

**Findings of Fact
Special Exception Permit
Deuel Harvest Wind Energy LLC
June 10, 2019**

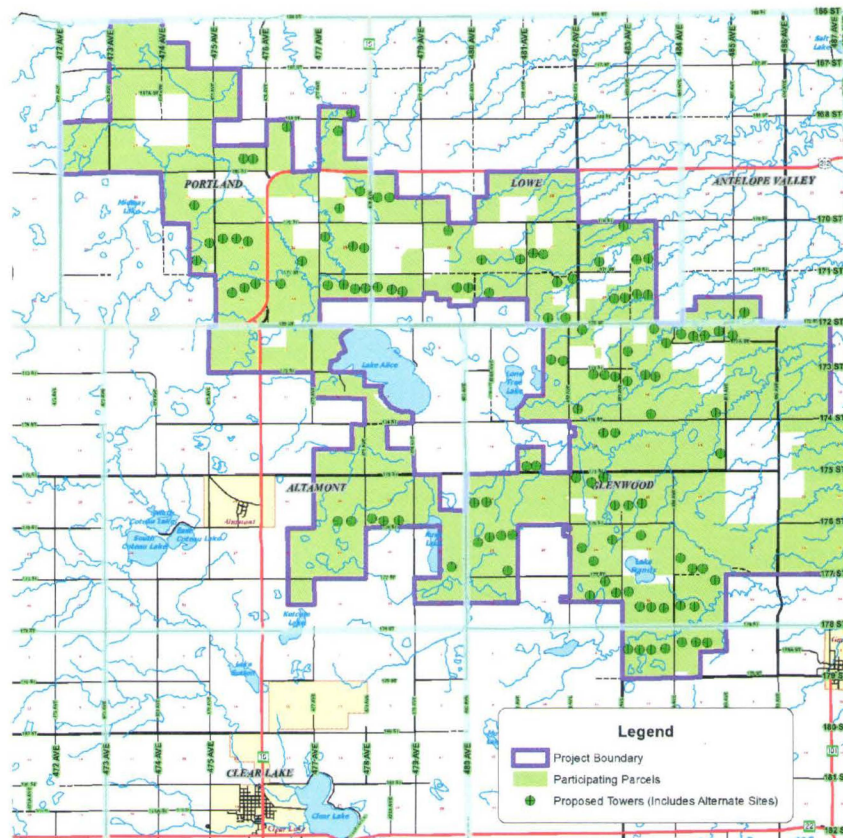
This matter having come before the Board of Adjustment and the Board having taken testimony and heard the evidence. The Board enters the following Findings of Fact in support of its motion to approve the Petitioner's application for a Special Exception Permit.

1. The following use is listed in the A – Agricultural Zone and Zone B of the Aquifer Protection Overlay District of the Deuel County Zoning Ordinance (Ref: SDCL 11-2-17.3):

Wind Energy Systems (Ref: Zon. Ord. Section 1215).

All special exceptions allowed in underlying districts, with the exception of those expressly prohibited in Zone B, may be approved by the Board of Adjustment provided they can meet Performance Standards outlined for the Aquifer Protection Overlay Zone. (Ref: Zon. Ord Section 1105.10.1)

2. On or before April 8, 2019, Deuel Harvest Wind Energy LLC applied for a Special Exception Permit to operate a Wind Energy System on property in Antelope Valley, Altamont, Glenwood, Herrick, Lowe and Portland Townships as displayed in Exhibit "A" below and hereby incorporated by reference.



3. Section 504.8 of the Deuel County Zoning Ordinance states: "No applicant requesting a special exception permit whose application includes the same or substantially the same requirements for the same or substantially the same property which has been denied by the Board of Adjustment shall be again considered by the Board of Adjustment before the expiration date of six (6) months from the date of the final action on the petition."
4. On January 22, 2018 the Deuel County Board of Adjustment approved a similar application for Special Exception to operate a Wind Energy System filed by Deuel Harvest Wind Energy, LLC.
5. Following an appeal to circuit court, the January 22, 2018 decision of the Board of Adjustment was invalidated due to disqualification of the votes of two Board of Adjustment members.
6. The January 22, 2018 action by the Board of Adjustment was to approve the request, and the Circuit Court's decision to invalidate that approval was not a denial by the Board of Adjustment. Therefore, Section 504.8 does not apply to this application.
7. This application meets the definition of a Wind Energy System.
8. 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.
9. The application and testimony at this meeting allowed the Board to adequately review how the applicant will satisfy requirements for 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 and appearance, noise and flicker.
10. 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 and features which would require setback. Final determination of compliance with setbacks is completed upon issuance of building permit(s).
11. With regard to the setback from businesses, the Board's interpretation of Section 1215.03(2)(a) is that the term "business" refers to a physical structure associated with a business that can be occupied by people.
12. With regard to Section 1215.03(2)(d), the Board's interpretation is that the 2-mile setback is intended to apply to the Lake Park District at Lake Alice, not the lake itself.
13. The applicant submitted Boundaries of the site proposed for WES on a USGS Map, a map of easements, copies of easement agreements with landowners, 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.

14. The agreement in the letter of assurance that the applicant will obtain haul road agreements satisfies the requirement for a haul road agreement.
15. The Board added conditions relating to concerns expressed about proximity of proposed towers from established eagle nests and notice prior to issuance of building permits for wind towers.
16. The application, staff report, and testimony during the public hearing adequately addressed all applicable requirements of the zoning ordinance, including Section 504 of the Zoning Ordinance in reference to all forms of Special Exceptions.
17. No other issues were brought up with the application or during testimony which relate to the Zoning Ordinance or Land Use Plan that needed to be addressed.
18. 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. Therefore, The Board of Adjustment finds that it is empowered to grant the Special Exception, and that the granting of the Special Exception will not adversely affect the public interest.
19. The Board requests legal counsel 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 Special Exception permit and any letters of assurance, building permits or other items associated with said Special Exception Permit.
20. 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 Deuel County Zoning Ordinance to be agreed to in the form of a “Letter of Assurance”:
 - 1) Effective Date and Transferability:
 - a. Upon issuance of applicant permit by South Dakota Public Utilities Commission.
 - b. This permit shall expire if no substantial construction described within the application has occurred within three (3) years of issuance of this permit (on or before June 10, 2022.)
 - c. The Special Exception 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. Grantor 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. No permit shall be issued for a wind tower proposed less than one-half (1/2) mile from active eagles’ nests at the time of permit issuance. The applicant shall submit a map of active eagles’ nests known to exist at the time of the May 8, 2019 hearing.

- e. Building permits for wind towers shall become effective upon publication of notice in the *Clear Lake Courier* in the form of a map which indicates the location of towers permitted.

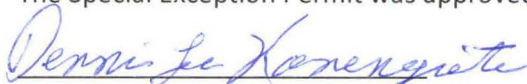
3) Obligation to Meet Requirements:

- a. Applicant agrees to meet requirements of Section 1215 of the Deuel County Ordinance in reference to remaining obligations including but not limited to: submittal of Haul Road Agreements, Submittal of Decommissioning Plan, Final site location of towers, building permit application, meeting applicable federal and state requirements, and consideration of bond for abandonment/decommissioning.

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 Special Exception permit will be determined by the Deuel County Zoning Officer.
 - (1) The first violation substantiated by the Zoning Officer of this Special Exception 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 Special Exception permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the Special Exception permit and cessation of all operations 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 Deuel County Board of Adjustment to the Deuel 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 Deuel County Board of Adjustment may be deemed a separate violation.

The Special Exception Permit was approved by a vote of 5 yes and 0 no.



Dennis Kanengieter, Chairperson
Deuel County Board of Adjustment

Date Approved: May 8, 2019 (Permit acted on); June 10, 2019 (Findings Approved)

Date Signed: June 10, 2019

Date Filed: June 10, 2019

Special Exception Permit Number(s): 19-SPV 115

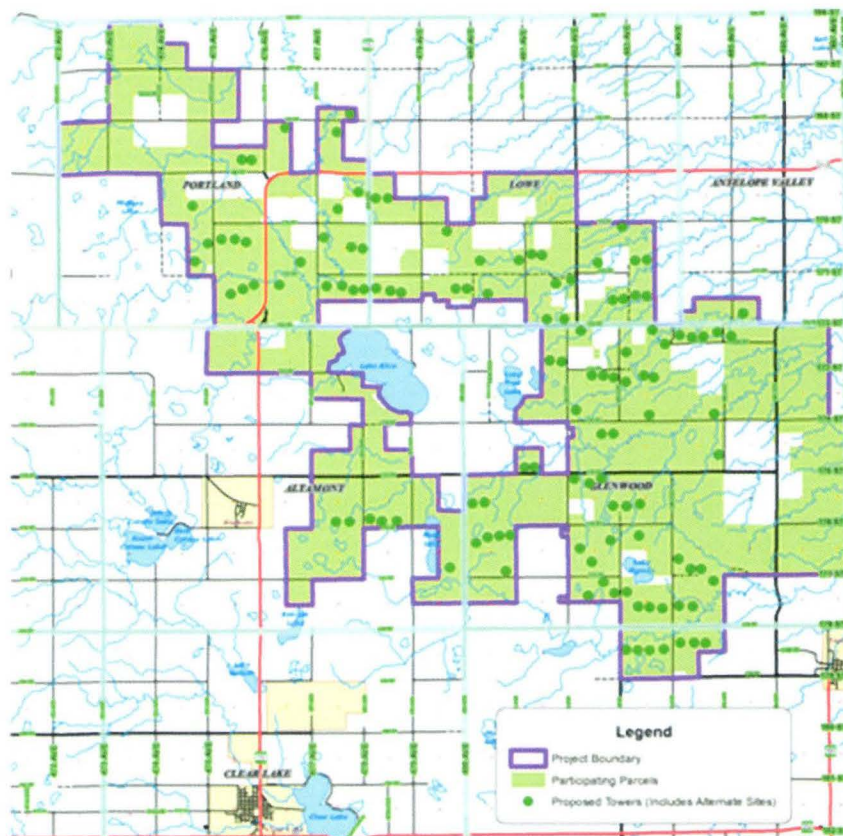
Prepared by:

Deuel County Zoning Office
408 4th Street West
Clear Lake, SD 57226

Letter of Assurance

A Special Exception Permit under Deuel County Zoning Ordinance Section 1215, “Wind Energy Systems” has been granted by the Deuel County Board of Adjustment to Deuel Harvest Wind Energy LLC to operate a Wind Energy System with up to 112 Wind Towers and other ancillary structures/uses.

Property location: Antelope Valley, Altamont, Glenwood, Herrick, Lowe and Portland Townships as displayed in Exhibit “A” below and hereby incorporated by reference.



Conditions to be placed upon the Special Exception permit issued to Deuel Harvest Wind Energy LLC by the Deuel County Board of Adjustment on May 8, 2019:


- 1) Effective Date and Transferability:
 - a. Upon issuance of applicant permit by South Dakota Public Utilities Commission.
 - b. This permit shall expire if no substantial construction described within the application has occurred within three (3) years of issuance of this permit (on or before June 10, 2022.)
 - c. The Special Exception permit is transferable. Subsequent owners/operators shall agree to the same conditions described herein.
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 - 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. Grantor 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. No permit shall be issued for a wind tower proposed less than one-half (1/2) mile from active eagles' nests at the time of permit issuance. The applicant shall submit a map of active eagles' nests known to exist at the time of the May 8, 2019 hearing.
 - e. Building permits for wind towers shall become effective upon publication of notice in the *Clear Lake Courier* in the form of a map which indicates the location of towers permitted.
- 3) Obligation to Meet Requirements:
 - a. Applicant agrees to meet requirements of Section 1215 of the Deuel County Ordinance in reference to remaining obligations including but not limited to: submittal of Haul Road Agreements, Submittal of Decommissioning Plan, Final site location of towers, building permit application, meeting applicable federal and state requirements, and consideration of bond for abandonment/decommissioning.
- 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 Special Exception permit will be determined by the Deuel County Zoning Officer.
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 - (3) Failure to comply with the decision of the Zoning Officer or other agent of the Deuel County Board of Adjustment may be deemed a separate violation.

IN WITNESS WHEREOF, Deuel County and the Grantor(s) have executed this Special Exception Permit Letter of Assurance.

Deuel Harvest Wind Energy LLC (Grantor)

Date

by (Name): _____
its (Title): _____


Deuel County Zoning Officer
Deuel County Board of Adjustment

6-10-19
Date


Chairman
Deuel County Board of Adjustment

6-10-19
Date

STATE OF _____
SS:
COUNTY OF _____

This instrument was acknowledged before me on _____, 2018 by _____, on behalf of Deuel Harvest Wind Energy LLC (Grantor).

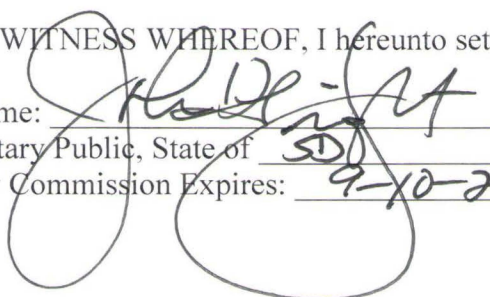
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Name: _____
Notary Public, State of _____
My Commission Expires: _____

STATE OF SOUTH DAKOTA
SS:
COUNTY OF DEUEL

This instrument was acknowledged before me on June 10, 2018 by Dennis Kanengate representing Deuel County as the Chairman of the Deuel County Board of Adjustment.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Name: 
Notary Public, State of SD
My Commission Expires: 9-10-2021

IT IS UNLAWFUL TO COMMENCE WORK BEFORE THIS PERMIT
IS PLACED IN A CONSPICUOUS PLACE ON THE PREMISES

THIS CERTIFIES THAT
SPECIAL EXCEPTION

PERMIT NUMBER

19-SPV 115

ZONING DISTRICT

AG

has been issued to
in compliance with the requirements of the Deuel County Planning

Deuel Harvest Wind Energy LLC

Commission Ordinances for

Wind Energy System with up to 112 wind turbines, Meteorological Towers, Aircraft Detection Lighting Sensor Towers, associated electrical transmission lines, substation, construction and maintenance structures, and other accessory uses

located in

Antelope Valley, Portland, Lowe, Altamont,
Glenwood, and Herrick Townships

Sec

T

N;

R

DOE #

See below

SPECIFIC CONDITIONS OR VARIANCE REQUIREMENTS

Special Exception Permit Pursuant to Section 1101.03.22 Wind Energy System. The applicant, Deuel Harvest Wind Energy LLC, is requesting to operate a Wind Energy System with up to 112 wind turbines, Meteorological Towers, Aircraft Detection Lighting Sensor Towers, associated electrical transmission lines, substation, construction and maintenance structures, and other accessory uses on certain property situated in Antelope Valley, Portland, Lowe, Altamont, Glenwood, and Herrick Townships. Applicant agrees to meet requirements of Section 1215 of the Deuel County Ordinance in reference to remaining obligations including but not limited to

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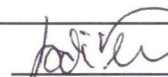
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DATE

July 8, 2019



DEUEL COUNTY ZONING OFFICER
JODI THEISEN
PO BOX 606
CLEAR LAKE, SD 57226

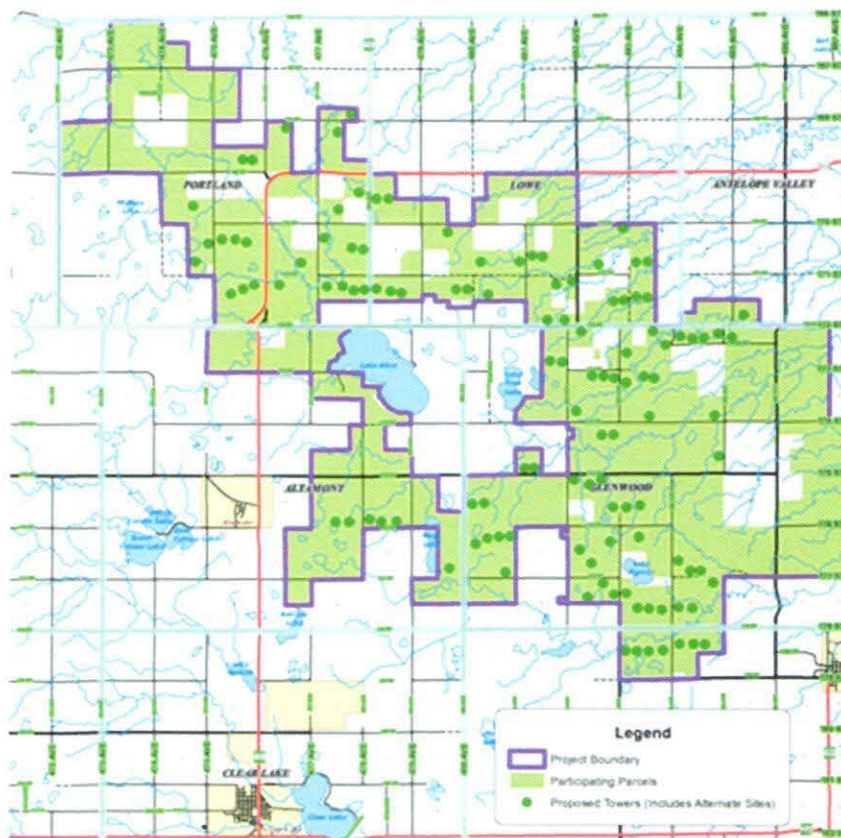
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 - (3) Failure to comply with the decision of the Zoning Officer or other agent of the Deuel County Board of Adjustment may be deemed a separate violation.

IN WITNESS WHEREOF, Deuel County and the Grantor(s) have executed this Special Exception Permit Letter of Assurance.

Deuel Harvest Wind Energy LLC (Grantor)

7/8/19
Date

by (Name): Jonathan Saxon
its (Title): vice President

[Signature]
Deuel County Zoning Officer
Deuel County Board of Adjustment

7-16-19
Date

[Signature]
Chairman
Deuel County Board of Adjustment

7-16-19
Date

STATE OF Illinois
SS:
COUNTY OF COOK



This instrument was acknowledged before me on July 8th, 2019 by Jonathan Saxon, on behalf of Deuel Harvest Wind Energy LLC (Grantor).

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Name: Melanie Frank
Notary Public, State of Illinois
My Commission Expires: 06/03/2023



STATE OF SOUTH DAKOTA
SS:
COUNTY OF DEUEL

This instrument was acknowledged before me on 7/6, 2019 by Deann Kanengiser representing Deuel County as the Chairman of the Deuel County Board of Adjustment.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Name: [Signature]
Notary Public, State of South Dakota
My Commission Expires: 9-10-2021