and significant because lack of opportunity for public involvement is grounds for reversal, and implicitly, denial, of a permit.

Finally, as only one example of the many possible instances of improper redaction, readers are advised to review Appendix 2-B to the Application<sup>17</sup>. This appendix contains copies of written correspondence between private and/or public entities and the Applicant, and which are by default not exempt from disclosure under the Freedom of Information Law. Pages 143 to

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<sup>17</sup> Available at: <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=f0f44093-0000-c956-bbdc-034a1a24d515>

148 of Part 1 of the appendix appear to be documents from a Public Meeting. See Appendix 2-B Part 1, pp. 138, 143-148. If the documents were part of a public meeting, there can be no basis for their redaction in the ORES proceeding.

Similarly, in Part 2 of the Appendix 2-B,<sup>18</sup> the Applicant has redacted in its entirety correspondence and/or draft agreements under the heading “Road Use Agreement Correspondence”. See Appendix 2-B, pp. 36-80. Simply put, there is no basis for this communication with local government, or even draft or final Road Use Agreements, to be exempt from public disclosure. Road Use Agreements, as well as Host Community, Decommissioning, and PILOT agreements, are public documents that are routinely disclosed in response to FOIL request.

Based on the forgoing, a hearing must be held to review the Applicant’s redactions and determine whether they have any valid basis pursuant to the Protective Order. If any information is determined to have been improperly redacted, newly unredacted versions should be made available for public review, and an additional public comment hearing should be conducted. The alternative is denial of the permit pursuant to Section 146 (3)(f) of the Public Service Law.

**ISSUE 4: Whether the record contains sufficient evidence for ORES to determine that the Draft/Final Permit avoids, minimizes, or mitigates, to the maximum extent practicable, potential significant adverse environmental impacts of the Facility to the local tourism and agriculture economies, or is otherwise consistent with regional planning objectives.**

Before issuing a permit, ORES is required to determine that adverse impacts to the local economy are sufficiently mitigated or avoided. *See* Rule 1100-2.19. As part of its analysis, ORES

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<sup>18</sup> Available at: <https://documents.dps.ny.gov/public/Common/ViewDoc.aspx?DocRefId=30f54093-0000-c410-97f3-f53638763221>

is required to consider the project's consistency with the existing economy, and regional planning objectives. Rule 1100-2.3. As demonstrated below, a hearing is required to determine whether the Applicant and ORES failed to consult with all relevant regional planning agencies or adequately considered whether the introduction of industrial wind turbines into the Finger Lakes watershed will impact the unique and thriving local economy. The Agricola Wind project will have a regional impact, and therefore regional consultation should have been conducted. It was not.

ORES regulations required the Applicant and Draft Permit to account for "all publicly known proposed land uses within the study area, as determined in consultation with State and local planning officials . . . ." Rule 1100-2.4(i). The Applicant must also quantify, "recreational and other land uses within the study area that might be affected by the sight or sound of the construction or operation of the facility, interconnections and related facilities, including wild, scenic and recreational river corridors, open space, and any known archaeological, geologic, historical or scenic area, park, designated wilderness, forest preserve lands, scenic vistas specifically identified in the Adirondack Park State Land Master Plan, NYS Parks, NYSDEC lands, conservation easement lands, federal or state designated scenic byways , nature preserves, designated trails, and public-access fishing areas, major communication and utility uses and infrastructure, and institutional, community and municipal uses and facilities." Rule 1100-2.4(k). Finally, the Applicant is required to provide:

A qualitative assessment of the compatibility of the facility, including any off-site staging and storage areas, with existing, proposed and allowed land uses, and local and regional land use plans, located within a one (1)-mile radius of the facility site. The assessment shall identify the nearby land uses of particular concern to the community and shall address the land use impacts of the facility on residential areas, schools, civic facilities, recreational facilities, and commercial areas. The assessment and evaluation shall demonstrate that conflicts from facility-generated noise, traffic

and visual impacts with current and planned uses have been minimized to the extent practicable.

Rule 1100-2.4(l).

The Application and Draft Permit fail to comply with the above regulations, or demonstrate avoidance or mitigation of adverse impacts, because the Applicant failed to consult with New York State Regional Economic Development Councils overseeing areas in the Finger Lakes region from which the wind turbines will be visible.

Regional Economic Development Councils (“REDCs”) are government bodies created by Article 11 of the New York State Economic Development Law. N.Y Economic Development Law Sections 230-232. A New York State website provides the following description of REDCs:

The Regional Economic Development Councils (REDCs) support the State’s innovative approach that empowers regional stakeholders to establish pathways to prosperity, mapped out in regional strategic plans. Through the REDCs, community, business, academic leaders, and members of the public in each region of the State put to work their unique knowledge and understanding of local priorities and assets to help direct State investment in support of job creation and economic growth.

[ ]

**Each Regional Council has become the voice of the region, advising agencies on the programs and projects most valuable to the region.** What started as an initiative focused on economic investments has blossomed into a program that invests in people and communities. Under Governor Hochul’s leadership, the State is continuously improving the REDC process to continue to maximize impact throughout the State.

Since its inception, the REDC Initiative has awarded over \$8.2 billion to more than 10,400 projects. The REDCs have also played a critical role in selecting the nearly 91 Downtown Revitalization Initiative (DRI) communities and 60 New York Forward communities to receive \$1.2 billion for transformative projects to revitalize their downtowns. The DRI is a community planning and implementation process where each participating community develops the key ingredients needed for successful downtown

revitalization. The REDCs will again identify the communities that will benefit from \$200 million in state investment this year through the ninth round of the traditional DRI Program along with the fourth round of the NY Forward program and will appoint an REDC member to co-chair the local planning committee.

Regional Economic Development Councils, <https://regionalcouncils.ny.gov/about> (last accessed August 11, 2025).

The Agricola Wind Project will have major impacts on two separate REDC's that include the Finger Lakes: the Central New York REDC, and the Finger Lakes REDC. The Applicant failed to consult with either of them.

Exhibit 3, which details consultation with local planning agencies, fails to even mention either the Finger Lakes Region or Central New York REDCs. The Applicant's analysis of "Consistency with Regional Planning Documents", found on pages 22-23 of Exhibit 22, fails to mention the strategic plans issued by either REDC. In addition, Exhibit 2 of the Application indicates the Applicant never made any attempt to contact either REDC. *See* Exhibit 2, Appendix 2-A, and Appendix 2-B (DMM Item No. 56). The REDCs are not listed in the Stakeholder Engagement Log or included in the Local Agency Consultation and Outreach Correspondence. *See* Appendices 2-A, 2-B. Finally, Exhibit 18, the Applicant's Socioeconomic Analysis of the project, fails to mention the REDCs strategic plans, at all.

The Applicant's and ORES's failure to consult with the REDCs means that, in issuing a Draft Permit, ORES has failed to properly consider consistency with all regional economic development and land use plans, and failed to consider potential adverse impacts to the economy. A review of the REDC's 2023 strategic plans, and 2024 updates, shows that the REDCs envision no role for large scale industrial wind facilities within the Finger Lakes watershed. *See* Exhibits B, C, E, and F. The Applicant and ORES have completely failed to account for the importance of

tourism to the region's economy, as demonstrated in Exhibit D to this Petition. As an offer of proof in support of all of these issues, APFL provides Exhibits B, C, D, E, and F. *See also p. 4 supra.*

As demonstrated above, ORES and the Applicant have failed to consider the adverse impact to the tourism economy of introducing visual blight into the Finger Lakes viewshed, and failed to even consult with the state agencies necessary to understand existing economic development goals in the region. This issue is substantive and significant because ORES may not award a permit absent a demonstration that the project is consistent with regional planning objectives, and that adverse socio-economic impacts have been mitigate or avoided. Because ORES and the Applicant failed to consult with the driving force behind regional economic development (the REDCs), or consider how the project is complete inconsistent with the region's tourism based economy (*see* Exhibit D to this Petition), the issue is one that warrants dismissal of the Application, or denial of permit.

**ISSUE 6: Whether the Applicant's admitted failure to consult with Owasco Airfield constitutes a major error and omission in the application warranting denial of the permit application.**

Rule 1100-2.17(e) requires "[a]n analysis and evaluation of the impacts of the facility on airports and airstrips . . . in the vicinity of the facility." In Application Exhibit 16, Agricola Wind identified the Owasco Airfield as one of six airports requiring consultation. Application Exhibit 16, p. 16, Table 16-2 (DMM Item No.108). According to the Applicant Owasco field is only 0.5 miles from the nearest wind turbine. *Id.* Although the Applicant sent a letter to Owasco Airfield requesting feedback, the airfield never responded, and the Applicant apparently did nothing else

to discuss whether siting of turbines 0.5 miles away would be problematic. *See Id.* at pp. 17-18; Application Exhibit 2, Appendix 2-A, Appendix 2-B.

The extent of the Applicant's consultation with an airport only 0.5 miles from the nearest proposed turbine, and 0.3 or 0.4 miles from other facility towers, consisted of a single letter to the airfield. The letter can be found in its entirety on page 84 of Application Appendix 2-B, Part 2. An excerpt from the map attached to the letter is reproduced below:



*Figure 9: excerpt from Application Appendix 2-B part 2, p. 85 (DMM Item No. 56).*

The Owasco Airfield never responded to this letter, and the lack of follow-up correspondence between the airfield and Agricola Wind stands in stark contrast to multiple emails between



Agricola a Wind and a representative of the Skaneateles Aerodrome. *See* Application Appendix 2-B part 2, pp. 856-88 (DMM Item No. 56). Those emails demonstrate an analysis of whether wind turbines would impact flight paths around the airport. No similar analysis appears to have been conducted with the assistance of the Owasco Airfield.

Based on the foregoing, there is a substantive and significant issue regarding whether the Applicant has adequately consulted with the Owasco Airfield. The issue is substantive because it relates to the Applicant's obligations under Rule 1100-2.17, and it is significant because without information relating to whether the turbines, met towers, or ADLS towers will pose a hazard to aviation, it is not possible for ORES to consider whether this facility layout minimizes or avoids impacts to the Owasco Airfield.

Based on the foregoing, APFL requests full party status and a hearing to adjudicate the issue of whether ORES and the Applicant have adequately assessed, minimized, or avoided impacts to the Owasco Airfield.

**ISSUE 7: Whether the record contains sufficient evidence for ORES to waive Town laws, or whether such waiver would be arbitrary and capricious, an abuse of discretion, and not permissible under applicable law.**

APFL incorporates by reference the issues statements and statements of non-compliance with local law submitted by the Towns of Scipio and Venice. The APFL opposes waiver of any local laws, and if granted party status, will offer testimony from members of the APFL quantifying the adverse impact that will result from ORES's waiver of local laws.

**Issue 8: Whether the Visual Impact Assessment prepared for Agricola Wind is Inadequate because it arbitrarily limits review to a radius and fails to address additional major impacts.**

The question before ORES is whether the Finger Lakes viewshed is an appropriate place to cite industrial wind projects. The public comments received to date indicate that the public believes the answer is no. The Draft Permit appears to completely miss the importance of the Finger Lakes as a region, its role as a major tourism center in the state, or the unique geography that means impacts will be felt far beyond the minimum 2-mile or even the expanded 10-mile study areas. Although there are many examples of ORES's failure to identify unique local conditions, the most glaring is ORES's failure to not require a sufficient visual impact assessment pursuant to Rule 1100 (b)(1).

This Rule requires an applicant to prepare viewshed maps including, "any potential visibility from specific significant visual resources beyond the specified study area." An inspection of *Figure 2 supra* (reproduced below for convenience) shows that visual impacts are likely along the entire shoreline of both western Cayuga and eastern Skaneateles Lake, as well as on adjacent ridgelines and hillsides.

[reproduced figure next page]

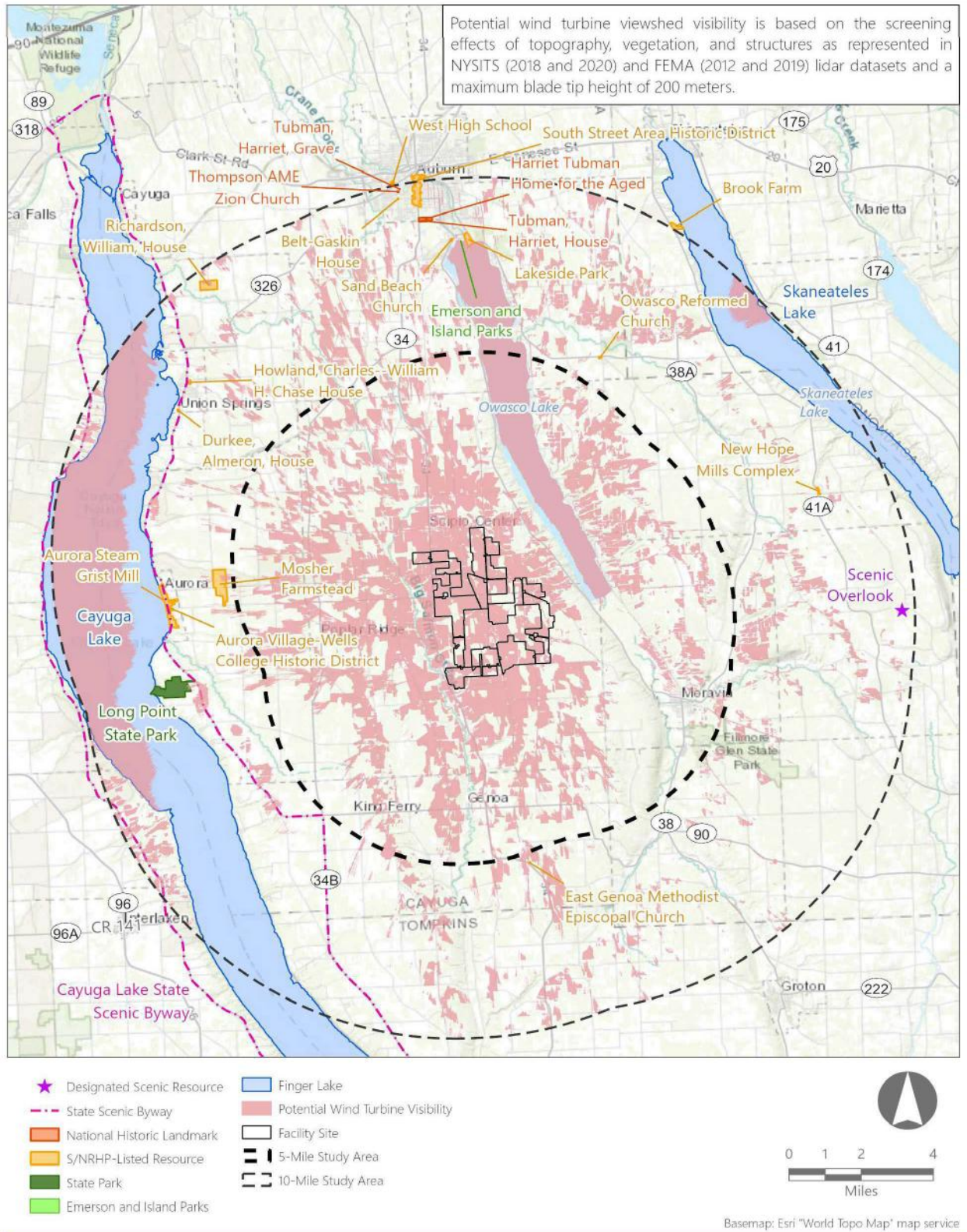


Figure 2: Application Appendix 08-A, Visual Impact Assessment, p. 74 (DMM Item No. 65).

Inexplicably, the Applicant and ORES arbitrarily limited its visual impact review to a 10-mile radius. In so doing, the Applicant failed to provide maps necessary to identify the adverse visual impacts of the facility on three separate Finger Lakes, shoreline communities, population and economic centers, or the parks, vineyards, and wineries dotting Cayuga's western lake shore. The Applicant and ORES have already acknowledged that an increase over the normal 5-mile<sup>19</sup> study area was necessary in this case, but the decision to limit the study area to a 10-mile radius was arbitrary and capricious. Given the possibility for extreme adverse visual impact, the study areas should have been expanded to the entirety of the Cayuga Lake and Skaneateles lakes viewsheds, at a minimum. The failure to do so was arbitrary and capricious, and represents a major omission in the Application.

This issue is substantive and significant because it goes to the sufficiency of visual impact assessment required by ORES, and merits denial of the permit based on ORES's failure to quantify, mitigate, or avoid the adverse visual impacts of the facility, or the nexus between adverse visual impacts and potential impacts to the tourism and agritourism economy.

As demonstrated in this issues statement, ORES has (1) failed to assess the impact of altering the Finger Lakes viewshed through introduction of 650-foot tall industrial wind turbines; or (2) consulted with the entities necessary to understand the potential catastrophic risk to the local tourism and leisure economies that this change may entail.

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<sup>19</sup> Note that Rule 1100-1.2 (bx) states a study areas, "shall **at a minimum** include the area within a radius of at least five (5) miles from all generating facility components, interconnections and related facilities."

## **CONCLUSION**

The issue before ORES is whether industrial wind turbines should be allowed in the Finger Lakes watershed. If ORES ignores the public and regional economic development plans by approving this project, it is likely that other wind energy developers will begin scouring the Finger Lakes for additional land. This will result in the utter destruction of the region's character, and its unique, natural beauty, potentially resulting in a disaster for economic development in the region, and eliminating one of New York State's primary tourism centers. The APFL therefore implores ORES to reverse course and deny Agricola Wind a permit. A decision of this gravity should be made by electorally accountable politicians, not ORES.

In light of the foregoing, APLF respectfully requests that the Application be dismissed without prejudice to refile, or in the alternative that the APFL be granted full party status to participate in adjudication of any and all substantive and significant issues identified in this proceeding.

Dated: August 11, 2025  
Webster, New York

*/s/ Benjami E. Wisniewski*

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### **Exhibit List**

<b>Exhibit A</b>	Landowner Affirmations and Statements
<b>Exhibit B</b>	Central New York Economic Development Council 2024 Annual Report
<b>Exhibit C</b>	Finger Lakes Economic Development Council 2024 Annual Report
<b>Exhibit D</b>	Economic Impact of Visitors in New York 2023 Finger Lakes Focus
<b>Exhibit E</b>	Central New York Economic Development Council Strategic Plan 2023
<b>Exhibit F</b>	Finger Lakes Economic Development Council Strategic Plan 2023
<b>Exhibit G</b>	DMM Comment by Dennis Higgins