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## MEMORANDUM

**TO: BOWMAN-SLOPE SOIL AND WATER CONSERVATION  
DISTRICT LAND USE PLAN STEERING COMMITTEE**

**VIA: EMAIL**  
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**FROM: KAREN BUDD-FALEN & CONNER NICKLAS  
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**THROUGH: BRENDA YOUNKIN  
Y-2 CONSULTANTS**

**DATE: SEPTEMBER 12, 2017**

**RE: INDUSTRIAL SITING FOR WIND ENERGY DEVELOPMENT**

### I. BACKGROUND

#### A. State Statutory Requirements

North Dakota Public Service Commission regulates siting of wind power facilities greater than 500 kilowatts (kW) by providing a Certificate of Site Compatibility. This is the sole permit needed but the permit cannot supersede local governments' regulations or zoning. N.D.C.C. § 49-22-16. The application must contain several pieces of information including, the environmental impact of the facility, the need for the facility, a comprehensive analysis supporting why the location is best suited for this facility, mitigation measures for foreseen adverse impacts, and other information. *Id.* at § 49-22-08.

Upon submitting the application, the North Dakota Public Service Commission has 11 factors it must consider when it approves a facility. These factors include:

(1) the effects of the location, construction, and operation of the facility on the public health and welfare, natural resources, and the environment, (2) the effects of new energy conversion and transmission technologies and systems designed to minimize adverse environmental effects, (3) the potential for beneficial uses of waste energy from the proposed facility, (4) adverse direct and indirect environmental effects which cannot be avoided, (5) alternatives to minimize the adverse effects, (6) irreversible and irretrievable commitments of natural resources, (7) the direct and indirect economic impacts of the facility, (8) existing plans for other developments in the vicinity of the site, (9) the effect of the proposed site on scenic areas, historic sites and structures, and paleontological and archaeological sites, (10) the effects of the site which are unique because of biological wealth or because of rare or endangered species, and (11) other problems raised by governmental entities.

*Id.*

#### **B. State Regulatory Requirements**

Under the North Dakota Public Service Commission's regulations there are several areas in which general energy conversion facilities cannot be built. These areas include national, state, and local parks and recreational areas. N.D.A.C. § 69-06-08-01(1). Prime farmland and unique farmland are also excluded, unless that prime or unique farmland is small enough as to be of negligible impact on agricultural productions. *Id.* Other areas where general facilities cannot be built include irrigated areas, areas critical to the life stages of threatened or endangered species, and areas where animal or plant species that are unique or rare to the state would be irreversibly damaged. *Id.*

Additionally, the North Dakota Public Service Commission makes specific prohibitions for wind energy facilities. These prohibitions include areas that are less than:

(1) One and one-tenth times the height of the turbine from interstate or state roadway right of way; (2) One and one-tenth times the height of the turbine plus seventy-five feet from the centerline of any county or maintained township roadway; (3) One and one-tenth times the height of the turbine from any railroad right of way; (4) One and one-tenth times the height of the turbine from a one hundred fifteen kilovolt or higher transmission line; and (5) One and one-tenth times the height of the

turbine from the property line of a nonparticipating landowner, unless a variance is granted.

*Id.* at § 69-06-08-01(2).

Along with prohibited areas, there are also areas in which a facility cannot be built unless there are no reasonable alternatives. These areas include (1) historical resources not designated as exclusion areas, (2) areas within a city's limits, (3) areas within known floodplains, (4) areas that are geologically unstable, (6) woodlands and wetlands, and (7) areas of recreational significance. *Id.* at § 69-06-08-01(3). Additionally, wind energy facilities should not be within 100 feet of an inhabited residence if the facility will generate over 50 decibels of sound. *Id.* at § 69-06-08-01(4).

Finally, the agency has selection and policy criteria that look at several factors. Under the selection criteria, the agency will have a minimal, or controlled impact on agriculture, the availability of municipal resources, and on local institutions and other valuable resources. *Id.* at § 69-06-08-01(5). Under the policy criteria, the agency will give preference to those facilities that demonstrate certain policy benefits. *Id.* § 69-06-08-01(6). Some of these benefits include recycling of the conversion byproducts and effluents, not relocating residents, and monitoring of impacts. *Id.* § 69-06-08-01(6).

## **II. ISSUES FOR BOWMAN-SLOPE LAND USE PLAN**

Given this analysis, I believe that the Bowman-Slope land use plans should consider including issues regarding wind energy siting. Those issues may include (but are not limited to):

- A.** What are the economic impacts of wind energy in the area?
- B.** Are there other local norms and resources that are affected by wind energy not covered by state statute and regulation?
- C.** What kind of local procedures do you want in place to address local concerns over new facilities?

Should you have any questions, please do not hesitate to contact us.