

APPENDIX C – WES ORDINANCE, SEP, AND FINDINGS

ORDINANCE B2004-01, AN ORDINANCE ESTABLISHING ZONING REGULATIONS FOR DEUEL COUNTY, SOUTH DAKOTA, AND PROVIDING FOR THE ADMINISTRATION, ENFORCEMENT, AND AMENDMENT THEREOF, IN ACCORDANCE WITH THE PROVISIONS OF CHAPTERS 11-2, 1967 SDCL, AND AMENDMENTS THEREOF, AND FOR THE REPEAL OF ALL RESOLUTIONS AND ORDINANCES IN CONFLICT THEREWITH.

WHEREAS, the Deuel County, South Dakota, Board of County Commissioners, hereinafter referred to as the Board of County Commissioners, deems it necessary, for the purpose of promoting the health, safety, and the general welfare of the County, to enact a zoning regulation and to provide for its administration, and

WHEREAS, the Board of County Commissioners have appointed a County Planning Commission, hereinafter referred to as the Planning Commission, to recommend the district boundaries and to recommend appropriate regulations to be enforced therein, and

WHEREAS, the Planning Commission has divided Deuel County into districts, and has established by reference to maps the boundaries of said districts for administration and interpretation; has provided for definitions and for amendments to this regulation; has provided for the enforcement; prescribed penalties for violation of provisions; has provided for building permits within the districts; has provided for invalidity of a part and for repeal of regulation in conflict herewith; and has prepared regulations pertaining to such districts in accordance with the county comprehensive plan and with the purpose to protect the tax base, to guide the physical development of the county, to encourage the distribution of population or mode of land utilization that will facilitate the economical and adequate provisions of transportation, roads, water supply, drainage, sanitation, education, recreation, or other public requirements, to conserve and develop natural resources, and

WHEREAS, the Planning Commission has given reasonable consideration, among other things, to the character of the districts and their peculiar suitability for particular uses, and

WHEREAS, the Planning Commission has given due public notice to a hearing and has held such public hearing and has made a preliminary report and submitted it to the Board of County Commissioners, and

WHEREAS, the Board of County Commissioners has given due public notice to a hearing relating to zoning districts, regulations, and restrictions, and has held such public hearings, and

WHEREAS, all requirements of SDCL 11-2, 1967, with regard to the preparation of this ordinance and subsequent action of the Board of County Commissioners, has been met, and

WHEREAS, copies of said zoning ordinance and zoning map have been filed with the Deuel County Auditor for public inspection and review during regular business hours, and

WHEREAS, all ordinances or parts of ordinances in conflict herewith are hereby expressly repealed;

THEREFORE BE IT RESOLVED that the Deuel County Zoning Ordinance is hereby adopted by the Board of County Commissioners, Deuel County, South Dakota.

Adopted this 6th day of July, 2004.

Chairman
Deuel County Board of County Commissioners

ATTEST:

Deuel County Auditor

Ordinance B2004-01-23B

AN ORDINANCE ENTITLED, An Ordinance to Amend Section 1215 Wind Energy System (WES) Requirements Adopted by Ordinance B2004-01, July 6, 2004, as amended, of the Zoning Ordinance of Deuel County.

Be it ordained by the Board of County Commissioners of Deuel County, South Dakota: that section 1215 Adopted by Ordinance B2004-01 July 6, 2004, as amended, of the Zoning Ordinance of Deuel County be amended to change Section 1215 Wind Energy System Requirements as follows: (Changes are printed with those parts in bold as additions and those parts with a line through as deletions to the ordinance.)

Section 1215. Wind Energy System (Wes) Requirements

Section 1215.01 Applicability

The requirements of these regulations shall apply to all WES facilities except private non-commercial facilities with a single tower height of less than one-hundred forty (140) feet and used primarily for on-site consumption of power.

Section 1215.02 Federal and State Requirements

All WESs shall meet or exceed standards and regulations of the Federal Aviation Administration and South Dakota State Statutes and any other agency of federal or state government with the authority to regulate WESs.

Section 1215.03 General Provisions

1. Mitigation Measures

a. **Site Clearance.** The permittees shall disturb or clear the site only to the extent necessary to assure suitable access for construction, safe operation and maintenance of the WES.

b. **Topsoil Protection.** The permittees shall implement measures to protect and segregate topsoil from subsoil in cultivated lands unless otherwise negotiated with the affected landowner.

c. **Compaction.** The permittees shall implement measures to minimize compaction of all lands during all phases of the project's life and shall confine compaction to as small an area as practicable.

d. **Livestock Protection.** The permittees shall take precautions to protect livestock during all phases of the project's life.

e. **Fences.** The permittees shall promptly replace or repair all fences and gates removed or damaged during all phases of the project's life unless otherwise negotiated with the affected landowner.

f. Roads

i. **Public Roads.** Prior to commencement of construction, the permittees shall identify all state, county or township "haul roads" that will be used for the WES project and shall notify the state, county or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. The governmental body shall be given adequate time to inspect the haul roads prior to use of these haul roads. Where practical, existing roadways shall be used for all activities associated with the WES. Where practical, all-weather roads shall be used to deliver cement, turbines, towers, assemble nacelles and all other heavy components to and from the turbine sites.

ii. The permittees shall, prior to the use of approved haul roads, make satisfactory arrangements with the appropriate state, county or township governmental body having jurisdiction over approved haul roads for construction of the WES for the maintenance and repair of the haul roads that will be subject to extra wear and tear due to transportation of equipment and WES components. The permittees shall notify the County of such arrangements upon request of the County.

iii. Turbine Access Roads. Construction of turbine access roads shall be minimized. Access roads shall be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainageways, the access roads shall be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed.

iv. Private Roads. The permittees shall promptly repair private roads or lanes damaged when moving equipment or when obtaining access to the site, unless otherwise negotiated with the affected landowner.

v. Control of Dust. The permittees shall utilize all reasonable measures and practices of construction to control dust.

vi. Soil Erosion and Sediment control Plan. The permittees shall develop a Soil Erosion and Sediment Control Plan prior to construction and submit the plan to the County. The Soil Erosion and Sediment Control Plan shall address the erosion control measures for each project phase, and shall at a minimum identify plans for grading, construction and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material and removal of silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.

2. Setbacks

Wind turbines shall meet the following minimum spacing requirements.

a. Distance from existing Non-Participating residences and businesses shall be not less than four times the height of the wind turbine. Distance from existing Participating residences, business and public buildings shall be not less than fifteen hundred feet. Non-Participating property owners shall have the right to waive the respective setback requirements.

~~Distance from existing off-site residences, business and public buildings shall be not less than one thousand (1,000) feet. Distance from on-site or lessor's residence shall be not less than five hundred (500) feet or one hundred and ten percent (110%) of the wind turbine height, whichever is greater. For purposes of this section only, the term "business" does not include agricultural uses.~~

b. Distance from public right-of-way shall be one hundred and ten percent (110%) the height of the wind turbines, measured from the ground surface to the tip of the blade when in a fully vertical position.

c. Distance from any property line shall be one hundred and ten percent (110%) the height of the wind turbine, measured from the ground surface to the tip of the blade when in a fully vertical position unless wind easement has been obtained from adjoining property owner.

d. Distance from the Lake Park District located at Lake Cochrane 3 miles, Lake Alice 2 miles and 1 mile from the Lake Park District at Bullhead Lake.

e. Distance from the municipalities of Altamont, Astoria, Brandt and Goodwin of 1 mile from the nearest residence and 1 1/2 miles from the city limits of the towns of Gary, Toronto and Clear Lake, except the area of Clear Lake located in sections 11, 12 and 14.

3. Electromagnetic Interference. The permittees shall not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications

Commission (FCC) regulations or other law. In the event such interference is caused by the WES or its operation, the permittees shall take the measures necessary to correct the problem.

4. **Lighting.** Towers shall be marked as required by the Federal Aviation Administration (FAA). There shall be no lights on the towers other than what is required by the FAA. This restriction shall not apply to infrared heating devices used to protect the monitoring equipment. Upon commencement of construction of a Tower, in cases where there are residential uses located within a distance which is three hundred (300) percent of the height of the Tower from the Tower and when required by federal law, dual mode lighting shall be requested from the FAA. Beacon lighting, unless required by FAA, shall not be utilized.

5. **Turbine Spacing.** The turbines shall be spaced no closer than is allowed by the turbine manufacturer in its approval of the turbine array for warranty purposes.

6. **Footprint Minimization.** The permittees shall design and construct the WES so as to minimize the amount of land that is impacted by the WES. Associated facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems shall to the greatest extent feasible be mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.

7. **Electrical Cables.** The permittees shall place electrical lines, known as collectors, and communication cables underground when located on private property except when total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. Collectors and cables shall also be placed within or immediately adjacent to the land necessary for turbine access roads unless otherwise negotiated with the affected landowner. This paragraph does not apply to feeder lines.

8. **Feeder Lines.** The permittees shall place overhead electric lines, known as feeders, on public rights-of-way if a public right-of-way exists. Changes in routes may be made as long as feeders remain on public rights-of-way and approval has been obtained from the governmental unit responsible for the affected right-of-way. If no public right-of-way exists, the permittees may place feeders on private property. When placing feeders on private property, the permittees shall place the feeder in accordance with the easement negotiated with the affected landowner. The permittees shall submit the site plan and engineering drawings for the feeder lines before commencing construction.

9. **Decommissioning/Restoration/Abandonment**

a. **Decommissioning Plan.** Within 120 days of completion of construction, the permittees shall submit to the County a decommissioning plan describing the manner in which the permittees anticipate decommissioning the project in accordance with the requirements of paragraph (b) below. The plan shall include a description of the manner in which the permittees will ensure that it has the financial capability to carry out these restoration requirements when they go into effect. The permittees shall ensure that it carries out its obligation to provide for the resources necessary to fulfill these requirements. **The decommissioning plan shall include the requirement that Permittee post a bond or other adequate security sufficient to pay the entire cost of the decommission process.**

b. **Site Restoration.** Upon expiration of this permit, or upon earlier termination of operation of the WES, the permittees shall have the obligation to dismantle and remove from the site all towers, turbine generators, transformers, overhead and underground cables, foundations, buildings and ancillary equipment to a depth of forty two (42) inches. To the extent possible the permittees shall restore and reclaim the site to its pre-project topography and topsoil quality. All access roads shall be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between the permittees and the affected landowner

shall be submitted to the County prior to completion of restoration activities. The site shall be restored in accordance with the requirements of this condition within eighteen months after expiration.

10. **Abandoned Turbines.** The permittees shall advise the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require the permittees to decommission any abandoned turbine.

11. **Height from Ground Surface.** The minimum height of blade tips, measured from ground surface when a blade is in fully vertical position, shall be twenty-five (25) feet.

12. **Towers.**

a. **Color and Finish.** The finish of the exterior surface shall be non-reflective and non-glass.

b. All towers shall be singular tubular design. With the exception of those towers identified in Section 12.15.01.

13. **Noise & Shadow Flicker.**

a. ~~Noise level shall not exceed 50 dBA average A-Weighted Sound pressure at the perimeter of existing residences.~~ **Noise level shall not exceed 45 dBA average A-Weighted Sound pressure at the perimeter of existing residences, for non-participating residences.**

b. **Limit for allowable shadow flicker at existing residences to no more than 30 hours annually.**

14. **Permit Expiration.** The permit shall become void if no substantial construction has been completed within three (3) years of issuance.

15. **Required Information for Permit.**

a. Boundaries of the site proposed for WES and associated facilities on United States Geological Survey Map or other map as appropriate.

b. Map of easements for WES.

c. Copy of easement agreements with landowners.

d. Map of occupied residential structures, businesses and public buildings.


e. Map of sites for WES, access roads and utility lines.

f. Proof of utility right-of-way easement for access to transmission lines.

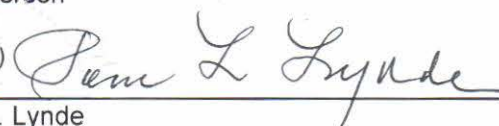
g. Location of other WES in general area.

h. Project schedule.

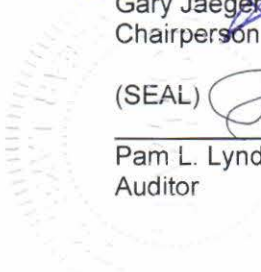
Passed and adopted this 23rd day of May, 2017.



Gary Jaeger
Chairperson

(SEAL) 

Pam L. Lynde
Auditor



First Reading May 16, 2017
Second May 23, 2017
Approved & Adopted May 23, 2017
Notice of Adoption Published May 31, 2017

Effective Date June 20, 2017

This ordinance shall become effective 20 days after publication of this notice in the official newspaper, thereby repealing all ordinances or parts thereof in conflict herewith unless a referendum is timely involved prior thereto.

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 18-01 ZONING DISTRICT AG

has been issued to DEUEL HARVEST WIND ENERGY LLC
in compliance with the requirements of the Deuel County Planning

Commission Ordinances for Permit for a Wind Energy System and Maintenance Building,
Project Station, interconnection Substation, Collector Lines,
and up to 3 Meteorological Towers

located in


Portland, Lowe, Altamont	117	49
Glenwood, Herrick Townships	116	48
Sec <u> </u> T <u>115</u> N; R <u>47</u> DOE # <u> </u>	115	47

See below

SPECIFIC CONDITIONS OR VARIANCE REQUIREMENTS

Special Exception permit to construct and operate up to 300 MW Deuel Harvest North Wind Farm up to 150 wind turbines. The facilities will also include an operations and maintenance building, a project substation, an interconnection substation, collector lines, and up to three meteorological towers. The proposed Wind Energy System is located in the following sections and townships: Portland Township (T117N, R49W) in sections 4, 5, 8-10, 12-18, 21-28, 34-36; Lowe Township (T117N, R48W) in sections 19-22, 25-36; Antelope Valley (T117N, R47W) in sections 31, 32; Altamont Township (T116N, R49W) in sections 1-3, 12, 13, 24-26, 35; Altamont Township (T116N, R48W) in sections 7, 18-20, 29, 32; Glenwood Township (T116N, R48W) in sections 1-3, 10-15, 21-28, 33-36; Glenwood Township (T116N-R47W) in sections 4-9, 15-22, 27-31; Herrick Township (T115N, R48W) in section 1; and in Herrick Township (T115N, R47W) in section 6, all in Deuel County.
Upon issuance of applicant permit by the South Dakota Public Utilities Commission. Applicant is required 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, sign the letter of Assurance, Submittal of Decommissioning Plan, Final site location of towers, building permit application, meeting applicable federal and state requirements, and consideration of adequate security for abandonment/decommissioning. The permit shall expire if no substantial construction described within the application has occurred within three (3) years of issuance of a permit by South Dakota Public Utilities Commission. The project will need to be at least 25% complete to meet the substantial completion requirement. The applicant may apply for an extension the requirements above are not met. The Special Exception permit is transferable. Subsequent owners/operators shall agree to the same conditions described herein.

DATE March 2, 2018


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

**Findings of Fact
Special Exception Permit
Deuel Harvest Wind Energy North LLC
January 22, 2018**

This matter having come before the Deuel County Board of Adjustment (Board) 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. Deuel County adopted its Comprehensive Land Use Plan on April 6, 2004. (Ref: SDCL 11-2-11; 11-2-12; 11-2-13)
2. Deuel County adopted its current zoning regulations with ordinance #2004-1 on July 6, 2004. (Ref: SDCL 11-2-13)
3. Deuel County Zoning Ordinance appoints the Planning Commission to act as the Board (Ref: SDCL 11-2-49) and Deuel County Zoning Ordinance (Zon. Ord. Section 501)
4. The Deuel County Zoning Ordinance has identified the Board as the approving authority relating to special exceptions. (Ref: SDCL11-2-17.3 and Zon. Ord. Section 504)
5. On December 22, 2017, Deuel Harvest Wind Energy LLC applied for a special exception permit to operate a Wind Energy System on property in Antelope, Altamont, Glenwood, Herrick, Lowe and Portland Townships As displayed in Exhibit "A" attached and hereby incorporated by reference
6. Required public notices pursuant to South Dakota Codified Law and Deuel County Zoning Ordinance was published in the paper on January 10 and 17, 2018. (Ref: SDCL 11-2-57 and Zon. Ord Section 504.2)
7. On January 22, 2018 a public hearing was held before the Board. At said hearing, testimony both in support and in opposition to the request was heard and reviewed by the Board (Ref: SDCL 11-2-57 and Zon. Ord. Section 504.3)
8. 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 1101.03, 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)

9. This proposed project meets the definition of a Wind Energy System.

10. The application and testimony 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. (Ref: Zon. Ord. Section 1215)
11. The applicant satisfactorily demonstrated the ability to meet required setbacks for turbines from property lines, right-of-way, residences, businesses, Lake Park Districts, municipalities, government facilities and other structures, uses and features which would require setback. (Ref: Zon. Ord. Section 1215)
12. The reference to business in the ordinance is defined as a physical structure.
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. (Ref: Zon. Ord. Section 1215)
14. The application and testimony at the meeting allowed the Board to adequately review and determine that satisfactory arrangements have been made, or may be made if conditions are placed upon the applicant concerning:
 - a. Entrance and exit to property and proposed structures thereon; The proposed entrances and exits do not create a safety issue or hardship of any kind.
 - b. Off-street parking and loading areas; Applicant has sufficient parking and loading at the proposed sites. The entrance and exit to the property and proposed structures, along with the off-street parking and loading areas will have no or minimal economic impact on the surrounding properties and properties generally in the district. The proposed project will have a positive economic benefit to the properties in the project and the county as a whole.
 - c. Utilities; Applicant has adequate arrangements for utility services.
 - d. Screening and buffering; Applicant meets the established setbacks for screening and buffering.
 - e. Signs; Any signs will be located on site and will primarily be temporary in nature and do not appear to impact any other property or motorists.
 - f. Required yards and other open space; Applicant has met the required setbacks.
 - g. General compatibility with adjacent properties and other property in the district; Wind Energy Systems are a use allowed by special exception in the Ag District. Applicants proposed project meets the use contemplated by the ordinance.
 - h. Refuse, and service areas; Applicant has made sufficient arrangement for the storage and disposal of its refuse and its proposed service areas are sufficient. (Ref: Zon. Ord. Section 504.5)
 - i. The agreement in the required letter of assurance that the applicant will obtain a haul road agreement satisfies the requirement for a haul road agreement. (Ref: Zon. Ord. Section 1215)
 - j. This permit shall 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 (Ref: Zon. Ord. Section 1215)

- k. 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's permit by South Dakota Public Utilities Commission.
- b. This permit shall become void if no substantial construction described within the application has been completed within three (3) years of issuance by the South Dakota Public Utility Commission.
- c. The applicant may apply for an extension of this permit if the requirements of 1.b above cannot be met.
- d. For the purposes of this application substantial construction shall be considered the completion of at least 25% of the towers in the final layout are erected.
- e. 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 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 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 adequate security for abandonment/decommissioning.

15. 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.
16. The Special Exception Permit was approved on January 22, 2018 by a vote of 5 yes and 0 no. (Ref: SDCL 11-2-59).
17. Once these findings are approved by the Board and signed by the Board Chair the zoning officer shall issue the Special Exception Permit and any letters of assurance, building permits or other items associated with said Special Exception Permit.

18. The findings contained herein combined with the findings of the Board of Adjustment contained in the motion to approve the special exception permit serve as the Official Findings of Fact referenced in Section 504.4 and 504.5.

Danni Lee Kerenyicz

Chairperson

Deuel County Board of Adjustment

Date Signed: 2-13-18

Date Filed: 2-13-18

Special Exception Permit Number(s): 18-02

Exhibit A - Deuel Harvest North

