

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Courtenay Wind Farm, LLC
200.5 MW Wind Energy Conversion Facility-Stutsman
County
Siting Application**

Case No. PU-13-64

AFFIDAVIT OF SERVICE BY CERTIFIED & REGULAR MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Cara DeSaye deposes and says that:

she is over the age of 18 years and not a party to this action and, on the 22nd day of **August, 2013**, she deposited in the United States Mail, at Bismarck, North Dakota, one envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

Notice of Intent to Consider Additional Information Not Presented at a Hearing

The envelope was addressed as follows:

Mollie Smith
Fredrikson & Byron
200 South Sixth Street Suite 4000
Minneapolis MN 55402-1425

Cert. No. 7013 0600 0001 7154 5437

Cara DeSaye further deposes and says that on the 22nd day of **August, 2013**, she deposited in the United States Mail, Bismarck, North Dakota, four envelopes by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

Kyle C. Wanner
North Dakota Aeronautics Commission
PO Box 5020
Bismarck ND 58502-5020

Robert & Julie Sprague
8720 20th Street SE
Courtenay ND 58426

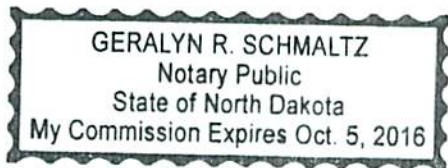
James & Sharon Hastings
1878 88th Avenue SE
Courtenay ND 58426

Grant Baumgartner
8965 16th Street SE
Courtenay ND 58426

Each address shown is the respective addressee's last reasonably ascertainable post office address.

Subscribed and sworn to before me
this 22nd day of **August, 2013**.

SEAL



Cara DeLorge
Gerald R. Schmaltz
Notary Public

**STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION**

**Courtenay Wind Farm, LLC
200.5 MW Wind Energy Center – Stutsman County
Siting Application**

Case No. PU-13-64

**NOTICE OF INTENT TO CONSIDER ADDITIONAL INFORMATION NOT
PRESENTED AT A HEARING**

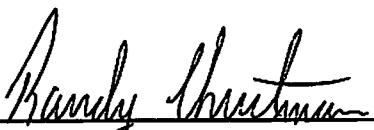
August 21, 2013

Pursuant to N.D.C.C. section 28-32-25, the Public Service Commission gives notice that it intends to consider information in its possession that was not presented as evidence at a hearing and that has been received by letters from persons and governmental agencies. The information is docketed in the Commission case file for Case No. PU-13-64 under docket entry numbers 24, 25, 27, 34 and 35. A copy of each document is attached.

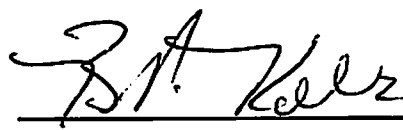
You are hereby advised that you have the right, upon written request, to examine the information or evidence and to present your own information or evidence and to cross-examine the person furnishing the information or evidence. Any such written request must be received within ten days of this notice.

For more information contact the Public Service Commission, State Capitol, Bismarck, North Dakota 58505, 701-328-2400; or Relay North Dakota 1-800-366-6888 TTY. If you require any auxiliary aids or services, such as readers, signers, or braille materials please notify the Commission, at least 24 hours in advance.

PUBLIC SERVICE COMMISSION



Randy Christmann
Commissioner



Brian P. Kalk
Chairman



Julie Fedorchak
Commissioner

Lein, Jerry R.

From: Sheldon, Scott F.
Sent: Friday, August 16, 2013 8:07 AM
To: Lein, Jerry R.
Subject: Fwd: Phone message - Robert Sprague re Courtney Wind

Scott F. Sheldon

Begin forwarded message:

From: "Hamre, John G." <jghamre@nd.gov>
Date: August 15, 2013, 4:44:14 PM CDT
To: "Sheldon, Scott F." <sfseldon@nd.gov>
Subject: Phone message - Robert Sprague re Courtney Wind

Scott,

Robert Sprague called regarding the letter he received from Courtney Wind (See docket No. 34 in Case No. PU-13-64).

He said he had not been contacted as the letter had stated near the end of the letter and he just wanted us to be aware of that.

If you did want to call him to acknowledge that we have his concerns noted, his number is: 701-320-2890

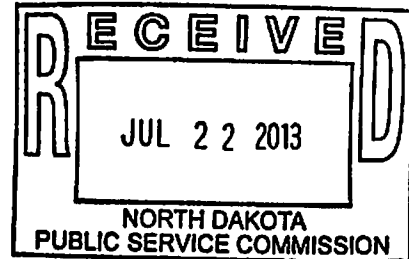
John

John G. Hamre
Administrative Assistant
ND Public Service Commission
328-4279

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Mr. and Mrs. Robert Sprague
8720 20th ST SE
Courtenay, ND 58426

Mr. Darrell Nitschke
Public Service Commission's Executive Director
600 East Boulevard, Dept. 408
Bismarck, ND 58505-0480



July 18, 2013

Dear Mr. Darrell Nitschke and Public Service Commission,

We, Robert Sprague and Julie Sprague, are filing a request to consider additional evidence in Case # PU13-64 (Courtenay Wind Farm).

We just learned the proposed locations of the turbines, met towers and collector lines. We read this information in the Jamestown Sun published on 7-13-13. This is the first time we have seen a location map for the project.

We were under the impression from talking to local people involved with this project that the turbines would be located further north of our residence. We thought that Courtenay Wind Farm and Geronimo Energy would have contacted us if the turbines location affected us. We did not attend the hearing on 7-12-13 because we did not think we would be affected by the location of the turbines. After talking to the PSC on July 17, 2013 they helped us obtain clear and legible maps of the proposed Courtenay Wind Farm, Exhibit 3, 4 Part A, and 4 Part B.

We have lived at our residence: 8720 20th ST SE Courtenay, ND 58426 located in the northwest quarter of section 15, Ashland Township, range 142-63, Stutsman County, since 1995.

We have provided an aerial spraying service to the Courtenay, Wimbledon, and surrounding areas. We operate out of our residence, and fly from our private runway (8ND7) located behind our residence.

We have a beautiful country home that we have remodeled and two young children. We have enjoyed living in the country side these past eighteen years. Although we are not opposed to the Courtenay Wind Farm, we have many concerns. We have listed them and some will have attachments.

Concern # 1: Exhibit 4 Part B, clearly states that it includes homes within 5,000 ft of the project area. Exhibit 4 Part A shows locations of the residences. **Our residence is not listed on either exhibit 4 part B or shown on exhibit 4 part A.**

Our residence is within 5,000 ft of the project area. Our private runway (8ND7) is 5,230 ft from the project area.

We have attached a copy of Exhibit 4 Part A and marked our residence and runway

location. We have titled it residence and runway location.

We have concerns that turbines 1,2,3,10,11, 12,13,21,22, and permanent Met Tower B will affect the daily operations and safety of landings and take offs of our aerial spraying business runway. All the turbines are within two miles of the runway.

Concern # 2: Exhibit 4 Part B states it includes homes within 5,000 ft of the project area. Why was 5,000 ft chosen: Why not one mile which is 5,280 ft? Or, why not 2 miles or 3 miles?

We feel that 5,000 ft was chosen to exclude our private runway (8ND7) so that Geronimo Energy would not have to deal with FAA regulations concerning turbines and towers. But why was our residence was not included in exhibit 4 Part A and Exhibit 4 Part B? Our residence is within 5,000 ft of the project area.

Concern # 3: Our house faces east. Our only view of the country side. A direct view of the proposed turbines 1,2,3,10,11,12 and 13 will all be well within two miles. Our residence has five east facing windows with an open house plan. We are concerned with shadow flicker, and red blinking lights penetrating our home. We are also concerned that our property value will be lowered. Will we be compensated for property losses?

Concern# 4 Courtenay Wind Farm sent us information regarding buying shares in the project in the spring of 2013. We declined buying shares. Geronimo Energy has never contacted us or sent us any information regarding this project. We contacted them on 7-16-13 to express our issues. None were resolved.

Concern # 5 We believe that the people in the project area and around the project area should receive, by mail, Exhibit 3, Exhibit 4 Part A and Exhibit 4 Part B. Also, we would like to see residences, within two to three miles of the project area, included in the mailings. We ask for information and maps by mail because people are busy farming at this time of year and we have retired residences that may not have a computer and people may not know how to obtain this information. We were not provided with the project information and did not know how to obtain it, until we contacted the PSC.

After visiting with our neighbors, James and Sharon Hastings, about the turbine and tower locations we asked if they wanted us to include their request with ours. Their request to consider additional evidence in case #PU13-64 (Courtenay Wind Farm) is enclosed with our request letter.

In conclusion, we are not against Courtenay Wind Farm and Geronimo Energy, but we do ask that turbines 1,2,3,10,11,12,13,21,22, and permanent Met Tower B be moved elsewhere. We hope this project does not get railroaded through before area residences receive accurate information from Geronimo Energy, on paper, as to where the turbines, and met towers will be located and have a chance to express their concerns.

Sincerely,

Robert Sprague Julie Sprague
Robert Sprague and Julie Sprague

I James O Hastings

on this day of July 18 2013

of my own free will express my objection to the Geronimo Energy turbines on SW corner of section two -142-63 address of 1878 88 Ave SE farm 5113 of USDA map

I have been declared 100% disabled by the USVA for traumatic stress disorder and noise and flashing lights can and has made my systems worse in the past .I am under medical care at this time to keep this under control .

I was told that the project would not or may not go through and I would have no towers near my retirement home and I would not hear any noise .

I am wondering why there was not an environment impact study done on this project. The area of towers is in a waterfowl fly way ,having studied towers in college , the killing of waterfowl was substantial.

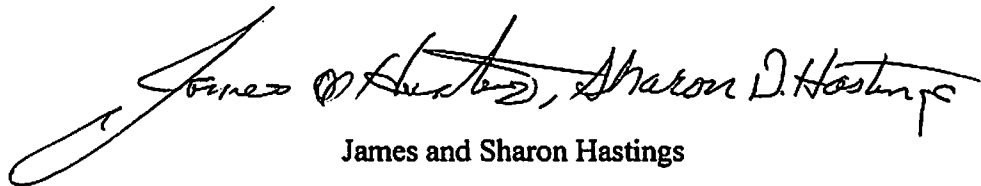
With my health condition are they willing to buy me out and cover my losses ?

With towers in the minimum distance from my homestead who is going to pick up the loss of property value?

Why make the jog over to section 2 when they could have gone to sec.8,12,and 13 or any where but where they did!

Had Jay told me the truth when I talked to him I would not have signed up and would like to withdraw my consent.

I will turn this over to the USFWS service and the DAV attorneys to stop or reroute the turbines with my heart defibrillator and pace maker along with my PTSD .I feel this to be a bad idea and oppose the turbines where they are now proposed .

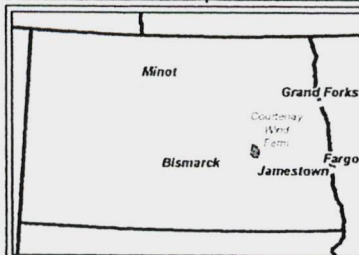
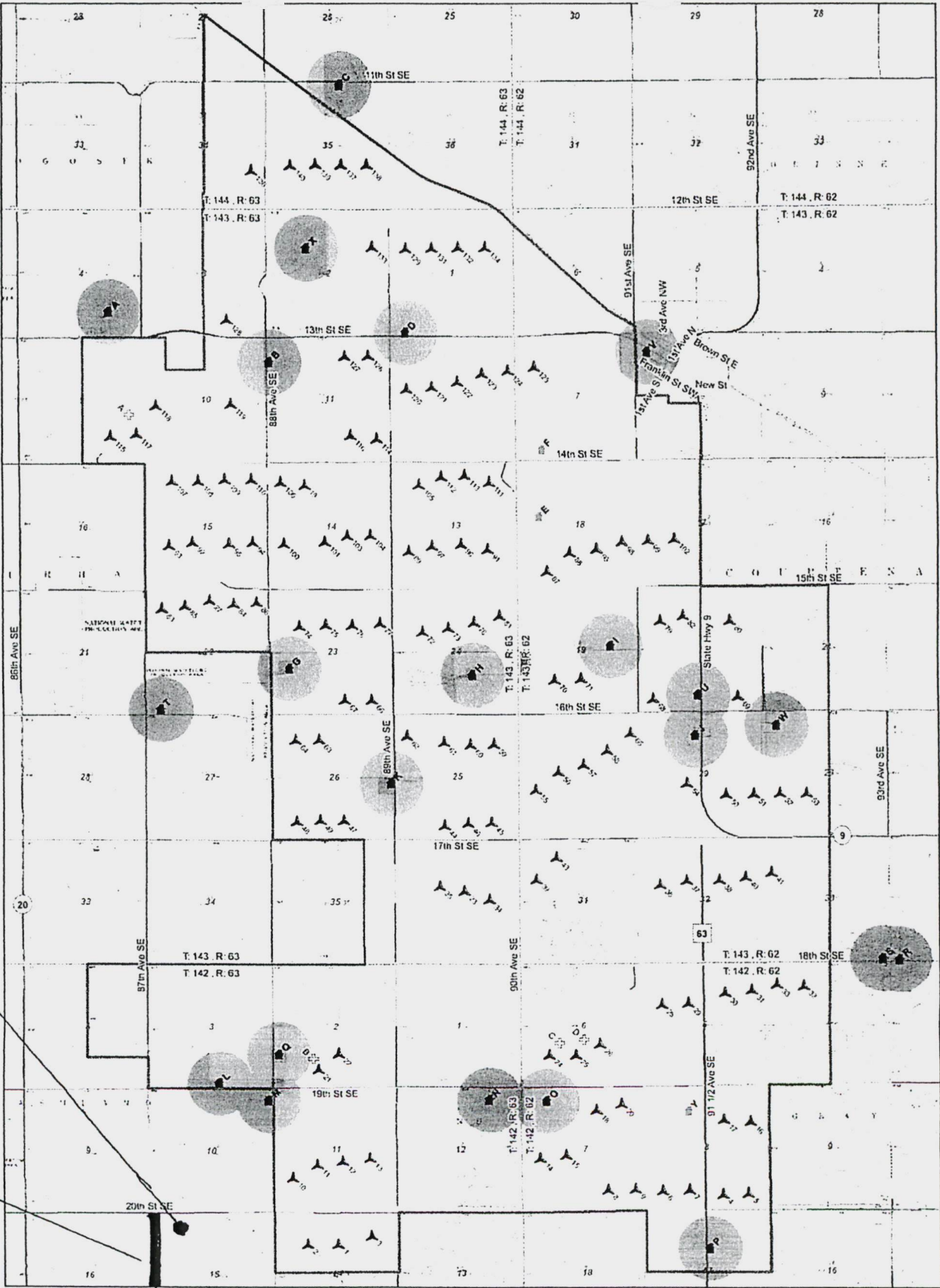
A handwritten signature in black ink, appearing to read "James O Hastings, Sharon D Hastings". The signature is written in a cursive style with a large, sweeping initial "J".

James and Sharon Hastings

Residence and Runway Location

Residence ~~Location~~

Runway



| | |
|----------------------|---------------------------|
| Turbine Layout | Residence Setback (1400') |
| Permanent Met Towers | Project Area |
| Occupied Residence | Substation |
| Unoccupied Residence | Signed Parcel |

0 0.4 0.8 1.6
Miles

Source: Geranimo Energy NGS USA Topo (2011).
Ventyx, ESRI et al World Transportation (2012)



Hamre, John G.

From: gbaum@gocougs.wsu.edu <gbaum2@earthlink.net>
Sent: Monday, July 22, 2013 7:59 PM
To: Smith, Mollie (msmith@fredlaw.com); Lein, Jerry R.; -Info-Public Service Commission
Cc: Sheldon, Scott F.; Jeffcoat-Sacco, Ilona; MArmstrong@smithbakke.com; Hamre, John G.
Subject: RE: Courtenay Wind Farm
Attachments: Scan_Doc0001.pdf

Dear Mr. Lein (et al):

Thank you very much for your response. I have FedEx'd the attached request letter to the Commissioners c/o Mr. Nitschke and Ms. Smith at your direction. Thank you for your consideration.

Sincerely,

Grant Baumgartner

-----Original Message-----

From: "Lein, Jerry R."
Sent: Jul 16, 2013 1:35 PM
To: "gbaum@gocougs.wsu.edu", "gbaum2@earthlink.net"
Cc: "Sheldon, Scott F.", "Jeffcoat-Sacco, Ilona", "MArmstrong@smithbakke.com", "Smith, Mollie (msmith@fredlaw.com)", "Hamre, John G."
Subject: RE: Courtenay Wind Farm

Dear Mr. Baumgartner:

Thank you for your email below. I hope you find the attached response helpful.

Sincerely,

Jerry Lein
Staff Engineer
701 328-1035

From: gbaum@gocougs.wsu.edu [mailto:gbaum2@earthlink.net]
Sent: Saturday, July 13, 2013 11:05 PM
To: -Info-Public Service Commission
Subject: Courtenay Wind Farm

Dear Public Service Commissioners,

I own a house virtually in the middle of the proposed Courtenay Wind Farm. Within one mile of my house, it appears there are proposed to be 14 wind turbines, plus a collector substation. I am not currently a participant by contract in the wind farm project.

I was unaware of the recent public hearing. I imagine it was published in the Jamestown Sun, however I don't read the Sun daily. Geronimo Energy has been in touch with me, however they did not notify me of the hearing. Since this project would impact me and my property significantly, I am asking if you could notify me when the next hearing will be? I would definitely like to express my opinion.

Thank you for your consideration,

25 PU-13-64 Filed: 7/22/2013 Pages: 3
Request to consider additional information not
presented at hearing

Grant Baumgartner
8965 16th St. SE
Courtenay, North Dakota 58426

Grant Baumgartner
gbaum@gocougs.wsu.edu

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Grant Baumgartner
gbaum@gocougs.wsu.edu

July 22, 2013

Public Service Commission
State of North Dakota
c/o Darrell Nitschke
Executive Secretary
600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480

Mollie Smith
Fredrikson & Byron P.A.
200 South Sixth Street, Suite 4000
Minneapolis, Minnesota 55402-1425

Re: Case No. PU-13-64, Courtenay Wind Farm Siting Application

Dear Commissioners and Applicant:

I am writing to request your consideration of additional information not presented at the hearing in Jamestown, North Dakota on July 12, 2013 in accordance with the North Dakota Century Code Section 28-32-25.

I am significantly impacted by this project as I have a residence virtually in the middle of the project footprint. Within one mile of my house, there are proposed to be 14 wind turbines, plus a collector substation. I am not currently a participant by contract in the wind farm project. I am not against the project as a whole; however I offer the following testimony regarding components of the planned project:

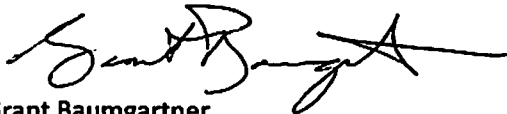
1. Adequate consideration by the project planners has not been given to placement of the collector substation relative to residences in the project footprint, specifically my residence which is not participating in the project.

My testimony/position: The collector substation is proposed to be placed right in front of (by country terms) my front door. I will be able to see it every time I open my front door, literally about 800 feet across a small field. This collector substation should be moved farther south down the planned transmission line away from non-participating residences.

2. Adequate consideration by the project planners has not been given to the density (number) of turbines around residences not participating in the project.

My testimony/position: I do not believe there is an inhabited residence, other than mine, within the project footprint that has 14 turbines (plus a collector substation) within one mile of it. Additionally, there appears to be a much higher density of turbines around residences not participating in the project, than those participating. There should be a policy or regulation regarding the density of wind turbines placed within one mile of inhabited residences not participating, with 6-8 seeming reasonable to me.

Thank you for your consideration of my testimony,



Grant Baumgartner
8965 16th St. SE (Auditor's Lot 24-1, Durham Township, Within the SE ¼ of Section 24)
Courtenay, North Dakota 58426
Cell phone: 206-9993663
Email: gbaum@gocougs.wsu.edu

-Info-Public Service Commission

From: Wanner, Kyle C.
Sent: Wednesday, July 24, 2013 9:22 AM
To: -Info-Public Service Commission
Cc: Lein, Jerry R.; Taborsky, Lawrence E.
Subject: Courtenay Wind Farm Comments
Attachments: Courtenay Wind Farm.pdf

Enclosed for filing on behalf of the ND Aeronautics Commission for case #PU-13-64 are comments regarding the Courtenay Wind Farm proposal and the effect that the proposal will have on an airport in the area. If you have any further questions or need additional clarity, please let me know.

Regards,

Kyle Wanner, Airport Planner
North Dakota Aeronautics Commission
w (701) 328-9651
c (701) 425-5926
<http://www.nd.gov/ndaero/>



27 PU-13-64 Filed: 7/24/2013 Pages: 7
Letter comments

July 23, 2013

Jerry Lein, Public Utility Analyst
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480



SUBJ: Courtenay Wind Farm

Dear Mr. Lein:

The purpose of this letter is to bring to your attention the safety concerns associated with allowing the construction of the proposed Courtenay Wind Farm and its relationship to the Sprague Airport. Being one of North Dakota's registered private airstrips, the Sprague Airport, with identifier 8ND7 currently allows its owner Robert Sprague to operate his agricultural spraying operation close to the vicinity in which he services. On a yearly basis, approximately 5,000 – 22,000 acres affecting over 50 farmers surrounding the Courtenay/Wimbledon area are provided services from the utilization of this airport.

Our main safety concerns are as follows:

- An object constitutes an obstruction to navigation if the object is 200 ft. above the airport elevation when the obstruction is within 3 miles of an airport. With multiple wind turbines planned to be approximately 500 ft. above the airport elevation, this is a safety concern.
- The proposed wind turbines would also conflict with the FAA Part 77 conical airspace of the airport. This airspace is important for an airport, as it allows the safe transition of aircraft departing and arriving to the airport. (see attached illustration)
- The Sprague Airport is a registered and identifiable airport on the North Dakota sectional chart. The airport may be used by the public who are flying in the area and have an emergency. It is very important to protect any airspace that may be utilized by the public.

With the above listed concerns, it is recommended that the following wind turbines and permanent met towers be removed from the current proposal (see attachment):

- Permanent Met Tower B
- Wind Turbine 1, 2, 3, 10, 11, 12, 13, 21, 22

If I may provide any further assistance or information relating to the importance of protecting the airspace of the Sprague Airport, please advise.

Sincerely,

A handwritten signature in black ink that reads "Kyle C. Wanner".

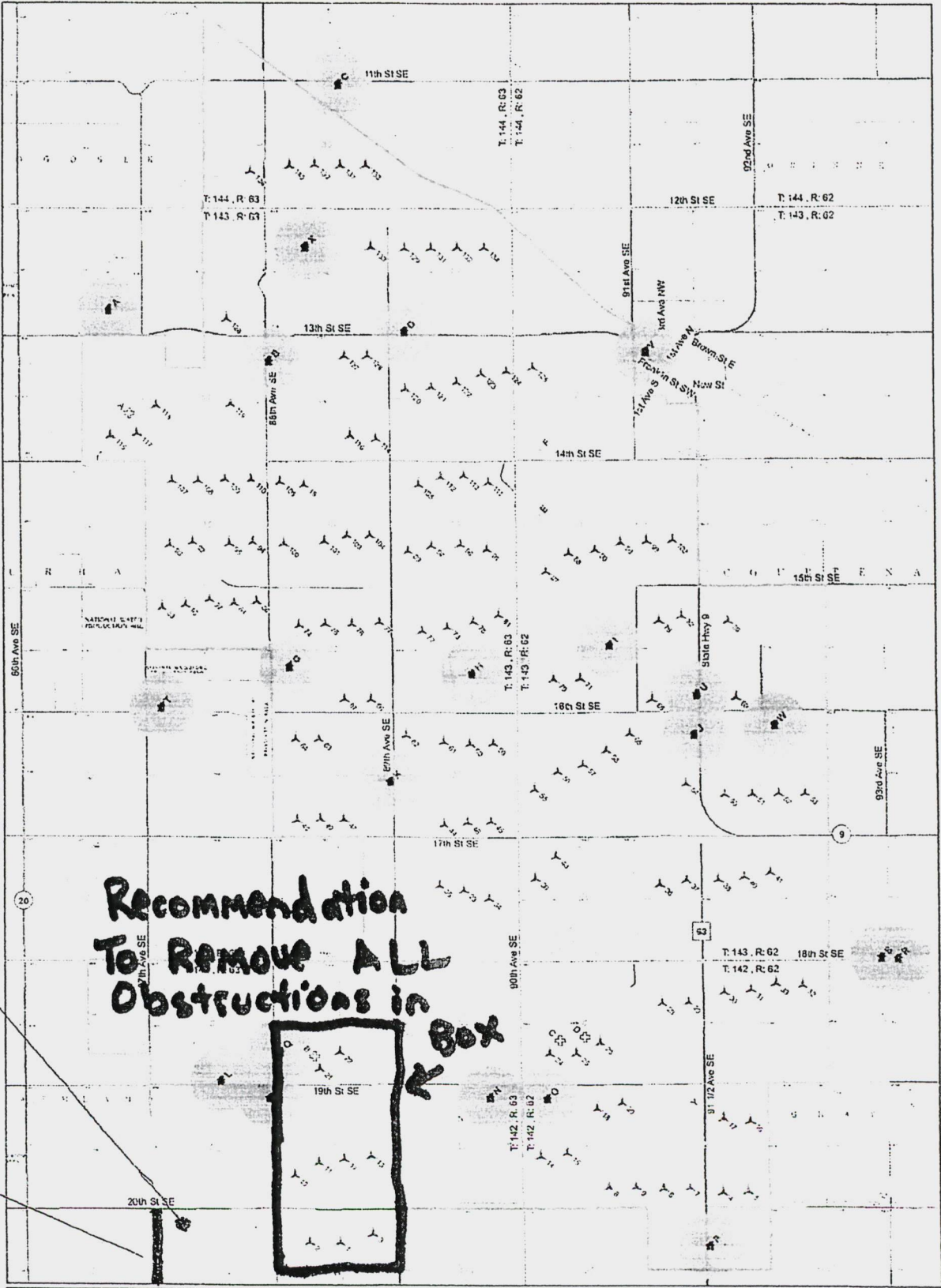
Kyle C. Wanner
Airport Planner

Cc: Larry Taborsky, Director, NDAC

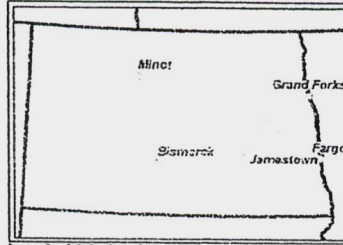
Residence and Runway Location

Residence ~~Area~~

Runway



Recommendation
To REMOVE ALL
Obstructions in
Box



| | |
|------------------------|---------------------------|
| ▲ Turbine Layout | Residence Setback (1400') |
| ⊕ Permanent Met Towers | Project Area |
| ⊙ Occupied Residence | Substation |
| □ Unoccupied Residence | Signed Parcel |

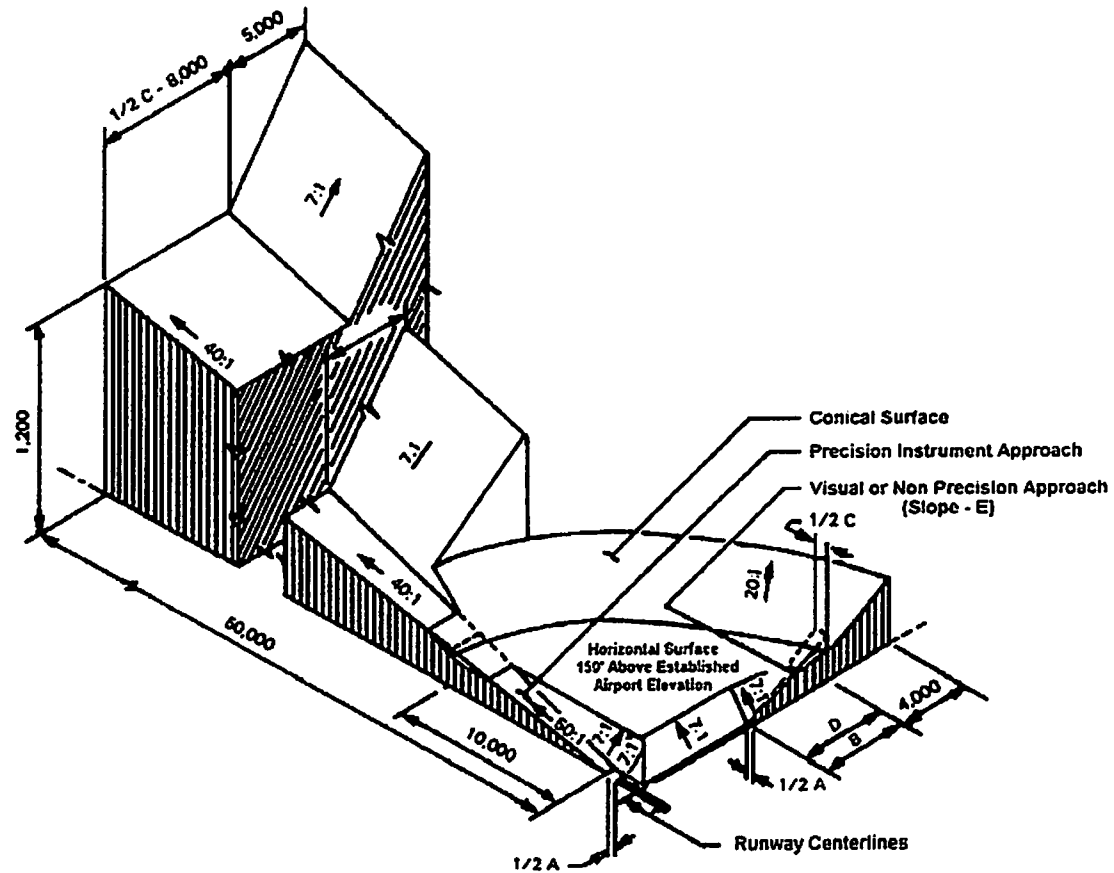
0 0.4 0.8 1.6
Miles

Source: Germino Energy, NGS USA Topo (2011),
Ventyx, ESRI et al: World Transportation (2012)



17 Part A

Imaginary Surfaces



Source: <http://www.ngs.noaa.gov/AERO/oisspec.html>



Google earth



AIRNAV.COM



NEW ATLANTA LOCATION
Kennesaw, GA (RYY)



Airports Nav aids Airspace Fixes Aviation Fuel **ASOS** iPhone App

1551 users online [Login](#)

8ND7 Sprague Airport

Courtenay, North Dakota, USA



FAA INFORMATION EFFECTIVE 27 JUNE 2013

[Log](#) | [Qns](#) | [Rws](#) | [IFR](#) | [FBO](#) | [Links](#)
[Com](#) | [Nav](#) | [Svs](#) | [Stats](#) | [Notes](#)

Location

FAA Identifier: 8ND7

Lat/Long: 47-07-14.3900N / 098-39-28.2000W
47-07.239833N / 098-39.470000W
47.1206639 / -98.6578333
(estimated)

Elevation: 1555 ft. / 474 m (estimated)
From city: 8 miles SW of COURTENAY, ND
Time zone: UTC -5 (UTC -6 during Standard Time)
Zip code: 58426

Airport Operations

Airport use: Private use. Permission required prior to landing
Activation date: 04/2010
Sectional chart: TWIN CITIES
Control tower: no
ARTCC: MINNEAPOLIS CENTER
FSS: GRAND FORKS FLIGHT SERVICE STATION
Attendance: UNATNDD
Segmented circle: no

Airport Communications

WX ASOS at JMS (11 nm S): 118.425 (701-251-9002)

Nearby radio navigation aids

| | | | |
|----------------------|-------------------|--------|-----|
| VOR radial/distance | VOR name | Freq | Var |
| <u>JMS</u> r354/11.3 | JAMESTOWN VOR/DME | 114.50 | 10E |

| | | | | |
|--------------------|----------|------|-----|--------------------|
| NDB name | Hdg/Dist | Freq | Var | ID |
| <u>VALLEY CITY</u> | 289/33.8 | 382 | 07E | VCY ---- -.-. -.-. |

Airport Services

Aerial photo

Sectional chart

Runway Information

Runway 17/35

Dimensions: 2700 x 50 ft. / 823 x 15 m

Surface: turf

RUNWAY 17 RUNWAY 35

Traffic pattern: left left

Airport Ownership and Management from official FAA records

Ownership: Privately-owned

Owner: ROBERT SPRAGUE
8720 20TH ST SE
COURTENAY, ND 58426
Phone 701-435-0018

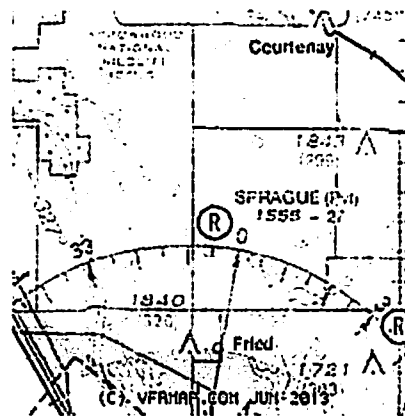
Manager: ROBERT SPRAGUE
8720 20TH ST SE
COURTENAY, ND 58426
Phone 701-435-0018

Instrument Procedures

There are no published instrument procedures at 8ND7.

Some nearby airports with instrument procedures:

- KJMS - Jamestown Regional Airport (11 nm S)
- 46D - Carrington Municipal Airport (28 nm NW)
- KBAC - Barnes County Municipal Airport (28 nm E)
- S32 - Cooperstown Municipal Airport (29 nm NE)
- 4V4 - Northwood Municipal Airport-Vince Field (56 nm NE)



Airport distance calculator

Flying to Sprague Airport? Find the distance to fly.

From to 8ND7

Sunrise and sunset

Times for 23-Jul-2013

| | Local (UTC-5) | Zulu (UTC) |
|------------------------|---------------|------------|
| Morning civil twilight | 05:27 | 10:27 |
| Sunrise | 06:04 | 11:04 |
| Sunset | 21:18 | 02:18 |
| Evening civil twilight | 21:55 | 02:55 |

Current date and time

Zulu (UTC) 23-Jul-2013 13:55:18
 Local (UTC-5) 23-Jul-2013 08:55:18

METAR

KJMS 231256Z AUTO 02003KT 10SM CLR
 11nm S 14/13 A3005 RMK AO2 SLP177
 T01440128

TAF

KJMS 231134Z 2312/2412 03006KT P6SM
 11nm S VCSH SCT040 FM231400 10006KT
 P6SM SCT050 SCT070 FM240200
 09004KT P6SM SCT100 FM240600
 18006KT P6SM SCT120

NOTAMs

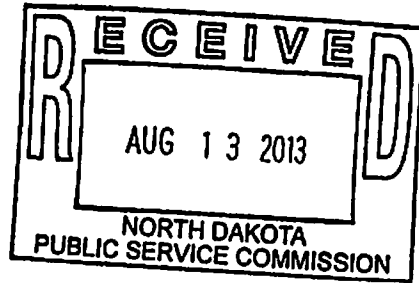
Click for the latest NOTAMs
 NOTAMs are issued by the DoD/FAA and will open in a separate window not controlled by AirNav.

Where to Stay: Hotels, Motels, Resorts, B&Bs, Campgrounds

August 13, 2013

VIA E-MAIL AND FEDERAL EXPRESS

Mr. Jerry Lein
Public Utility Analyst
North Dakota Public Service Commission
600 E. Boulevard, Dept. 408
Bismarck, ND 58505-0480



RE: Courtenay Wind Farm, LLC's Certificate of Site Compatibility Application for the Courtenay Wind Farm in Stutsman County, North Dakota Case No. PU-13-64

Dear Mr. Lein:

Thank you for your August 5, 2013 letter regarding information received by the North Dakota Public Service Commission ("Commission") after the public hearing on Courtenay Wind Farm, LLC's ("Courtenay") Application for a Certificate of Site Compatibility ("Application") for the Courtenay Wind Farm ("Project"). For the reasons discussed below, the Commission should not consider the post-hearing submissions as part of the hearing record on Courtenay's Application.

As background, on July 12, 2013, the Commission held a public hearing on Courtenay's Application. On July 22 and 24, 2013, four letters were filed with the Commission: (1) a letter from Kyle C. Wanner, North Dakota Aeronautics Commission (the "Aeronautics Commission"), dated July 23, 2013 (the "Aeronautics Commission letter"); (2) a letter from Robert and Julie Sprague, dated July 18, 2013 (the "Sprague letter"); (3) a letter from James and Sharon Hastings, dated July 18, 2013 (the "Hastings letter"), which was submitted with the Sprague letter; and (4) a letter from Grant Baumgartner, dated July 22, 2013 (the "Baumgartner letter").

None of the four letters should be considered by the Commission because they do not fall within the categories of post-hearing information that may be considered pursuant to N.D.C.C. § 28-32-25. Section 28-32-25 provides that the Commission "may avail itself of competent and relevant information or evidence in its possession or furnished by members of its staff, or secured from any person in the course of an independent investigation conducted by the agency."

Attorneys & Advisors
main 612.492.7000
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Letter in opposition to reopening hearing

Thus, in order to be information that the Commission may consider, the information must fall into one of three categories: (1) information that the members of the Commission possessed; (2) information provided by a member of the Commission's staff; or (3) information provided by a third party as part of an independent investigation by the Commission. In this case, each of the four letters came from third parties, so they do not fall within categories 1 or 2; furthermore, the letters were not received as part of an independent investigation by the Commission and, as such, do not fall within category 3. For these reasons, the letters are not the type of information that the Commission may consider under N.D.C.C. § 28-32-25.

Additionally, the letters should not be considered because doing so sets an unfavorable precedent for future siting cases. With respect to siting applications, the Commission is required to conduct a public hearing in the county in which any portion of the proposed project is to be located. N.D.C.C. § 49-22-13(1); N.D. Admin. Code § 69-06-01-02(3). The Commission must give the public notice of the hearing by two weeks' publication of the hearing notice in a newspaper in the county in which the project is to be located. N.D.C.C. § 49-22-13(4); N.D. Admin. Code § 69-06-01-02(3)(a). In addition, the Commission must serve a copy of the hearing notice on certain agencies and other entities and on certain local and state officials by mail or electronic mail. N.D.C.C. § 49-22-13(4); N.D. Admin. Code §§ 69-06-01-02(3)(b), (c) and (e) and 69-06-01-05. In this case, the Commission complied with these notice requirements and, as such, provided the public (including the Spragues, the Hastings, and Mr. Baumgartner), as well as agencies and other entities (including the Aeronautics Commission), with the prior notice of the public hearing that is required by law. See Affidavit of Service and Affidavit of Publication, Docket Item Nos. 15 and 23, filed May 23, 2013 and July 18, 2013, respectively.

None of the letters' authors indicate that they were unable to attend the public hearing – three of the letters provide no explanation for not attending the public hearing, while the Sprague letter indicates that they knew about the public hearing, but chose not to attend because they did not think they were affected.¹ The Aeronautics Commission offered no explanation for not attending the hearing despite the fact that (1) the Commission served a copy of the hearing notice on the Aeronautics Commission by mail (as indicated in the Commission's Affidavit of Service, dated May 23, 2013, and filed on the same date as Docket Item No. 15), and (2) as a state agency, the Aeronautics Commission is specifically required by statute to "present the position of the agency *at the public hearing* on an application for a certificate," and that "it shall be presumed that a proposed facility will be in compliance with a state agency's rules if such agency fails to present its position on

¹ The Sprague letter could be read as implying that Courtenay should have provided the Spragues with the final layout of the Project prior to the public hearing. However, there is no requirement in N.D.C.C. Ch. 49-22 or the Commission's rules that an applicant provide the final Project layout to individual landowners, either within or outside of the Project footprint (the Spragues are located outside of the Project footprint). The final Project layout was filed with the Commission one week prior to the public hearing, per the Commission's request.

Mr. Jerry Lein
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the proposed site . . . *at the appropriate public hearing.*" See N.D.C.C. § 49-22-16(4) (emphasis added); *see also* N.D. Admin. Code §§ 69-06-01-02(3)(c) and 69-06-01-05(1) (requiring hearing notice to be served on the Aeronautics Commission).

Essentially, the letters' authors ask the Commission to ignore the fact that they had the same opportunity and obligation to attend the hearing as other members of the public and agencies, including those that took time out of their schedules to attend and testify at the public hearing. If the Commission were to consider the four letters, it would tell others that one does not have to attend a public hearing in order to testify on a siting application, regardless of the hearing and notice requirements set forth in the Siting Act and the Commission's rules. As such, it would open the door to similar requests from other individuals and agencies, and they would expect similar treatment. This would result in a siting application process with no certainty for either the public or the applicant.

For these reasons, in addition to the fact that the information is not the type of information that should be considered pursuant to N.D.C.C. § 28-32-25, the Commission should not consider the four letters submitted after the July 12, 2013 public hearing.

Although it opposes consideration of the letters by the Commission, Courtenay is mindful of the concerns raised in the letters, and has contacted each of the letters' authors to discuss their concerns. With respect to the Aeronautics Commission letter, in addition to contacting the agency, Courtenay has also engaged the services of an aviation expert, who has determined that the Project layout will comply with all state and federal aviation regulations.

If you have any questions concerning this letter, please do not hesitate to contact me.

Sincerely,



MOLLIE M. SMITH

MMS/ms
Enclosures

cc: Mitch Armstrong (*via E-mail*)
Kyle C. Wanner, North Dakota Aeronautics Commission (*via U.S. Mail*)
Robert and Julie Sprague (*via U.S. Mail*)
James and Sharon Hastings (*via U.S. Mail*)
Grant Baumgartner (*via U.S. Mail*)
Patrick Smith (*via E-mail*)

Subscribed and sworn to before me this 13th day of August, 2013.

Martha H. Nagan
Notary Public

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