

**Findings of Fact
Conditional Use Permit
Dakota Range III, LLC (Petitioner): Wind Energy Systems
January 29, 2019**

This matter having come before the Roberts 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. The application complies with the Standard Findings of Fact for Conditional Uses contained in Article 20 Section 2002.5 of the County's Zoning Ordinance.
2. The following use is listed in the A – Agricultural Zone District of the Roberts County Zoning Ordinance and (Ref: SDCL 11-2-17.3):
 - Wind Energy Systems (Ref: Zon. Ord. 6.04.17).
3. On or before November 6, 2018, Dakota Range III, LLC applied for a conditional use permit to operate a Wind Energy System on property in Ortleigh Township and Summit Township 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 1613 of the Roberts 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, 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 1613 of the Roberts 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. 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 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
13. Further, the satisfaction of the conditions of the Zoning Ordinance regulating Wind Energy Systems (Section 1613) and all conditional use permits (Section 2002) satisfies Section 601 (Statement of Intent - Agricultural District) of the Roberts 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 requests 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 Roberts 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 at the earliest date of on January 29, 2022 if no substantial construction as described in the application has been completed; or if a State Permit from the South Dakota Public Utility Commission has not been issued; or within two (2) years of the final decision regarding any appeal to circuit court relating to the issuance of the permit.
- c. The applicant may apply for an extension of this permit if the requirements of 1.b above cannot be met.
- d. 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 a updated local contact information of supervisor with authority to implement dust control and other necessary enforcement of the conditions of this permit.

3) Obligation to Meet Requirements:

- a. Applicant agrees to meet requirements of Section 1613 of the Roberts 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 1613.
- 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.
- c. Applicant agrees to construct all WES towers with a setback distance equal to or greater than the minimum setback distances described in the application.
- d. Applicant agrees that the construction and operation of all WES towers will comply with noise and shadow flicker thresholds as described in the application.

4) Violation and Penalties:

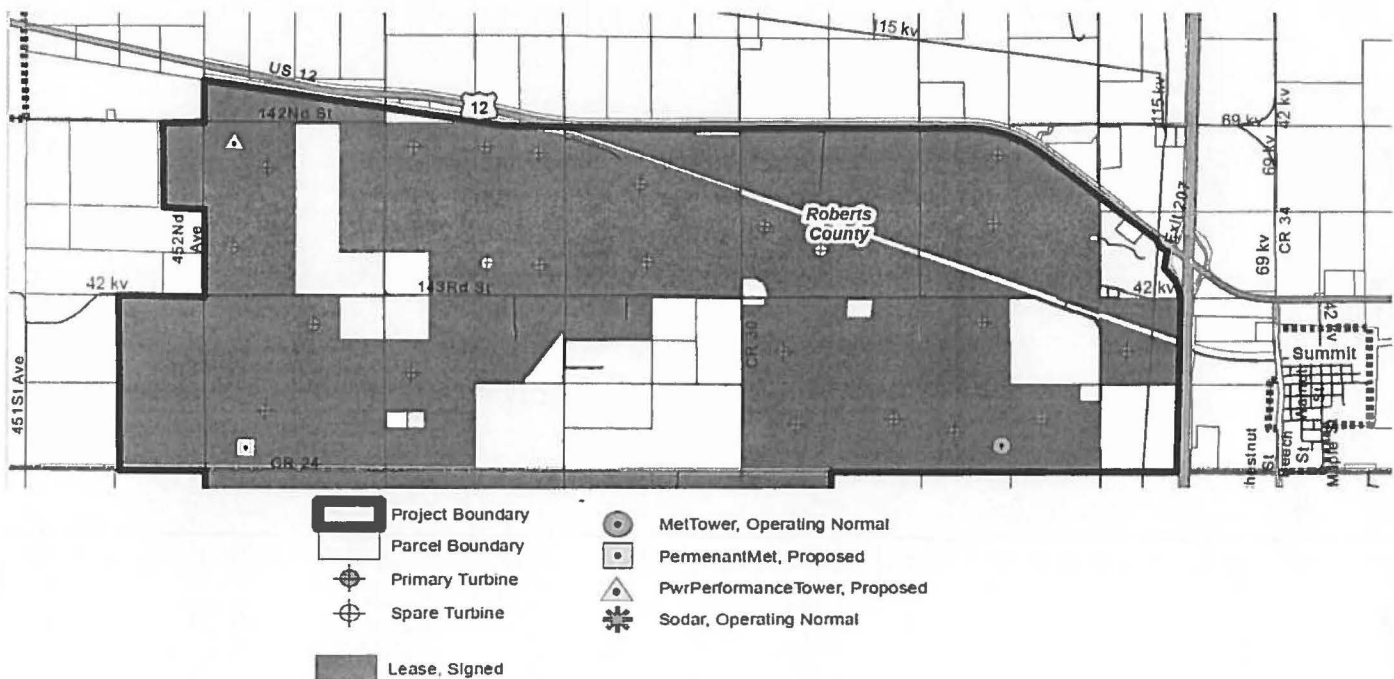
- a. Violations of requirements of the ordinance relating to the operations of a specific tower will result in enforcement/penalties in reference to the specific tower found to be in violation and will be enforced in the manner as described in Section 4.b below.

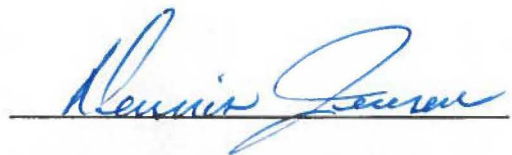
b. Violation of the terms of this conditional use permit will be determined by the Roberts County Zoning Officer.

- (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 Roberts County Board of Adjustment to the Roberts 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 Roberts County Board of Adjustment may be deemed a separate violation.

The Conditional Use Permit was approved by a vote of unanimous vote (Ref: SDCL 11-2-59).

Exhibit A





Dennis Jensen, Chairperson
Roberts County Board of Adjustment

Date Approved: January 29, 2019

Date Signed: 2/5/2019

Date Filed: 2/5/2019

Conditional Use Permit Number(s): 3901