

**Findings of Fact
Conditional Use Permit
Cattle Ridge Wind Farm, LLC (Applicant): Wind Energy Systems
April 8, 2019**

This matter having come before the Grant County Board of Adjustment and the Board having taken testimony and heard the evidence; the Board enters the following Findings of Fact in support of its motion to approve the Petitioner's application for a Conditional Use Permit.

1. Standard Findings of Fact for Conditional Uses adopted in the Articles of By-Laws for Grant County Board of Adjustment: Article 12 were addressed.
2. The following use is listed in the A – Agricultural Zone and Zone B of the Aquifer Protection Overlay District of the Grant County Zoning Ordinance and (Ref: SDCL 11-2-17.3):
 - Wind Energy Systems (Ref: Zon. Ord. 1101.03.22).
 - All uses permitted by conditional use in the underlying district which do not pose a potential risk to groundwater resources and are not a prohibited use may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones. (Ref: Zon. Ord. 1105.09)
 - All Conditional Uses allowed in underlying districts, with the exception of those prohibited, may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zones. (Ref: Zon. Ord. 1105.10)
3. On or before February 12, 2019, Cattle Ridge Wind Farm, LLC. applied for a conditional use permit to operate a Wind Energy System on property in Mazeppa, Stockholm and Twin Brooks Townships as displayed in Exhibit "A" attached and hereby incorporated by reference
4. This application meets the definition of a Wind Energy System.
5. This permit should not become effective until all required permits are granted by the state and federal government, including the remaining applications and licenses referenced in the application.
6. The application and testimony at this meeting allowed the Board to adequately review how the applicant will satisfy requirements of Section 1211 of the Grant County Zoning Ordinance; including but not limited to site clearance, topsoil protection, compaction, livestock protection, fences, public roads, haul roads, turbine access roads, private roads, control of dust, soil erosion and sediment control, electromagnetic interference, lighting, turbine spacing, footprint minimization, collector lines, feeder lines, decommissioning, tower height, shadow flicker, appearance, and noise.
7. The applicant satisfactorily demonstrated the ability to meet required setbacks for turbines from property lines, right-of-way, residences, businesses, government facilities and other structures, uses, municipalities and features which would require setback.

8. The applicant submitted all materials required by Section 1211 of the Grant County Zoning Ordinance, including but not limited to boundaries of the site proposed for WES, a map of easements, maps of occupied residential structures, businesses, churches, and buildings owned and/or maintained by a governmental entity, maps of sites for WES, access roads, and utility lines, location of other WES in general area, project schedule, and mitigation measures.
9. The agreement in the letter of assurance that the applicant will obtain a haul road agreement satisfies the requirement for a haul road agreement.
10. The application, staff report and testimony during the meeting adequately addressed all concerns of the ordinance, including those concerns which apply to the provisions of the Zoning Ordinance raised in written testimony received in accordance with the By-Laws of this Board, and in testimony given during the public hearing. All issues that were brought up with the application or during testimony which relate to the Zoning Ordinance or Land Use Plan were adequately addressed.
11. The Board considered and determines that, with conditions contained in the staff report and proposed by the Board, the proposed use will meet the intent, purpose, and regulations of the Comprehensive Land Use Plan and Zoning Ordinance.
12. That Wind Energy Systems such as proposed by the applicant are allowable in the A – Agricultural District, and Zone B of the Aquifer Protection District under certain conditions; and
13. Further, the satisfaction of the conditions of the Zoning Ordinance regulating Wind Energy Systems (Section 1211), the Aquifer Protection District (Section 1105), and all conditional use permits (Section 504) satisfies Section 104 (Purpose) of the Grant County Zoning Ordinance.
14. Therefore, the Board of Adjustment finds that it is empowered to grant the conditional use, and that the granting of the conditional use will not adversely affect the public interest.
15. The Board directs the zoning officer to prepare the findings of fact which are to be approved by the Chairman of the Board; and for the zoning officer to issue the conditional use permit and any letters of assurance, building permits or other items associated with said conditional use permit.
16. In order to comply with the requirements of the Zoning Ordinance the Board of Adjustment prescribes the following conditions and safeguards in conformity with the Grant County Comprehensive Land Use Plan and Zoning Ordinance to be agreed to in the form of a "Letter of Assurance":
 - 1) Effective Date and Transferability:
 - a. Upon issuance of permit by South Dakota Public Utilities Commission.
 - b. This permit shall expire on April 8, 2022 if no substantial construction as described in the application has commenced; or the permit shall expire on April 8, 2021 if a State Permit from the South Dakota Public Utility Commission has not been issued.

- c. The Conditional Use permit is transferable. Subsequent owners/operators shall agree to the same conditions described herein.

2) General Requirements:

- a. There shall be no discharge of industrial processed water on the site
- b. Storage of petroleum products in quantities exceeding one hundred (100) gallons at one (1) locality in one (1) tank or series of tanks must be in elevated tanks; such tanks larger than eleven hundred (1,100) gallons must have a secondary containment system where it is deemed necessary by the Board of Adjustment.
- c. Applicant shall provide the zoning office with an updated local contact information of plant supervisor with authority to implement dust control and other necessary enforcement of the conditions of this permit.
- d. Applicant agrees to submit final WES maps, points of contact, soil and erosion plan, decommissioning plan and haul road agreements as required by ordinance.
- e. Applicant agrees to obtain building permits prior to commencing construction on any towers.
- f. Applicant agrees to meet all State and Federal requirements.

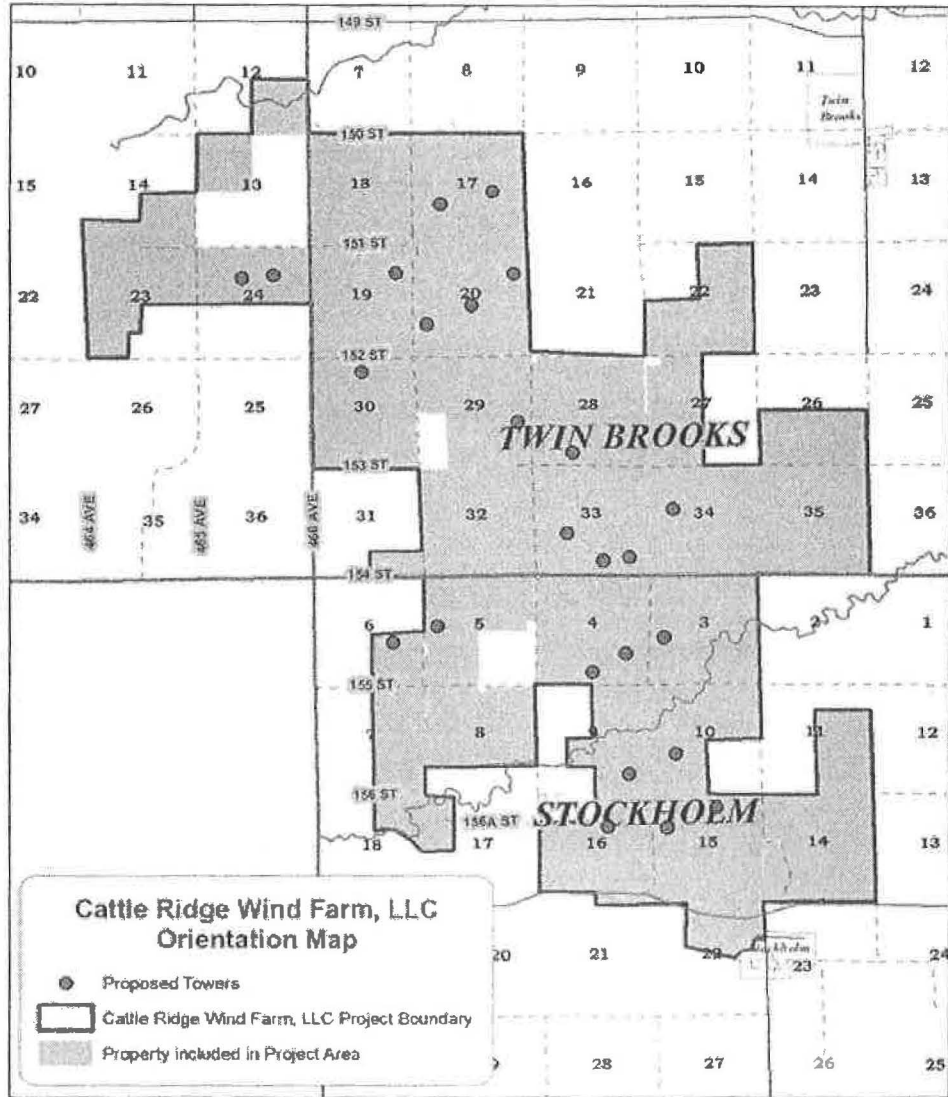
3) Obligation to Meet Requirements:

- a. Applicant agrees to meet requirements of Section 1211 of the Grant County Ordinance in reference to remaining obligations including but not limited to: submittal of Soil Erosion and Sediment Control Plans, Haul Road Agreements, Decommissioning Plan, Final site location of towers, building permit application, meeting applicable federal and state requirement as required by Section 1211
- b. Applicant acknowledges the ability of the Board of Adjustment to require some form of financial assurance to cover the anticipated costs of decommissioning the WES Facility. Final Decommissioning Plan to be submitted as required by ordinance.
- c. Applicant agrees to provide haul agreements in accordance with Grant County Zoning Ordinance Section 1211.04.f and County Resolution 2014-36. Unless otherwise agreed to between the road authority and the applicant, Grant County requires, at a minimum the Applicant to abide by the following terms to be included in the Agreements:
 - i. Unless otherwise agreed upon between the applicant and Road Authority, the applicant shall be responsible for any costs associated with damage done to haul roads during construction. Further, damaged haul roads will be repaired to preconstruction status.
 - ii. Unless otherwise agreed upon between the applicant and Road Authority, the applicant shall be responsible for any costs associated with extraordinary maintenance and graveling on those roads used during the construction of the proposed use.

- iii. Unless otherwise agreed upon between the applicant and Road Authority, all road work whether customary or extraordinary shall be done under the authority and supervision of the Road Authority and meet its specifications. The work shall be done through the applicable contractor unless the applicant receives prior authorization from the applicable road authority to conduct its own repairs or maintenance.
 - iv. The Road Authority shall be responsible for all ordinary snow removal on their respective roads on the same basis as provided to the remainder of the Road Authority. Any additional snow removal deemed necessary for the applicant to continue its operations is hereby authorized to be done at applicant's expense.
- d. In the event the haul road agreements hereinbefore described are not executed, the applicant, his heirs, assigns or successors in interest of the Applicant agree that all the terms and conditions of Item "c", above, are to be deemed a covenant running with the above-described property. Furthermore, it is agreed that, in accepting title to the above-described property any grantee, heir, assign, or successor in interest to the undersigned expressly agrees to be bound by the terms of Item "c".
- 4) Violation and Penalties:
- a. Violations of requirements of the ordinance relating to the operations of a specific tower will result in enforcement/penalties in reference to the specific tower found to be in violation and will be enforced in the manner as described in Section 4.b below.
 - b. Violation of the terms of this conditional use permit will be determined by the Grant County Zoning Officer.
 - (1) The first violation substantiated by the Zoning Officer of this conditional use permit may result in a notification letter stating the violation and a prescribed period of time to remove the violation. A second violation occurring within one calendar year of the previous violation may result in a review of the validity of the conditional use permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the conditional use permit and/or cessation of the specific tower within forty-five days (45) of notice of revocation.
 - (2) The applicant may make appeal from the decision of the Zoning Officer or other agent of the Grant County Board of Adjustment to the Grant County Board of Adjustment. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Board of Adjustment shall be taken to Circuit Court.
 - (3) Failure to comply with the decision of the Zoning Officer or other agent of the Grant County Board of Adjustment may be deemed a separate violation.

The Conditional Use Permit was approved by a vote of 5 yes and 1 no (Pillatzki). (Ref: SDCL 11-2-59).

Exhibit A



Tom Pillatzki, Chair
Grant County Board of Adjustment

Date Approved: April 8, 2019

Date Signed: 4-18-19

Date Filed: _____

Conditional Use Permit Number(s): _____