KAREN BUDD-FALEN ¹ FRANKLIN J. FALEN ² BRANDON L. JENSEN ³

¹ ALSO LICENSED IN ID & NM ² ALSO LICENSED IN NE, SD & ND ³ ALSO LICENSED IN CO & NM 300 EAST 18TH STREET • POST OFFICE BOX 346 CHEYENNE, WYOMING 82003-0346 TELEPHONE: 307/632-5105 TELEFAX: 307/637-3891

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6 TERESA L. SLATTERY 4
CONNER G. NICKLAS 5
RACHAEL L. BUZANOWSKI 6

⁴ ALSO LICENSED IN IL & TX ⁵ ALSO LICENSED IN CO & MT ⁶ ALSO LICENSED IN NE & KS

March 17, 2023

Mr. Steven Kahl
Executive Secretary
North Dakota Public Service Commission
600 East Boulevard, Dept. 408
Bismark, ND 58505
ndpsc@nd.gov

Re: Response to Bowman Wind LLC Letter to the PUC Dated February 27, 2023 Regarding Bowman Wind, LLC's Application for a Certificate of Site Compatibility for the Bowman Wind Project Case No. PU-21-121

Dear Mr. Karl:

On behalf of the Bowman County Planning and Zoning Board, this letter is to respond to a letter sent to you on February 27, 2023 from Mollie Smith representing Bowman Wind LLC. Bowman County was not copied on the letter, nor did they learn of its existence until very recently.

Just so there is no confusion on what the Bowman County Board and Commission did approve and did not approve, I have attached Bowman Wind's application for a zoning variance 1113 related to decommissioning based on the Bowman County Ordnance. *See* Exhibit 1. This variance contained two distinct requests. First, the variance requested that the decommissioning time period of nine months required by the County Ordinance be extended to twelve months after abandonment or at the end of its useful life. Both the Bowman County Planning and Zoning Board and the Bowman County Commission denied this request. *See* Exhibit 2.

Separately, this variance requested a variance from the financial surety required by the County Ordinance. *See* Exhibit 1. The Bowman County Planning and Zoning Board and the Bowman County Commission granted this portion of variance application 1113. *See* Exhibit 2.

The Bowman County Planning and Zoning Board appreciates the opportunity to provide this information to you. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Karen Budd-Falen

KBF/rjg

Enclosure

cc w/ enclosure via email

Mollie B. Smith representing Bowman Wind LLC – <u>msmith@fredlaw.com</u>

Adam Renfandt - arenfandt@nd.gov

Brian Johnson-<u>brjohnson@nd.gov</u>

Kevin Pranis – <u>kpranis@liunagroc.com</u>

Timothy Dawson — tjdawson@nd.gov



BOWMAN COUNTY

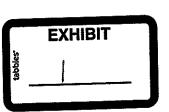
APPLICATION FOR ZONING VARIANCE

County Zoning Commission 104 First Street NW Suite #4 Bowman, North Dakota 58623	1	Application #	113 - 25-2021
INSTRUCTIONS:	F	APPLICATION FEE:	\$150.00
Complete form and return the completed application and fee to the address above. Make check payable to Bowman County.		Receipt Number: 43658 - 43660	
APPLICANT INFORMATION:	Name: Bowman Wind, LLC Mailing Address: 310 4 th Street I City, State, Zip Code: Charlottes Phone Number: 715-432-3927 (ville, VA 22902	
Legal Description of Property:	Lot: Block: Subdivision Otr: Section: To Present Zoning of Property: _Agriculture Present Use of Property: _Agriculture Agriculture Agricul	ownship: R ricultural	ange:

Reason for Requesting Variance:

Section 6.11.7(1) of the Bowman County Zoning Ordinance specifies that decommissioning must be completed "[w]ithin nine (9) months of termination of operations or abandonment of the wind energy facility, leases or easements for a wind energy facility in the county." With respect to decommissioning timing, the North Dakota Public Service Commission's (NDPSC) decommissioning rules require the following: "The owner shall begin decommissioning within twelve months after abandonment or the end of [the wind energy conversion facility's] useful life. Decommissioning must be completed within twenty-four months after abandonment or the end of its useful life unless the commission approves a plan specifying the steps and schedules to return the facility to operation." ND Admin. Code Section 69-09-09-04. The NDPSC defines the terms "abandonment" and "end of useful life" in ND Admin. Code Section 69-09-03. Bowman Wind requests a variance from Section 6.11.7(1) of the Bowman County Zoning Ordinance and application of the NDPSC's decommissioning start/completion timing requirements for the following reasons: (1) based on Bowman Wind and Apex Clean Energy's experience in the wind energy industry, it would be extremely difficult - and likely unfeasible - to complete decommissioning within the nine month time period specified in Section 6.11.7(1); (2) the terms triggering decommissioning in Section 6.11.7(1) are not clearly defined, but the NDPSC's decommissioning triggers are defined in ND Admin. Code Ch. 69-09-09; and (3) applying the NDPSC's decommissioning requirements will avoid imposition of inconsistent requirements.

Further, Bowman Wind requests a variance from Sections 6.11.5 and 6.11.7 regarding financial surety for decommissioning. Specifically, Bowman Wind requests a variance authorizing the following: Prior to construction, Bowman Wind will provide the NDPSC with financial surety for decommissioning in the amount of 125% of the estimated removal and restoration costs for the Project based on a NDPSC-approved Decommissioning Plan. The



to the variance thereafter in a beneficiary und	th ND Admin. Code Ch. 69-09-09 ar e request set forth above), and accordance with ND Admin. Cod der the surety provided to the NDF ne NDPSC does not complete the	wman Wind by a North Dakota-licensed prof nd Section 6.11,7 of the Bowman County Zonin the Decommissioning Plan and financial sur le Ch. 69-09-09. Bowman County will be r PSC and will have the right to make a claim or on the decommissioning in accordance with the	ng Ordinance (subject rety will be updated named as secondary claims upon the form
truthful and o	correct to the best of my ability	est that the information contained in this y. I further agree to comply with the zon s variance as established by Bowman Cou	ing ordinances
obtaining the poriginal Permit Administrator	proper permit, there will be a pen t Fee. If any building, structure or	ed, reconstructed, altered, repaired or conve nalty assessed to the applicant at the rate of a r land is found to be in violation of this code, by owner, in addition to other remedies, may	ten (10) times the the Code
1)		on, construction, reconstruction, alteration,	repair,
2)	conversion, maintenance or use To restrain, correct, or abate su		
3)	To prevent the occupancy of the		
4)	To prevent any illegal act to con	duct business or use in or about such premis	ses.
maintenance o	any provision of this code or the r of a public nuisance and shall be a	egulations and restrictions made herein shall Class A Misdemeanor.	Il constitute the
<u>Attached</u> Signa	ture of Applicant	Printed Name of Applicant	Date
Please co comp 1. What is the continue to be	implete the questions and cert letely. If additional space is ne proposed use of the property to i	tification on this form. All questions mus eeded, please attach extra pages to this a nclude all land and structures: <u>The land is us</u> he land will also be used for development of a	sed for and will
	cteristics of your property prevent	t its being used for any of the uses permitted Soil Too small []	in your zone? Slope []

(If Not Applicable (N/A) is selected, you may skip questions 3-7 and begin with question #8)

Too shallow [__]

Subsurface [__]

Shape ___ Other reasons ___

3.	Describe your concerns with the items marked above, giving dimensions where appropriate.
4.	How do the above site conditions prevent any reasonable use of your land under the terms of the Zoning Ordinance?
5.	Are the conditions on your property the result of man-made changes (such as the relocation of a road or highway)?, if so, describe
6.	Which of the following types of modifications will allow you a reasonable use of your land? Change in setback requirement Change in lot coverage requirement Change in yard restriction Change in height requirement Change in area requirement
7.	Are the conditions of hardship for which you request a variation true only of your property? If not, how many other properties are similarly affected?
	If a change in classification is requested, please indicate: Agricultural Zone to Commercial Zone to Industrial Zone to Residential Zone to A scale drawing must be submitted showing the identity and dimensions of all structures on the parcel with their distances shown from lot lines and setback requirements. (See attached page #4)
re Ac re	applications must be completed by the landowner and submitted in person or by mail. Applications may be jected or returned if all supporting materials are not submitted together or the application is not complete. Iditional information, deemed necessary by the County Zoning Committee to approve the application, may be quested by the County Zoning Office after the application has been submitted. No application will be occessed, reviewed or scheduled for a public hearing if it is incomplete.
ap	the application is a corporation, LLC, an attorney, realtor, or someone other than the owner, the name on the plication shall remain consistent throughout the supporting materials submitted. Please contact the Zoning fice if you have any questions. For Use By the Planning and Zoning Commission
Da Da	ite application Filed: 6-25-2021 ite set for Hearing: 7-7-2022 ite Notice Published in Newspaper: 5-2022

THE BOWMAN COUNTY PLANNING AND ZONING COMMISSION BOWMAN COUNTY, BOWMAN, NORTH DAKOTA

The Bowman County Planning and Zoning Commission met in special session on July 7, 2022 for a hearing on Conditional Use Permit #1112 and Variances #1113 through #1125 received from Bowman Wind/APEX Clean Energy. Members present: Lynn Brackel, Chris Fischer, Jerid Janikowski, Jerry Jeffers, Doyle Kruger, Ryan Shear, Rodney Schaaf and Myron Vail. No members absent. Also present: Zoning Director, Jodi Freier, Attorneys, Karen Budd-Falen and Rachel L. Buzanowski, and State's Attorney, Andrew Weiss. A full list of guests present is on file in the Bowman County Auditor's office. Chairman Janikowski called the meeting to order at 5:44 pm.

Discussion was held on the conflict of interest of board member Chris Fischer. Fischer's mother has signed with APEX. He does not own the property, but he does manage it. Schaaf moved to allow Fischer to participate in the conversation, but not be allowed to vote. Vail seconded the motion. A roll call vote was taken with all members voting aye.

Chairman Janikowski asked APEX representatives a series of questions. Scott Jansen, APEX, gave a presentation.

Chairman Janikowski opened the public meeting and public comments were taken.

At 7:22 PM Jeffers moved to close the public hearing. Kruger seconded the motion, and upon a vote, the motion was carried unanimously.

Discussion was held on the submitted variances. Scott Jansen, APEX, stated that Variance numbers #1115 and #1120 can be removed.

Variance #1113 was reviewed. Schaaf moved to amend Variance #1113 to align with the Bowman County Ordinance. Schaaf retracted his motion. Schaaf moved to deny the first paragraph of variance #1113 pertaining to the nine-month decommission period. Kruger seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried. Jeffers moved to approve the second paragraph of variance #1113. Vail seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Variance #1114 was reviewed. Kruger moved to approve variance #1114. Shear seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Variance #1116 was reviewed. Vail moved to approve variance #1116. Schaaf seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Variance #1117 was reviewed. Jeffers moved to approve variance #1117. Shear seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Variance #1118 was reviewed. Schaaf moved to approve variance #1118. Vail seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Variance #1119 was reviewed. Shear moved to approve variance #1119. Kruger seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Variance #1121 was reviewed. Brackel moved to approve variance #1121. Jeffers seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Variance #1122 was reviewed. Vail moved to approve variance #1122. Schaaf seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Variance #1123 was reviewed. Brackel moved to approve variance #1123. Shear seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Variance #1124 was reviewed. Vail moved to approve variance #1124. Schaaf seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Variance #1125 was reviewed. Schaaf moved to deny variance #1125 with the reason being that Adelaide Township has not been contacted yet about their ordinances. Jeffers seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

Discussion was held on Conditional Use Permit #1112. Schaaf moved to recommend the approval of Conditional Use Permit #1112 from Bowman Wind/APEX with the following conditions: 1) a signed road use agreement with Bowman County, 2) mediation process for all complaints from non-participating landowners must be forwarded to the Bowman County Commissioners and resolutions approved by the Bowman County Commissioners, 3) Bowman County Planning and Zoning receive the full decommission plan that is sent to the North Dakota Public Service Commission amended to reflect the nine month commencement and show that the Planning and Zoning Board are the secondary beneficiary for the 125% surety bond. Shear seconded the motion. A roll call vote was taken with all members voting aye except Fischer, who abstained from voting. Motion carried.

With no further business to discuss, Shear moved to adjourn the meeting at 8:52 PM, with Vail seconding the motion. Motion carried.

Respectively submitted,

Mindy Schumacher, Secretary