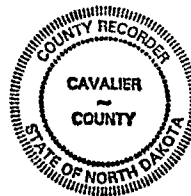


OFFICE OF COUNTY RECORDER FEE: \$65.00  
State of North Dakota)  
County of Cavalier)

I hereby certify that the within instrument was filed in  
this office for record on 4/6/2023 at 12:10 PM, and  
was duly recorded as Document Number 250781



*Vicki Kubat*

VICKI KUBAT, Cavalier County Recorder

Return To: ATWELL-GROUP 7100 E PLEASANT VALLEY |

INDEPENDENCE, OH 44131-5559  
Recorded Electronically

PREPARED BY AND  
AFTER RECORDING RETURN TO:  
Otter Tail Power Company  
PO Box 496, Fergus Falls  
Minnesota 56538  
Attention: Bryce Haugen  
(218) 739-8385

THIS SETBACK WAIVER AGREEMENT (this "Agreement"), is dated and effective as of March 29, 2023 ("Effective Date"), by and between Donald L. Smith, a married individual, and Dalen L. Smith, an unmarried individual ("Owner") with a mailing address of 11271 88<sup>th</sup> Street NE, Osnabrock, North Dakota 58269, and Otter Tail Power Company, a Minnesota corporation ("Grantee"), with a mailing address of PO Box 496, Fergus Falls, Minnesota 56538.

**RECITALS:**

A. Owner is the owner of that certain real property located in Cavalier County, North Dakota, as more particularly described on the attached Exhibit A ("Owner Property").

B. Grantee owns, operates, and maintains a wind energy generation facility ("Project") on certain real property located adjacent to and in the vicinity of the Owner Property (collectively, the "Project Property").

C. Grantee intends to install new turbine technology on the Project, which includes new, longer turbine blades ("Project Upgrades"). The Project's turbine locations will not change, but the Project Upgrades will increase the overall height of the turbines (due to the increased blade length) and result in one or more turbine(s) on Project Property being within 1.1 times the height of the turbine from a property line of the Owner Property.

D. Owner is willing to grant to Grantee a setback waiver for the Owner Property as it relates to Grantee's Project on the Project Property, as set forth below.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree that the Recitals set forth above are hereby incorporated into the Agreement and further agree as follows:

1. **Setback Waiver.** North Dakota Century Code Section 49-22-05.1(4) and North Dakota Administrative Code Section 69-06-08-01(2)(a)(5) provide that a turbine shall be 1.1 times the turbine's height from the property line of a nonparticipating landowner ("**Property Line Setback**"), unless the setback is waived by written agreement. Owner agrees to and hereby does waive the Property Line Setback with respect to the Project, and supports the North Dakota Public Service Commission granting a variance to Grantee for the Project with respect to the Property Line Setback as it relates to the Owner Property.
2. **Cooperation.** Owner agrees to not publicly oppose or otherwise object to the Project and to execute and deliver such reasonably requested documents and take such action as may be reasonably requested by Grantee to carry out the purposes and intent of this Agreement.
3. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2105.
4. **Consideration.** The consideration for this Agreement is set forth on the attached Exhibit B, which Exhibit B shall be removed before recording this Agreement in the official real property records of the county in which the Owner Property is located. Owner and Grantee agree that such removal of Exhibit B prior to recording shall not affect the validity of this Agreement.
5. **Termination.** Grantee shall have the right, at any time during the Term, to terminate this Agreement as to all or any part of the Owner Property by providing written notice to Owner. Following any such termination, Grantee is authorized to file a release of this Agreement in the official real property records of the county in which the Owner Property is located.
6. **Authority; Title.** Owner represents and warrants that it is the sole owner of the Owner Property in fee simple and has the full and unrestricted right and authority to execute and deliver this Agreement and to grant to Grantee the waiver and other rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so, and all persons having any ownership or interest in the Owner Property have signed this Agreement on behalf of Owner.
7. **Assignment.** Grantee shall have the right at any time, without need for consent from Owner, to assign or convey all or any portion of this Agreement to an assignee or assignees, on an exclusive or nonexclusive basis, or to mortgage or collaterally assign all or any part of its interest in the Agreement and its rights under the Agreement to any entity (each a "**Mortgagee**" and collectively, "**Mortgagees**"). Grantee may mortgage or encumber any part of Grantee's rights and interests under the Agreement without the need for consent from Owner, provided that any such mortgage attaches only to Grantee's rights and does not otherwise attach to the Owner

Property. Owner shall have the right to sell, convey, or transfer its interest in the Owner Property, or a portion thereof, without the need for consent from Grantee, provided that Owner shall, prior to any such sale, conveyance, or other transfer, give written notice to Grantee thereof, which notice shall include the name, address, and telephone number of the proposed transferee.

8. **Notice.** All communications required or permitted by this Agreement shall be given in writing by personal delivery (confirmed by courier delivery service) or first-class U.S. mail, postage prepaid, return receipt requested, certified, addressed as follows:

If to Owner:

Donald L. Smith and Dalen L. Smith  
11271 88<sup>th</sup> Street NE  
Osnabrock, North Dakota 58269

If to Grantee:

Otter Tail Power Company  
Attn: Bryce Haugen  
PO Box 496  
Fergus Falls, Minnesota 56538  
Phone: 218-739-8385  
E-mail: bhaugen@otpc.com

Any party may change its address for purposes of this paragraph by giving notice of such change to the other parties in the manner provided in this Section 8. Any notice provided for herein shall become effective only upon actual receipt by the party to whom it is given, unless such notice is mailed by certified mail, return receipt requested, in which case it shall be deemed to be received five (5) business days after the date mailed.

9. **Recording.** Owner and Grantee agree that this Agreement may be recorded by Grantee in the official real property records of the county in which the Owner Property is located.

10. **Miscellaneous.** This Agreement shall be governed by the laws of the State of North Dakota. This Agreement constitutes the entire agreement between Grantee and Owner with respect to the subject matter hereof and supersedes any and all prior oral or written understandings, representations or statements among the parties with respect to the subject matter hereof. This Agreement may not be amended except in a writing executed by both parties. This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. Nothing herein shall be deemed to create a joint venture or partnership between parties hereto. In the event of breach of this Agreement, Grantee shall be entitled to all remedies provided at law or in equity, including injunctive relief. The prevailing party in any action arising out of, or in connection with, this Agreement shall be entitled to be reimbursed its costs and expenses, including reasonable attorney fees, by the non-prevailing party. NEITHER PARTY SHALL BE ENTITLED TO, AND OWNER AND GRANTEE HEREBY WAIVE ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY

DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.

[Signature pages follow.]









**EXHIBIT A**

**Legal Description of the Owner Property**

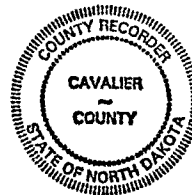
**The West Half of the Northwest Quarter (W½NW¼), Section Eleven (11), Township One Hundred Sixty (160), Range Fifty-nine (59), EXCEPT the right-of-way of St. Paul, Minneapolis and Manitoba Railway Company;**

Cavalier County, North Dakota

**Parcel Identification Number: 08058001**

OFFICE OF COUNTY RECORDER FEE: \$65.00  
State of North Dakota)  
County of Cavalier)

I hereby certify that the within instrument was filed in  
this office for record on 4/6/2023 at 12:05 PM, and  
was duly recorded as Document Number 250780



*Vicki Kubat*

VICKI KUBAT, Cavalier County Recorder

Return To: ATWELL-GROUP 7100 E PLEASANT VALLEY |

INDEPENDENCE, OH 44131-5559  
Recorded Electronically

PREPARED BY AND  
AFTER RECORDING RETURN TO:  
Otter Tail Power Company  
PO Box 496, Fergus Falls  
Minnesota 56538  
Attention: Bryce Haugen  
(218) 739-8385

---

THIS SETBACK WAIVER AGREEMENT (this "Agreement"), is dated and effective as of April 3, 2023 ("Effective Date"), by and between Frances Johnston Lucci, a married individual ("Owner") with a mailing address of P.O. Box 1464, Point Roberts, WA 98281, and Otter Tail Power Company, a Minnesota corporation ("Grantee"), with a mailing address of PO Box 496, Fergus Falls, Minnesota 56538.

**RECITALS:**

- A. Owner is the owner of that certain real property located in Cavalier County, North Dakota, as more particularly described on the attached Exhibit A ("Owner Property").
- B. Grantee owns, operates, and maintains a wind energy generation facility ("Project") on certain real property located adjacent to and in the vicinity of the Owner Property (collectively, the "Project Property").
- C. Grantee intends to install new turbine technology on the Project, which includes new, longer turbine blades ("Project Upgrades"). The Project's turbine locations will not change, but the Project Upgrades will increase the overall height of the turbines (due to the increased blade length) and result in one or more turbine(s) on Project Property being within 1.1 times the height of the turbine from a property line of the Owner Property.
- D. Owner is willing to grant to Grantee a setback waiver for the Owner Property as it relates to Grantee's Project on the Project Property, as set forth below.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree that the Recitals set forth above are hereby incorporated into the Agreement and further agree as follows:

1. **Setback Waiver.** North Dakota Century Code Section 49-22-05.1(4) and North Dakota Administrative Code Section 69-06-08-01(2)(a)(5) provide that a turbine shall be 1.1 times the turbine's height from the property line of a nonparticipating landowner ("Property Line Setback"), unless the setback is waived by written agreement. Owner agrees to and hereby does waive the Property Line Setback with respect to the Project, and supports the North Dakota Public Service Commission granting a variance to Grantee for the Project with respect to the Property Line Setback as it relates to the Owner Property.

2. **Cooperation.** Owner agrees to not publicly oppose or otherwise object to the Project and to execute and deliver such reasonably requested documents and take such action as may be reasonably requested by Grantee to carry out the purposes and intent of this Agreement.

3. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2105.

4. **Consideration.** The consideration for this Agreement is set forth on the attached Exhibit B, which Exhibit B shall be removed before recording this Agreement in the official real property records of the county in which the Owner Property is located. Owner and Grantee agree that such removal of Exhibit B prior to recording shall not affect the validity of this Agreement.

5. **Termination.** Grantee shall have the right, at any time during the Term, to terminate this Agreement as to all or any part of the Owner Property by providing written notice to Owner. Following any such termination, Grantee is authorized to file a release of this Agreement in the official real property records of the county in which the Owner Property is located.

6. **Authority; Title.** Owner represents and warrants that it is the sole owner of the Owner Property in fee simple and has the full and unrestricted right and authority to execute and deliver this Agreement and to grant to Grantee the waiver and other rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so, and all persons having any ownership or interest in the Owner Property have signed this Agreement on behalf of Owner.

7. **Assignment.** Grantee shall have the right at any time, without need for consent from Owner, to assign or convey all or any portion of this Agreement to an assignee or assignees, on an exclusive or nonexclusive basis, or to mortgage or collaterally assign all or any part of its interest in the Agreement and its rights under the Agreement to any entity (each a "Mortgagee" and collectively, "Mortgagees"). Grantee may mortgage or encumber any part of Grantee's rights and interests under the Agreement without the need for consent from Owner, provided that any such mortgage attaches only to Grantee's rights and does not otherwise attach to the Owner

Property. Owner shall have the right to sell, convey, or transfer its interest in the Owner Property, or a portion thereof, without the need for consent from Grantee, provided that Owner shall, prior to any such sale, conveyance, or other transfer, give written notice to Grantee thereof, which notice shall include the name, address, and telephone number of the proposed transferee.

8. **Notice.** All communications required or permitted by this Agreement shall be given in writing by personal delivery (confirmed by courier delivery service) or first-class U.S. mail, postage prepaid, return receipt requested, certified, addressed as follows:

If to Owner:

Frances Johnston Lucci  
P.O. Box 1464  
Point Roberts, WA 98281

If to Grantee:

Otter Tail Power Company  
Attn: Bryce Haugen  
PO Box 496  
Fergus Falls, Minnesota 56538  
Phone: 218-739-8385  
E-mail: bhaugen@otpc.com

Any party may change its address for purposes of this paragraph by giving notice of such change to the other parties in the manner provided in this Section 8. Any notice provided for herein shall become effective only upon actual receipt by the party to whom it is given, unless such notice is mailed by certified mail, return receipt requested, in which case it shall be deemed to be received five (5) business days after the date mailed.

9. **Recording.** Owner and Grantee agree that this Agreement may be recorded by Grantee in the official real property records of the county in which the Owner Property is located.

10. **Miscellaneous.** This Agreement shall be governed by the laws of the State of North Dakota. This Agreement constitutes the entire agreement between Grantee and Owner with respect to the subject matter hereof and supersedes any and all prior oral or written understandings, representations or statements among the parties with respect to the subject matter hereof. This Agreement may not be amended except in a writing executed by both parties. This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. Nothing herein shall be deemed to create a joint venture or partnership between parties hereto. In the event of breach of this Agreement, Grantee shall be entitled to all remedies provided at law or in equity, including injunctive relief. The prevailing party in any action arising out of, or in connection with, this Agreement shall be entitled to be reimbursed its costs and expenses, including reasonable attorney fees, by the non-prevailing party. NEITHER PARTY SHALL BE ENTITLED TO, AND OWNER AND GRANTEE HEREBY WAIVE ANY AND ALL RIGHTS TO RECOVER, CONSEQUENTIAL, INCIDENTAL, AND PUNITIVE OR EXEMPLARY

DAMAGES, HOWEVER ARISING, WHETHER IN CONTRACT, IN TORT, OR OTHERWISE, UNDER OR WITH RESPECT TO ANY ACTION TAKEN IN CONNECTION WITH THIS AGREEMENT.

[Signature pages follow.]







EXHIBIT A

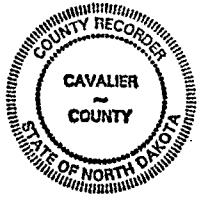
Legal Description of the Owner Property

The South Half of the Northwest Quarter (S $\frac{1}{2}$ NW $\frac{1}{4}$ ) of Section Two  
(2), Township One Hundred Sixty (160), Range Fifty-nine (59)  
Cavalier County, North Dakota

Parcel Identification Number: 08007000

OFFICE OF COUNTY RECORDER FEE: \$65.00  
State of North Dakota)  
County of Cavalier)

I hereby certify that the within instrument was filed in  
this office for record on 3/16/2023 at 10:10 AM, and  
was duly recorded as Document Number 250753



*Vicki Kubat*

VICKI KUBAT, Cavalier County Recorder

Return To: ATWELL-GROUP 7100 E PLEASANT VALLEY |

INDEPENDENCE, OH 44131-5559  
Recorded Electronically

PREPARED BY AND  
AFTER RECORDING RETURN TO:  
Otter Tail Power Company  
PO Box 496, Fergus Falls  
Minnesota 56538  
Attention: Bryce Haugen  
(218) 739-8385

THIS SETBACK WAIVER AGREEMENT (this "Agreement"), is dated and effective as of March 15, 2023 ("Effective Date"), by and between Paulette L. Schultz and Lydell Schultz, wife and husband ("Owner") with a mailing address of 7 Fremont Drive, Fargo, North Dakota 58103, and Otter Tail Power Company, a Minnesota corporation ("Grantee"), with a mailing address of PO Box 496, Fergus Falls, Minnesota 56538.

**RECITALS:**

- A. Owner is the owner of that certain real property located in Cavalier County, North Dakota, as more particularly described on the attached Exhibit A ("Owner Property").
- B. Grantee owns, operates, and maintains a wind energy generation facility ("Project") on certain real property located adjacent to and in the vicinity of the Owner Property (collectively, the "Project Property").
- C. Grantee intends to install new turbine technology on the Project, which includes new, longer turbine blades ("Project Upgrades"). The Project's turbine locations will not change, but the Project Upgrades will increase the overall height of the turbines (due to the increased blade length) and result in one or more turbine(s) on Project Property being within 1.1 times the height of the turbine from a property line of the Owner Property.
- D. Owner is willing to grant to Grantee a setback waiver for the Owner Property as it relates to Grantee's Project on the Project Property, as set forth below.

**AGREEMENT:**

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree that the Recitals set forth above are hereby incorporated into the Agreement and further agree as follows:

1. **Setback Waiver.** North Dakota Century Code Section 49-22-05.1(4) and North Dakota Administrative Code Section 69-06-08-01(2)(a)(5) provide that a turbine shall be 1.1 times the turbine's height from the property line of a nonparticipating landowner ("**Property Line Setback**"), unless the setback is waived by written agreement. Owner agrees to and hereby does waive the Property Line Setback with respect to the Project, and supports the North Dakota Public Service Commission granting a variance to Grantee for the Project with respect to the Property Line Setback as it relates to the Owner Property.

2. **Cooperation.** Owner agrees to not publicly oppose or otherwise object to the Project and to execute and deliver such reasonably requested documents and take such action as may be reasonably requested by Grantee to carry out the purposes and intent of this Agreement.

3. **Term of Agreement.** The term of this Agreement shall commence on the Effective Date and shall continue until December 31, 2105 or until the turbine is removed, whichever occurs first.

4. **Consideration.** The consideration for this Agreement is set forth on the attached **Exhibit B**, which **Exhibit B** shall be removed before recording this Agreement in the official real property records of the county in which the Owner Property is located. Owner and Grantee agree that such removal of **Exhibit B** prior to recording shall not affect the validity of this Agreement.

5. **Termination.** Grantee shall have the right, at any time during the Term, to terminate this Agreement as to all or any part of the Owner Property by providing written notice to Owner. Following any such termination, Grantee is authorized to file a release of this Agreement in the official real property records of the county in which the Owner Property is located.

6. **Authority; Title.** Owner represents and warrants that it is the sole owner of the Owner Property in fee simple and has the full and unrestricted right and authority to execute and deliver this Agreement and to grant to Grantee the waiver and other rights granted hereunder. Each person signing this Agreement on behalf of Owner is authorized to do so, and all persons having any ownership or interest in the Owner Property have signed this Agreement on behalf of Owner.

7. **Assignment.** Grantee shall have the right at any time, without need for consent from Owner, to assign or convey all or any portion of this Agreement to an assignee or assignees, on an exclusive or nonexclusive basis, or to mortgage or collaterally assign all or any part of its interest in the Agreement and its rights under the Agreement to any entity (each a "**Mortgagee**" and collectively, "**Mortgagees**"). Grantee may mortgage or encumber any part of Grantee's rights and interests under the Agreement without the need for consent from Owner, provided that any

such mortgage attaches only to Grantee's rights and does not otherwise attach to the Owner Property. Owner shall have the right to sell, convey, or transfer its interest in the Owner Property, or a portion thereof, without the need for consent from Grantee, provided that Owner shall, prior to any such sale, conveyance, or other transfer, give written notice to Grantee thereof, which notice shall include the name, address, and telephone number of the proposed transferee.

8. **Notice.** All communications required or permitted by this Agreement shall be given in writing by personal delivery (confirmed by courier delivery service) or first-class U.S. mail, postage prepaid, return receipt requested, certified, addressed as follows:

If to Owner:

Paulette L. Schultz and Lydell Schultz  
7 Fremont Drive  
Fargo, North Dakota 58103

If to Grantee:

Otter Tail Power Company  
Attn: Bryce Haugen  
PO Box 496  
Fergus Falls, Minnesota 56538  
Phone: 218-739-8385  
E-mail: bhaugen@otpco.com

Any party may change its address for purposes of this paragraph by giving notice of such change to the other parties in the manner provided in this Section 8. Any notice provided for herein shall become effective only upon actual receipt by the party to whom it is given, unless such notice is mailed by certified mail, return receipt requested, in which case it shall be deemed to be received five (5) business days after the date mailed.

9. **Recording.** Owner and Grantee agree that this Agreement may be recorded by Grantee in the official real property records of the county in which the Owner Property is located.

10. **Miscellaneous.** This Agreement shall be governed by the laws of the State of North Dakota. This Agreement constitutes the entire agreement between Grantee and Owner with respect to the subject matter hereof and supersedes any and all prior oral or written understandings, representations or statements among the parties with respect to the subject matter hereof. This Agreement may not be amended except in a writing executed by both parties. This Agreement may be executed in two or more counterparts and by different parties on separate counterparts, all of which shall be considered one and the same agreement and each of which shall be deemed an original. Nothing herein shall be deemed to create a joint venture or partnership between parties hereto. In the event of breach of this Agreement, Grantee shall be entitled to all remedies provided at law or in equity, including injunctive relief. The prevailing party in any action arising out of, or in connection with, this Agreement shall be entitled to be reimbursed its costs and expenses, including reasonable attorney fees, by the non-prevailing party. Otter Tail Power Company, its successors and assigns, shall indemnify, defend and hold harmless Owners, their heirs, successors

and assigns, from and against all demands, claims, damages to persons and/or property, losses and liabilities, including damage to crops and including reasonable attorney fees (collectively "Claims") related to the operation of the turbine for which this Variance is sought, arising out of or caused by the negligence or intentional misconduct of Otter Tail Power Company, its successors and assign.

[Signature pages follow.]





**EXHIBIT A**

**Legal Description of the Owner Property**

**The East Half of the Southeast Quarter (E½SE¼), Section Ten (10) Township One Hundred sixty (160), Range Fifty-nine (59).**

**County of Cavalier and State of North Dakota**

**Parcel Identification Number: 08056000**