STATE OF SOUTH DAKOTA)

COUNTY OF CLARK)

:SS

CROCKER WIND FARM, LLC,

Petitioner,

vs.

THE CLARK COUNTY COMMISSION AND THE CLARK COUNTY COMMISSION ACTING AS THE CLARK COUNTY BOARD OF ADJUSTMENT,

IN CIRCUIT COURT

THIRD JUDICIAL CIRCUIT

12CIV17-0017

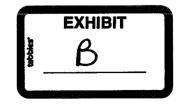
MOTION FOR PARTIAL SUMMARY JUDMENT AND NOTICE OF HEARING

Respondent.

MOTION FOR PARTIAL SUMMARY JUDGMENT

Petitioner, Crocker Wind Farm, LLC ("Crocker"), through undersigned counsel, hereby moves for partial Summary Judgment pursuant to SDCL 15-6-56. Crocker seeks a judgment and order directing the Clark County Board of Adjustment ("Board") modify the conditional use permit issued to Crocker by eliminating a condition requiring a setback in excess of 1,000 feet or remand to the Board with instruction to make them consistent with the zoning ordinance at 1,000 feet. SDCL 11-2-65. This motion is supported by a Statement of Undisputed Material Facts and the Affidavit of Brian J. Donahoe.

Crocker reserves all other claims and further specifically reserves its rights to raise additional issues not addressed in the brief or argument presented on the narrow legal issues presented in this Motion for Partial Summary Judgment.



NOTICE OF HEARING ON MOTION FOR PARTIAL SUMMARY JUDGMENT

TO: THE CLARK COUNTY COMMISSION AND THE CLARK COUNT COMMISSION ACTING AS THE CLARK COUNTY BOARD OF ADJUSTMENT, and their legal counsel Jack H. Hieb and Zachary W. Peterson of Richardson, Wyly, Wise, Sauck & Hieb, LLP, One Court Street, Post Office Box 1030, Aberdeen SD 57401.

PLEASE TAKE NOTICE that the foregoing Motion for Partial Summary Judgment will

be presented for oral argument at hearing by presiding Circuit Court Judge, the Honorable

Carmen Means, on August 14, 2017, at 10:30 a.m. at the Clark County Courthouse in Clark, SD.

This hearing was set pursuant to the requirements of SDCL 15-6-6(d) and applicable Supreme

Court Rules.

Dated this 26th day of July, 2017.

DONAHOE LAW FIRM, P.C

By <u>/s/ Brian J. Donahoe</u> 401 East 8th Street, Suite 215 Sioux Falls, SD 57103 Telephone: (605) 367-3310 Email: <u>brian@donahoelawfirm.com</u>

and

Brett Koenecke MAY, ADAM, GERDES & THOMPSON LLP 503 South Pierre Street Post Office Box 160 Pierre, SD 57501 Telephone: (605) 224-8803 Email: <u>koenecke@magt.com</u>

CERTIFICATE OF SERVICE

I hereby certify that on July 26, 2017, a true and correct copy of the foregoing Motion for Partial Summary Judgment and Notice of Hearing was electronically filed and served through South Dakota's Odyssey File and Serve Portal upon the following:

Jack H. Hieb jhieb@rwwsh.com

and

Zachary W. Peterson zpeterson@rwwsh.com

Attorneys for Respondents