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OPINION

April 29, 2019



Mr. John Schuh
Public Service Commission
600 E Boulevard Ave Dept 408
Bismarck, ND 58505

Dear Mr. Schuh:

The Office of Attorney General has examined the proposed amendments to N.D.A.C. § 69-06-08-01 concerning removal of prime and unique farmland, and irrigated land, from being excluded from consideration for an energy conversion facility, and to clarify additional exclusion areas for a wind energy conversion facility, along with the notice of the proposed rules, the publication of that notice, and the filing of that notice with the Legislative Council. This office has also determined that 1) a written record of the agency's consideration of any comments to the proposed rules was made, 2) a regulatory analysis was not required to be issued because the proposed rule changes are not expected to have an impact of over fifty thousand dollars on the regulated community nor was a request for a regulatory analysis requested by the Governor or any member of the Legislative Assembly, 3) a takings assessment was not required because there is no constitutional taking caused by the proposed rule changes, 4) no small entity regulatory analysis or economic impact statement were prepared because no adverse impact on small entities is anticipated nor are the rule changes expected to have any economic impact on small entities, 5) the proposed rules are within the agency's statutory authority.

These administrative rules are in substantial compliance¹ with N.D.C.C. ch. 28-32 and are hereby approved as to their legality. Upon final adoption, these rules may be filed with the Legislative Council.

Sincerely,

Wayne Stenehjem
Attorney General

amj
cc: Emily L. Thompson, Legislative Council

¹ One newspaper (The New England Herald) failed to publish the required notice within the 20 days before the hearing pursuant to N.D.C.C. § 28-32-10. This appears to be an error of the newspaper and all other notices were published in accordance with the law.