

2019 HOUSE POLITICAL SUBDIVISIONS

HB 1167

2019 HOUSE STANDING COMMITTEE MINUTES

Political Subdivisions Committee Prairie Room, State Capitol

HB 1167

1/18/2019

Job # 31071

Subcommittee

Conference Committee

Committee Clerk: Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to exclusion and avoidance areas for a wind turbine; and to provide for application

Minutes:

1 - 13

Chairman J. Dockter: Opens the hearing on HB 1167

Rep. Magrum: (Handout #1) Introduces the bill by reading his testimony and explained the attachments.

Rep. Adams: Would this affect the turbines that are already up?

Rep. Magrum: No those would be grandfathered in.

Rep. Hatlestad: On line 17 of the bill it says a local zoning authority may require setback distances greater than those required. So why do we need your bill?

Rep. Magrum: I will defer to another speaker.

Rep. Ertelt: There is a concern the wind energy companies will not seek additional wind farms in ND if this is the case. Do you believe that?

Rep. Magrum: No they are bluffing, we have what they want. We need to protect our non-participating landowners as well.

(16:22) Julie Hornbacher: (Handout #2). Read her testimony.

(19:36) Erin Magrum, Emmons County Commissioner (Handout #3). My main concern coming in is why don't we have the counties or the zoning boards issue these? As a local representative we try and use what's based off of Century Code. We look for the state to protect us.

Keith Kessler: (Handout #4) There a lot of issues in the Glen Ullin area with property lines and setbacks. I would like to include participating landowners in an amendment. Part of my property has been fenced off and given to my neighbor to accommodate because they need a certain size pad to set there crane up for maintenance work. So that is my reason for including participating. You have weeds after the dirt is moved, there are fencing issues, there is very little compensation for any of that. Ice can fly off over 1400 feet. The towers can send a shadow over ½ mile. PSC approved this without the easements being signed. Some days the noise is over 90 decibels. The easements state they cannot be over 50 decibels. The cattle get nervous with the noise, so you have to plan your schedule around which way the wind is going to blow and how fast it's blowing.

Rep. Hatlestad: You indicated they needed part of your land to put the crane on to do maintenance on the tower?

Mr. Kessler: Yes, they need a certain square footage area to set the crane up. This wind farm went into production in January 2016 and they have replaced numerous bearings on the hub.

Rep. Hatlestad: You have given your permission to use your land?

Mr. Kessler: Yes, we didn't sign the easement but we kept meeting with Minnesota Power and expressed concerns about the towers being to close. They said it wouldn't bother us and said the fence would go back where it was. I asked what would happen if we didn't sign the easement, they said they would have a Judge sign it. They also said they wouldn't let people out of the agreement but they have let people out of it but they wouldn't let us out. We ended up signing. Is it right of them to fence me off of my property when I pay the taxes?

Rep. Ertelt: You are participating land owner and you are in support of the bill?

Mr. Kessler: Yes, absolutely.

Rep. Magrum: The handout picture with the B on it is where they fenced you off of your land?

Mr. Kessler: Yes.

Rep. Magrum: Is that a double fence? Why is there a double fence?

Mr. Kessler: That is the neighbor's property on the other side. There is a double fence to keep the bulls apart.

Rep. Simons: I would like to listen to a turbine, you said it echoes off your building and you can hear it in your house?

Mr. Kessler: Absolutely. When the wind is blowing out of the southeast you can hear it constantly. I have filed a complaint with the PSC and they came out to meet and in the yard it was so loud the PSC said they would not want to live in that area.

Rep. Simons: How have they been to work with about the noise? Are there any repercussions?

Mr. Kessler: They have made small attempts. They said they would reinsulate the house or put awnings on to help with the shadow flickering. They offered to buy a quarter of our land, they wanted us to tear down our house and relocate it that is not an option.

James Schmidt: (Attachment #5) A year ago our zoning board with consists of three townships we actually adopted this same rule as Rep. Magrum is proposing. If you ask the wind turbine companies for a manual, they say they don't have them. I did find one, and it says for a 2.75 megawatt turbine, it says no not stay within a radius of 400m or 1300 feet from the turbines. If you look at the one handout it is 400 feet back. The easements are for 50 to 100 years. Why do you need such a long easement when the life expectancy of turbines is only 20 years? You are tying up generations of property rights. Another concern is landowners are signing up for towers, but they do not live in our township. We are in favor of this bill.

(43.00- 48:00) David Nehring: ND Vision Keepers: (Attachment #6). Read his testimony and went over the handouts. Wind companies operate different in ND compared to other states. We are provided protection under the taking clause of the 5th Amendment to have just compensation for taking of property,

that hasn't happened here. Constitutionally we need to provide the same protections to the non-participating land owners. We need to be cautious in our approach to wind development and not cause issues with everything else we have in the state. The wind developer will tell you that this will kill the wind industry in ND. I believe that is not true. We are the top 5 or 6 states for wind potential. It will cause lots of opportunities for land owners. They are providing a lot of jobs. Our lignite energy has 4,000 jobs are directly related to coal industry in ND.

Rep. Hatlestad: Is the issue compensation or setback? Or both?

David Nehring: I would say fairness. It is a property rights issue. I believe we need to have the same setbacks for a non-participating land owner. That allows them full use of their property.

Rep. Hatlestad: When the wind farms were cited by the PSC why was this not raised as a major issue?

David Nehring: We are learning more every day about the potential negative impacts of wind development. Described problems that the wind farms have caused.

Mike Krumwiede: Wind Industry of ND. (Attachment #7). He read Testimony.

Rep. Ertelt: Would you deny the setback provision that is currently in law and what existed before was 1.1 or less, that it creates a burden on the non-participating landowner's property?

Mr. Krumwiede: I would say it doesn't because of property lines, it's not amongst houses. Inhabiting residence is already a 3 times setback.

Rep. Magrum: Isn't this the same argument they used last session when they wanted to have the setbacks for residence that it would destroy wind in ND?

Mr. Krumwiede: This is my first go around with this setback. The counties have the ability to go beyond that.

Rep. Magrum: Would you recommend that a ½ mile would be better?

Mr. Krumwiede: Those counties that are less densely populated and the conditions would work out correctly they can work with different setbacks.

Rep. Magrum: Is WIND not concerned with the safety of the non-participating landowners and families?

Mr. Krumwiede: I don't think any of our testimony will say we have no concern for the landowner. That is not our position.

Rep. Magrum: Why does WIND want to build in the urban areas?

Mr. Krumwiede: We are talking about counties and lines associated with those counties. If there are open areas in those more densely populated counties that can be developed and the rights of the landowners wants to sign the leases, we think that is the right of those landowners.

Rep. Magrum: You mention the rights of the participating landowners, what about the rights of the non-participating landowners?

Mr. Krumwiede: I did not say non-participating landowners didn't have any rights, they have the rights as currently written. They also have the rights to go to their counties and talk about setbacks and negotiate with the counties.

Rep. Magrum: The wind people come in with 3 or 4 lawyers and intimidates the landowners, as well and the townships and counties. You say the counties can do this but it is causing a lot of unrest. You are creating a negative reaction towards wind. We have a county that voted the wind farm down but then there is threats of lawsuits.

Mr. Krumwiede: Not every county is the same for development and it is better to approach it by a case by case basis.

Rep. Ertelt: You speak of local control, is there more local control than individual control over property rights?

Mr. Krumwiede: We are not trying to take control; the local control I speak of is the counties.

Rep. Toman: These example charts carving out non-participating landowners. If I am a non-participating landowner the current setback laws and radius coming into my space, does that inhibit my ability to make money off of my land by participating in a competing company's windfarm or a new windfarm? Because now I am encumbered by the radius and I won't be able

to participate in the next phase of it? Would it impede with the spacing of the towers and my right to make money off of my land?

Mr. Krumwiede: I will have to refer to the experts on how the overlaps work with additions to farms and how that would work.

Clay Cameron: Project Manager NextEra Energy Resource (Handout #8).
Read his testimony.

Rep. Ertelt: The diagram you have and the statistics you presented, 18 of the 48 wind turbines couldn't be erected within the 3 times setback that is proposed by the bill, are you not making an assumption that a non-participating landowner would allow you to build within that setback? There is provision in law that allows you to make an agreement or make a variance if the non-participating landowner would agree to it.

Mr. Cameron: I would defer to Dan Labate to answer that.

Daniel Labate: Wind Energy Resource Analyst. These are landowners who were the ones that said no to the project.

Rep. Ertelt: There was talk of the community wanting the wind farm, but there are some of them who didn't want the turbine closer than the 1.1 setback to their land. Do you believe the individual landowner shouldn't have the say to be this 3 times if he doesn't want it?

Mr. Labate: The analysis was based on landowners saying no they are opposed to the wind farm.

Rep. Ertelt: Because there was hesitation of the burden placed on the land. Would you deny that having 1.1 or less setback burdens the non-participating landowner property?

Mr. Labate: I can't comment on that but just based on the analysis I performed. We use a blade 1.1 plus 10-meter setback for participating landowners. For non-participating it's the 1.1. We have a lot of environmental features we avoid.

Rep. Simons: When you are approached about decibels what is your standard procedure? How do you deal with the public? What is the repercussion?

Mr. Cameron: When that is presented to us we analyze that situation immediately. We have an onsite operations group on every operating wind farm. We go out with a decibel meter at the location to determine what the decibel level is. If it exceeds the state level which is 50dva, typically it is a mechanical issue. If it was a mechanical issue, we would shut the turbine down to fix it. The last resort would be to curtail it to drop the sound level down within the guidelines.

Rep. Toman: If the non-participating landowners have a change of heart and now they want to participate are they able to make money off of their land if they are going to put wind towers there?

Mr. Labate: For siting purposes we get our land map, if that landowner is non-participating then we still keep that 1.1 setback.

Rep. Toman: If they want to be a participate, but you can't site one on my land so now I can't make money off an easement or lease agreement because of the neighbor who is a participant?

Mr. Labate: If that land is actually signed we use a blade plus 10 setback.

Rep. Adams: When you talk about the blade plus 10% is that how far the turbines have to be apart?

Mr. Labate: The blade plus 10 meters for all participating landowners who want to participate in the project. That is industry wide.

Rep. Magrum: When the setback was proposed to the Emmons County Commissioners you had made a statement that said wouldn't affect the Logan Emmons wind farm at all. Is that a true statement then?

Mr. Cameron: I'm not 100% certain of that setback that was going to be proposed.

Rep. Magrum: It was the same thing I proposed to the Emmons County Commissioners.

Mr. Cameron: That was early in our design, about 2 years ago.

Rep. Magrum: That was in in August or September of 2018.

Mr. Cameron: What was the setback distance you were referring to?

Rep. Magrum: It was the same setback, 3 times the turbine height. You told the Commissioners that it would not affect the Emmons Logan wind farm at all.

Mr. Cameron: I believe that was for residents not property lines.

Rep. Johnson: So the people on the other side of the property line would have no say in where the tower sits, within 160 acres where else could other turbines be built for a 2 megawatts turbine?

Mr. Cameron: Turbine spacing three rotor diameters in the perpendicular direction and eight rotor diameters in the prevailing wind direction. We want to make sure there is proper spacing. When there are some constraints we have to shrink that setback or the distance between the turbines. We can go to a 3X5 spacing setback but we want to keep a bigger distance for suitability standpoint.

Rep. Johnson: In a 2 megawatts, are you able to build other turbines within a 160 acres?

Mr. Cameron: If that landowner wants to participate we use the blade plus 10 setback. If that landowner is participating, we can put more turbines in there.

Robert Harms: (Handout #9,10,11) Lobbyist for Tradewind Energy. I am going to hand out Mark Walter's testimony and maps that evaluating its project in Williams Co. He explained the handouts.

Chairman J. Dockter: In section 2 it talks about the certificate of site compatibility. Do you have certificate of site?

Mr. Harms: The Aurora project has been approved by the Williams County Commission Planning and Zoning as well as the County Commission, we believe the bill would not effect of Aurora. But if it was applied to Aurora it would kill the project.

Rep. Toman: The map with the non-participating landowners, did they say no or that you did not approach because you did not need to use their land?

Mr. Harm: That would be a development detail that I wouldn't have knowledge of. I'm guessing they were landowners who were approached and did not want to participate.

Rep. Magrum: Do you think there was no chance to getting a variance on any of these wind turbines with non-participating landowners? I think this setback bill would encourage getting more landowners involved. Would this encourage the wind farms to go out and work harder to work with the non-participating landowners?

Mr. Harms: I think the general feeling exists within the wind community is rather than bring more landowners in it will kill projects and that investment will leave ND.

Rep. Magrum: So you would just go to another state, is it that easy to go somewhere else and they are just going to accept wind farms? If that is the case, why are you trying to develop here then?

Mr. Harms: The wind industry is interested in ND because it has a robust wind resource. They are not just going to go to another state because they didn't like what happened in ND. But the developer will evaluate the economies of that project. And the Aurora project was planned for 4 years, so if every time the Legislature meets and we change the rules, we have to go back and redesign it.

Rep. Magrum: What if the nonparticipating landowner wants to build on his own land, what are his rights? State law says he has to stay 3 times the turbine height away, he could probably build in the danger zone, but why would we want to encumber so he can have safety and peace on his own property?

Mr. Harms: If I am a participating landowner and you are a non-participating landowner, the fact that I sign a lease doesn't encumber your property.

Rep. Johnson: Are there nuisance ordinances available to landowners to claim against wind farms?

Mr. Harms: We have a variety of statutes in ND. I don't know if there is remedy under the nuisance law. There are legitimate complaints that a landowner has, whether it's weeds, loud noises, I would bring them to the PSC, to the developer and get them fixed. There is a remedy there as opposed to the nuisance statute.

Handouts out corporate data. (Handout#12)

Natalie Pierce: (Handout #13). ND Planning Association. The portion of the Century Code this is in is for exclusion area for siting new projects. When the PSC reviews these applications to say it can't be any closer in than this 3 times. It doesn't mean someone can't build there it just means for new projects. Referred to her handout.

Rep. Ertelt: You said there isn't a direct impact to health and safety but would you say there is an impact to property use?

Ms. Pierce: There could be but that varies across the state.

Darrell Lies: NDFB. I respect what Rep. Magrum is attempting to do by protecting private property rights. We have to be careful that in the protection of all private property rights we do not create a circumstance of elimination of certain property rights. This bill I would caution with the 3 times setback does that. If you have a single quarter you would not be able to develop wind on your property if there are non-participating landowners around you. This eliminates that single quarter owner's property rights. If a township doesn't want wind development and the majority of the people decide that, they can make it so that it is impossible for any property to be developed in that township. The remedy is already here. We need a standard to base off of, that is what we created in 2017. We need to look at nonparticipating and participating but we have to be careful we don't create elimination. We are in a soft oppose we feel there is a guideline and remedy in current legislation.

Carlee McLeod: President of the Utility Shareholders ND. We believe this was fully vetted and are in opposition to this bill.

John Wald: Logan County Commission. I don't like state government over burdening county government.

Rep. Ertelt: Do you feel it is the role of state government to protect rights if they exist for the political subdivisions or for the people who reside in the political subdivisions and landowners?

Mr. Wald: Just the residents.

Chairman J. Dockter: Closed the hearing.

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Relating to exclusion and avoidance areas for a wind turbine; and to provide for application

Minutes:

Rep. Longmuir, Rep. Guggisberg, Rep. Magrum were in attendance.

Chairman Longmuir: Opened the subcommittee on HB 1167 to review it. It is increasing the tower height from 1.10 to 3 times the height of the turbine. I cannot support the 3 times the height. I think this is a local planning and zoning board.

Rep. Magrum: Three years ago it was a good way to go the local zoning but the wind developers have gained so much influence they are challenging these counties. How can you expect a county to stand up to them? Landowners are not being compensated for use of their land as they should. Our duty is to the individual and to protect them. Explained about local control of this. 2:50-7:20

Chairman Longmuir: This should stay at the local level. Its taking away the local decision. Each county operates separately.

Rep. Magrum: They can but they are being challenged right now and is there going to be lawsuits. If we would set a standard. The only thing we don't set at the state level is wind turbines. We need to help the counties and townships out. The wind developers are giving Legislatures campaign money then coming in and opposing the bills. I feel it is unethical what they are doing. I think this is one of the most important bills this session for private property rights. Wind has changed in this state. They have gained a lot of power. The time for the townships and counties setting their own ordinances is past. Last session people were concerned about the set back from residence more than the property line. The wind lobby was against that also. 7:50-15:00

Rep. Guggisberg: 95% of what we debate on this committee is local control, to me that is what this is about. If we keep changing it this will never end. It is up to us to take care of this.

Rep. Magrum: We are continually changing laws. We have to adjust and change things and we have to help the people out and the non-participating land owners are crying out right

now. Two years ago I had not heard from people about wind and now people are contacting me because the non-participating need representation. Within 1300 feet is considered dangerous. Why should they be allowed to be any closer? The non-participating landowner is not safe on their land. Then there is the shadow flicker to contend with. The companies that build these are going to build these wind farms, then sell them and they will be gone.

Chairman Longmuir: What about the participating land owner. You have both sides of the coin. If people want to develop their land into a wind farm but can't because the laws are so tight. To come up with a one size fits all is always so difficult.

Rep. Magrum: We need to look at the evidence here, even the constitutionality of it all. The state has you should stay 3 times back from a residence but yet we are letting them build closer to the property line. I think that is called trespass zoning.

Chairman Longmuir: I would disagree. What I see here is one group that has a local issue and wants it to go statewide. These are the same people who don't want the stat coming in and doing things for them but they want the state to force other people to do what they want done. I feel it should be back with the local zoning board.

Rep. Magrum: We just voted to deny the City of Grand Forks to put a license fee on rentals. Wouldn't that be a local decision that we took away. Now we are saying wind turbines should be a local decision which is affecting a lot more people. I don't know how we can say we are for local control on one hand and vote against it on the other.

Chairman Longmuir: I don't see the comparison of a rental fee to a wind tower. That is two different issues. I understand where you are coming from. It's not that I am not aware of it. The basis of this is local control.

Rep. Magrum: I still disagree about the local control. We are elected by the individuals. The state should look out for the individual. If they have a problem with their township or city they come to us to have a bill passed. They depend on the state government to look out for them. Counties and townships are going to be challenged now by the wind developers and their lawyers. It is happening that they are intimidating these people. Explained how the townships and counties are challenged. If we could give them a guideline and it will not take away any control.

Chairman Longmuir: I still disagree and do want a make a recommendation. We will just tell the whole committee that we discussed it and made no recommendation.

Meeting closed on subcommittee.

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Explanation or reason for introduction of bill/resolution:

Relating to exclusion and avoidance areas for a wind turbine; and to provide for application.

Minutes:

Attachment 1-6.

Chairman J. Dockter: Opens hearing for HB 1167.

Rep. Magrum: Handed out amendment (Attachment 1) and information received from Bismarck Tribune (Attachment 2); Emmons County Record (Attachment 3); North Dakota Utilities (Attachment 4); Vestas Wind Systems (Attachment 5); Burleigh County Building, Planning, Zoning Department (Attachment 6).

Rep. Magrum: I make a motion for amendment 19.049.01002 but to verbally correct that to 2.1 instead of two and one-half on HB 1167.

Rep. Ertelt: Seconded.

Voice vote. Motion carried.

Chairman J. Dockter: We have HB 1167 as amended. If there any discussion?

Rep. Longmuir: We discussed this in subcommittee and the amendment wasn't brought up at that time. There was really no change in the status. Taking that into consideration I would move a Do Not Pass as amended on 1167.

Rep. Guggisberg: Seconded.

Chairman J. Dockter: Is there any discussion?

Rep. Longmuir: The 3 tower lengths or 2.1 tower lengths is actually being able to be accomplished today by going to your township zoning board or their county. That keeps it at a local decision. They are the ones who know. I see this as a mandate from the state and it takes it away from local control.

Rep. Magrum: That is why I passed out the press releases because I want them to see that there is a lot of opposition from the wind lobby. The wind developers are opposing any of the local ordinances and it will be hard to get anything done locally. These counties are getting lawsuits from these wind developers. We need to help them and give them some direction. Lawsuits could break a small county. We are not increasing the setback a lot. This legislation represents 95% of the state, that number came from the PSC which are non-participating landowners. When you are speaking of landowners rights you are speaking for 5 % of the state. These companies are not wanting to buy power from P&E wind, I think we are at the cusp of something getting out of hand.

Rep. Fegley: I support this bill because I was on a township board and we had a company that came in and said we have the attorneys, we have the money and you will lose if we go to court. Local zoning works for local people not when the corporations come in and try to intimidate them. You have to have the dollars and the attorneys to oppose them. The final aspect of zoning is settled by the courts. I think the state should have the aspect of setting a standard to protect both sides. I am in support of this bill.

Rep. Simons: I come from oil country and we well know about setbacks and when it comes to oil wells I have seen them punch holes in the ground right next to homes. It is not a good thing. There should be a common respect for people. I see this in the same way. I don't know if we can fix setbacks in our counties because we as counties benefit from those holes. Our whole state is making our budget off of the oil. The people really aren't having a voice anymore. We do have to do things within reason of the people. Let's set a precipice and think of the people of the state. I think this is reasonable.

Chairman J. Dockter: in some counties have set backs up to 5 miles.

Rep. Adams: Let the cities and counties have the say that is where the power is with the people. Participating people are not opposed. As a state we should not be governing the locals, let them have the power.

Rep. Longmuir: This set back is from a property line out in the middle of nowhere there is no residence around it. State law already has 3 tower lengths setback from a residence, we are talking about someone wanting to have a wind tower when others don't want them to. From a residence it is already established.

Rep K. Koppelman: The main objection to the proximity is what?

Chairman J. Dockter: It is noise, debris, flicker and all the different issues. It comes down to are we taking the side of the participating or the non-participating landowners. Through this whole session its always been about the property owners but with this bill we are picking one side of the property owners. We are not doing it for the whole.

Rep. Simons: My problem is where ever the towers are too close you would not be able to build there because of one landowners intrusion of his property. This is a serious issue and it is a property rights issue.

Rep. Ertelt: The safety regulations from the Vestas Wind shows it is not safe to stay within 1300 ft. when the turbine is 498 ft tall and that is 2.7 times the height and the bill as amended

is down to 2.1 is a fair compromise for both parties. The bill as amended is not saying we are choosing the rights of one landowner to another. This bill does provide for both property owners to exercise their rights.

Chairman J. Dockter: We had this last session, so every time we have an issue with one area they are asking to have the goal moved again. That is why we have counties and zoning commissions. Any board you are on you are elected and entrusted to make decisions.

Rep. Magrum: Burleigh County has the biggest issues when you say this is out in the middle of nowhere that is not true. These are small tract owners. These towers are encumbering so they can't build on their property. Then this does change the land value. People don't want to build by a wind farm. We are not taking away local control at all. If the wind developers had to compensate even the non-participating landowner, it would be helpful.

Rep. Longmuir: If the state law is passed, the county would not allow you to get variance. State law take precedence.

Rep. Ertelt: Its already in state law, there is variance that can be allowed.

Rep. Magrum: All you need to do is put yourself in the place of a non-participating landowner. If a participating landowner puts in a turbine you might not be able to build like you wanted. You could also lose property value.

Chairman J. Dockter: So landowners should have the opportunity to the people who gets benefits from the wind turbines. Our jobs as representatives is to figure out what is best for your district and state.

Rep K. Koppelman: Is there in current law where people are compensated if it is so close to the property line? Have people sued wind litigators saying they have devalued the land?

Rep. Magrum: I do not know of situations like that in this state.

Rep K. Koppelman: But there is not a common practice to pay non-participating landowners?

Rep. Magrum: No the wind developers are saying that is not a fact. It would take a lot of money to challenge wind corporations. There have been big changes in our state with wind development and the people are crying out for some help and guidance. The County commissioners are not listening to the people and when they do they end up like in Burleigh County where they are in litigation. This has not been resolved and I think this is a good opportunity for us to take care of business.

Vice Chairman Pyle: How many meeting has Burleigh County had on this and what are they doing for their setbacks and requirements?
They are the representatives closer to their people

Rep. Magrum: this is in several different townships. The Morton County Commissioners are all participating landowners. They asked Burleigh County to take it over because there would be a conflict of interest. The board listened to their people and are still being challenged.

Vice Chairman Pyle: The locals are closer to the people than we are. What are they doing at the local level now?

Rep. Magrum: This particular wind farm is in three different townships, three are unified and passed a setback ordinance. In the Morton township all the township committee members are participating landowners so they would not change the ordinance. The township didn't want to make a decision because of conflict of interest. They asked Burleigh county to take it over. Most of the other counties are watching this to see if this will pass. We always look to the state for guidance. End 42:12

Vice Chairman Pyle: What is the setback in Burleigh county? Did they attempt to increase that?

Rep. Magrum: I believe it is 1.1 like the state and no they didn't at this point.

Rep. Ertelt: The participating landowner with this bill would allow to a landowner to participate even though they are surrounded by non-participating landowners. There is a provision for all parties to come to the table for the variances. If you want all parties to come to the table, then you should be voting for the bill.

Rep. Simons: You talked about somebody having hard times and then if a wind tower is too close to some one else's property than that other person's hard times will continue because their land cannot have a wind tower. In oil country we split up profits of the oil if it is on more than one owners land. We do need to do this cautiously and carefully. We need to make sure the people are getting justice. End 47:21

Rep. Strinden: On the variance issue there was conflicting testimony. There is a variance option right?

Rep K. Koppelman: Yes, in the current statute that is being amended. All the bill does is amend the distance so it is changed from 3 to 2.1 and it is 1.1 in current law. In that same section of code it says the commission may grant a variance if authorized representative or agent of the permittee, the nonparticipating landowner and the affected parties file a written expressing the support of all parties for a variance to reduce the set-back in this subsection.

Chairman J. Dockter: Any further discussion? Seeing none. We will take the roll on a Do Not Pass as amended on HB 1167.

Roll Call Vote: Yes 7 No 7 Absent 0. Motion fails.

Vice Chairman Pyle: I think this should go out and have everyone vote on it. Let's send without any recommendation.

Rep. Simons: I move a Do Pass as amended on HB1167.

Rep. Strinden: Seconded.

Roll call vote taken: Yes 8 No 6 Yes 0. Motion carries.

Vice Chairman Pyle: We will always have the discussion even if it is hard.

Rep. Ertelt: Will carry the bill.

19.0409.01003
Title.02000

Adopted by the Political Subdivisions
Committee

February 15, 2019

DP 2/15/19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1167

Page 1, line 7, after the first "one" insert "two"

Page 1, line 7, remove the overstrike over "~~and one tenth~~"

Page 1, line 7, remove "three"

Renumber accordingly

Date: 2-15-19
Roll Call Vote #: 1

2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1167

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: 19.0409.01003

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
Other Actions: Reconsider

Motion Made By Rep. Magrum Seconded By Rep. Ertelt

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:					
Vice Chairman Pyle:					
Rep. Ertelt:					
Rep. Fegley:					
Rep. Hatlestad:					
Rep. Johnson					
Rep K. Koppelman:					
Rep. Longmuir					
Rep. Magrum:					
Rep. Simons:					
Rep. Toman:					
Rep. Strinden:					
Rep. Adams:					
Rep. Guggisberg					

Voice Vote

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion Carries

Date: 2-15-19
 Roll Call Vote #: 2

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1167**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar
 Other Actions: Reconsider _____

Motion Made By Rep. Longmuir Seconded By Rep. Guggisberg

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:	X				
Vice Chairman Pyle:	X				
Rep. Ertelt:		X			
Rep. Fegley:		X			
Rep. Hatlestad:	X				
Rep. Johnson	X				
Rep K. Koppelman:		X			
Rep. Longmuir	X				
Rep. Magrum:		X			
Rep. Simons:		X			
Rep. Toman:		X			
Rep. Strinden:		X			
Rep. Adams:	X				
Rep. Guggisberg	X				

Total (Yes) 7 No 7

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Motion failed.

Date: 2-15-19
 Roll Call Vote #: 3

**2019 HOUSE STANDING COMMITTEE
 ROLL CALL VOTES
 BILL/RESOLUTION NO. HB 1167**

House Political Subdivisions Committee

Subcommittee

Amendment LC# or Description: _____

Recommendation: Adopt Amendment
 Do Pass Do Not Pass Without Committee Recommendation
 As Amended Rerefer to Appropriations
 Place on Consent Calendar

Other Actions: Reconsider _____

Motion Made By Rep. Simons Seconded By Rep. Strinden

Representatives	Yes	No	Representatives	Yes	No
Chairman J. Dockter:		X			
Vice Chairman Pyle:	X				
Rep. Ertelt:	X				
Rep. Fegley:	X				
Rep. Hatlestad:		X			
Rep. Johnson		X			
Rep K. Koppelman:	X				
Rep. Longmuir		X			
Rep. Magrum:	X				
Rep. Simons:	X				
Rep. Toman:	X				
Rep. Strinden:	X				
Rep. Adams:		X			
Rep. Guggisberg		X			

Total (Yes) 8 No 6

Absent 0

Floor Assignment Rep. Ertelt

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1167: Political Subdivisions Committee (Rep. Dockter, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (8 YEAS, 6 NAYS, 0 ABSENT AND NOT VOTING). HB 1167 was placed on the Sixth order on the calendar.

Page 1, line 7, after the first "~~one~~" insert "two"

Page 1, line 7, remove the overstrike over "~~and one tenth~~"

Page 1, line 7, remove "three"

Renumber accordingly

2019 TESTIMONY

HB 1167

NORTH DAKOTA HOUSE OF REPRESENTATIVES



STATE CAPITOL
600 EAST BOULEVARD
BISMARCK, ND 58505-0360

1
1-18-19
HB 1167

COMMITTEES:
Judiciary
Political Subdivisions

Representative Jeffery J. Magrum

District 28
P.O. Box 467
Hazelton, ND 58544-0467

C: 701-321-2224
jmagrum@nd.gov

"Click here to type date"

Chairman Dockter and fellow committee members.

For the record I am Jeff Magrum representing district 28 which is south central ND east of the Missouri river.

I stand to introduce HB1167 to our committee. This bill simply changes the setback from a wind turbine to the property line of a nonparticipating landowner to 3 times the turbine height . This would be equal to the distance of the setback of a wind turbine from an inhabited rural residence. Making this change protects the nonparticipating landowner rights from being encumbered. This bill is a property rights bill .

This bill does not change anything otherwise in current statute.

Subsection 3 of section 49-22-05 .1 does a good job of explaining the options available to get a variance granted by the local zoning authority if all party's involved are in agreement.

Opposition to this bill is spinning a false scenario . The idea that this setback proposed would destroy wind in North Dakota is just untrue. Setback's may inhibit wind development in growing rural areas where folks are building new homes and business'. It may encourage wind farm developers to develop in

rural areas of our state. In turn this would help to alleviate the civil unrest that saw recently east of Bismarck in Burleigh County.

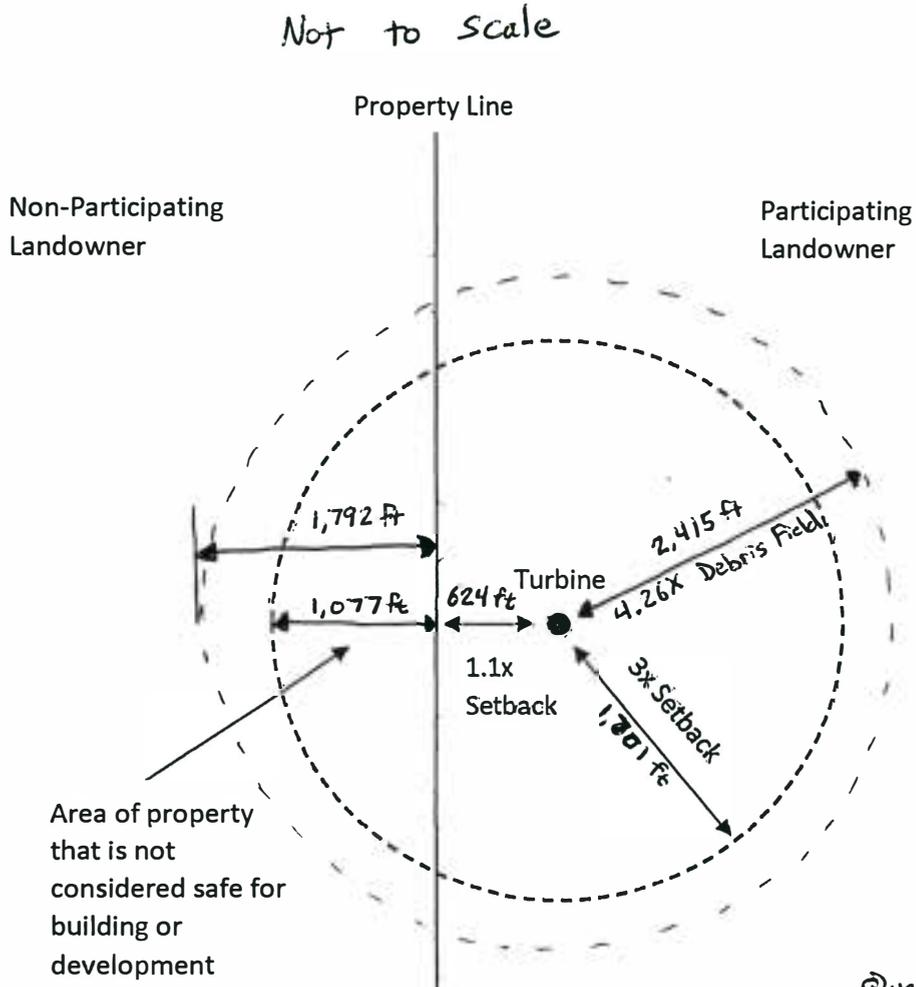
Next Era Energy Corp. headquartered in Florida is proposing a wind farm in Emmons-Logan counties encompassing 64,000 acres and approximately 130 wind turbines. At a recent Emmons County commission meeting I presented this same setback proposal and their representatives made the comment that this would not have affected the development of their proposed wind farm . I am both pro-wind and pro-property rights. We must protect the property rights of participating and non-participating landowners or we will jeopardize the future of wind development in the state of North Dakota.

#1
HB 1167
1-18-19

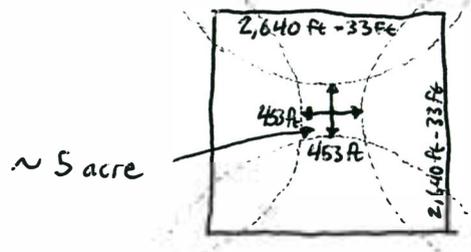
Burleigh - Emmons Wind Project
Turbine Height = 567 ft
Debris Field = 4.26X height

Current Zoning

1.1x Height of Turbine Setback from Property Line



Quarter Section = 160 acre
w/ 1.1X setback
Vestas 100 2MW Turbine



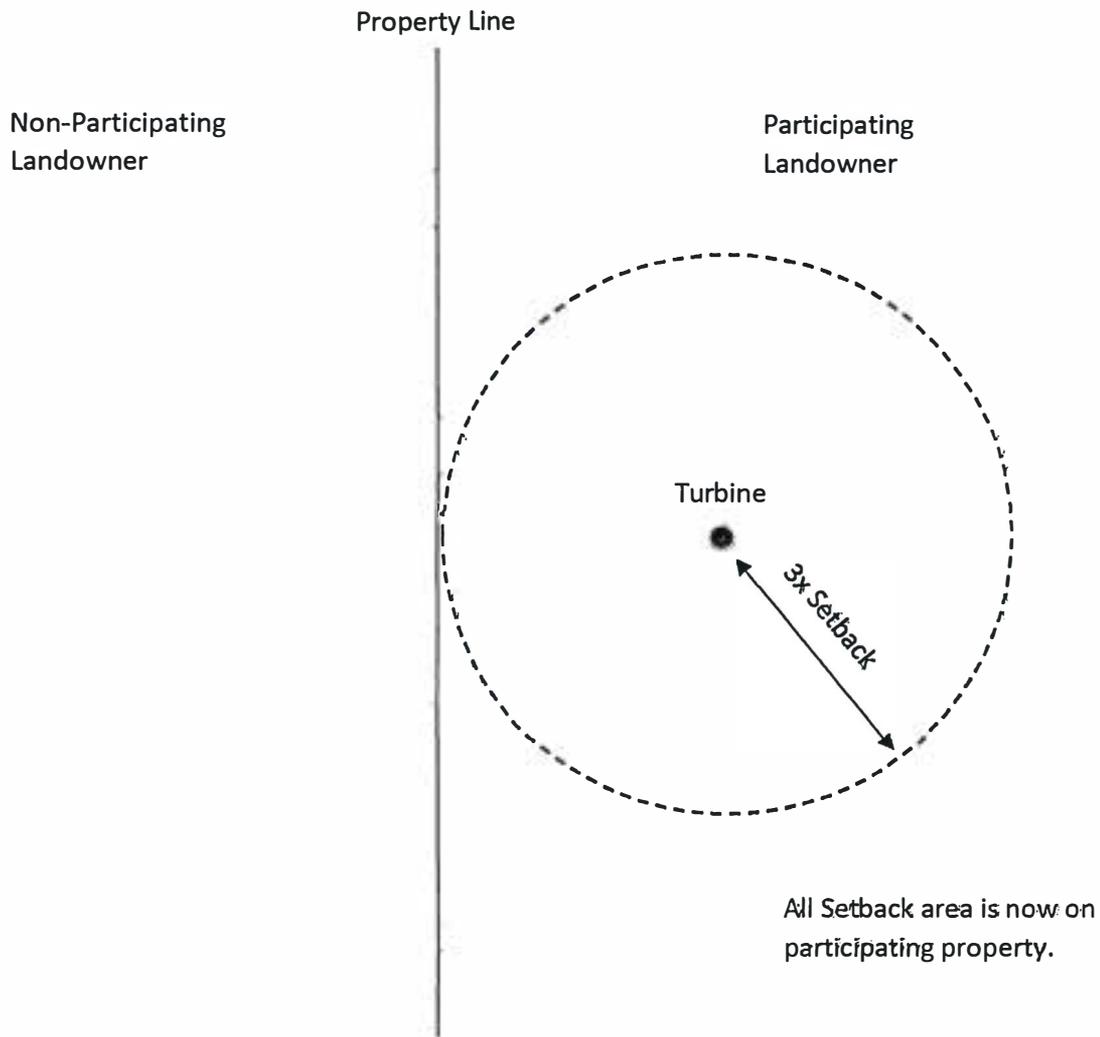
Not to scale

#1

HB1167
1-18-19

Proposed Zoning

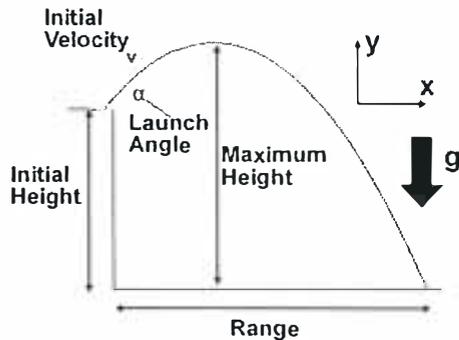
3x Height of Turbine Setback from Property Line



#1
 HB1107
 1-18-19

Wind turbine debris range

model	capacity	blade length*	hub ht†	total ht	area swept by blades	rpm range	blade tip speed
Vestas V90	2 MW	144 ft	345 ft	489ft	6,362 m ² (1.57 acres)	8.8-14.9	157 mph
Vestas V100	2 MW	161 ft	310 ft	471ft	7,854 m ² (1.94 acres)	7.2-15.3	179 mph



Vestas 90 at rated wind speed.
 Initial Velocity (V0) 157 mph
 Launch Angle (α) 0 degrees
 Initial Height (h₀) 489 ft
 Horizontal distance 1269.544 ft
 (Range of debris) 2.6 times tower height

Initial Velocity (V0) 157 mph
 Launch Angle (α) 15 degrees
 Initial Height (h₀) 489 ft
 Horizontal distance 1705.645 ft
 (Range of debris) 3.49 times tower height

The Vestas 90 2MW unit using a launch angle of 0 degrees running at rated speed will at minimum create a debris field of 2.6 times the tower height. Using a conservative launch angle of 15 degrees the debris field will be 3.49 times the tower height. Calculating in an error of plus or minus 10 percent the debris field could be 3.14 to 3.84 times the tower height.

Vestas 100 at rated wind speed.
 Initial Velocity (V0) 179 mph
 Launch Angle (α) 0 degrees
 Initial Height (h₀) 471 ft
 Horizontal distance 1420.552 ft
 (Range of debris) 3.02 times tower height

Initial Velocity (V0) 179 mph
 Launch Angle (α) 15 degrees
 Initial Height (h₀) 471 ft
 Horizontal distance 2008.513 ft
 (Range of debris) 4.26 times tower height

The Vestas 100 2MW unit using a launch angle of 0 degrees running at rated speed will at minimum create a debris field of 3.02 times the tower height. Using a conservative launch angle of 15 degrees the debris field will be 4.26 times the tower height. Calculating in an error of plus or minus 10 percent the debris field could be 3.83 to 4.69 times the tower height.

Conclusion: This comparison shows that 2 wind turbines of the same nameplate capacity and of similar tower height can create debris fields of vary different ranges. There are conditions in which the debris field could be greatly increased, for example a turbine over

speed caused by a system failure, or a failure caused by a localized weather event. Even with using very conservative numbers a minimum setback of 3 times the tower height would not protect an adjacent landowner or someone driving next to the windfarm from a broken blade tip or the occasional ice shedding event. A minimum setback of 4 times the tower height would seem more appropriate to protect adjacent landowners and the public.

#1
HB 1167
1-18-19

Note: To simplify conversions calculations used <https://www.amesweb.info/Physics/Trajectory-Calculator.aspx>

#2
1-18-19
HB 1167

Chairman Dockter and Members of the Committee:

My name is Julie Hornbacher and I am a rural resident and cattle producer in southern Burleigh County. I am here today to offer support for House Bill 1167. For the last 3 years we have been dealing with a proposed wind facility in our area and Telfer Township passed the same setback that is proposed in HB 1167. I do not consider this bill anti-wind at all - this bill deals with property rights.

Where do your property rights end and the neighbor's begin? Most people would say at the property line. However, the way our current law works, the property line is not a true separation point. Right now, according to state law, a turbine can be placed 1.1 times the height of the turbine from a nonparticipating landowner. Last Session, the legislature passed a law that says a turbine cannot be closer than 3x the height of the turbine from a nonparticipating residence. Having different ratios for residence setbacks and property line setbacks creates a problem.

<Current Setbacks Diagram >

This circle here is the area that the state has determined is necessary to protect homes from the impacts of turbines such as sound, shadow flicker, and ice throw. It's 3 times the height of a turbine. However, a turbine can be placed 1.1 times the height of a turbine from a nonparticipating property line. As you can see here, this zone is spilling over onto non-participating property. <show zone> The nonparticipant did not sign a contract with the wind developer and has not been compensated, yet they now have an area of property that could not safely be used for future building or development. So I ask what is the point of a property line if it doesn't separate what the neighbor is doing from what I'm doing? The nonparticipant's property value is diminished by something the neighbor chose to do.

<Proposed Setback Diagram>

Fixing this problem is pretty straight forward and HB 1167 does just that. To keep turbine exclusion zones onto participating land, the setback should be 3x height of the turbine from the PROPERTY LINE. With this change, as you can now see – all of the required setback zone is on the participating landowner. All nonparticipating land, not just homes, is given the same

#2
HB 1167
1-18-19

setback protection. This would allow for homes to be built a safe distance away from turbines in the future and the landowner to maintain the current use and enjoyment of the property.

Please note, this proposed increase in property line setback is only from non-participating landowners. Landowners who have signed wind easements can still place turbines close to other landowners who have signed wind easements. This change would not affect the placement of turbines between participating landowners.

The last 3 years since a wind developer came into our community have been very difficult. The way projects are currently allowed to be developed in North Dakota is tearing apart rural communities. HB 1167 would make wind developers more inclined to negotiate with nonparticipating landowners and offer them compensation if they wish to place turbines near their property. For example, the wind developer in our area did not contact many of my neighbors because they do not own enough acres to host a turbine, so some people with homes in the footprint were offered nothing. I believe if this bill passes, more residents in the footprint will be offered contracts to allow turbines close to their land. And if a resident still chooses not to participate, there is enough setback that their property rights are not infringed upon.

Many political subdivisions in the state may lack the knowledge and expertise to site projects of this scale, so they look to the state for guidance. I sat through many township and county meetings over the course of the last three years and when questions would come up about siting turbines, it seems the answer was always "what does the PSC say?" or "what does the Century Code say?". While local control will always be important, not all counties and townships have wind zoning ordinances in place so it is important for the state to set a minimum standard.

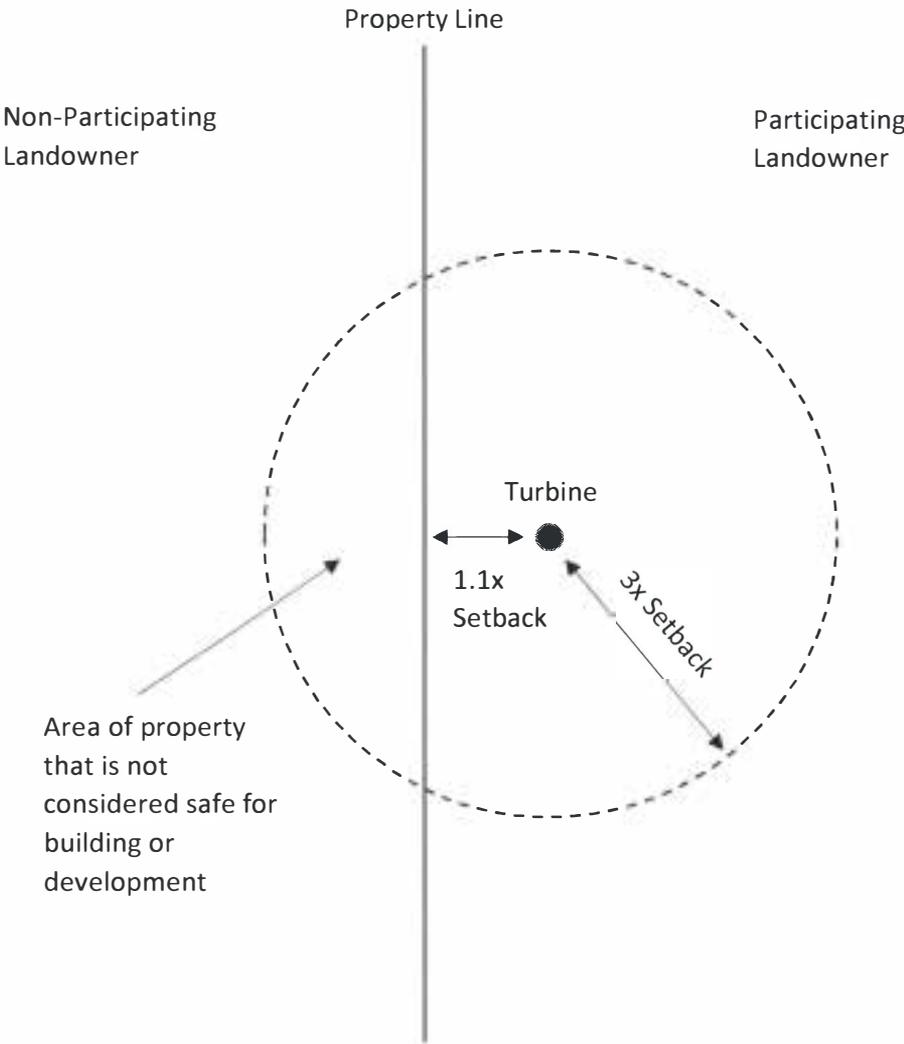
I thank our local township for taking the concerns of its residents very seriously and implementing a property line setback that is fair to all landowners. I hope that this same common-sense regulation is used throughout the state.

Thank you for your time and consideration and I urge you to give a do-pass recommendation to HB 1167. I would be happy to answer any questions you may have.

#2
HB 1167
1-18-19

Current Property Line Setback

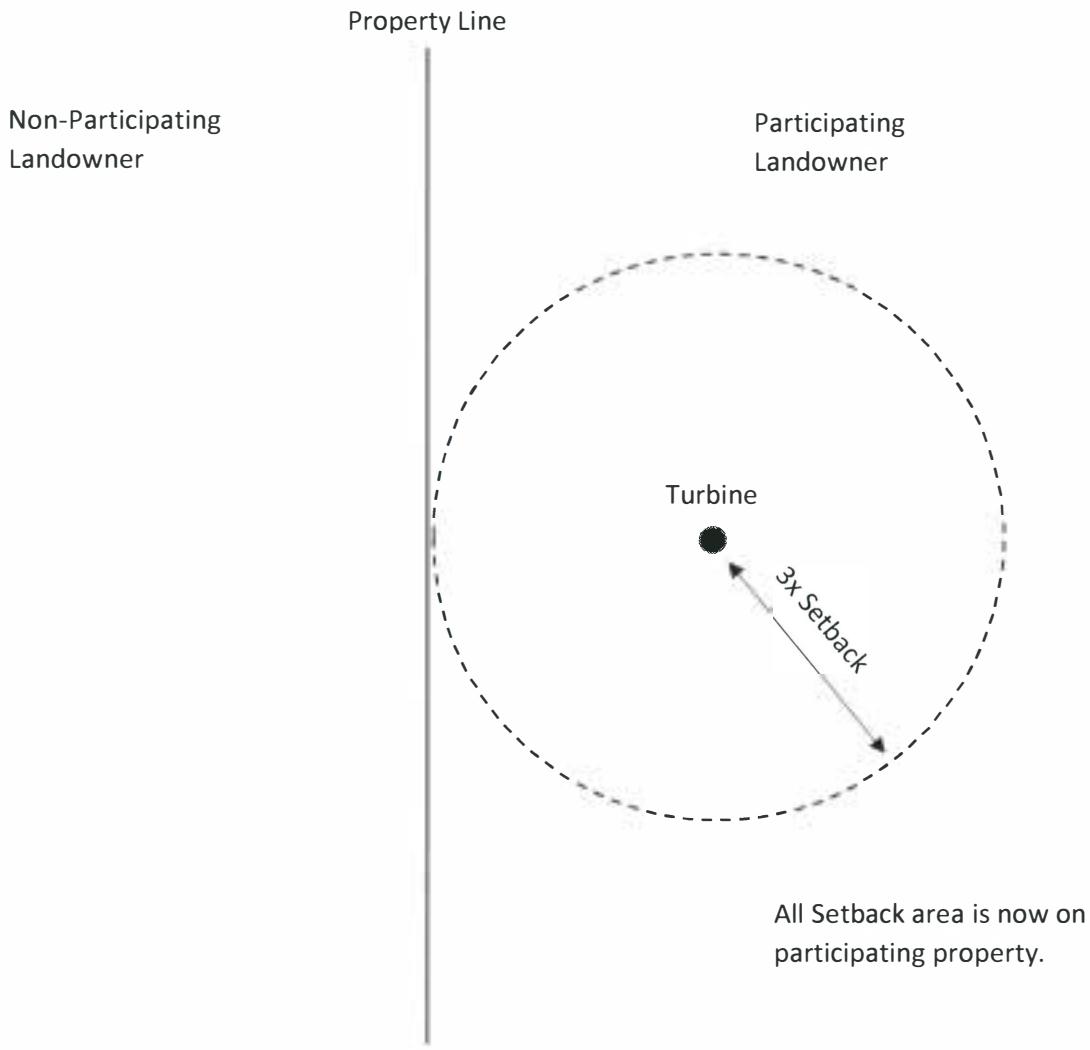
1.1x Height of Turbine Setback from Property Line



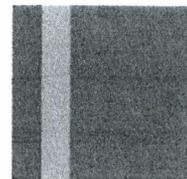
#2
1-18-19
HB1167

Proposed Property Line Setback

3x Height of Turbine Setback from Property Line



Erin Magrum - Emmons County Commissioner
PO Box 596 Linton, ND 58552
701-782-4589 emagrums@nd.gov



#3

1/18/2019

HB 1167
Political Subdivisions Committee
ND House of Representatives

Mr. Chairman and members of the committee,

I come here today to testify in support of HB 1167. My position as Emmons County Commissioner is the reason for my testimony. There are currently 2 proposed wind farms making their way to Emmons County and this topic is one of intense and sometimes heated debate. Where are the protections for the non-participating landowners? There are landowners in the areas where these farms are proposed that want nothing to do with wind energy and feel invaded by the idea of turbines hundreds of feet tall being close to the property they hold dear. As a county commissioner, I am also weary of the size and resources these companies have and their willingness to push their agendas no matter what the local governing bodies or area residents say. A good example would be the Burleigh-Emmons Wind Farm that is proposed just south of this very city. After Burleigh County Planning and Zoning Committee denied their Conditional Use Permit and the Burleigh County Commission upheld that decision, they hinted on several news outlets that they may seek legal action to keep their project moving forward. How can county governments compete with these very large, out of state wind companies with lawyers and other resources at their disposal? I fear that this same company will come to Emmons County next and if they do not get approval, will they sue us as well? If approval for a project is given, which one project in our county has, zoning ordinances and setbacks are the only protections we can offer as a county to our residents who do not want these turbines near their property. That is the reason this legislation and the oversight of the State government



1-18-19

#3

HB 1167

is so crucial in this industry. We cannot fight these corporate giants on our own and the non-participating landowners look to their local governments to protect their property rights. The setbacks need to be extended to protect the non-participating landowners. We also need oversight from a larger government entity regarding wind production so the county governments have some protection. We as counties depend on the Century Code, the resources, and knowledge of our State government to help us in times when we don't have all the answers.

Sincerely,

Erin Magrum - Emmons County Commissioner

#4
1-18-19

Keith G. Kessler

6001 26th st. sw

Glen Ullin ND 58631

I'm in favor of House Bill No. 1167

There is a need for increasing the set back from a property line.

Although I suggest an amendment to include a participating land owner also:

(refer to picture exhibit A & B) dirt moved, loss of production, noxious weeds,

Being fenced off of our property, with very little compensation,

Example: a 428' tower X 3 = 1284'

Blades from a turbine are capable of throwing ice up to 1400' blade tip speed can go as high as 190 MPH

Setbacks should be at least 1500' from a property line to include participating land owners. (SAFETY)

Setbacks for a residence at least 2640' (shadow flickering, noise)

Reference: to Agweek article setbacks

PROPERTY VALUES: Lower appraisals if you're in a wind farm area

#4
HB1167
1-18-19

#1

Fayette Heidecker
(800) 681-0679
fheidecker@agweek.com
South Dakota
Gail Greenwood
(605) 351-9989
ggreenwood@agweek.com

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Check the history on wind energy development

By Will Stone, Gary, S.D.

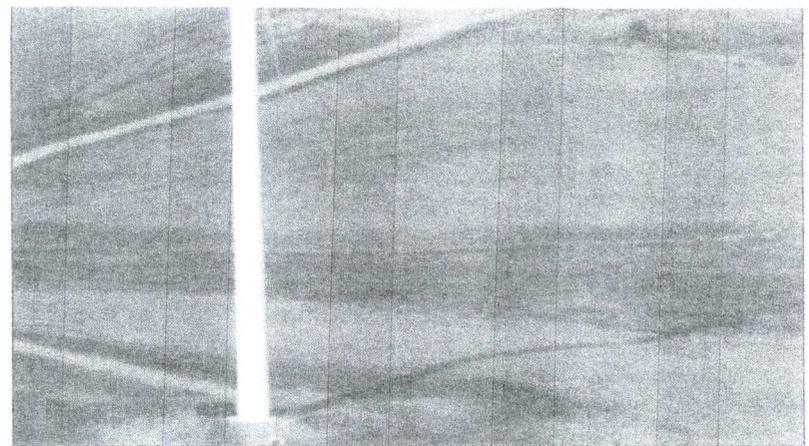
“Those who cannot remember the past are condemned to repeat it.” This quote by George Santayana appears on the frieze at the entrance of the main library at the University of Colorado. It has been widely used in variation by presidents, economists, generals, etc., who want to point out past mistakes so we don’t repeat them.

Wind companies DO NOT want us to check out their history. They DO NOT want us to find out how they come into communities with smooth talkers and slick lawyers. We are only to believe what they tell us. Only their lawyers and paid experts have the right answers. There’s no need to ask questions. For billions of dollars in Produc-

tion Tax Credits, they’ll give the only answers we need. They don’t give a rat’s tail about our health and safety, property values, ground water quality, wildlife or just doing the right thing.

There is more than a 25-year history of how they operate. They have left a trail. They divide, devastate and wreak havoc on families, communities and wildlife. People from all across the U.S., Canada and Europe are speaking out about the negative, life-changing impacts.

Wind companies’ “experts” and lawyers bribe, belittle, bully and call people liars who have suffered because of misplaced turbines. At one meeting, a lawyer said wind turbine syndrome is all in their head. His statement was truer than he



realized.

A Colorado psychiatrist has said WTS can be compared to post-traumatic stress disorder. Not all people suffer the effects, but if you do it is very real.

Do the research. Every day there are new articles from concerned citizens who want to warn us not to be duped into what they were years ago. We have a history to check out and they did not.

They only had the unscrupulous wind companies’ words.

When the governor and our representatives build a home and live among the turbines, I will put a little more credence in what they tell us. Say green energy and money in the same sentence and people go brain dead.

Pull your heads out of the sand. Turbines are neither green or harmless. Do the research!

Editor’s note: Will Stone owns land on the eastern edge of the Coteau Hills of South Dakota, hosts pheasant hunters and owns the Gate City Lodge in Gary, S.D.

5-15-2017 Agweek

2

#4
HB 1167
1-18-19

19-2-16 By wech

REGIONAL NEWS

#2

Withdrawal of S.D. wind farm permit approved

Public opposition has helped block three proposed projects across the state

By Evan Hendershot
Forum News Service

MITCHELL, S.D. — Public outcry stopped another area wind project in its tracks.

The South Dakota Public Utilities Commission approved the withdrawal of a permit to build a 100 turbine wind farm in South Dakota's Charles Mix and Bon Homme counties after hearing significant resistance from the surrounding communities.

Prevailing Winds LLC, the company planning the project, filed its application for withdrawal in late August based on claims that "misinformation has been circulated about the project." If Prevailing Winds declines to file another permit application for the project, it would be the third wind farm in eight months to be rejected by nearby residents.

Since February, both the Davison County Commission and Letcher Township's Board of Supervisors have made moves to block proposed wind turbines in their respective areas.

And PUC Chairman Chris Nelson says public opposition to a project like Prevailing Winds' in Avon is a new occurrence.

"In the past, the wind siting applications that we have dealt with have not generated significant opposition," Nelson says. "In the time that I've been a commissioner for the last six years, I've only dealt with one of those prior to the Avon one, and that one, literally, there was no opposition to that particular application."

The PUC only reviews wind projects larger than 100 megawatts, and the most recent project it considered was the construction of the Willow Creek Wind Energy Facility in Butte County

South Dakota drew virtually no opposition, according to Nelson, but recent projects in south central South Dakota have been a source of debate among locals

Unsurprising reaction

Nelson, who attended a public input meeting in Avon that attracted 300 spectators, says the Prevailing Winds project has drawn more attention than the project located more than 350 miles west in Newell.

"The considerable opposition that was raised at the public input hearing in Avon was certainly very different than what we experienced in Newell last year," Nelson says.

One opponent to the project, State Sen. Bill Van Gerpen, R Tyndall, sees a few reasons for recent public uproar about nearby wind farms, particularly those as large as 100 turbines.

"When you drive out of Avon currently, there's just a beautiful view to the north, a beautiful view of the valley," Van Gerpen says. "I think some are concerned about what the towers would do to take away that beautiful act of creation."

And Van Gerpen isn't surprised about the reaction from locals.

Van Gerpen also attended the public meeting in Avon, where he says he met people who had recently moved to the area from out of state. Van Gerpen says many of these new South Dakotans moved to the area because of the rural atmosphere, where there is a view of the prairie, plenty of hunting and fishing opportunities and where the bustle of city life isn't an issue.

He was also worried the division between supporters and opponents of the Prevailing Winds project could splinter the "strong, strong community" of Avon

Following recent rejections of smaller scale projects in Davison and Sanborn counties, Van Gerpen was surprised to see Prevailing Winds attempt to bring another wind project to south central South

"I am surprised," Van Gerpen says. "There's so much territory in this county that is open land and not near communities. When you get within two or three miles of a small town with towers, I think you need to expect opposition."

In Davison County, the County Commission sided with the public when considering a \$40 million project to construct a 9 to 11 turbine wind farm. Since the project would have generated less than 100 megawatts, it was left to the county to approve or deny.

Months after the Davison County project was rejected, Minnesota based Juhl Energy began pitching a similar project a few miles north of the county line in Letcher

But the small township of Letcher did not prove welcoming to Juhl Energy, and later passed a setback to bar any wind tower larger than 75 feet tall from being constructed within 5,280 feet from the nearest residence. The township also established a 1,500 foot setback from the nearest neighbor's property line.

'Facts and law'

Despite recent objections from nearby counties and substantial opposition in Avon, mass public disapproval might not play a major role in determining the success of a project like the one proposed by Prevailing Winds in Avon.

Nelson says the three PUC commissioners are elected to serve in a judicial capacity, analyzing the facts of each given case and determining whether the proposed project falls within state guide lines.

"When we have these applications, it's not a question of, 'Does the PUC support wind energy or not?' That's not the question," Nelson says. "The question is, as I've stated, 'If the project is built, can it maintain and comply with those criteria that are established by state law?'"

Essentially, Nelson says, the PUC weighs the facts of each application to decide whether it can be built while

and economy of the area where the project is built.

But Nelson says, the public input hearings provide valuable guidance to the PUC. Nelson says the primary purpose of the meetings is to understand the concerns and opportunities of the project, then use what they've learned during the meeting to formulate questions for the applicant.

"Now having says that, do I always want to know what are the people of South Dakota thinking? Absolutely," Nelson says. "But at the end of the day, our decisions come down to facts and law."

Now residents local to Avon may rest easy for a short time. But the project isn't necessarily dead.

According to the motion for withdrawal, "Prevailing Winds is moving to withdraw the application to allow Prevailing Winds to better inform the community on the wind project and allow Prevailing Winds to revisit its options regarding the project."

Lisa Schoenfelder, a Wagner resident who says her property would be within one mile of seven of the proposed turbine locations, hoped the company would come back with a proposal more suitable to locals.

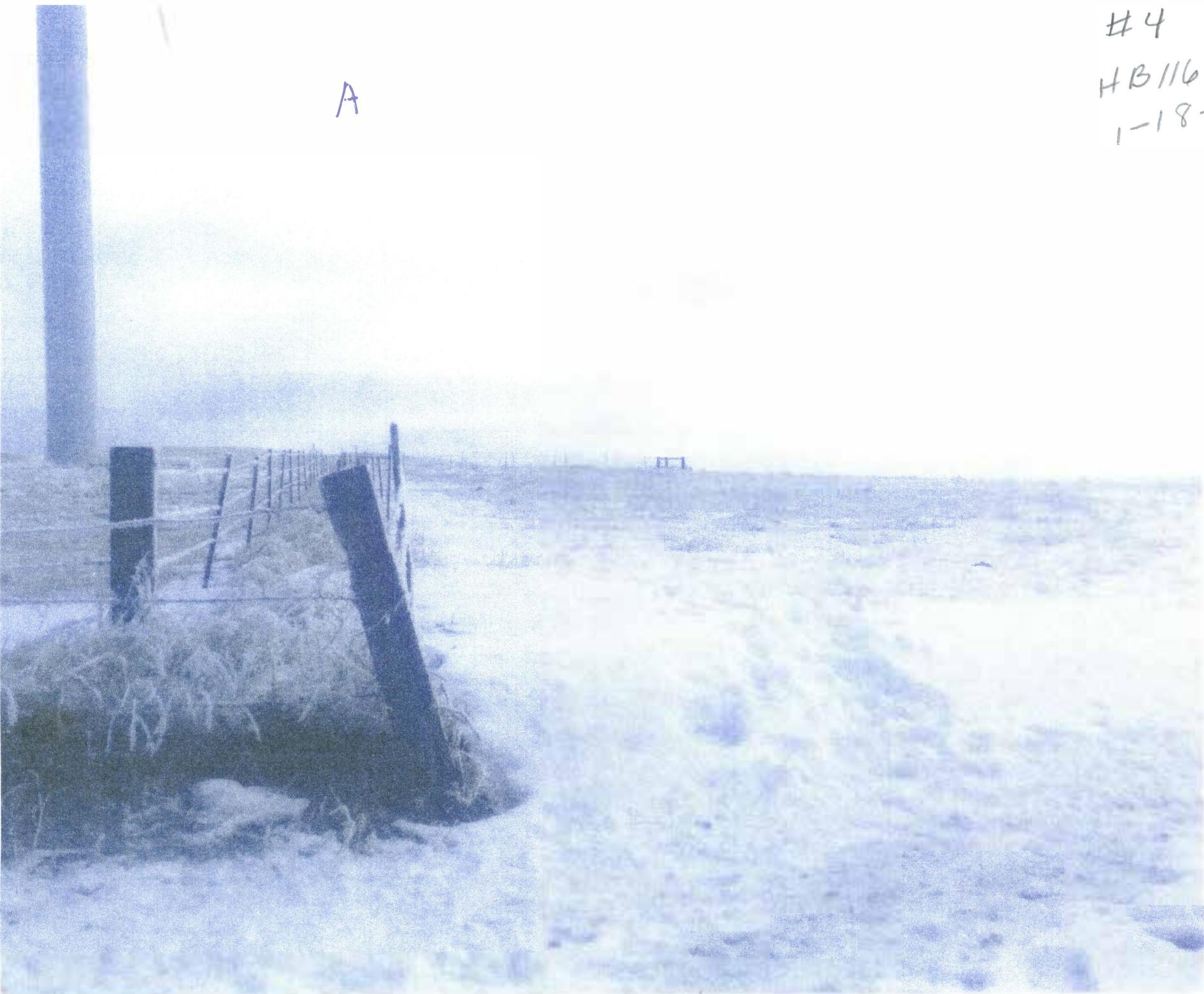
While Schoenfelder isn't opposed to alternative energy projects, she says the proposed turbine sites were close to the homes of several landowners, and she believes Prevailing Winds was surprised by the organized effort of locals to oppose the project.

If Prevailing Winds comes back to the PUC with a new proposal, Schoenfelder hoped it includes some new turbine site locations.

"In my heart, I would like to believe that they are ethical and are really considering the best well being for those people who live in that area, and that they will come back at some point with a more reasonable solution," Schoenfelder says. "The opposite would be that they are just trying to figure out how to better put together a case to continue their ex

#4
HB1167
1-18-19

A



#4
HB1167
1-18-19

B



#5
HB 1167
1-18-19

1. Introduction

A turbine connected to the grid implies certain elements of danger if it is handled without exercising proper caution.

For safety reasons, at least two persons have to be present during a work procedure.

The work must be properly carried out in accordance with this manual and other related manuals. This implies, among other things that personnel must be instructed in and familiar with relevant parts of this manual.

Furthermore, personnel must be familiar with the contents of the "Substances and Materials" regulations.

Caution must especially be exerted in situations where measurement and work is done in junction boxes that can be connected to power.

Consequently the following safety regulations must be observed.

2. Stay and Traffic by the Turbine

Do not stay within a radius of 400m (1300ft) from the turbine unless it is necessary. If you have to inspect an operating turbine from the ground, do not stay under the rotor plane but observe the rotor from the front.

Make sure that children do not stay by or play nearby the turbine. If necessary, fence the foundation. The access door to the turbine must be locked in order to prevent unauthorised persons from stopping or damaging the turbine due to mal-operation of the controller.

3. Address and Phone Number of the Turbine

Note the address and the access road of the turbine in case an emergency situation should arise. The address of the turbine can often be found in the service reports in the ring binders next to the ground controller. Find the phone number of the local life-saving service.



#6
HB 1167
1-18-19

Good Morning Mr Chairman and committee members.

My name is David Nehring, and I represent North Dakota Visionkeepers, a small organization that we founded in 2018 to help local and regional groups in their struggle in the fight against unfair wind development projects, and to ensure proper siting.

I am here in support of House Bill 1167 as a property rights bill, not as an anti-wind bill.

The Pro-wind lobby has been telling anyone who would listen that property rights are a very important consideration in determining siting of an industrial wind facility. They say “it’s my land, I should be able to do what I want with it!”

I agree with this wholeheartedly – why should someone else dictate what I can do with my property?

The State of North Dakota has said that a residence cannot be built within “3.0 X the tip height of a wind turbine”. This is a figure that is not open to discussion – it is a hard, fast number. Keep in mind that at the last legislative session, this was a value that was determined as a minimum for North Dakota, and that local zoning authorities may require setbacks greater than this. However, a wind developer can erect a tower only “1.1 X the tip height from a non-participating landowner’s property line.”

This leads us to the discussion on Trespass Zoning – what is trespass zoning? It is an “uncompensated easement without permission from the non-participating landowner – it’s called encroachment – in a nutshell, it is someone else dictating what I can or cannot do with my property.

If we look at the ND Century Code Section 47-05, it deals with servitudes and easements.

47-05-04 defines a servient tenement as “the land upon which a burden or servitude has been placed”.

47-05-05 deals with the creation of a servitude, stating that a servitude can be created only by one who has a vested estate in the servient tenement.

Now let’s look at the “takings” clause in the 5th Amendment of the US Constitution which applies here. In case law *United States v Dickinson*, 331 US 745 (1947) the Supreme Court held that even if the government does not physically seize private property, the action is still a taking “when inroads are made upon an owner’s use of it to an extent that, as between private parties, a servitude has been acquired either by agreement or in course of time.”

Encroachment, defined: intrude on (a person’s territory, rights, personal life, etc)

Synonyms: trespass, infringe, invade – to make inroads upon the property, territory, or rights of another – also usurpation of another’s rights or possessions. To usurp is to take without legal claim or authorization or permission.

#6
HB 1167
1-18-19

Now let's look at what trespass zoning would look like:

We have 1 participating landowner, and 2 non-participating landowners in this diagram – I'm using the assumptions of the recently proposed Burleigh Wind project with 567' high towers. You can see the 1.1 setbacks from the non-participating landowners' property lines, as well as the 3.0 setback from the participating landowner's residence (marked A). In this slide, it's shown as 1,750 feet, rather than the actual 1,701 feet due to Burleigh County's regulation of "3.0 X tip height, or 1,750 feet, whichever is greater".

The area with diagonal slashes is our "encroachment or trespass" area, as now the 2 non-participants are limited to the use of their property, due to the "taking of their property rights without just compensation". This bill will eliminate the improper taking of private property, and ensure parity or equity to all landowners involved. The developer still has the option given them by the ND Century Code to file with the commission a written agreement expressing the support of all parties for a variance to reduce the setback requirement. This would invite the developer to pursue and develop a relationship with the landowners not slated to have turbines on their property. If the wind lobby finds this unappealing, maybe another option would be to "amalgamate" wind rights and payments. Just a thought.

Let me read you a quote from a letter to the editor of the Burke County Tribune from Representative Mike Brandenburg – "As a state, we need to work together so we can stop the "infighting" amongst ourselves and figure out how to work together, so we can make North Dakota's energy pie bigger, and sell more energy to our neighboring states. I will keep working on policies that move in that direction. In the meantime, landowners who want to provide their families with new economic opportunities need to protect themselves and get engaged in the process".

Representative Brandenburg, that is exactly what an increasing number of people across our great state are doing – working on equity for all property owners in North Dakota.

Do not treat one landowner any differently than his/her neighboring landowner – property rights are very important! I recently received a postcard that spells it out very well!

"Property in a thing consists not merely in its ownership and session, but in the unrestricted right of use, enjoyment, and proposal. Anything which destroys any of the elements of property, to that extent, destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right."

I am here to ask you to forward a "do-pass" recommendation.

Are there any questions?

Thank you for the opportunity to appear before you.

#6
HB 1167
1-18-19

Private Property Owners Need to Protect Their Own Interests

State Representative
Mike Brandenburg

Private property owners need to speak up regarding their right to develop their property as they

see fit including the right to lease their land to a wind company.

Property owners risk losing their economic opportunity if they don't speak up, write letters, contact county commissioners and other elected officials.

Recent polling shows more than 70% of North Dakota people support further wind development. But, if property owners don't speak up, then a small vocal minority will determine whether a wind development takes place in your county.

Wind has been good for our state. It has brought over \$3 billion in investment and pays \$8 million in property taxes annually. A typical wind farm will pay \$1 million or more annually in property taxes. Landowners will enjoy a significant revenue stream from wind that isn't dependent upon the price of oil, or wheat and provides new vitality to rural North Dakota.

As a state, we need to work

(Continued on Page 6)

Letters to the Editor

(Continued from page 3)
together so we can stop the "in-fighting" amongst ourselves and figure out how to work together so we can make North Dakota's energy pie bigger and sell more energy to our neighboring states.

I will keep working on policies that move in that direction. In the meantime, landowners who want to provide their families with new economic opportunity need to protect themselves and get engaged in the process.

In my district we lost a billion dollar investment from in-fighting and landowners not speaking up. Let's work together so that scenario doesn't happen again.

#6
HB1167
1-18-19

Property: The Foundation of All Rights

It is no accident that a nation conceived in liberty and dedicated to justice for all protects property rights. Property is the foundation of every right we have, including the right to be free. Every legal claim, after all, is a claim to something—either a defensive claim to keep what one is holding or an offensive claim to something someone else is holding.

John Locke, the philosophical father of the American Revolution and the inspiration for Thomas Jefferson when he drafted the Declaration of Independence, stated the issue simply: “Lives, Liberties, and Estates, Property Rights and the Constitution which I call by the general Name, Property.” And James Madison, the principal author of the Constitution, echoed those thoughts when he wrote that “as a man is said to have a right to his property, he may be equally said to have a property in his rights.” Much moral confusion would be avoided if we understood that all of our rights—all of the things to which we are “entitled”—can be reduced to property. That would enable us to separate genuine rights—things to which we hold title—from specious “rights”—things to which other people hold title, which we may want. It was the genius of the old common law, grounded in reason, that it grasped that point. And the common-law judges understood a pair of corollaries as well: that property, broadly conceived, separates one individual from another, and that individuals are independent or free to the extent that they have sole or exclusive dominion over what they hold. Indeed, Americans go to work every day to acquire property just so they can be independent.

Legal Protection for Property Rights

It would be to no avail, however, if property, once acquired, could not be used and enjoyed—if rights of acquisition, enjoyment, and disposal were not legally protected. Recognizing that, common-law judges, charged over the years with settling disputes between neighbors, have drawn upon principles of reason and efficiency, and upon custom as well, to craft a law of property that respects, by and large, the equal rights of all.

In a nutshell, the basic rights they have recognized, beyond the rights of acquisition and disposal, are the right of sole dominion—variously described as a right to exclude others, a right against trespass, or a right of quiet enjoyment, which all can exercise equally, at the same time and in the same respect; and the right of active use—at least to the point where such use

#6
HB 1167
1-18-19

violates the rights of others to quiet enjoyment. Just where that point is, of course, is often fact dependent—and is the business of courts to decide. But the point to notice, in the modern context, is that the presumption of the common law is on the side of free use. At common law, that is, people are not required to obtain a permit before they can use their property—no more than people today are required to obtain a permit before they can speak freely. Rather, the burden is upon those who object to a given use to show how it violates a right of theirs. That amounts to having to show that their neighbor's use takes something they own free and clear. If they fail, the use may continue. Thus, the common law limits the right of free use only when a use encroaches on the property rights of others, as in the classic law of nuisance or risk. The implications of that limit, however, should not go unnoticed, especially in the context of such modern concerns as environmental protection. Indeed, it is so far from the case that property rights are opposed to environmental protection—a common belief today—as to be just the opposite: the right against environmental degradation is a property right.

Under common law, properly applied, people cannot use their property in ways that damage their neighbors' property—defined, again, as taking things those neighbors hold free and clear. Properly conceived and applied, then, property rights are self-limiting: they constitute a judicially crafted and enforced regulatory scheme in which rights of active use end when they encroach on the property rights of others.

Source: Cato Handbook for Policymakers, Chapter 34

North Dakota Visionkeepers

- We are a small grassroots organization that was founded in 2018 to assist small local and regional groups in North Dakota in their struggle to push for proper siting of industrial wind facilities.
- Visionkeepers are by our definition, tasked to make the world a better place than when they found it.

Property Rights

“It’s my land, I should be able to do what I want with it!”

Property Rights - Very Important

- ▶ I agree with this wholeheartedly - why should someone else dictate what I can do with my property?
- ▶ The State of ND has said that a residence cannot be built within “3.0 X the tip height of a wind turbine” - this is a figure that is not open to discussion - it is a hard, fast, number. Keep in mind that at the last legislative session, this was a value that was determined as a minimum for North Dakota, and that local zoning authorities may require setbacks greater than this.
- ▶ However, a wind developer can erect a tower only “1.1 X the tip height from a non-participating landowner’s property line.”
- ▶ This leads us to the discussion on “Trespass Zoning” - what is “Trespass Zoning”? It is “An Uncompensated Easement without Permission from the Non-Participating Landowner” - it’s called “encroachment” - in a nutshell, it is someone else dictating what I can or cannot do with my property!

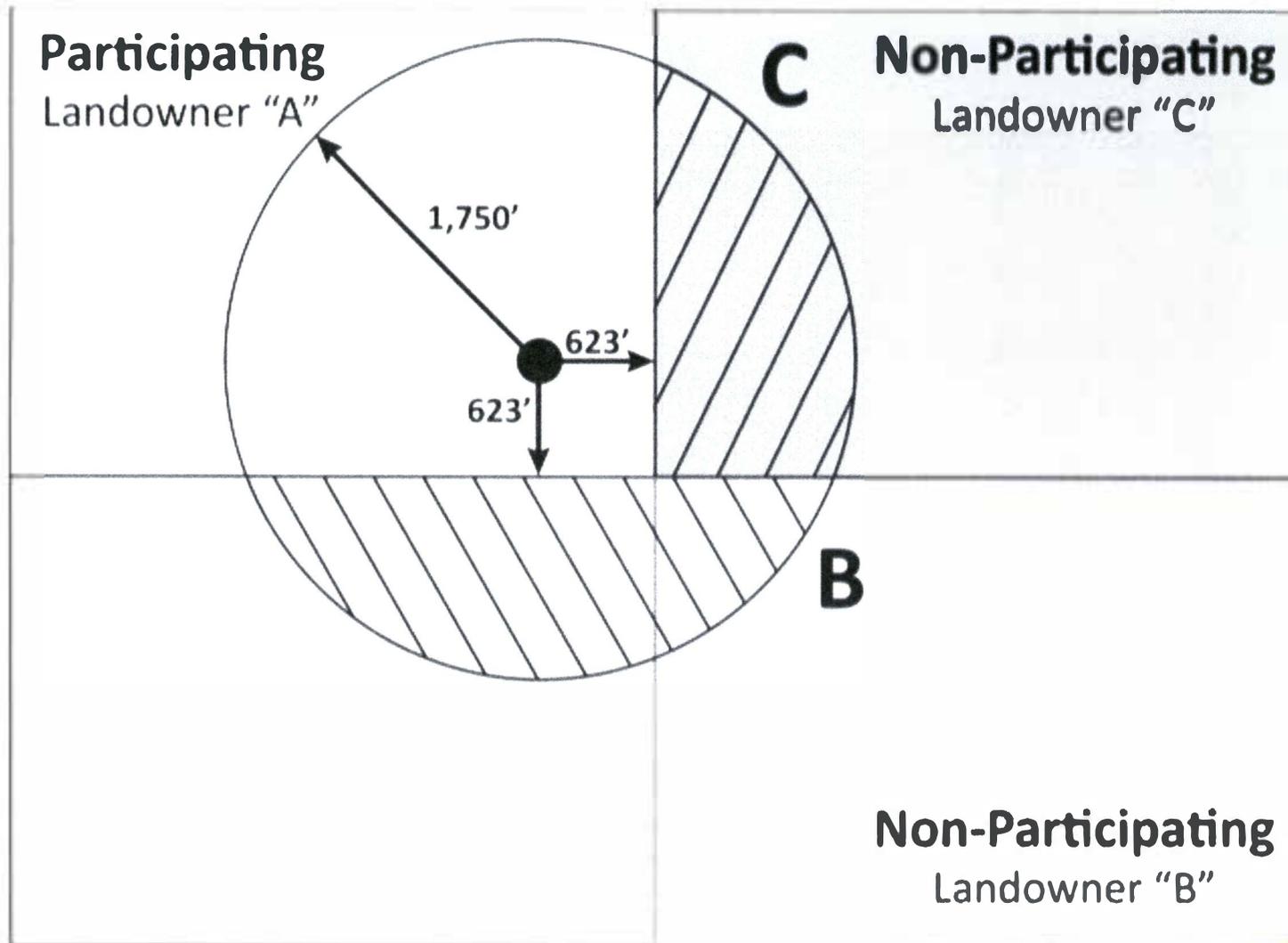
#6
HB 1167
1-18-19

ND Century Code 47-05: Servitudes Easements attached to other lands

- ▶ 47-05-04 Servient tenement defined: A servient tenement means the land upon which a burden or servitude has been placed.
- ▶ 47-05-05 Servitude - Creation: A servitude can be created only by one who has a vested estate in the servient tenement.
- ▶ The “Takings” clause in the Fifth Amendment of the US Constitution applies here. Case law US v. Dickinson, 331 U.S. 745 (1947) the Supreme Court held that even if the government does not physically seize private property, the action is still a taking “when inroads are made upon an owner’s use of it to an extent that, as between private parties, a servitude has been acquired either by agreement or in course of time.”

Property Rights - Encroachment

- ▶ Encroachment, defined: intrude on (a person's territory, rights, personal life, etc.)
- ▶ Synonyms: trespass, infringe, invade - to make inroads upon the property, territory, or rights of another - also usurpation of another's rights or possessions. To usurp is to take without legal claim or authorization/permission.
- ▶ Let's take a look at what trespass zoning would look like.....



#0
#B1167
1-18-19

Property Rights Equity/Parity

Do not treat one landowner any differently than his/her neighboring landowner - Property Rights are VERY IMPORTANT!
I recently received a postcard that spells it out very well!

“Property in a thing consists not merely in its ownership and session, but in the unrestricted right of use, enjoyment, and proposal. Anything which destroys any of the elements of property, to that extent, destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right.”

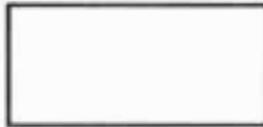
"Property in a thing consists not merely in its ownership and session, but in the unrestricted right of use, enjoyment, and disposal. Anything which destroys any of the elements of property, to that extent, destroys the property itself. The substantial value of property lies in its use. If the right of use be denied, the value of the property is annihilated and ownership is rendered a barren right."

Property rights have four components:

- the right to use the good (thing that is owned),
- the right to earn an income from it,
- the right to transfer it to others, and
- the right to enforce property rights

We as landowners, we have right to do what we see fit with our land.

From:
Friends of Wind Energy



#6
HB1107
1-18-11



#7
HB 1167
1-18-19

**House Political Subdivisions Committee
January 18, 2019
Oppose HB 1167**

Chairman Dockter and Members of the Committee,

For the record my name is Mike Krumwiede, and I'm here today representing Wind Industry of ND, or WIND. We are a coalition of industry members and supporters formed in 2018 that advocates for the continued support of wind as one of North Dakota's valuable energy resources. Our current coalition includes:

- American Wind Energy Association (AWEA)
- Apex Clean Energy
- Capital Power
- EDF Renewable Energy
- Enel Green Power North America Inc.
- Invenergy
- NextEra Energy Resources
- Tenaska
- Tradewind
- Wanzek Construction, Inc.

These members came together because we believe wind is an abundant asset in our state which should be harnessed for the continued benefit of our local communities and residents.

WIND's policy agenda this session is defensive: simply put, to oppose new or further taxes and regulation on the industry. That's why we oppose HB 1167. The bill would require a setback from the property line of a non-participating landowner to be three times the height of the turbine.

We oppose the bill because it will seriously hamper wind projects in the state and, in some cases, could make development of a project impossible. WIND is in opposition to bigger setbacks, which were debated in the 2017 session. Before the 2017 session, the Public Service Commission was requiring a 1.1x setback and the 2017 legislature codified that setback.

We recognize that this increased setback will impact areas differently depending on geography. For example, a project in a very rural, low-density area might have less impact by such large setbacks, but as you will hear shortly, elsewhere in the state, this setback would seriously hamper project development. This demonstrates the importance of local control – what works in a rural county might not work in a more densely populated county.

The practical effect of this bill is that it would push investment and rural economic development away from ND and into the willing arms of communities in neighboring states. WIND seeks to maximize investment in the communities across our great state, giving landowners streams of revenue that might not otherwise be available.

For these reasons, we respectfully request a Do Not Pass recommendation on HB 1167. It's now my pleasure to ask some of our WIND member companies to provide more technical, detailed testimony on why we oppose HB 1167. Thank you for your time.

#8

January 18, 2019

HB 1167 – Hearing

Testimony from NextEra Energy Resources, LLC, Clay Cameron, Project Manager Renewable Development and Daniel Labate, Wind Energy Resource Analyst

Chairman Dockter and Members of the Committee,

For the record my name is Clay Cameron, and I am a Project Manager for NextEra Energy Resources responsible for the development of our wind projects in North Dakota. Here with me is Daniel Labate, Wind Energy Resource Analyst. I currently manage the development of the Emmons Logan wind energy project located in south central North Dakota and the Burke wind energy project located in northwestern North Dakota. We also have 14 operating wind energy centers in North Dakota. We have been doing business in North Dakota for over a decade, investing in wind, oil and gas. Our wind farms represent a capital investment of over \$2.5 billion. We employ over 75 full-time employees, spend approximately \$19 million in annual payroll, \$3 million annually in property taxes and \$6 million annually in lease payments to local landowners in the state.

We value our partnership with North Dakota, which continues to be very important to the success of our company. We strive to be a good partner with local communities and landowners. The wind projects I have managed were challenging, but they are examples of projects where we worked closely with landowners, counties and the state to address concerns and develop successful projects that are now operating and bringing revenue and jobs to the local community.

North Dakota is well-known for a reasonable, fair, and predictable energy policy that has allowed us to build these projects, and NextEra would like to commend the state on its long-term policy of even-handed regulation of wind farms.

I am here today because HB 1167 represents a departure from this long-standing policy.

If this bill passes in its present form, many wind projects will not be able to comply with the setbacks for turbines, and thus will not be built. Now, this doesn't mean the projects won't be built at all – the marketplace is asking for wind farms and the technology for wind energy today makes it a cost-effective choice for many customers. What will happen is the projects will be built in other states – taking jobs, landowner revenue, and tax revenue away from the North Dakota communities who want the benefits of these projects?

We support the Public Service Commission (PSC) regulating the decommissioning and siting of wind farms through rulemaking. Wind farm siting is not a one-size fits all approach – there are unique aspects to every project, every landowner, and every

#8
HB 1167
1-18-19

county, and right now the siting process allows for those unique aspects to be vetted on a project-specific basis. The onerous setbacks contained in this bill would take away most of that flexibility. There are communities in this state who want wind farms, and there are communities who don't. What this bill does is take away the option for those who do want the benefits of a wind farm.

For example, we recently built the Oliver III wind project in Oliver and Morton Counties – this is an example of a community who wanted a wind farm. We did an analysis, and if the setback requirements included in this bill had been applicable to the Oliver III project, about 38% (18 of 48) of the turbine locations would not have been viable, and we could not have built the project. Here is a community who wants a wind farm, and if this bill had been in place, they wouldn't have been able to get one.

NextEra encourages the legislature to continue to support reasonable, fair, and predictable energy policy for wind generation, and for the reasons I outlined in my testimony, the proposed bill is not in line with this policy. Thus, NextEra urges the committee to vote Do Not Pass on HB 1167.

#8

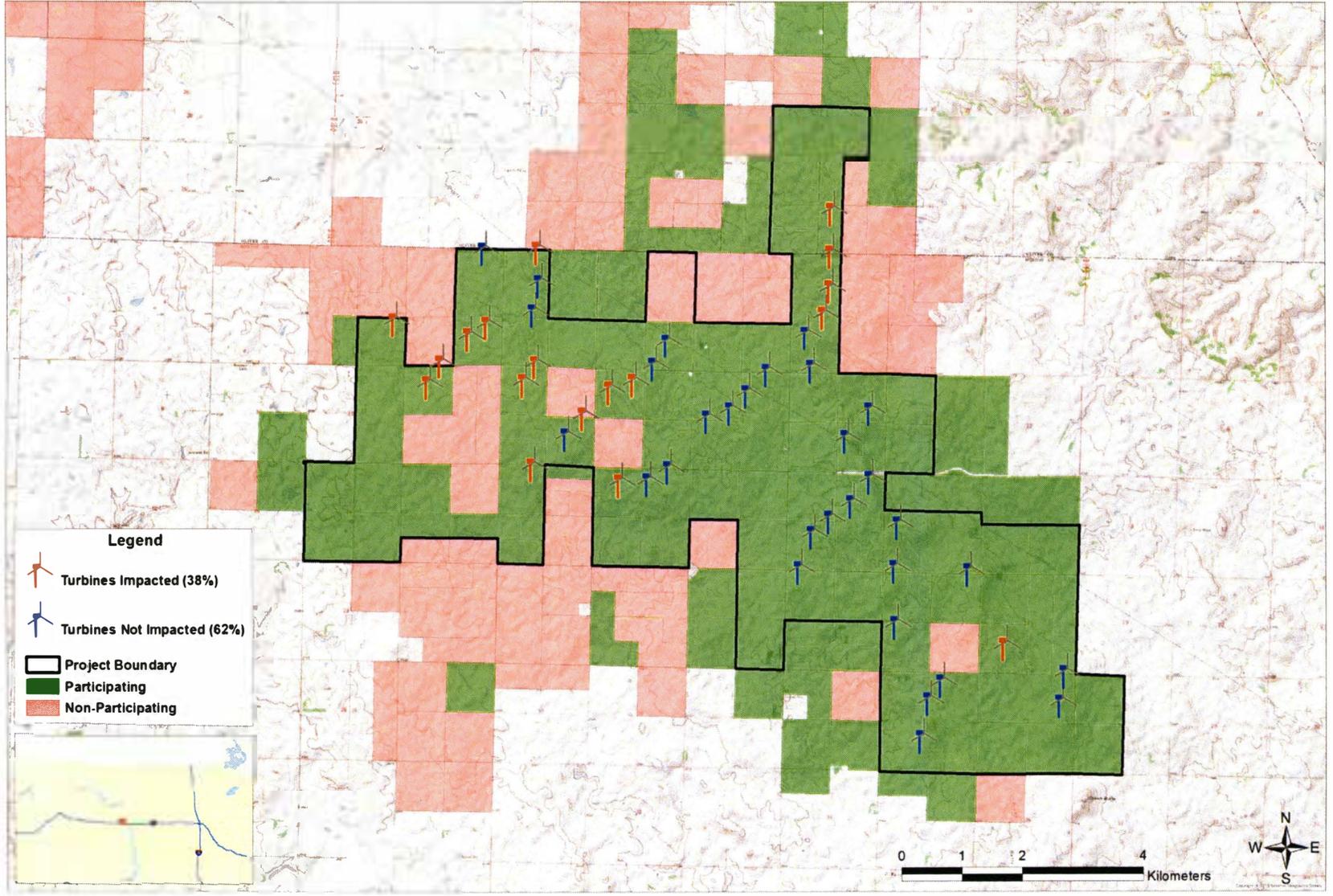


HB 1167 Impacts on NextEra Oliver III, ND Wind Energy Center

January 18, 2019

1-18-19 #8
HB1167

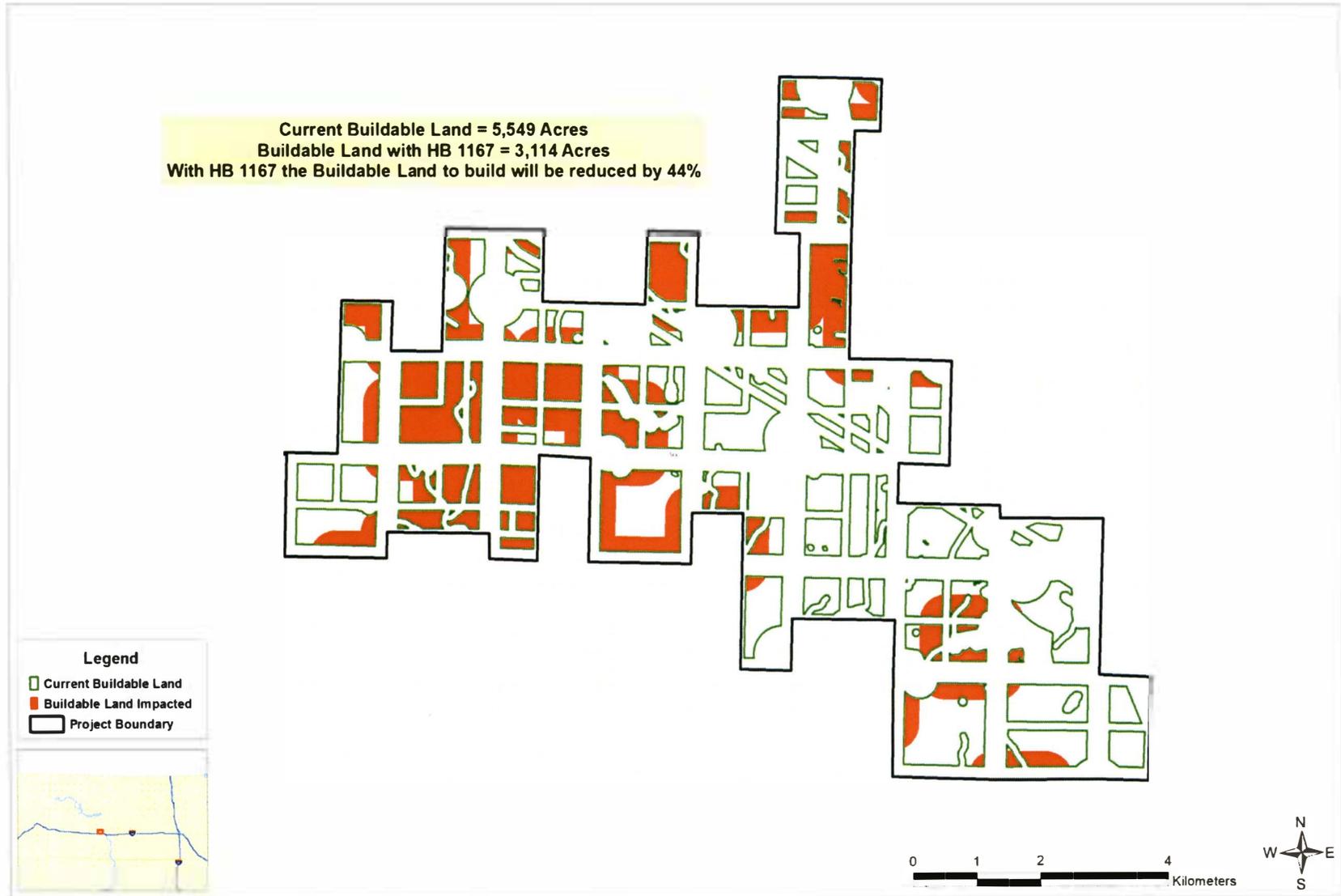
Oliver III, ND Wind Energy Center Turbine Impacts



4

1-18-19 #18
HB 1167

Oliver III, ND Wind Energy Center Buildable Land Impacts



Future Project Impacts By Year

- Future projects with larger hub heights and rotor diameters will be impacted more severely by HB 1167

Table 1. Nonparticipating Landowners from Property Lines

Year	Turbine Technology	Hub Height (Feet)	¹ NextEra Setback (Feet)	² Proposed Bill Setback (Feet)	Difference (Feet)
2017	GE 2.30 116RD	262	498	1,358	+860
2019	GE 2.52 116RD	295	534	1,457	+923
2020	GE 2.52 127RD	292	550	1,501	+951
2021-2022	GE 3.03 140RD	361	650	1,772	+1,122

Table 2. Inhabited Rural Residence of a Nonparticipating Landowner Setbacks

Year	Turbine Technology	Hub Height (Feet)	NextEra Setback (Feet)	² Proposed Bill Setback (Feet)	Difference (Feet)
2017	GE 2.30 116RD	262	1,475	1,358	-117
2019	GE 2.52 116RD	295	1,475	1,457	-18
2020	GE 2.52 127RD	292	1,475	1,501	+26
2021-2022	GE 3.03 140RD	361	1,475	1,772	+297

¹Assumes a 1.1 times Turbine Height setback

²Assumes a 3.0 times Turbine Height setback
 Turbine Height = Hub Height + Tip Height

6



16105 West 113th Street, Suite 105
Lenexa, Kansas 66219

P: 913.888.9463

tradewindenergy.com

January 18, 2019

North Dakota House of Representatives
Political Subdivisions Committee
State Capitol
600 East Boulevard
Bismarck, ND 58505-0360

#9
HB 1167

Chairman Dockter and Members of the Committee,

My name is Mark Walter, Director of Legislative and Regulatory Affairs for Tradewind Energy. Tradewind Energy is a utility scale wind and solar development company based out of Kansas City with around 150 employees across the country. We are responsible for over 5,000 MW of wind and solar development nationally, including the development of the 150 MW Lindahl Wind project just outside of Tioga, which is now owned and operated by Enel Green Power with the power being sold to Basin Electric. We have a second facility currently awaiting approval at the Public Service Commission, Aurora Wind, which is 300 MWs.

Aurora Wind, if approved by the PSC, would come online in 2020 and would have a total capital expenditure of \$400 million. It is expected to pay approximately \$1.5 million in annual landowner payments and an additional \$1.375 million in local taxes annually.

Tradewind opposes HB 1167, which would change wind setbacks that were agreed to in the 2017 session. In the past two years, there have been no new data or circumstances that would require a change in law as contemplated in this legislation. Projects such as Aurora have received approval from local authorities without conflict under the current regulation, and we believe there is no need to revisit the setback standards.

North Dakota is seen as a business-friendly state, and this change in law would tarnish that reputation. Though the bill is prospective and wouldn't apply to Aurora Wind, applying the regulations to a known development shows the dramatic impact such a law would have. The current setbacks removes 9,728 of the 44,017 leased acres from development, which is 22.1% of the project's footprint. HB 1167 would remove 30,897 acres from development - 70.2% of the acreage. This would undoubtedly kill the project. Please see the attached maps for reference.

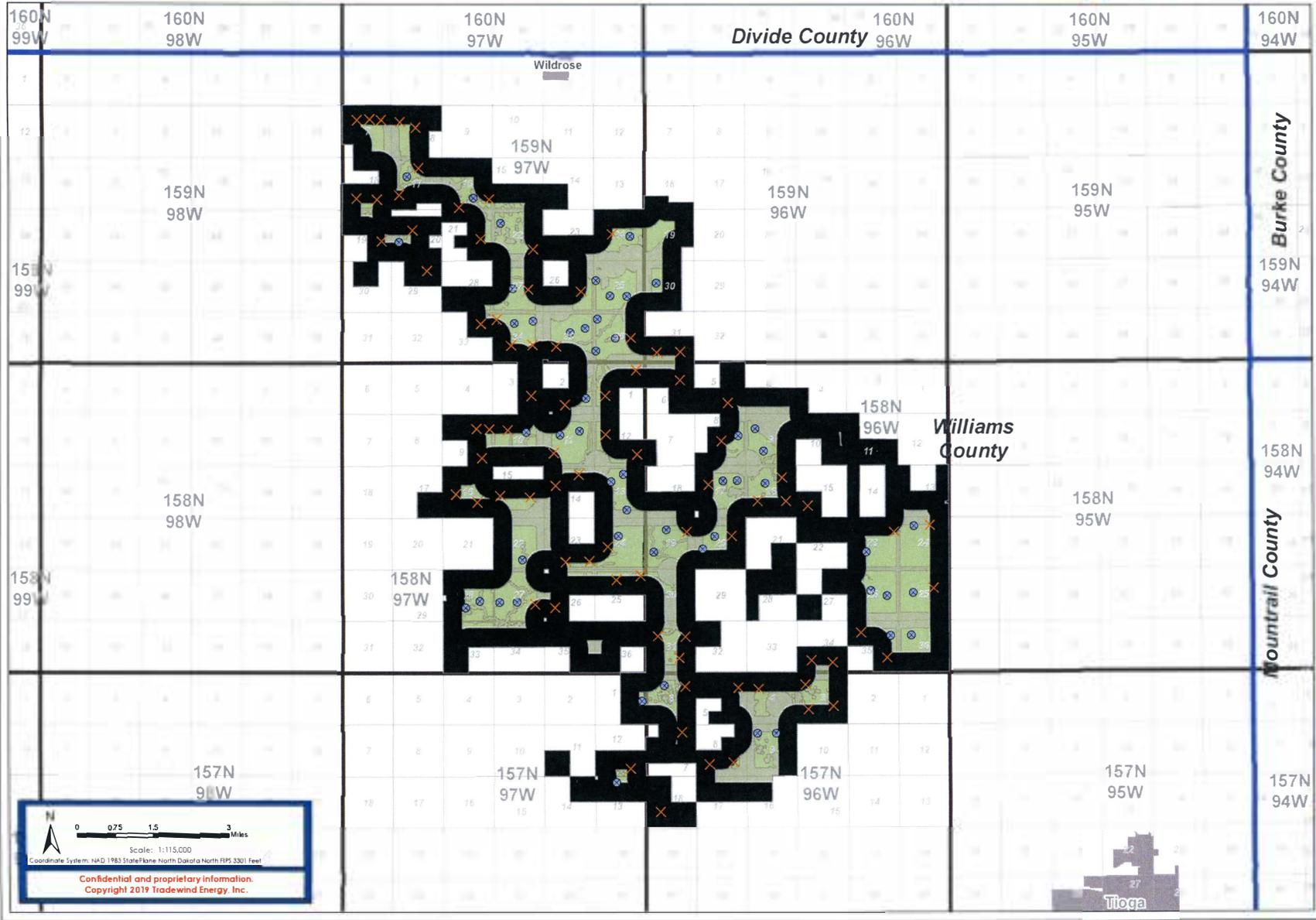
For the reasons outlined above, we ask that you vote no on HB 1167. Thank you for your time and consideration.

Sincerely,

Mark Walter
Director of Legislative and Regulatory Affairs
(573) 590-2255
mwalter@tradewindenergy.com

A10
1-18-19

Aurora Wind Project - with Proposed HB 1167 Property Line Setback



Legend

- Aurora Wind Project
- Aurora Turbine Locations**
- Viable Location
- Not Viable under HB 1167
- 3x Tip Height Setback From Non-Participating Property
- Current County/PSC Setbacks
- Section**
- Township
- County
- Municipal Boundary

N
 0 0.75 1.5 3 Miles
 Scale: 1:115,000
 Coordinate System: NAD 1983 StatePlane North Dakota North FIPS 3301 Feet
 Confidential and proprietary information.
 Copyright 2019 Tradewind Energy, Inc.

The following companies and organizations provided data that contributed to the production of this map

- U.S. Geological Survey (USGS)
- Environmental Systems Research Institute (ESRI)
- U.S. Department of Agriculture (USDA)
- U.S. Federal Aviation Administration (FAA)
- WhiteStar Corporation
- CoreLogic
- Ventrix Inc

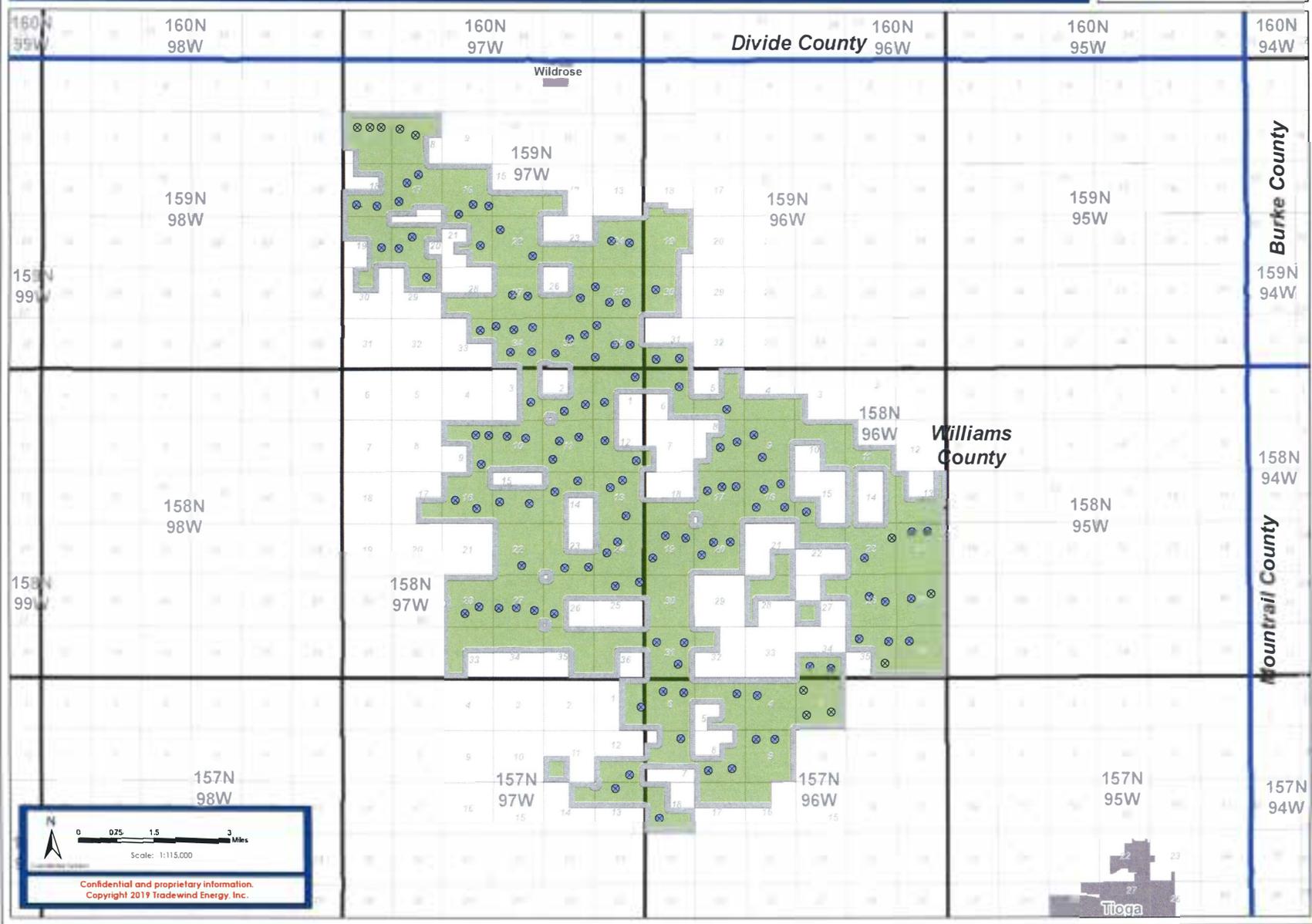
#11
HB 1167
1-18-19

Aurora Wind Project - Current Property Line Setback



Legend

- Aurora Wind Project
- Aurora Turbine Locations
- 1.1x Tip Height Setback From Non-Participating Property
- Section
- Township
- County
- Municipal Boundary



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- WhiteStar Corporation
- CoreLogic
- Ventix, Inc.





Tradewind Energy is among the largest and most successful wind and solar development companies in the United States.

Tradewind Energy Presence



OPERATING/CONSTRUCTION WIND AND SOLAR PORTFOLIO

IN DEVELOPMENT WIND AND SOLAR PORTFOLIO

6

States where Tradewind is present

26

States where Tradewind is present

27

U.S. wind and solar projects operating/construction

106

U.S. wind and solar projects in development

\$5.6B

Total capital investments to-date

\$24.3B

Potential total capital investments

1M

Equivalent to powering 1M U.S. homes

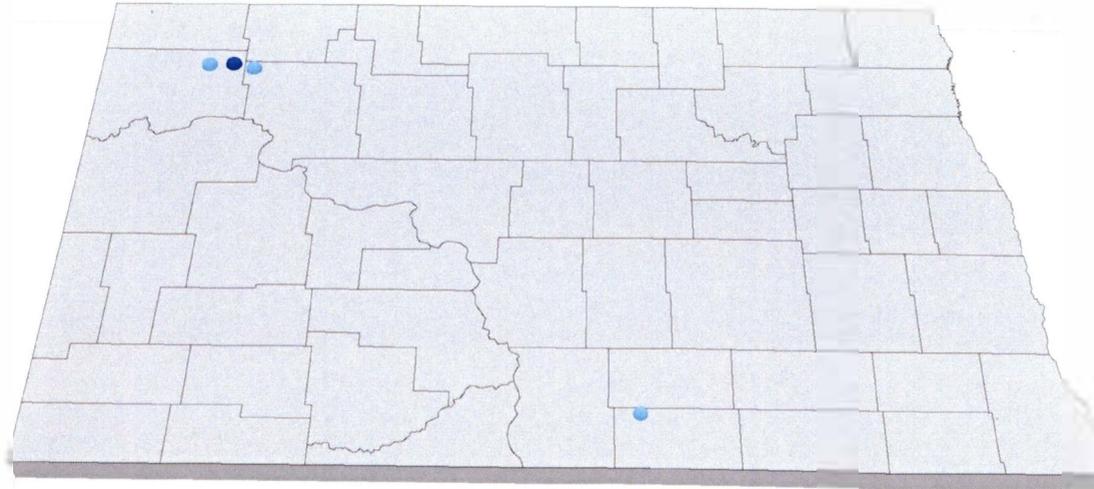
5M

Equivalent to potentially powering 5M U.S. homes

4B 07 1-18-19 #10 p2,



Tradewind Energy North Dakota Wind and Solar Portfolio



In Development Wind Operating Wind

TRADEWIND NORTH DAKOTA SOLAR PROJECTS

1

Total solar projects in development:
representing 350 MW

\$490M

Potential total capital
investments in North Dakota

60K

Equivalent to potentially
powering 60,000 ND homes

TRADEWIND NORTH DAKOTA WIND PROJECTS

3

Total wind projects in development:
representing 750 MW

\$1B

Potential total capital
investments in North Dakota

250K

Equivalent to potentially
powering 250,000 ND homes

Total Projects (Constructed and In Development): 5 Projects representing 1,250 MW and over \$1.8B in investment

North Dakota Wind Energy ¹

\$5.8B

Total wind project
investment (\$)

2,996

Installed wind
capacity (MW)

\$5-\$10M

2017 annual wind
lease payments (\$)

1,611

Number of wind
turbines

¹American Wind Energy Association (AWEA), 2018. AWEA State Wind Energy Facts. Available at <<https://www.awea.org/resources/fact-sheets/state-facts-sheets>>

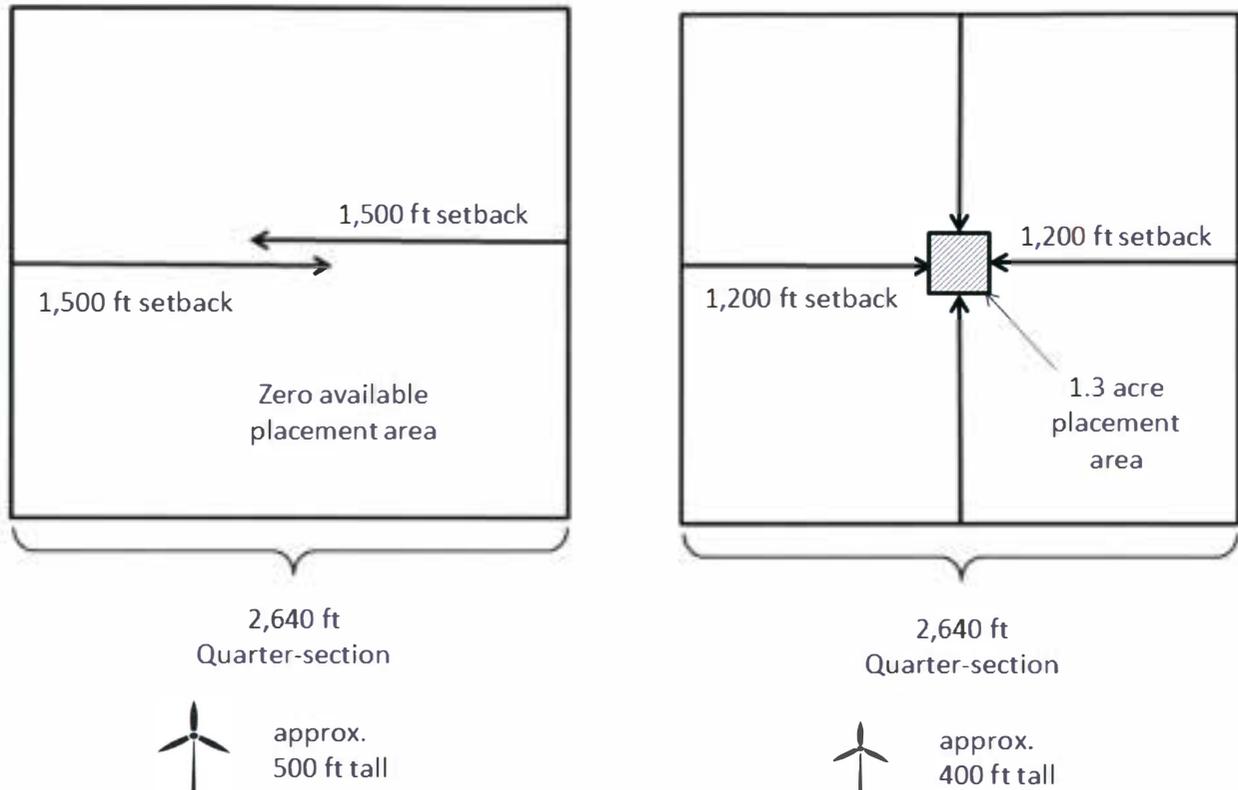
HB 1167

North Dakota Planning Association Testimony

Presented by Natalie Pierce

If enacted, HB 1167 would increase the setback distance of wind turbines from the property line of a non-participating land owner from 1.1 x tower height to 3 x tower height. The North Dakota Planning Association (NDPA) opposes HB 1167.

The below diagram illustrates the effect of the proposed change, in a typical quarter-section, in a scenario where there the land on all sides belongs to a non-participating land owner, assuming a 500-foot or 400-foot tower height.



There is a clear purpose to imposing minimum setbacks between wind towers and occupied residences, roads, or other locations where people are often present. Shadow flicker, noise and the rare possibility of tower collapse are directly related to public health and safety, and apply universally across the state.

Setbacks can also serve as a mechanism to facilitate harmony between neighboring land uses. The setback of a turbine from a property line falls into this second category. Because the determination of how to create harmony between neighboring land uses varies greatly from jurisdiction to jurisdiction, the determination of these types of setbacks are best left to the discretion of the local jurisdiction.

If enacted, the proposed bill would further erode local jurisdictions' authority to enact and enforce regulations that are appropriate for their community. As such, NDPA urges the Committee to report back a "do not pass."

19.0409.01002
Title.

Prepared by the Legislative Council staff for
Representative Magrum
February 1, 2019

#1
2-15-19

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1167

Page 1, line 7, replace "three" with "two and one-half"

Renumber accordingly

#2

HB 1167

2-15-19

P. 1.

ter on one

S DAKOTA, B1

tribune.com | \$2.00

Developer challenges decision of commission

Pure New Energy USA files court appeal over wind farm

CHERYL MCCORMACK
Bismarck Tribune

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According to the notice of appeal, PNE argues it "met any and all requirements for issuance of the subject permits and the board should not have denied its applications."

Also, the company alleges the commission's decisions and actions in denying its applications were "arbitrary, capricious and unreasonable, based upon substantial errors of fact and law, and not supported by substantial evidence."

On Jan. 7, the county commission, which agreed to assume Morton Township's permitting authority for the wind farm because all three of the township supervisors are participating landowners in the project, voted 4-1 to deny the permits in Morton Township, as recommended by the county

commission

Pure New Energy USA files court appeal over wind farm

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On Jan. 7, the county commission, which agreed to assume Morton Township's permitting authority for the wind farm because all three of the township supervisors are participating landowners in the project, voted 4-1 to deny the permits in Morton Township, as recommended by the county planning and zoning board.

"PNE designed and proposed a wind farm in accordance with all Morton Township planning and zoning requirements The decision of the Burleigh County Commission to deny the special use permits for the wind farm were without valid reasons and against the wishes of the local Morton Township community," said Courtney Timmons, PNE's director of business development.

"The result of this process has harmed rural landowners, farmers and ranchers, the taxpayers of Burleigh County and the

Please see **APPEAL**, Page A12

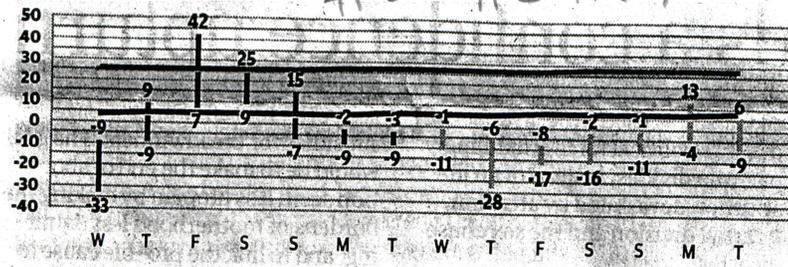
About the project

- Chicago-based Pure New Energy USA is proposing to develop the 250-megawatt Burleigh-Emmons Wind Farm, which would be located about 15 miles southeast of Bismarck and 12 to 13 miles from the city's airport.
- The proposal includes about 70 wind turbines that would be erected in southern Burleigh County, including Morton and Telfer townships, and northern Emmons County in an area that covers 15,000 acres.

#2 HB 1167.
2-15-19
P2

PRESS

Press



Moon 9:09 a.m.

First Quarter Feb 12

Full Moon Feb 19

Last Quarter Feb 26

©2019; forecasts and graphics by AccuWeather

Appeal

From A1

property rights of all landowners in North Dakota," he said. "PNE and our landowners are requesting the district court address this inappropriate decision."

Among the planning and zoning board's reasons to deny the permits, as outlined in its report to the county commission, were property rights of nonparticipating landowners, pilots' safety due to the project's close proximity — within 15 miles — to the Bismarck Airport, as well as hindering the future expansion of the airport.

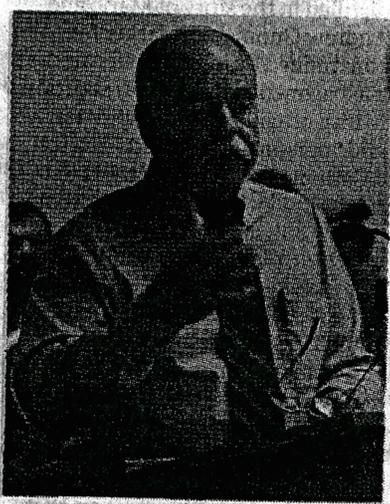
"They (planning and zoning board) felt it was not in the best interest of Burleigh County and for its residents," said Ray Ziegler, Burleigh County's building official. "They recognized the nonparticipants have rights in this, too."

Last month, prior to the county commission's decision to deny the permits, a discussion took place in regard to the 567-foot height of the proposed turbines. According to Ziegler, 18 of the towers being proposed for Morton Township are not in compliance with rules set forth by the Federal Aviation Administration.

"Wind projects are constantly changing and so once we do have a permit in place that we can amend, then we would be coming back to request the changes and, at that time, they would have to be determined whether they are material or not and how to proceed forward," Timmons said at the Jan. 7 meeting.

In December, more than 500 citizens attended a four-hour public hearing, in which passionate testimony was provided by both sides, at the Bismarck Event Center. The hearing resulted in 14 pages of meeting minutes, according to Ziegler.

Opponents raised questions about impacts to quality of life, wildlife, health and reduced property values. Supporters of the project emphasized the new jobs the project would create and other economic benefits to the community, particularly the



WILL KINCAID, TRIBUNE

Ray Ziegler, Burleigh County's building official, spoke Jan. 7 on the reasons the planning and zoning board recommended denying the special use permits for the Burleigh-Emmons Wind Farm in Morton Township.

local school district.

Burleigh County Commission Chairman Brian Bitner, who is also on the planning and zoning board, cast the lone dissenting vote last month to deny the permits. He said he was in favor of following Burleigh County State's Attorney Julie Lawyer's advice, which was to send the matter back to the planning and zoning board to clear up some inconsistencies in its report.

"I thought that was a fair recommendation," Bitner said.

"This should've been handled at the local level. I always felt it was a local issue to that township, to that area. And it didn't need to be a county issue," he added. "But there wasn't any other option at the time for them or us."

Through its appeal, PNE is requesting "relief in the form of an order and judgment directing that the permit applications be granted and the permits issued."

"They're appealing the decision of the county commission," Bitner said. "That's their right."

Reach Cheryl McCormack at 701-250-8264 or cheryl.mccormack@bismarcktribune.com.

Fagerland

From A1

in college and far beyond. Shiloh math teacher Na... in a letter of recommendation, exemplifies honesty, kindness, self-control and ability. His faith is important and he treats others as...

The athlete is a two-sport captain of Shiloh's basketball and football team. He is able to play under the floodlights with fans cheering. One of the things Fagerland loves most about the late...

"Being able to lead is important and it's got to be because you're not a team leader," he said. "That's I definitely take pride in..."

The teen is also passionate about music. He's been in choir since elementary school and has played in three — soon to be four — bands. Whether he's performing lyrics during the seven-minute stretch or earning star status at regional and state music festivals, Fagerland says he's having a great time.

Playing synthesizer is one of the things Fagerland loves most about the late Shiloh Worship Team leader.

Address

From A1

In his speech, Trump planned to announce details of his second meeting with North Korean leader Kim Jong Un, outlining a schedule for Feb. 27 and 28 in Vietnam. Trump, according to his prepared remarks, has been teasing the meeting for several weeks.

As he stood before lawmakers, the president was surrounded by symbols of his emboldened political opposition.

House Speaker Nancy Pelosi was praised by Democratic hard-line negotiators for her shutdown, sat behind Trump and spoke.

#3 HB 1167
2-15-19

Commissioner Magrum wants county to increase wind turbine setbacks

District 2 Commissioner Erin Magrum raised the issue of wind farm setbacks at the Tues., Feb. 5, 2019, meeting of the Emmons County Commissioners.

He said he would like to see the county adopt setbacks similar to what his father, State Rep. Jeffery J. Magrum, has proposed in House Bill 1167. The House Political Subdivisions Committee held a hearing on the bill on Fri., Jan. 18, and is expected to vote on it in the next few days.

Rep. Magrum's bill would increase the setback of a wind turbine from a nonparticipating landowner's property line from 1.1 times the height of the turbine to 3 times. That is roughly an increase from 528 feet to 1,440 feet based on turbines currently being installed in North Dakota.

Variations could be negotiated by the parties involved, according to the bill's language.

The bill would go into effect Aug. 1, 2019, and would not affect existing wind farms or proposed wind farms that have received a certificate of site compatibility. Future expansion of existing wind farms and new wind farm projects would be impacted.

"My intention is to make sure we are evaluating it and that our ordinances are up to date," E. Magrum said.

He said he is not opposed to wind farms, and he said the Emmons-Logan Wind Farm would not be affected by HB 1167 or by any change in the county's wind farm ordinance.

Magrum noted that some other counties have stricter requirements than state law. He said McLean County has a 2,500-foot setback from non-participating residences.

"I think our ordinance should be stricter than the state's," Magrum said.

He emphasized he wants to protect the rights of non-participating landowners.

Tom Von Bische, Community Development Leader for NextEra Energy Resources, said the increased setbacks would be "more exclusionary than protectionary."

He said the increased setback from a non-participating land owner's property line could preclude a participating land owner from having a turbine on an adjacent quarter of land.

Von Bische said the setbacks in Rep. Magrum's bill would probably have killed or greatly expanded the footprint of the Oliver I, II and III wind farms in Oliver County.

He said wind farm developers "simply would not build" in counties with setbacks that exceed those required in state law.

"I support Emmons County and its commissioners, but I must object to increased setbacks that would kill wind farm development," Von Bische said.

Rep. Magrum's bill is supported by a number of land owners in Burleigh and Emmons County who oppose the Burleigh-Emmons Wind Farm proposed by Pure New Energy USA (PNE). The Burleigh County Commissioners voted to deny a permit for the project because of its location near the Missouri River, lack of a buyer for the electricity and proximity to the Bismarck Municipal Airport.

Last week, PNE filed an appeal of the Burleigh County decision with the South Central District Court in Bismarck.

E. Magrum said the appeal is an example of wind farm developers having the money to override the wishes of the people.

Not by bread alone

Welcome to My Kitchen




Verda Tschritter

What is the history behind Valentine's Day? According to the Catholic Encyclopedia, "At least three different St. Valentine's, all of them martyrs, are mentioned in the early martyrologies under the date of Feb. 14." The ancient Roman Emperor Claudius II was the man who executed two of these saints ... both named Valentine on Feb. 14 in different years of the third Century AD. After that, their martyrdom was honored by the Catholic Church declaring Feb. 14 to become St. Valentine's Day! (The preceding information was gathered from the History Channel at History.com). It was because of these saints' love for humanity that they died as martyrs. There is much more about this history that you can research at History.com. Certainly, the most ultimate of all Valentine Day's gift is that Jesus Christ gave His life, covering us with His love so we can spend eternity with Him. In 1840, the first USA mass produced Valentines were sold. Today, Valentine's Day is known as a day of romance. Blessing those you love with flowers, cards, gifts or a romantic dinner is practiced by millions of people worldwide on this holiday. In place of going out and purchasing a box of candy, you might consider making some of the recipes I am sharing this week which I got from my sister, Wilma McMillen, and my sister-in-law, Donna (Tschritter) Job. What could be better than a box of homemade confections given from a loving heart to someone special in your life? Enjoy and Happy Valentine's Day!

- English Toffee**
By Wilma McMillen
- 1 lb. margarine
 - 2 C. white sugar
 - 3/4 C. coarsely crushed nuts
 - 8 plain Hershey bars



for about 5 minutes or less. When it starts to turn a very light brown, remove from the burner immediately as it will burn easily. Pour into pan. Spread quickly on pan. Place candy bars on immediately to melt and spread. Sprinkle with 1/4 cup of finely crushed nuts. Cool and crack into pieces.

- Microwave Caramel Corn**
By Donna Job
- Large brown paper grocery bag
 - Pam spray
 - 1 C. brown sugar
 - 1/4 C. brown corn syrup
 - 1/2 C. butter
 - 1/2 tsp. salt
 - 1/2 tsp. baking soda
 - 4 qts. popped corn
- Spray inside of bag with Pam. Put popcorn in a very large bowl. Cook sugar, syrup, butter and salt until bubbly. Then boil 2 minutes. (Do all in microwave!) Take out of oven. Add baking soda. Stir quickly and immediately, pour over popcorn and stir very quickly. Pour into grocery bag.

Fold over top of bag. Tuck top under bag. Microwave 4 1/2 minutes on high - shake bag every 60 seconds while microwaving. Spread on wax paper to cool. Store in airtight container.

- Almond Bark Crunchies**
By Verda Tschritter
- 1 lb. white almond bark
 - 3/4 C. salted almonds
 - 3 C. crushed salted pretzels
- In a 3 quart glass bowl, melt almond bark at 70 percent power for about 2 minutes. Stir and fold in almonds and

Spec

KIDDER EMMO SENIOR SERVICE

- Meals on Wheels, beginning 11 a.m., and congregate is served at noon, at the Senior Center, Monday-Friday. Suggested donation Title III meal is \$4, age 60 and their spouse. Guest 60 pay \$8, full cost of Dakota EBT/SNAP is accepted for meals. No membership required.
- Please call 254-559-9300 to 9:30 a.m. to reserve meal.

Thursday, Feb. 14 - steak, baked potatoes, Brussels sprouts and fruit dessert

Friday, Feb. 15 - toast, sausage, oven pot roast and whole banana.

Monday, Feb. 18 - au gratin potatoes, peas, carrots and fruit.

Tuesday, Feb. 19 - stuffing casserole with vegetables and cranberries

Wednesday, Feb. 20 - balls and gravy, mashed potatoes, green beans and cocktail.

LINTON SENIOR CENTER

- Card playing every Monday and Thursday at 7 p.m.
- Tuesday - 2 p.m. social

STRAS. SENIOR CENTER

- Every 1st Monday 1:30 p.m. - Bingo
- Every 4th Tuesday 12 noon - Dinner
- Thursday 2 p.m. - Card games

HAZELTON SENIOR CENTER (Meet at Coffee Shop Center)

- 1st Friday 1 p.m. - Sr. meeting
- Birthday Club
- Each Tuesday 2 p.m. - Card party

Braddo

Mary Ann Byrne Dickinson was an over-visited of her parents and Joan Schmidt. Saturday visitors for Bingo were Nora Butler from Sterling, her daughter Ariel Dralle from Bismarck, and Andrea I from Bismarck.

Lugard Leier and went to Cheyenne, Wyoming to surprise her daughter.

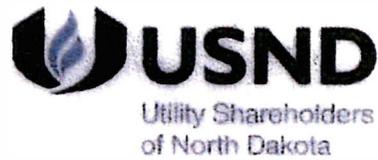
Linton School will advertise for

Memorandum

#4
HB 1167
2-15-19

To: Burleigh Planning and Zoning Committee
From: North Dakota Utilities (See logos beneath statement)
Date: November 27, 2018
Re: Burleigh Emmons Wind Project

There has been speculation regarding potential involvement of North Dakota utilities in the wind project currently before this planning committee. To be clear, none of the undersigned North Dakota utilities have agreements to purchase the proposed project or the output of the proposed project, nor are they in any discussions to purchase the proposed project or the output of the proposed project.



#5
HB1167
2-15-19

1. Introduction

A turbine connected to the grid implies certain elements of danger if it is handled without exercising proper caution.

For safety reasons, at least two persons have to be present during a work procedure.

The work must be properly carried out in accordance with this manual and other related manuals. This implies, among other things that personnel must be instructed in and familiar with relevant parts of this manual.

Furthermore, personnel must be familiar with the contents of the "Substances and Materials" regulations.

Caution must especially be exerted in situations where measurement and work is done in junction boxes that can be connected to power.

Consequently the following safety regulations must be observed.

2. Stay and Traffic by the Turbine

Do not stay within a radius of 400m (1300ft) from the turbine unless it is necessary. If you have to inspect an operating turbine from the ground, do not stay under the rotor plane but observe the rotor from the front.

Make sure that children do not stay by or play nearby the turbine. If necessary, fence the foundation. The access door to the turbine must be locked in order to prevent unauthorised persons from stopping or damaging the turbine due to mal-operation of the controller.

3. Address and Phone Number of the Turbine

Note the address and the access road of the turbine in case an emergency situation should arise. The address of the turbine can often be found in the service reports in the ring binders next to the ground controller. Find the phone number of the local life-saving service.

#6 HB 1167

2-15-19
PI



**BURLEIGH COUNTY
BUILDING/PLANNING /ZONING
DEPARTMENT**



REQUEST FOR COUNTY BOARD ACTION

DATE: December 14th, 2018
TO: Kevin Glatt
County Auditor
FROM: Ray Ziegler
Burleigh County Building Official/Director
RE: Please include the following item on the next Burleigh County Board of Commissioners agenda which is dated January 7th, 2019:

ACTION REQUESTED:

To consider action on: PNE's Applications for Wind Turbines in Morton Township.

SUGGESTED MOTION:

To support the recommendation made by the Burleigh County Planning and Zoning Commission at their December 5th, 2018 Meeting/Public Hearing. Motion was made and seconded to deny the permit: motion passed 5 to 3. Resolving the staff findings was not required because of the motion to deny.

Reasons defining the motion included commentary such as; in the best interest for the future, property rights of the non-participating residents, safety of pilots, hindering future expansion of the Bismarck Airport.

The motion followed the required duties of the Planning Commission as outlined in the Burleigh County Ordinance Article 2. Section 5.

It is the duty of the Planning Commission to:

1. Promote the public health, safety, peace, morals, comfort, convenience, general welfare and conservation of the value of property throughout the County.
2. Regulate and restrict the location, erection, construction, re-construction, alteration and use of buildings, structures and land uses for industrial, business trade, residential and other purposes, except as used for farming.

#6 2-15-19
HB 1167
P 2



Staff Report – Burleigh County Building/Planning/Zoning

PNE Wind USA Special Use Permit Applications

Applicant: PNE Wind USA, Inc.

Proposal: The applicant is seeking approval of the following special use permits to develop wind energy in Morton Township, Burleigh County, North Dakota.

Existing Zoning: Agricultural

Location: Towers Per PNE

#	Parcel ID	Legal	Address: per location map
3	47-137-77-00-17-600	W1/2SW1/4, NE14/S1/4, N1/2SE1/4W1/4	22480 115 AVE. SE, MOFFIT
7	47-137-77-00-28-800	W1/2SE1/4	13790 249 TH ST SE MOFFIT
10	47-137-77-00-29-600	SW1/4	13511 223 RD ST SE MOFFIT
12	47-137-77-00-30-400	GVT. LOTS 3-4 E1/2NW1/4	21355 128 TH AVE. SE MENOKEN
13	47-137-77-00-19-800	SE1/4	12330 223 RD ST. SE MOFFIT
14	47-137-77-00-29-200	N1/2N1/2	12865 223 RD ST. SE MOFFIT
15	47-137-77-00-19-600	SW1/4	21300 128 TH AVE SE MENOKEN
17	47-137-77-00-33-800	SE1/4	24040 154 TH AVE SE MOFFIT
19	47-137-77-00-21-600	SW1/4	12635 236 TH ST SE MOFFIT
23	47-137-77-00-28-810	E1/2SE1/4	13730 249 TH ST SE MOFFIT
24	47-137-77-00-19-400	NW1/4	11790 223 RD ST SE MOFFIT
27	47-137-77-00-20-400	SW1/4NW1/4, NW1/4SW1/4	22425 115 TH AVE SE MOFFIT
28	47-137-77-00-20-610	S1/2 S/12	12640 236 TH ST SE MOFFIT
29	47-137-77-00-34-200	NE1/4	25711 141 ST AVE SE MOFFIT
36	47-137-77-00-34-800	SE1/4	25791 141 ST AVE SE MOFFIT
39	47-137-77-00-32-410	E1/2NW1/4LESS R/W; SW1/4NW1/4	14135 223 RD ST SE MOFFIT
42	47-137-77-00-33-600	SW1/4	24010 154 TH AVE SE MOFFIT
43	47-137-77-00-19-200	NE1/4	11730 223 RD ST SE MOFFIT
46	47-137-77-00-29-800	SE1/4	13530 236 TH ST SE MOFFIT
47	47-137-77-00-21-200	NE1/3 LESS NE1/4NE1/4	12040 249 TH ST SE MOFFIT
50	47-137-77-00-18-250	S1/2NE1/4	21655 MOFFIT RD MENOKEN
52	47-137-77-00-17-200	NE1/4	10825 MOFFIT RD MOFFIT
54	47-137-77-00-33-200	NE1/4	24080 154 TH AVE SE MOFFIT
55	47-137-77-00-19-800	SE1/4	12730 223 RD ST SE MOFFIT
57	47-137-77-00-28-200	NE1/4	13551 236 TH ST SE MOFFIT
58	47-137-77-00-22-400	NW1/4	25385 MOFFIT ROAD MOFFIT
65	47-137-77-00-30-600	GVT. LOTS 3 & 4;E1/2SW1/4	14955 210 TH ST. SE MENOKEN
66	47-137-77-00-21-800	SE1/4	12080 249 TH ST. SE MOFFIT
67	47-137-77-00-29-800	SE1/4	13580 236 TH ST SE MOFFIT
70	47-137-77-00-30-800	SE1/4 LESS AUDITOR'S LOT A	14385 210 TH ST. SE MENOKEN

Public Hearing - Published in the Bismarck Tribune on November 19, & November 26, 2018. Letters mailed to property owners November 20, 2018. Posted on Burleigh County Website, November 28nd, 2018.

Findings:

1. Criteria item #25. An archeology survey has been requested by the chairman of the Mandan, Hidatsa & Arikara Nation. The Three Affiliated Tribes has informed use that their position has not changed as outlined in there 2/14/2018 & 11/14/2018 letter (attached).
2. Criteria Item #30. Calls out for a one-half mile setback from Public Recreation Areas. The following Special Use Permit Applications are in violation; #3,14,19,27,28,47,58,65, and 66. The intent of the ordinance and the ½ mile setback is to provide an adequate buffer zone between all recreation areas open to the public and a wind turbine.
3. Special Use Permit Applications #12, 15, 24 and 65 are in violation of Telfer Townships Ordinances setback amendment requiring 3.0 times the turbine height from non-participating parcels. Determine recognition of Telfer's Ordinance.

Recommendation by staff:

Based on the above findings, staff recommends resolving compliance with the requirements of the Special Use Permits.

Item 1. Consider the request from the Three Affiliated Tribes to conduct an archaeological and historical evaluation.

Item 2. Follow the intent of the adopted ordinance as determined by the Burleigh County Building Official/Director. Applicant has the right to appeal the determination made by the Building Official/Director to the Burleigh County Board of Appeals as prescribed in Article 27 of the Burleigh County Ordinance.

Item 3. Discuss the issue with Telfer and Morton Township Officers.

Telfer Township Planning and Zoning Board has stated that they would like to see their setback requirements honored.

#6 HB 1167
2-15-19 p.4

Analysis of Impacts to the Bismarck, ND, National Weather Service (NWS) Radar from the Proposed Burleigh-Emmons Wind Farm

Summary of Project/Site-Specific Analysis for the Bismarck, ND NWS Radar:

- In general, there are four levels of potential impacts on NWS radars from wind farms: Low, Moderate, High, and Recommend No Build.
- Based on the proposed placement and height of turbines, impacts to the Bismarck NWS radar from the proposed Burleigh-Emmons wind farm would be Moderate to High.
- The highest impacts to the weather radar would be associated with the tallest turbines proposed for the project.
- The analysis revealed that 20 turbines in the proposed project would contaminate radar data from the two lowest-elevation angle scans that the radar completes.
- The analysis revealed that 51 turbines in the proposed project would contaminate radar data from the lowest-elevation angle scan that the radar completes.

Below is a generalized list of potential impacts to NWS weather radars by wind farms, which is NOT specific to the proposed Burleigh-Emmons Wind Farm:

- The radar data can be contaminated - both the appearance of precipitation and winds that the radar detects can be corrupted, adding uncertainty to the analysis that forecasters do with radar data.
- Contaminated data can lead to inaccuracies in radar algorithm output, such as those used to generate rainfall estimates important to flash flood warnings, and those used to highlight areas of storm rotation, which are important to tornado warnings.

In addition to how far a project is from a radar site, and how tall turbines are, atmospheric conditions can also determine the extent to which wind farms can impact radar data. In some cases the greatest impacts to radar data from wind farms tends to occur under "fair" weather conditions, not those associated with severe storms.



MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes * Fort Berthold Indian Reservation
404 Frontage Road New Town, ND 58763
Tribal Business Council

Office of the Chairman
Mark N. Fox

November 14, 2018

Ray Ziegler, Building Official-Director

Burleigh County Planning Department
221 N 5th St
Bismarck, ND 58501

Re: Proposed PNE Wind Energy Project in Burleigh County

The Mandan, Hidatsa, and Arikara (MHA) Nation takes its responsibilities for the protection of cultural, historical and archaeological resources very seriously. PNE's archaeological report recommends meaningful collaborative consultation with tribal cultural resource experts no less than three times. The report is also very specific regarding its limitations stating that "...sites evaluated for potential contribution to history or cultural traditions ...tend to have different evaluation and management considerations than archaeological sites."

Mindful of PNE's clear expression of lack of expertise regarding history and cultural traditions, the MHA Nation in cooperation with local landowners has been moving forward with our own cultural, archeological and environmental surveys. While we have not received final reports at this time, preliminary findings concur with PNE's assessments that not only will sites of cultural significance be disturbed by the proposed wind farm project, but the potential danger to protected and culturally essential bird species (including the eagle) is substantial.

In addition, we have a cultural and social responsibility for the protection of these resources and a specific responsibility under federal law including the Native American Graves Protection and Repatriation Act. We also note that North Dakota's own statute regarding disturbance of human remains is more robust and encompassing.

We therefore respectfully request that (as indicated in the PNE report) you suspend the final approval for the wind farm project until such a time as our own "culturally competent" and knowledgeable consultations and evaluations can be completed.

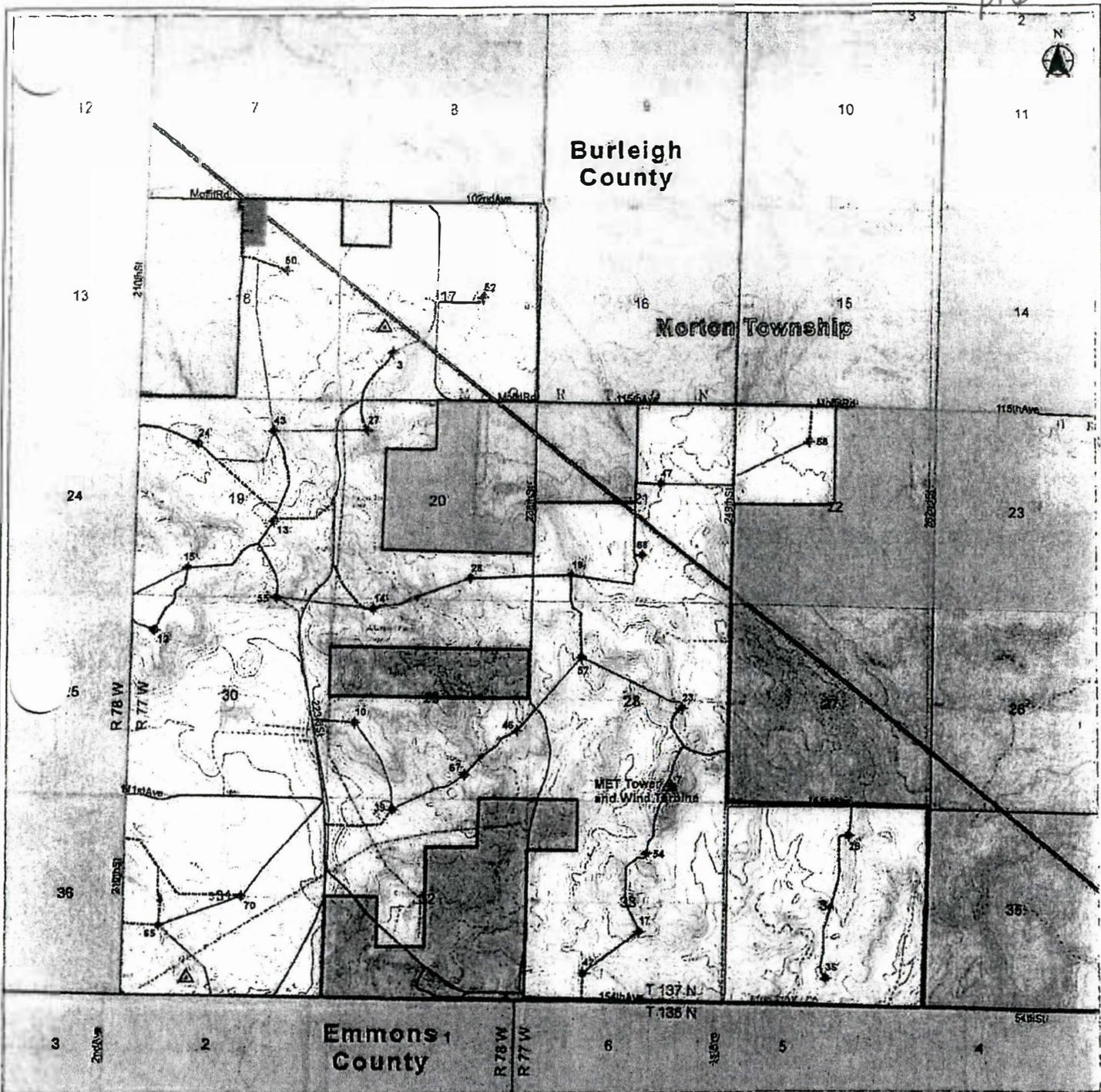
404 Frontage Road * New Town, North Dakota * 58763
Phone: 701.627.4781 * Ext. 8203 * Fax: 701.627.3503

#6

AB 1167
2-15-19

p. 5

#6 HB1167
2-15-19
p.6



Stantec  

Notes:
 1. Coordinate System: IAD 1983 UTM Zone 14N
 2. Sources: PNE 2017; NDGFD 2017
 3. Slantec: 3325 S. Timberline Road Suite 150, Fort Collins, CO 80525.

0.5
Miles

© All original document file of 30x34

- Legend**
- Proposed Features**
-  Project Area
 -  Wind Turbine
 -  Meteorological Tower
 -  Access Roads
 -  Collector Lines
 -  Substation Infrastructure

- Other Features**
-  Public Road
 -  230-kV MDU Transmission Line
 -  Distribution Line
 -  Intermittent Stream/River
 -  Field Delineated Welland
 -  Township Boundary
 -  NDGFD PLOTS Land



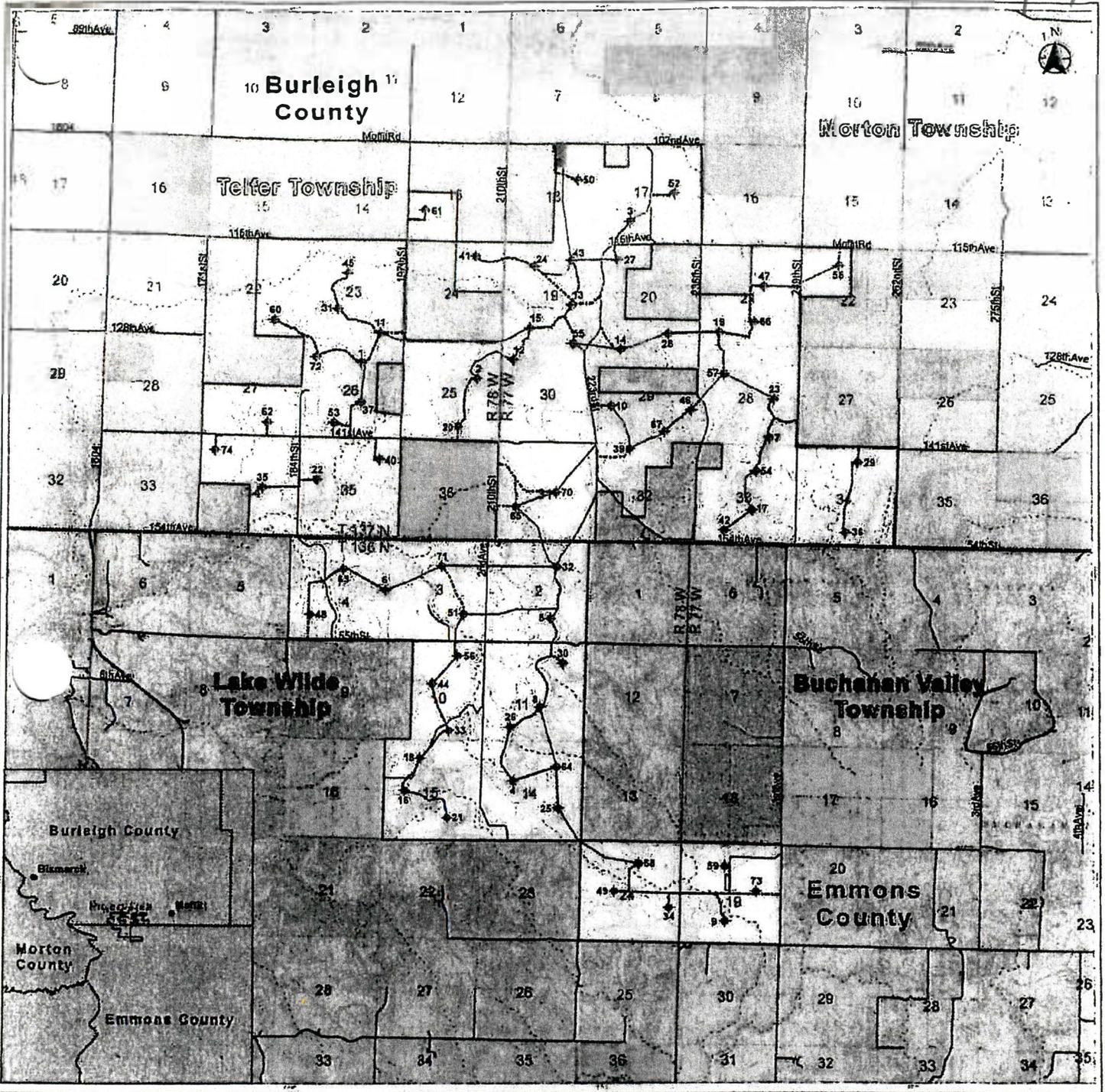
Project Location
 Burleigh County
 Emmons County NO

Client/Project
 PNE Wind, USA
 150 N. Michigan Ave Chicago, IL 60601

Burleigh Wind Project

Figure No.
 2

Title
 Project Site Plan - Morton Township

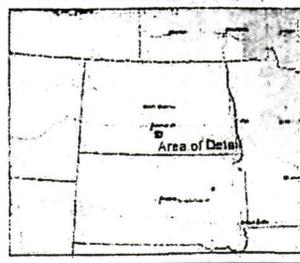


- Legend**
- Proposed Features**
- Project Area
 - Wind Turbine
 - Access Roads
 - Collector Lines
 - Substation Infrastructure

- Other Features**
- North Dakota State Land
 - USFWS Easement
 - Township Boundary
 - Public Road
 - Intermittent Stream/River

Notes

1. Coordinate System: GCS North American 1983
2. Sources: PNE 2017; USFWS 2017; NDSD 2017.
3. Stantec: 3325 S. Timberline Road Suite 150, Fort Collins, CO 80525



Project Location

Burleigh County
Emmons County, ND

Prepared by MP on 2/15/19
Tech/Map Engineer by MS on 2/15/19
Final & Issue by JS on 2/15/19

Client/Project

PNE Wind, USA
150 N. Michigan Ave Chicago, IL 60601

Burleigh Wind Project

Figure No. 1

Title

Site Plan - Overall

