

**August 7, 2023 BOARD OF ADJUSTMENT/ PLANNING COMMISSION
DEUEL COUNTY
STAFF REPORT**

Monday – August 7, 2023 – 6:00 p.m.

DEUEL COUNTY BOARD OF ADJUSTMENT

ITEM #1 CONDITIONAL USE

Applicant: Jerae Wire - East River Electric Power Coop

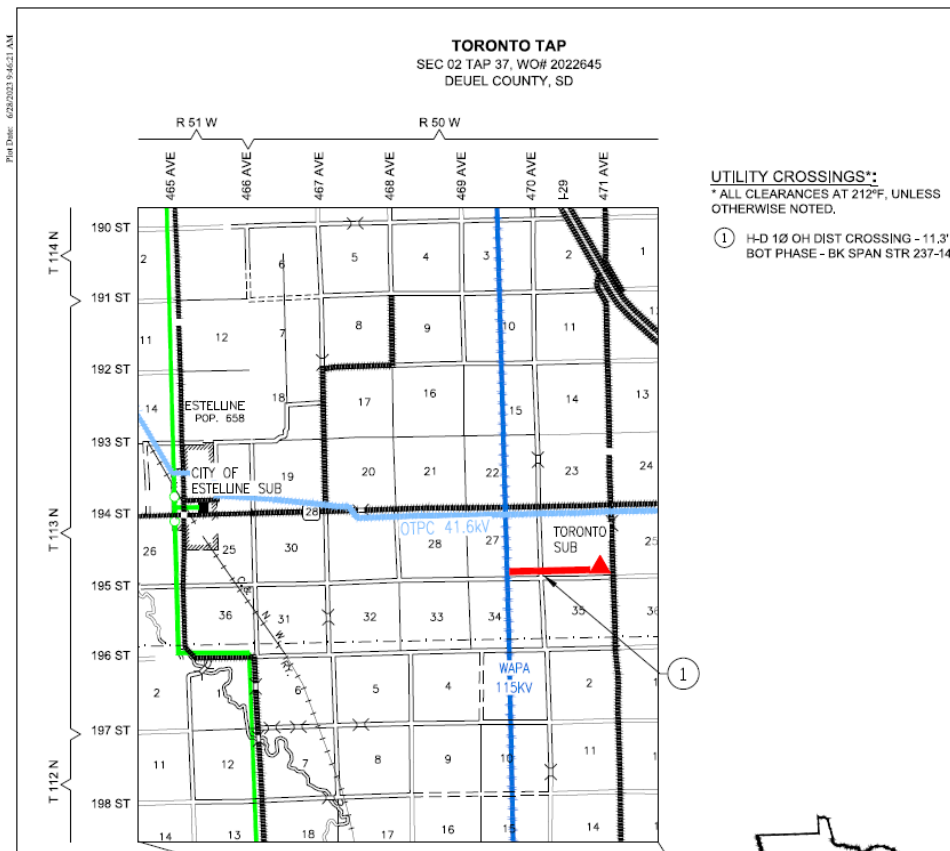
Land Owner: Jeffrey & Christine Watt & Kurt Kaiser & Kay Johnson Trust

Property Description: north side of 195th street roughly 1.5 mile west (SE1/4 & SW1/4 of Section 26-113-50 and S1/2 of Section 27-113-50, Grange Township, Deuel County, South Dakota).

Action Items – Conditional Uses Permit – (Section 1101.04.12 Essential Services System)

Zoning Designation: A – Agricultural District

Request: Applicant/Owner requesting a Conditional Uses Permit requesting to construct approximately 1.5 miles of electrical transmission lines from the Toronto Substation to connect to the existing WAPA line.



History/Issue(s):

Specifics of Request

1. The applicant is requesting to construct approximately 1.5 miles of electrical transmission lines from the Toronto Substation to connect to the existing WAPA line in AG District.
 - a) The new 69k transmission line is needed to meet the expanding load growth in Deuel County, SD.

b) This new line and the substation that was permitted on May 15, 2023 will also provide backup for the existing Dempster, Astoria and Clear Lake Substations for H-D. Sioux Valley Energy will take service from the new Toronto Substation to provide backup to their load in the area.

c) The applicant seeks to set H1 and H2 poles with roughly a 300' span in between. The poles will be 60' to 70' tall depending on the terrain. The lowest conductor will be 25' or greater depending on the location to the bell of the line sag. The poles will be 2' from the ROW in the private easement which they have with the land owners.

d) The applicant has acquired the easement form the property owners in the is project.

e) We have also notified the impacted townships (Grange Township in Deuel) about the plans for the installation of the transmission line

2. Deuel County Ordinance requires that a company go through the Conditional Uses Permit Process construct approximately 1.5 miles of electrical transmission lines from the Toronto Substation to connect to the existing WAPA line in AG District.

Ordinance and Comprehensive Land Use Plan regarding this request:

1. Essential services are listed as a Conditional Uses in the A – Agricultural District.

12. Essential services – Overhead or underground electrical, gas, steam or water transmission or distribution systems and structures, or collection, communication, supply or disposal systems and structures used by public for protection of the public health, safety or general welfare, including towers, poles, wires, mains drains, sewers, pipes, conduits, cables satellite dishes, and accessories in connection therewith. The Board attached the specific condition in accordance with its ability to add conditions to a conditional use permit.

2. Wireless Telecommunication Towers are listed as a Conditional Uses in the A – Agricultural District.

3. The Deuel County Comprehensive Land Use Plan states that the main goal is to accommodate growth and to minimize the disturbance of agricultural land.

4. This property is located out of the floodplain.

5. No specific requirements are listed for public utilities such as this structure. Regarding the general requirements of the Zoning Ordinance with reference to conditional use in addition to:

a. Setbacks have not historically been applied to transmission lines or poles due to the above referenced pre-emption in state law.

b. The use is a listed use and therefore is “generally compatible” to other uses within the district according to the zoning ordinance.

c. No new access locations are requested.

d. No septic systems/sanitary sewer is proposed, nor necessary. There is no expected need for trash services.

e. No fencing is requested or expected.

f. No signs other than safety signs are proposed with this request

Staff Summary

Conditional Use Permit – Essential Services & Wireless Telecommunication Tower: The application may be approved, postponed, or denied.

Staff recommendation:

Approval would be based on the applicant's ability to meet the requirements for a Conditional Use Permit described in ordinance - To grant the Conditional Uses Permit to construct approximately 1.5 miles of electrical transmission lines from the Toronto Substation to connect to the existing WAPA line in AG District.

The Board determined that it is empowered under the section of the ordinance described in the application to grant the special exception and that granting the special exception will not adversely affect the public interest. Please see Findings of Fact and Conclusions of Law on file with this application.

ITEM #2 VARIANCE

Applicant: Brad Fairchild

Owners: 26 Pines LLC

Property Description: Lot 1 Helmbolt Sub in SW1/4 of the Section 34-115-47 Herrick Township, Deuel County, South Dakota.

Action Items – Variance – (Section 1101.05 Area Regulations)

Zoning Designation: AG – Agricultural

Request: Applicant requesting a Variance to build a lean-to on the existing building with less than 25' of rear yard.

Specifics of Request:

1. Brand Fairchild (26 Pines LLC) purchased this property July 16, 2018 from Fireworks City Inc under a CFD.
2. Helmbolt (Fireworks City) sold firework many years prior to Fairchild purchasing the property and they continue to sell fireworks and apply for permits
3. Mr. Fairchild is requesting to build a lean-to on the existing building with less than 25' of rear yard.
4. Fairchild would like to build a 8' x 36 lean-to which would be an addition on the exiting building (30' x 40'). The lean-to would be approximately 2' from the rear lot line. The existing structure 110' from the 75' road right-of-way the back of the existing structure is approximately 215' from the center of a 75' ROW. With those measurement the existing structure is 140' from the road right-of-way and the lot is 150' deep which puts the existing structure 10' from the rear property line.
4. Fairchild would like more storage for the fireworks and building to the north toward the rear property line is most cost effective. The office has received a letter from Gabrielson (adjoining property owners) stating they are okay with the addition (lean-to) being within 2' from their property line.

Ordinance/Variance History regarding this request: Section 1101.05 Area Regulations

1. The Zoning Ordinance requires that all residential lots shall be a minimum of three (3) acres the minimum depth of the front yard shall be not less than sixty-five (65) feet, side yard, the minimum width of a side yard shall be twenty-five (25) feet and the minimum depth of a rear yard shall be twenty-five (25) feet.
2. The Board has history of granting numerous variance requests in the Ag District of similar or greater relaxation of rules (Peterson)

Staff recommendation: If approved, staff recommendation - To grant the Variance to build a lean-to on the existing building no closer than 2' from the rear lot line. This Variance does not apply to any new structures that are built on the property. All voted in favor and the motion carried. Please see Findings of Fact and Conclusions of Law on file with this application.

The Board could deny the Variance on the basis that the circumstances surrounding this request are not so unique in nature to necessitate granting special privilege to this applicant which is denied to other properties in this zoning district.

ITEM #3 CONDITIONAL USE – Deuel Harvest South Wind Farm

Applicant: Deuel Harvest Wind Energy South LLC

Owner: Deuel Harvest Wind Energy South LLC

Property Description: Certain property in Blom, Brandt, Clear Lake, Norden and Scandinavia Townships

Action Items – Conditional Use – Wind Energy Systems (Section 1101.04.22 & Section 1215)

Zoning Designation: A – Agricultural; Zone B – Aquifer Protection Overlay District

Request: Deuel Harvest Wind Energy South LLC requests to construct and operate the up to 260 MW Deuel Harvest Wind Energy South with up to 76 wind turbines. The facilities will also include an operations and maintenance building, a project substation, an up to aircraft detection lighting system (“ADLS”) towers, collector lines, transmission lines, laydown yard, concrete batch plant and up to three meteorological towers.

History/Issue(s):

Specifics of Request:

1. Deuel Harvest Wind Energy South LLC has defined a project area that includes approximately 32,951 leased acres in the above townships for wind towers and electrical transmission lines. In addition, 1,351 acres are currently under negotiation and are expected to be signed before start of construction. Table 1 below. It should be noted that the total number of towers in each township in table 1. Applicant has stated that the total number of towers will not exceed 76 for the project. The application has 81 sites which represents the number of locations within the project boundary that can host the GE turbine model the SE and Vestas can host 75 turbines.
2. In addition to the wind towers, the project includes gravel access roads to turbines, buried electric collection lines and communication cables, O & M building, Project Substation, Interconnection substation, overhead feeder line connecting Project Substation to Interconnection Substation, up to 2 Aircraft Detection lighting towers, up to three temporary or permanent MET Towers, and temporary construction areas/facilities.
3. Each turbine will have an access road.
4. Each turbine will be connected via fiber optic cable for communications with the tower.
5. The project will include temporary concrete batch plant(s) and laydown yard(s) during construction. Applicable setbacks will be adhered to.
6. The project includes at most 76 towers with 81 location tower locations cited in the application.

TABLE 1

Brandt Township		Norden Township	
Section Number	Number of Towers	Section Number	Number of Towers
2-114-49	1	3-114-48	2
5-114-49	3	4-114-48	1
9-114-49	2	5-114-48	3
11-114-49	1	6-114-48	1
12-114-49	2	8-114-48	2
13-114-49	2	10-114-48	1
14-114-49	1	11-114-48	4
15-114-49	2	14-114-48	1
17-114-49	1	15-114-48	2
20-114-49	1	16-114-48	3
21-114-49	3	23-114-48	1
23-114-49	3	27-114-48	2
24-114-49	1	31-114-48	1
27-114-49	1	32-114-48	2
28-114-49	2	33-114-48	3
Total	26	34-114-48	1
Scandinavia Township		36-114-48	2
Section Number	Number of Towers Layout	Total	32
1-113-48	1	Clear Lake Township	
2-113-48	3	Section Number	Number of Towers Layout
3-113-48	2	32-115-48	1
4-113-48	1	Total	1
5-113-48	2		
10-113-48	3		
11-113-48	2		
12-113-48	2		
13-113-48	2		
14-113-48	2		
7-113-49	2	Grand Total	81

Ordinance Requirements regarding this request:

1. Portions of the project area are located over Zone B of the Aquifer Protection District.
2. Wind Energy Systems are an allowable use in Zone B provided performance standards are met.
3. The applicant proposes to meet all required performance standards including but not limited to: 1. The requirement that storage of petroleum products in quantities exceeding one hundred (100) gallons at one (1) locality in one (1) tank or series of tanks must be in elevated tanks; such tanks larger than eleven hundred (1,100) gallons must have a secondary containment system where it is deemed necessary by the Board of Adjustment; and 2. The applicant does not intend to discharge of industrial processed water on the site.
4. The zoning ordinance lists numerous requirements of Wind Energy Systems. Below is a breakdown of the review of compliance with those requirements. Table 2

Section	Title	Reference Page	Notes
1215.02	Federal and State Requirements	Sections 4.0 & 6.3.1 Pages 11 & 14	Applicant addresses correspondence with multiple state and federal agencies
1215.03.1(a)	Site Clearance	Section 6.3.2 Pages 14 & 15	The applicant stated that they will disturb or clear the site only to the extent necessary to assure suitable access for construction, and safe operation and maintenance of the Project. Construction of the up to 76 wind turbine foundations, approximately 21 miles of access roads, approximately 170 miles of underground collector lines, approximately six-mile Feeder Line, Project Substation, O&M building, and associated facilities would result in approximately 1,080 acres of temporary disturbance and approximately 72 acres of permanent impacts within the Project Area. The permanent impacts represent less than 0.2 percent of the total acreage within the Project Area.
1215.03.1(b)	Topsoil Protection	Section 6.3.3 Page 15	<p>The applicant stated that they will submit a Soil Erosion and Sediment Control ("SESC") Plan to Deuel County prior to construction. This SESC Plan will outline construction Best Management Practices ("BMPs") for all Project Facilities and specifically address topsoil protection. South Deuel will make efforts during construction of the Project to minimize soil erosion and removal of topsoil from cultivated lands. Protection measures typically include segregating topsoil from subsoil during construction, replacing topsoil after subsoil has been backfilled, and not removing topsoil from any property without the landowner's consent.</p> <p>For collection system trenching during construction, the Applicant will remove topsoil prior to trenching and restore topsoil after trenching is complete. For road construction, topsoil will be removed and stockpiled in the temporary construction area. For turbine foundation installation, topsoil and subsoil will be removed, separated, and stockpiled at each turbine site. After construction, the subsoil will be compacted over the wind turbine foundation, and the topsoil will be spread on top of that. All temporary construction areas will be restored after construction, including removing gravel, decompacting subsoil, and replacing removed topsoil.</p>
1215.03.1(c)	Compaction	Section 6.3.4 Page 15	The applicant stated that they will implement measures to minimize compaction of all lands during all phases of the Project's life and will confine compaction to as small an area as practicable. All temporary construction areas will be restored after construction, including removing gravel, decompacting subsoil, and replacing removed topsoil, and the Applicant will comply with its agreements with landowners regarding compaction and restoration. All temporarily disturbed areas will be graded back to natural contours, de-compacted, and seeded as needed.

1215.03.1(d)	Livestock Protection	Section 6.3.5 Page 15	<p>The applicant stated that they will take precautions to protect livestock during all phases of the Project's life. These precautions typically involve coordinating with the landowner/tenant to ensure that livestock is either moved to an area not currently under construction or installing gates or cattle guards to prevent livestock from getting out. If a landowner's property is fenced, access roads constructed by the Applicant on the applicable property shall be gated by the Applicant at the Applicant's expense, and landowner/tenant shall be furnished with keys or other ability to open and close such gates.</p>
1215.03.1(e)	Fences	Section 6.3.6 Page 16	<p>The applicant stated that they will promptly replace or repair all fences and gates removed or damaged by its activities during all phases of the Project's life from the start of construction through operations at South Deuel's expense, unless otherwise negotiated with the affected landowner.</p>
1215.03.1(f.i)	Public Roads	Section 6.3.7 Page 16; and Figures 6 and 7	<p>Prior to commencement of construction, The applicant stated that they will identify all state, county, or township "haul roads" that will be used for the Project, shall notify the state, county, or township governing body having jurisdiction over the roads to determine if the haul roads identified are acceptable. Existing public roads in the vicinity of Project Facilities are indicated in Figures 6 and 7. Designated haul-roads will be reviewed with the local jurisdictional authority and South Deuel will negotiate in good faith to execute a road use agreement with applicable road authorities that will be used to identify suitable travel routes; traffic control measures; methods for evaluating, monitoring, and restoring roads; and mitigation measures to ensure roads used for oversize/overweight loads are properly identified, monitored, and stabilized. South Deuel will ensure that the general contractor it selects communicates with the relevant road authorities throughout the construction process, particularly regarding the movement of equipment on public roads, and complies with the terms of the potential road agreement.</p> <p>Where practical, existing roads will be used for construction and maintenance. Where practical, all-weather roads will be used to deliver cement or concrete, turbines, towers, assembled nacelles and all other heavy components to and from the turbine sites.</p>
1215.03.1 (f.ii)	Haul Roads	Section 6.3.8 Page 16	<p>Prior to the use of public roads for hauling activities related to Project construction, The applicant stated that they will make satisfactory arrangements with the appropriate state, county, or township governmental body having jurisdiction over such haul roads. As stated in Section 6.3.7, South Deuel will negotiate in good faith to execute a road use agreement that will be used to identify suitable travel routes, traffic control measures, methods for evaluating, monitoring, and restoring roads, and mitigation measures to ensure roads used for oversize/overweight loads are properly identified, monitored, and stabilized.</p> <p>The Applicant may need to improve certain public roads to ensure they are appropriate for hauling activities. All upgrades will be coordinated in advance with applicable County and township authorities. South Deuel will obtain all necessary local driveway and state road permits, and coordinate construction activities with the South Dakota Department of Transportation ("SDDOT"), Deuel County, and the affected townships to manage construction traffic and safely deliver the Project Facilities.</p>

1215.03.1(f.iii)	Turbine Access Roads	Section 6.3.9 Page 17	<p>The applicant stated that they will minimize impacts of turbine access roads. Where possible, existing public roads, private roads, and field paths will be utilized to access Project components. New access roads will also be constructed between existing roadways and Project components. Access roads will be all-weather, gravel surfaced, and generally 16 feet in width. During construction, some of the access roads will be temporarily widened to accommodate movement of turbine erection cranes and other heavy construction equipment, with temporary widths generally not exceeding 50 feet. Once the Project completes construction of the wind turbines, the roads will be reduced to a permanent width of approximately 16 feet.</p> <p>Access roads will be low profile roads so that farming equipment can cross them and shall be covered with Class 5 gravel or similar material. When access roads are constructed across streams and drainage ways, the access roads will be designed in a manner so runoff from the upper portions of the watershed can readily flow to the lower portion of the watershed. Where crossings of streams and drainageways cannot be avoided by access roads, appropriately designed crossings (i.e., culverts, low-water crossings) would be constructed to maintain existing drainage.</p>
1215.03.1(f.iv)	Private Roads	Section 6.3.10 Page 17	<p>The applicant stated that they will promptly repair all private roads or lanes damaged when moving equipment or when obtaining access to the site during construction and operation/maintenance of the Project, unless otherwise negotiated with the affected landowner.</p>
1215.03.1(f.v)	Control of Dust	Section 6.3.11 Page 17	<p>The applicant stated that they will utilize reasonable construction practices and comply with all applicable requirements of the road use agreement for control of dust. See Appendix E. For example, South Deuel will implement BMPs to minimize dust emissions during construction such as spraying the roads with water.</p>
1215.03.1(f.vi)	Soil erosion and Sediment Control Plan	Section 6.3.12 Page 17 & 18	<p>The applicant stated that they will submit a SESC Plan to the County prior to construction, as required by the Zoning Ordinance. The SESC Plan will address the erosion control measures for each Project phase, and shall at a minimum identify plans for grading, construction, and drainage of roads and turbine pads; necessary soil information; detailed design features to maintain downstream water quality; a comprehensive revegetation plan to maintain and ensure adequate erosion control and slope stability and to restore the site after temporary Project activities; and measures to minimize the area of surface disturbance. Other practices shall include containing excavated material, protecting exposed soil, stabilizing restored material, and removing silt fences or barriers when the area is stabilized. The plan shall identify methods for disposal or storage of excavated material.</p>
1215.03.2	Setbacks	Section 6.3.13 Table 3 Page 18; Section 2.5.1,2.5.2 & 2.5.3 Page 2 & 3; Figures 3, 6 & 7; Appendix G	<p>The applicant stated that they will comply with all applicable Lake Park districts, municipalities, property lines, public rights-of-way, and residences. The Project will comply with all setbacks (see Table 3 and Figures 6 and 7 for demonstrated compliance).</p>
1215.03.3	Electromagnetic Interference	Section 6.3.14 Page 19	<p>The applicant stated that they will not operate the WES so as to cause microwave, television, radio, or navigation interference contrary to Federal Communications Commission regulations or other law. In the event such interference is directly caused by the WES or its operation, the Applicant will take the measures necessary, upon proper notice, to correct the problem at its own expense.</p>

1215.03.4	Lighting	Section 6.3.15 Page 19	The applicant stated that the wind turbines will be marked in accordance with industry standards, and lighted as required and allowed by the FAA. If approved by the FAA, wind turbines will employ an ADLS to significantly reduce the amount of time the FAA lights are on. The MET towers will be marked and lighted as specified by the FAA. There will be no lights on the towers other than what is required by the FAA. Beacon lighting, unless required by FAA, will not be used. Upon commencement of construction of a tower (prior to the implementation of the ADLS system) in cases where there are residential uses located within a distance which is 300 percent of the height of the tower from the tower and when required by federal law, dual mode lighting shall be requested from the FAA.
1215.03.5	Turbine Spacing	Section 6.3.16 Page 19	The applicant stated that the turbines will be spaced no closer than is allowed by the turbine manufacturer. This will be confirmed by the manufacturer prior to construction for warranty purposes.
1215.03.6	Footprint minimization	Section 6.3.17 Page 19; Figure 9	<p>The applicant states they have designed and will construct the WES so as to minimize the amount of land that is impacted by the WES. The representative layout of up to 76 turbine locations reflects an optimal configuration for a Project within the Project Area, while demonstrating the Applicant's efforts to minimize the footprint of the Project. Compared to earlier projects with smaller nameplate turbines, South Deuel presents an opportunity to minimize the footprint on the land while generating even more energy and economic benefits.</p> <p>Project Facilities in the vicinity of turbines such as electrical/electronic boxes, transformers and monitoring systems will be, to the greatest extent practicable, mounted on the foundations used for turbine towers or inside the towers unless otherwise negotiated with the affected landowner.</p>
1215.03.7	Electric Cables	Section 6.3.18 Page 19 & 20	The applicant states they will place electrical lines, known as collectors, and communication cables underground when located on private property except for the Feeder Line, where the total distance of collectors from the substation require an overhead installation due to line loss of current from an underground installation. The purpose of these collector lines is to connect the individual turbines and transmit power to the Project Substation. The section below covers the 345-kV Feeder Line that is part of the Project.
1215.03.8	Feeder Lines	Section 6.3.19 Page 20 Figure 4	The applicant states the overhead 345-kV Feeder Line will connect the Project Substation and existing interconnection switching station. South Deuel anticipates the length of the overhead Feeder Line will be approximately 6 miles long. The overhead Feeder Line is proposed to be constructed only on leased properties. The anticipated route of the Feeder Line can be seen in Figure 4. The final route location will comply with Zoning Ordinance requirements.
1215.03(9)(a)	Decommissioning	Section 6.3.20 Page 20	The applicant states they will be responsible for covering all anticipated decommissioning costs. Within 120 days of completion of construction, South Deuel will submit to the County a Decommissioning Plan describing the manner in which South Deuel anticipates decommissioning the Project in accordance with the requirements set forth in Section 1215.09(b) of the Zoning Ordinance. In addition, as part of the SDPUC process, the SDPUC will review a Project-specific decommissioning plan and is authorized to require financial assurance(s) in accordance with Administrative Rule of South Dakota 20:10:22:33.01. South Deuel requests that the BOA approve a CUP for the Project and find that, should the SDPUC require South Deuel to provide financial assurance that the filing of proof of South Deuel's compliance with the SDPUC's requirements with the Zoning Officer is sufficient to satisfy Ordinance § 1215.03(9)(a).

1215.03(9)(b)	Site Restoration	Section 6.3.21 Page 20	When the Project is decommissioned, South Deuel will dismantle and remove from the site all Project Components including towers, turbine generators, transformers, overhead and underground cables, foundations, buildings, and ancillary equipment to a depth of 42 inches. To the extent possible, South Deuel will restore and reclaim the site to its pre-Project topography and topsoil quality. All access roads will be removed unless written approval is given by the affected landowner requesting that one or more roads, or portions thereof, be retained. Any agreement for removal to a lesser depth or for no removal shall be recorded with the County and shall show the locations of all such foundations. All such agreements between South Deuel and the affected landowner will be submitted to the County prior to completion of restoration activities. The site(s) will be restored in accordance with the requirements of this condition within 18 months after expiration of the issued permit, or upon earlier termination of operation of the WES. After decommissioning for the Project is complete, no irreversible changes to land use would remain beyond the operating life of the Project.
1215.03.10	Abandoned Turbines	Section 6.3.22 Page 21	South Deuel will notify the County of any turbines that are abandoned prior to termination of operation of the WES. The County may require South Deuel to decommission any abandoned turbines.
1215.03.11	Height from Ground Surface	Section 6.3.23 Page 21	The height from ground surface when a wind turbine blade is in fully vertical position will be a minimum of 25 feet.
1215.03.12	Towers	Sections 2.3; 6.3.24 Pages 4 & 21	The finish of the exterior surface of the towers will be non-reflective and non-glass. All towers shall be singular tubular design.
1215.03(13)	Noise	Section 6.3.25 Page 21 Appendix C	<ul style="list-style-type: none"> Applicant states that noise will not to exceed 45 dBA at the perimeter of any non-participating residences. Of the 101 non-participating residences there are 46 receptors with a dBA level exceeding 40 dBA. With the highest sound level being 44 dBA with V163-4.5 STE and 43 dba with SG 4.4-164 & GE Sierra 4.4-140 LNTE .
1215.03(13)	Flicker	Section 6.3.25 Page 21 Appendix E	<ul style="list-style-type: none"> Applicant states that flicker will not exceed 30 hours in one year at any residence. 14 Receptors total (however there are 10 – SG, 10 - Vestas and 10 – GE) expected to experience over 20 hours of flicker per year (29.59 hours is highest.) 9 are participating residences Highest non-participating receptor will experience 25:27 hours.
1215.03(14)	Permit Expiration	Section 6.5 Page 26	3 years from issuance to complete substantial construction.
1215.03(15) (a-e)	Maps and Easement Documentation	Section 6.3.26 (p26); Figure 1; Figure 2; Appendix G; Figure 3; Figure 4; Figure 5; Table 2	Proof of utility right-of-way easement for access to transmission lines not applicable: No easement for access to a transmission line is required for the project.

Powers and Jurisdiction Relating to Special Exceptions

Section	Title	Reference Page	Notes
504.1	Application Submitted	7/19/23	
504.2	Notice Published in a paper	Published 7/26/23	
504.3	Public hearing held	August 7, 2023	
504.4	Empowered to issue permit	Section 6.4 Page 22-23; Findings of Fact	Listed use, Does it meet definition of Wind Energy System?
504.5.a. and b.	Access/Parking and Internal Traffic/	6.4.1 Page 23; 6.4.2 (p23)	

504.5.c	Utilities	6.4.3 (p23)	
504.5.e	Screening, buffering, open space	6.4.4 (p25)	
504.5. f	Signs and lighting	6.4.5 (p24)	
504.5. g	Required Open Space	6.4.6 (p24)	
504.5.h	General Compatibility	6.4.7 (p24-26)	Request meets same conditions as was approved in 2017 for Deuel Harvest (North and South) and in 2018 for Crowned Ridge
504.6	Permit Expiration	6.5 (p26)	References 3 year Expiration in 1215
504.6	Prescription of Conditions	6.6 (p26)	Based upon Hearing and policies of board
504.7	Reapplication		Six month waiting period if denied

Other items:

- a. Applicant provided information regarding permanent meteorological towers. Final location is dependent upon final location of Turbines. Locations will be within Project Area, on land that is under lease and will meet County setbacks and requirements. These towers should be considered accessory with no further special exception permit necessary if within the area described in the application.
- b. Applicant agrees to submit decommissioning plan and haul road agreements as required by ordinance.
- c. Applicant agrees to obtain building permits prior to commencing construction on any towers.
- d. Applicant agrees to meet State and Federal requirements regarding permitting and interference with communications.

Staff Summary and Recommendation:

The applicant has provided documentation of its ability to meet the requirements of the zoning ordinance in reference the proposed wind energy system. The Board may attach conditions to this request provided there is a logical reason to do so. Any conditions recommended by staff are primarily references to continuing obligations of the applicant from the zoning ordinance.

Staff recommends:

Special Exception Permit – **Wind Energy Systems** - The Board may table the request, deny the request or approve the request. If approved staff recommends the following conditions be agreed to in a letter of assurance signed by the applicant(s):

- 1) Effective Date and Transferability:
 - a. Upon issuance of applicant permit by South Dakota Public Utilities Commission.
 - b. This permit shall expire if no substantial construction described within the application has occurred within three (3) years of issuance of this permit (on or before August 7, 2026.)
 - c. The Conditional Use permit is transferable. Subsequent owners/operators shall agree to the same conditions described herein.
- 2) General Requirements:
 - a. There shall be no discharge of industrial processed water on the site
 - b. Storage of petroleum products in quantities exceeding one hundred (100) gallons at one (1) locality in one (1) tank or series of tanks must be in elevated tanks; such tanks larger than eleven hundred (1,100) gallons must have a secondary containment system where it is deemed necessary by the Board of Adjustment.
 - c. Grantor shall provide the zoning office with an updated local contact information of plant supervisor with authority to implement dust control and other necessary enforcement of the conditions of this permit.
- 3) Obligation to Meet Requirements:
 - a. Applicant agrees to meet requirements of Section 1215 of the Deuel County Ordinance in reference to remaining obligations including but not limited to: submittal of Haul Road Agreements, Submittal of Decommissioning Plan, Final site location of towers, building permit application, meeting applicable federal and state requirements, and consideration of bond for abandonment/decommissioning.

4) Violation and Penalties:

- a. Violation of the terms of this Special Exception permit will be determined by the Deuel County Zoning Officer.
- (1) The first violation substantiated by the Zoning Officer of this Special Exception permit may result in a notification letter stating the violation and a prescribed period of time to remove the violation. A second violation occurring within one calendar year of the previous violation may result in a review of the validity of the Special Exception permit and potential revocation of said permit. A third violation within one calendar year of the initial violation may result in revocation of the Special Exception permit and cessation of all feeder operations within forty-five days (45) of notice of revocation.
 - (2) The applicant may make appeal from the decision of the Zoning Officer or other agent of the Deuel County Board of Adjustment to the Deuel County Board of Adjustment. The applicant shall file with the Zoning Officer a notice of appeal specifying the grounds thereof. The Zoning Officer shall forthwith transmit to the Board of Adjustment all papers constituting the record upon which the action appealed from was taken. Such appeal shall be taken within thirty (30) days. Appeals from the Board of Adjustment shall be taken to Circuit Court.
 - (3) Failure to comply with the decision of the Zoning Officer or other agent of the Deuel County Board of Adjustment may be deemed a separate violation.

Public Copy - Do Not Take